

UNORGANISED WORKERS' SOCIAL SECURITY: LEGAL APPRAISAL AND CRITICISMS

Written by Dr. Namrata Luhar

*Assistant Professor, Faculty Of Law, The Maharaja Sayajirao University Of Baroda,
Vadodara*

ABSTRACT

Unorganised Sectors in India are contributing immensely towards economic growth, however the same is not recognised due to lack of statistical information and lack of proper mechanisms to collect the same. Equally a huge number of people are depended on workers working in unorganised sectors, but the same is also not recognised. There are no available statistics reflecting the types of unorganised sectors and the workers. It is difficult indeed!

Labour legislations and other welfare legislations in India are all focused towards organised sectors, seldom is provided for unorganised sectors. The Constitutional provisions do not guarantee rights only for people working in organised sectors and hence, it leaves a room for the legal fraternity to suggest solutions for filling up the legal dearth. The only law dealing with unorganised sector in India is 'The Unorganised Workers' Social Security Act, 2008', which requires a critical study.

The Article provides an account and provides an appraisal of International and National developments on unorganised sector. The shortcomings of the Act are delineated to point the criticisms of the Act. Appropriate amendments are suggested in the existing legal framework to ensure human rights of workers working in unorganised sector in India.

INTRODUCTION

Workplaces in India are formal and informal, organized and unorganised, micro, small and medium. Although, statistical information may be clearly available for organized and formal

sectors, the same is not the case with the informal and unorganized sectors. The diversity, nature, enterprises and the people employed in informal and unorganized workplaces is undermined and unreported in spite of the fact that, labour force is one of the most important attributes in building the economy of India. These unorganized sectors are the ones contributing immensely not only towards the growth of Nation but also towards building and strengthening the organized sectors.

In fact, there exists no data regarding the unorganized sectors and the number of workmen working thereof even with the Government. The estimates given by different Governmental Agencies are also not certain. The Economic Survey of 2018-19, released on July 4, 2019, says "almost 93%" of the total workforce is 'informal'. But the Niti Aayog's Strategy for New India released in November 2018, said: "by some estimates, India's informal sector employs approximately 85% of all workers".ⁱ The Report of the Committee on Unorganized Sector Statistics estimates more than 90% of the workforce in informal sector, at the same time it also specifies that there are a number of gaps in the statistics on enterprises and employment in informal sector in India.ⁱⁱ As per the latest year data of International Labour Organisation, the share of informal sectors is 80% which includes own-account workers outside the formal sector, contributing family workers, employers and members of producers' cooperatives in the informal sector, and employees without formal contracts.ⁱⁱⁱ

In view of above estimated information, it seems to be a far-sighted dream to have accurate information about men, women and children working in unorganised sectors.

The terms 'unorganised' and 'informal' considered to be synonymous and used interchangeable, however there is a thin line of difference between both the terms. Unorganised refers to opposite of organized. Organized sectors are those which are regulated by the existing labour legislations and hence to its natural corollary unorganised sectors are those which are not regulated by any labour legislations. The Factories Act, 1948 defines "Factory as any premises including the precincts thereof - (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on

without the aid of power, or is ordinarily so carried on; but this does not include a mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place."^{iv}

In the Indian context and considering this definition, we find that many occupations are unorganised owing to its nature i.e. self-workers, domestic helpers, small enterprises including household enterprises. On the other hand, 'informal' sectors are not subjected to any formalities as prescribed under any laws. Hence, owing to miniscule difference between both the terms, they are used interchangeably. For the purpose of this Article, the Author prefers using the term 'Unorganized'. The International Labour Organisation (ILO) prefers the term 'informal' while in the Indian legal setup it is termed as 'unorganized'.

INTERNATIONAL APPROACHES TOWARDS UNORGANISED SECTOR

International Labour Organisation (ILO)

ILO is the only tripartite U.N. agency, since 1919 for bringing together governments, employers and workers of 187 member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men.^v It binds the Members States by adopting Conventions and Protocols and provides Recommendations for labour welfare. Till date there are 190 Conventions and 206 Recommendations being given by ILO to regulate the labour sector, and several amongst them indirectly provide protection to women working in informal sectors. Further, ILO also provides for the broader in the International Labour Conference which is also called as International Parliament of Labour. The Conference meets once a year in and brings together governments', workers' and employer's delegates of the ILO member States. It aims to establish and adopt international labour standards and is a forum for discussion of key social and labour questions. It also adopts the Organization's budget and elects the Governing Body.

International Conference on Labour Statisticians

The earliest attempts to define informal sectors initiated in 1970s which was individual-based concepts from the perspective of the worker^{vi}. Further, elaboration based on establishment or

enterprise was conceptualized^{vii} in 1972 in the report of an ILO employment strategy mission to Kenya. The 13th International Conference on Labour Statisticians (ICLS) in 1982 initiated the consideration of informal sectors and urged the countries to develop methodologies and data collection programmes to measure informal sector activities. The Resolution further stated the need for having a suitable definition for informal sector. The 15th ICLS in 1993 defined an internationally agreed statistical definition of informal sector. It defined informal sector in terms of the characteristics of the production units and therefore represented an establishment/enterprise perspective on informality.

The concept of informal sector was further conceptualized at the 90th Session in 2002 at the International Labour Conference which adopted the resolution concerning Decent Work and the Informal Economy and defined Informal Economy as “all economic activities by workers and economic units that are – in law or in practice- not covered or insufficiently covered by formal arrangements. (ILO, 2002a, para 3). Informal economy is a broader term as compared to employment in informal sector as it covers within itself both production relationships and employment relationships. Hence, it culminates within itself the definition of informal sector.

The 17th ICLS endorsed the Guidelines concerning Statistical definition of informal employment and provided a broader definition of Informal Employment. It stated that Informal employment comprises the total number of informal jobs as defined below, whether carried out in formal sector enterprises, informal sector enterprises, or households, during a given reference period.

- (i) own-account workers employed in their own informal sector enterprises;
- (ii) employers employed in their own informal sector enterprises;
- (iii) contributing family workers, irrespective of whether they work in formal or informal sector enterprises;
- (iv) members of informal producers’ cooperatives;
- (v) employees holding informal jobs in formal sector enterprises, informal sector enterprises, or as paid domestic workers employed by households;
- (vi) own-account workers engaged in the production of goods exclusively for own final use by their household, if considered employed according to paragraph 9(6) of the

resolution concerning statistics of the economically active population, employment, unemployment and underemployment adopted by the 13th ICLS.

It further specified that the definitions of Own-account workers, employers, members of producers' cooperatives, contributing family workers, and employees will be as per the latest version of the International Classification of Status in Employment. Producers' cooperatives are considered informal if they are not formally established as legal entities and also meet the other criteria of informal sector enterprises specified in the resolution concerning statistics of employment in the informal sector adopted by the 15th ICLS. Employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.).

Further the joint OECD and ILO publication refers Informal employment as to working arrangements that are de facto or de jure not subject to national labour legislation, income taxation or entitlement to social protection or certain other employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.).^{viii}

Recommendation R204 - Transition from the Informal to the Formal Economy Recommendation, 2015

Recommendations given by the Conference of International Labour Organisation, is made with a view to effect being given to it by national legislation or otherwise. Within a specified period of time^{ix}, the Members are required to inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them. Members are also bound to report to the DG of ILO, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.^x

ILO Recommendations are not open to ratification but they are meant to provide guidance to the National Governments as regards formulation and implementation of policy, legislation and practices, whereas ILO Conventions and their protocols create binding obligations upon ratification.

The recent Recommendation R204 - Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) is a major breakthrough in attempting to bringing informal sector at par with formal sector.

The Recommendation provides guidance to Members to:

- (a) facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship;
- (b) promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies; and
- (c) prevent the informalization of formal economy jobs.^{xi}

The Recommendation recognizes that it is a major challenge to protect the rights of workers including fundamental principles and rights at work, and for social protection, decent working conditions, inclusive development and the rule of law. It also acknowledges that most people enter the informal economy not by choice but as a consequence of a lack of opportunities in the formal economy and in the absence of other means of livelihood. Further, it recalls that decent work deficits – the denial of rights at work, the absence of sufficient opportunities for quality employment, inadequate social protection and the absence of social dialogue – are most pronounced in the informal economy.

The Recommendation defines 'informal economy' and specifies that it:^{xii}

- (a) refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements; and

(b) does not cover illicit activities, in particular the provision of services or the production, sale, possession or use of goods forbidden by law, including the illicit production and trafficking of drugs, the illicit manufacturing of and trafficking in firearms, trafficking in persons, and money laundering, as defined in the relevant international treaties.

The applicability of this Recommendation is made to all workers and economic units – including enterprises, entrepreneurs and households – in the informal economy, in particular:

(a) those in the informal economy who own and operate economic units, including:

(i) own-account workers;

(ii) employers; and

(iii) members of cooperatives and of social and solidarity economy units;

(b) contributing family workers, irrespective of whether they work in economic units in the formal or informal economy;

(c) employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains, or as paid domestic workers employed by households; and

(d) workers in unrecognized or unregulated employment relationships.^{xiii}

Provisions relating to Rights and Social protection^{xiv} are provided which obligates the members to take measures to achieve decent work and to respect, promote and realize the fundamental principles and rights at work for those in the informal economy, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

Members are also mandated to-

- (a) take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy; and
- (b) promote and extend occupational safety and health protection to employers and workers in the informal economy.^{xv}

The Recommendation provides that through the transition to the formal economy, Members should progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers and considers relevant factors, including but not limited to the cost of living and the general level of wages in their country.^{xvi}

Also, it obligates upon the Members to progressively extend the coverage of social insurance to those in the informal economy and, if necessary, adapt administrative procedures, benefits and contributions, taking into account their contributory capacity.^{xvii}

In India, the Union Cabinet under the Chairmanship of Prime Minister Shri Narendra Modi had approved the proposal for placing Recommendations concerning The Transition from the Informal to the Formal Economy (No.204) before the Parliament as its adoption was supported by India, represented at the Session by the Union Minister of State for Labour & Employment.

The Recommendation will provide guidance to Members to facilitate the transition of workers and economic units from the informal to the formal economy while respecting workers' fundamental rights and promote creation, preservation and sustainability of enterprises and decent jobs in the formal economy and prevent informalization of formal economy jobs.^{xviii}

NATIONAL APPROACHES TOWARDS UNORGANISED SECTOR

Constitutional Provisions

The Constitution of India provides a robust framework for the protection and welfare of labour class. It does not differentiate between organised and unorganised labour forces. Rather Article 14 provides for person equality before the law or the equal protection of the laws within the territory of India. Further, Article 19 (1) (g) of the Indian Constitution states that all citizens have the Fundamental Right to practise any profession, or to carry on any occupation, trade or

business. Article 19(1)(c) provides a freedom to all to form union or association. Article 23 prohibits forced labour and Article 24 provides for a ban on child labour in hazardous occupations up to the age of 14 years. These provisions contained in Part III of the Constitution are enforceable in the Courts of law vide Article 32 which provides Constitutional remedy.

Further, Directive Principles of State Policy, although not enforceable in the Courts of law are guiding principles for the States. Article 38 (2) states The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39 (a) states the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 39(d) provides for equal pay for equal work for both men and women and (e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 states the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42 provides for just and human conditions of work and maternity relief. Significantly Article 43 directs the State to secure by suitable legislation, or economic organisation or any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, and conditions of work ensuring a decent standard of life. These directives are equally to be made applicable to unorganised sectors.

National Commission on Labour

The First National Commission on Labour was constituted in 1969 under the Chairmanship of Justice P.B. Gajendragadkar with an objective to study and review the living conditions of labour and the labour legislations since 1947. The Commission submitted its Report in 1969 focusing on the labour issues both in Organised and Unorganised Sectors. The main recommendations of the Gajendragadkar Commission included:

- a) First hand detailed surveys from time to time to understand the problems of the different categories of unorganised labour.
- b) Legislative protection by the state for unorganised/ unprotected labour.

- c) Simplification of legislative and administrative procedures applicable to small establishments.
- d) Expediting education and organization in the field of unorganised labour.
- e) As there is no alternative to the existing implementation machinery, what exists should be reinforced, and the inspection system should be strengthened.
- f) Steps for the protection of workers against middlemen, and development of self-help through co-operatives. Co-operatives should pay adequate wages and bonus, and give employment opportunities to the underemployed and unemployed among them.

It defined the unorganised sector as that part of the workforce 'who have not been able to organise in pursuit of a common objective because of constraints such as:

- (a) casual nature of employment
- (b) ignorance and illiteracy
- (c) small size of establishments with low capital investment per person employed
- (d) scattered nature of establishments and
- (e) superior strength of the employer operating singly or in combination.'

The Commission listed 'illustrative' categories of unorganised labour: 'These are:

- (i) contract labour including construction workers;
- (ii) casual labour;
- (iii) labour employed in small scale industry;
- (iv) handloom/ power-loom workers;
- (v) beedi and cigar workers;
- (vi) employees in shops and commercial establishments;
- (vii) sweepers and scavengers;
- (viii) workers in tanneries;
- (ix) tribal labour; and
- (x) 'other unprotected labour'

The Second National Commission on Labour was constituted in 1999 under the Chairmanship of Mr. Ravindra Varma. One of the tasks entrusted to the Commission for the very first from the Government was to propose an umbrella legislation on unorganised sector. The

Commission observed that unorganised sector is too vast to remain within the confines of a conceptual definition. It conceptualized the definition of unorganised sector on residual basis specifying that it is the residual of the organised sector and the term 'organised' is generally used when we refer to enterprises or employees in which 10 or more employees work together. The Commission identified certain characteristics of Unorganised sector as under:

- (a) low scale of organisation
- (b) operation of labour relations on a casual basis, or on the basis of kinship or personal relations
- (c) small own account (household) or family-owned enterprises or micro enterprises
- (d) ownership of fixed and other assets by self
- (e) risking of finance capital by self
- (f) involvement of family labourers
- (g) production expenditure indistinguishable from household expenditures and use of capital goods
- (h) easy entry and exit
- (I) free mobility within the sector
- (j) use of indigenous resources and technology
- (k) unregulated or unprotected nature
- (l) absence of fixed working hours
- (m) lack of security of employment and other social security benefits
- (n) use of labour-intensive technology
- (o) lack of support from Government
- (p) workers living in slums and squatter areas
- (q) lack of housing and access to urban services
- (r) high percentage of migrant labour.

The Commission further concluded that the laws in the statute book that relate to some sectors of the unorganised sector are too inadequate to give protection or welfare for the vast majority of workers in the unorganised sector. It recommended that a new and separate umbrella legislation is imperative to protect the rights and welfare of workers in the unorganised sector. The Commission further pointed that the umbrella legislation should be viewed in a holistic way. The unorganised sector is in no way an independent and exclusive sector. It is dependent

on and linked to the organised sector and the rest of the economy. The umbrella legislation should be seen as a legislation that will lead to the growth of the economy, improve the quality of employment, provide a decent life to workers, and integrate them with the growing opportunities in the country.

In specific terms, the objectives of the legislation will have to be:

- a) To obtain recognition for all workers in the unorganised sector
- b) To ensure a minimum level of economic security to these workers
- c) To ensure a minimum level of social security to these workers
- d) To facilitate the removal of the poverty of these workers
- e) To ensure future opportunities for children by eliminating child labour
- f) To encourage formation of membership-based organisations of workers including Trade Unions
- g) To ensure representation of the workers through their organisations in local and national economic decision making.

It emphasized upon recognition to unorganised workers and for that registration is imperative. Although, the nature of each of the unorganised sector varies from each other to a large extent, the Commission was of the view that multiple legislations would only add up the number of legislations hence a single legislation is required for that purpose.

Other Attempts:

The Government of India has from time to time made other attempts to build the unorganised sector which are stated as under:

- The National Commission on Self-employed Women and Women in the Informal Sector (Shramshakti) 1988,
- The National Commission on Rural Labour 1991
- The Thirty Fourth Session of the Indian Labour Conference
- NSS Surveys on Unorganised Enterprises
- Annual Surveys of Labour Bureau which have considered the issue of survey of unorganised labour

NATIONAL COMMISSION FOR ENTERPRISES IN THE UNORGANISED SECTOR

The Government of India in the year 2004 constituted the National Commission for Enterprises in the Unorganised Sector (NCEUS) under the chairmanship of Dr. Arjun Sengupta. The Commission was an advisory body and watchdog for the informal sector. The main objective of the Commission was to "review the status of unorganised/informal sector in India including the nature of enterprises, their size, spread and scope, and magnitude of employment". NCEUS defined Unorganised Sectors as "The unorganised sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers".

Further, Informal worker/employment was defined as "Unorganised workers consist of those working in the unorganised sector or households, excluding regular workers with social security benefits provided by the employers and the workers in the formal sector without any employment and social security benefits provided by the employers".

NCEUS submitted several report during its tenure towards protection of Unorganised Sectors. NCEUS was referred with Unorganised Sector Workers' Bill, 2004 which was prepared by the Ministry of Labour and Employment of the Government of India, arising out of the recommendations of the Second Labour Commission for its review and revision. Based upon the Terms of Reference, the Committee prepared "Report of National Commission for Enterprises in the Unorganised Sector on Social Security for unorganised sector" and proposed a Draft Bill. Also the Commission prepared a Report on Conditions of Work and promotion of Livelihoods in the Unorganised Sector recommending measures and Action plan to provide protection to workers in non-agricultural sector, focusing separately on wage workers, self-employed workers and women workers in 2007. Further, a Report on "Comprehensive Legislation on Minimum conditions of work and social security for unorganised workers was prepared incorporating two separate Bills on Unorganised Non-Agricultural and Agricultural Workers was submitted in 2007.

Committee on Unorganised Sector Statistics (2012):

The National Statistical Commission (NSC) constituted a Committee on Unorganised Sector Statistics under the chairmanship of Prof. R. Radhakrishna to examine the issues relating to

standardized concepts, definitions, coverage and comparability over time and space of the unorganised sector. The basic objective of the Committee was to:

- To examine the existing definitions of informal enterprises and employment and suggest appropriate modifications with specific objective of their amenability towards better measurement.
- Also, it was entrusted with the work of data gaps, methodologies and arrangements for estimating informal employment and income and to analyse the system of data collection and suggest modifications thereof.

The Commission's recommendation relating to the definition of informal sector is as follows:

- Informal Sector: "The unorganised sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers".
- Informal worker/employment: "Unorganised workers consist of those working in the unorganised sector or households, excluding regular workers with social security benefits provided by the employers and the workers in the formal sector without any employment and social security benefits provided by the employers".
- Informal economy: The informal sector and its workers plus the informal workers in the formal sector constitutes the informal economy.

The Committee recommended establishment of a dedicated unit to be created within NSO for standardizing concepts, definitions and harmonization thereof and promoting their use in census and surveys. The Recommendations of the Committee also provided measures for streamlining data relating to quality of employment, to conduct systematic studies, setting up permanent unit for collection of data every 5 years, publication of data, surveys and studies on financial service enterprises and bank and other finances, create linkages between formal and informal sectors.

Analysis and Criticisms of the Unorganised Workers' Sector Social Security Act, 2008

Based upon the recommendation of NCEUS, the Government of India enacted Unorganised Workers' Social Security Act, 2008 to provide for the social security and welfare of unorganised workers. Several recommendations given by the Commission have not been

incorporated under the Act and the Act is being criticised to be an unrewarding piece of legislation.

Important Definitions

Some of the terminologies as defined under Section 2 of the Act:

(l) “unorganised sector” means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

(m) “unorganised worker” means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act.

(b) “home-based worker” means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs

(k) “self-employed worker” means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government

(n) “wage worker” means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

On analysing the above definitions, we find that a home-based worker is one of the categories mentioned in the definition of wage worker. The definitions of self-employed worker and wage workers has used the phrase “subject to/with a monthly earning/wage of an amount as may be notified by the Central Government or the State Government from time to time”. This raises a doubt about those unorganised labourers who cannot earn their monthly wages subject to the limits specified by the appropriate governments. Also there are no corresponding provisions with respect to the notification on monthly wage and the basis on which it can be decided. In the Indian context, we find many workers who may be earning meagre amounts of money for instance domestic servants, cobblers, hawkers to name a few. A question arises as to the applicability of the only piece of legislation on them. It clearly raises doubts and concerns for their social security.

Schemes on Social Security

Section 3 of the Act empowers the Central Government to formulate and notify, suitable welfare schemes for unorganised workers on matters relating to—

- (a) life and disability cover;
- (b) health and maternity benefits;
- (c) old age protection; and
- (d) any other benefit as may be determined by the Central Government

and further specifies the schemes included in the Schedule 1 to the Act to be deemed to be the welfare schemes.

It empowers the State Government to formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to—

- (a) provident fund;
- (b) employment injury benefit;
- (c) housing;
- (d) educational schemes for children;
- (e) skill upgradation of workers;
- (f) funeral assistance; and
- (g) old age homes.

Section 4 of the Act provides for the funding of the Schemes either wholly by Central Government or partly by Central and partly by State Government or partly by Central and State Governments and partly by the contributors or employees as per the Scheme. Similarly, Schemes announced by State Governments under Section 7 are either funded wholly by State Governments or partly by State Governments and partly by the contributors or employees as per the Scheme.

The Act has notified certain Schemes which can be made applicable to workers in unorganised sectors. It is pertinent to note that many of the schemes notified in the Act were in force even before the Act came into force. The Schemes are not specifically applicable to workers in unorganised sectors only, they are general schemes which were already in force. It means, the Act does not provide for any further protection to workers working in unorganised sector. Hence it misses on the proactive steps to be taken by the Government for social security of unorganised workers. In absence of this Act too, the benefit of the Schemes was available to workers. At the same time, it rests on the Executive wing to come out with further Schemes. The benefits arising from such schemes also seem to be meagre in view of inflation that has taken place over a period of time.

The latest pension scheme notified by the Central Government for workers in informal sector is Pradhan Mantri Shram Yogi Mandhan. The Scheme is application to all workers in unorganised sectors falling within the age group of 18 to 40. The workers and Central Government shall contribute equally under the Scheme to provide pension benefits of Rs. 3000/- after the contributors reach the age of 60 years. The scheme raises questions on the following matters:

1. What about the unorganised worker who is more than 40 years of age?
2. What would be the value of Rs. 3000/- at the time when the contributor would receive pension?

It is pertinent to note that success of any Scheme depends on its implementation and effectiveness.

Essential Requirements of Schemes

The Act further provides that every scheme notified by the Central Government shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to-

- (i) scope of the scheme;
- (ii) beneficiaries of the scheme;
- (iii) resources of the scheme;
- (iv) agency or agencies that will implement the scheme;
- (v) redressal of grievances; and
- (vi) any other relevant matter.

This leaves a wide room on the hands of executive to implement the scheme. As the grievance redressal is also a part of the Scheme, the workers can be made devoid of the benefits of the scheme if it is not properly implemented. Appellate provisions are not given under the Act in case a worker becomes a victim of corrupt and harassing practices by the concerned departments.

Social Security Boards

A National Social Security Board under Section 5 is constituted to perform the following functions, namely: —

- (a) recommend to the Central Government suitable schemes for different sections of unorganised workers;
- (b) advise the Central Government on such matters arising out of the administration of this Act as may be referred to it;
- (c) monitor such social welfare schemes for unorganised workers as are administered by the Central Government;
- (d) review the progress of registration and issue of identity cards to the unorganised workers;
- (e) review the record keeping functions performed at the State level;
- (f) review the expenditure from the funds under various schemes; and
- (g) undertake such other functions as are assigned to it by the Central Government from time to time.

The Act obligates the State Governments under Section 6 to formulate State Social Security Boards to perform similar functions as that of National Board.

Role of District Administration

The record keeping functions are entrusted to District Administration. We find that the District Administration is already overburdened with their work. The addition of record keeping functions under the Act has added the burden of the District Administration. A provision is added which specifies that State Government may direct that the record keeping function shall be performed by—

- (a) the District Panchayat in rural areas; and
- (b) the Urban Local Bodies in urban areas.

This provision is not a mandatory provision as the word “may” is used in the provision. In view of this, if the State Government does not delegate the record keeping functions as stipulated under the provision, it would become cumbersome for the workers’ living in remote and rural areas to approach the District Offices for all the purposes of the Act. In such case these workers’ who are generally below the poverty line could not receive benefits under the Act. Looking into the spread of unorganised sectors and workers in rural and remote areas, it is pertinent to delegate the functions till taluka levels. Rather, it would have been better if a separate wing was constituted to look into the matters relating to unorganised sector.

Workers Facilitation Centres

Section 9 of the Act envisages for the setting up of Workers Facilitation Centres (WFC) to-

- (a) disseminate information on available social security schemes for the unorganised workers;
- (b) facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;
- (c) assist unorganised worker to obtain registration from the District Administration;
- (d) facilitate the enrolment of the registered unorganised workers in social security schemes.

The setting up of WFC is a positive part of the Act, however, it would have been better if the same was entrusted with wider powers and functions for unorganised workforce. The Act could have provided it to be a nodal point for the welfare of unorganised workers. The Act could have provided for Mandatory registrations of employers, employees and self-employed people with WFC. The establishment of WFC at Districts and Taluka levels depending upon the nature

of unorganised sector could have fulfilled the gap of registration and data collection of unorganised workers. Needless to say, any such procedures of the Government should have provided for least formalities to endow benefits to maximum.

Registration of Unorganised Workers

The most important provision in the Act is relating to the process of Registration of Unorganised Workers. Workers who have completed 14 years of age can be registered upon a self-declaration confirming him or her to be a worker of unorganised sector. Upon Registration, an identity card and a unique identification number shall be issued. A registered worker can avail benefits of the Scheme as per the requirements of the Scheme.

Process and eligibility for Registration of Unorganised Workers

Section 10 of the Act provides for following conditions to be fulfilled for registration:

- (a) he or she shall have completed fourteen years of age; and
- (b) a self-declaration by him or her confirming that he or she is an unorganised worker.

Application for registration has to be submitted with District Administration and upon registration the workers is issued a smart card with unique identification number. Depending upon the requirements with respect to the contribution of the Scheme, the benefits are supposed to be made available to the workers. The provision stipulates that the contribution is to be made by Central or State Government which shall make the contribution regularly in terms of the Scheme.

No mechanism is provided under the Act in case the benefits of the Scheme do not reach the Workers. Also, the authority to be approached in case Central or State Government has not contributed is not mentioned in the Act. The Act is absolutely silent on the procedure as to non-fulfilment of the terms of the Scheme.

Other Criticisms

Although the Act provides for a basic framework for workers in unorganised sector, certain important aspects are missing in the Act which can be summarised as below:

- A rights based approach for social security as envisaged under the Constitution of India and other International Instruments viz. Universal Declaration of Human Rights, 1948 International Covenant on Economic, Social and Cultural Rights, 1966, International Covenant on Civil and

Political Rights, 1966, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 is missing.

- A complaint mechanism is not provided under the Act in case there are any violation of rights like non-payment of wages, violence and exploitation.
- The Act does not encompass any provisions on employers engaged in unorganised sector. Such provisions if made mandatory can go a long way in ensuring social security to unorganised workers except self-employed peoples.
- The entire fate of the social security measures is vested with the Executive wing.
- At the Central and State levels the Boards are constituted, but similar mechanism to carry the day to day functions of the Act is missing. When the estimated workforce in unorganised sector is around 90%, Government should have given priority to this sector by creating Authorities at all levels including taluka levels for proper implementation of the Act.
- The Act also misses out on certain humane work conditions like hours of work, conditions of work, weekly holidays, maternity and paternity benefits, disability, injury, minimum wages, health rights and other health and safety provisions.
- A huge workforce from amongst children between the age groups of 15 to 18 is in unorganised sector. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 has banned working of children between the age group of 15-18 in Mines, Inflammable substances or explosives or Hazardous process. It means these children can legally work in unorganised sectors. Special emphasis on child labour in unorganised sector is required to be provided.
- India's unorganised sector comprises of women workforce to a large extent. To provide for specific rights to the women working in unorganised sector, special provisions relating to health and childcare were needed to be provided.
- The present legislation also does not fulfil the obligations of ILO Conventions and Recommendations as ratified by India and ILO Declaration on Fundamental Principles and Rights at Work

Judicial Approach towards Unorganised Sector

Although Supreme Court is proactive in its effort of bringing justice to the vulnerable groups, in cases of unorganised sectors, the Courts have time and again passed directions for the implementation of the Act. In case of *Shramjeevi Mahila Samiti Vs. State of NCT of Delhi & Anr.*,^{xix} it was brought to the notice of the Court that Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, Janani Suraksha Yojana, Janshree Bima Yojana, Aam Admi Bima Yojana and Rashtriya Swasthya Bima Yojana schemes have been notified for the unorganised workers. The petitioner brought to the notice of the Court that despite the Act coming into force in the year 2008 and despite framing of several schemes, no domestic worker has enjoyed the benefit of any scheme. Further, the fact that domestic workers have not been registered for the purpose of the benefits. Also it was pointed out that as far as the unorganised workers are concerned, unless there is somebody to pro-actively help them, they will not go for registration and consequently, they will not be getting benefit of any scheme despite the fact that it is more than a decade since the Act has come into force.

It was argued by the Government that so far the workers have not turned up for the registration as required under Section 10(2) of the Act. The Court gave directions to the Central Government not to disburse any further grants to the States, which have not registered the domestic workers,"

In case of *All India Progressive Women Association and Ors. Vs. The Union of India and Ors.*^{xx} decided by the Jharkhand High Court, a PIL was filed for strict implementation of social welfare Schemes and strict implementation and enforcement of "The Unorganised Workers' Social Security Act, 2008" in the State of Jharkhand. Some of the directions of the Court to the Government were:

- To implement the Schemes under the Unorganised Workers Social Security Act, 2008.
- To utilize the services of Para Legal Volunteers to create awareness amongst the public at large of the State of Jharkhand, to get benefits under the aforesaid schemes.
- To publish in adequate number of necessary pamphlets/booklets for the schemes so that through the District Legal Services Authorities these pamphlets/booklets may be distributed in the Jharkhand so as to make public at large, aware about their rights.

- To put necessary hoardings, signboards with lights/without lights to give necessary advertisements through print and electronic media and also through LED Electronics Boards. The State will also use community radio for the aforesaid purpose.

In case of *Bruhad vs State*^{xxi}, the Court directed the Government of Gujarat (i) notify the seven schemes, as stated to have been framed by the State Government under Section 3(4) of The Unorganised Workers' Social Security Act, 2008 and directed to-

- constitute State Social Security Board for unorganised workers immediately;
- take immediate steps for registration of all unorganised workers working within the State of Gujarat.

Vandana Prasad vs Ministry of Labour & Employment^{xxii} was a typical case which was an Appeal was filed before Central Information Commission as the Appellant did not get the information on number of construction workers, domestic workers and women workers in the country who have received maternity benefits in the last five years. Also she had questioned the status of implementation of the Unorganised Workers Social Security Act, 2008 etc. Since no information was received, the appellant approached this Commission. The Commission appreciated the initiative taken by the appellant by bringing to the forefront on such a crucial issue; secondly the Commission observed that it is a huge task to provide complete information as sought in this RTI application, however, the information sought is supposed to be disclosed voluntarily under section 4 of the RTI Act. The Commission in this regard recommended the Ministry of Labour and Employment under Section 25(5) of the Act to take necessary steps in formulating the statistics pertaining to construction workers, domestic workers and women workers in unorganised sector for promoting transparency, accountability and conformity. The Commission further directed the respondent authority to update in their official website on the aforementioned aspects keeping in view the provisions of Section 4(1)(b), 4(1)(c) and 4(1)(d) of the RTI Act, with an intimation to this Commission, within 90 days from the date of receipt of this Order.

CONCLUSION

Considering the international attempts made by ILO and other UN instruments, it is significant to consider the rights of workers in unorganised sectors. Being a welfare state, the primary responsibility is of the Government to fulfil the rights of workers. The Constitutional mandate can be fulfilled only if necessary and immediate steps are taken in the direction to protect the rights. The present law requires amendments looking into the nature and diversity of unorganised labour force existing in our society. Further, making amendments and laws would be an absolute futile exercised until and unless the same is made available to the beneficiaries. The Second National Commission on Labour has remarked that “The laws or welfare systems that we propose for them cannot be effective unless they themselves are conscious of the laws, and acquire the strength to ensure that laws are brought into force; unless there are effective means to implement, monitor and provide quick redress; unless breaches of the law are punished with deterrent penalties, and unless the organs of public opinion and movements and organisations mount vigil, and intercede to ensure that the provisions of the laws and welfare systems are acted upon.”

The present legislation is based on Schemes pronounced and implemented by the respective Government. Though Schemes do provide benefits to the unorganised labour force but a comprehensive legislation to provide, protect and fulfil the rights of people working in unorganised sector is required.

REFERENCES

<https://www.businesstoday.in/sectors/jobs/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt/story/364361.html>

ⁱⁱ National Statistical Commission Government of India February 2012

ⁱⁱⁱ ILOSTAT available at <https://ilostat.ilo.org/topics/informality/>

^{iv} Section 2(m) of Factories Act, 1948

^v <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>

^{vi} The definition was conceptualised by Keith Hart

^{vii} Multi-criteria definition was presented by Richard Jolly and Hans Singer

^{viii} OECD/ILO (2019), *Tackling Vulnerability in the Informal Economy*, Development Centre Studies, OECD Publishing, Paris, <https://doi.org/10.1787/939b7bcd-en>.

^{ix} Article 19 (6)(b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action

^x Preamble of the Recommendation

^{xi} Article 1

^{xii} Article 2

-
- xiii Article 4
 - xiv Articles 16
 - xv Article 17
 - xvi Article 18
 - xvii Article 20
 - xviii Press Information Bureau, Government of India, 6th Jan 2016
 - xix MANU/SCOR/15465/2017
 - xx (WP(PIL) Nos. 7032 and 2810 of 2012)
 - xxi (SPECIAL CIVIL APPLICATION No. 14565 of 2008)
 - xxii 16 November, 2018

