



A
PROJECT WORKON



***SOCIAL SECURITY FOR WOMEN WORKERS IN
UNORGANISED SECTOR: PROBLEMS AND
PROSPECTIVES***

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REPORT

A project on "Social security for women workers in unorganized sector: Problems and perspectives" prepared by students of the department of Political Science during the session 2020-21. Total 18 numbers of students participated in the project work. In this project data has been collected from secondary sources like international labour convention and recommendation, legislation concerning social security, reports of National commission for enterprises in the unorganized sector and National commission for women etc. The objectives of study is to examine the issue of social security along with the conditions of work and livelihood promotion for unorganized workers and examine the issue of unorganized workers relating to the physical conditions of work, promotion of livelihood particularly focusing the issue of migrant Laboure's construction workers and women workers and the need for immediate attention to extend the benefits of the social security schemes to the unorganized sector workers and the nature and working conditions of women workers in order to understand the position of women workers in informal sector. The departmental faculties guided the students to conduct this project and the project is original. The conclusion of the study is social security measures are critical for informal workers, particularly for women workers to protect them from contingencies and deprivation.


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Chapter - I

Introduction

A man or woman has the basic right to a life of dignity in civilized society where the rule of law prevails which is essential for the growth, development and stability of an individual's personality. "Dignity of all" is indispensable for social peace as it is a matter of affair social adjustment with dependable economic and ethical support which has been an exception rather than a rule in almost every human aggregate and culture. This is a fact particularly with regard to the dignity of labour, therefore, recognition of labour as a subject of social justice was established only after the painful struggle and cries of suffering of millions of workers. Industrialization plays a vital role in providing employment opportunities and generating income. Industrial development has been a major factor in the economic development of the Country as it serves the role of a catalyst that transforms agriculture, construction, transport and other service industries into highly productive sector leading to a sophisticated life. Economic development alone cannot be relied upon to deal either with the promotion or with the protection of living standards of the workers. This is because, the growth of industrialization has led virtually all works subject to various types of health hazards and occupational hazards due to their frequent exposure to chemical substances, environmental factors including illness arising out of radiation, noise, vibrations, inadequate ventilation etc., and also biological factors such as sickness caused by bacteria, viruses, dietary deficiencies, emotional strains due to fear, anxiety etc. These kinds of hazards necessitated the protection of workers in the society as it deprives the earning power.

Economic security is one of the main components of human security which requires employment and an assured source of basic income adequate to workers basic need. But the industrial development which has generated the employment opportunities threatens the workers regarding the fear of insecurity arising out of certain risks or contingencies in the event of sickness, old age, maternity, unemployment, employment injury, death of worker etc. Primitive man sometimes sought safety in plight and sometimes his innovative mind would have motivated him to master and control numerous sources of insecurity through humaning

enuity. The lifting of some wooden stick or a stone by him in defence against the aggressive postures of some carnivorous beast was probably the first effort of man to overcome insecurity. It seems that from the primitive time to the present industrial society, man is not entirely free from insecurity because in order to ensure physical survival he strives continuously for material security to protect himself from pangs of hunger and also deadly diseases. Thus concept of social security is as old as the history of man. Prior to industrialisation, when human needs were limited and livelihood was based primarily on agriculture, the artisans were also existed as independent self employed persons. They used to market their own products. In case of agriculture, the independent peasant or farmer worked with his own holding by the labour of himself and his family.³ As regards India, we are not merely a pastoral band since industries like handicrafts of export quality, mining, metal processing and manufacturing of jewellery were existing prior to industrialisation though not industry in the modern sense. In the episode of human civilization from pre-industrial society to the present day, everyone is dependent on others because no one is capable and versatile as to be able to satisfy all his needs. In every society, there have been sick people requiring medical aid and care, handicapped and aged people unable to work for a living.

pregnant women need assistance during the period of pregnancy before and after delivery and then unemployed persons not able to make both the ends meet. Hence, during the pre-industrial society joint families, craft guilds, churches, charitable, philanthropic and other institutions provided securities to overcome the hazards of life and work. This system was drastically disturbed after industrial revolution when labour was drawn to factory. This was due to the competition between machine-made foreign goods and hand-made Indian goods. Machine-made goods were flooded into the market as Indian goods failed to compete with machine-made goods for its cheapest price. This had led to the closure of most of the manufacturing units. So, skilled Indian craftsmen lost their jobs and had to migrate to cities for survival. The introduction of factory system had led to the problems relating to safety, hygiene and health of the workers. Employers paid their sole attention to the maintenance of machines and the improvement of the technical knowhow to the utter neglect of the human hands employ to man the machines because they were readily available and could be easily replaced.⁶ Since the *laissez-faire* policy ruled supreme during the colonial

period, there was no interference of the government to provide compensation or medical care when workers were exposed to serious accidents due to unprotective methods of handling machines and sickness due to unhealthy living and working conditions. Therefore, the causes of accidents might be attributed to work related causes and worker related causes. Most of the industrial workers were temporarily or permanently disabled resulting in their unemployment causing financial misery and other consequences due to hazardous working conditions. The need of the compensation to the worker arises when his working conditions is at risk. Since there was no provision for social security, the workers had to spend their major portion of earnings for their medical treatment and also to manage interruption of wages i.e. loss of earning due to their absence for work during treatment. The traditional protective system was inadequate for the modern industrial worker because industrialisation and urbanization have resulted in drastic change in social-economic conditions which in turn resulted in new conflicts and tensions consequent upon the erosion of joint family and fraternal security. Thus, the transition from agricultural economy to industrial economy brought in special accompanied problems that called for social security for its absence. So, it was very much felt that workers should be provided measures for financial stability as they could not take care of their own needs when exposed to problems linked with social insecurity i.e. inability or lack of capacity of a worker to protect himself from the risks of unemployment, sickness, industrial accidents or disability, old age or other contingencies. Thus, the concept of social security has been evolved in response to meet the specific needs relating to the protection and stability of the work force. The shift from *laissez-faire* policy to welfare state made obligatory on the part of the state to take the responsibility of assuring the confidence to the workers and their families that their level of living and quality of life will never be eroded by meeting the contingencies such as sickness, unemployment, industrial accidents, disablement, old age etc., in their work life. In pre-independence period, a beginning was made to provide social security measures with the passing of the Workmen's Compensation Act, 1923. After the independence, the Government of India has enacted a number of legislations to provide social security to industrial workers as productivity of labour is an essential condition for all-round prosperity of the country. But efficient production depends upon the sincere functioning of labour and industry. If an industry exploits labour,

it will affect the attainment of socio-economic objectives of the country itself. When social justice is the primary objective of the state as envisaged in our constitution, a reasonable return on labour is facilitated by social security laws which are as follows:

1. The Employees' Compensation Act, 1923;
2. The Employees' State Insurance Act, 1948;
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
4. The Maternity Benefit Act, 1961;
5. The Payment of Bonus Act, 1965;
6. The Payment of Gratuity Act, 1972;
7. The Unorganised Workers' Social Security Act, 2008.

Thus, the labour policy has two fold objectives i.e., maintaining industrial peace and promoting social security of labour. Social security is an important component of any social development agenda and is as relevant as physical security in the evolving concept of human security. Right to social security is a human right and hence everyone has a right to a standard of living adequate for the health and well being of himself and his family. India, being a socialist democratic state, has a commitment of providing social and economic justice to its citizen for the survival of democracy. Moreover, the creation of a welfare state is to execute instrumentalities which are enshrined in the Directive Principles of State Policy serve as fundamental guides for the state's action towards social, economic and welfare programmes with a view to ameliorate the conditions of labour. Labour at the grass root level is being hit by uncertainty and poor wages. A number of legislations relating to social security have been passed to operationalise the vision of the constitution for the working class to ensure adequate livelihood security, i.e., freedom from want. But in reality, mostly the workers in the organised sector are able to secure social security benefits for themselves and their families. The total employment in the Indian economy is 456

million, of which informal sector accounted for 393.2 million. This direct estimation shows that the unorganised sector constituted more than 86% of the total workers in 2004-05¹¹ and in that, only about 0.4% of the unorganised sector workers were receiving social security benefits like provident fund¹². Despite their significant contribution to national income, they face the

problem of deprivation of basic needs as well as the problem of adversity i.e., arising out of such contingencies as sickness and accident. Apart from that, the National commissions entrusted with the task of review of status of unorganised sector, have observed that there is irregularity, uncertainty and inability to secure even minimum wages for the informal workers. The detailed review of wages and earnings carried out by the National Commission for Enterprises in the Unorganised Sector has brought the fact that the wages in the unorganised sector are arbitrarily fixed without regard to the minimum wage legislation which adversely affected the income of the wage workers in general and women workers in particular. This is due to casual nature of employment, illiteracy, lack of skill and poverty. The aim of social security measures is designed to prevent the loss of productive capacity due to sickness, disease and accidents and therefore, it is imperative to have good quality of physical environment at work place by providing some basic comforts and healthy living which in turn enhance the productivity of the workers. Based upon the studies on physical environment at work place in the unorganised sector, the National Commission for Enterprises in the Unorganised Sector has revealed that cramped working space is provided to the workers in many work places. Adequate ventilation, lighting and good sanitation conditions are indispensable to enhance the quality and safety of work at workplace. But, the problem of poor ventilation and lighting is widely prevalent in industries such as leather tanning, brick kilns, fish processing units and in some specific industries such as cutting operations done with the use of sharp knife, weaving of carpets etc. In most of the industries in unorganised sector, sanitation facilities are scarce and scary leading to unhygienic working conditions of workers. In case of home based workers their living place serves as working place resulting in both unhygienic working and living conditions. There is another segment of disadvantaged workers in the unorganised sector called as migrant labourers who need special attention as they are more vulnerable groups in the labor force. This is due to lack of employment opportunities for the less educated and less skilled which lead to migration. The major problems faced by the migrant workers are instability in employment, forced to accept unhealthy working conditions and work for lesser wages due to their poverty. Their working hours are not only long but also not fixed. Often they are exploited due to their weak bargaining power. For instance, in fish-processing units the whole operation

depends upon the arrival of catching of fishes. Likewise, in cases like sugarcane cutting, the arrival of trucks for transporting the sugar-cane has no fixed hours. The long working hours have a severe repercussion on the social and family life of labourers in general and women labourer in particular. Women workers are found physically weak due to the burden of dual fronts of work.

OBJECTIVES OF THE STUDY

The basic objective of the present study is to explore, examine and analyse the issue of social security along with the conditions of work and livelihood promotion for unorganized workers. In this background, the present study examines the following research objectives specifically:

- To analyse the concept of social security as an effective tool for transforming the workers lives towards the attainment of decent status for majority work force.
- To identify the status of unorganised sector in India including the magnitude of workers in the unorganized sector.
- To examine the issues of unorganised workers relating to the physical conditions of work, promotion of livelihoods particularly focusing the issue of migrant labourers, construction workers and women workers and the need for immediate attention to extend the benefits of the social security schemes. To test the efficiency of the social security legislations with a view to identify the factors that hurdle the application of social security schemes to the unorganized sector workers.
- To review the existing arrangements of social security with a view to describe a number of challenges in extending social security measures to the informal sector.
- To analyse the nature and working conditions of women workers in order to understand the position of women workers in informal sector.
- To analyse the success of the Unorganised Workers' Social Security Act, 2008 by evaluating the working of the Act and to suggest measures to provide social security to all the unorganised workers.

METHODOLOGY ADOPTED

The research work is predominantly doctrinal in nature. To comply with this kind of research, the researcher has collected data from secondary sources. International labour conventions and recommendations, legislations concerning social security, notifications issued by the government of India and Tamil Nadu have been made use of as primary sources. The researcher could rely upon data collected from reports such as National Commission for Enterprises in the Unorganised Sector, Reports of First and Second National Commission on Labour and National Commission for Women with a view to make an analytical study. Historical method is also employed to trace out the origin and development of the concept of social security. Further, the researcher has applied the evaluative method with a view to find out the effective implementation of social security legislations. The researcher has also referred various articles published in different reputed journals to update the research. To appreciate the contribution made by the judiciary in promoting social justice to the workers case laws are also analysed.

SCHEME OF THE STUDY

The research is divided into seven chapters. The first chapter deals with the importance of labour and also the technological progress that has not improved the quality of life of the worker. This chapter also highlights the significance of social security as well as social justice by emphasising the need for state action in ensuring protective and ameliorative measures in favour of unorganised labour particularly women labourers against the exploitative labour practices as it is the most sensitive issues of human rights.

The second chapter entitled "**Concept, Origin and Development of Social Security**" which examines the evolution, object, scope, constituents and developments of social security with a view to appreciate the need for social security to protect the interest of the workers when they lack capacity to protect themselves and their families from the risk of unemployment, sickness, industrial accidents or disability, old age and other contingencies. The basic idea of social

security is based on the ideals of humanity and social justice to which every civilised society is committed and hence,

the third chapter deals with the **“Role of International Labour Organisation in Promoting Social Security”**. This chapter makes an attempt to analyse various conventions because ILO has contributed very effectively through its conventions concerning various aspects such as employment injury benefit, old age benefit, unemployment benefits etc. This chapter also examines the recommendations containing comprehensive provisions relating to guiding principles for the attainment of social security. In addition to that, an attempt has been made to analyse its impact on Indian labour legislation.

The fourth chapter entitled **“An Analysis of Social Security Laws in India with special Reference to The Unorganised workers’ Social Security Act, 2008”** makes an attempt to have an overview about the legislations providing social security for unorganised sector. This chapter also analyses The Unorganised workers’ Social Security Act, 2008 and special emphasis is also made to pinpoint its inadequacies.

The fifth chapter deals with the **“Unorganised Workers in India: Issues and Concerns”**. This chapter examines the causes, problems and challenges of workers in unorganised sector. It also highlights the working and living conditions of unorganised workers generally by providing overall picture which reveals pathetic plight of the unorganised workers in the absence of adequate social security measures.

The sixth chapter entitled **“Social Security for Women Workers in Unorganised Sector”** examines the various issues of women workers in unorganised sector. It also focuses on certain categories of women workers engaged in unorganised sector and throws light on critical areas of wages, maternity benefits, child care facilities and social security which require immediate attention.

The seventh chapter deals with **“Conclusion and Suggestions”** in which the discussion of facts in the findings set forth in the preceding chapter leads to the conclusion that legislation have failed to provide social security benefits to workers in unorganised sector in general and women in particular. By considering the importance of quality of life, few suggestions are proposed to ensure provisions for comprehensive social security coverage comprising provision for

working condition, welfare and livelihood promotions. In the process of implementation, it is also suggested to have adequate enforcement machinery keeping in view the problem of unorganised sector workers

CHAPTER – II

CONCEPT, ORIGIN AND DEVELOPMENT OF SOCIAL SECURITY

The concept of social security has evolved over a period of time. In the primitive societies it was mankind's struggle against insecurity to protect himself from the vagaries of nature or finding the basic necessities of day today life. Later community living came into existence which brought the family to provide adequate social measures for the needy. With the rapid industrialisation, there was break up of family setup destructing the traditional system resulting in need for institutionalised and state-cum society regulated social security arrangement. Therefore, the concept of social security kept evolving and widening as there is no commonly accepted definition of the term.¹ Hence, an attempt has been made in this chapter to discuss the concept, definitions along with the background of origin and development of social security

CONCEPT OF SOCIAL SECURITY

All the industrial countries of the world have developed measures to promote the economic security and welfare of individual and his family. These measures have come to be called as social security. Social security is dynamic concept and an indispensable chapter of a national programme to strike at the root of poverty, unemployment and diseases. Social security may provide for the welfare of persons who become incapable of working by reason of old age, sickness and invalidity and or unable to earn anything for their livelihood. It is necessary to analyze various definition of social security in order to appreciate the nature and concept of social security.

ANALYSIS OF VARIOUS DEFINITIONS OF SOCIAL SECURITY

Definition by Sir William Beveridge

In 1942, Sir William Beveridge headed a committee that reviewed the national schemes of social insurance in Great Britain during the post war period. In his report he defines social security as

follows: "The security of an income to take place of the earnings when they are interrupted by unemployment by sickness or accident to provide for retirement through age, to provide against the loss of support by the death of another person and meet exceptional expenditure, such as those connected with birth, death and marriage. The Beveridge report argued that there were 'five giants' that were stalking the land and that should be tackled. They are want, disease, ignorance, squalor and idleness.

Definitions by ILO

A systematic attempt was made by ILO in defining social security. ILO defines social security as follows:

"The security that society furnishes, through appropriate organisation, against certain risks, to which its members are exposed. These risks are essentially contingencies against which the individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with fellows". These risks are being sickness, maternity, invalidity, old age and death. It is the characteristics of these contingencies that they imperil the ability of the working man to support himself and his dependents in health and decency.

Definition by National Commission on Labour

"Social security envisages that the members of the community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose primary resources can seldom be adequate to meet them. 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 or as consequence of it". Thus the National Commission on Labour observed that the citizen who has contributed to his country's welfare should be given protection against certain contingencies of work life to which he is exposed as every worker is an active partner in a protective process and hence, he has legitimate right to claim social security benefits to safeguard against economic insecurity as a condition of human survival.

NEED FOR SOCIAL SECURITY

Modernisation and urbanisation have resulted in radical socio-economic changes and give rise to new conflicts and tensions consequent upon the erosion of age old family and fraternal security.

The transition from agricultural economy to an industrial economy brought in special accompanied problems like industrial accidents in serious dimensions. Hence the joint family system, workers mutual aid societies, private savings etc. are found to be out dated and inadequate to the tempo of modern life to provide relief in the event of sickness, old age, maternity, unemployment, employment injury etc. Human development insists that everyone should enjoy minimum level of security. Workers also want to be free from economic threats which disrupt in their daily lives. Hence, there must be a system in which the state bears the responsibility for providing and ensuring a basic level of social security which is an essential ingredient in the protection, development and full utilisation of human resources.

CHARACTERISTICS OF SOCIAL SECURITY

The purpose of any social security measure is to provide individuals and families the confidence that their standard of living will not be eroded by meeting with such socio-economic contingencies in their life. The concept of social security varied from country to country. This is understandable in a way because of the differential social and economic development of societies in different parts of the world. But the need for economic protection is universal and hence social security measures have three major characteristics even though they vary from country to country and from time to time according to the need of the people and countries resources. They are as follows:

- Social security measures are established by law. They provide cash benefit to replace at least a part of income in meeting contingencies such as unemployment, maternity, employment injury, sickness, old age etc.
- These benefits are provided in three major ways such as social assistance, social insurance and public services. The most well known techniques adopted by social security at present are no doubt social assistance and social insurance which are discussed as follows:

Social Assistance

Social assistance schemes will grant benefits to people needing them. Social assistance is a device organised by the state by providing cash assistance and

medical relief, to such members of the society as they cannot get them from their own resources. The ILO defines social assistance scheme as one that provides benefits to persons of small means granted as of right in amounts sufficient to meet a minimum standard of need and financed from taxation. The special characteristic of this measure is that it is financed wholly from the general revenues of the state and the benefits are provided free of cost. But the beneficiary has to satisfy means test which means certain prescribed conditions. The first risk to be covered was that old age, but gradually non-contributory benefits were also introduced for invalids, survivors and unemployed persons as well. Today social assistance programmes cover programme like unemployment assistance, old age assistance, national assistance.¹⁹ Thus, the social assistance underlines the idea that the care of people could not be left to voluntary charity and should be placed on a compulsory and statutory basis. It represents, "the unilateral obligation of the community towards its dependent groups".

Social Insurance

Social Insurance was first introduced in Germany by Bismarck and since spread all over the world.²¹ Social insurance is a plan insurance which aimed for protecting the wages of those workers who do not have sufficient source to support their own self or their families in case of loss of income due to meeting contingencies in their worklife. Lord William Beveridge has defined social insurance as "plan of insurance of giving in return for contributions benefits upon subsistence level, as a right and without means test so that individuals made build freely upon it."

From the above analysis the following ingredients may be regarded as basic features of scheme of social insurance:

- Certain risks which cannot be faced by the persons in their individual capacity are faced collectively by a group of persons;
- For that purpose they have pooled together their resources;
- Benefits are provided to them in case of contingency;
- This makes them maintain their standard up to a subsistence level Benefits are payable to them according to rates prevalent as a matter of right in accordance with their salary or income; and

- The payment of contribution is obligatory since they are insured against the risk compulsorily.

AIM OF SOCIAL SECURITY

Social security represents society's current answer to the problem of economic insecurity. Social security measures have a twofold significance for every developing country. They constitute an important step towards the goal of a welfare state, by improving living and working conditions and affording the people protection against the uncertainties of the future. These measures are also important for every industrialisation plan, for, not only do they enable workers to become more efficient, but they also reduce wastage arising from industrial disputes causing work stoppages. Hence, the aim of all social security measures is three fold in nature which are as follows:

1 Compensation

It aims to substitute income when there is interruption of earnings due to unemployment, sickness, permanent disability, old age etc.

2 Restoration

It is designed to provide certain services like medical care to the sick and invalid and rehabilitations in cases of need.

3 Prevention

Social security measures not only provide reliefs when occasions require expenditure that strains family budget, but also prevents the risks from arising in the first place itself. Prevention is designated to avoid the loss of productive capacity due to sickness, unemployment or invalidity and to render the available resources which are used up by avoidable disease and idleness and this increases the material, intellectual and moral well being of the community.

CONSTITUTIONAL STATUS OF SOCIAL SECURITY IN INDIA

The constitution of India guarantees fundamental rights to every citizen including the right to life and as the Supreme Court has pointed out that the right to livelihood is inherent in the right to life. The ultimate aim of social security is to ensure that everyone has the means of livelihood and hence the right to social security and protection of the family are integral part of right to life. Further, the Supreme Court has also held that security against sickness and disablement and

also right to family pension held to be forming part of right to life under Article 21. The Directive Principles of State policy set standard of achievement of socialistic pattern of society as it embraces principles and policies pertaining to social security measures which are to be followed by the state in future.

Accordingly, the following legislative measures have been adopted by the Government of India by way of social security schemes for industrial workers:

- Employees' Compensation Act, 1923;
- Employees' State Insurance Act, 1948;
- Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- Maternity Benefit Act, 1961;
- Payment of Gratuity Act, 1972.
- Recently, the Unorganised Workers' Social Security Act was passed in 2008.

Apart from these legislations there are legislations to regulate the conditions of work. Which are as follows:

- Payment of Wages Act, 1936;
- Factories Act, 1948;
- Minimum Wages Act, 1948;
- Plantation Labour Act, 1951;
- Contract Labour (Regulation and Abolition) Act, 1970;
- Bonded Labour (Abolition) Act, 1976;
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Child Labour (Prohibition and Regulation) Act, 1986;
- Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Beedi and Cigar (Conditions of Employment) Act, 1996.

From the above observation it is concluded that there is considerable development in the social security measures during the post independence period. Even from the perusal of five year plans, it is inferred that the state has moved to translate the objectives stated in Directive Principles of State Policy into statutes which are to safeguard the interests of workers against sickness, accident, disease, old age and unemployment. Particularly the programmes of sixth plan was on the effective implementation of different legislative enactments regarding labour and special

programmes for agricultural labourers, artisans, hand loom weavers, leather workers etc., and its special attention towards the problems of bonded labour, child labour, women labour, contract labour, construction labour and inter-state migrant labour. The eight five year plan also pointed out that the enforcement of labour laws especially laws relating to the unorganised labour should be effective.

CHAPTER – III

ROLE OF INTERNATIONAL LABOUR ORGANISATION IN PROMOTING SOCIAL SECURITY

ILO is a large community including not only Governments, but also includes workers' and employers' representatives each with their global networks. The ILO has played a key role at historical junctures such as the great depression, decolonisation etc., and at present, it plays a productive frame work for affairs of globalisation. ILO was created to promote social progress and overcome social and economic conflicts of interest through dialogue and cooperation. The two triggers for the creation of ILO were war and revolution. In the wake of the First World War, there was a need for fundamental changes in politics, economy and society and the same openness to change again emerged after second world war to reconstruct better world by promoting human rights and social progress. The failure of any nation to adopt human conditions for labour is an obstacle in the way of other nations which desire to improve the conditions of labour in their own countries. To achieve these objectives ILO came into existence in the year 1919 assuring overall development of working class of the world through standard setting and economic development of member countries, as a means to improve world economy. The vision of original constitution was taken a step further towards the end of the Second World War in a powerful declaration, and was adopted by the organisation at the conference held in Philadelphia 1944, which is consequently incorporated in to its constitution for the need of international and national action for universal social progress.

ILO AND SOCIAL JUSTICE

In the context of the ILO constitution, "Social Justice" can be interpreted so as to include within its ambit the conceptualized philosophy that all human beings irrespective spiritual development in conditions of freedom and dignity of economic security and equal opportunity. Thus, ILO was built on the fundamental belief that universal lasting peace can be established only if it is based upon social justice. Peace and justice go hand in hand whereas conditions of labour exists involving such injustice, hardship and privation to large number of

people as to produce unrest so great that the peace and harmony of the world are imperilled.

Basic Principles of ILO

The basic principles of ILO is based on the recognition of the fundamental social right guaranteed by law to all human beings who live from their labour and who finds themselves unable to work temporarily or permanently for reasons beyond their control. These objectives are as follows: Lasting peace cannot be achieved unless it is based on social justice, grounded in freedom, dignity, economic security and equal opportunity.

- Labour should not be regarded merely as a commodity or an article of commerce.
- There should be freedom of association for both workers and employers, along with freedom of expression and the right to collective bargaining.
- These principles are fully applicable to all human beings, irrespective of race, creed or sex.
- Poverty anywhere constitutes a danger to prosperity everywhere, and must be addressed through both national and international action. An improvement in the conditions of labour is urgently required to progress towards the goals. These goals are in the form of seven central policy concerns which are as follows:
- The promotion of full employment and rising standards of living, in occupations in which workers can apply their capabilities and contribute to the common wellbeing- along with equal opportunity for men and women in achieving this end, and facilities for training and for migration. The provision of an adequate living wage for all those employed, calculated to ensure a just share of the fruits of progress to all. The regulation of hours of work, including the establishment of a maximum working day and weekend of weekly rest.
- Protection of children, young persons and women, including the abolition of child labour, limitation on the labour of young persons and the provision for child welfare and maternity protection.
- Protection of the economic and social interest of those workers who are employed in countries other than their own.
- The adequate protection of all workers against sickness, death and injury arising out of employment.

- The extension of social security measures to provide for old age and ill-health, a basic income to all those in need of protection, and comprehensive medical care.

CHAPTER - IV

AN ANALYSIS OF SOCIAL SECURITY LAWS IN INDIA WITH SPECIAL REFERENCE TO THE UNORGANISED WORKERS' SOCIAL SECURITY ACT, 2008

Social Security Legislations in India provides security against loss of earning due to certain contingencies such as industrial accident and occupational diseases, sickness, invalidity, maternity, old age and unemployment to which workers or their dependents are exposed. The social security problems of workers in unorganised sector may be divided into two sets of problems. The first one arises out of deficiency or capability deprivation in terms of inadequate employment, low earnings, low health and educational status and so on that are related to the generalised deprivation of poorer sections of the population. The second arises out of adversity in the absence of adequate fall back mechanism that is, safety net to meet such contingencies such as ill health, accident, death and old age. Hence the object of social security is to promote economic development by increasing production and productivity. This would be possible when the employer secure the labour proper humane conditions of working and living so as to minimize the hazardous effect on life of the workers. Hence, it is the duty of the employer to provide proper working conditions with a view to improve the efficiency of the labour to benefit both the employer and worker. Adequacy of wages also has an impact on efficiency of the worker as it includes provision for balanced diet, housing, education etc. A well built social security not only guarantees socioeconomic justice to the toiling masses, but also maximize productivity by keeping up an efficient and healthy workforce by way of security to guard against various contingencies consequent to working class. A social security system should be backed by adequate provisions for dual purposes i.e., social security measures constitute a goal for a welfare state by improving living and working conditions. Hence, an attempt has been made to discuss not only on the benefits conferred exclusively under social security laws but also a special focus is made on the provisions relating to working conditions, welfare, social security and the schemes applicable to unorganised sector. Further, a detailed analysis has been made with regard to the effectiveness of labour legislation to provide at least a minimum standard for conditions of work and social security in order to provide upliftment of the unorganised workers relating to their livelihood opportunities in

general and women workers in particular. Hence, in this context, the study has been conveniently analysed under the following categories to discuss few important legislations that prevent deprivation and vulnerability to deprivation which is the promotional aspect of social security

LAWS WHICH PROVIDE SOCIAL SECURITY

Social security legislations for workers in India consist of the following enactments:

- The Employees' Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972

Each legislative enactment provides provisions for social security benefit by covering various risks and contingencies to which a worker is exposed. Hence, an attempt has been made to discuss overall perspectives of social security enactments.

PROTECTIVE AND REGULATORY LEGISLATIONS APPLICABLE OR EXTENDABLE TO THE UNORGANISED SECTOR

Various studies indicate that labour laws are highly protective to labour. But, the workers in the unorganised sector are the most who suffer from various forms of insecurities and vulnerabilities. No labour laws can be effective, if it does not take into consideration regarding the conditions of the working community for which it is designed. Hence, an attempt has been made to examine the protective and regulatory legislations to identify its efficacy and adequacy. Important laws in this category are as follows:

- Payment of Wages Act, 1936;
- Minimum Wages Act, 1948;
- Bonded Labour (Abolition) Act, 1976;
- Child Labour (Prohibition and Regulation) Act, 1986;
- Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Contract Labour (Regulation and Abolition) Act, 1970;

- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Beedi and Cigar (Conditions of Employment) Act, 1996.

Definition of Unorganised Sector

'Unorganised Sector' means an enterprise owned by individuals or self employed workers and engaged in 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.

Social Security Benefits

The Act provides for welfare schemes to be formulated and notified by the Central Government from time to time for the welfare of the workers of unorganised sector relating to the following matters:-

- Life and disability cover;
- Health and maternity benefits;
- Old age protection; and
- Any other suitable benefit.

The Act also provides that the state Governments may formulate and notify from time to time, suitable welfare schemes for unorganised workers in the following matters:

- Provident Fund;
- Employment injury benefit;
- Housing;
- Educational scheme for children;
- Skill upgradation of workers;
- Funeral assistance; and
- Old age homes.
- The workers need to register with the district administration for the benefits provided under the Act.

Social Security Boards

The Act empowers the central government to constitute a National Social Security Board and state boards to exercise the powers and perform functions assigned to

them. The board shall advise, monitor, and review the schemes for different sectors of unorganised workers.

Critical Evaluation of the Act Inadequate Coverage

The definition of unorganised worker seems to be excluded from the major section of unorganised labourers whose income limit is expected to be notified by the Government that is mostly applicable only for below poverty line category. Hence, most of the unorganised workers in the urban areas may not fall under the below poverty line category. Section 2(1) of the Act defines unorganised sector which restricts the coverage to those enterprises employing less than 10 workers. Contrary to the usual way of defining the unorganised sector as a residue of the organised, the Act defines organised as a residue of the unorganised. Moreover, limiting less than ten is a violation of Article 14 of the Constitution of India because there is no reasonable classification between workers working with employeeless than ten workers and working with one who is employing more than ten workers.

Inadequate Benefits

The objective of the Act is to provide social security and welfare to the unorganised worker but, the Act does not confer any justifiable social security for them as there is no provision for defined right to social security. Instead of providing social security schemes as a part of body of the Act, Chapter II of the Act explains the possible scheme of social security and most of these schemes are insurance schemes which are to be sourced from workers and operated by insurance

companies. But social security cannot be reduced to these types of schemes because it should be articulated from the perspective of rights derived from constitutional rights and principles.

Financing Arrangements

The Act has provided generally that the schemes notified by the central government may be funded wholly by central Government or partly funded by both central as well as state Governments. But, it does not have separate section that defines the existence and nature of the national social security fund. The Act fails to provide an appropriate mechanism at the state level to ensure that there is clear financing support to address the social security needs of the workers.

No Proper Administrative Mechanism

From the perusal of the Act, it is clear that the national and the state social security boards are not vested with adequate powers to implement the social security schemes effectively. There is also no provision for aggrieved worker to seek remedy in the court of law. 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 voicing their complaints about violations. The board seems to have only advisory role. The boards will be effective if some powers are conferred to administer and enforce.

Schemes Specified under Schedule I of the Unorganised Workers' Social Security Act, 2008

The Act also provides in Schedule I specifying ten schemes and as proof of Government's commitment to formulate new schemes.

- Indira Gandhi National Old Age Pension Scheme
- National Family Benefit Scheme
- Janani Suraksha Yojana
- Handloom Weavers' Comprehensive Welfare Scheme
- Handicraft Artisans' Comprehensive Welfare Scheme
- Pension to Master Craft Persons
- National Scheme for Welfare of Fishermen and Training and Extension
- Janshree Bima Yojana
- Aam Aadmi Bima Yojana
- Rashtriya Swasthya Bima Yojana

Moreover, the current schemes are implemented by various Ministries and are regulated by different bodies. For instance, health insurance is provided by insurance companies and hence it falls under the purview of Insurance Regulatory and Development Authority (IRDA). However, National Pension Scheme is regulated by Pension Fund Regulatory and Development Authority (PFRDA). The role of National Social Security Administration (NSSA) will have to provide clarity on regulation setting for social security products. There should be clarity between regulator and implementer.

CHAPTER - V

UNORGANISED WORKERS IN INDIA: ISSUES AND CONCERNS

The concept of an informal or unorganised sector began to receive world-wide attention in the early 1970s, when the International Labour Organisation initiated series efforts to identify and study the area through its World Employment Programme Missions in Kenya, Columbia, Sri Lanka and Philippines primarily underlined the development strategy based on economic growth in which employment was considered as the prime objective for development.¹ The British Economist Keith Hart in 1971 coined the term informal sector. He made a detailed study of urban Ghana in which the study reported the new entrants, particularly rural migrants, to the labour market in the urban areas were forced to work in the informal sector partly owing to their lack of skill and experience needed for the jobs in the urban formal sector. Since then, the informal sector has been the subject of several studies and seminars covering various aspects like its size, employment potential, its relationship with the formal sector, technological level etc. The term often is defined by indicating the absence of characteristics that belonging to the organised sector. The unorganised sector is often termed as residual sector but, it has its own merits as there is consistent growth rate in employment. The unorganised sector is known by different names such as informal sector, unregulated sector etc. This implies that informal workers are beyond any regulation or legislations passed by the Government. Hence, their working status is rarely covered by the legal status. Social security arising out of employment status and provided by employers is largely confined to workforce who are identified as organised workers. Only 0.4% of the unorganized workers in unorganised sector were receiving benefits like provident fund, and this proportion has not changed since 1999-2000. The social security measures such as old age pension, gratuity, employees' state insurance and other insurance schemes are non-accessible to workers of the unorganised sector. A large number of statutes and schemes addressed to different categories of workers are found neither feasible nor practicable. This is because labour relations in the unorganised sector are chaotic and there is no formal employer-employee relationship. But, even if it exists, it is of casual nature. Since the unorganised sector plays pivotal role in the Indian economy, it needs special attention. Hence, an attempt has been made in this

chapter to examine the issues and challenges faced by the unorganised workers with a view to overcome the obstacles in the unorganised sector to provide at least a basic minimum social security to the workers. The unorganised sector could be described as that part of the work force who have not been able to organise in pursuit of a common objective because of constraints such as

- a) casual nature of employment
- b) ignorance and illiteracy
- c) small size of establishments with low capital investment per person employed
- d) scattered nature of establishments and
- e) superior strength of the employer operating singly or in combination.

The unorganised sector is in no way an independent and exclusive sector. It is linked to, or in many cases depended on the organised sector and the rest of the economy through a variety of linkages. It depends on the organised sector for few raw materials and other capital requirements, generation of employment, marketing facilities, and so on. The sub contracting model is used by the formal sector for engaging labour in the unorganised sector. National Commission for Enterprises in the Unorganised Sector provides definition of unorganised sector as follows:¹⁰

Unorganised Sector: "The unorganised sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis with less than ten total workers".

Unorganised workers: "Unorganised workers consists of those working in the unorganised enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/social security benefits provided by the employers".

Magnitude of Workforce in the Unorganised Sector

As per the survey carried out by the National Sample Survey Organisation in the year 2009-2010, the total employment in both organised and unorganised sector in the country was of the order of 46.5 crore. Out of this, about 2.8 crore were in the organised sector and the balance 43.7 crore in the unorganised sector. Out of 43.7 crore workers in the unorganised sector, 24.6 crore workers were employed in agricultural sector, 4.4 crore in construction, and the remaining were in manufacturing activities, trade and transport, communication and services. A large number of unorganised workers are home based workers and are engaged in

occupations such as beedi rolling, agarbatti making, pappad making, tailoring, and embroidery work. More than 90% of workforce and about 50% of the national product are accounted by the informal economy. A high proportion of socially and economically underprivileged sections of society are concentrated in the informal economic activities.

CHARACTERISTICS OF UNORGANISED LABOUR

The unorganised workers suffer from excessive seasonality of employment, lack of formal employer-employee relationship and inadequate social security protection.

Unorganised sector or

informal economy is replete with diverse concepts and lack of uniformity of definitions. Based on some of the specific characteristics, the unorganised enterprises could be distinguished from formal sector like no paid leave, no written job contract, and no social security to the workers.¹⁶

The high level of growth of Indian economy during the past two decades is accompanied by increasing informalisation. There has been new dynamism of the informal economy in terms of output, employment and earnings. Faster and inclusive growth needs special attention to informal economy. The unorganised labour is characterised as follows:

- It is in general a low wage and low earning sector.
- Women constitute an important section of the workers in this sector. Family labour is engaged in some occupations such as home-based ones.
- Economic activities, which engage child labour, fall within this sector.
- Migrant labour is involved in some sub-sectors.
- Piece-rate payment, home-based work and contractual work are increasing trends in this sector.
- Direct recruitment is on the decline. Some employees are engaged through contractors. An increasing trend to recruit workers through contractors is visible in areas of home-based work. There is a sort of convergence of home-based work and engagement in work through contractors.
- If some kinds of employment are seasonal, some others are intermittent. As such, under-employment is a serious problem.
- Most jobs are, for the greater part, on a casual basis.

□ Both employed and self-employed workers can be found in a number of occupations.

□ Workers are not often organised into trade unions. The self-employed are seldom organised into associations. There is not much recourse to collective bargaining.

□ There are many co-operatives of self-employed workers. Very often, others supply raw materials, production by self-employed workers, therefore, becomes dependent on, or linked with enterprises or individuals active in other

sectors.

□ Debt bondage is very common among the employed as well as the self-employed workers in the unorganized sector.

□ The self-employed have less access to capital. Whatever capital they manage, is mostly from non-banking and usurious sources, especially from the trader-contractor.

□ Health hazards exist in a majority of occupations.

CATEGORIES OF UNORGANISED LABOUR

The National Commission on Labour listed 'illustrative' categories of unorganised labour which are as follows:¹⁹

□ 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'

IMPORTANCE AND CAUSES OF UNORGANISED LABOUR

The activities in the informal sector account for a substantial share of total employment in the developing countries -ranging from the third to two-thirds or more, particularly in urban areas.²⁰ National level data on employment and income generated in the informal economy is generally not available. India is one of

the few exceptions where it has recently estimated the informal sector by National Sample Survey Organisation. Globalisation measured in terms of trade and capital flows between countries and technological changes believe to have played an important role. A faster growth of employment in the unorganized or informal sector is often referred to as an evidence of the employer's unwillingness to expand employment in large sized factories in which the protective labour laws are applicable. They instead farm out work to smaller units. Hence, there is no doubt that employment has grown faster in the informal segment and its share has sharply increased over the years. Further, the intensified competitions among firms have resulted in driving down the labour-cost. These costs are lower in informal economy, due to non compliance with labour regulations such as minimum wage, social security contributions and other welfare provisions.

Apart from that, improvement in technologies are also have contributed to such informalisation as we do not possess required skills and training for the employment in the organised sector. A further distinction is often made within the informal sector between those who operated from their residence, and other microenterprises. Not all those operating from their residence or whom are truly independent enterprises, taking risks and making decisions; many, especially women, are paid for their work by the employer, sub contractor, agent or middlemen and hence consider as "homeworkers" or "disguised wage workers". The tendency to engage workers outside the factory premises on a sub contracting basis is widely seen in the process of informalisation and interpreted as a means by which employers disown responsibilities for their welfare envisaged in the labour standards.

Another factor that has developed the unorganised sector is non-availability of modern sector jobs even to those women and men who live in urban places and have some education and skill. The employment opportunities in the modern sectors are rare due to technological development in these sectors. These sectors are capital intensive rather than labour intensive. Thus, a large number of unemployed men and women are attracted by the unorganised sector as entry is easy there and it provides income, though insufficient, to the family. The meagre income that they get is precious for their own and for their survival.

PROBLEMS OF UNORGANISED WORKERS

Unlike organised sector, this sector have not tasted the benefits or derived the advantages that can be gained from organisation. Many of them are victims of invisibility. The difficulty starts from identifying or defining the unorganised sector itself. There is no a single or primary criterion by which the sector could be defined. The large segment of the work force has continued to be neglected even though this sector has a crucial role in economy in terms of employment. Hence, an attempt has been made to address the problems faced by the unorganised workers resulting in vulnerability are as follows:

Insecurity of Job

The informal sector workers often undertake multiple jobs, pursuing of multiple jobs by a person may be taken as a sign of insecurity in jobs. A single job or even two may generate income barely enough for subsistence. For instance employment of agricultural labour is irregular and unassured. This is due to availability of work to them only for about three months and the remaining nine months, they are mostly unemployed and suffer from starvation.²⁶ Employment in agriculture is thus available for fewer days per year.²⁷ In India Mahatma Gandhi National Rural Workers Employment Guarantee Act, 2005 aims to provide employment security by guaranteeing at least 100 days of work in the most backward districts of the country who can perform manually. But, informal workers continue to face the risk of loss of employment as they are varied by nature and location.

Irregularities and Inability to Secure Even Minimum Wages

The Supreme Court of India ruled that employing workers at wage rates below the statutory minimum wage levels was equivalent to forced labour and prohibited under Article 23 of the constitution of India even though economic compulsion might drive one to volunteer to work below the statutory minimum wage. Most of the studies on conditions of employment in the unorganised sector have examined the wage levels and earnings of workers and identified that the daily wages are below the minimum rate of wages. But, the prevailing situation shows the reach and effectiveness of the Minimum Wages Act is limited.

Long Hours of work

The long working hours have a severe repercussion on the social and family life of labourers in general and women labourers in particular. They do not find any time to take part in cultural or social activities. They do not even take proper child care. Long hours work in the unorganised sector beyond the labour and regulatory norms are common in India. In agricultural sector there is no fixed hours of work as there are no laws to act as guidelines for the working conditions of agricultural labourers. In case of non-agricultural sectors such as fireworks, match making, power looms and so on, workers started their work very early in the morning at 6.00 a.m. and continue till late evening. In hand loom sector the work is organised in such a way that wages were based on a 12-15 hours work per day.³⁴ The Factories Act, 1948, The Minimum Wages Act, 1948 and the Shops and Establishments Act stipulates that no adult worker shall be required to work more than 48 hours in a week. But these provisions relating to working hours have been violated frequently. Thus limitation on hours of work is almost non-existent.

Poverty and Indebtedness

Workers in the unorganised sector had a much higher incidence of poverty than their counterparts in the organized sector.³⁶ Due to low level of income and uncertain employment in the unorganised sector make the workers unable to meet their basic necessities and other social and other cultural responsibilities. In agricultural sector, it is fact that increased indebtedness is noted as a major reason for suicide in various states.³⁷ Since the wage levels have been very low, they are worst in terms of poverty level and economic status.

Occupational hazards and Health Issues

The working conditions in the unorganised sector is the main cause to have an adverse effect on the health conditions of workers. Low nutritional intake due to low income, constant physical labour increases health problems to the workers in the unorganized sector resulting in risks of life of unorganised workers. Lack of resources to pay for the health care often forces the poor worker either to forego it or become indebted. With regard to home workers most of the studies reported health problems mainly related to respiratory due to inhalation of the tobacco dust and body aches due to the peculiar posture that has to be maintained at all times of work.³⁸ In some of the

sectors like fish processing units and tobacco and salt pan industry, the working conditions can be called as horrible for workers in general and women workers in particular. In Tobacco- processing units the workers have to do their entire job such as plucking, winnowing, grading and packaging, while they are surrounded by heaps of tobacco, which is considered to be unhygienic to the health. The mist of tiny particles of tobacco is found to such an extent that the workers can't even see the faces of each other. The factory owners do not take proper care of the workers. They do not provide them facilities like apron, spectacles, mouth closer, socks etc. Similarly, salt pan workers are also found to be suffering from skin diseases as they have to work constantly in salty water. They develop severe eye problems due to the reflection of light from the heap of salt. In agricultural sector due to extensive use of fertilizers, insecticides and pesticides and mechanisation workers suffer from certain specific health hazards. The pesticide applicators, mixers, loaders are at the risk of exposure to toxic chemicals. Since the farming sector is unorganised in character, there is an absence of statistics on farm related accidents and injuries.

Thus, workers in unorganised sectors such as fireworks and match industry, leather tanning industries, construction sectors etc., are dangerous and full of hazards. Loss of limbs and amputations occur often when workers operate unguarded or inadequately safeguarded machines.⁴² Occupational illness and diseases have also been reported among workers in many industries of unorganized sector.

Non-Applicability of Social Security Measures

There are many times when a worker cannot economically active. Due to biological circumstances such as modernity, sickness or old age; on account of personal calamities such as widowhood, or an accident; social or natural calamities such as unemployment, flood, fire drought or high unemployment or closure of an industry. During these spells of risk the worker needs support, in the form of some social insurance to survive the crisis and resume work after it. Social security measures are indispensable for unorganised workers to protect them from contingencies and deprivation. The existing social security legislations are not applicable to most of the unorganised sectors. There are no social security measures to provide risks coverage and ensure maintenance of basic living standards at times of crises such as unemployment or health issues.

Lack of Proper Physical Environment at Place of Work

Lack of sanitation facilities has an impact on health of the workers. But, sanitary conditions are so precarious in most of the industries in the unorganised sector due to lack of proper toilet facilities. The facilities such as washing, urinal and toilet facilities at work are found to be low standard. It could be said that no such facilities were provided to workers in the industries.⁴⁴ Apart from that, physical conditions such as space, lighting, ventilation etc., are very poor.

Insecurity Arising out of Illness

Many studies show health risk as the primary risk of informal sector workers.⁴⁵ A number of studies show that risks and crisis situations due to low level of health security are endemic for informal sector workers. Stress events associated with health, dominated the outflows comprising 48% of annual household expenditure, while rituals and marriages account for 30%. The vulnerability of the poor informal workers increases when they have to pay fully for their medical care with no subsidy or support. A number of studies observed that the lack of resources to pay for treatment often leads to the poor foregoing health care or becoming indebted or impoverished trying to pay for it. Poverty was a major factor for not seeking treatment during illness.

Migrant Workers

Migrant workers are the most disadvantaged segment of workforce facing adverse working and living conditions. For instance, sugarcane labourers are generally staying in open place in the absence of proper space. Also, they have to cook their food in open space, which causes hardship during monsoon season. Since the labourers are staying in open space, they are continuously worried about the menace from snakes, scorpions, mosquitoes etc. In most of the cases, the resident sugarcane cutters have no basic facilities like electricity, water, sanitation etc. The problems faced by migrant workers are as follows:

- Vast majority of migrant workers fall in the unorganized sector.
- No working hours are fixed.⁵³
- They belong to poorest sections of population and inadequate access to basic amenities.
- People who migrate from rural to urban areas have absolutely no rights when they arrive⁵⁵ as they lack bargaining power and forced to accept work for lesser

Lack of Bargaining Power

Lack of organisation or least unionisation among the unorganised workers is mainly on account of illiteracy and lack of awareness. Despite the increased recognition of informal sector's contribution to employment and gross domestic product among others the lack of worker's rights and legal status has tended to adversely affect worker's prospects. This is due to lack of organisation or least organised in the sense that they are not able to voice their feelings or dissent against the attitude of employers in order to protect their interests. Due to long working hours, social isolation of migrant workers, high level of unemployment, illiteracy and lack of awareness are the major hurdles in organizing themselves.

Insecurity Arising Out of Natural disasters

There are many natural disasters like floods, drought, famine, earth quake etc., which also have a devastating impact on the informal sectors. Natural disasters do not only wipe out the productive base of the informal sector, but can also affect the limited household assets of the own.

CHALLENGES AND OPPORTUNITIES FOR EXTENDING SOCIAL WELFARE SCHEMES FOR UNORGANISED SECTOR WORKERS

The limitations faced in seeking to extend formal social security systems to workers and their families outside the formal sector are well documented. Informal sector workers cannot join formal national social security systems on a voluntary basis. Most are in categories of work that excluded from formal systems. Many systems also exclude enterprises below a certain size, or exclude workers with earnings below a certain level. From the detailed analysis of the problems faced by workers in unorganised sector, it is realised that social security is mandatory for the unorganised sector workers to decrease their vulnerability. Though some efforts are taken by the Government by passing the Unorganised Workers' Social Security Act, 2008 to provide a minimum level of social security to the poor unorganised workers but proved to be inadequate. The growth of informal employment resulted in shrinkage of formal employment consequent upon their quality of life. Therefore, to overcome such adverse consequences, it is necessary to build a strong base for at least a minimum level of social security with a view to climb up vertical occupation ladder resulting in strengthening their financial status. Instead of analysing what sort of social security measures are required to fulfil the multi facet needs of the unorganised sector workers, the need

of the hour is how social security programmes have to be effectively implemented for the informal workers who are the target groups. Hence, with the objective of providing social security to the most vulnerable sector of the society, the Government of India has been actively involved in sponsoring a range of large social welfare schemes under the unorganised workers' Social Security Act, 2008 such as Aam Aadmi Bima Yojana (Life Insurance), Rashtriya Swasthya Bima Yojana (Health Insurance) etc., including both national and state government initiatives.

PROTECTION OF RIGHTS OF UNORGANISED WORKERS

The judiciary has played a significant role in the evolution of industrial jurisprudence and made a distinct contribution towards innovative methods and devise strategies to ensure social justice to weaker sections of the society which could be evidenced from a number of decisions. Therefore, Indian judiciary has always been quite proactive in the matter of extending the coverage of social security to eliminate the vulnerability of unorganised workers. Despite various legislations such as Employees' Compensation Act, Employees' State Insurance Act, Employees' Provident Funds and Miscellaneous Provisions Act, etc., it is a fact that the unorganised sector workers are remaining outside the purview of social security nets. Owing to the failure of legislations, judiciary has come forward to protect the workers in order to fulfil the gap created by legislative machinery.

Judiciary in the Protection of Workers

The judiciary has special responsibility towards the weaker sections of the society and hence it has zealously protected not only the human rights of individual but also particularly unorganised workers who are due to poverty, ignorance and illiteracy find it difficult to access the court of justice. The Supreme Court in number of cases has pointed out that the right to livelihood is inherent in the right to life. Particularly, in the case of *Rural Litigation and Entitlement Kendra, Dehradun v. Uttar Pradesh*,⁷¹ the court has held that the right to livelihood is inherent in right to life under Article 21. In *Peoples' Union for Democratic Rights v. Union of India*,⁷² it was held that taking

of labour or service of any person for payment less than the prescribed minimum wages is violation of the fundamental right to such labourer while exercising the scope and ambit of Article 23 of the Constitution of India. The court further held that begar is a form of forced labour, in whatever form it may manifest itself because it is violative of human dignity and contrary to basic human rights.

CHAPTER VI

SOCIAL SECURITY FOR WOMEN WORKERS IN UNORGANISED SECTOR

Various studies have shown that economic dependence of women is predominant cause of their subordination. Thus, a change in the structure of the economy whereby women are assigned a major productive role would be a way to improve their status. Economic independence is a foundation on which any structure of equality for women can be built. Hence the employment of women have opened up new vistas for women; shifting interest from household duties to work outside. In the modern world women have to perform dual responsibilities in being a house wife, a mother as well as an employee and a producer of income for her family. Society being male dominated, women workers receive still poor recognition and value especially for women workers in the informal sector, the double burden of combining the tasks of production and reproduction is even more arduous despite the statutory provisions to ensure fair working conditions for women in India and also the specific provisions for the protection and welfare of women workers. According to the information provided by the office of Registrar General and Census Commissioner of India as per census 2011, the total number of female workers in India is 149.8 million comprising of 121.8 and 28.0 million in rural and urban areas respectively. Out of total 149.8 million female workers, 35.9 million females are working as cultivators and another 61.5 million are agricultural labourers. Of the remaining 8.5 million are in household industry and 43.7 million are classified as other workers. As per census 2011, the work participation rate for women is 25.51% as compared to 25.63% in 2001. The work participation rate of women was however 22.27% in 1991. Merely 6% of the women workers are in formal sector and the remaining that is majority of the women workers are employed in rural area, in that, 87% amongst them are labourers and cultivators. Thus women constituted a significant part of the workforce of India.

CAUSES OF UNORGANISED WOMEN WORKERS

Decline in the number of female world over is an indicator of the discrimination against the female's right from their birth. The reasons for this discrepancy include, among other things, harmful attitudes and practices, such as female genital mutilation, son preference which result in female infanticide and pre-natal

sexselection using techniques like amniocentesis, chorine biopsy andultra-sound.In most parts of the world today, the women are virtuallyabsent from or the poorly represented in the decision-makingprocesses. Their household work is invisible as it is performed insidefour walls of the house and their work is not measured in quantitative terms and thus not valued in national accounts. Thecontribution of the women to development is seriously underestimated and socially unrecognised. Even when women are remunerated for their work, their contribution is often undervalued.Women have shouldered a large part of the burden of developingcountries in 1980s. To make up for lost family income, they haveincreased in employment for home consumption, worked long hours,slept less and often eat less to make substantial costs of structuraladjustment that have gone largely unrecorded.⁸ In India, thesituation of women is even worse than most of the developingcountries of the globe today. Even after 68 years of its freedomdespite the progress the war on inequality, discrimination, violenceand also lack of empowerment is continuing. In addition to that thereare various other manifestations of women's poverty in India whichinclude hunger and malnutrition, ill-health; increasing morbidityand mortality from illness; homelessness and inadequate housing;unsafe environments and their social discrimination and exclusionfrom the mainstream. This is mainly due to lower level of educationamong the women workers that are so crucial in determining thequality of employment and the ability to secure reasonable wages.Low level of education creates vulnerability at two levels. It firstdenies access to "good jobs" in organised sector. Secondly, it confinesthe workers to mostly manual jobs. Especially, women workers inrural areas are the worst victims of this double disadvantage.Hence, illiteracy coupled with extremely low level of education denies having access to better and possibly remunerative jobs and that itconfines to casual manual labour.The activities in the informal sector are such that it requires less skill and less capital and that is the reason for concentration ofwomen for employment in informal sector. Apart from that the socialnorms and exigencies arising out of the double burden of workrestrict their mobility. But the economic condition forces manywomen to be available for additional work as they wish to engage inproductive activities if such work was available within the confines oftheir homes and also employer's preference for female employee.Hence, women

participate mostly in home based work system which is predominantly unorganised. This home based system is creating problem of invisibility of such enterprises as rural women workers in non agricultural sector are even more likely to work at home than urban women. From the above analysis it is clear that women workers are

mainly confined to unorganised sector of employment due to certain basic factors such as they do not get opportunities for acquiring skills and training in which they could thereby enable them to seek occupational or professional change from unorganised to that of organised sector of employment. Lack of education is major reason seriously delimits their employment options in the modern sectors of economy.

This is also mainly due to prevailing social relations between men and women as well as the structure of economy. Women is expected to bear maximum burden of domestic work in her family which is time as well as energy consuming due to which they are not in a position to acquire skills and training for getting jobs. Low skill attainment among women and their consequent relegation to job, which are labour intensive, time consuming and arduous in nature have been perpetuated by their unequal access to technology

PROBLEMS OF UNORGANISED WOMEN WORKERS

Globalisation of economy and their new trends have created new opportunities for employment of women around the world. In many regions women's participation in remunerated work in the formal and non-formal labour market has increased significantly and

has changed during the past decade. While women continue to work in agriculture and fisheries, they have also increasingly involved in micro, small and medium sized enterprises. Policies of economic liberalisation have severely altered the relationship among the state, labour and business. Globalisation backed by rapid technological progress brings in its trail- multi skilling, alteration of the normal employment by new relation which are characterised as pervasive contractualisation, casualisation and informalisation. The transformation in production systems and growing competition had major impact on employment, skill formation and on gender roles leading to the shrinkage of jobs in the organised sector resulting in more people entering the unorganised sector particularly, women find easier to find jobs in the informal sector as it requires

less skill. Women's share in the labour force continues to rise and almost everywhere women are working more outside the household. In India, the sharing of economic activity by women is nothing new. From time immemorial women have been working both in the home and the outside. Although various studies are conducted on the level and type of female work participation in agricultural and other sectors in India, scholars agree that these have often failed to take note of women's presence in or contribution to the labour force. Further, the gender bias is evident in the fact that while enumerating labour participation, there is a deliberate exclusion of a whole range of non market activities produced by women. Women informal workers are concentrated mainly in agriculture so much so that three quarters of all employed women are in informal employment in agriculture. 90% of those employed in manufacturing and construction are also unorganised sector workers. The workers in these sectors suffer from high incidence marginalisation and instance of casual wage workers which make them vulnerable to a range of exploitative practices. Women in the unorganised sector require social security addressing issues of leave, wages, working conditions, pension, housing, child care, health benefits, maternity benefits, safety and occupational health. This can only be ensured by extending labour protection to those sectors in a manner that pays special attention to needs of women workers. Hence, the need arises to make an in depth study of women workers employed in informal sector with a view to analyse the various issues and challenges of women workers concerning their wages, employment injury risks, maternity needs, extent of accessibility to social security measures and their vulnerability to exploitation. In this background an attempt has been made to focus the study only on specific employments and specific categories of women workers in the following units of this chapter as it is not possible to cover the vast segments of workforce in the unorganized sector.

CHAPTER - VII

Conclusion and suggestions

The data of National Sample Survey Organisation from 1999-2000, 2004-05 and 2009-10 shows that the percentage of informal workers among paid workers in the non-agricultural sector has steadily increased on the percentage of such workers with access to social security has declined. From the above analysis, it is clear that social security measures are critical for informal workers, particularly for women workers to protect them from contingencies and deprivation. For instance, in the case of the informal workers the death of bread winner is not only a tragic event but a question of survival for the family left behind due to the permanent loss of income. Hence, an accident either during the course of work or otherwise is a major crisis for the informal workers since it leads to loss of income. Similarly, there is a lack of old age security to informal workers especially for agricultural labour, construction labour and domestic workers. For the unorganised workers, under employment and low productivity employment with the consequent risk of low incomes and high levels of poverty is also the great source of insecurity.

The National Rural Employment Guarantee Act, 2005 made an attempt to provide employment guaranteeing at least 100 days of work. But, informal workers who are varied by nature and location would continue to face the risk of loss of employment for a variety of reasons. Another risk faced by the unorganised workers is with regard to health care services. A number of studies show that risks and crisis situations due to low level of health security is endemic for informal sector workers. A number of studies also identified that the vulnerability of the poor informal workers increases when they have to pay their full hand-earned money on expensive health care.

The Rashtriya Swasthya Bima Yojana which was initiated in 2008, is a health insurance package that covers up to Rs.30000 for inpatient related expenses for families that hold below poverty line cards. But since this insurance covers the cost of hospitalisation, the informal workers still have to invest money often to outpatient treatments which include medical fees, cost of medicines and diagnostic facilities.

The Government also has shown its concern and desire to take steps to root out the vulnerability of informal workers by passing the Unorganised Workers' Social Security Act, 2008. This Act also does not assure benefits to all workers as it

applies only for below poverty line workers and there is no universal coverage or integrated implementation. Hence, it is a major challenge to extend social security measures effectively to unorganised sector.

In the light of foregoing discussions, and the problems related to social security concerning the promotion of livelihood security of unorganised workers in general and also hazards and

issues of women's right at work in particular are identified as follows:

- There is lack of conceptual clarity and uniformity to define unorganised sector or unorganised employment as there has not been any uniform definition of the sector reflecting its specific characteristics.
- Wages in the unorganised sector are arbitrarily fixed without regard to Minimum Wages Act, 1948.
- Long hours seem to be a usual feature of unorganised sectors in India which is contrary to regulatory norms.
- Due to low income and uncertain employment in unorganised sector workers are not able to meet the basic necessities and the level of indebtedness among them is very high.
- There is absence of proper unionisation in the unorganised sector, hence they lack bargaining power which is due to non availability of regular jobs and also disbursed nature of work place.
- The study also identified that workers recruited through contractors did not receive minimum employment protections and benefits as they are exploited by the contractors or principal employer.
- The physical condition of work and occupational safety are deplorable.
- The study also identified child workers are the worst exploited.
- New form of bonded labour is also identified as the wage payment of the worker is tied up with debt and practically wages are never received by the workers.
- The experience of implementation of labour legislations designed specifically for unorganised sectors namely Contract Labour (Regulation and abolition) Act, 1970; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Beedi Workers Welfare Fund Act, 1976; and Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 etc., show that there is inadequate and ineffective

implementation resulting in not ensuring atleast minimum labour standards to workers.

- Social security laws like Employees' State Insurance Act, Employees' Provident Fund Act, Payment of Gratuity Act and Maternity Benefit Act cover both organised and unorganised sector, but, it is limited in its coverage due to threshold limit of employment in which the unorganised sector do not meet the eligibility criteria and thus kept aside the purview of application of these laws. In the case of Employees' Compensation Act, the categories of employees specified in Schedule II restrict its applicability. Hence, there is an inadequate coverage of social security laws to unorganised sector workers.
- The latest enactment the Unorganised Workers' Social Security Act, 2008 has number of defects. The Act does not confer any defined right to social security for the workers. Social security schemes are not incorporated as part of the body of the Act but are provided in a Schedule which could be changed at any point of time by notification. There is no universal coverage or integrated approach in implementation. It is like a collection of schemes in a piece-meal approach of leaving vast number of vulnerable workers as it covers only below poverty line workers. The Social Security Board established under the Act has advisory role and are not effective as they do not have powers to administrate and enforces schemes. Even in the schemes provided under Schedule I of the Unorganised Workers' Social Security Act, there is overlapping, lack of coordination and ambiguity in regulations.
- In the case of home based workers there is lack of clear cut employer-employee relationship due to lack of designated place of work and it is easy for the workers to deny the benefits resulting in increasing their vulnerability.
- Women workers are mostly employed in unskilled jobs. Gender discrimination at the work place is reflected in the nature of the work they perform and also in the valuation of skills and technologies used by men and women.
- Women employees are engaged in poor quality jobs as they do not get opportunities for acquiring the required skills and training. It is also identified that one of the important factors contributing to hurdle their improvement in acquiring higher paid jobs is due to lack of opportunities for acquiring the required skills

and training responding to the technological changes and facilitate occupation shift to appropriate employment status.

- The existing laws providing maternity benefits for women employees are restricted to the organised sector. But, women employees in the unorganised sector who represent the vast majority of the work force are not provided with maternity protection and provisions of paid maternity leave seems to be very rare in this sector.
- There is a significant disparity in wage payments between male and female employees resulting in violation of the Equal Remuneration Act, 1976.
- The relevant statutory provisions of safety, health and welfare for the women employees with regard to protection of employment, restriction on carrying heavy loads, separate toilet facilities and washing facilities creche facilities etc., under the Factories Act, 1948; Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Plantations Labour Act, 1951; Beedi and Cigar Workers (Conditions of Employment) Act, 1966 are failed to protect the legitimate interests of women employees due to their poor implementation.
- It is also identified that the condition of women migrant workers are more adverse than their male counterparts.
- It is also identified that domestic workers are excluded from labour laws to deal with the issues such as conditions of work, wages, social security, provident fund, old age pensions and maternity leave. Thus, women are forced to work in sub-human conditions with no job security due to absence of legal protection. They remain invisible and under reported both in the labour market and in the society.

SUGGESTIONS

In the light of the above discussions, the following suggestions have been submitted to have a strategy to create a legislative and administrative frame work to provide as per the requirement and without any additional burden on the government to ensure not only to remove existing inefficiencies, gaps and weakness but also to ensure basic minimum social security cover for unorganised workers are as follows:

- One of the important insecurities to any informal worker is the risk of health insecurity and hence health security is the prime security for the unorganized worker as it has a detrimental effect on the earnings and earning potential leading to vulnerability of the poor informal workers. It is suggested that the poverty alleviation programmes should make allowance for the burden of treatment. Since health security should be equally available and accessible to all citizens, it is also suggested that a comprehensive health policy should be framed by strengthening the public health care infrastructure by designing under a comprehensive insurance plan for hospitalisation.
- In the unorganised sector, under-employment in the form of irregularity of work is also a source of insecurity. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 attempts to provide employment security by guaranteeing atleast 100 days of work in the most backward districts. However, the informal workers who are varied by nature and location would continue to face the risk of loss of employment. Hence, it is suggested that government should make provision for unemployment allowance to informal workers to alleviate poverty.
- To have a better coverage of beneficiaries and for ensuring effective implementation of social security schemes under the Unorganised Workers' Social Security Act, 2008, it is suggested that while formulating the schemes itself efforts should be taken to design simple and efficient procedures. It is also suggested to use advance technology to ensure quick accessibility of the schemes with regard to delivery of the programmes by the government agencies because beneficiaries should not be discouraged due to complicate procedures.
- Women who form the majority in the informal sector are victims of gender based discrimination, hence it is suggested that women should be fully empowered with proper education, skills and training. It is also further suggested that government should promote more vocational training programmes for advancement of skills of women.
- Maternity benefit is an another important social security measure for protecting the dignity of motherhood by providing healthy maintenance and well being of mother and child to prevent maternal mortality and morbidity. In this regard, it is suggested to enhance the maternity leave from 12 weeks to 14 weeks as per the

stipulation of ILO along with medical expenses to prevent the loss of income during maternity illness.

- One of the sources of risks for informal workers is insecurity with regard to old age. When an adult informal worker himself faces insecurity of work and income for their survival, there is no possibility to save from their earnings to support their needs during the old age. Hence, it is suggested that a proper adequate institutional mechanism should be established for taking care of the aged informal workers and it is also further suggested that Indira Gandhi National Old Age Pension Scheme should be extended to cover the informal workers belonging to above poverty line category also.
- It is suggested that domestic workers should be identified and registered by the state labour department. With regard to payment of wages, it is further suggested that domestic workforce should be included in the central list of scheduled employments under the Minimum Wages Act, 1948 for fixation and revision of minimum wages in order to ensure uniformity in payment of wages throughout India. Since the domestic work sector is going rapidly in urban areas and takes place in an un-conventional work place, it is suggested to have separate law with adequate regulatory mechanism to protect and promote labour rights of domestic workers when all such rights and protection are available to other categories of workers.
- There are too many laws for too few in the organized sector and too few for too many in the unorganized sector. Hence, it is suggested to have comprehensive social security legislation for both organized and unorganized workers in the country.
- Last but not least, women workers in the unorganized sector are ignorant about their rights, benefits and protection provided under labour legislations. Ignorance of statutory provisions is one of the main causes that had resulted in injustice to women. Since there is demand for empowerment of workers in general and women in particular, it is suggested that government, trade unions, non voluntary organisations should organise awareness programmes relating to health, nutrition as well as sanitation and disseminate information to workers about the rights and their responsibilities. To prevent exploitation of workers, it is also

suggested that the trade unions should extend their assistance with regard to access to legal aid in the course of legal proceedings

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**PROJECT ON " SOCIAL SECURITY FOR WOMEN WORKERS IN
UNORGANIZED SECTOR: PROBLEMS AND PERSPECTIVES"**

SESSION-2020-21

DEPARTMENT OF POLITICAL SCIENCE

PATTAMUNDAI COLLEGE, PATTAMUNDAI, KENDRAPARA, ODISHA

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