

Critical analysis of promises under Unorganised

Sector's Social Security Act, 2008

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Introduction

Profit in a business is perceived to be directly proportional to the extent of exploitation of labour. Labour is classified into different segments as unorganised and organised, wage earners and self-employed, skilled, semi-skilled and unskilled and so on, depending upon the nature, period, and place of work.¹ Stunningly, the labour laws of the country only covered workers of organised sector, who form only 8 % of the total labour force. Informal sector or unorganised sector in India is broadly characterized as consisting of units engaged in the production of goods and services with the primary objectives of generating employment and incomes to the persons concern.² In India, almost 92% of the labour comes under unorganised sector.³ Dearth of regulations and absence of Legislation purports the connivance of the government towards barbarous and roughshod (of course even Inhuman, at times) treatment of these labourers by the employees.⁴ They are not provided with any security against working conditions including safety, maximum hour of work and job security.

To protect the rights of this segment of workers, the first of its type; Unorganized Workers' Social Security Act, 2008 was passed by the parliament. The preamble of the Act reads as: "An Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto."⁵

Unorganized Workers' Social Security Act, 2008 is the beginning in the direction of protecting the rights of unorganised workers in India but numerous implementation issues, inherent in the very structure of the Act, barricades in its well functioning. Being among ratifying countries of UDHR and International Covenant on Civil and Political Rights, the

¹ Balwinder Singh, Worker's Life, work and decency: needed regulatory measures in India, Paper to be Presented at Conference on Regulating for Decent Work: Innovative Regulation as a Response to Globalization Organized by ILO from 8-10 July, 2009 at Geneva, Switzerland.

² Informal Sector in India: Approaches for Social Security, <http://labour.nic.in/ss/INFORMALSECTORININDIAApproachesforSocialSecurity.pdf>.

³ According to NSS survey, 1999-2000, <http://www.mospi.gov.in/>.

⁴ S. Mahendra Dev, Social security for unorganised workers, Monday, Sep 26, 2005, The Hindu, www.thehindu.com.

⁵ Unorganized Workers' Social Security Act, 2008.

social security of unorganised workers should be considered as their basic human right in India and the country must adhere to protect such rights.

The Act is claimed to cover six crore unorganized workers, and in turn their family members of 30 crore people.⁶ The expectations are high but the objective still seems to be far-flung. This paper analyses the provisions of the Act and also proposes amendments, wherever it is felt necessary.

The much awaited: Unorganized Workers' Social Security Act, 2008

Unorganized Workers' Social Security Act, 2008 has become a major force of the millennium and can be considered as a beginning – an opportunity to raise working class struggles to newer heights by involving crores of unorganized workers.⁷ This must have been a complex exercise for the legislature to oblige an exacting analysis of the Act⁸ and related legislation.⁹

In the Act 'unorganised workers' are defined and include home based worker, self-employed worker or wage worker.¹⁰ The Act provides for welfare schemes formulated by government for unorganised workers on 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.¹¹ The Schemes under the Act means the schemes given under schedule 1 of the Act.¹² For the functioning of the scheme a National Board to be known as the National Social Security Board and other state boards¹³ are conferred with the powers under Section 5 of the Act and the monitoring and review function of the board is mentioned under Section 5 (8).

For getting the benefit under the Act, the worker needs to register with the district administration and on registration an identity card bearing a unique number would be issued

⁶ V Shankar with inputs from B Sivaraman, Unorganised Workers' Social Security Act 2008 A Beginning for Bigger Struggles! This piece is a sequel to the commentary on the unorganized labour bill that appeared in the April 2006 and July 2007 issues of Liberation, www.index.com.

⁷ Pritam Ghosh, Unorganized Workers' Social Security Act, 2008-A Critical Analysis on IAUGUST 28, 2009, www.ljurisonline.com.

⁸ 'Act' would mean Unorganized Workers' Social Security Act, 2008, throughout this paper.

⁹ T S Sankaran, The Unorganised Workers' Social Security Act, 2008- A Critique, <http://www.lawyerscollective.org/>

¹⁰ Section 2 (m).

¹¹ Section 3.

¹² Section 3 (2).

¹³ Under Section 6.

to him.¹⁴ Under Section 10 (4), the Act also obligates the workers to make a contribution for a social scheme if it requires so, and only then he/she would be eligible to enjoy such benefit.

The pitfalls and drawbacks

The inherent structural problems of the Act are evident in various sections of the Act, starting from the very definition of ‘unorganised worker’ under Section 2(m). The Act while defining ‘unorganised worker’ appears to have excluded vast sections of unorganized workers like agricultural labourers, the unorganized labourers in the organised sector including contract labourers and the informal labourers in the formal sector, and those in the cooperative sector. This exclusion reveals the true colours of the “Politics of Inclusiveness” of the government. Also, the Act is applicable only to a small section of unorganized labourers whose income limit is expected to be notified by the government. So, there is every possibility of misuse of provision. Thus, Section 2 (m) should also include:

- workers dependent on traditional livelihood systems as specified in the schedule
- unpaid Women Workers and unpaid Family members engaged in household or other family occupations.

Further defining 'unorganised sector' as establishments that employ less than 10 workers, is unreasonable and amounts to arbitrariness. Under section 2(l) the term "Unorganised Sector" restricts the coverage to those enterprises employing workers who number less than 10. This numerical limit may raise problems. This provision is violative of Art. 14 of right to equality of the constitution as there cannot be any reasonable distinction between workers working with employee having 10 workers and working with one who is employing more than 10 say 11 or 12. Thus the definition under 2 (l) is arbitrary.¹⁵

The act reads as Unorganized Workers’ Social Security Act, the name itself is a misnomer because the Act does not provide any social security (except mere registration) to any section of worker. The word Social Security itself is not defined anywhere in the Act.

No rights can be of any use for an unorganised sector worker, unless his livelihood would be secured and they would avail job-security. Section 3(1) of the Act mentions the list of suitable welfare schemes but surprisingly livelihood Rights are not the part of Social

¹⁴ Section 10.

¹⁵ Suggested amendments to the unorganised workers’ social security Act, 2008, National Convention on social security for unorganised sector, January 8-10, 2010.

Security Benefit. So, the Act must be Inclusive of livelihood rights which are not mentioned in the list of schemes under Section 3(1) and rights for additional protection to Dalits, women, adivasi, other excluded groups like eunuch, handicap, abandoned and old people/sick people.

Also, the social Security schemes under section 3(1) is not Universal as most of the schemes available under schedule 1, are only for BPL workers and, therefore, Constitutionally Invalid. None of these schemes are new but are mostly applicable only for BPL families. Most of the urban unorganized workers may not fall under the BPL category and hence they would be left out of the purview of this Act.

Under Section 8 (1), The National Social Security Board and State Social Security Board should also be given provision for having secretariat in the ministry of labour of the government of India or the governments of the states, as the case may be for better administrative functioning. The Social Security Boards have only advisory role according to the Act. The Board will be effective only if they are given powers to administer and enforce. So, the word 'monitor' under Section 6 (8) (c) should be replaced by 'administration' to empower the state boards.

No Social Security Fund - The absence of a financial memorandum casts doubts on the genuineness of government's intentions in delivering social security rights to the unorganised workers in India. Finance is one of the biggest problems in implementation of the Act. The Act should be clearer about distribution of burden for the funding under the Act.

Compulsory registration – The Act should provide for the registration of an employer of an unorganised worker. It should be made the responsibility on their part in case of non-registration of Employees. There is no action against the bureaucrats who refuse to register any unorganized worker under any of the twin scheduled schemes.

Also, there is no provision for penalties in the Act to punish those employers who violate it. The special problem of migrant workers, especially inter-State migrants, among unorganized workers, the problem of security, has been totally ignored by the Act. Even the problem of women unorganized workers do not figure in the Bill.

Contribution by the Worker - This welfare legislation surprisingly mentions a provision under Section 10 (4), to require a registered unorganised worker to contribute, if he/she is eligible for a benefit. While making the ridiculous provision, the government did not bother that the

workers will not be in a position even to pay the minimal required contribution as may be prescribed under section 10 (4) of the Act, which makes it quite clear that non payment of the contribution disentitles the worker from getting any benefits.(labour 3)

Implementation issues: the failure Front

The prime issue in implementation of the Act is that there is no Justiciable Social Security given to unorganised workers. To make a right justiciable, it must be defined, although the stated objective of the Act is to provide social security and welfare to the unorganised workers, the Act does not confer any defined right to social security for them. In the Act, social security schemes are not included as part of the body of the Act and are given in a schedule. This essentially means that schemes can be changed at any point of time by a notification, and not after discussion in the Parliament, thereby denying the workers the benefit of consistency and justiciability. Also, the Act does not provide any additional and new welfare scheme rather just mentions 10 existing welfare legislations as the applicable schemes under the Act.¹⁶

The fairness and effectiveness of the implementation of the Act greatly depends on the availability of a functional institution of grievance redressal mechanism, through which workers have recourse to a method for registering their complaints about violations. Thus, a new Chapter needs to be added on Dispute Settlement requiring the government to formulate a model Dispute Settlement Mechanism for unorganised workers of each occupations involving local administration, employers, police and other authorities for resolving disputes and grievances. The mechanism should be empowered for arbitrating and also for punishing faulty employers. The district administration, the state boards established under the Act¹⁷ and the National Board should also be empowered to entertain and enforce complaints from aggrieved workers.

Concluding remarks

The Unorganised sector being so diverse; the major challenge is to extend social security to 300 million workers covering all States and all groups of workers. As India has not implemented protective social security schemes on a large scale, more debate and

¹⁶ Section 3 (2).

¹⁷ Section 6, Unorganized Workers' Social Security Act, 2008.

discussions are needed for better implementation.¹⁸ The Unorganized Workers' Social Security Act, 2008 can be considered as a welcome legislation from the government where the function of registration of workers, the 'biggest' advantage of the entire Act. But, the Act fails measurably on the implementation front and requires reconsideration in this regard.

¹⁸ Ibid.(3).