CHAPTER IX
THE UNORGANISED WORKERS' SOCIAL SECURITY ACT, 2008

9.1 Introduction

The waves of liberalization, privatization and globalization have changed the structure of business processes and nature of employment and economic activities. This has resulted in high incidents of contracting, sub contracting, outsourcing and casualisation of labour services. These changes have further created many critical issues for the social security sector. Addressing these issues is vital to the socio-economic and human development of the country. Globalization makes social safety nets more necessary, as they cushion the blow for those most severely affected, help to maintain the legitimacy of reform, and help to avoid a backlash against the social and distributional consequences of globalization.¹

In this context the issue of provision of social security to the growing segment of unorganised sector workers gained enhanced significance in the development discourse in India. Various efforts of the Government of India, in recent years, such as designing of new social security schemes, recasting of earlier schemes, introduction of innovative methods towards effective

identification and enrolment of beneficiaries, contemplation of comprehensive legislations to ensure social protection for unorganised sector workers and so on testify a paradigm shift in the social security front. Also, in the recent past, there has been an increased emphasis on creating enabling frameworks and promotional measures towards ensuring effective social protection to the poor (especially for those in the unorganised segments of the workforce) and enhancing their reservation income in the labour market. 

When the United Progressive Alliance (UPA) Government came into power in 2004, in line with the commitment made by it in the National Common Minimum Programme, the National Commission for Enterprises in the Unorganised Sector (NCEUS) was set up in September 2004, under the Chairmanship of Late Dr. Arjun Sengupta. The Commission has the mandate to examine the problems of the unorganized sector and suggest measures to overcome them.

The Commission after thorough investigation on the subject and after elaborate discussions with trade unions and other stake holders found that

3 National Common Minimum Programme provided that “The UPA Government is firmly committed to ensure the welfare and well-being of all workers, particularly those in the unorganised sector who constitute 93 per cent of our workforce. Social security, health insurance and other schemes for such workers like weavers, handloom workers, fishermen and fisherwomen, toddy tappers, leather workers, plantation labour, beedi workers, etc. will be expanded.”
4 One of the terms of reference was to review the social security system available for labour in the informal sector, and make recommendations for expanding their coverage.
there is a need for separate laws to protect agricultural workers and non-agricultural workers within the unorganized sector. In this regard the Commission proposed two draft Bills "Unorganised Non-agricultural Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2007" and the "Unorganised Agricultural Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2007" to cover unorganized agricultural workers and non-agricultural workers respectively.

In 2005, the National Advisory Council [NAC] also submitted a draft Bill based on the recommendations of the Second National Labour Commission (2002). Still, all of them were thrown into the dustbin and the Ministry of Labour and Employment brought out its own Bill, the Unorganised Sector Workers' Social Security Bill, 2007 before the Rajya Sabha during the zero hour. The Bill was referred to the Parliamentary Standing Committee on Labour, (2007-08). The Committee in its report extensively discussed various aspects pertaining to the unorganized workers in the Country and the question of feasibility of ensuring practicable social security coverage for these workers. The Committee afforded an opportunity of being heard to the trade union organizations, employers' organizations, NGOs. The Committee also invited suggestions and comments from various Ministries and Departments of Government of India, States and Union
Territories. After considering the views expressed by several representatives of Trade Unions/NGOs/Employers' Groups/Associations, etc., and after going through the memoranda received, the Committee was convinced that 'The Unorganized Sector Workers' Social Security Bill, 2007 in its present form will not be able to meet the aspirations of millions of workers in the unorganized sector. The Committee, therefore, proposed necessary amendments to be carried out in the title of the Bill, definition of various significant terms contained in the Bill, various clauses of the Bill relating to provision of a statutory right for national minimum benefits for all unorganized workers, their coverage within specified time frame, composition of the National and State Social Security Advisory Boards, functions to be assigned to these Boards, creation of separate National Fund including method of funding, provision of staff for servicing these Boards and constitution of Grievance Redressal Machinery, etc. As these amendments have altogether changed the very nature and structure of the Bill, the Committee felt that it was prudent to enclose a copy of the Bill itself in the amended form as an Annexure II to the Report.5

But the Government ignored crucial recommendations of the Second National Labour Commission, the Report of the Petitions Committee of Lok

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5 Dr. I. Sharath Babu, “Social Security Protection for the Unorganised Workers in India - a myth or reality?” published in Labour Law Journal, June 2010 at 50-51
Sabha, and the Report of the Parliamentary Standing Committee for Labour along with draft laws prepared by the National Commission for Enterprises in the Unorganised Sector (2006). Finally the Parliament passed the Unorganized Workers' Social Security Act, 2008 which was basically original Bill with minor changes. This clearly demonstrates the attitude and lack of pragmatic approach on the part Government despite the fact that millions of exploited population in India has been demanding for this Constitutional Right from decades. But after a long wait what the Government announced was legislation with few Schemes rather than a definite plan of action with firm resource commitments to make social security a reality for 369 million unorganised sector workers.

The UPA Government has brought the Act into effect, in the last six months of its tenure with a hope to pull votes of unorganised sector workers in the elections. In the words of Labour Minister Shri Oscar Fernandes, “When the income of our people is only Rs. 20 per day, our Parliament, through this Bill, has given an income of two dollars a day to our people in the rural areas. Anybody can stand up and say that I want a job. You get a job of two dollars a day. What a jump it is from Rs. 20 to Rs. 80, and to Rs.135 in States like Delhi, Haryana and Punjab!” Perhaps, the Minister wanted to conceal the fact that the workers had to fight a major battle even
to get the declared wages of Rs. 80 even in the much trumpeted the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. In the Government’s own reply to the debates, the Minister has clarified that the Scheme will be implemented in a phased manner to cover six crore unorganized workers, and in turn their family members of 30 crore people, over a period of five years, extending benefits to 1 crore 20 lakh workers per year. This makes it amply clear that the Act is only an eyewash and intends to cover just 6 crore workers out of the total workforce of more than 42 crore. Any legislation is meant for guaranteeing certain legal commitments on the part of the State; this Act, instead, leaves the implementation entirely to the whims of Governments of the day.6

9.2 Key Definitions under the Act

Originally the Bill was named as the Unorganised Sector Workers Social Security Bill 2007 which is changed to the Unorganised Workers Social Security Act, 2008 (herein after referred to as ‘the Act’). This may give an impression that the Act will cover unorganised workers in the organised sector as well. But, the change in title does not made much effect on application of the Act to the unorganised workers in the organised sector.

Section 2(m) of the Act defines 'unorganised worker' as a 'home-based worker', self employed worker or wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act. This will imply that casual and contract workers in the organized sector are excluded from the purview of the present legislation as they are covered under some of the Acts specified under the Schedule of the Act. Further, the Section 2(c) of the Act defines “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. This implies that any entity which is carried on by employing ten or more workers is not

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7 Sec. 2(b) of the Act defines home-based worker as 'a person engaged in the production of goods and 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.

8 Sec. 2(k) of the Act defines The 'self-employed' worker as 'any person, who is not employed by an employer, but engages himself or herself in an occupation in the unorganized sector subject to a monthly earning of an amount notified by the Central or State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.

9 Sec. 2(n) of the Act defines 'wage worker' as a person engaged for remuneration in the unorganized sector, directly by an employer or through any contractor, irrespective or place of work, whether exclusively for one employer or 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.

‘unorganised sector’ and workers employed in such an entity are not entitled to benefits available under this Act.

The definitions also exclude workers dependent on livelihood systems such as forest workers and fish workers, who cannot be brought within the ambit of home-based workers, self-employed workers and wage workers. The Act does not even cover unorganised cross-border temporary migrant workers, who have gone to other countries to be engaged in dirty, difficult and dangerous jobs such as construction, cleaning, domestic work, paramedical work and such other occupations in manufacture and service sectors. When on work, they contribute to the national income by their remittances. These workers are a vulnerable group exposed to violently offensive situations and require social security protection. Further, unpaid family workers and care workers (such as Anganwadi workers) are also not included under the definitional ambit of the Act.

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9.3 Social Security Benefits under the Act

The long title of the Act provides that the Act is passed to “provide for the social security and welfare of unorganised workers and for other matters connected to therewith or incidental thereto.” 13 Further the Section 3 (1) of the Act provides that the Central and the State Government shall formulate and notify schemes from time to time covering life and disability, health and maternity benefits, old age protection and any other benefit as may be determined by the Central Government. This *inter alia* underscores the fact that entitlement has to wait for an opportune time. 14

To claim social security benefits under the Act, the unorganised worker need to register himself after fulfilling certain conditions specified in the section. 15 But the Act does not define the term ‘social security

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13 See The Gazette of India, Extraordinary, Part II, Section I, dated the 31st December, 2008.
15 Section 10 of the Act provides that
(1) Every unorganised worker shall be eligible for registration subject to the fulfillment of the following conditions, namely:—
   (a) he or she shall have completed fourteen years of age; and
   (b) 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) 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.
(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.
benefits’, instead provides for following social security schemes in the schedule I of the Act.  

1. Indira Gandhi National Old Age Pension Scheme.
3. Janani Suraksha Yojana.
6. Pension to Master craft persons.
7. National Scheme for Welfare of Fishermen
10. Rashtriya Swasthya Bima Yojana.

9. 3. 1 Indira Gandhi National Old Age Pension Scheme

Under this scheme any person of 60 years\(^{17}\) old and belonging below poverty line family is entitled for monthly pension. From November, 2007 onwards, at a revised rate pension of Rs. 200 with equal contribution from

\(^{16}\) As all these Schemes are discussed in detail in the Chapter VI, a brief details of these Schemes is given in this Chapter.

\(^{17}\) With effect from 1st April, 2011 onwards age limit is lowered from 65 years to 60 years.
the States is provided. So, this scheme provides a monthly pension of Rs. 400 to the beneficiaries.

9.3.2 National Family Benefit Scheme

This Scheme aims at providing a lump-sum amount of money to the households below the poverty line in the event of the death of primary bread winner (age between 18 to 64 years) irrespective of the cause of death. The financial assistance provided under this scheme to the bereaved household is Rs. 10,000.

9.3.3 Janani Suraksha Yojana

This Scheme aims at providing benefits to the pregnant women of 'below poverty line' families and to encourage antenatal care, institutional deliveries and provision for post-partum care. Under this scheme, cash benefit is given to the poor pregnant women aged 19 years and above for institutional delivery.

9.3.4 Handloom Weavers' Comprehensive Welfare Scheme

This Scheme came into being during the 11th plan with an amalgamation of two separate schemes, viz. the 'Health Insurance Scheme'
and the ‘Mahatma Gandhi Bunker Bima Yojana’. The former scheme was providing health care facilities to the handloom weavers and the latter one aimed at providing life insurance cover to the handloom weavers at times of natural or accidental death, total or partial disability due to accident.

9.3.5 Handicraft Artisans’ Comprehensive Welfare Scheme

This Scheme has two main constituents, viz. Raiv Gandhi Shilpi Swasthya Bima Yojana and Bima Yojana for Handicrafts Artisans. The former provides life insurance protection to the handicrafts artisans and their family members, and later provides life insurance protection to the handicrafts artisans.

9.3.6 Pension to Master Craft Persons

Under this Scheme, the senior master craft persons (above 60 years of age), who are the recipients of National/State Awards in handicrafts, are provided with pension benefits so as to enable them for disseminating their knowledge to the younger generation.

9.3.7 National Schemes for Welfare of Fishermen and Training and Extension

This Scheme was launched in 1991-92 under the title, “National Scheme of Welfare of Fishermen” with the sole objective of providing basic
civic amenities and socio-economic security to the fishermen. The Scheme has four major components like (i) Development of Model Fishermen Villages (ii) Group Accident Insurance for Active Fishermen (iii) Saving cum Relief Scheme (iv) Training Scheme.

9.3.8 Janashree Bima Yojana

This Scheme is introduced with an objective of providing life insurance cover to the rural and urban poor of age-group of 18 to 60 years and who live in below poverty line family or on the margin. Scheme provides for payment of Rs. 30,000/- in the event of death due to natural causes. In the case of accidental death or permanent disability, the benefit will be Rs.75,000 and Rs.37,500 in the case of partial disability.18

9.3.9 Aam Admi Bima Yojana

With a view to provide death and disability cover to rural landless households, 'Aam Admi Bima Yojana' was launched. The benefits under this scheme are limited to Rs.30,000 in case of natural death, Rs.75,000 for death or disability due to accident. Scholarship as a free add-on benefit is also provided to a maximum of two children of the beneficiary.

9.3.10 Rashtriya Swasthaya Bima Yojana

It provides support to the BPL families, in case of hospitalisation. As per scheme, the enrolled BPL families are eligible to get medical benefits from various empanelled hospitals. The benefits are limited to Rs. 30,000 to a family unit of five members. In order to encourage institutional delivery maternity benefits are also provided under this scheme. The building and other construction workers are also covered under this scheme.

An analysis of these schemes shows that nothing new is offered in the Act. These Schemes are already existing target oriented social security programmes initiated by the Central Government. The Act only provides for integration of various existing schemes of the Central Government into the Act. These are not universally applicable to all unorganised workers. Application of these schemes is subject to the condition that the family must be a below poverty line. Most of the urban unorganized workers may not fall under the BPL category which ultimately excludes them from the benefits of the schemes.

The Act does not even provide any assured minimum social security. The ILO convention No. 102 on Social Security (Minimum Standards) adopted in 1952 provides that any social security benefit scheme need to
make provision for at least certain minimum benefits providing medical care, benefit for sickness, unemployment, old age, employment injury, maternity and survivor's benefits. The Act which is passed after sixty years of independence and projected as major step of millennium in full filling aspirations of millions of unorganised workers, is not even providing minimum social security benefits to these workers.

Moreover, even though the Act was passed with the objective of providing social security and welfare to the unorganized workers, it does not confer any defined right to social security for them. The social security schemes are not included as part of the body of the Act but are given in a Schedule which means Government can change or withdraw these schemes by mere giving a notification.

9.4 Mechanism under the Act

The Act provides for a three tier structure mechanism for the purpose of the implementation of the law.

9.4.1 National Social Security Board

The Central Government constitutes the National Social Security Board with Union Minister for Labour and Employment as Chairperson, and
members nominated by the Central Government consisting of seven each representing workers and employers from unorganised sector, eminent persons from civil society, two members from Lok Sabha and one member from Rajya Sabha, and also five each members representing Ministries from the Central and the State Governments. This is a multi partite composition. The National Social Security Board performs following functions, namely:-

(i) recommend to the Central Government suitable schemes for unorganised workers;
(ii) advise the Central Government on matters arising out of the administration of Act;
(iii) monitor such social welfare schemes for unorganised workers;
(iv) review registration and issue of identity cards to unorganised workers;
(v) review the record keeping functions performed at the State level;
(vi) review the expenditure from the funds under various schemes; and
(vii) undertake other functions as assigned to it by the Central Government.

19 See Section 5(1) read with Section 5 (2) of the Act.
9. 4. 2 The State Social Security Board.

At the State level, the State Government is empowered to constitute State Social Security Board for the purpose of implementation of the Act. Composition and functions of State Social Security Board are similar to that of National Social Security Board. An analysis of composition of these two institutions both at National and State level which are constituted with the task of implementation of the Act has very meager representation from unorganised sector workers which comprises of gigantic 369 million workers. The National Social Security Board has provision to have only ‘seven’ members representing unorganized sector workers and the State Social Security Boards have ‘seven’ members representing unorganized sector. Moreover, there is no role given to trade unions or any other organisations of the unorganised workers.

Further, the Social Security Boards which are entrusted with the responsibility of implementation of the Act, are just advisory in nature and are not empowered to perform any function except that of monitoring and

20 See Sec. 6(2) to be read with Sec. 6(8) of the Act.
review. They are not empowered to take decisions on their own. It is up to the Government to accept or not to accept the recommendation of the Board. For effective implementation of any Act and consistent delivery of social security rights to the workers, a well-defined administrative mechanism is very much essential, which is missing in the Act.

The Act also provides for constitution of 'Workers Facilitation Centers' by the State Governments to disseminate information social security schemes, assist unorganised workers for registration and facilitate the enrollment of the registered unorganised workers for social security schemes. But the Act is silent about at which level these Workers Facilitation Centers are to be created.

9.5 Funding of Schemes

The Act does not provide for the creation of a structured Social Security Fund. Even though Parliamentary Standing Committee strongly recommended that social security schemes cannot just work without any statutory backing and assured resource allocation, which was not taken into consideration by the Government and the Act was brought into force without

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making provision for funds. The absence of Social Security Fund in the Act, casts doubts on the genuineness of Government’s intentions in delivering social security rights to the unorganised workers in India. The Act should have contained a definite provision for the creation of a Social Security Fund, and a financial memorandum for budgetary allocation for the Fund.

Most of the Schemes are available only for below poverty line family. A person earning more than Rs. 26 per day in village and Rs. 32 per day in urban area is not considered below poverty line population as per the current below poverty line norms.\(^{22}\) This estimation is made by the 11th Planning Commission on the basis of 2011 prices. Economic experts have criticised this estimation because spending below this will lead to starvation. By this restrictive clause in the schemes, most of the unorganized workers, denied the benefits of the schemes provided under the Act. Moreover, section 10 (4) of the Act, provides that nonpayment of the contribution disentitles the worker from getting any benefits. At the same time the Act does not contain any provisions with regard to security of employment. In case of unorganised workers, because of non availability of regular

\(^{22}\) As per the affidavit filed before the Supreme Court by 11th Planning Commission, on 28th September 2011, a person spending more than 26/day in village and Rs. 32 /day in urban area cannot be termed as poor and would not be entitled for social security benefits and subsidized food given by the Center to BPL Families. ; Also see Utsa patnaik “How little can a person live on?” Published in ‘The Hindu’ dated 30th September 2011.
employment, making regular contribution is difficult. Work and employment are the starting point for any scheme for the benefit of workers. Therefore, any law which does not deal with the 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 stand alone basis.\textsuperscript{23}

As the Act is only for BPL workers, identification of beneficiary is a challenge and there are also issues relating to ‘leakage’. Another aspect is that if BPL estimates by the State government exceeds that of Planning Commission estimate of number of poor (as is the case in many States at present), then State Government and other agencies (and not the Central Government) have to fund the differences of excess beneficiaries under any particular scheme. Taking in to account the financial positions of the State Governments, it will be very difficult for them to finance the excess beneficiaries leading to exclusion of some of the deserving beneficiaries from getting benefits from various schemes.\textsuperscript{24}


\textsuperscript{24}Babu Pottaveettil Remesh, "Extending social protection for unorganized sector workers in India: One step forward, two steps backward?" Paper presented at 6th International Policy and Research Conference on Social Security Luxembourg.
Moreover, the very implementation of welfare and social security schemes for the millions of exploited working class would depend upon the sweet will of the Central and State Governments. There is no time bound framework for the Central and State Governments to formulate various social security schemes as specified in the Act. The mechanism pertaining to the registration of a worker and entitlement to the benefits would depend upon the formulation of a specific social security scheme which is a contingent aspect under the legislation. Even the basic issue of delivery of the social security benefits to the deserving worker is vaguely designed.\textsuperscript{25}

The Act does not provide for a grievance redressal mechanism. The fairness and effectiveness of the implementation of the Act greatly depends on the availability of a well-designed and functional grievance redressal mechanism through which workers have recourse to a method for voicing their complaints about violations. This inherent structural gap and inadequacy make the Act ineffective in providing social security benefits.\textsuperscript{26}

Notwithstanding the perceived shortcomings of the Act, it is widely acknowledged that the enactment of such an Act can be seen as one of the

\textsuperscript{25} Supra note 5 at 54-55.
pioneering initiatives from the Government in the direction of providing social security benefits to the unorganised sector workers. It is hoped that the Act will also enable the unorganised workers to organise around the Act, which will give them voice and will help them enhancing their bargaining power.

The new legislation can, be taken as a beginning – an opportunity to raise working class struggles to newer heights by involving crores of unorganized workers. It is for the working class and trade union movement to take up the challenge to create waves of bigger and bigger struggles for a really meaningful and comprehensive legislation for unorganized workers that can cover not only social security but also wages, rights, job security and the conditions of employment.\textsuperscript{27}

\textsuperscript{27}V Shankar with inputs from B Sivaraman, "Unorganised Workers' Social Security Act 2008- A Beginning for Bigger Struggles!" article published in "Liberation" Feb 2009.