SUMMARY

Unorganized workers have a long history of its existence and have its origin in socio-economic structure of all ancient civilizations. In India unorganized workers constitute a huge labour force. Unorganized workers are characterized by low educational level, poor financial capacity, possessing at best low-end skills, inferior working conditions, and low bargaining capacity due to lack of the organizational skills and legal protection. These workers get low wages and if they are self-employed their income is usually very low. Presence of these workers can be in self employment, casual wage employment and in regular wage employment. The Ministry of Labour & Employment in India has categorised the unorganised workers under four groups in terms of occupation, nature of employment, especially distressed categories and service categories. In terms of occupation, Small and Marginal Farmers, Landless Agricultural Labourers, Share Croppers, Fishermen, those engaged in Animal Husbandry, Beedi Rolling, Labeling and Packing, Building and Construction Workers, Leather Workers, Weavers, Artisans, Salt Workers, Workers in Brick Kilns and Stone Quarries, Workers in Saw Mills, Oil Mills etc. are come under this category. Under the category nature of employment, Attached Agricultural Labourers, Bonded Labourers, Migrant Workers, Contract and Casual Labourers are considered. In terms of especially distressed categories Toddy Tappers, Scavengers, Carriers of Head Loads, Drivers of Animal Driven Vehicles, Loaders and Unloaded Vehicles come under this category. While service categories include Midwives, Domestic workers, Fishermen and Women,
Barbers, Vegetable And Fruit Vendors, News Paper Vendors Etc.

In addition to these four categories, there exists a large section of unorganized workers such as Cobblers, Hamals, Handicraft Artisans, Handloom weavers, Lady Tailors, Physically Handicapped Self Employed Persons, Rickshaw Pullers, Auto Drivers, Sericulture Workers, Carpenters, Tannery Workers, Power Loom Workers and Urban Poor. In India social security provisions for protection of unorganised workers in the form of employment security, economic security, medical & sickness benefit, maternity benefit, pension, life insurance, are the long felt needs of the unorganized labour, where the workers, at large, neither have access to these benefits nor have the statutory backing for their enforcement. But it is unfortunate that social security has not been defined in India in a concrete sense by any legislation. Generally, social security is understood as any kind of security or collective measures designed to ensure the members of the society to meet their basic needs and to protect against contingencies, enabling them to maintain a decent standard of living. According to the various Conventions and Recommendations of International Labour Organization, social security is needed in case of contingencies like unemployment, medical care, maternity, maintenance of children, old age, invalidity and survival, and occupational health etc. The vision for social security encompasses not merely poverty alleviation but also enhancement of quality of life, thus creating a hedge against social and economic uncertainty. The eminent economists Amartya Sen and Jean Dreze have stated that the basic idea
of social security is to use social means to prevent deprivation and vulnerability to deprivation. Social security is increasingly viewed as an integral part of the development process because it helps to create a more positive attitude to the challenge of globalization and the consequent structural and technological changes. Unorganised workers in India despite a huge labour force remained undefined and untouched from social security before and after independence in India. Though the beginning of the codification of labour in India was started by appointing the Royal Commission on Labour in 1929 by the British India Government, to enquire into and report on the existing conditions of labour in industrial undertakings and plantations, on the health, efficiency and standard of living of the workers, and on the relations between employers and employed, and to make recommendations for the welfare of labour. However the Royal Commission confined its study to industrial, plantations and mines labour and made recommendations only for the labour who were working in these sectors. The workers in the house hold, agriculture, and rural labour setup were not the in the ambit of the Royal Commission’ study. Then the Government appointed a Labour Investigation Committee in 1946, to investigate the risk due to insecurity, need of labour, housing and factories conditions, and to collect data relating to wages, earnings and social conditions of labour particularly about industrial labour in India. The objective of the Central Government was to provide a policy of social security for organized labour on the basis of the report of this Committee. After Independence in 1947, India emerged as a sovereign,
socialist and democratic Country and adopted its own Constitution. Constitution of India imposes an obligation on the State to help the workers by providing them the social safety cover. The preamble express the ideology of the Constitution and states that India being a sovereign, socialist, secular, and democratic republic is committed to secure to all its citizen, justice social (economic and political), liberty of thought and expression, faith and worship, equality of status and of opportunity, and to promote among them all fraternity assuring the dignity of individual and the unity of Nation. The Directive Principles call for the State to provide for adequate means of livelihood within the limits of its economic capacity and development. The State is also under an obligation to make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Constitution of India also cast a duty upon the State to make provisions for the ingredients of decent work in terms of conditions of employment and a living wage. It is the primary duty of State to raise the level of nutrition and the standard of living of its people and to improve public health. Therefore various labour legislations have been enacted in the light of Indian Constitution. But these legislations could not cover the entire class of workers on the matter of social security. So it was felt by the Government that there is a need to constitute a commission on labour to access the socio-economic and working conditions of labours and to suggest the plan for the uplift of the labour class. The Government of India in 1966 constituted the National
Commission on Labour under the Chairmanship of P.B. Gajendragadkar. The study of this commission was limited up to the organized sector workers and very few were done for the unorganized workers. The Commission in its report neither defined the term unorganized worker nor suggested any social security plan for unorganized workers. It only drew the characteristics of unorganized workers by which one can differentiate between organized and unorganized workers. According to this Commission unorganized workers are those who have not been able to organized in pursuit of a common objective because of constraints such as (a) casual nature of employment, (b) ignorance and illiteracy, (c) small size of establishments with low capital investment per person employed, (d) scattered nature of establishments, (e) superior strength of employer operating singly or in combination. However this Commission has a synoptic view on the matter of social security for labour whether organized or unorganized, protected or unprotected. The Commission opined that no one should be taken in isolation from the trends of development in the system as a whole. But unfortunately nothing was recommended by this Commission for the welfare of unorganized workers. The only recommendation was made to formulate suitable ameliorative measures for welfare of the unorganized workers. Due to the continue apathy of the Government towards this unprivileged section of labour nothing could not be done on the matter of social security to unorganized workers for a long period. Therefore the Government of India decided to setup another Commission on labour which is known as the Second National Commission on Labour (2002). This Commission
adopted the same approach on the definition of unorganized worker, but recommended for umbrella legislation for the social security to unorganized workers. However a plethora of social welfare legislations is existed in India. These are the Employee’s Compensation Act, 1923, the Employees’ State Insurance Act, 1948, the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, and the Payment of Gratuity Act, 1972. But all these laws govern the workers who are working in the organized sector only. In so far as the unorganized workers is concerned, who generate nearly sixty five percent of the National Income, have remained uncovered by any meaningful social security legislation. Thus acting up on the recommendations of the Second National Commission on Labour, Parliament passed an Act with the aim to provide social security to unorganized workers in 2008. This Act is known as Unorganized Worker’s Social Security Act, 2008. It is the first legislation of its kind which directly concern with the unorganized workers in the matter of social security. In the present study the focus is on the analysis and evaluation of the provisions of Act in order to know whether this Act provides social security for the unorganized workers who were still exploited and deprived of their social as well as legal rights. The Act is also examined to know whether the social security schemes, which are mentioned in the Act, provide adequate social security to all unorganized workers. All these questions are tried to be answered in the present study. The objectives of Act regarding social security to unorganized workers are also discussed. Primarily the Act gives although not exhaustive but a wide definition to
unorganized worker. According to the Act, unorganized workers include home based worker, self employed worker, and 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. The Act further defines separately all types of workers which are mentioned in definition of unorganized worker. According to the Act 'home-based worker’ means “a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.” Definition of the self employed worker is provided as “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 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” Wage workers are defined by the Act as “a person employed for remuneration in the unorganized 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. Thus it includes almost every category of workers other than
organized sector workers. The then Chief Justice of India K.G. Balakrishnan aptly highlighted the objectives of the Act in the following words: “Needless to say, the millions of unorganized workers are in dire need of a stable and reliable social security regime. The Unorganized Workers’ Social Security Act contemplates the delivery of benefits to unorganized workers in instances of sickness, disability, maternity, unemployment, old age and the death of a family’s bread winner. The Act has defined ‘unorganized workers’ in a wide and liberal manner so as to include those who are casually employed and receive daily or monthly wages as well as ‘home-based workers’ and even farmers who work on small land-holdings. Hence, the legislative intent is to expand the social security net as widely as possible”. The benefits proposed under the Act are: (a) life and disability cover (b) health and maternity benefits (c) old age protection generally and (d) any other benefit as determined by Central Government. The Act envisages that the States Governments may formulate suitable welfare schemes including provident fund, employment injury benefit, housing, educational schemes for children, skill up gradation of workers, funeral assistance and old age homes which may be wholly funded either by Central Government or shared by Central and State Government or along with contribution from employees also. The Act empowers the Central Government to amend the Schedule annexed to this Act and also empowers that ‘The State Government may formulate and notify from time to time, suitable welfare schemes for unorganized workers, including schemes relating to (a) provident fund; (b) employment injury benefit; (c) housing; (d) educational
schemes for children; (e) skill up gradation of workers; (f) funeral assistance; and (g) old age homes. However the Central Government has more power in this respect than State, as section 3(1) (d) of the Act empowers the Central Government to determine any other benefit on the matter of social security. The Act also contains the provisions for the constitution of a National Social Security Board and State Social Security Board for unorganized workers and empowers the Central Government to formulate and notify, from time to time, suitable welfare schemes for unorganized workers on matters relating to, (a) health and maternity benefits (b) life and disability cover (c) old age protection and (d) any other benefits as may be determined by the Central Government. The Act says that the schemes included in the Schedule I to this Act shall be deemed to be the ‘welfare schemes’. It is true that labour welfare is a subject matter of concurrent list under the Constitution of India. So the Act does not impose the sole obligation on Central Government, this Act also empowers the State Governments and casts a responsibility on them to constitute ‘State Social Security Board’. The Act states that ‘every State Government shall by notification, constitute a Social Security Board to be known as (name of the State) State Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it under this Act. Functions of the State Social Security Board are to recommend the State Government in formulating suitable schemes for different sections of the unorganized sector workers. The position in case of powers, functions and tenure of the State Social Security Boards is almost same as is of the National Social Security Board. However in realty
these boards are deprived of all type of decision making power on the matter of social security. In spite of the fact that the Act gives power to State Government to constitute a State Social Security Board, many States have neither set up Social Security Board at the State level, nor framed rules and schemes for the benefits of the unorganized worker. The Schemes included in the Schedule I of the Act are as under:

1. Indira Gandhi National Old Age Pension Scheme
2. National Family Benefit Scheme
3. Janani Surksha Yojana
4. Handloom Weavers’ Comprehensive Welfare Scheme
5. Handicraft Artisans’ Comprehensive Welfare Scheme
6. Pension to Master craft persons
7. National Schemes for Welfare of Fishermen and Training and Extension
8. Jan Shree Bima Yojana
9. Aam Admi Bima Yojana
10. Rastriya Swasthya Bima Yojana

The interesting fact is that the social security schemes for unorganized workers mentioned in Schedule I of the Act, are pre existing schemes, and were in existence before the commencement of the Act. The funding of these schemes is mostly based on tripartite model, in which the Government, Insurance Agency and Beneficiary pay the premium for the scheme in a certain ratio. The analytical study of this Act shows that it has raised very high hopes in the mind of unorganized workers. But these hopes bitterly shattered as the Act due to its defective drafting, could not fulfill the objective of social security. In fact this Act has very few provisions that can be beneficial to unorganized workers. The
long title of the Act itself expresses that it is an Act “to provide for social security and welfare of the unorganized workers and for other matters connected therewith or incidental thereto”. It refers to “matters connected therewith or incidental thereto”, but it does not explain that what types of matters be these. The sole objective of the Act is to provide social security to unorganized workers but the term ‘social security’ remained undefined in any substantive and explicit sense in the whole body of the Act. However the term ‘social security’ is used in a few places, i.e. in the heading of Chapter II, designating the National and State level Boards as “Social Security” Boards. It is pertinent to mention here that the description of these schemes mentioned in the Act are also as welfare schemes, and labour welfare and social welfare. Thus instead of using the one term ‘Social Security’ there are three expressions namely welfare schemes, labour welfare and social welfare have been used in the Act, which are leading to confusion, and conveying the meanings of manifold. The reflection of existing provisions shows that the social security of the unorganized and poor workers is handed over in multiple hands. This leads a delay and different-different thoughts on the fate of the poor. National Social Security Board and State Social Security Boards under Chapter III and IV of the Act also have many lacunas, as they have no absolute power to formulate any schemes for unorganized workers. Act confines their limits to an advisory and monitoring role respectively. Apart from these, the Act has a lack of legislative will or intent. Even many of States have not constituted the States Social Security Boards so far. Further the Act imposed the obligation of record keeping
function on District Administration. But the expression ‘District Administration’ occurring in the Act has not been defined. Thus the analytical and critical study of the Act shows that, it does not provide absolute or total security to the unorganized worker so it causes serious discontent and unrest among the unorganized workers. There is no enforcement and redressal mechanism available under the provisions of the Act. The Act contains ten schemes in Schedule I, after an analytical and critical study of each scheme a conclusion can be drawn that these schemes are not providing a complete range of social security; these are only insurance and pension schemes. These schemes can be enjoyed by workers either on old age (means after the age of sixty years) or on accident, or on the accidental death of the bread earners of the workers family. The amount payable to the beneficiary under these schemes is also very meager. There is no scheme under the Act that provides guarantee for full employment. Full employment means, income security, job security, proper wages, sickness benefits, maternity benefit, invalidity benefits, old age, survivals and other contingent benefits. In addition to these shortcomings, some schemes have been merged in each other due to the identical structure of benefits. Coverage of beneficiaries is also very low under these schemes. As per Government Statistic only six percent of total unorganized workers are covered under these schemes. Most of the schemes are available only for below poverty line families and don’t cover the entire section of unorganized workers. In nutshell it can be said that the present Act for social security of the unorganized worker is not a perfect legislation and it is a bundle of scanty and
ambiguous provisions. This Act has no sanction authority behind it and there are no penal provisions to meet out the situation, in case, if violation of any the provision or provisions of the Act is made. Further the Act does not provide any concrete social security plan for unorganized workers. So the Act is not a boon for unorganized workers, but it is a bane. The overall review of the above literature reflects that the Government of India is least reluctant to provide the social security for its huge labour force that is why an half hearted Act enacted by the Parliament. So there is a need to amend the Act in a comprehensive sense accordingly so that it could fulfill the dream of decent work and dignified life of the most exploited and vulnerable section of workers. Therefore the following suggestions are being submitted for the betterment of the unorganized workers in terms of their social security.

1. The long title of the Act contains the term ‘social security’ but does not define this term anywhere in the Act. Therefore first of all the term ‘social security’ must be defined in a specific and broader sense. For this purpose ILO Conventions on social security may be taken into account as these conventions recognize wide ranges of social security on the medical care, sickness benefit, maternity benefit, invalidity benefit, old-age benefit, survivors' benefit, employment injury benefit, unemployment benefit and family benefit.

2. The definition of the unorganized workers under the Act has squarely covered the various categories of unorganized workers, but this definition clause has forgotten to include the most exploited/vulnerable
unorganized workers since its inception i.e. sex workers. An amendment in the Act is required to amend the definition clause of the Act so that the most exploited/vulnerable unorganized sex workers may be included in the definition of unorganised worker.

3. All components of social security mentioned in Section 3(1) and (4) should be brought under the ‘one umbrella’, means all types of social security schemes or welfare schemes should be framed by the National Social Security Board and there should be a universal application of these schemes. Universal application means social security scheme or schemes should be available to every unorganized worker in the Country.

4. State Governments role on the matter of social security should be limited to implementation & execution of the schemes only rather than the framing of schemes.

5. There should be a separate ‘National Social Security Budget’ for the social security of unorganized workers. Special provisions for this budget should be made in the Union Budget.

6. Presently the role of National Social Security Board and State Social Security Boards are merely advisory and almost identical. The National Social Security Board must be entrusted with the power to formulate and notify the social security schemes under ‘single window architecture’ policy and State Social Security Boards must be entrusted with the power to implement the schemes formulated by the National Social Security Board.
7. National Social Security Board and State Social Security Boards must be re-constituted by giving at least fifty percent representations to unorganized workers.

8. The ‘adequate representation’ used in proviso of Section 3(4) must be defined in the Act that in what proportions the schedule caste, schedule tribes, minorities and women will get the representations.

9. Comprehensive provisions regarding the qualification of Chairperson and other members of the boards under the Act should be made because the word ‘eminence’ conveys a vague and ambiguous meaning and gives discretion to the executive in appointments.

10. The ‘Record Keeping Administration’ responsible for registration of unorganized workers must be clearly depicted in the Act instead of using the vague and ambiguous term ‘District Administration’ and leaving the matter at the whims of State Government.

11. An obligation regarding establishment of workers facilitation centers under Section 9 of the Act must be made mandatory on the part of State.

12. Workers Facilitation Centers should be set up at each Tehsil or Block levels.

13. Workers Facilitation Centers should be entrusted with the function of the skill development of unorganized workers in addition to the functions already provided for disseminate information on social security, processing of application form for registration of unorganized workers and enrollment of the registered unorganized workers in social security schemes.
14. The enforcement and redressel mechanism for the proper implementation of the provisions of the Act must be provided under the Act, which is presently absent from the Act.

15. The registration of each and every unorganized worker must be mandatory under the Act. For this an obligation can be imposed on the State Social Security Boards.

16. Provisions regarding two components of social security namely employment guarantee and income guarantee should be laid down in the Act. Through employment guarantee the workers who work for employer/employers can be covered. The workers who are self employed should be benefited with income guarantee.

17. All workers in unorganized sector except self employed workers should be engaged or hired through a registered contract so that employee-employer relations can be made visible. In this regard mandatory clauses should be inserted in the Act. It will prevent exploitation of the unorganized workers.