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# Social Security for the Unorganised Sector Workers in India

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## ABSTRACT

*The right to social security has been widely recognised as a basic human right. Many international and regional instruments have laid down a particular set of guidelines which emphasise the protection of this right to all the individuals, including those in unorganised sectors. As of 2021-2022, the total number of people working in the unorganised sector was around 43.99 crores, i.e roughly around 93% of the population of India was working in the unorganised sector. Although the workers in this sector make a significant contribution to the national wealth, they do not have sufficient and reliable access to social security.*

*While the Indian government has adopted a whole range of labour and welfare policy initiatives that aim to extend the scope of social security benefits to unorganised sector workers in the country, their coverage remains rather limited.*

*This paper highlights the concept of social security vis-à-vis the unorganized sector workers, drawing on viewpoints based on international and regional frameworks, constitutional provisions in India, and the present framework on social security. It further deals with the current and emerging challenges of these workers, along with recommendations for improvement. The article insists on comprehensive changes that need to be made to assure economic and social justice for this helpless part of the population.*

**Keywords:** *Unorganised sector, Social Security, Informal workers.*

## I. INTRODUCTION

The Indian labour market has been, and continues to be, predominated by the existence of a vast majority of informal or unorganised labour employment.<sup>3</sup> As per the Economic Survey conducted in 2021-2022, the total number of people working in the unorganised sector was around 43.99 crores, i.e roughly around 93% of the population of India was working in the unorganised sector.<sup>4</sup> Although the workers in this sector make a significant contribution to the

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<sup>3</sup> Addelli Ravinder, A Study on Employment and Social Security Policy Approaches in Urban Informal Sector, 13 *Journal of Exclusive Management Science* 1, (2024).

<sup>4</sup> Government of India, Report: *Number of Workers In Unorganised Sector (Ministry of Labour & Employment, 2023)*.

national wealth, they do not have sufficient and reliable access to social security.<sup>5</sup>

These workers are either covered inadequately or not at all covered under the existing labour legislations, social protection schemes, and other employment benefits. As a result, India is amongst the 10 worst countries in terms of workers rights according to the International trade union confederation, conducted in 2020.<sup>6</sup> While the Indian government has adopted a whole range of labour and welfare policy initiatives that aim to extend the scope of social security benefits to unorganised sector workers in the country, their coverage remains rather limited.<sup>7</sup>

## II. UNDERSTANDING SOCIAL SECURITY AND UNORGANISED SECTOR WORKERS

The idea of social security is not alien to the modern world; it has been there ever since the inception of human civilisation in one or the other form.<sup>8</sup> In primitive society, protection from earthquakes, famines, and other natural disasters was taken care of by society itself. However, state intervention was required during the industrial revolution when new and varied needs emerged among the industrial workers.<sup>9</sup> As a result the concept and definitions of social security have been evolved to meet the emerging needs of the society. Today, it is regarded as a basic human right. However, the nature and implementation of social security differ from country to country, depending on the prevailing economic condition, political system, and overall cultural values.<sup>10</sup>

The foundation for social security was laid down by the Sir William Beveridge committee in 1942 which aimed at reducing inequality and preventing poverty by guaranteeing citizens a sufficient income to meet their responsibilities. It defined social security as a system which ensures the replacement of the income during unemployment, sickness, or retirement, and support in times of birth, death, or marriage. The Beveridge report argued that there were ‘five giants’ that were stalking the land and that should be tackled. They are want, disease, ignorance, squalor and idleness.<sup>11</sup>

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<sup>5</sup> D. Rajasekhar, "Social Security for Unorganised Workers in India: Status and Issues," 5 *The India Economy Review* 124 (2008).

<sup>6</sup> Riya Gupta, "Social Security Act of 2020: A Significant Step Towards Universalizing Social Protection for India's Working Class Social Protection as a Prerequisite for Sustainability Development," 13 *Res Militaris* (2023)

<sup>7</sup> Mridusmita Bordoloi et al., *Social Security for Informal Workers in India: Exploring India's Labour Market Policies on Provisioning of Social Security to Informal Workers in the Unorganised Sector*, Accountability Initiative, Centre for Policy Research (2020).

<sup>8</sup> Shilpa Shivangi, "Impact of Social Security on Economic Growth in India", 1 *NUJS Journal of Regulatory Studies* 156 (2017).

<sup>9</sup> Ashima Majumdar & Saundarjya Borbora, Social Security System and the Informal Sector in India: A Review, 48 *Economic and Political Weekly* 69-72 (2013).

<sup>10</sup> P, Balamurugan, *Social security for workers in unorganised sector with special reference to women workers problems and perspectives* (2015) (Unpublished Ph.D. dissertation, Tamil Nadu Dr. Ambedkar Law University)

<sup>11</sup> Parliamentary Archives, *Social Insurance and Allied Services (Beveridge Report)*, Cmd. 6404 (1942).

A systematic attempt was made by the International Labour Organisation (ILO) in defining social security. ILO defines social security as follows:

*“The security that society furnishes, through appropriate organisation, against certain risks, to which its members are exposed. These risks are essentially contingencies against which the individuals of small means cannot effectively provide by his own ability or foresight alone or even in private combination with fellows”.* These risks include sickness, maternity, invalidity, old age and death. It is the characteristics of these contingencies that they imperil the ability of the working man to support himself and his dependents in health and decency.<sup>12</sup>

In India, the term social security is used in its broadest sense, which may consist of all types of measures encompassing social assistance, social safety nets, social insurance, micro-insurance or “insurance for the poor,” social protection, and any other preventive, promotional or protective measures.<sup>13</sup>

The working group on social security for the Twelfth Five-Year Plan of India defines social security as ...essential for the well-being of the people and society. It is a basic human right (though not one of the constitutional fundamental rights), and its fulfilment will contribute to achieving various development goals of the nation.

Despite remarkable achievements, the social security provisions of India remain confined to the formal sector in general. This becomes a challenge as a large section of the workforce belongs to the unorganised sector. It is this policy gap that needs to be addressed if comprehensive social protection is to be ensured.

Before exploring the current state of social security in the unorganised sector and the hurdles associated with its implementation, it is essential to understand who these workers are and the challenges they face.

The term 'unorganised' is often used interchangeably with the term 'informal', or employment in the informal sector. Strictly speaking, 'informal' is used to denote those forms of enterprise that are not governed by any legal framework.<sup>14</sup>

The first National Commission on Labour, chaired by Justice Gajendragadkar, defined the unorganised sector as workers who are unable to organise due to factors such as casual

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<sup>12</sup> T.R. Subramanya, *The Role of International Labour Organisation in Ensuring Social Security: An Assessment*, available at <https://www.nujs.edu/wp-content/uploads/2022/11/File-7.pdf> (last visited Sept. 10, 2024).

<sup>13</sup> Ambalika Sinha & Divya Sharma, Social Security for Upliftment of Unorganized Sector: A Relook, 4 *New Man International Journal of Multidisciplinary Studies* 194 (2014).

<sup>14</sup> Dipankar Debnath, Way Forward for Empowering of Unorganized Workers in India: A Review of the Unorganised Workers Social Security Act, 2008, *Indian Journal of Law and Justice* (2014).

employment, illiteracy, small size of establishments, low capital investment per person, scattered nature of establishments, and employer strength.<sup>15</sup>

Workers in this industry often lack collective representation, making it difficult for them to advocate for their rights and interests. This lack of organisation is the root cause of their ongoing problems.

Unorganised workers in India face a range of challenges and issues, some of which include:

- Most unorganised workers in India do not have access to social security programs such as health insurance, pensions, or maternity benefits.
- These workers often receive low pay and inconsistent income, making it challenging for them to budget and save for emergencies.
- They frequently work in dangerous environments without sufficient safety equipment or protective apparel. This can result in accidents at work and injuries.
- They are vulnerable to exploitation by employers who may not pay them fair wages or provide them with decent working conditions.
- They are usually employed on a temporary or contract basis, with no job security or benefits.
- These workers often have limited access to education and training, which can make it difficult for them to acquire the skills they need to secure better-paying jobs.

These issues have serious consequences for the well-being and livelihoods of unorganised workers, who make up a significant portion of India's workforce. To address these concerns, policy interventions should focus on providing social safety, improving working conditions, and increasing access to education and training.<sup>16</sup>

While India is trying to bridge the gap in social security for its unorganised sector it is essential to discuss the global context and various international commitments on the right to social security.

### **III. RIGHT TO SOCIAL SECURITY UNDER INTERNATIONAL AND REGIONAL INSTRUMENTS**

The right to social security has been widely recognised as a basic human right.<sup>17</sup> Many

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<sup>15</sup> Report On National Commission on Labour 1969.

<sup>16</sup> Anurag Sahoo, *A Study on the Prospects and Problems of Unorganised Sector in India*, 6 *International Journal of Law Management and Humanities*. 23-25 (2023).

<sup>17</sup> Supra Note 10

international and regional instruments have laid down a particular set of guidelines which emphasise the protection of this right to all the individuals, including those in unorganised sectors. These standards provide guidelines not only for national policymaking but also aim at ensuring access to social security to all, irrespective of their employment or socio-economic background.

The International Labour Organisation has made groundbreaking contributions to the field of social security. Since its inception, the ILO has worked to set standards with the purpose of extending social security benefits to a larger number of people in a greater range of conditions. The Philadelphia Declaration acknowledges the ILO's solemn commitment to promoting programs among global nations aimed at "*extending social security measures to provide a basic income to all in need of such protection and adequate medical care.*"<sup>18</sup>

Furthermore, the Universal Declaration of Human Rights (UDHR) is viewed as progressive in terms of providing social and economic benefits to the general public.<sup>19</sup> Article 22 of the UDHR addresses social security. It states that "*everyone, as a member of society, has the right to social security and is entitled to the realisation, through national effort and international cooperation, and in accordance with each State's organisation and resources, of the economic, social, and cultural rights necessary for his dignity and the free development of his personality.*".

Following this initiative, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) acknowledged social security as a right.<sup>20</sup> Apart from these, the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>21</sup> International Convention on the Elimination of All Forms of Discrimination Against Women,<sup>22</sup> Convention on the Rights of the Child,<sup>23</sup> and International Convention on the Protection of the Rights of All Migrant Workers and their Families<sup>24</sup> contain several provisions on social security to be provided to the target groups as needed by the Conventions.

The recognition of social security as a right is further reflected in a number of regional human

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<sup>18</sup> Md. Shoaib Alam, Social Security of Labour in India in a New Economic Reform, *International Journal of Law Management and Humanities* 16-43 (2023).

<sup>19</sup> Ishwara Bhat & Shuvro Prosun Sarker, Constitutional Dimensions of Social Security Laws in India, 1 *NUJS Journal of Regulatory Studies* 82 (2017).

<sup>20</sup> International Covenant on Economic, Social and Cultural Rights, art. 9, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>21</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iv), Dec. 21, 1965, 660 U.N.T.S. 195.

<sup>22</sup> Convention on the Elimination of All Forms of Discrimination Against Women, arts. 11(1)(e), 14(2)(c), Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>23</sup> Convention on the Rights of the Child, arts. 26, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>24</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 27, Dec. 18, 1990, 2220 U.N.T.S. 3.

rights instruments. The American Declaration on the Rights and Duties of Persons (1948),<sup>25</sup> the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (1988),<sup>26</sup> and the Inter-American Convention on the Protection of the Human Rights of Older Persons (2015)<sup>27</sup> all recognise the right to social security. This kind of development of the right to social security from international to regional mechanisms demonstrates its universality and places an obligation on states to uphold laws that guarantee and promote social security.<sup>28</sup>

#### IV. CONSTITUTIONAL MANDATE FOR SOCIAL SECURITY IN INDIA

In India, the right to social security is deeply embedded in the constitutional framework. The Indian Constitution serves as the basis for labour jurisprudence across the country. It guarantees various rights to its residents, including the right to form unions, freedom of speech and expression, protection from forced labour, protection from child labour, equal pay for equal work, the right to adequate working conditions, and maternity leave. While some of these are fundamental rights, such as the right to organise a union, freedom of speech and expression, and the right against forced labour and child labour, are justiciable, others are not.<sup>29</sup>

Further, the Seventh Schedule of the Constitution specifies how legislative powers are distributed between the federal and state legislatures on certain issues. List III (Concurrent List) contains the majority of labour-related topics. These include maternity benefits, employer liability, workers' compensation, invalidity, and old-age pensions; social security and social insurance; employment and unemployment; labour unions; industrial and labour conflicts; and provident funds. Since the majority of labor-related subjects are on the Concurrent List, Parliament has enacted labour laws in most of these fields.<sup>30</sup>

The Supreme Court in *Bandhua Mukti Morcha* case,<sup>31</sup> observed that with respect to the Directive Principles of State Policy under the Indian Constitution, both the Central and State Governments must ensure that social welfare and labour laws passed by Parliament are followed in order to provide workers with a life of dignity as human beings. Further, in the *D.*

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<sup>25</sup> American Declaration on the Rights and Duties of Man, art. XVI, May 2, 1948, O.A.S. Res. XXX

<sup>26</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, art. 9, Nov. 17, 1988, 28 I.L.M. 156. Also known as the "Protocol of San Salvador," it explicitly guarantees the right to social security.

<sup>27</sup> Inter-American Convention on the Protection of the Human Rights of Older Persons, art. 12, June 15, 2015, O.A.S.T.S. No. A-70.

<sup>28</sup> Supra note 19

<sup>29</sup> Supra note 14

<sup>30</sup> Naveen Talawar, "Labour Laws in India," iPleaders (May 19, 2020), <https://blog.ipleaders.in>.

<sup>31</sup> *Bandhua Mukti Morcha vs Union Of India & Others*, 1984 AIR 802

S. Nakara case,<sup>32</sup> it was observed that the major purpose of a welfare state is to eliminate gaps in income and living standards, and socialism must offer a suitable quality of living for all residents, with a focus on security from birth to death.

In this backdrop, the constitutional mandate assumes great significance with respect to labor rights. These Directive Principles act as guiding principles for both the central and state governments to look after the welfare of workers and weaker sections of society. These provisions not only emphasise economic justice but also bring to light the moral obligation of the state in saving its citizens from exploitation, unemployment, and deprivation.

When it comes to law relating to labour, Articles 38, 39, 41, 42, and 43 are particularly essential since they serve as the 'Magna Carta' of industrial law. These provisions impose an obligation on the central and state governments to maintain social order and living wages in accordance with the economic and political circumstances of the nation.

In several decisions, the Supreme Court has underlined that Articles 42 and 43 of the Constitution convey serious concerns for worker welfare. It has broadened the interpretation of Article 21, including the right to live in dignity, by integrating it with many Directive principles, particularly Article 42.

In so far as unorganized labour is concerned, specific legislations were enacted because the labourers suffer from different kinds of problems. The unorganized sector accounts for the bulk of the working population in India, whose regulatory mechanism does not even fall under the ambit of laws except in a few places, leaving the workers at the most vulnerable position from exploitation to social security.<sup>33</sup> In order to fill this gap, several Acts have been passed providing legal protection and welfare facilities to the unorganised labourers. Some of them are mentioned below.

## **V. LEGISLATION PERTAINING TO UNORGANISED SECTOR WORKERS IN INDIA**

Some of the legislations pertaining to Unorganised sector workers in India are as follows:

### **(A) Unorganised Workers Social Security Act, 2008**

Important provisions of the Act include;

- The Act defines unorganised workers as individuals who work in the informal sector or in their own homes and do not have regular employment or social security benefits.
- The Act authorises the Central and State governments to develop schemes providing

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<sup>32</sup> *D.S. Nakara & Others vs Union Of India, 1983 AIR 130*

<sup>33</sup> *Supra* Note 19



different social security benefits to unorganised workers, such as life and disability insurance, health and maternity benefits, old-age protection, education, and housing.

- The Act also establishes a National Social Security Board and State Social Security Boards for unorganised workers, who will advise and oversee the implementation of the Scheme
- The Act requires the District Administration to register unorganised workers and issue them identity cards.
- The Act also advocates for the establishment of worker facilitation centres to give information and ease access to the schemes.<sup>34</sup>

### **(B) Social Security Code, 2020**

The Social Security Code, 2020 was enacted to amend and consolidate the relevant provisions of nine central labour statutes which are as follows:

1. The Employees' Compensation Act, 1923
2. The Employees' State Insurance Act, 1948
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
5. The Maternity Benefit Act, 1961
6. The Payment of Gratuity Act, 1972
7. The Cine Workers Welfare Fund Act, 1981,
8. The Building and Other Construction Workers Welfare Cess Act, 1996, and
9. The Unorganised Workers' Social Security Act, 2008.

### **Some of the important provisions of the Code are as follows:**

- Code proposes to extend social security to all employees and workers, whether organised or unorganised, and in any other sector, as well as for things associated or incidental thereto.
- The Code can be implemented to establishments subject to a size threshold upon notice by the central government.
- The Central and State governments will establish separate Social Security Funds for

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<sup>34</sup> Manu Datta, "The Concept of Social Security and Plight of Unorganised Labour in India: A Critical Analysis", 9 *Global Journal for Research Analysis* 13 (2020).

unorganised workers, gig workers, and platform workers, respectively.

- There are registration provisions for unorganised workers, gig workers, and platform workers.
- A National Social Security Board will be formed to recommend and oversee systems for these types of workers.
- Governments and aggregators may contribute to gig worker and platform worker schemes.
- Certain offences, such as hindering inspectors and wrongfully deducting contributions from earnings, now have lower penalties.
- During an epidemic, the central government may defer or reduce employer and employee contributions to Employee State Insurance (ESI) and Provident Fund (PF) for up to three months.<sup>35</sup>

However, the code had received several criticisms. Following are some of the criticisms of the code;

- Most of its provisions are mostly based on the now-repealed Unorganised Workers Social Security Act (UWSSA), 2008, whose requirements and implementation left much to be desired. The Parliamentary Standing Committee on Labour stated in its report that *"merely retaining the usual administrative clauses of the previous UWSSA in the Social Security Code without any legal framework will not bring the intended benefits for the unorganised sector workers, nor will it widen the social security coverage in the near future."*<sup>36</sup>
- Despite the enactment of this code, the unorganised workers still struggle to get full access to the social security benefits like health insurance, pensions, and maternity relief, etc. This gap leaves many unorganised sector workers without adequate protection.
- There is no clear mechanism for the registration of the workers which has led to limited enrolment of the unorganised workers, as the code removed the accountability of the district administration to ensure registration.

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<sup>35</sup> *Enhancing Social Security for Unorganized Workers*, Drishti IAS (Sept. 9, 2023), available at <https://www.drishtiiias.com>.

<sup>36</sup> Arjun Sangwan, *Decoding the Code - A Focus on the Language Employed in Chapter IX of the Code on Social Security, 2020*, 4 *International Journal of Law Management and Humanities*, 28-77 (2021).

### **(C) Social security schemes launched by government**

A brief overview of the social security schemes provided by the government of India are as follows:

#### **1. Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)**

This scheme provides a life insurance of Rs. 2.00 lakh to insured persons, irrespective of the cause of death, for an annual payment of Rs. 436/-.<sup>37</sup>

#### **2. Pradhan Mantri Suraksha Bima Yojana (PMSBY)**

This scheme is available to persons aged 18 to 70 who have a bank or post office account. It provides accidental death or disability coverage of Rs. 2.00 lakh and Rs. 1.00 lakh, respectively, for a minimum annual premium of Rs. 20/-.<sup>38</sup>

#### **3. Pradhan Mantri Shram Yogi Maan-Dhan (PM-SYM)**

This scheme was launched in 2019, this scheme gives a monthly minimum guaranteed pension of Rs. 3000/- to workers aged 60 and above who earn Rs. 15000/- or less per month. The beneficiary contributes 50% monthly, which is matched by an equivalent payment from the central government. Approximately 49.47 lakh people have been enrolled across the country.<sup>39</sup>

#### **4. The eShram Portal**

The eShram Portal was launched by the Ministry of Labour and Employment in 2021. It aims to compile a comprehensive database of unorganised workers. Approximately 28.97 crore workers have registered on the eShram Portal, including their details such as occupation, residence, education, skills, and family information.<sup>40</sup>

## **VI. RECOMMENDATIONS**

Some of the recommendations to strengthen the social security framework for the unorganised sector workers are as follow;

- Provide universal social security coverage by extending social security benefits to all workers, irrespective of their employment status. This includes home based workers, gig workers, platform workers, and other unorganised sector workers, ensuring that

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<sup>37</sup> Pradhan Mantri Jeevan Jyoti Bima Yojana, Ministry of Finance, Gov't of India, <https://financialservices.gov.in/> (last visited Sept. 12, 2024).

<sup>38</sup> Pradhan Mantri Suraksha Bima Yojana, Ministry of Finance, Gov't of India, <https://financialservices.gov.in/> (last visited Sept. 12, 2024).

<sup>39</sup> Pradhan Mantri Shram Yogi Maan-Dhan, Ministry of Labour & Employment, Gov't of India, <https://labour.gov.in/pmsym> (last visited Sept. 13, 2024).

<sup>40</sup> eShram: National Database of Unorganized Workers, Ministry of Labour & Employment, Gov't of India, <https://eshram.gov.in> (last visited Sept. 13, 2024).

they are entitled to health insurance, pensions, maternity benefit, etc.

- Introduce a national level minimum social security benefit policy which guarantees a minimum level of protection for all workers aligning with the international standards such as ILO Recommendation 204.
- Raising awareness among the unorganised sector workers about their rights to social security benefits through government campaigns and community outreach programs. Also inform workers about the importance of registration to avail the benefits they are entitled to.
- Make the registration process for unorganised workers easier by establishing digital platforms, mobile apps, and worker facilitation centres to guide workers on how to easily register for social security benefits and make them accessible to workers.

## **VII. CONCLUSION**

What lies in the future for achieving adequate social security for the unprotected workers of India is to further strengthen policy interventions, enhance the coverage of existing laws, and establish effective implementation mechanisms. Bridging this gap would require the integration of the informal workers into the formal social protection schemes, increase financial and literacy, and put in place effective monitoring mechanisms to make sure that the right of social security is found for all workers. This would ensure that not only millions would be uplifted from poverty and insecurity but that this would further contribute toward sustained economic growth and social stability in the country.

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