CHAPTER-I
INTRODUCTION

1.1 INTRODUCTION

Generally social security is understood as any kind of security or collective measures designed to ensure that members of the society meet their basic needs and are protected against contingencies to enable them to maintain a relatively decent standard of living. The basic idea of social security is to use social means to prevent deprivation and vulnerability to deprivation.¹

The concept of social security is based on ideals of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country’s welfare should be given protection against certain hazards. Although social security systems are related to policies of development and the main constraint on their evolution is limited financial resources, the economic content of social security measures is being increasingly recognised. Measures adopted by different societies for protecting the needy individuals have been manifold.

Beginning with individual acts of charity and philanthropy, these devices progressed to include mutual benefit schemes, both formal and informal. Then followed State sponsorship and State participation, finally culminating in the present pattern where social security measures form a major plank of Governmental policy in many countries.¹

In India, the first piece of social security legislation namely, the Employees’ Compensation Act, 1923³ was passed under the influence of International Labour Organization (I.L.O.) Convention. The I.L.O in its founding convention strongly propounded the concept of social security for the industrial workers on the premise that the State cannot remain as a mere spectator for the various risks exposed at the work place by the industrial workers. This legislation was a well drafted legislation by the British Government providing a measure of social security protection for the industrial workers in the event of any personal injuries suffered by them out of and in the course of their employment or for any occupational diseases contacted by the workers which are peculiar to their employment. The law

³Originally short title of this Act was the Workman’s Compensation Act, 1923 which was changed to the Employees’ Compensation Act, 1923 by the Workmen’s Compensation (Amendment) Act, 2009.
provided sufficient measure of compensation in the event of any disability or death suffered by the workman out of and in the course of his employment.

In 1942, the first Indian Labour Conference resolved to examine thoroughly the necessary reforms to the law relating to compensation for industrial injuries. In pursuance of this resolution, a Committee headed by Prof. Adarkar was appointed and basing on Prof Adakar Committee Report, the Employees’ State Insurance Act, 1948 was passed. The Employees’ State Insurance Act, 1948 enlarged the scope of social security benefits covering the invalidity, death and maternity benefit. The law contains an inbuilt social security mechanism based on contributory system both by the employer and the workman. This law applies on the basis of existence of employer and employee relationship. The law defines the terms, employee, employer and industrial establishment in order to have a specific application in the context. It is an insurance based social security mechanism for the industrial workers.

Later, the history witnessed the passing of other set of social security legislations for the industrial workers, namely, the Employees Provident Fund (Miscellaneous Provisions) Act, 1952, the Maternity Benefit Act, 1961
and the Payment of Gratuity Act, 1972. It was very clear from the provisions of these legislations that, these shall apply only if clear employer-employee relationship exits. As a result, the other categories of industrial workers suffered the agony of being deprived of the benefit of social security protection. Even after Independence the situation continued without much commitment from the Government. The labour employed on contract, causal, temporary or ad hoc basis are completely denied the social security protection.

As stray incidents in the history, the Government of India enacted the Dock Workers (Regulation of Employment and Welfare Provisions) Act, 1948 by providing a structured mechanism under the Act to provide certain social security measures for the dock workers. Later, the Maharastra Government passed the Maharastra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare), Act in the year 1969 to provide the employment protection as well as welfare measures to certain specified manual workers in the State. From 1970s onwards, the Country witnessed only a few States’ initiatives in bringing certain social welfare and social security legislations applicable to particular categories of unorganised
sector workers following the model as envisaged in the Dock Workers (Regulation of Employment) Act, 1948.

In the year 1974, the Kerala Government enacted the Agricultural Workers Act providing a measure of regulation of employment and welfare benefits for the registered agricultural workers in the State. The State also enacted the Kerala Head Load Workers Act, 1978 providing a measure of regulation of employment and welfare benefits for the Head Load workers. These laws contain a mechanism wherein the registered workers are ensured certain minimum period of employment in a year and in case there is no employment or full employment is not available, the law ensures certain minimum amount of remuneration. These Acts also provide for some social security benefits on reaching the age of superannuation.

Later, the State of Tamil Nadu followed the suit by enacting the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. This law provides far-reaching welfare measures for the registered manual workers ranging from disability to old age benefits. The benefits are a measure of compensation in the event of employment injury, disablement, death, maternity and old age. Apart from these benefits, the
law also provides other benefits to dependent children of the registered workers in pursuing better education.

In the year 2003, the Madhya Pradesh Government enacted the Madhya Pradesh Unorganised Sector Workers Social Security Act providing major social security benefits for the specified Unorganized Sector Workers in the State. There is a conceptual difference between social welfare and social security. Social welfare is genus where as social security is its species. It is interesting to know that the State Governments like Maharashtra, Kerala and Tamil Nadu have gone to the extent of providing social security as well as social welfare benefits for the specific unorganized sector workers in their respective State legislations.

With the initiation of globalization process there is a tremendous change in the very pattern of employment system in India with the entry of multinational companies in various ventures. Reduction in tenured employment and increase in contractualisation, casualisation and sub contractualisation is the order of the day. Our country also witnessed the closure of thousands of industrial establishments including small scale industries, thus rendering millions of workmen as unemployed and there by
compelling them to become the unorganised sector workforce. According to National Accounts Statistics Report, out of 457 million total workforce in the Country, the unorganised sector workforce constitutes 422 million. These workers contribute 65% to the Country’s Gross Domestic Product. Thus their role in the economy of the country is substantial. Unfortunately, today the unorganised sector workmen in the country work under the highly exploitative conditions of work. Meager wages, excessive working hours, absence of welfare provisions and social security benefits (baring few employments in the State of Maharashtra, Kerala, Tamil Nadu and Madhya Pradesh) are the glaring agonies of these workers.

Social security protection for the unorganised sector workmen plays an important role for them to lead a decent standard of life. In the year 1998, for the first time in the history of Independent India, the Government of India considered the issue of providing the social security benefits for the unorganised sector workmen by appointing the Second National Commission on Labour, with a two fold terms of reference namely: (i) Rationalization of existing labour laws applicable to unorganized sector workmen and (ii) to suggest an umbrella legislation providing minimum

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social security measures for the unorganised sector workman in the Country. The Commission considered the subject elaborately by examining various categories of employments involved in the unorganized sector and issues relating to social security problems. The Commission also annexed a draft version of the Bill entitled “the Unorganised Sector Workmen (Employment and Welfare) Bill, 2002.” in its Report.

The Government of India in pursuance of the recommendations of the Second National Commission on Labour (2002) circulated several draft versions relating to unorganised sector workmen’s social security protection. At every stage till the National Democratic Alliance Government was in power there was stiff resistance from the stake holders to the very approach of these draft versions. Later, in the year 2004, the United Progressive Alliance Government come up with another draft version namely, Unorganized Sector Workers Bill, 2004. Pending further initiation, the Government appointed the National Commission for Enterprises in the Unorganized Sector in the same year with wide ranging terms of reference pertaining to the employments in the unorganized sector. One of the terms of reference was to examine the existing social security schemes for the
unorganized sector workmen and to suggest the measures to widen the scope of these Schemes.

It is interesting to note that the Commission came out with a draft Bill namely, Unorganized Sector Workers Social Security Bill 2005, containing only the social security measures for certain categories of unorganized sector workmen. Till 2006, the Commission successively presented three revised draft versions of the Bill. The same was met with sharp criticism from the stakeholders. The final draft was submitted by the Commission in the year 2006. The fundamental drawback in the final draft version submitted by the Commission to the Government was pertaining to the definition of a term 'unorganised sector workman' apart from other inherent defects. Hence, the fundamental issue that is pertinent for this research is to have clarity on the basic aspects of the unorganized sector workers and issues in connection with ensuring social security measures.

1.2 THE PROBLEM

The social security measures namely, invalidity benefit, old age benefit, unemployment benefit, death benefit and maternity benefit for the unorganised sector workers in India are viewed solely form the point of the
view of sustenance. As already pointed out it is not an easy task to define precisely the term 'unorganised sector worker'. Rather it is an easy task to identify the various categories of unorganised sector workers and employments. The draft version submitted by the National Commission on Labour (2002) entitled Unorganised Sector Workers Bill as well as the draft version circulated by the Ministry of Labour, Government of India namely, the Unorganised Sector Workers Bill, 2004 both are pragmatic in not making any conceptual attempt in defining the term 'unorganised sector worker'. Instead they simply provided that unorganised sector worker means the persons employed in the Scheduled Employments. The Schedule annexed to the draft versions contain a list of employments and avocations wherein the unorganised sector workers are employed or engaged with a saving clause empowering the appropriate Governments to add any employments or avocations to the Schedule. This sector is increasingly showing a growing trend since a decade because of the expanding nature of economy prevailing in the country. The unorganised sector workers include both the wage paid and self employed. Under these circumstances a proper planning of policy is required in order to provide an effective coverage of the social security benefits to this sector. The policy needs to address the kinds of benefits, contributions, creation of funds, the mechanism for administration of funds
and delivery of the benefits to the workers. In 2007, the National Commission for the Enterprises in the Unorganised Sector (2006) submitted the draft version of Unorganised Sector Workers Social Security Bill, 2007, to the Ministry of Labour, Government of India, for consideration. However, the United Progressive Alliance Government after much deliberation enacted the Unorganised Sector Workers Social Security Act in the year 2008. The Act lacks clarity on many key issues and appears to be inadequate to meet the varying challenges confronted by the unorganised workers.

In view of the experience gained over the years of implementation of labour laws in the country, it is highly interesting to examine the practicability of the intended move of the Government with regard to the issue of ensuring the social security benefits to this vast segment of unprotected working population in the country and to find the practical solutions to the problem, keeping in view the Constitutional commitment of ‘social justice’.

1.3 IMPORTANCE OF SOCIAL SECURITY

The concept of social security is having a wide ranging impact on the lives of the vast segment of unorganised sector workers population in India. The unorganised sector workers work under highly exploitative working
conditions with unduly low wages and without any social security coverage. Added to this problem, the other dimension of the issue is that the majority of unorganised sector workers either work as causal labour or self-employed. In the event of any misfortune these workers are deprived of the very livelihood and thus might suffer starvation. The Social Security Schemes launched by the Government of India are solely based on target orientation rather than universal application. Moreover, these Schemes are far from realization of the benefits to the unorganised sector workers. The reports clearly indicate that many poor persons and the disabled workers in the rural areas and urban slums are just starving and suffering health hazards without any monetary and social support. Certainly this is not the wish of the founding fathers of the Constitution. The State, under the Constitutional obligation is bound to provide and ensure that the needy and helpless unorganised sector workers are guaranteed with the protection of social security benefit.

1.4 OBJECTIVES OF THE STUDY

1. To establish that the concept of social security is a normative standard which ensures a decent standard of living to the vast segment of unorganised sector workers population in the country as
opposed to the growing inability of the State in considering this measure purely as an economic venture.

2. To examine and ascertain precisely the scope of existing Central and State social security legislations in India, its application, benefits available and the possibility of their application to the other segments of the unorganised sector workers in order to have more clarity on the subject.

3. To examine the manner in which the social security fund may be created on solid basis with the aid of the contributions of the workers, the employers (where they are identifiable) and the contributions of the State in view of the fact that it is these workers who are contributing immensely to the gross domestic income of the country.

4. To investigate a system of the administration of social security mechanism from the highest level to the local level in order to see that the unorganised sector workers have an easy access as a contributor as well as a beneficiary for the social security measures.
5. To investigate and examine the existing Social Welfare and Social Security Schemes initiated by the Central Government and the causes as to why these measures stood far from being satisfactory in ensuring the desired purpose and to evolve the appropriate strategies in realising the purpose.

6. Depending upon the answers to the above issues, the research would proceed to evolve and suggest the appropriate means and ways to ensure the social security benefits to the vast millions of the unorganised sector workers population from the livelihood perspective keeping in view the Constitutional goal of Social Welfare State.

1.5 METHODOLOGY

The study is primarily doctrinal and not empirical. But empirical data would be used for the purpose of examining the key issues to justify the claim for social security protection for the unorganised sector workers in the Country. The descriptive method would be followed with critical analysis in examining the Governments’ commitment made through the pronouncement of policies and the appointment of high power Commissions on the subject,
the existing Central and State legislations, the projected draft attempts made by the Central and State Governments, the Planning Commission documents, and the original studies undertaken by various experts and the institutions in the context would be examined in detail.

For the purpose of critical evaluation of the role of the State, pertinent secondary sources such as books written by various authors, studies conducted by the social scientists will be taken to aid. An element of inter-disciplinary approach is identified.

1.6 IMPORTANCE OF THE STUDY

The importance of study of this sort lies in better understanding of the problem of ensuring a decent social security protection, to the growing population of the unorganised sector workers in the Country, which aids as an instrument in removing the societal imbalances and inequalities. The Study would help not only the academics but more intimately to the Policy-Makers, Policy Controllers, Administrators, Planners, Legislators, Workers’ Organisations, Civil Societies, Social Activists and the like. The importance of
the Study lies in its purpose, namely to achieve the noble aspirations of the founding fathers of the Indian Constitution.

1.7 LIMITATIONS

The Study confines itself in examining the need for social security protection to the unorganised sector workers by conducting an investigation into various aspects of the livelihood patterns and the risks involved therein pertaining to different categories of unorganised sector workers in the Country. The social security protection to the unorganised sector workers would be examined from the point of view of their entitlement to their minimum human dignity in a social order like our Country. Thus the Study excludes deeper inquiry into other aspects such as the actual earnings made and the employment conditions of the unorganised sector workers.

1.8 PLAN OF THE THESIS

The investigation into the norms and principles relating to the determination of social security measures for the unorganised sector workmen in India is tentatively planned in ten chapters. An attempt is made to present important themes underlined in different chapters as shown below.
1. Introduction:

The first Chapter deals with elucidation of the problem and its context, objectives of investigation, the importance of the subject, the methodology and the limitations.

2. Social Security Protection for Unorganised Sector Workers - A Conceptual Clarity

The concept of social security for the industrial workers in India is viewed from two different perspectives namely it is a ‘saving’ as long as a worker is in employment and an ‘income’ once he is unemployed. In order to have clarity, the definitions given by prominent authors on social security shall be examined and discussed. An attempt shall be made to examine the conceptual frame work of the term ‘unorganized sector workmen’ by referring definitions given by different High Power Committees appointed by the Government of India.

3 Social Security Protection Regime under the existing Central Labour Welfare Legislations – A Review

In this Chapter, the first piece of social security legislation namely the Employees’ Compensation Act, 1923 shall be examined with a two fold purpose. One is to look into the applicability of the Act and the other one is to examine the precise social security benefits under the Act.
The Employees' State Insurance Act, 1948 is projected as a reformatory to the existing Employees' Compensation Act, 1923. In this context the focus shall be on the applicability, extent and coverage of the legislation in order to investigate the reasons as to why this law has benefited only particular categories of unorganised sector workforce involving employer and employee relationship and to find out the possible means and ways to extend its coverage to the other categories of the unorganised sector workmen. A similar Study would be conducted on the applicability and the coverage of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, the Payment of Gratuity Act, 1972.

4. Social Security Protection for Sector Specific Unorganised Workers - The Central Modules

In this Chapter an investigation shall be conducted in to the provisions of the Dock Workers (Regulation of Employment) Act, 1948 and the Building and other Constructions Workers (Regulation of Employment and Conditions of Service) Act, 1996. These two Central legislations are enacted with a specific object of ensuring regulation employment and social welfare measures for the Dock and construction workers in the country. The
purpose of this exercise is to analyze the application, the extent of coverage, the administrative mechanism in the formulation and implementation of the schemes made there under, the manner in which the worker is entitled for the welfare benefits under these legislations with a view to identify the practicability of ensuring the benefits provided for the said specific categories of unorganised sector workmen and to see the practicability of similar module for the other uncovered unorganised sector workmen in the country.

5. Social Security Protection for Sector Specific Unorganised Workers - The State Modules

In this Chapter the models prevailing in the States of Maharashtra, Kerala and Tamil Nadu pertaining to social security protection for the specified unorganised sector workmen shall be discussed by clearly examining the content of each legislation as to its applicability, extent of coverage the social security measures, the manner in which the Schemes framed there under are administered, the manner in which the respective funds are constituted and the manner in which the benefits are delivered to the workers covered under the said legislations. The purpose of this exercise is to examine, the practicability of ensuring the social security protection for
the specific categories of unorganised sector workmen covered under these State legislations.

6. State Funded Target Oriented Social Welfare Schemes in India – A Mere Political Mileage

This Chapter shall contain a detailed examination of various social security and welfare schemes promulgated by the State for the people living below poverty line without any Statutory backing. Every year, the Central Government is spending thousands of crores of rupees for these social security and welfare schemes. The specific feature of these schemes is that they are target oriented schemes. The schemes envisage a target oriented coverage in each district per annum. This system suffers with many vices. Many deserving rural poor workers are deprived of these benefits due to the apathy of Government functionaries and exhaustion of funds. The fundamental question is how for it is fruitful to spend thousands of crores of rupees on these schemes which are not serving the needs of deserving. An examination shall be made in this Chapter to find out what are the other alternatives available to reach the needy?
7. Types of Funding of Social Security Mechanisms in India - The Prevailing Structures

In this Chapter an investigation is conducted as to the manner in which the ‘Social Security Funds’ are created under various mechanisms prevailing in the country. An analysis of different legislations indicate that each set of legislation contemplate a different methodology as far as creation of the ‘Fund’ for the purpose of administration of social security benefits contemplated there under. One set of legislations provide for the contribution exclusively by the employer to the fund. The other set of legislations provide for the contribution both by the employer and the employee towards the fund from which benefits will be provided. The third set of legislations provides for a contribution by the way of allocation from the resources of the State and contribution from employer and employee.

There is also one more model of funding social security measures, i.e. exclusive funding by the Central and State Governments. This model can be seen in the popular welfare schemes promulgated by both Central and State Governments for the specific target population in the country namely below poverty line population.
The purpose of this investigation is to draw clarity as to which type of model of funding is more appropriate in ensuring the social security benefits for the unorganised sector workmen in the country.


In this Chapter a historical investigation would be conducted in order to ascertain the precise commitment of the Government in identifying the social security mechanisms for various to particular categories of industrial workforce in the country prior to the Independence as well as after the Independence. In this context, a detailed examination of the findings and recommendations of the High Power Commissions and Committees appointed by the Government shall be carried out. Focus shall be given to the Report of the Second National Commission on Labour, 2002 and to the Report of National Commission on Enterprises in the Unorganised Sector (2006) in view of the fact that these Commissions were entrusted with the specific task of suggesting legislation for the unorganised sector workers in the country for ensuring the social security benefits.
9. The Unorganised Workers' Social Security Act, 2008

The Central Government has passed the Unorganised Workers' Social Security Act, 2008 to provide social security coverage to the Unorganised Sector Workmen. A thorough investigation of this Act shall be done to review the Act as a whole, thereby making a detailed analysis of its main provisions as well as the positive and negative aspects. An analysis of operation and implementation measures surrounding the Act shall also be done.

A detailed perusal of this legislation shall be carried out in this Chapter in respect of key contents of the legislation with a view to ascertain whether the State really committed to the concept of Welfare State as envisaged in the Constitution of India that too in era wherein the reminiscence of laissez faire doctrine is fast reappearing.

10. Conclusion and Suggestions.

It is proposed to make an attempt throughout the investigation to envisage a model of social security protection that unorganised sector workers deserve by taking into consideration the vastness of its population, the level of their earnings, their tribulations and their desires keeping in view the noble aspirations of the founding fathers of the Constitution.