CHAPTER - II

SOCIAL SECURITY FOR UNORGANISED SECTOR WORKERS – A CONCEPTUAL CLARITY

2.1 Introduction

The quest for social security and freedom from want and distress has been the consistent urge of man through the ages. This 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. From its modest beginnings in a few countries in the early decades of the present century, social security has now become a fact of life for millions of people throughout the world. Social security measures have introduced an element of stability and protection in the midst of the stresses and strains of modern life. It is a major aspect of public policy today and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a Welfare State.¹

In the early days when human needs were limited and livelihood was primarily based on agriculture, joint families, craft guilds, churches,

charitable, philanthropic and other religious institutions provided these securities. In some countries poor houses were also established. However, later the system based on voluntary charity proved to be inadequate and unsatisfactory. In some countries these were supplemented with mutual benefits schemes and State aids. Today when the World is becoming more and more individualistic yet complex and complicated because of scientific advancement, risks of life have increased manifold. In this scenario a person may not be able to fight these risks on the basis of his own strength or capacities. Sir William Beveridge summarises this as “there are five giants on the road of reconstruction. These are want, disease, ignorance, squalor and idleness. Fears created by these giants have crossed the limit where individuals could not have controlled them individually or in small groups.” The need to address social exclusion caused by old age and contingencies forms the bedrock of social security schemes.

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2(U.K.) Poor Law Act, 1601
3In Great Britain, Sir William Beveridge was appointed to make recommendations for the reconstruction of better Britain in the post-war period. In his Report on “Social Insurance and allied services” which was published in 1942, he suggested that social security should be designed to combat the five giants—want, disease, ignorance, squalor and idleness.
2.2 Concept of Social Security - International perspective

In modern era, it was in U.S.A where official recognition of the term "social security" was given for the first time. Late Abraham Epstein, the Executive Secretary of the American Association of Social Security is credited with originating the term 'social security'. The Social Security Act, 1935, passed by the Roosevelt administration in U.S.A. was the first official use of the term social security. Later on, New Zealand used the term in the same sense in the Social Security Act, 1938.

There is no internationally accepted definition of social security. The concept of social security varies greatly from country to country. The term social security has been defined differently by various authors and authorities and thus, there is no universally accepted definition of social security. Different definitions stress different elements. Some definitions are very broad and others are narrow. Cassidy, famous Canadian economist defines social security 'as a scheme that connotes particularly

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6 Haber and Cohen, "Readings in Social Security", at. 39; Dr. P.C. Srivastava, (1964), Social security in India, at. 14.
measures of income maintenance or income security'. However, this
definition appears to be too narrow and vague. Further, American
Encyclopedia defines social security ‘as specific Government programmes
designed primarily to prevent want by assuring to families the basic means
of subsistence’.

Lord William Beveridge defines social security as “the
term social security is a ‘job’ when you can work and ‘security of an
income’ when you can’t work. The term social security means ‘security of
an income’ and it will take the ‘place of earnings’ when it is interrupted by
unemployment, sickness or accident, retirement through age, loss of support
by the death of the person and to meet an exceptional expenditure such as
those connected with birth, death and marriage.

The International Labour Organisation (I.L.O) defines term social
security as ‘the security that the society furnishes through appropriate
organisations against certain risks to which its members are exposed.’

Wouter van Ginneken, an I.L.O expert on social security, defines social
security ‘as the benefits that society provides to individuals and households,
through public and collective measures to guarantee them a minimum

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13 William Beveridge, Social Insurance and Allied Services, Report presented to Parliament (London:
H.M.S.O.) p.120
standard of living and to protect them against low or declining standards arising out of a number of basic risks and needs'. Further, highlighting importance of social security, he points out that, it is a public measure providing protection against low and declining standards, arising out of the contingencies in life; these are available to all individuals and households. For any social security scheme to be relevant and effective, it should have four constituent parts, namely, coverage, benefits, financing and administration.\textsuperscript{16}

Today the right to social security throughout the world is a recognized human right, providing protection to all persons against economic insecurity. It is universally recognised that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work, old age, etc. The Article 23 of the Universal Declaration of Human Rights recognised social security as the significant human right under in the following words:

"Everyone as a member of society has right to social security and is entitled to realisation through national efforts and international cooperation and in accordance with the organisation and resources of each

\textsuperscript{16} \textit{Id.}
State, of economic, social and cultural rights indispensable for his
dignity and the development of his personality." Further, the
declaration provides that "everyone has the right to standard of living
adequate for the health and well being of himself and of his family
including food, clothing, housing, medical care and social security in the
event of unemployment, sickness, disability, old age or other lack of
livelihood or circumstances beyond his control."\(^{17}\)

Similarly the International Labour Organisation (ILO) has adopted
several Resolutions, recommendations and conventions on various aspects of
social security. In 1952, a Comprehensive Convention (No.102) concerning
Minimum Standards of Social Security was adopted which provides that
every social security measure need to at least provide for medical care,
sickness benefit, unemployment benefit, old age benefit, invalidity benefit,
employment injury benefit, family benefit, maternity benefit and survivor's
benefit.\(^{19}\) Subsequently ILO has adopted a number of Conventions and
Resolutions amplifying and extending the scope of various measures of
social security. Through these Conventions, the concept of social security
has been further widened, so as to include provisions for minimum wage,


\(^{18}\) Ibid., Art. 25.

\(^{19}\) International Labour Organisation (1952), "Convention No. 102 Social Security (Minimum Standard),"
International Labour Office, Geneva, Switzerland.
housing, safe drinking water, sanitation, health, educational and cultural facilities which can guarantee workers a decent life.

Further, the Covenant on Social, Economic and Cultural Rights of the United Nations *inter alia*, recognised the right of everyone to social security including social insurance. Article 7 of this Covenant assures right to everyone to the enjoyment of just and favorable conditions of work which ensures not only adequate remuneration and fair wages but also decent living to the workers for themselves and their families. Article 9 of the Covenant provides that the State shall provide special protection to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

### 2.3 Concept of Social Security - Indian Scenario

The concept of "social security" in India has been very old one, though the term, the laws and institutions built around it to institutionalize the entire concept of social security may be of recent origin.\(^\text{20}\) India has a long tradition of social security and social assistance directed particularly towards the more vulnerable sections of society. The institution of self

sufficient village communities, the system of common property resources, joint families and the practice of making endowments for religious and charitable purposes provided the required social security and assistance to the needy and poor of the nation. In fact, the caste and religion based institutions also played significant role in providing the needed support to the weaker sections of the selected castes and group of people.21

Further, when India became independent chose a Socialistic pattern of society, which aimed at socio-economic development by ensuring the social, economic and political justice to the people to reach the goal of Directive Principles of State Policy enshrined under Art 41 and Art 42 of the Constitution which directs the State to provide work, education and public assistance in cases of unemployment, old age, sickness and disablement in other cases of undeserved want.22

These high ideals and objectives of the social security have been interwoven in the socio economic and legal framework of our country.

22 Article 41 provides that “the State shall, within the limits of its economic capacity and development, make effective provision 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. Article 42 provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.
There are sufficient and explicit provisions in Directive Principles of State Policy for various measures and means of social security system. The Supreme Court of India has held that the Directive Principles and Fundamental Rights are supplementary and complimentary to each other.\textsuperscript{23}

Even though right to social security is explicitly not a fundamental right under the Constitution, the right to social security finds an important place in different rights enshrined under the Constitution of India. Further, the judicial interpretations have widened the scope of fundamental right to embrace various interconnected subject matters which are closely and integrally linked with the fundamental rights enshrined in Part III of the Constitution. In \textit{Maneka Gandhi v. Union of India}\textsuperscript{24} the Supreme Court of India held that right to life is not merely confined to existence, it includes within its ambit the right to live with human dignity. In \textit{Peoples' Union for Democratic Rights v. Union of India}\textsuperscript{25}, it was held that the rights and benefits conferred on the workmen, under various laws, entitle them to live with human dignity.

\textsuperscript{23} Express Newspapers v. Union of India, 1959 SCR 12.
\textsuperscript{24} 1978 (2) SCJ. 31.
\textsuperscript{25} AIR 1982 SC 1473.
and if the workmen are deprived of any of these rights and benefits that would clearly be a violation of Article 21.

Further analysis of different pronouncements of the Supreme Court of India confirms that the right to social security has been interpreted implicitly as an integral part of right to life under Article 21 of the Constitution of India. The Supreme Court in *Bandhua Mukti Morcha v. Union of India*, 26 has interpreted the right to social security implicitly and explicitly as an integral part of right to life under Article 21 of the Constitution. Justice Bhagwati, while affirming the proposition that Article 21 must be construed in the light of the Directive Principles of the State Policy observed that “this right to live with human dignity enshrined in Article 21 derives its life and breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities of children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions to work

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26 AIR 1984 SC 802.
and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity.”

In *Francis C. Mullin v. Administrator, Union Territory of Delhi*\(^2^7\) Supreme Court, while elaborating the scope of the right guaranteed under Article 21, stated that “but the question which arises is whether the right to life is interpreted only to protection of limb or faculty or does it goes further to embraces something more. We think that the right to life includes right to live with human dignity and all that goes along with it viz., the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and communicating with fellow human beings....”

Further, in *Consumer Education and Research Centre v. Union of India*\(^2^8\) Supreme Court held that “it would thus be well settled law that the Preamble, Chapter of Fundamental Rights and Directive Principles accord right to livelihood as a meaningful life. Social security and disablement benefits are integral schemes of socio-economic justice to

\(^2^7\) 1981 (2) SCR 516.
\(^2^8\) 1995 (3) SCC 42.
the people in particular to the middle class and lower middle class and all poor people. Life insurance coverage is against disablement or in the event of death of the insured, economic support for the dependants, social security to livelihood to insured or the dependants. The appropriate life insurance policy within the paying capacity and means of the insured to pay premium is one of the social security measures envisaged under the Constitution to make right meaningful, worth living and right to livelihood a means for sustenance.”

In the light of these judicial pronouncements of apex Court it is very clear that social security can be interpreted as fundamental right within the Constitutional framework of the Country.

The main reason of social insecurity in India is poverty and that is largely due to lack of adequate employment opportunities. Apart from that there are other insecurities like conventional contingencies such as the disability, old age, death, etc. The State has the responsibility to make provision for adequate and stable income to enable the poor to satisfy their basic needs. The State also needs to provide the means of livelihood to those who cannot work and earn their living due to age or disabilities. The
requirements of the varied sections of the working population differ depending on their circumstances. In order to understand and identify the different social security needs of the varied sections of the working population, the working population may be categorized as organised sector workers, unorganised sector workers, and unemployed.

The organised labour, who have regular employment with assured income, need protection of their income against loss or diminution due to the occurrence of contingencies. Broadly speaking, social insurance types of schemes will be appropriate for these categories as these can make regular contributions.

The unorganised labour who are employed on casual, temporary or intermittent basis, need continuity of employment. Various de-casualisation measures by the State providing employment security and income security will be relevant in this context. Self-employed persons also belong to the same class. They need protection of their employment against the vagaries of nature and of the market. As there are numerous occupations in the unorganised sector for which the conventional types of social insurance
schemes can not be applied as they lack regular income, the welfare funds and social assistance schemes shall be ideal for this category.

Non-working population consists of the old, the infirm and the young who are unemployed because of non availability of employment. For old, infirm and the persons with disabilities social security will have to be provided under social assistance schemes as these are not in a position to make contributions themselves. The priority need of unemployed class of people is employment and a source of income. In order to provide income security, it will be necessary to undertake employment schemes, in the nature of public works which shall provide employment and income to the unemployed. In this context the enactment of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 is worth mentioning.

All people, irrespective of the class to which they belong, need food security, health security, old age security, and the provision of clothing and shelter, and if they are below the poverty line and cannot provide for these through their own efforts. The Government needs to share the burden of providing social security to these people.
India as a welfare State is under Constitutional mandate in the form of various Fundamental Rights and Directive Principles of State Policy, to provide social security benefits to the people. At the same time being signatory to various international conventions pledged to achieve in the field of social security. In fulfilling these obligations the Government of India has passed few legislations like the Employees' Compensation Act 1923, the Employees' State Insurance Act 1948, the Employees' Provident Fund and Miscellaneous Provisions Act 1952, the Maternity Benefits Act 1961, the Payment of Gratuity Act 1972, etc deal with matters relating to social security. Unfortunately most of these legislations are providing social security benefits only to organised sector workers who constitute mere seven percent of working class. Remaining ninety three percent of workers which constitute unorganised sector workers are outside the preview of these social security legislations because of lack of employer-employee relationship, seasonal character of employment, casual and contractual character of employment etc.

2. 3. 1 Unorganised Sector workers and Social Security

In order to realize the gravity of social security problems of unorganised sector workers, it is very essential to know magnitude and
vastness of this sector. To estimate total number of workers in unorganised sector, it is necessary to understand the precise meaning of unorganised sector.

In India, the terms 'unorganised sector' and 'informal sector' are used interchangeably in research literature. The term 'unorganised sector' is used commonly in all official records and analysis. Defining unorganised sector worker is difficult task as this sector involves workers who are engaged in a variety of occupations or employments, ranging from forest workers, fishermen, agriculture workers, building and other construction workers, workers in beedi industry, handloom workers, toddy tapping, head load workers, railway porters, agarbatti workers, rag pickers, rickshaw pullers, salt workers, carpet and leather workers etc. Even the High level Commissions appointed by the Government of India attempted to define unorganised sector workers in their Reports. In the process it was found that the unorganised sector is too vast to remain within the confines of a conceptual definition. Hence, descriptive means are often used to identify the unorganised or informal sector.

30 Id.
The First National Commission on Labour (1969), under the Chairmanship of Justice Gajendragadkar, defined the unorganised sector 'as that part of the workforce who have not been able to organise in pursuit of a common objective because of constraints such as casual nature of employment, illiteracy, small size of establishments with low capital investment per person employed, scattered nature of establishments and superior strength of the employer operating singly or in combination'. Further the Commission listed 'illustrative' categories of unorganised labour like contract labour including construction workers; casual labour; labour employed in small scale industry, handloom/power-loom workers, beedi and cigar workers, employees in shops and commercial establishments, sweepers and scavengers, workers in tanneries, tribal labour and 'other unprotected labour.'

The National Commission on Self-Employed Women and Women in the Informal Sector (1988) set up under the Chairpersonship of Smt. Ela R. Bhatt, defined unorganised sector by pointing out characteristics of the unorganised sector. "Unorganised sector workers are those casual labours who mostly do intermittent jobs at extremely low wages or doing their own

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account work at very uneconomical returns. There is a total lack of job security and social security benefits. The areas of exploitation are high, resulting in long hours, unsatisfactory work conditions and occupational health hazards.”

Realising the difficulty in defining vast segment of labour force the National Commission on Labour (2002), pointed out ‘perhaps, the unorganised sector is a term that eludes definition. Its main features can be identified, and sectors and processes where unorganised labour is used can be listed, though not exhaustively. Apprentices, casual and contract workers, home-based artisans, and a section of self-employed persons involved in jobs such as vending, rag picking and rickshaw pulling come in the unorganised sector. Agricultural workers, construction workers, migrant labour and those who perform manual and helper jobs also come in the category of unorganised sector workers."

The National Commission for Enterprises in the Unorganised Sector (2006) defined unorganised sector on the basis of size criterion in terms of

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the number of workers. *Unorganised sector is all unincorporated private enterprises owned by individuals or households engaged in the production and sale of goods and services and operated on a proprietary or a partnership basis and employing less than 10 persons.*” Further the Commission held that the unorganised sector is an enterprise-based concept and does not reflect the characteristics of the jobs or employment relationships. It is possible that some workers in the organised sector do not enjoy any job security, work security or social security. In order to identify such categories of workers, it is necessary to complement the definition of unorganised sector with a definition of unorganised/informal employment. All the casual workers and unpaid family workers in all enterprises, irrespective of the sector, are being considered as unorganised workers. Similarly, self-employed persons in the unorganised sector, and private households and other employees not eligible for paid sick/annual leave or other social security benefits offered by the employer, are also being considered as unorganised workers. Thus taking these things into consideration, the Commission, defined unorganised workers as “*unorganised workers are all those who are working in the Unorganised Sector defined earlier and the workers in the formal sector without any*

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34 Report of the National Commission for Enterprises in the Unorganised Sector (May 2006), Ministry of Labour, Government of India, New Delhi., Chapter IV, at 7
35 Id. at 8
employment security and social security provided by the employer." On the basis of this definition, Commission estimated formal and informal employment in India.

Further, the Commission held that "in the context of the definition of the sector, 85.8 per cent of the total employment in the Indian economy during the period 1999-2000 was accounted for by the unorganised sector. This was around 340 million including 4 million workers whose job status can be characterised as formal. As regards the type of employment, 91.3 per cent of the total employment was in the category of informal employment which is around 362 million workers of which nearly 26 million were accounted for unorganised workers in the organised sector." 37

Table 1 provides comparative analysis of numerical strength of workers employed in organised sector and unorganised sector in India during the period 1999-2000. This provides an idea of vastness of unorganised sector workers in India.

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36 Id.
37 Id.
Table 1
Work force in India (1999-2000)
(in millions)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Employment Category</th>
<th>Organised worker</th>
<th>Unorganised worker</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organised Sector</td>
<td></td>
<td>30.66</td>
<td>25.79</td>
<td>56.45</td>
</tr>
<tr>
<td>Unorganised Sector</td>
<td></td>
<td>4.02</td>
<td>336.29</td>
<td>340.31</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>34.68</td>
<td>362.08</td>
<td>396.76</td>
</tr>
</tbody>
</table>


Over the years this vast population of unorganised sector is further expanded because of initiation of liberalisation and globalisation policy, as unorganised sector provided cheap labour force in the form of contractual and casual labour. This helped the industries to reduce labour cost which was necessary to face tough competition in the global market.
The following table provides the data of organised sector and unorganised sector workers in India during 2004-2005.38

<table>
<thead>
<tr>
<th>Sector/Worker</th>
<th>Unorganised Worker</th>
<th>Organised Worker</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unorganised Sector</td>
<td>393.5 (99.6)</td>
<td>1.4 (0.4)</td>
<td>394.9 (100.0)</td>
</tr>
<tr>
<td>Organised Sector</td>
<td>29.1 (46.6)</td>
<td>33.4 (53.4)</td>
<td>62.6 (100.0)</td>
</tr>
<tr>
<td>Total</td>
<td>422.6 (92.4)</td>
<td>34.9 (7.6)</td>
<td>457.5 (100.0)</td>
</tr>
</tbody>
</table>

Source; NCEUS (2007: 4). Figures in brackets indicate row percentages

The Report of the National Commission for Enterprises in the Unorganised Sector (2007) provided that “as per data available 92.4 per cent of the total employment in the Indian economy during the period 2004-05 was accounted for the unorganised /informal sector. This is around 422.6 million workers, out of which 393.5 million workers from unorganised sector and 29.1 million unorganised workers in the formal sector. This vast majority of unorganised workers do not enjoy the benefits of the social

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security laws.”39 This clearly points out that within a span of five years (2000 to 2005) number of unorganised workers in India increased from 393.5 million to 422.6 million. And this number is increasing every year. It is very much evident that millions workers of our country are denied right to social security which is a fundamental right under Art 21 of the Constitution.

In this scenario there is an urgent need of comprehensive social security policy in order to extend wider coverage of social security measures for the un-organised sector workers to cover number of contingencies such as sickness, maternity, old age, disablement and employment injury as there is an inadequate coverage of unorganised sector under social security laws which do not meet the eligibility criteria such as threshold limits of employment, wage ceiling coverage etc.

It is universal truth that democracy can survive only if society is based on social and economic justice because social justice is social order and economic justice is the rule of the day which facilitates to promote the welfare of the people so that society will thrive. These are

inseparable because economic justice goes along with social justice. As labourer is an active partner in the contribution to productive process in industry and country as well, he has a legitimate right to claim the fruits of social security when he is caught into the web of contingencies. Hence economic and social developments cannot be considered as a separate process because economic growth makes the expansion of social programmes to provide security as it ensures workers to become more efficient as a country's progress is determined by the efficiency of labour in quantitative aspect. Lack of social security impedes progress and prevents formation of a stable and efficient labour.40

In this context an attempt is made in the following Chapters to give an overview of initiations by both Central and State Governments in addressing social security needs of unorganised sector workers. Author has also tried to analyse the institutional strengths and weaknesses of these efforts.

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