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UNORGANISED WORKERS SOCIAL SECURITY ACT 2008: A MIRAGE OF SOCIAL SECURITY?

Meenakumari S¹

*“Praja sukhe sukham rajna: Prajanam ca hite hitam:
Natma priyam hitam rajna: Prajanam tu priyam hitam.”*

Kautilya in Arthasastra1 (1.19.34)

*“In the happiness of the subjects lies the happiness of the king;
In the welfare of the subjects is the welfare of the king;
Not his personal desires and ambitions,
But what is desirable and beneficial to the subjects,
That is desirable and beneficial for the king”*

R P Kangle (trans.), The Kautilya’s Arthasastra (1960)

Introduction

The quest for social security and freedom from want and distress has been the consistent urge of man through the ages (Kumar 2003). The urge has assumed several forms according to the needs of the people and their level of social consciousness, the advancement of technology and the pace of economic development (Gupta 2013). In the context of right to work, Sandra (2002: 147-155) describes social security as "those measures that aim at guaranteeing a certain minimum subsistence level, as well as protecting the income of people in situations where it is imperilled owing to various contingencies ." These measures are significant from three aspects. First, they provide workers and their families with access to health care and with protection against loss of income, whether it is for short periods of unemployment or sickness or maternity or for a longer time due to invalidity or employment injury. It also provides older people with

¹ The author is an Assistant Professor in Government Law College, Ernakulam, Kerala.
Email: advmeeks@gmail.com

income security in their retirement years. Secondly, they enable workers to become more efficient and thus reduce wastage arising from industrial disputes. Moore, V. and others (1999) affirms that lack of social security impedes production and prevents formation of stable and efficient labour force . Finally, these measures constitute an important step towards the goal of a welfare state. Social security measures can contribute towards social cohesion and to a country's overall growth and development by improving living standards and by cushioning the effects of structural and technological change on people. Undeniably as observed by Udombana (2006: 182) the creation of jobs, the development of labor relations, and the securing of social security are essential preconditions for achieving social peace and establishing social democracy, which is an extension of political democracy. It is in this context that this paper articulates as to how far India's social security legislation for unorganized workers has succeeded in achieving its target.

The hardest reality of social security in India has been that it predominantly excluded the unorganized sector workers within its safety net though they account for more than 90% of the total work force of our nation. Conversely, given the continuing predominance of the unorganized workforce, without substantial improvement in skills, efficiency, wages, working conditions and welfare of this sector, the goal of reaching the status of a developed economy would remain a mirage for India. In spite of these reminders, the fact remained that till the framing of the much awaited Unorganized Workers Social Security Act in 2008, the terrain of the social security for the overwhelming majority of the workers in India, who are informal and hence largely poor and vulnerable, was a deserted one with some patches here and there.

The Unorganised Workers Social Security Act (UWSSA) 2008 – A Critical Analysis

The UWSSA 2008 can be considered as a beginning and an opportunity to raise working class struggles to newer heights by involving crores of unorganized workers (Ghosh 2009). Though the ultimate legislation that has come in place, is a substantially diluted version of the social security bill proposed by the National Commission for Enterprises in the Unorganized Sector (NCEUS), according to Saxena (2009), the act is significant in that for the first time the term unorganized workers is defined thereby identifying them in the eyes of law. The Act enlist various welfare schemes under which workers can get and allows for registration of unorganized workers and issuance of smart cards with portable unique ID number. But the enactment is not an enabling legislation compared to NCEUS proposal (GOI 2012).

The prime objective behind the Act was to provide social security and welfare of the unorganized workers and all matters that is in connection with it. The Act is applicable to whole of India to the entire Unorganized Workers. As per the Act Unorganized Worker means

*“home- based worker, self- employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II to this Act.”*²

Salient Features of the UWSSA Legislation

1. Enabling Framework for Social Security Schemes

The Act enables the central government to formulate welfare schemes for unorganized sector workers regarding life and disability cover, health and maternity benefits, old age protection and also any other benefit decided by the government. In the Act, eleven social security schemes for the unorganized sector workers are listed³. The central government may modify the list by notification. The Act also enables state governments to formulate welfare schemes relating to provident fund, employment injury benefits, housing, educational schemes for children, and skill up graduation of workers, funeral assistance and old age homes. Further any notified scheme may be wholly funded by the central or state government or both and could require contributions by the beneficiaries of the schemes or their employers to unorganized sector workers.

2. Establishment of State and National Social Security Advisory Boards:

The Act institutes a National Social Security Advisory Board to recommend formation and implementation of suitable welfare schemes for the unorganized sector workers. The national board will consist of an appointed chairperson, a member secretary, and 31 nominated members. The Act also establishes state level Social Security Advisory Boards. The state boards will have similar functions as the central board at the relevant state and district levels. Each state board consists of an appointed chairperson, a member secretary, and 26 nominated members.

² Section 2(m) of UWSSA, 2008.

³ The schemes includes national Old Age Pension Scheme, National Family Benefit Scheme, National Maternity Benefit Scheme, Mahatma Gandhi Bunkar Bima Yojana, Health Insurance Scheme for Handloom Weaver, Scheme for Pension to Master Crafts Person, Group Accident Insurance Scheme for Active Fishermen, Saving- cum- Relief for fishermen, Janshree Bima Yojana, Aaam Admi Bima Yojana, Swasthya Bima Yojana.

3. Provision for Registration and Smart Cards for Unorganized Sector Workers

The unorganized workers should mandatorily apply for registration with the district administration. An individual must be 14 years of age or older and should declare that he is an unorganized sector worker. Upon registration, the district administration will issue a portable smart card carrying a unique identification number. If a scheme requires contribution from the registered unorganized sector, he will be eligible for social security benefits under that scheme only if he has made the required contribution (Reddy, Ravindra V. 2012: 1-21). Through these provisions aims at imparting social security to unorganized workers and place them in a better position turning away from all miseries and crisis.

UWSSA, 2008 - Evaluation of the Defects and Challenges

The much awaited legislative framework on social security of unorganized workers could not fully justify the prime objective of realization of the rights of unorganized sector and enhancing their social security. The basic aspiration while enacting UWSSA, 2008 was to have a comprehensive legislation encircling all ground aspects of the work of unorganized sector and life at work including regulation of their employment, wages, social security, safety, conditions of work and so on, all to be administered through tripartite bodies, for each group of employments, at the national, state, district and lower operational levels down to the village. Social security was conceived as not just a mere benevolence from the Government but as the lawful right of the citizens. However contrary to the recommendations of the Second National labour Commission, the Report of the Petitions Committee of Lok Sabha, the Report of the Parliamentary Standing Committee for Labour and the draft laws prepared by the National Commission for Enterprises in the Unorganized Sector, the Act is a soulless legislation with half baked benefits. An evaluation of the contents of the act reveals the following inadequacies (Shankaran 2009):

1. Ambiguity With Respect To Definition Clauses

The term “social security” has not been defined in the law and what is disquieting is that the term does not occur in the body of the law in any substantive sense. Unless the expression social security and welfare are used interchangeably, in which case there is no need to call it Social Security Act, the emphasis seems to be only on schemes of welfare⁴. The loose usage of the terms is evident from the fact that in Sections 3(1),

⁴ The defect is evident perusing through the following provisions of UWSSA, 2008. The analysis is provided in four parts. I. Section 3 under Chapter II deals with Social Security Benefits entails on the aspect of Framing of scheme. –

“(1). The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to-

- 1. life and disability cover;*
- 2. health and maternity benefits;*
- 3. old age protection; and*
- 4. any other benefit as may be determined by the Central Government.*

(2). The schemes included in the Schedule 1 to this Act shall be deemed to be the welfare schemes under sub-section (1).

(3). The Central Government may, by notification, amend the Schedules annexed to this Act.

(4). The State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to-

- 1. provident fund;*
- 2. employment injury benefit;*
- 3. housing;*
- 4. educational schemes for children;*
- 5. skill upgradation of workers;*
- 6. funeral assistance; and*
- 7. old age homes.*

II. Section 5(3) and Section 5(8) under the chapter III National Social Security Board for Unorganised Workers. According to Section 5(3) *the Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.* Further According to Section 5(8):

“The National Board shall perform the following functions, namely:-

- 1. recommend to the Central Government suitable schemes for different sections of unorganised workers;*
- 2. advise the Central Government on such matters arising out of the administration of this Act as may be referred to it;*
- 3. monitor such social welfare schemes for unorganised workers as are administered by the Central Government;*
- 4. review the progress of registration and issue of identity cards to the unorganised workers;*
- 5. review the record keeping functions performed at the State level;*
- 6. review the expenditure from the funds under various schemes; and*
- 7. undertake such other functions as are assigned to it by the Central Government from time to time.”*

III. Section 6(3) and Section 6(8) under the chapter IV State Social Security Board for Unorganised Workers According to Section 6(3) *the Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.* Further according to Section 6(8):

“The State Board shall perform the following functions, namely:-

- 1. recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;*

Section 3(2) and Section 3(4) it is referred to as welfare scheme, in Section 5(3) and 6(3) the expression used is labour welfare while in Section 5(8) and 6(8) the term used is social welfare.

The term "Family" has not been defined. It is not rational to leave it on the ground that it is defined in similar schemes. Indeed for the purpose of avoiding any kind of uncertainty caused by varying definitions drawn up by different state governments, it is necessary to define it in the Central Act. As in general practice there exist a tendency to define "family" in a very restricted manner to include only the worker, his or her spouse and up to two children. However considering the fact that unorganized sector worker in the Indian society will invariably be the sole breadwinner of an extended family, it is desirable to give an extended definition to include not merely the spouse and all children but also parents of the worker and or the spouse, dependent widowed sister, dependent widowed daughter-in-law. Only then will the term "social" in social security attain its full stature.

The expression "District Administration" occurring in section 2(c) has not been defined⁵. With the spread of administrative hierarchies of various developmental and regulatory departments of government, there is considerable presence of almost all departments at the District Level, Labour Department also being one such. Section 8 of the Act⁶ entrusts to it the record keeping function but the proviso to this section seems to

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2. *advise the State Government on such matters arising out of the administration of this Act as may be referred to it; monitor such social welfare schemes for unorganised workers as are administered by the State Government;*
 3. *review the record keeping functions performed at the District level;*
 4. *review the progress of registration and issue of cards to unorganised sector workers;*
 5. *review the expenditure from the funds under various schemes; and*
 6. *undertake such other functions as are assigned to it by the State Government from time to time."*

IV. Section 16 deals with saving of certain laws. – Accordingly nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the unorganised workers than those provided for them by or under this Act.

⁵ Under section 2 (c) of UWSSA, 2008 which deals with "identity card" means a card, document or certificate issued to an unorganised worker by the District Administration under sub-section (3) of section 10.

⁶ Under Section 8 of UWSSA, 2008 which deals with record keeping by District Administration. It states thus:

equate District Administration with District Panchayats in rural areas and urban local bodies in urban areas. If the intention is to entrust the record keeping functions including the work of registration of workers as per section 10(2) and section 10(3)⁷ of the Act to elected urban and rural bodies, it could have been explicitly stated in the law. The entire dilemma could have been avoided if the workers were taken into confidence and the entire administration of the funds and the schemes entrusted to Tripartite Bodies at various levels, with a certain degree of linkage between the levels.

The term “Unorganized Worker” has been defined in section 2(m) as “*a home based worker, self-employed worker or a wage worker in the unorganized sector.....*” and the term “Unorganized Sector” restricts the coverage to those enterprises employing workers whose number is less than 10⁸. This numerical limit leads to diverse dilemmas and problems. For instance, in the case of brick kilns not using power in the manufacturing process, the number of persons employed ,even if it be for only a portion of the year, will be well above 9, this definition will make the workers ineligible for coverage. Also even if the argument is that such enterprises will get covered under, say the Factories Act, 1948, but the quest still persists as to how can those enterprises where the employment is between 10 and 19. As well enterprises employing 9 or less number of workers may include cyber cafes, beauty parlours, and real estate agencies and so on but their employees may not even like to be referred to as unorganized worker.

Further as in relation with defining the term “unorganized workers” while examining

“The record keeping functions for the purpose of this Act shall be performed by the District Administration: Provided that the State Government may direct that the record keeping function shall be performed by-

1. *the District Panchayat in rural areas; and*
2. *the Urban Local Bodies in urban areas.”*

⁷ Section 10(2) and Section 10(3) of the UWSSA, 2008 under Chapter V Registration dealing with the aspect of eligibility for registration and social security benefits. According to Section 10(2), every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration. According to Section 10(3), every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.

⁸ Section 2(l) of the UWSSA, 2008 reads thus:

“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”

Section 2(n)⁹ defining "Wage Worker" prescribes a monthly wage limit. Here the Central and State Governments are authorized to notify an amount as monthly wage as the case may be. It is not clear why the Central Government should at all be authorized to notify a monthly wage, particularly when different rates may be prescribed by the Central Government and a State Government. If for purposes of uniformity of coverage it is felt desirable to authorize the Central Government, then legislative policy should warrant the law itself to prescribe a limit, with a provision for changes once in 6 months depending on the upward or downward movement of Consumer Price Index numbers.

Also in addition, the same procedure may be followed in respect of "self-employed worker", in which case also there is provision in section 2(k) for a limit on monthly earnings to be notified by the Central or State Government¹⁰. The second part of the definition of the term "Unorganized Worker" includes "a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II to this Act". The intention behind this inclusion is laudable because it is well known that in the so-called "Organized Sector", there are thousands of workers particularly contract labour, casual labour and so on who may not be covered by the laws in Schedule II. The point to note, however, is that there are different employment limits prescribed in the various laws¹¹.

⁹ According to section 2(n) of UWSSA, 2008 defines the term "wage worker"

"as 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."

¹⁰ Section 2(k) of the UWSSA, 2008 defines "self-employed worker" as

"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."

¹¹ The Industrial Disputes Act, 1947 which presumably has been included because of the provisions in Chapter V(A) of the Act, there are employment limits for eligibility to lay off; it must also be noted that this Chapter covers only factories, mines and plantations as defined in those respective Acts. Likewise the coverage under some of the Acts in Schedule II is not universal. These Acts apply only to certain kinds of establishments and with different employment limits. One is not sure whether any detailed study was undertaken to see how far this inclusion will be really beneficial to the left out workers of the organised sector. The use of the

2. Deficient in Appropriate Administrative Mechanism for Implementation

The Act does not incorporate the provision for an appropriate administrative mechanism for the realization of objectives behind the framing of the so called comprehensive legislation. It is certainly insufficient to have a single monolithic Board for the whole country at the national level and one Board at the State level. The various issues which is need to be regulated including matters relating to regulation of employment, fixation of wages keeping in mind that in the unorganized sector bulk of the payments are on a piece rate basis and conditions of work will vary considerably from sector to sector and therefore there is need to group all allied occupations and employments into separate sectors and set up Boards for each such sector. In fact the examples and experiences of Kerala and Tamil Nadu are pointers in this regard and also the draft law prepared by NCEUS had attempted to group the employments into thirteen or fourteen groups and recommended tripartite Boards for each group at various levels.

In UWSSA, 2008 Chapters III and IV deal with National and State Social Security Boards respectively. These Bodies which were originally designed to be merely advisory bodies have now been assigned some specific functions both at the Central and State Levels. Incidentally, section 6(8) (a) seems to call for some reformulation. A thought that occurs in the context of provisions relating to National and State Level Boards is whether in the matter of implementation of schemes, there is any need at all to distinguish between schemes notified by Central Government and those by State Governments. In reality, the law is concerned with social security and welfare of the unorganized sector and not with the regulation of employment and wages; also, the implementation is sought to be done through District Administration or elected local bodies. Thus the present implementation mechanism is paving way for disorderly structure as the quest exists as to why the Central Government should administer any schemes under this Act.

Moreover an examination of Section 16 of the Act brings to the light the unripe attitude of the legislature. The present provision calls for giving priority to State welfare schemes than the welfare measures precipitated under the Act which are more beneficial to the unorganized worker. Firstly, it must be pointed out that there are no benefits provided by the Act and if at all any benefits are to accrue to the unorganized workers, it can only be under the Act through schemes notified under the Act. Apart from that, the

words "any of the Acts" and the inclusion of Workmen's Compensation Act, 1923 in the Schedule may result in bulk of the workers falling between two stools.

Act is silent about the consequence or validity of welfare scheme benefiting unorganized workers implemented through executive decisions. Thus the unambiguous clauses in the enactment leave myriads of unanswered concerns as to whether the benefits at the State level are to be enjoyed in addition to or in place of what the schemes under this Act provide. Also what will be the manner of determining the extent of Central Government funds that will be made available to a State Government in the above situations as well as will that also be determined by the Central Government and if so, on what authority it can be determined. There urges the need for the law to be clear and precise on these matters.

3. Inconsistency in the Constitution and Powers of the Board

It is averred that the composition and functions of the National level Body under UWSSA, 2008 mentioned in Chapters III and IV needs an amendment. At present the Board is chaired by the Union Minister of Labour and Employment and the Member Secretary is the Director General, Labour Welfare in that ministry. In addition there are 5 representatives of Central Government's ministries. It is submitted that it will be adequate that one representative from the Ministry of Social Justice and Empowerment and another each from the Ministries of Law and Finance be part of the Board and the remaining seats can be allotted to State Governments raising their number from 5 to 7. The stipulation in section 5(3) and section 6(3) that the members of the Board shall be "from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration" seems unnecessary. At best, this need only apply to the "eminent persons from civil society" referred to in section 5(2) (c) (iii)¹² and section 6(2) (c) (iv)¹³.

If the substantive provisions for social security for the unorganized workers are tentative leaving it to the Central and State Governments to formulate the schemes, the arrangements for implementing the schemes such as those in sections 8¹⁴, 9¹⁵ and 10¹⁶

¹² Under Section 5(2)(iii) of the UWSSA, 2008 which deals with the National Social Security Board says that the National Board shall also consist of thirty- four members to be nominated by the Central Government and among that seven representing eminent persons from civil society.

¹³ As per Section 6(2)(c)(iv) of UWSSA, 2008 which deals with the State Social Security Board for Unorganised Workers, says that State Board shall consist of twenty eight members to be nominated by the State Government, out of which five representing members of Legislative Assembly of the concerned state.

¹⁴ Section 8 of the Act deals with maintaining records.

are even weaker. Firstly, as already pointed out, monolithic boards at the National and State Levels will not and cannot carry out the functions. This will require particularly at the State level sectoral Boards for each group of allied employments. These Boards ought to be tripartite in character, may be with inclusions of persons well versed in social security, law, finance and other specified fields. These Boards at State level should have their establishments, again of a tripartite nature, at the lower levels such as Districts, Gram Panchayats and so on. These will be the agencies for the implementation of the schemes with built-in dispute settlements machinery and so on. While no doubt, the district administration and local bodies will have representation on

¹⁵ Section 9 which says about workers facilitation centres is as follows:

“the State Government may set up such Workers' facilitation centres as may be considered necessary from time to time to perform the following functions, namely:-

1. *disseminate information on available social security schemes for the unorganised workers;*
2. *facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;*
3. *assist unorganised worker to obtain registration from the District Administration;*
4. *facilitate the enrollment of the registered unorganised workers in social security schemes.”*

¹⁶ Section 10 of UWSSA which is dealt under Chapter V Registration which enunciates about the eligibility for registration and social security benefits. –

“1. Every unorganised worker shall be eligible for registration subject to the fulfillment of the following conditions, namely:-

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

2. Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration.

3. The very unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.

4. If a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.

5. Where a scheme requires the Central or State Government to make a contribution, the Central or State Government, as the case may be, shall make the contribution regularly in terms of the scheme.”

these bodies as part of Government representatives; the functioning will be tripartite and democratic. Workers' representatives can be elected through secret ballot. Trade unions, which have been totally ignored in the scheme of the Act, should be encouraged to play their legitimate role including the registration of workers and espousing their causes. In fact in the place of bureaucratic workers felicitation centers as indicated in section 9 this function should be done by trade unions; this will not merely help the trade unions to work closely with the workers but also, enable them to grow in strength. Perhaps, it is the fear of the latter that had led to the total ignoring of trade unions in the law.

To conclude, the Act as it now stands is totally an exercise in futility. There is no aspect of this law that is commendable unless it be the provisions in section 10(3) relating to the issue of "a smart card carrying unique identification number and shall be portable". This law has ignored the demand for a separate law for agricultural labour given its size and variety. The law has failed to indicate clearly the extent of funds that must be earmarked for providing social security and welfare. This could have been done by prescribing a minimum percentage of Central and State's revenue budgets or of their GNPs to be earmarked for this purpose. In all, the Act suffers from a serious lack of legislative policy and intent.

4. Absence of Universal Application for Realizing Social Security of unorganized Sector

The bulk of the schemes rendered under the Act have been devised and designed as Poverty Alleviation efforts and generally directed at persons and families below the Poverty Line. The definition of the term "self employed worker" in section 2(k) and of the term "wage worker" in section 2(m) of the Act provide for limits to be prescribed by the government for monthly earnings or of extent of land holdings or of monthly wage only strengthens the suspicion that the act is essentially designed to cover Below Poverty Line (BPL) workers. A person earning more than Rs. 12 per day in a village is not considered BPL as per the current BPL norms, which leave a large proportion of the deserving poor outside the safety net. The Central Vigilance Commissioner has recommended enhancing the number of BPL families. By this restrictive clause in the schemes, more than 90 per cent of the unorganized workers, the contingencies of whose lives have pushed them into poverty and increased vulnerabilities, are, in effect, denied the benefits of the schemes mentioned in the schedule of the Act. In the Scheme given in the Schedule I of the Act, unorganized workers, except the BPL workers, have been generally excluded from enjoying the benefits of the schemes and therefore, from the benefits of the Act. This generalized exclusion is constitutionally invalid. It has been observed keenly in National Convention on Social Security for Unorganised Workers (2010) that this is in violation of Article 14 of the Constitution, which does not permit

generalized discrimination.

5. Refusal of Justiciable Social Security to Unorganized Workers

A justiciable right is one in which the aggrieved individual can seek remedy in a court of law. To make a right justiciable, it should be defined and be made available to the individual either by the Constitution- the supreme law of the land or by specific statutes. Although the stated objective of USSWA is to provide social security and welfare to the unorganized workers, the Act does not confer any defined right to social security for them. In the Act, social security schemes are not included as a part of the body of the Act and are given in a schedule. This essentially means that schemes can be changed at any point of time by a notification, and not after discussion in the Parliament, thereby denying the workers the benefit of consistency and justifiability.

With the flagging of sixty sixth year of our Republic, it is definitely the right of unorganized sector workers for a minimum standard of social security, on the scale and spread in the relevant International Labour Organization (ILO) Convention drawn up even more than fifty years ago. When the Constitution of India in Article 41 talks of public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want, it covers the entire population. The unorganized workers who contribute by their labour to two thirds of our national product are entitled to something more than what Article 41 contemplates. Without any employment either as a home based worker or wage worker as defined in the Act, the workers will not be in a position even to pay the minimal contribution as may be prescribed under section 10 (4) of the Act, which makes it quite clear that nonpayment of the contribution disentitles the worker from getting any benefits. Work and employment are so essential, both for earning a livelihood and for leading a life of dignity, that employment and work are the starting point for any scheme of things for workers. Therefore, any law which does not deal with this issue of employment, its regulation, wages, conditions of work, and so on will be not merely incomplete but dysfunctional if it proceeds to deal with social security on a standalone basis. It is this compulsion that has led to the demands from all workers and their organizations including National Commission for Enterprises in the Unorganized Sector (NCEUS) for an integrated comprehensive law.

6. Absence of Dispute Settlement Mechanism

The fairness and effectiveness of the implementation of the Act greatly depends on the availability of an institution for grievance redressal mechanism wherein the workers can register their complaints about violations. Thus, there necessities the inclusion of a new

Chapter on Dispute Settlement requiring the government to formulate a model Dispute Settlement Mechanism for unorganized workers of each occupations involving local administration, employers, police and other authorities for resolving disputes and grievances. The mechanism should be empowered for arbitrating and also for punishing faulty employers. The district administration, the state boards established under the Act and the National Board should also be empowered to entertain and enforce complaints from aggrieved workers.

7. Lack of Legislative policy or intent

A glaring lack of legislative policy or intent is apparent in the Act. One would expect that the Parliament would build into the law what constitutes an appropriate and adequate social security for the vast mass of unorganized workers and their dependents and to determine what eligibility criteria, if any, ought to be prescribed, what will be the scale of benefits that the workers and their families are entitled to receive and under what conditions, what will be the funding arrangements that must be put in position to meet the cost of social security and so on. Instead what is seen is that our Parliamentarians are content with a mere hollow enactment which enables the Central and State Governments to do whatever they deem expedient. To that extent as per section 1(3)¹⁷ of the Act the commencement of the Act is left to be decided by the Central Government without prescribing even a time limit, say 12 months.

Need for the Revamping UWSSA 2008: Proposal For Amendments

In reality it is the need of the hour to explore new and innovative techniques or addressing the existing demerits and challenges faced by unorganized sector in spite of the enactment of a comprehensive legislation. Though the endeavor of the Government is to improve the socio and economic conditions of the unorganized workers and there was indeed sustained effort on the part of the State and the Central Government, the present scenario calls for a restructuring and revamping the existing structure and legislations. The following are some of the steps which are to be considered for taking a future step ahead:

1. Determination of the Minimum Social Security Needs and Tentative Decision on Initial Benefits

The minimum needs are necessarily to be established on the basis of a study of the

¹⁷ Section 1(3) of the UWSSA says that the act shall come into force on such date as the Central Government may by notification in the Official Gazette.

working and living conditions as well as the life styles of the unorganized sector people in a particular area. Some of the information can be obtained from the data available through national surveys and registrations already undertaken. However, if the minimum social security needs as well as their inter se priority are to be determined there has to be some definite decision on data requirements for the purpose. The existing data has to be thoroughly scrutinized for their adequacy. It would also be necessary to collect additional data.

2. Determination of specific targeted beneficiaries

The planning has to proceed in such a manner that several aspects need to be tallied as different entities like financial feasibility, the administrative concern, the equity considerations are to be met and external sources of financing are also need to be channelled systematically.

3. Setting up an administrative Structure

The administrative structures needed for the type of program proposed will have to be decided. Against these administrative requirements the existing administrative resources will have to be compared to see how far latter will be able to take the load of implementing the proposed social security program in addition to their original functions.

4. Proper estimation of the total financial cost

Post conducting a tentative decision on the benefits, it is necessary to estimate the cost on the basis of actuarial and financial studies would obviously vary with type of benefits like sickness, medical care or employment injury benefits. Even in the first stage itself, it might be possible to anticipate the data requirements for actuarial studies and programs the actuarial input in the planning exercises. The benefits costs and administrative costs would give an indication of total cost of any program at a single point of time. Apart from the total cost, it will be also necessary to have an idea of the projected cost estimates of the scheme over a period of years.

5. Determination of resources to finance social security

The magnitude of internal resources available will necessarily be dictated by income levels of the unorganized sector workers. Taxes and levies might be possible only from the affluent section of the population. The scope of diversion of savings of unorganized sector workers to finance social security is impracticable. In exploring the sources of external finance it would be necessary to examine carefully those instruments already

applied in urban sectors and consideration underlying such instruments.

6. Formulation of an ideal decision on benefits, administration and financial

With a firm base, the planning exercise should be preceded in order for the policy makers to take a decision on the type of social security benefit to be provided in the area, the ideal administrative structures and the financial arrangements needed.

Amendments suggested

A series of proposed amendments in the enactment of UWSSA, 2008 includes the following:

1. Section 2(l) needs to be amended deleting coverage of enterprises employing less than 10 workers. The term “unorganized sector” shall be amended to include “any 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 does not fall under the definition of Factories Act, 1948”.
2. An additional sub section may be added as Section 2(i) unless otherwise provided in this Act or schemes made there under “social security” means measures by the government in collaboration with employer, worker or otherwise, designed to meet the contingencies in life of a worker, namely old age pension, unemployment benefits, maternity benefits, livelihood loss compensation, accident and medical care, provident fund etc.
3. Section 2(m) reads as “unorganized worker” means a home based worker, self – employed worker or a wage worker in the unorganized sector and included a worker in the organized sector who is not covered by any Acts mentioned in Schedule II to this Act; and in Section 2(m) the following words should be added after the words, who is not covered “and includes workers dependant on traditional livelihood systems as specified in the schedule”.
4. Section 2(k) can be rephrased as follows “self employed worker’ means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganized sector subject to a monthly earning of an amount as any be notified by the central government or the state government from time to time or hold cultivable land subject to such ceiling as may be notified by the state government and also includes unpaid women worker and unpaid family member engaged in household or other family occupations.

5. A modification can be made in Section 3(1) of the Act as, the Central Government may, by notification in the Official gazette, frame schemes to be called the Unorganized Workers Social Security Fund Schemes for the establishment of Social Security fund under this Act for unorganized workers as defined in this Act, to whom the said Schemes shall apply and there shall be established, as soon as may be after the framing of the Schemes, a Fund in accordance with the provisions of this Act and the Scheme on matters relating to life and disability cover; health and maternity benefits; old age protection; livelihood protection; additional protection to dalits, women, adivasi, other excluded groups like sex workers, enunch, handicap, abandoned old people/sick people and any other benefit as may be determined by the Central Government.
6. An addition can be made as in Section 3(3)(a), which reads, the protection and benefit under any scheme constitutes under the Unorganized Workers Social Security Fund Schemes shall be managed by or under the authority of the government or any nationalized financial institution.
7. The benefits and protection of healthcare, maternity leave and pension should be need based and not minimum. In cases where the pension is not defined, the criteria for assessing the pension amount should be 50 per cent of the last wage by the employee. An additional Section 3(1) A can be inserted and can deal with the aspect of social security made under this Act shall provide medical, maternity and accident care with hospitalization as per the medical needs without any cost ceiling; the compensation shall be as per Workman Compensation Act and the pension on attaining sixty years of age shall be fifty per cent of the need based wages fixed by the Central Government.
8. A sub section be inserted as Section 8(1) the National Social Security Board and State Social Security Board shall be having secretariat in the ministry of labour of the government of India or the governments of the states, as the case may be and the secretary of respective ministry shall be responsible for the overall administration, finance, annual report, enforcement, RTI and to the parliament or state legislature as the case may be.
9. An addition to section 4(1)A can be made as, there shall be created a 'National Social Security Fund' and all contributions, grants, donations and other proceeds shall be deposited with the 'National Social Security Fund'. The Government of
10. India shall make budgetary provisions for transforming budget allocation for social security for unorganized workers to this Fund subject to minimum of

five percent of the total budget.

11. A new Chapter on Dispute settlement, as Chapter VII(1) as the government should formulate a model Dispute Settlement Mechanism for unorganized workers of each occupations involving local administration, employers, police and other authorities for resolving disputes and grievances relating to employment, livelihood, encroachment, displacement, land rights, discrimination, state actions etc with powers to grievances redressal authority to enforce attendance, take evidence, inspections and investigations, seize records and such other powers as necessary to resolve dispute or difference amicably parties and if necessary to refer the dispute for arbitration. Certain deletions and replacements such as the word 'sector' to be deleted from Section 5(2)(c)(i) and Section 5(2)(c)(ii). A replacement of the word 'monitor' in Section 5(8)(c) by the words 'administer and enforce'.

Implementation Plan

In addition to the proposed amendments, a futuristic implementation is required to impart social security to unorganized sector workers. The implementation shall focus on the following aspects:

(a) Coverage and registration:- Considering the scattered nature of workers in unorganized sector, particularly inter- state migrant labour and the general apathy of enterprises towards social security of workforce the extension of coverage of the scheme requires several proactive steps like making social security contribution mandatory for all employees and employers in small scale-industries, employers of small business, contractors of all business and construction works and self-employed to contribute to the scheme. The compliance with this mandate can be with the help of licensing authorities like local bodies, commercial financial institutions and banks that finance these establishments (Reddy 2012: 1-21). At individual level, the compliance with social security schemes can be ensured by making the Social Security Card mandatory for all employment, whether casual or regular, for starting or continuing any business, to open bank account etc. To facilitate unorganized sector workers to partake in the scheme effectively, the Commercial banks, the Regional Rural Banks, and the post offices should be made collection centers for the collection of the contributions.

(b) Receipt and Record of Contributions:- The Act is completely silent as to which organization should collect the employer's contribution and how the employee's contribution should be collected. One solution is to entrust the Employees Provident fund organization to collect the contributions of the employers and while this can be

directly done , there should be provision for workers to remit their contribution through post offices, regional rural banks branches of commercial bank branches and other scheduled commercial banks.

(c) Financing of social security schemes:- If the USSWA, 2008 were not to be relegated as yet another futile legislation, then there should be sufficient financial allocation for meeting its commitments. Considering the fact that the majority of the beneficiaries are from below poverty line, it will not be feasible if the benefits are dependent on beneficiary contribution. Therefore the corpus for schemes under the Act shall primarily be financed by the state. However to reduce the burden on exchequer, the government should also stop all the subsidies given to the social assistance pension schemes and divert all the funds towards the proposed pension scheme. There should also be a rational scheme for fixing the employer- employee contribution.

(d) Award and Payment of Benefits:- The award and payment of benefit under the Act shall be implemented as done in the case of the organized sector; In case of medical benefits all unorganized sector workers carrying social security cards should be treated free of charge in the state run hospitals and in the ESIC hospitals. A tie up arrangement should be made with the charitable hospitals by diverting certain amount from the fund to them to extend the treatment to the social security cardholders. Disbursement of pension should be done through post offices banks and other state run financial institutions free of cost. All these governmental organizations and public sector banks should be involved in disbursement of benefits without charging anything either to the beneficiary or the organization since the social security for the unorganized is for a noble cause (Reddy 2012: 13).

Policy Decisions Required

The enactment of USSWA, 2008 is not an end in itself. If social security is made a fundamental right enforceable by law it will go a long way in enforcing the same. Conversely if right to work as defined earlier, is entrenched as a fundamental right then social security will be automatically taken care of. Therefore constitutionalising the right to work with the concomitant basic social security coverage should be the prime policy initiative.

The social security schemes currently adopted by USSWA, 2008 are run by different Ministries. For instance while the National Board under the Act and ERF, ESA etc are under Ministry of Labour, Medical care is under by Ministry of Health, Food security

under Ministry for Agriculture, IRDP and similar schemes under Ministry of Rural Development and Old-age benefits in the informal sector under Ministry of Social Justice and empowerment. The budgetary allocations for various programs under various Ministries, multiplicity of agencies and duplicity of benefits has become a major concern for the policy makers, therefore creation of Ministry of Social Security would be of an immense help for the formulation and implementation of social security schemes. The constitution of National Social Security Commission of India, with Prime Minister of India as its Chairman will also go a long way in fostering the objectives of the Act. Social security Budget should be introduced in the Parliament on the lines of Railway Budget. Policy decisions should also be taken to involve NGOs and Panchayats in the rural areas to implement the social security policies.

Administrative reforms needed

The Administrative set up required for the comprehensive social security system should be in tune with the policy enshrined above. The set up should be looked from beneficiary angle instead of manageability. The experiences of Employees' Provident Fund Organization and the Employees State Insurance Corporation are now well documented and it is highly debated that both the organizations failed to reach the beneficiary on time. While the ESIC is mostly dependant on state governments for medical treatment dispensation, the Employees' Provident Fund Organization, suffers from many maladies like non-timely settlement of claims, non-coverage of all coverable employees. It is suggested that the comprehensive social security scheme should be administered by a tripartite body with full autonomy under the Chairmanship of Prime Minister of India. The proposed Organization should be headed by an officer of the rank of Special Secretary to the Government of India. Minister of proposed Social Security Ministry should be the Vice- Chairman of the Board. The total computerization of entire administration, opening of kiosks everywhere in the country and issue of a smart card to each beneficiary would go a long way in the Administration. The smart card would eventually circumvent multiple cards like Ration Card, Voters Identity Card, and Employment Identity Card etc. Ancillary provisions like creation of social security service as an All India service can also be considered. With these modifications and policy changes and decisions the Act can be progressively transformed to strong-willed guarantee of social security to the undeserved lot of the working population if not the whole population. Social security schemes designed on the above lines, coupled with a scheme of housing to the working population would conclude the requirements of a person from womb to tomb (Rao 2015).

Conclusion

Construed narrowly, the term social security denotes the guarantee which the state undertakes to compensate the workers in case of loss of income during any period which may take place due to sickness, industrial injury, unemployment or old age invalidity. The benefits under the guise of social security as a right are provided to the worker either in the form of lump sum payment of cash benefits or cash contributions of recurring nature or both and these are the main benefits provided to the worker (Rao 2015). However viewed progressively, the facet of social security is grounded on the ideals of human dignity and socio economic justice. Underlying the concept is the desire to give protection to the citizens of a country who contribute to its total welfare, against certain hazards of life to which they are exposed either in the working life or as a consequence of it. In this sense social security is the alter ego of social justice.

It is also pertinent that social security, if properly managed, enhances productivity by providing health care, income security and social services. In conjunction with a growing economy and active labour market policies, it can be an instrument for sustainable social and economic development. It can facilitate structural and technological changes which require an adaptable and mobile labour force. Thus while social security is a cost for the state /enterprises, it is also an investment in, or support for, people. With globalization and structural adjustment policies, social security becomes more necessary than ever as work is increasingly being informalised and more and more workers are excluded from the coverage of social security schemes. The question is how far India's maiden venture to implement a national level social security framework for unorganized sector, The Unorganized Workers' Social Security Act, 2008 has succeeded in reflecting these ideals?

The answer is that notwithstanding its inadequacies, the Act is a progressive step in that it recognized the role of unorganized sector not only in Indian economy but also in society and polity and envisaged social security not as a charitable gesture but as an entitlement to beneficiaries and conversely as a solemn obligation on the part of state. What is now required is to revise and amend the existing Act to streamline its entitlement structure and to provide for a well defined configuration for governance of National Social Security Administration with participation of various stakeholders such as State Governments, fund managers, service providers and beneficiaries.

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