5.1 Conclusion

The unorganized or informal workers play a pivotal role in Indian economy. More than ninety percent of work force and about fifty percent of National Product is accounted for by informal workers. A high proportion of socially and economically underprivileged sections of the society are concentrated in the informal economic activities. The unorganized sector is known as unprotected sector in relation to the income security, employment security, sickness benefits, invalidity benefits’ survival and other contingencies benefits. So the workers who work in this sector are deprived of all kind of social security. However in India, strengthening of the social security for unorganized workers has been the primary goal of the Government since independence. The Constitution of India also gives a mandate to the Government, to protect the rights of the vulnerable section of unorganized workers, and to provide such environment, by which they can live and work in a dignified manner. The Government has taken various steps in this direction by casting the social security schemes through the welfare oriented or safety net schemes and employment oriented programmes for the unorganized workers. The Government also recognized the need to enhance the welfare and well-being of workers, specifically those who fall in the unorganized sector and also to assure a secure future for their families in every respect. This
was taken as one of its basic principle of governance. For the achievement of this goal the Government set up the National Commissions on Labour in 1969 and 2002 respectively and National Commission for Enterprises in the Unorganized Sector (NCEUS 2006), to review the social security system available for labour in the informal sector and to make recommendations for expanding their coverage. All the Commissions made recommendations for umbrella legislation, with a view to provide social security for unorganized workers. Thereafter the Parliament enacted legislation The Unorganized Workers’ Social Security Act, 2008. This is the first legislation of its kind, which is exclusively designed and drafted for the social security of unorganized workers. This Act has raised very high hopes in the mind of unorganized workers. But these hopes bitterly shattered as this Act, due to its defective drafting could not fulfill the objectives of social security. This Act has very few provisions that can be beneficial to unorganised workers. The long title of the Act itself expresses that it is an Act which provides social security to 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. On the analysis of preamble and provisions of the Act under Chapter I, it can be said that the Act is not a perfect legislation and have many defects. The sole objective of the Act is to provide social security to unorganised workers but the term ‘social security’ remained undefined in any substantive and explicit sense in the whole body of the Act. The Act emphasizes only on the schemes of
welfare. As the Sections 3(1), 3(2), 3(4), 5(8)(c), 6(8)(c) and 16 of the Act deal with it. 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” Board in Section 9(a) and in Section 10(3) and finally in the heading of Schedule I. It is pertinent to mention here that in Section 3(2) which refers to Schedule I, the description of these schemes are mentioned as ‘welfare schemes’ and not as the social security schemes. Thus there are three types of terms which are used in the Act, in Sections 3(1), 3(2) and 3(4), it is referred to as welfare schemes, in Sections 5(3) and 6(3) the expression used is ‘labour welfare’ while in Section 5(8)(c) and 6(8)(c) the term used is 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. Therefore on this point, it is suggested that the Government should define primarily the concept of social security in a specific sense rather than in generic sense so that any confusion about the definition of social security can be set at rest. On the definition of unorganized worker, Section 2 of the Act reflects good sense as it gives the wider sense to the definition of ‘unorganized worker’, by giving the separate definitions, to home-based worker, self-employed workers, and wage worker, under Sections 2(b), 2(k) and 2(n) respectively. However the Second National Commission on Labour (2002) in its report recommended that the sex workers which are more exploited physically, socially and morally (means victim of all forms of
exploitation) should be considered as unorganized workers. The Apex Court of the country has also issued the directions to the Government for the welfare and rehabilitations of the sex workers, but in spite of all these directions and recommendations, the sex workers could not find place in the definition of unorganized worker for the purpose of social security. The provisions under chapter II are also ambiguous on the objectives of the Act. The provisions under Section 3(1), 3(4) are suffering from defects as the legislature bifurcated the concept of social security between Central Government and State Governments, and thus makes it the toy in the hand of central or state instruments. Section 3(1) empowers the Central Government to formulate and notify the schemes for unorganized workers on the matters relating to life and disability cover, health and maternity benefits, old age protection and any other benefit as may be determined by the Central Government. Whereas Section 3(4) empowers the State Government to formulate and notify the schemes on provident fund, employment injury benefit, housing, education schemes for children, skill upgradation of workers, funeral assistance, and old age homes. It is true that the labour relation is a subject matter of concurrent list in Constitution of India but keeping larger interest of unorganized/destituted workers the Central Government must shoulder entire responsibility of social security in the matter of unorganized workers. As the existing provisions of the Act reflect that the social security of the unorganized and poor workers has been handed over in multiple hands. This causes a delay in its formulation & enforcement of social security plans to the unorganized
workers and also shows the crumble thoughts on the fate of the poor. Therefore the social security to unorganized workers must be provided through a unified command, it means that expressly Centre Government only should have a right to frame the law on the matter of social security and there should be a single window architect to design social security schemes. The role of State Government should be limited only for the implementation of schemes formulated by Centre Government in true letter and spirit and redressal of grievances of the aggrieved. Further, what types of social security be available to the workers, must be defined in the Act categorically instead of leaving it, at the whims of the Centre and State executives. Therefore it is suggested that all the schemes regarding social security for unorganized workers should be formulated and notified by a single authority so that the uniform and easily accessible approach on social security may be maintained. As far as the funding of the schemes is concerned, this fact is also in question. Sections 4(1) and 7(1) of the Act give opinions only on the funding of the schemes that which scheme will be centrally funded, which scheme will be State funded and this section also says that which scheme wholly funded and which schemes will partially funded by Centre and State respectively. However these provisions are silent about the source of the funding of the schemes to be formulated under the Act. It is suggested that there should be separate allocation of budget for the funding arrangements for social security.

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 authority to formulate any schemes
for unorganized workers. Section 5(8) and Section 6(8) of the Act confine their limits to an advisory and monitoring role respectively. Apart from this, the Act is absolutely lacking of total lack of legislative will or intent. Even many of States have not constituted the States Social Security Boards so far. Of course the Parliament is responsible to enact the law and in this case while enacting the law for welfare and social security what constitutes appropriate and adequate social security for unorganized workers, the Parliament omitted the concept of the eligibility criteria for benefits which ought to have been prescribed that who are entitled to receive benefits and under what conditions, and Parliament also hesitated to make provisions that who will provide funds for social security under the Act. All These questions must be answered clearly and categorically in the Act. Unfortunately instead of doing all these things cautiously, Parliamentarians hurriedly enacted the law which liberalized the Central and State Governments to do whatever they deem expedient on the matter of social security without making any check and balance. The concept of social security should have been the integral part of the law made by the Parliament, instead of leaving it on the whims of the executive. Further section 8 of the Act imposed the obligation of record keeping function on District Administration. But the expression ‘District Administration’ occurring in section 2(c) has not been defined in Act. However the proviso to section 8 equates 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) of the Act, by the elected urban and rural bodies, it could have been explicitly stated in the law with a mandatory provisions. Provisions under section 10(2) and (3) of this Act are also scanty on the matter of registration, as they declare the ‘District Administration, shall make the registration and issue the smart card to the ‘registered unorganized workers’ under the Act. But in the whole body of the Act the term ‘District Administration’ has not been defined. So it must be clearly illustrated that, what is the meaning of the ‘District Administration’ under the Act. 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 unorganized labour. There is no enforcement and redressal mechanism available under the provisions of the Act. It gives entire powers to Central Government and State Governments to make rules to carry out the provisions of the Act by Sections 11 and 14 of the Act respectively. In fact the power given to Central Government and State Governments under Sections 11 and 14 to make rules is also qualified and not absolute power. Section 15 of the Act states that every rules made by Central Government under this Act shall be laid before each House of Parliament, while it is in session as soon as may be after it is made. The same provision has been made in case of State Government’s matter. So far as the matter of social security schemes provided under the Act is concerned these schemes are not adequate in nature. This Act contains ten schemes in schedule I, after a careful study and analyses 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. No scheme 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 beneficiary is also very low under these schemes. As per Government Statistic only six percent 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 any violation of the provision or provisions of the Act is made. Further this Act does not provide any concrete social security plan for unorganized workers. Thus the Act is not a boon but it is a bane for unorganized workers. Therefore it is a need to amend the Act in a comprehensive sense accordingly so that it can provide an environment of decent work and dignified life to the most exploited and vulnerable section of workers. It is very unfortunate that in the
Act enacted for social security legislature could not define the term social security in a perfect sense. Due to the defective and ambiguous provisions of the Act regarding the definition of social security, its designing and funding of schemes provided in the Act, implementing mechanism, and evaluating machinery of the schemes, makes the objectives of the Act doubtful, and defeat the real objectives of the Act. It is suggested that the Parliament either define the social security on the line of International Labour Organizations’ definition or adopt the International Labour Organization’s definition on social security in toto. As the definition provided by International Labour Organization covers a wide range of social security and very near to its perfectness. So the Act should be amended accordingly. However the overall review of the above literature pertains to unorganized workers reflects that the Government is least reluctant to provide the social security for its huge labour force that is why an half hearted Act is enacted by the Parliament.

5.2 Suggestions

In view of the above discussions 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 unorganised 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.