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Application of Unorganised Sector

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Abstract
To protect the rights of this segment of workers, the first of its type; Unorganized Workers' Social Security Act, 2008 was passed by the parliament. The Act is claimed to cover six crore unorganized workers, and in turn their family members of 30 crore people. Funds and Miscellaneous Provisions Act, 1952; the Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; and The Worker's Compensation Act, 1936. Some legislation, such as the Workers Compensation Act, Maternity Benefit Act, and Building and Other Construction Workers Acts, were directly or indirectly applicable to workers in the unorganized sector also. But the application and implementation of these laws have been mostly limited and ineffective. India has had a long tradition of State-sponsored social security initiatives. However, these initiatives have been fragmented, their coverage has been limited in terms of both workers and contingencies, and their delivery has often been ineffective. The Commission proposed legislation in this regard, which after prolonged discussion and deliberations, culminated in the enactment of the Unorganized Workers' Social Security Act in 2008. Before discussing the contents of the Act it is pertinent to highlight the main features of the recommendations of the NCEUS, since the idea of a national minimum was put forward by that Commission for the first time and also because it provided the basis for the new legislation in 2008.

Keywords: *unorganized workers, social security initiatives, contingencies, legislation*

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INTRODUCTION
Unorganised Workers' Social Security Act 2008 is an Act of the Parliament of India enacted to provide for the social security and welfare of the unorganised workers (meaning home-based workers, self-employed workers or daily-wage workers). This Act received the assent of the President of India on 30 December 2008 [1].

Profit in a business is perceived to be directly proportional to the extent of exploitation of labour. Labour is classified into different segments as unorganised and organised, wage earners and self-employed, skilled, semi-skilled and unskilled and so on, depending upon the nature, period, and place of work.1Stunningly, the labour laws of the country only covered workers of organised sector, who form only 8 % of the total labour force. Informal sector or unorganised sector in India is broadly characterized as consisting of units engaged in the production of goods and services with the primary objectives of generating employment and incomes to the persons concern [2]. In India, almost 92% of the labour comes under unorganised sector. Dearth of regulations and absence of Legislation purports the connivance of the government towards barbarous and roughshod (of course even Inhuman, at times) treatment of these labourers by the employees. They are not provided with any security against working conditions including safety, maximum hour of work and job security.

To protect the rights of this segment of workers, the first of its type; Unorganized Workers' Social Security Act, 2008 was passed by the parliament [3].

The preamble of the Act reads as: "An Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto. Unorganized Workers' Social Security Act, 2008 is the beginning in the direction of protecting the rights of unorganised workers in India but numerous implementation issues, inherent in the very structure of the Act, barricades in its well-functioning. Being among ratifying countries of UDHR and International Covenant on Civil and Political Rights the social security of unorganised workers should be considered as their basic human right in India and the country must adhere to protect such rights. The Act is claimed to cover six crore unorganized workers, and in turn their family members of 30 crore people.6 The expectations are high, but the objective still seems to be far-flung. This paper analyses the provisions of the Act and also proposes amendments, wherever it is felt necessary.

HISTORY AND DEVELOPMENT

The protective social security measures were envisaged by a variety of legislative measures, which date back to the pre-Independence era and have been largely aimed at organized sector workers. Some of the important legislations were: Employees State Insurance Act; Employees Provident Funds and Miscellaneous Provisions Act, 1952; the Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; and The Workers Compensation Act, 1936 [4].

These statutorily provided protective social protection measures are largely confined to 8 per cent of the workforce constituting formal workers in the organized sector. In view of the lack of social protection for a majority of the workers in the informal sector, there have been a number of attempts to overcome this lacuna through policies and programmes at both the central and state levels.

Prior to the enactment of the Unorganized Workers Social Security Bill of 2008, contingent social security schemes for informal workers by the Central Government were very few in number and limited in coverage. Some legislation, such as the Workers Compensation Act, Maternity Benefit Act, and Building and Other Construction Workers Acts, were directly or indirectly applicable to workers in the unorganized sector also. But the application and implementation of these laws have been mostly limited and ineffective [5]. Welfare funds have, however, been established to provide some social security to selected groups of workers. These funds, financed through a cess on the respective industries, are: The Mica Mines Labour Welfare Fund Act of 1946, The Limestone and Dolomite Mines Labour Welfare Fund Act of 1972, The Iron Ore, Manganese Ore and Chrome Ore Mines Labour Welfare Fund Act of 1976, The Beedi Workers Welfare Fund Act of 1976, and The Cine Workers Welfare Fund Act of 1981 [6]. These Acts provide for meeting the expenditure incurred in connection with welfare 6 measures and facilities in such fields as health, social security, education, housing, recreation and water supply. Some of these funds are hardly in operation (e.g. dolomite mine workers) or cover very few workers.

India has had a long tradition of State-sponsored social security initiatives. However, these initiatives have been fragmented, their coverage has been limited in terms of both workers and contingencies, and their delivery has often been ineffective. In this context, the Government made an highly significant move when in 2005, it announced the constitution of the National Commission for Enterprises in the Unorganised Sector (NCEUS) for examining the problems faced by unorganized sector enterprises and workers, including the extension of coverage of social security to the unorganised sector workers. In its first report, Social Security for Unorganised Workers (NCEUS, 2006), the Commission addressed this issue in detail and recommended a universal national minimum social security framework for all unorganized workers [7]. The Commission proposed legislation in this regard, which after prolonged discussion and deliberations, culminated in the enactment of the Unorganized Workers’ Social Security Act in 2008.

OBJECT AND REASONS BEHIND ENACTING UWSS ACT

It is estimated that the workers in the unorganised sector constitute more than ninety-four per cent, of the total employment in the country [8]. On account of their unorganised nature, these workers do not get adequate social security [9]. Some welfare schemes are being implemented by the Central Government for specific groups of unorganised sector workers such as beedi workers, non-coal mine workers, handloom weavers, fisherman, etc.

State Government are implementing welfare programmes for certain categories of unorganised sector workers and some Non-Government Organisations also provide social security to certain categories of workers. Despite all these efforts, there is a huge deficit in the coverage of the unorganised sector workers in the matter of labour protection and social security measures ensuring the welfare and well-being of workers in the unorganised sector, such as agricultural workers, construction workers, beedi workers, handloom workers, leather workers, etc.

The Unorganised Sector Workers Social Security Bill, 2007 [10] aims to provide for social security and welfare of the unorganised sector workers and for matters connected therewith or incidental thereto. The Bill, inter alia, provides for the following matters namely:

1. The Central Government shall constitute a National Social Security Advisory Board to recommend suitable welfare schemes for different sections of unorganised sector workers, and upon consideration of these recommendations, the Central Government may notify suitable welfare schemes relating to life and disability cover, health and maternity benefits, old age protection, or any other benefits [11].
2. The State Government shall constitute the State Social Security Advisory Board to recommend suitable welfare schemes for different sections of unorganised workers in that state and the state government may notify suitable schemes for one or more sections of the unorganised workers [12].
3. A worker of an unorganised sector shall be eligible for social security benefits if, he is duly registered. Every registered worker in the unorganised sector shall be issued an identity card which shall be a smart card carrying a unique identification number and shall be portable.
4. The Central government and the State Government shall have the powers to make rules for the purpose of carrying out the objects of the bill.

FEATURES OF UWSSA

Before discussing the contents of the Act it is pertinent to highlight the main features of the recommendations of the NCEUS, since the idea of a national minimum was put forward by that Commission for the first time and also because it provided the basis for the new legislation in 2008. The NCEUS scheme was intended to cover all unorganised or informal workers, including both wage and self-employed workers, earning less than Rs. 6500 per month in 2005. The scheme had the following three types of social security cover [14].

a. Health cover to take care of illness of the workers and members of the family and maternity benefit to the spouse or self (in the case of women workers)
b. Accident or death of the registered worker, and
c. Old age pension for those belonging to poor households and provident 11 fund to those outside this segment [15]. The Unorganized Workers Social Security Act 2008 (UWSSA) [16] though not measuring up to the expectations of the NCEUS, does take forward many of its recommendations, and thus marks a departure from the past on the much-neglected issue of social protection for the unorganized workers. The main features of the UWSSA, 2008, are as follows [17].

i. The Act covers unorganized workers, including both self-employed and wage workers.
ii. It provides for formulation of schemes by the Central Government for different sections of unorganized workers on matters relating to: (a) life and disability cover, (b) health and maternity benefits, (c) old age protection, (d) any other benefit as may be determined by the Central Government.
iii. It provides for formulation of schemes relating to provident fund, employment injury benefits, housing, educational schemes for children, skill upgradation, funeral assistance and old age homes by the state governments [18].
iv. It provides for a National Social Security Board under the chairmanship of the Union Minister for Labour and Employment. The Board, among others,

also provides for representatives of unorganized workers and employers of unorganized workers as well as persons belonging to the Scheduled Castes (SCs), Scheduled Tribes (STs), other minorities and women. There is provision for the constitution of similar Boards at the state level.

v. Realizing the critical deficiency in the database relating to unorganized workers and the need for such information for proper monitoring, the Act prescribes record-keeping functions by the district administration with the help of the District Panchayats in rural areas and urban local bodies in urban areas.

vi. Provision is also made for setting up of Workers' Facilitation Centres to disseminate information on social security schemes available to them and to facilitate registration of workers by the district administration and enrolment of unorganised workers [19].

vii. The Act, in Schedule I, lists ten social security schemes for unorganized workers and provides for inclusion of more such schemes from time to time.

The Central rules under the Act have since been framed and the Act came into force with effect from 16 May 2009. The National Social Security Board has been constituted and some states have already constituted the Social Security Board.

The ten schemes included in the Schedule 1 of the Act are:

i. Indira Gandhi National Old Age Pension Scheme,
ii. National Family Benefit Scheme,
iii. Janani Suraksha Yojana,
iv. Handloom Weavers' Comprehensive Welfare Scheme,
v. Handicraft Artisans' Comprehensive Welfare Scheme,
vi. Pension to Master Craftspersons,
vii. National Scheme for Welfare of Fishermen and Training and Extension,
viii. Janashree Bima Yojana,
ix. Aam Aadmi Bima Yojana (Life Insurance Scheme for Common People), and
x. Rashtriya Swasthya Bima Yojana (National Health Insurance Scheme).

The first eight of these ten schemes are among the existing ones while the last two are relatively new schemes that were announced a few months before the Act was passed.

DRAWBACKS OR DISADVANTAGES

The inherent structural problems of the Act are evident in various sections of the Act, starting from the very definition of 'unorganised worker' under Section 2(m). The Act while defining 'unorganised worker' appears to have excluded vast sections of unorganized workers like agricultural labourers, the unorganized labourers in the organised sector including contract labourers and the informal labourers in the formal sector, and those in the cooperative sector. This exclusion reveals the true colours of the "Politics of Inclusiveness" of the government [20]. Also, the Act is applicable only to a small section of unorganized labourers whose income limit is expected to be notified by the government. So, there is every possibility of misuse of provision. Thus, Section 2(m) should also include:

- Workers dependent on traditional livelihood systems as specified in the schedule
- Unpaid Women Workers and unpaid Family members engaged in household or other family occupations.

Further defining 'unorganised sector' as establishments that employ less than 10 workers, is unreasonable and amounts to arbitrariness. Under section 2(l) the term "Unorganised Sector" restricts the coverage to those enterprises employing workers who number less than 10 [21]. This numerical limit may raise problems. This provision is violative of Art. 14 of right to equality of the constitution as there cannot be any reasonable distinction between workers working with employee having 10 workers and working with one who is employing more than 10 say 11 or 12. Thus the definition under 2(l) is arbitrary.

The act reads as Unorganized Workers' Social Security Act, the name itself is a misnomer because the Act does not provide any social security (except mere registration) to any section of worker. The word Social Security itself is not defined anywhere in the Act.

No rights can be of any use for an unorganised sector worker, unless his livelihood would be secured, and they would avail job-security. Section 3(1) of the Act mentions the list of suitable welfare schemes but surprisingly livelihood Rights are not the part of Social Security Benefit. So, the Act must be Inclusive of livelihood rights which are not mentioned in the list of schemes under Section 3(1) and rights for additional protection to Dalits, women, adivasi, other excluded groups like eunuch, handicap, abandoned and old people/sick people.

Also, the social Security schemes under section 3(1) is not Universal as most of the schemes available under schedule 1, are only for BPL workers and, therefore, Constitutionally Invalid. None of these schemes are new but are mostly applicable only for BPL families. Most of the urban unorganized workers may not fall under the BPL category and hence they would be left out of the purview of this Act.

Under Section 8(1), The National Social Security Board and State Social Security Board should also be given provision for having secretariat in the ministry of labour of the government of India or the governments of the states, as the case may be for better administrative functioning. The Social Security Boards have only advisory role according to the Act. The Board will be effective only if they are given powers to administer and enforce. So, the word ‘monitor’ under Section 6(8)(c) should be replaced by ‘administration’ to empower the state boards.

No Social Security Fund—The absence of a financial memorandum casts doubts on the genuineness of government’s intentions in delivering social security rights to the unorganised workers in India. Finance is one of the biggest problems in implementation of the Act. The Act should be clearer about distribution of burden for the funding under the Act.

Compulsory registration—The Act should provide for the registration of an employer of an unorganised worker. It should be made the responsibility on their part in case of nonregistration of Employees. There is no action against the bureaucrats who refuse to register any unorganized worker under any of the twin scheduled schemes.

Also, there is no provision for penalties in the Act to punish those employers who violate it. The special problem of migrant workers, especially inter-State migrants, among unorganized workers, the problem of security, has been totally ignored by the Act. Even the problem of women unorganized workers does not figure in the Bill.

Contribution by the Worker—This welfare legislation surprisingly mentions a provision under Section 10(4), to require a registered unorganised worker to contribute, if he/she is eligible for a benefit. While making the ridiculous provision, the government did not bother that the workers will not be in a position even to pay the minimal required contribution as may be prescribed under section 10(4) of the Act, which makes it quite clear that non-payment of the contribution disentitles the worker from getting any benefit.

CONCLUSION

The Unorganised sector being so diverse; the major challenge is to extend social security to 300 million workers covering all States and all groups of workers. As India has not implemented protective social security schemes on a large scale, more debate discussions are needed for better implementation.18 The Unorganized Workers’ Social Security Act, 2008 can be considered as a welcome legislation from the government where the function of registration of workers, the ‘biggest’ advantage of the entire Act. But the Act fails measurably on the implementation front and requires reconsideration in this regard.

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