

## PROTECTION OF WORKERS IN UNORGANIZED SECTORS - A CRITIQUE OF UNORGANISED WORKERS SOCIAL SECURITY ACT, 2008

\*SIDDHART BEHERA

### ABSTRACT: -

*Economic growth of any country, especially for developing countries, depends on three cardinal factors, namely, land, capital and labour. These three pivotal elements are inter-related and one cannot perform without the other's contribution. Since land and capital are in the possession of a minimalistic population, majority of the masses depend on labour for their livelihood. Over 90% of India's workforce is engaged in the unorganised sector. Due to the absence of proper regulatory mechanisms, the unorganised sector workers face serious problems ranging from the fear of unemployment to the hazardous conditions at work. The unorganized workers usually engage in casual, seasonal and scattered employments, which often lack any regulation. Social security is a very vital component for the well-being of a worker, his/her family and the community at large. The principal aim of the concept is to provide – compensation, restoration and protection. The workers are kept away from Old Age Pensions, Gratuity, Employees State Insurance, Workmen's Compensation etc. To secure this, the government enacted the Unorganized Workers Social Security Act, 2008 which provides for social security benefits to the unorganized workers. However, the Act fails to define 'social security' in unambiguous words. It also fails to act as an 'umbrella legislation' to secure the rights of the workers. There is no clarity and coherence regarding the dispute resolution mechanism. Therefore, in the light of these pitfalls there is an urgent need for its effective amendment. Similarly, the Indian judiciary also plays a very crucial role in upholding the rights and benefits of such unorganized workers. In order to bring about the effective implementation of the labour legislations, it is very important to understand the employment relations, working conditions, informal sector, regulatory protections and other challenges faced by the workers. Dealing with the issue of unorganised sector would help combat two rampant problems at one go – poverty and unemployment. This paper focuses on the various problems faced by the workers of unorganized sector, critically analyses the Unorganized Workers Social Security Act, 2008, emphasises on the role of judiciary and enlists certain recommendations.*

**Keywords:** Labour, Unorganized Workers, Social Security, Regulation, 2008 Act.

## **LITERATURE REVIEW: -**

As per the study undertaken by Anshul Prakash & Utkarsh Kumar (2018), the unorganised sector makes up 90% of India's workforce and contributes to about 45% of the economy. The unorganised sector workers face severe hardships and are in dire need of social security. S. C. Srivastava (1985) views social security as a method of reconstruction and states there are five giants on the road of reconstruction - want, disease, ignorance, squalor and idleness. The concept of social security has evolved from being a charity-based approach to a rights-based approach (A. M. Sharma 2006). It has been viewed from both protective as well as promotional aspect (A.C. Dhas & M. Helen 2019). Arjun Patel and Desai Kiran (1995) identify the various problems faced by unorganised sector workers ranging from low wages to loss of livelihood. R. S. Tiwari (2005) highlights that the problems faced by workers must be resolved immediately to form a better society. Sulekha Punyani (2020) critically analyses the Unorganised Workers' Social Security Act, 2008 and highlight the salient features and loopholes. The Act lacks inclusiveness which leaves a room for misusing the provisions (K. B. Saxena 2009). N. H. Kiran (2008) identifies that there is a dearth of provisions relating to grievance redressal and dispute resolution. The need of the hour is to amend the Act and come up with inclusive provisions to address the needs of the workers efficiently. The plight of the unorganised workers would have been different in the wake of COVID-19 pandemic had there been proper implementation of the said Act. (Himanshu Upadhya 2020).

---

## INTRODUCTION

---

In developing countries such as India, labour is the most important factor which drives a country to the path of economic development. Labour can be classified into various groups such as – organised, unorganised, skilled, unskilled, etc. In India, the unorganised sector, makes up 90% of India's workforce and contributes to about 45% of the economy.<sup>1</sup>

---

\*GNLU, GANDHINAGAR

<sup>1</sup> Anshul Prakash & Utkarsh Kumar, *Social Security for Unorganized Sector Workers and Related Issue*, BW PEOPLE (Oct. 31, 2020, 7:00 PM), <http://bwpeople.businessworld.in/article/Social-security-for-unorganized-sector-workers-and-related-issue/14-06-2018-151986/>.

Although, unorganised sector provides majority of the jobs, such jobs are generally low-paid and the job security is either unavailable or negligible. The reasons for such an unregulated informal sector can be attributed to factors such as dull implementation of laws, weaker regulations and technological changes.

The social security legislations in India find its roots in the Directive Principles of the State Policy as contained in the Constitution of India. Further, the issue of social security is a subject matter of List – III (Concurrent List) which infers that both the Centre as well as the states can come up with laws on social security. Article 42 of the Indian Constitution enshrines that State should make provision for securing just and humane conditions of work and for maternity relief.<sup>2</sup>

The major breakthrough in this regard was the enactment of Unorganised Workers' Social Security Act, 2008.<sup>3</sup> This legislation came up as a result of large-scale protests and demonstrations across the country by various organisations over several years. However, it has been found that there have been many flaws in the effective implementation of the Act. Many social activists and researches believe that the plight of the unorganised workers would have been different in the wake of COVID-19 pandemic had there been proper implementation of the said Act.<sup>4</sup> India, being a signatory of the UDHR and ICCPR, must ensure that social security of unorganized workers is viewed through the lens of basic human rights and further must strictly adhere to the same. The current paper throws light upon the various problems faced by the unorganised sector, judicial precedents regarding the same and also carefully analyses the 2008 Act.

---

## SOCIAL SECURITY TO UNORGANISED WORKERS AND PROBLEMS FACED

---

Social security refers to the public provision for the economic security and social welfare of workmen and their families. Many authors have defined social security in different ways –

---

<sup>2</sup> INDIA CONST. art. 42.

<sup>3</sup> Unorganised Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008 (India).

<sup>4</sup> Himanshu Upadhya, *The Missing National Social Security Funds for India's Unorganised Sector Workers*, THE WIRE (Oct. 31, 2020, 7:30 PM), <https://thewire.in/labour/national-social-security-fund-unorganised-workers>.

for e.g., ‘social security is a method of reconstruction and there are five giants on the road of reconstruction, these are want, disease, ignorance, squalor and idleness’.<sup>5</sup> The concept of social security has evolved from being a charity-based approach to a rights-based approach.<sup>6</sup> It has been viewed from both protective as well as promotional aspect.<sup>7</sup>

**Low Wages** – The Supreme Court has held that employing workers at wage rates below the statutory minimum wage levels is considered as forced labour and is in violation of Article 23 of the Indian Constitution.<sup>8</sup>

**Long Working Hours** – Since the sector is largely unregulated, there are no fixed working hours. In most of the cases their wages depend on the hours of their work and hence, they are exploited by their employers.<sup>9</sup>

**Women and children are unprotected** – Comparatively, children and women are paid meagre wages despite working for long hours. This is in clear violation of Article 39(d).<sup>10</sup>

**Work hazards, occupational safety and living conditions** – The workers are exposed to various toxic elements such as coal, dust, chemicals etc. Due to low wages, they live in inhuman and deplorable conditions which further adds on to their ill health.

**Lack of knowledge pertaining to Labour Unions** – Most of the workers are unaware about their rights of collective bargaining. Long working hours, social isolation, unemployment risk, illiteracy and lack of awareness are the major hurdles in organising themselves.

Unfortunately, all the social security legislations and schemes fail to address the concerns of workers and there is a dire need of welfare programs. The need of the hour is to strengthen the social safety nets and prevent the exploitation of workers engaged in the unorganised sector.

WORDS SPEAK

---

<sup>5</sup> S. C. SRIVASTAVA, SOCIAL SECURITY AND LABOUR LAWS (Eastern Book Co. 1985)

<sup>6</sup> A. M. SHARMA, ASPECTS OF LABOUR WELFARE AND SOCIAL SECURITY (Himalaya Publishing House 2006).

<sup>7</sup> A.C. Dhas & M. Helen, *Social Security for Unorganised Workers in India*, MUNICH PERSONAL REPEC ARCHIVE (Nov. 1, 2020, 9:00 PM), <http://mpa.ub.uni-muenchen.de/9247/>.

<sup>8</sup> Peoples’ Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

<sup>9</sup> R. S. TIWARI, INFORMAL SECTOR WORKERS: PROBLEMS AND PROSPECTS 5 (Anmol Publisher 2005).

<sup>10</sup> INDIA CONST. art. 39(d).

---

## UNORGANIZED WORKERS' SOCIAL SECURITY ACT, 2008: CRITICAL ANALYSIS

---

The business environment and nature of employment drastically changed due to the advent of liberalisation, globalisation and privatisation. Such a growth of market created many issues in social security measures. In the backdrop of such event, the said Act was enacted by the Government. The aim of the Act is to provide social security and welfare to unorganised sector. For the first time, the Act has defined the term 'unorganised workers' and therefore such workers have caught the attention of the lawmakers. The Act enlists various welfare schemes under which workers can get some security and protection and allows for registration of unorganized workers. It also empowers the central and the state governments to frame rules for the effective implementation of the Act.<sup>11</sup> The **salient features of the Act** are mentioned herein below: -

- ***Enabling Framework for Social Security Schemes***

The benefits included in these welfare schemes range from health and maternity benefits, life and disability cover, old age protection and other benefits as deemed fit by the government.<sup>12</sup> Similarly, the Act also empowers state governments to formulate welfare schemes specifically on matters related to provident fund, employment injury benefits, educational schemes for children, and skill up graduation of workers, funeral assistance and old age homes. A total of 11 schemes are prescribed under the Act for the unorganised workers. The funding of such welfare schemes is done wholly by concerned governments or through the contributions by beneficiaries or their employers.

- ***Establishment of State and National Social Security Advisory Boards***

The Act provides for a three-tier mechanism to undertake the implementation of the provisions:

1. National Social Security Board
2. State Social Security Board

---

<sup>11</sup> Sulekha Punyani, *Unorganised Workers Social Security Act 2008*, LEXLIFE INDIA (Nov. 1, 2020, 10:00 PM), <https://lexlife.in/2020/07/10/unorganised-workers-social-security-act-2008/>.

<sup>12</sup> Unorganised Workers' Social Security Act, 2008, § 3, No. 33, Acts of Parliament, 2008 (India).

### 3. Workers Facilitation Centres

National and State Social Security Boards – The composition of the Board is that of an appointed chairperson, a member secretary and 31 nominated members. The main objective is to recommend the formation and implementation of suitable welfare schemes. The other functions carried out by the Board include advising the union government on matters pertaining to administration of the Act, reviewing the registration and issuing identity cards to unorganised workers, reviewing the expenditure from the funds and suggesting recommendations to enhance the efficacy of the Act.<sup>13</sup> Similar functions are entrusted upon the State Social Security Board.<sup>14</sup>

Workers Facilitation Centres – The Act further provides for the establishment of ‘Workers Facilitation Centres by the concerned State Governments to provide information regarding social security schemes. These Centres also aim to assist unorganised workers for registration and help in their enrolment for social security schemes.<sup>15</sup>

- ***Provision for Registration and Smart Cards for Unorganized Sector Workers***

Every unorganised worker should mandatorily apply for registration with the district administration as per the provision of the Act. The two pre-requisites for registration include – completion of 14 years of age, and a self-declaration confirming that the individual is an unorganised worker. On successful registration, every unorganised worker shall be issued a smart card carrying a unique identification number. Lastly, if any scheme requires a contribution from workers, then workers will be eligible for social security benefits under the scheme only upon payment of such contribution.<sup>16</sup>

### **CRITICAL ANALYSIS: IDENTIFYING THE LOOPHOLES**

The Act can be considered as a beginning in the right direction. It provides for an opportunity to raise working-class struggles to newer heights by involving crores of unorganized workers.<sup>17</sup> However, a closer analysis of the Act reveals that there are inherent structural problems and have a lot of lacunae. Considering the fact that the said Act is the only piece of

<sup>13</sup> Unorganised Workers’ Social Security Act, 2008, § 5, No. 33, Acts of Parliament, 2008 (India).

<sup>14</sup> Unorganised Workers’ Social Security Act, 2008, § 6, No. 33, Acts of Parliament, 2008 (India).

<sup>15</sup> Unorganised Workers’ Social Security Act, 2008, § 9, No. 33, Acts of Parliament, 2008 (India).

<sup>16</sup> Unorganised Workers’ Social Security Act, 2008, § 10, No. 33, Acts of Parliament, 2008 (India).

<sup>17</sup> Pritam Ghosh, *Unorganized Workers’ Social Security Act, 2008 - A Critical Analysis*, JURISONLINE (Nov. 2, 2020, 8:00 AM), [www.ljurisonline.com](http://www.ljurisonline.com).

legislation which is directly aimed towards the unorganised sector workers, it is very important to highlight the underlying issues.

**Definitions are not exhaustive** – The Act loosely defines an unorganised worker which includes “home-based worker, self-employed worker or wage worker.”<sup>18</sup> This definition leaves behind many sections of unorganised workers such as agricultural labourers, forest workers, family workers, unpaid workers etc. Therefore, it can be stated that Act lacks inclusiveness which leaves a room for misusing the provision.<sup>19</sup> Further, defining ‘unorganised sector’ as establishments that employ less than 10 workers is unreasonable and amounts to arbitrariness. The Act fails to define ‘social security’ itself which leads to several hurdles.

**Compilation of existing BPL Schemes** – The Act fails to provide new welfare schemes. It only includes the already existing schemes in Schedule I of the Act. No obligation has been imposed upon governments to come up with new and inclusive welfare schemes. Also, the welfare schemes mentioned in the Act are for people belonging to below poverty line (BPL). Therefore, the Act unreasonably distinguishes between unorganised workers of BPL and non-BPL category.<sup>20</sup>

**Wage Issues and Contribution of Workers** – The Act is silent on the aspect of ‘minimum wages.’ If minimum wages are not stipulated, and are not revised on a time-to-time basis, the entire concept of social security takes a hit. There are no provisions dealing with the rampant problem of unequal wages, delay in payment, under-paying the workers etc. In addition to this loophole, the Act provides for contribution to be paid by workers to avail a benefit. In the absence of wages, contributing becomes very difficult. This clearly shows that the lawmakers have turned a blind eye towards the financial restraints faced by the unorganised workers.

**Protection of Women** – Matters such as unequal remuneration for equal work, protection from sexual harassment at workplace and decent working conditions for women have been excluded from the purview of the Act. Their needs must also be included in the Act in the

---

<sup>18</sup> Unorganised Workers’ Social Security Act, 2008, § 2(m), No. 33, Acts of Parliament, 2008 (India).

<sup>19</sup> K. B. Saxena, *The Unorganised Sector Workers’ Social Security Act, 2008: A Commentary*, 39 S. C. J. (2009).

<sup>20</sup> Paromita Goswami, *A Critique of the Unorganised Workers’ Social Security Act*, JSTOR (Nov. 2, 2020, 10:30 PM), <http://www.jstor.com/stable/40278606>.

interest of social justice. Further, the Supreme Court guidelines on prevention of sexual harassment at workplace don't find a place in the Act.<sup>21</sup>

**Refusal of Justiciable Social Security** – A justiciable right refers to the right of an aggrieved individual to knock the doors of the court and seek remedy in cases of dispute. The Act fails to provide the unorganised workers justiciable social security. The welfare schemes contained in the Act are placed in the schedule and not in the main body of the Act. This indicates that the government by merely issuing a notification can alter the said schemes without having a discussion in the Parliament. Further, the Act fails to deliver a justiciable right by not considering the inhuman working conditions, financial restraints, health conditions and livelihood aspects. There is a dearth of provisions relating to grievance redressal and dispute resolution which adds on to the hardships faced by the unorganised workers.<sup>22</sup> One of the suggestions of Labour Ministry was to remove the limitation that prohibits extending social security benefits to unorganised workers in the organised or formal sector.<sup>23</sup>

## **RECOMMENDATIONS: -**

From the above-mentioned pitfalls, it can be observed clearly that effective implementation of the Act has been a failure. The Act does not define clinical aspects such as 'social security', 'minimum wages' etc. leaving a large void in the implementation process. Therefore, it is highly recommended that the definition clause must be broadened to cover more aspects relating to the unorganised sector.

The fairness and effectiveness of the implementation of any Act revolves around the presence of functional institutions such as grievance redressal mechanisms and dispute resolution methods. The Act fails to deliver on such mechanisms. As a result, the workers are left with no recourse for registering their grievances. Therefore, a new chapter must be added in the Act which addresses the mechanism of dispute settlement. It must be an inclusive framework involving local administration, employers, police and other authorities. Accordingly, penal provisions must also be kept in place to set a positive example.

---

<sup>21</sup> Vishaka & Ors. v. State of Rajasthan & Ors., AIR 1997 SC 3011.

<sup>22</sup> Nagunuri Harshitha Kiran, *Unorganised Worker's Social Security Act, 2008*, C.L.A.W. (Nov. 3, 2020, 8:30 AM), [https://www.clawlegal.org/editorial/unorganised-workers-social-security-act-2008/#\\_ftnref12](https://www.clawlegal.org/editorial/unorganised-workers-social-security-act-2008/#_ftnref12).

<sup>23</sup> Yogima Sharma, *Labour Ministry Proposes Amendment to Unorganised Workers' Act*, THE ECONOMIC TIMES (Nov. 3, 2020, 9:00 AM), <https://economictimes.indiatimes.com/news/economy/policy/>.



The Act also suffers from lacunae with regards to imposing rigid definitions. The scope of 'unorganised workers' leaves behind several workers who are involved in the unorganised sector. The definition must be properly worded and its scope and ambit must be widened to include agricultural labourers, fish and forest workers, unorganised labourers in organised sector, anganwadi workers, etc. Acknowledging the nature of their work and providing them relief must be the aim of the law makers.

It is very unfortunate that the provision pertaining to protection of women doesn't find a place in the Act. Almost every other day, a horrific incident of sexual harassment at workplace is reported in our country. It's high time that appropriate laws are put in to place to secure the safety and well-being of women workers. Similarly, the mental and physical health of women workers must be taken into consideration and timely maternity benefits and allowances must be granted. Ensuring safety to women would not only amount to equality but would also ensure growth and development of the society as a whole.

The Act is also silent on any legally stipulated guarantee for the establishment of a Central Welfare fund. It is often reported that the funds are mis-utilised by the concerned authorities. There is no stipulation with regards to the amount, source and use of the Central Welfare Fund. Although the national and state boards have been set-up, they're merely restricted to the task of monitoring the welfare schemes. They are not bestowed with executive powers which further hinders their functioning. Therefore, the establishment of a robust mechanism which would cater to the needs of unorganised workers is highly essential.

Another major drawback of the Act is that it doesn't talk about forming labour unions. The right to organise, to represent groups and to enter into collective bargaining are not recognised by the Act. Collective bargaining is the backbone of labour industry which allows the workmen to express their concerns in a collective manner and promotes a fair and healthy work environment. The needs of the unorganised workers can be addressed better if they come forward together and claim their rights. It would not only strengthen them, but it would make the authorities liable for their mismanagement. Therefore, the Act must include the provision for collective bargaining. Further, special attention should be provided to encourage green jobs, sustainable development, community participation, health and safety consciousness and enriching the skills of unorganised workers in India.

---

## ROLE OF INDIAN JUDICIARY

---

In certain situations, wherein the legislature fails to implement a particular piece of legislation, the judiciary steps in to aid the interpretation and to protect the rights of the stakeholders. Due to the poor implementation of the Unorganized Workers' Social Security Act, 2008, unorganised workers have remained outside the purview of social security measures. The Indian judiciary has played a crucial role in securing the interests of such weaker sections of the society. Further, it has identified and helped in the evolution of industrial relations jurisprudence and the rights of unorganised workers.

The Hon'ble Supreme Court has held that 'right to livelihood' is an essential and integral component of 'right to life' as enshrined in Article 21 of the Indian Constitution.<sup>24</sup> It has also been held by the Apex Court that non-payment of minimum wages to a person offering services would amount to violation of Article 23 of the Indian Constitution.<sup>25</sup> A similar position was taken in the case of Sanjit Roy v. State of Rajasthan<sup>26</sup>, wherein the Court held that State cannot take advantage of the helplessness of unorganised workers by paying them less than the minimum wages. In one case, the Supreme Court held that undertaking labour from prisoners without paying them sufficient wages is considered as forced labour and is violative of Article 23.<sup>27</sup>

In the landmark judgment of Bandhua Mukti Morcha v. Union of India,<sup>28</sup> the Supreme Court held that the governments at both central and state level are bound to ensure observance of social welfare and labour laws enacted by parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy. The governments must examine the issue of bonded labour closely and must eradicate the same. In another leading judgement, Bhagwati J. observed that the government must not solely focus on eradicating bonded labour but also on rehabilitating the labourers to protect them from despair, poverty, and helplessness.

---

<sup>24</sup> Rural Litigation and Entitlement Kendra, Dehradun v. Uttar Pradesh, 1985 SCC (2) 431.

<sup>25</sup> People Union for Democratic Rights v. Union of India, 1982 SCC (3) 235.

<sup>26</sup> Sanjit Roy v. State of Rajasthan, 1983 SCC (1) 525.

<sup>27</sup> Deena v. Union of India, 1983 SCC (4) 645.

<sup>28</sup> Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

The Supreme Court in the case of *Daily Rated Casual Labour v. Union of India*<sup>29</sup>, held that classification of workers into casual and regular employees leads to the violation of Article 14 and 16 of the Indian Constitution. It was further held to be in violation of Article 7 of International Covenant on Economic, Social and Cultural Rights, 1966. The Court also observed that denying minimum wages to the workers amounts to exploitation of labour and also stated that the government must act as the model employer.

In many instances, workers are discriminated on the basis of their caste. The Patna High Court took stock of the situation and held that persons cannot be refused to render services merely on the ground of their caste. This is to protect the interests of weaker sections of the society.<sup>30</sup>

In the landmark case of *M. C. Mehta v. State of Tamil Nadu*<sup>31</sup>, the Apex Court directed the government to undertake a survey and stop the child labour prevalent in matchstick and cracker factories. It also held that there must be no deviation from the Minimum Wages Act and the Contract Labour Act, 1970.

Further, in the case of *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers*<sup>32</sup>, the Supreme Court acknowledged the failure of social security mechanisms on the implementation front. It observed the absence of provision for payment of reasonable compensation in the event of death and urged the concerned authorities both at the central and state levels to review such legislations and enact better and wide-reaching schemes. However, there has been no update since.

Recently, in the case of *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*,<sup>33</sup> the court granted the implementation of the Building and Other Construction Workers (Regulation and Employment) Act 1996, as well as the Building and Other Construction Workers' Welfare Cess Act 1996, which were not implemented for last 12 years of coming into force. This shows the pro-active involvement of

---

<sup>29</sup> *Daily Rated Casual Labour v. Union of India*, 1988 SCC (1) 122.

<sup>30</sup> *State v. Banwari*, AIR 1951 Pat 473.

<sup>31</sup> *M. C. Mehta v. State of Tamil Nadu*, AIR 1997 SC 699.

<sup>32</sup> *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers*, (2011) 8 SCC 568.

<sup>33</sup> *National Campaign Committee for Central Legislation on Construction Labour v. Union of India and Ors*, 2018 (3) BomCR 347.

Judiciary in protecting the rights of unorganised workers and implementing social security welfare schemes.

---

## CONCLUSION

---

The unorganised sector workers are caught in a vicious cycle of poverty and exploitation due to the weak implementation of laws. Wages paid by the owner, sub-contractor, agent and middlemen are in violation of wage regulations which causes extreme hardship to the marginalized and unorganised workers.

Non-availability of jobs due to factors such as ongoing COVID-19 pandemic and technological advancements. Further, lack of skills and training, home based work, micro enterprises, has led to an unregulated work environment. Many employers resort to this sector mainly because of easy employment and absence of stringent regulatory norms. Therefore, the government must make it a focal point that informal economic activities need to be regulated on grounds of safety, social security and health. This would not only lead to a healthy working environment but would also uplift the lives of unorganised workers.

Social security must not be conceived as the mercy of the government, rather it should be viewed with the lens of legal rights. The Unorganized Workers' Social Security Act, 2008 is a welcome legislation in this regard but there is still room for improvement. There is a dire need to remove the flaws and ambiguities of the legislation since it is the only Act directly aimed towards the welfare of unorganised sector workers.