

# Social Security Protection for Unorganised Sector Workers in India: Myth & Reality

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## **Abstract:**

India, being a Welfare State, has taken upon itself the responsibilities of extending various benefits of Social Security and Social Assistance to its citizens deriving their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India.

The unorganized sector in India comprises roughly 93% of the population. Only 7% were in the organized sector having access to statutory social security benefits. The remaining workforce had been socially excluded. The unorganized sector contributes over 60% of the country's GDP to the national prosperity; yet, workers in this sector do not have access to sufficient and reliable social security.

Several and successive attempts have been made to address the multifarious problems faced by the workers in the unorganized sector through legislative as well as programme oriented measures. Even though these measures have not succeeded in achieving the desired object partly on account of the ignorance, illiteracy and lack of unionization of workers on the one hand and the resource constraints of the State on the other, some of the programmes have provided a good setting through which the hopes and expectation of the workers in the unorganized sector have been considerably aroused.

Substantive labour standards need to be enacted to provide a floor of rights for all workers. This may include minimum wages, maximum hours of work, social and income security, health security and so on. In the present paper an attempt has been made to understand the nature and growth of unorganized workers, the initiatives of social security towards unorganized workers and to highlight the needs of the unorganized workers on social security aspects.

**Key words:** Social Security, Unorganized Sector, Legislative Measures, Policy.

## **I. Introduction:**

Modern governments are committed to promote the welfare of its citizens and in the process, therefore, a number of initiatives have continued to be undertaken over time to protect them from various calamities and contingencies of life. The net of material welfare of the state has thus widened in an effort to ensure a minimum standard of life for its citizens. However, in this race relatively less developed countries like India have lagged behind in the absence of availability of adequate employment opportunities. The organized sector of the economy has not been able to absorb the increasing labour force with the increasing size of the population. Under such a situation, the unorganized sector plays a dominant role in providing employment opportunities to a significant portion of the labour force. The nature of employment in the unorganized sector, by and large, is of

contractual type as the element of uncertainty continues to be very high in the absence of any suitable legal framework. The workers, therefore, suffer from income insecurity, occupational insecurity and natural insecurity.

Although the Constitution of India is yet to recognize Social Security as a fundamental right it does require that the State should 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 national life.

Article 41 of the Constitution requires that the State should within the limits of its economic capacity make effective provision for securing the right to employment, education and public assistance in case of unemployment, old age, sickness and disablement. Article 42 requires that the State should make provision for securing just and humane conditions of work and for maternity relief. Article 47 requires that the State should raise the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties. The obligations cast on the State in the above Articles constitute Social Security. Social security is the security that the State furnishes against the risk which an individual of small means cannot, today, stand up to by himself even in private combination with his fellows.<sup>1</sup>

## II. Unorganized Sector Workers: Meaning

The so-called unorganized sector has not been defined anywhere scientifically. Nor was there any serious attempt to define this word or phrase. However, this term was used to speak of availability or non-availability of certain benefits or rights to the working class outside the organized sector. Sometimes this sector is also termed as informal sector. The First National Labour Commission has however tried defining this term to some extent for the purpose of their report. We may use the same analogy for our understanding. The commission opined “the group of workers, who cannot be defined by definition but could be described as those who have not been able to organize in pursuit of a common objective because of constraints such as:

- Casual nature of employment
- Ignorance and illiteracy
- Small size of establishments with low capital investment,
- Scattered nature of establishment, and.
- Superior strength of employer operating singly or in combination.

This definition or analogy of the First National Labour Commission will help us understand what the unorganized sector is. Therefore based on this we can identify the workforce with the above attributions in:

- Agriculture
- Contract labour including construction workers & Workers in tanneries
- Casual labour

<sup>1</sup> V.V. Giri, Labour problems in India, 3<sup>rd</sup> Revised edition, Asia Publishing House, New Delhi, 1973 p. 247

- Labour employed in small-scale industry
- Handloom and power loom workers
- Bidi and cigar workers
- Employees in shops and establishments
- Sweepers and scavengers and

Domestic servants and other workers who do not fall under any of the above category but earn their livelihood by manual work and those self employed & not the masters of any other employees also form part of these unorganized work force. The social security programs designed for the work force should be so formed that they should go beyond any definition; however, for financing constraints, these definitions are necessary, and identification of the richest among the poor would become easier.<sup>2</sup>

### III. Importance of Unorganised Sector In Indian Economy:

The results of the Survey of the National Sample Survey Organization (NSSO), carried out in 1999-2000, revealed that out of a total workforce of 397 million, only 28 million (7%) workers are employed in the organized sector and the remaining 93% are employed in the unorganized sector. The Survey also revealed that over a decade, employment in the organized sector has been almost stagnant or has slightly declined.<sup>3</sup>

The unorganized sector, therefore, has been playing a vital role in providing employment in the economy. It is estimated that the contribution of the unorganized sector to the Net Domestic Product and its share in the total NDP at current prices is over 60%. It accounts for over 40% of our exports. In terms of savings also, its share in the gross domestic savings is significant.

In view of the importance of the unorganized sector in the Indian economy, it is not only desirable but essential that the workers in this sector, whose employment is of a contractual character plagued with uncertainty, should be given due protection by the state. It is, however, unfortunate that this large segment of the workforce has continued to be neglected.

Thus unorganized sector has a crucial role in our economy in terms of employment and its contribution to the National Domestic Product, savings and capital formation. At present Indian Economy is passing through a process of economic reforms and liberalization. During the process, merger, integration of various firms within the industry and up gradation of technology and other innovative measures take place to enhance competitiveness of the output both in terms of cost and qualitative to compete in the international market. The low inefficient units either wither away or merge with other ones performing better. In this situation, there is a special need to take care of the interests of the workers by providing them training, upgrading their skills, and other measures to enable them to find new avenue of employment, improve their productivity in the existing employment, necessary to enhance the competitiveness of their product both in terms of quality and cost which would also help in improving their income and thereby raising their socio economic status. It has been experienced that organized sector could not provide adequate opportunities to accommodate the workforce in the

<sup>2</sup> Report of the National Commission on Labour, 1969 p.162

<sup>3</sup> Unorganized Labour (2004-05), Annual Report, Government of India.

country and informal sector has been providing employment for their subsistence and survival. Keeping in view the existing economic scenario, the unorganized sector will expand further in the years to come. Thus, it needs to be strengthened and activated so that it could act as a vehicle of employment provider and social development.

#### **IV. The Major Characteristics of the Unorganized Workers:**

The following are some of the characteristic of unorganized workers, namely

1. The unorganized labour is overwhelming in terms of its number range and therefore they are omnipresent.
2. As the unorganized sector suffers from cycles of excessive seasonality of employment, majority of the unorganized workers does not have stable durable avenues of employment.
3. The workplace is scattered and fragmented.
4. There is no formal employer – employee relationship
5. In rural areas, the unorganized labour force is highly stratified on caste and community considerations.
6. Most unorganized sector workers are migrant workers.
7. Workers in the unorganized sector are usually subject to indebtedness
8. The unorganized workers are subject to exploitation significantly by the rest of the society.
9. The unorganized workers do not receive sufficient attention from the trade unions.
10. Inadequate and ineffective labour laws.

#### **V. Application of Labour Laws to the Unorganized Sector: A Review**

Since labour laws by and large have been enacted to meet the need to regulate labour relations in the organized sector with a determinate and relatively stable employer –employee relations in those days, they are hardly applicable to unorganized sector with fuzzy and temporary employer-employee relationship at best. Even when they are made applicable, they cannot be effectively implemented. Moreover, most pieces of labour legislation appear to keep most enterprises and most workers outside the ambit of law with the help of some number and wage filters. Hardly any enterprise in the unorganized sector can come within the purview of these laws.

Most Indian labour laws use number filters and/or wage filters to exempt some enterprises from the applicability of the law. Industrial Disputes Act, 1947 lays down the procedures for the settlement of industrial disputes. It is procedurally applicable to all enterprises for the settlement industrial disputes. However, really protective clauses for the workers pertaining to layoffs, retrenchment and closure are contained in Chapter VA and Chapter VB. But even a cursory look at this chapter will convince anyone that the restriction does not apply to any firm employing less than 50 persons. It's most contentious sections in Chapter VB do not apply to any industry employing less than 100 persons.

Industrial Employment (Standing Orders) Act 1946 does not apply to any enterprise employing less than 100 workers.<sup>4</sup> The Factories Act provides for the health, safety, welfare and other aspects of workers while at

<sup>4</sup> Industrial Employment (Standing Orders) Act 1946 Sec 1

work in the factories. Under this Act, an establishment with 10 people (and electricity connection) is a factory. But the provisions of crèches is to be provided if 30 or more women are employed; provisions of a rest room is mandatory only if there are 150 or more persons employed; provisions of canteen is mandatory only if there are 250 or more persons employed; and the provisions for ambulance, dispensary, medical and Para-medical staff is mandatory only if there are 500 or more persons employed.

While Minimum Wages Act applies to all establishments, the Payment of Wages Act applies only to Factories and to workers drawing wages less than 1600 Rs. per *mensem*. The Payment of Bonus Act, 1965 is applicable to an enterprise employing 20 or more persons.<sup>5</sup>

The Plantation Labour Act, 1951 is the most blatant manifestation of legislative perversity in regard to labour in so far as it simply defines out of its definition of a worker any employee who happens to receive more than 750 Rs. per month as wages. Even the poverty level minimum wage that is fixed makes the workers non-workers and hence not entitled to benefits under the Act.

Employees Provident Fund and Miscellaneous provisions Act, 1952 leave out all employers employing less than 20 workers<sup>6</sup> while Employees State Insurance Act does not affect those firms employing less than 20 workers.

Even the Maternity Benefit Act, 1961 does not apply to any establishment employing less than 10 employees.<sup>7</sup> Since nearly 97% of unorganized sector enterprises employ less than 10 workers, they are hardly affected by labour laws except by the Minimum Wages Act and marginally by the Industrial Disputes Act. Since their workers are not unionized, the industrial disputes in the normal sense do not crop up in these enterprises. The only disputes that crop up relate to individual disputes that pertain to termination of service. And these disputes are conciliated and adjudicated for statutory rights and natural justice.

Among the major pieces of labour legislation the Industrial Disputes Act 1947 sans chapters VA and VB, Trade Unions Act, Minimum Wages Act, Equal Remuneration Act and Shops and Establishments Act are some of the labour laws that apply to unorganized sector.

Trades Union Act 1926 allows workers to form trade unions and obtain immunities from criminal and civil liabilities for genuine trade union activities. It goes without saying that trade unions can only effectively play their role by controlling supply of labour that militates against the free play of market forces. Hence it does create rigidity in the labour market in the neoclassical perspective. Industrial Disputes Act provides mechanism for the resolution of industrial and individual disputes mainly through adjudication. This may be said to come in the way of the freedom of the employers to hire and fire. But in the absence of the organization of labour in this sector these laws do not operate effectively to talk of rigidities arising from it. Minimum Wages Act is the only wage law that has been enforced to some extent in this sector. Since most enterprises in the unorganized sector are self-employment, it affects the minority of unorganized sector enterprises that employ wage labour.

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<sup>5</sup> Payment of Bonus Act, 1965

<sup>6</sup> Employees Provident Fund and Miscellaneous provisions Act, 1952 Sec 1(3)

<sup>7</sup> Maternity Benefit Act 1961 Sec 2

All these pieces of legislation and associated laws are not applicable to the unorganized sector. Hence a piecemeal approach of labour reforms will not protect the interest of this sector. Why such essential needs of employees should depend upon the number of employees in a factory is simply incomprehensible to a normal mind. The appropriate mechanisms of provisioning such needs may have to be designed, but the dire necessity of these welfare facilities to a worker irrespective of the employment size of the enterprise cannot humanly be wished out of existence by legislative perversity.

#### **VI. Social Security Programs Presently Available for the Unorganized Sector:**

In India the term social security is generally used in its broadest sense, it may consist of all types of measures preventive, promotional and protective as the case may be. The measures may be statutory, public or private. The term encompasses social insurance, social assistance, social protection, social safety net and other steps involved.

In India, the organized sector, which accounts for about 7% of the total workforce, benefit from a fair minimum standard of social security. The provisions of social security for organized workers are mainly protective in nature and are ensured through a legal framework and institutional infrastructure created under enabling legislations such as the Employees State Insurance Act, 1948 and the Employees Provident Fund and Miscellaneous Provisions Act, 1952. In contrast to this, the social security arrangements for vulnerable poor in general and informal workers in particular have been very minimal. For instance, rough estimates shows that only less than 3% of unorganized sector workers are covered by some social security measures. Nonetheless, the government and other societal institutions have launched various social security programmes to meet the basic subsistence needs and contingencies of the poor and informal sector workers.

For instance, The Minimum Wages Act, 1948 directs both the Central and State Governments to periodically notify the minimum wage rates for various categories of informal labour. The other important legislations, which have some bearing on the welfare of unorganized sector workers include: Bonded Labour System (Abolition) Act, 1976, Payment of Wages Act, 1936, Employees State Insurance Act, 1948, Maternity Benefit Act, 1961, Personal Injuries (compensation Insurance) Act, 1963, Payment of Gratuity Act, 1972, Workmen's Compensation Act, 1923, Plantation Labour Act, 1948, Employees Provident Fund and Misc. Provisions Act, 1976, Inter-state Migrant Workmen (RECS) Act, 1979 and Child Labour (Prohibition and Regulation) Act, 1986. However, all these Acts are either benefiting to select organized segments of the unorganized workforce or mostly with certain limited enabling provisions. Further, it is generally understood that the above acts have not been able to adequately address the social security concerns of the workers in the informal sector or to provide them any specific welfare measures.

There are number of models of providing social security to the workers in the unorganized sector. These may be classified as under:

## 1. Centrally funded social assistance programmes:

The social assistance programmes constitutes a varieties of measures such as food-based transfer programmes, income transfer programmes and cash-transfer programmes.

### a) Food-based transfer programmes:

The food based social safety nets are designed to ensure livelihoods and adequate consumption, relieve deprivation and improve nutritional status of the poor and vulnerable sections of the population. The centrally funded social assistance programmes include the employment oriented poverty alleviation programmes such as Swarnjayanti Gram Swarozgar Yojana, Jawahar Gram Samridhi Yojana, and Employment Assurance Scheme. National Social Assistance Programme (NSAP) comprising old age pension, family benefit and maternity benefits to address the social security needs of the people below poverty line.

The Public Distribution System (PDS) is the key component in the overall food security arrangements in the country. Over the years, the PDS has played an important role in moderating open market prices and ensuring food security at the household level by providing food grains and other essential prices at lower prices.

### b) Income transfer programmes:

Income transfer programmes in India basically include the labour-based public works and infrastructure programmes (or workfare programmes) to promote rural and urban livelihoods. The first such scheme was started in early 1960 in the form of Rural Works Programme largely due to recognition of the fact that growth alone could not take care of poverty. Subsequent to this, a number of wage employment programmes such as Food for Work Programme (FFW-1977), Jawahar Rozgar Yojana (JRY), Sampoorna Gram Swarozgar Yojana ((SGRY), Jawahar Gram Samridhi Yojana (JGSY), Employment Assurance Scheme (EAS), Pradhan Mantri Gram Sadak Yojana (JGSY), Food for Work Programme for Calamity Hit States (FFW-2002) and so on were initiated from time to time.

### c) Cash transfer programmes:

Among the cash transfer programmes in the social security front, which are equally applicable to the workers in the agricultural workers National Social Assistance Programme (NSAP) are prominent. NSAP, which is a social security programme for the welfare of poor households, has three components such as National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS) and National Maternity Benefit Scheme (NMBS).

## 2. Social Insurance Schemes:

Another major category of social protection in India for unorganized sector labour (and thus for agricultural labour) is the social insurance schemes, which are meant to improve ability of the poor individuals and households to resist sudden shocks or losses caused by social and other contingencies. The two major generic schemes under this are the Janshree Bima Yojana (JBY), 2000 and the Universal Health Insurance Schemes (UHS), 2004. While the former envisages life insurance protections to persons between 18-60 years old, living below or marginally above poverty line in rural areas, the latter assures hospital care to poor persons

and families. Other centrally sponsored schemes that benefit agricultural labourers are 'Personal Accident Insurance Scheme for Poor Families' and 'Group Insurance Scheme for Landless Agricultural Labourers'. Another group insurance scheme for the agriculture landless labour, 'Krishi Shramik Samajik Suraksha Yojana-2001' launched in July, 2001 provides for pension and insurance besides providing money back. The contribution of the beneficiary is Rs.1 per day while the Government contributes is Rs. 2/- per day.

### 3. Welfare Funds:

The Central Government through the Ministry of Labour and Employment operates five Welfare Funds for beedi workers, limestone & dolomite mine workers, iron ore, chrome ore & manganese ore mine workers, mica mine workers & cine workers created under the following Acts:

- a) The Mica Mines Labour Welfare Fund Act (1946),
- b) The Lime Stone and Dolomite Mines Labour Welfare Fund Act (1972),
- c) The Iron Ore, Manganese Ore and Chrome Ore Mines Labour Welfare Fund Act (1976),
- d) The Beedi Workers Welfare Fund Act (1976), and
- e) The Cine Workers Welfare Fund Act (1981).

All above funds are financed out of proceeds of cess levied on manufactured beedis, export of mica, consumption of limestone & dolomite and consumption and export of iron ore, manganese ore and chrome ore and feature films respectively.

The Welfare funds are utilized to implement welfare schemes for these workers in areas of housing, health & medical care, education to the children and recreational facilities to workers.

Moreover, the welfare fund model has successfully been implemented by various States for various categories of workers. The State of Tamilnadu is running 11 Welfare Boards for workers like construction workers, truck drivers, footwear workers, handloom and silk weaving workers. Similarly, State of Kerala is also running several welfare funds for agricultural workers, cashew workers, coir workers, fisherman, toddy-tappers etc. The model is so popular that some of the other States like Andhra Pradesh, Karnataka and Madhya Pradesh are in the process of bringing out their own legislation for creation of welfare funds in the unorganized sector workers for providing them social security.

### 4. Public initiatives:

Several public institutions and agencies are also imparting various kinds of social security benefits to the selected groups of workers. Among these Self Employed Women's Association (SEWA) has made significant achievement in promoting social security through the formation of cooperatives.

**Self-Employed Women's Association (SEWA):** SEWA a women's organization, is promoting social security through the formation of co-operatives. It aims to provide need based services to the women on demand and on payment of affordable charges. An Integrated Insurance Scheme introduced by SEWA for its members, offers several benefits for a consolidated premium of Rs.45/- per annum. While SEWA itself provides some of the benefits, it also works as a nodal agency to get cover under various policies separately for specific benefits



from different insurance companies. The risk covered includes health costs upto Rs.1000/-, maternity benefit of Rs.300/- and payment of varying amounts upto Rs.10,000/- in case of natural or accidental death including disablement of the member or her husband. The total coverage of SEWA social security scheme is about 50,000 women.

**Working Women Forum (WWF):** The Working Women's Forum India (WWF) selects and trains women cadres from the poorer neighbourhood communities to perform marketable skills in the field of health care to the poor as advocates at the grassroots. The health care system of WWF has impacted a population of about 1 million in 720 slums and 340 villages through 960 health cadres from the grassroots. Further about 5 lakh members are covered under the social security scheme for insurance for life, full/partial disability, accidents and crisis management towards rehabilitation during natural calamities. A Health Insurance Programme provides maternity benefits, reimbursement of hospitalization expenses etc., and also organizes preventive health check-ups.

### VII. Legislative Initiatives on Social Security

In 1996, two umbrella legislations towards regulating the conditions of work and provision of a measure of social security to the group of construction workers, which constitutes one of the largest segments of workers in the unorganized sector – were passed by the Parliament of India. On the basis of The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 & The Building and Other Construction Workers Welfare Cess Act, 1996, various states are expected to enact state level legislations. Subsequently, the Government notified the Building and Other Construction Workers Central Rules, 1998, which stipulated several social security benefits to the construction workers including accident relief, old age pension, housing loans, payment of insurance premium, payment towards educational expenses of children, medical and maternity benefits and so on. Following these Acts, various state governments are currently in the process of enacting their own legislations. So far, six states have enacted such legislations and functioning of the new schemes under these legislations have been attaining momentum in states like Kerala and Tamil Nadu.

The Second National Commission on Labour (NCL), constituted by the Government in 1999 dealt with the social security concerns of unorganized sector in a detailed manner. One of the six special study groups constituted by the commission was on social security and in its final report submitted in 2002, the Commission provided detailed recommendations towards strengthening the social security system in the country. In response to the Commission's recommendations, Government launched the 'Unorganized Sector Workers' Social Security Scheme, 2004' on pilot basis in 50 districts. The scheme envisages three benefits i.e. old age pension, medical insurance and personal accidental insurance. However, the scheme was not found viable as it had no statutory backing, it was voluntary in nature and the contribution from the employers was not forthcoming.

The present Central Government also continues to uphold the priority attached to social security issues, and in its Common Minimum Programme (CMP), *inter alia*, recognized as one of its basic principles of

governance the need to “enhance the welfare and well being of farmers, farm labour and workers, particularly those in the unorganized sector and assure a secure future for their families in every respect”.

Two other recent legislative initiatives of Government of India also require special mention in the ongoing discussion, as they undoubtedly act as promotional and enabling measures towards the realization of social security to the informal sector. The first one, the National Rural Employment Guarantee Act (NREGA), 2005 is a step towards legal enforcement of the right to work, as aspect of the fundamental right to live with dignity. The NREGA, 2005 ensures at least 100 days of guaranteed wage employment in a year to at least one adult member of very household. The work is to be provided within 15 days of demanding it and to be located within five kilometers distance. The salient features of the NREGA include the self-selection characteristics and the unemployment compensation to be paid by the government, in case the required minimum employment could not be provided. It is expected that the efficient implementation of the provisions of this act would enhance the social security levels and reservation income of the rural labour households, besides bringing in a rise in the rural wage levels across the country.

From time to time, the Government of India has carried out various programmes like, ‘Aam Admi Bima Yojana’, ‘National Old Age Pension Scheme’ and ‘Health Insurance Scheme’. The National Common Minimum Programme (NCMP) of the present Government highlights the commitment of the Government towards the welfare and well being of all workers, particularly, in the unorganized sector.

The ‘Unorganized Workers Social Security Act, 2008’, provides for protecting the interests of unorganized workers and setting up of Welfare Boards/Funds by way of contribution of workers, employers and the Government and formulation of social security schemes in the area of health care, insurance cover and old age pension etc.

### **VIII. Conclusion:**

There is a broad consensus among social policy experts, planners and administrators that every member of the society should have a minimum level of social protection. Social Security is an integral part of human development and social progress. The fundamental aim of social security is to give individuals and families the confidence that their level of living and quality of life will not, in so far as possible, be greatly eroded by any social or economic eventuality.

Indian government as well as civil society has been venturing into alternative strategies and mechanisms for universalisation of social security programmes for its citizens. These initiatives need a closer look from the perspective of their feasibility, affordability, outreach, sustainability and effectiveness.

Some of these interventions and initiatives though require further refinements and proper enforcement, invite more informed discussions at the national and international level. A welcome aspect of these new initiatives is the visible efforts of the government towards designing and implementing right-based social security systems, along with enabling governance structures, which *inter alia* seek more participation from all other stakeholders, including the targeted beneficiaries themselves.