

BREAKING THE CHAINS OF VULNERABILITY: A CRITICAL EXAMINATION OF SOCIAL SECURITY POLICIES FOR UNORGANIZED SECTOR LABOURERS

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ABSTRACT

This article aims to put forth the priority status that has to be afforded to the unorganised sector in India, and the priority that is provided to this indispensable but undervalued part of the economy and the population. Given the multitude of risks faced by the people in the unorganised sector, it seems perfectly logical that they be provided the necessary social security benefits. However, similar to many other legislative arenas in India, the social security legislation seems great on paper but suffers from serious setbacks in reality. It is crucial to constantly brainstorm new policies that can help those involved, as well as identify the gaps in the existing legislation. This paper thoroughly examines the contemporary situation of social security for the unorganised sector and the challenges that the sector poses in building a reliable social security system. Further, it also puts forth various suggestions to overcome these challenges and secure the constitutional promises under the Directive Principles of State Policy to 93% of our population.

Keywords: Social Security, Unorganised Sector, Code On Social Security, 2020, Risk-Prone, Contributory And Assistance-Based Programs, Healthcare, Sick Leave.

INTRODUCTION

The probability of a developing country transforming into a developed one largely depends on the ability of the government to uplift the lives of its people and provide the means to live a dignified and well-rounded life rather than a mere animal existence. Despite the recognition of social security as a right decades ago, its realisation seems to have taken a back seat. Even more for those constituting the unorganised sector. Unorganised workers form an integral and crucial part of one's everyday life and festivities, from selling vegetables to making firecrackers. However, their social security remains a big question owing to a multitude of reasons. It is these for reasons that this paper will be exploring along

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with a critical analysis of existing social security policies and potential solutions for the lacunae.

UNDERSTANDING THE UNORGANISED SECTOR

The unorganised sector as it is described, refers to those workers who fall out of the purview of existing social security legislations and policies. A report of the Central Government in 2013-2014 indicates that almost 93% of the Indian workforce are employed in the unorganised sector and contribute to more than half of the GDP. More recent data as to the effects of demonetisation and the pandemic on this vulnerable section is not available. The term 'unorganised sector' itself is a wide term with a high degree of heterogeneity. It consists of agricultural workers on one end with IT and tech professionals on the other. The National Commission on Labour in its 2002 report dedicated an entire chapter to discussing the difficulty in defining and contouring the scope of the sector¹. Certain common characteristics that can be deduced in this heterogeneity are as follows:

- **Lack of formal employer-employee relationship:** The unorganised sector consists of those individuals who invest their own capital and labour, those who operate out of their homes, assist their families in carrying out the activity, and also those who produce for their own end-use. There might be no difference between the expenses of the enterprise and the individual². Hence, it is difficult to cull out the exact employer-employee relationship. An article from 2018-2019 reveals that only 19% of those employed in the unorganised sector have a written contract³.
- **Casual nature of employment:** Various groups within the unorganised sector such as landless labourers, construction workers, part-time workers etc. are employed only for a limited period of the year. The short and uncertain duration of the employment makes it difficult to assign responsibility to a specific employer.

¹ National Commission on Labour (2002). *REPORT OF THE SECOND NATIONAL COMMISSION ON LABOUR WITH EMPHASIS ON RATIONALIZATION OF LABOUR LAWS AND UNORGANIZED LABOUR*. [online] Available at: https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf [Accessed 24 Feb. 2024].

² Mishra, S. (2017). Social Security for Unorganised Workers in India. *Routledge - Taylor and Francis Online*, [online] 3(2), pp.1–10. Available at: https://www.researchgate.net/publication/322362932_Social_Security_for_Unorganised_Workers_in_India [Accessed 25 Feb. 2024].

³ Bordoloi, M., Farooqui, M. and Pandey, S. (2020). SOCIAL SECURITY FOR INFORMAL WORKERS IN INDIA. *Central for Policy Research*, [online] pp.2–3. Available at: https://cprindia.org/wp-content/uploads/2021/12/Brief_SocialSecurity_InformalWorkers_21Nov2020.pdf [Accessed 27 Feb. 2024].

- Scattered nature of work: In the case of most unorganised sector works, there is no industry or establishment per se. As discussed earlier, the sector consists of home-based activities, small enterprises with low capital and poor quality of labour and individuals doing the same activities may be dispersed geographically as well. While this creates a need for an umbrella legislation, the ultimate success of which depends on its ability to modify according to local needs.
- Absence of suitable social security legislation: Social security legislations are predominantly tailored to address the risks arising out of the organised sector. The inherent nature of the unorganised sector exposes its members to vulnerabilities. The efforts of the state seem to be one-sided, as the contribution of the organised sector is presumed to be more valuable. The inherent nature of unorganised employment lacks a standardised structure which makes even promising initiatives unyielding⁴. Though they hedge against the risks, real progress can only be made when these risks are eliminated⁵. The legislation specifically tailored may also leave out a large group of people as their unit was too small or for other technical reasons⁶.
- Lobbying and Influential Capabilities: Existing social security legislations for the unorganised sector focus on very few groups within this gigantic sector. For instance, while there are special legislations for the social security of bidi workers, the same is not available to other groups such domestic workers or ragpickers⁷. This reflects the imbalance in the influential capacities of different groups.

The term ‘diversity’ has meaning under different contexts in India. This is evident in the differing social security risks that the urban and rural populations are exposed to. This, in itself, renders any attempt at a comprehensive legislation fruitless. It is in relation to all these

⁴ Satpathy, S. (2023). *Social protection to mitigate poverty: Examining the neglect of India’s informal workers*. [online] orfonline.org. Available at: <https://www.orfonline.org/research/social-protection-to-mitigate-poverty-examining-the-neglect-of-india-s-informal-workers> [Accessed 1 Mar. 2024].

⁵ Unni, J. and Rani, U. (2003). Social Protection for Informal Workers in India: Insecurities, Instruments and Institutional Mechanisms. *Development and Change*, [online] 34(1), pp.127–161. doi:<https://doi.org/10.1111/1467-7660.00299>.

⁶ Actionaid Association India, Jha, P. and Mishra, P. (2022). Social Security and Informal Workers a Comparative Study of Brazil, China, Germany and India. *ActionAid Association and Rosa Luxemburg Stiftung*, [online] pp.24–25. Available at: <https://www.actionaidindia.org/wp-content/uploads/2022/09/Social-Security-Monograph-I-E-book.pdf> [Accessed 25 Feb. 2024].

⁷ Chattaraj, S. (2016). Organising the Unorganised Union Membership and Earning in India’s Informal Economy. *BSG Working Paper Series*, [online] WP 2016(15). Available at: <https://www.bsg.ox.ac.uk/sites/default/files/2018-05/BSG-WP015.pdf> [Accessed 27 Feb. 2024].

elements that one can infer that the traditional approach towards social security is not adequate for those in the unorganised sector.

It is presented that a combination of a statute as comprehensive as possible, with a reasonable and guided delegation of powers, and statutory institutions allowing collaboration between the different categories of workers within the scope of the unorganised sector, with specific tribunals to keep the interactions in check, will show promising results.

For the purposes of this paper, let us consider the definition of the unorganised sector as defined by the National Commission for Enterprises in the Unorganised Sector (NCEUS).

The unorganised sector consists of all unincorporated private companies owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers⁸. The definition also includes those employed in the formal sector, but deprived of any social security benefits from the employer.

NECESSITY OF SOCIAL SECURITY FOR UNORGANISED SECTOR

A huge proportion of people employed in the informal sector belong to the economically and socially underprivileged sections⁹. The investment made in the unorganised sector, in terms of money and effort, to secure the workers from the nine core contingencies¹⁰, is negligible when compared to that of the organised sector. It is reminded that this is only a protective form of social security, much narrower than its successors. This remains the ugly truth for the millions of people pulling more than their weight in the economic growth of the country. For many of these people, the government is a distant entity whose minimal attempts they are not made aware of. Another phenomenon that can be observed in the Indian Labour scenario is that there has been informalisation of the formal sector, with more employees being hired on a contractual basis, without the social security benefits that the

⁸ Ministry of Finance, Government of India (2022). *Economic Survey of 2021-22*. [online] pp.398–399. Available at: https://www.indiabudget.gov.in/economicsurvey/ebook_es2022/index.html#p=398 [Accessed 27 Feb. 2024].

⁹ Kalyani, M. (2015). Unorganised Workers: a Core Strength of Indian Labour Force: an Analysis. *International Journal of Research in Business Studies and Management*, [online] 2(12), pp.1–13. Available at: <https://www.ijrbsm.org/pdf/v2-i12/6.pdf> [Accessed 24 Feb. 2024].

¹⁰ Fasih, F. (2011). SOCIAL SECURITY OF UNORGANISED WORKERS IN INDIA. *NUJS*, [online] pp.2–3. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1968206 [Accessed 27 Feb. 2024].

other employees enjoy¹¹.

A huge proportion of people in unorganised employment are engaged in hazardous activities, with meagre wages. Compared to organised sector employment, those in the unorganised sector are vulnerable to the risk of unemployment, financial loss, food insecurity and chronic health issues. However, the policy outlook of the state seems to be counterintuitive to this reality with the organised sector protected by safety nets.

The Niti Aayog presented in its Multidimensional Poverty Progress Report that there has been a stark decline in poverty especially in states such as Bihar, Jharkhand and Uttar Pradesh in the 2019-2021 period¹². The report discusses the importance of tailored policies and schemes of the government that facilitated such improvement. While various schemes such as the Mahatma Gandhi National Rural Employment Guarantee Scheme, the Public Distribution System, Pradhan Mantri Jan Arogya Yojana etc. secure the poor from financial distress¹³, it is reported that these programs are promotive in nature with not much attention spent on protecting them from unprecedented shocks¹⁴. With the broadening of the scope under the Code of Social Security, it seemed reasonable to expect that the situation would improve for the 'unorganised'. However, the results are inconsistent and the inadequacy of social security persists.

CONTEMPORARY POSITION OF SOCIAL SECURITY FOR THE UNORGANISED SECTOR

India is ranked 76th out of 82 countries on the Global Social Mobility Index¹⁵, performing worse than China. The RBI places the projection of GDP at 7% for this financial year (2024-

¹¹ Rajasekhar, D. (2008). SOCIAL SECURITY FOR UNORGANISED WORKERS IN INDIA: STATUS AND ISSUES. *The Indian Economy Review 2008*, [online] V(30th), p.124. Available at: https://www.dea.gov.in/sites/default/files/The%20Indian%20Economy%20-%20A%20Review_Jan%202024.pdf [Accessed 1 Mar. 2024].

¹² Niti Aayog (2023). *National Multidimensional Poverty Index- A Progress Review 2023*. [online] www.undp.org, pp.15–24. Available at: <https://www.undp.org/india/publications/national-multidimensional-poverty-index-progress-review-2023> [Accessed 1 Mar. 2024].

¹³ Supra 5

¹⁴ Satpathy, S. (2023). *Social protection to mitigate poverty: Examining the neglect of India's informal workers*. [online] orfonline.org. Available at: <https://www.orfonline.org/research/social-protection-to-mitigate-poverty-examining-the-neglect-of-india-s-informal-workers> [Accessed 1 Mar. 2024].

¹⁵ ActionAid Association India, Jha, P. and Mishra, P. (2022). Social Security and Informal Workers a Comparative Study of Brazil, China, Germany and India. *ActionAid Association and Rosa Luxemburg Stiftung*, [online] pp.37-38. Available at: <https://www.actionaidindia.org/wp-content/uploads/2022/09/Social-Security-Monograph-I-E-book.pdf> [Accessed 25 Feb. 2024].

25)¹⁶ and it would be reasonable to conclude that a major proportion of this growth will come from the unorganised sector. However, it is likely that the contribution of the unorganised sector towards the GDP will be seriously undermined and unrecognised. Add to this the concoction of the SDGs, especially SDG 8¹⁷ – that is to promote sustained, inclusive economic growth, full and productive employment and decent work for all by 2030, the situation seems bleak.

The Union Budget for 2023-24 revealed shocking cuts to social security schemes¹⁸, reducing the already low social security expenditure¹⁹.

The Labour Force Participation Rate (LFPR) as recorded by the Periodic Labour Force Survey, revealed that there has been a significant increase in the employment rate²⁰, the increase has been predominantly in the unorganised sector, especially with regard to women in rural areas. A higher rate of employment in the informal sector does not guarantee better wages, safe working conditions and other social security benefits to wade through contingencies.

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Constitutional Position

One of the objectives that the State strives to achieve is to secure economic, social and political justice for all. The Directive Principles of State Policy as discussed under Articles 41, 42 and 43 and 47 embody the intent to secure every citizen's social security through public assistance, humane conditions of work, and providing them a decent standard of living²¹. An important statistic that finds its place repeatedly in this article is the fact that

¹⁶ Ray, A. (2024). RBI projects 7% GDP growth in FY25. *The Economic Times*. [online] 8 Feb. Available at: <https://economictimes.indiatimes.com/news/economy/policy/rbi-projects-7-gdp-growth-in-fy25/articleshow/107518317.cms> [Accessed 24 Feb. 2024].

¹⁷ NITI AAYOG (2018). *SDG INDIA INDEX*. [online] pp.261–262. Available at: https://www.niti.gov.in/sites/default/files/2020-07/SDX_Index_India_Baseline_Report_21-12-2018.pdf [Accessed 27 Feb. 2024].

¹⁸ Dreze, J., Khera, R. and THE WIRE (2023). *Chart: The Sharp Decline in Total Expenditure on Social Security Schemes*. [online] The Wire. Available at: <https://thewire.in/rights/chart-decline-expenditure-social-security-schemes-budget-2023> [Accessed 28 Feb. 2024].

¹⁹ Sulzer, R. (2008). Social Security in India - A System in the Making. *The Social and Ecological Market Economy – a Model for Asian Development?*, [online] pp.211–212. Available at: <https://lib.icimod.org/record/13858> [Accessed 28 Feb. 2024].

²⁰ Garg, S.C. (2023). *India's Job Growth — Rising numbers, Falling Wages*. [online] Deccan Herald. Available at: <https://www.deccanherald.com/opinion/indias-job-growth-rising-numbers-falling-wages-2759971> [Accessed 27 Feb. 2024].

²¹ Bhardwaj, P., Singh, M. and Singh, K. (2019). SOCIAL SECURITY AND THE CONSTITUTION OF INDIA. *INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES*, [online] 5(2), pp.3–5. Available at: <https://thelawbrigade.com/wp-content/uploads/2019/05/Purnima-Dr.-Manu-Kunvar.pdf> [Accessed 1 Mar. 2024].

more than 90% of the population is engaged in the unorganised sector. Hence, the existing position of national and state-level social security programs does not do justice to the same.

Legislative Position

Upon the recommendation of the Second Labour Commission²², the Unorganised Workers' Social Security Act, of 2008 was enacted. Section 3 of the Act vests the power to formulate welfare schemes with the Central Government. It classifies the different social security needs into the ambit of the Central and the State Governments. Keeping in mind that the Act did not provide any form of justiciable²³ social security, let us now consider the position of social security for the unorganised sector workers, in light of the Labour Codes of 2020.

TRANSITION TO THE CODE ON SOCIAL SECURITY AND ITS RAMIFICATIONS

The Code on Social Security, 2020 states its purpose as being able to secure access to health care, and provide income security in case of old age, unemployment, sickness, invalidity, work injury, maternity or the loss of a bread winner through a rights-based approach²⁴.

In comparison to the 2008 Act which did not address the issue of poor wages in the unorganised sector, the Code on Wages, 2020 extends the applicability of the Payment of Wages Act, 1936, The Minimum Wages Act, 1948, Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 to all workers, including those in the unorganised sector. The Code on Social Security, 2020 subsumes legislations such as the Employees' Compensation Act, of 1923, the Maternity Benefit Act, of 1961, The Payment of Gratuity Act, of 1972, the Unorganised Workers' Social Security Act, of 2008 as well as special legislation for the welfare of cine workers, bidi workers, construction workers and mine workers.

The Code introduces Inspector-cum-Facilitators and a quasi-judicial appellate authority to adjudicate over disputes. The scope of the welfare schemes has been extended to include gig

²² Kar, S. (2015). History of Social Security of Unorganized Workers -- With Special Reference to India. *SSRN Electronic Journal*. doi:<https://doi.org/10.2139/ssrn.2559656>.

²³ Behera, S. (2021). PROTECTION OF WORKERS IN UNORGANIZED SECTORS - A CRITIQUE OF UNORGANISED WORKERS SOCIAL SECURITY ACT, 2008. *INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION*, [online] pp.6–8. Available at: https://www.ijlpa.com/files/ugd/006c7e_63b76e404e11455aae8b1b1f3f7cab71.pdf?index=true [Accessed 28 Feb. 2024].

²⁴ *Code on Social Security, 2020*. Available at: https://labour.gov.in/sites/default/files/ss_code_gazette.pdf [Accessed 3 Mar. 2024].

workers and platform workers. Welfare schemes related to life and disability coverage, accident insurance, health and maternity benefits, education for the unorganised workers, provident fund and pension scheme will also be made by the Central Government and the State Government. This is proposed to be significantly better than the existing mechanism under the 2008 Act²⁵. Yet, the improvement from the 2008 legislation is negligible with no substantial, in this case, even minimum benefits afforded to the unorganised sector. The Code resembles a compilation of existing laws with a splatter of minor tweaks and does not set forth a minimum standard of social security that a worker is entitled to²⁶.

Judicial Position

A perusal of various judgements from the Apex and the other courts of the country reveals the willingness to extend the benefits of social security legislation²⁷ to those under unorganised employment.

In *Regional Director, Employees State Insurance Corporation vs. Suvarna Saw Mills*,²⁸ the Full Bench of Karnataka High Court held that the definition of the word 'Employees' contained in Section 2(9) of the ESI Act does not classify between a casual or a temporary or permanent employee. It is wide enough to include even a casual employee for a day for wages.

In the case of *Daily Rated Casual Labour v. Union of India*²⁹, the Posts and Telegraph Department employed both permanent and casual labourers. Though the daily wage workers and the permanent employees put in the same amount of work, the former were paid very little. The schemes that the Union introduced classified the workers into skilled and unskilled wherein the latter were not provided benefits such as pension, paid leave and increments. This was held to be in violation of Articles 14 and 16 of the Constitution. A plea was made under Article 37 of the Constitution for 'equal pay for equal work' and the Apex Court observed that even if all the other benefits cannot be extended to the casual workers, they should be paid minimum wage.

In *Delhi Jal Board v. National Campaign For Dignity and Rights of Sewerage and Allied*

²⁵ Supra 3.

²⁶ Supra 5.

²⁷ *Royal Talkies v. ESIC*, (1978) 4 SCC 204.

²⁸ *Regional Director, Employees State Insurance Corporation vs. Suvarna Saw Mills*, 1979 Lab. IC 1335 Kant.

²⁹ *Daily Rated Casual Labour v. Union of India*, 1988 SCR (1) 598

*Workers*³⁰, the case highlighted the negligence of the executive and instrumentalities of the state in providing safe working conditions, proper wages and compensation upon death to the sewerage workers. The Apex Court took a firm stand as to the negligence of the lawmakers and the executives in establishing appropriate mechanisms for the welfare of the unorganised workers.

The case of *Shramjeevi Mahila Samiti v. State of NCT of Delhi*³¹ exposed the vulnerabilities that unorganised workers undergo despite the enactment of the Unorganised Workers Social Security Act, 2008 and a varied number of schemes under it. The Hon'ble Court expressed displeasure at this state of social security and rejected the contention of the Union that the workers had not turned in for registration to avail of the benefits. The Court then took up a proactive stance and ordered the Central Government to initiate a pilot project for registration and for the welfare of the unorganised sector.

The Jharkhand High Court in the case of *All India Progressive Women Association & Ors v. Union of India & Ors.*³², issued directions to the Union Government to implement the schemes under the 2008 Act and create awareness about the same using the District Legal Services Authorities and Para Legal Volunteers.

The situation in *Vandhana Prasad v. The Ministry of Labour and Development*³³ reflected the lack of reliable data with respect to maternity benefits among construction, domestic and women workers in the preceding five years, The Ministry of Labour and Development was directed to update this information on their official website. Thus, the Judiciary, through its various judgements, has extended a supportive and inclusive attitude. However, the translation of these judgements into tangible benefits for the unorganised employees remains obscure.

CRITICAL ANALYSIS OF SOCIAL SECURITY POLICIES: (IMPACT AND EFFECTIVENESS)

This section of the paper enumerates the various schemes and policy alignment of the

³⁰ Delhi Jal Board v. National Campaign For Dignity and Rights of Sewerage and Allied Workers, Civil Appeal NO. 5322 of 2011, arising out of Special Leave Petition (Civil) No. 12345 of 2009

³¹ Shramjeevi Mahila Samiti v. State of NCT of Delhi, SLP (Crl) No. 150 of 2012

³² All India Progressive Women Association & Ors v. Union of India & Ors.,

³³ Vandhana v. The Ministry of Labour and Development, 16 November, 2018

government by the division of social security into social insurance and social assistance.

- **Social Assistance in India:** Social assistance mainly refers to non-contributory schemes that play more of a protective role. These schemes are mainly intended to secure a basic standard of living for the people by providing benefits and allowances. This includes allowances for unemployment, old age, pregnancy, disability etc. Based on recently available data³⁴, existing expenditure towards social security in India has been low compared to other countries such as China and Brazil.
- **Old age benefits:** India, till now, lacks an effective mechanism for the provision of pensions to unorganised workers in their old age.
- **Indira Gandhi National Old Age Pension Scheme (IGNOAPS):** This scheme is a part of the National Social Assistance Programme and aims to provide those in their old age, living below the poverty line, with a reasonable allowance to meet their basic needs. Research reveals that that this program has a significant impact in ensuring better nutrition as well, as beneficiaries now have the means to choose foods like nuts, proteins, vitamins etc.³⁵ Similar to many other legislations in India, research reveals that the scheme fails to fulfil its goals, through its cumbersome procedure and delay. There are some improvements needed to make the scheme realise its full potential due to the demographic it covers. The allowance is disbursed through banks which has made it difficult for the beneficiaries to travel and wait in a queue etc³⁶. Further, the amount that is given, is very minimal, Rs.200 to 1000 per month.
- **Unemployment allowance:** India does not provide a single unemployment allowance. Different states like UP, West Bengal, Himachal Pradesh, Kerala, Haryana etc. have enacted their own unemployment allowance schemes, wherein the beneficiaries are provided a periodic sum to secure their financial safety. These

³⁴ Supra 15.

³⁵ Vidhya Unnikrishnan (2022) The Welfare Effects of Social Assistance Programs for Women in India, The Journal of Development Studies, 58:6, 1211-1230, DOI: 10.1080/00220388.2022.2043277

³⁶ Jothi, S., Lakshminarayanan, S., Ramakrishnan, J. and Selvaraj, R. (2016). Beneficiary Satisfaction Regarding Old Age Pension Scheme and Its Utilization Pattern in Urban Puducherry: A Mixed Methods Study. *Journal of Clinical and Diagnostic Research : JCDR*, [online] 10(9), pp.LC01–LC05. doi:<https://doi.org/10.7860/JCDR/2016/20147.8516>.

benefits are mainly garnered towards individuals who are unemployed due to reasons such as lay-offs, retrenchment, closure and recession. A unified scheme will bring in more certainty, especially with regard to migrant workers.

- National Scheme for Welfare of Fishermen: This scheme is a clear illustration of the state's attempt to provide income security despite the seasonality of the beneficiaries' employment. In this scheme, fishermen are provided with financial assistance to secure their income during off-seasons.

The aforementioned scheme clearly mentions the urgent need to identify vulnerable and income-insecure occupations to support those at the bottom rungs of society. Specific legislations such as the Fishermen's scheme have great potential in assuring the income security of those involved in seasonal jobs.

Death And Disability Allowance

The National Family Benefit Scheme is also a social assistance program wherein upon the death of the prime income holder of the family, the bereaved family is given a sum of Rs.20,000 in case of natural or accidental death. This scheme has reduced to a stagnant state due to social security taking a back seat in the Union Budget. The policy outlook of the government inclines more towards contributory schemes and reliance is still placed on outdated BPL lists. An increase in grants is also a demand under this scheme³⁷.

- Aam Aadmi Bima Yojana (AABY)³⁸: This scheme is targeted towards those landless rural poor living Below the Poverty Line. It is a non-contributory scheme wherein the contribution is made by the Central and the State Governments and offers financial security upon the death of the earning member of the family. It is appreciable that 50% of the premium is borne by the government and the data is digitized and monitored through a web-based system. Further, scholarship benefits are also provided to the children of the beneficiaries. However, it does not cover the cost of hospitalisation, which can be a huge support for these families in such

³⁷ Dreze, J. (2021). *National Family Benefit Scheme is in urgent need of revival*. [online] The Indian Express. Available at: <https://indianexpress.com/article/opinion/columns/national-family-benefit-scheme-is-in-urgent-need-of-revival-7655096/> [Accessed 3 Mar. 2024].

³⁸ Biswas, D. (2020). Problems of Unorganized Workers and their Social Security Measures in India: An Analysis. *International Journal of Research and Analytical Reviews (IJRAR)*, [online] 7(1). Available at: <https://ijrar.org/papers/IJRAR2001993.pdf> [Accessed 3 Mar. 2024].

vulnerable situations.

- Skill upgradation: Various schemes for the training and consequent upliftment of those concerned. Programs such as the Development of Women and Children in Rural Areas, and Training for Rural Youth for Self-development are also in place to upskill the unorganised workers and improve their earning capacity. The main objective of such schemes is to improve the conditions associated with the informal sector and their living standard.

Women In The Informal Sector

While organised workers are provided a minimum period of paid maternity leave, those in unorganised employment lack the liberty to avail the same and their financial security is at great risk of collapse. Women constitute more than half of the total population involved in unorganised employment, where they take part in agriculture, handloom, handicraft, street-selling, home-based work and so on. The social security of these women hangs by a thread with the absence of targeted and effective schemes. It is reported that women constitute the lower rungs of employment within the informal sector and earn much less, with societal expectations redirecting investment away from their education and financial independence³⁹.

- Janani Suraksha Yojana: This scheme is similar to the Bosis Familia Scheme in Brazil, wherein the cash transfer is made depending upon compliance with pre-natal and maternal care of the mother and the child. This has far-reaching benefits by sustaining the income security of the mothers and also ensuring that the health requirements of the mother and the child are met. The object of this scheme is said to be reducing the maternal mortality ratio and infant mortality ratio, and making institutional health care attractive to BPL families⁴⁰. However, the mechanism set up for the implementation of this scheme suffers from certain setbacks. There is inconsistency in the coverage of the scheme in different regions as well as socio-

³⁹ Ramani, S., Thurupalli, A., Medovarszki, T., Chattopadhyay, S. and Ravichandran, V. (2013). Women in the Informal Economy: Experiments in Governance from Emerging Countries. *Policy brief*, [online] (5), pp.2–3. Available at: <https://www.merit.unu.edu/publications/uploads/1368782651.pdf> [Accessed 4 Mar. 2024].

⁴⁰ International Labour Organisation (n.d.). *Janani Suraksha Yojana Guidelines for Implementation Ministry of Health & Family Welfare Government of India*. [online] www.ilo.org. Available at: <http://www.ilo.org/dyn/travail/docs/683/JananiSurakshaYojana-Guidelines/MinistryofHealthand-FamilyWelfare.pdf> [Accessed 3 Mar. 2024].

economic groups⁴¹. Women from marginalised communities especially face discrimination in obtaining these benefits. The success of the programme has been described as limited⁴² with the overall utilization of the scheme being only 36%.

- **Indira Gandhi National Widow Pension Scheme (IGNWP):** This is a social assistance scheme to support widows living below the poverty line. This scheme is important given the effects of societal and cultural expectations on women, which in many cases, precludes them from focusing on their education and skill development. However, evaluation of the scheme shows that the majority of the population considers the sum given as paltry. Further, the adoption of the scheme varies from region to region due to red-tapist procedure, inadequate guidance and the need for political influence⁴³.

However, a problem that a majority of women face everywhere, including in their workplace is not addressed. Unorganised women employees lack the necessary mechanisms to counter sexual harassment in their workplace. The women in the unorganised sector, avoid speaking against harassment in the workplace as they have their livelihood to lose along with the stigma generally associated with this issue. This includes women belonging to the marginalised communities and lack the necessary awareness with regard to availing protection under the appropriate forum⁴⁴.

At this juncture, it is important to answer the question as to whether women workers in the unorganised sector under the Prevention of Sexual Harassment Act, 2013. Recounting the landmark judgement in *Vishaka v. State of Rajasthan*⁴⁵, the Apex Court held that the right to trade and profession requires the availability of a 'safe' working environment. Fortunately, the definition of employee under the POSH Act is wide and includes those in the unorganised sector as well, irrespective of all the characteristics that result in inadequate

⁴¹ Mishra, P.S., Kumar, P. and Srivastava, S. (2021). Regional inequality in the Janani Suraksha Yojana coverage in India: a geo-spatial analysis. *International Journal for Equity in Health*, 20(1). doi:<https://doi.org/10.1186/s12939-020-01366-2>.

⁴² Bhuyan, R. (2015). *The limited success of Janani Suraksha Yojana*. [online] mint. Available at: <https://www.livemint.com/Opinion/PwRuPTCR8imbCM1mKbEJLK/The-limited-success-of-Janani-Suraksha-Yojana.html> [Accessed 4 Mar. 2024].

⁴³ Government of Jammu and Kashmir (2015). *Evaluation Report On Indira Gandhi National Widow Pension Scheme(IGNWPS) Jammu Division (2011-12 to 2014-15)*. [online] pp.2–3. Available at: <https://ecostatjk.nic.in/pdf/reports/evalstudies/IGNWPS2018.pdf> [Accessed 4 Mar. 2024].

⁴⁴ Ambli, A. and KM, J. (2018). SEXUAL HARASSMENT AT WORKPLACE IN UNORGANISED SECTOR. *JOURNAL OF LEGAL STUDIES AND RESEARCH*, [online] 4(2), pp.8–10. Available at: <https://thelawbrigade.com/wp-content/uploads/2019/05/Anushka-Ambli-Jhanvai.pdf> [Accessed 4 Mar. 2024].

⁴⁵ *Vishakha v. State of Rajasthan*, AIR 1997 SUPREME COURT 3011

measures otherwise. With these merits on paper, the implementation of the Act has suffered a serious setback with the enforcement mechanism under section 6 reduced to a dead letter, and obscurity as to the roles and responsibilities of the local committees. There is a deep lack of awareness among women, especially in the marginalised community. There is inaction with respect to establishing an appellate authority⁴⁶.

There are some inherent provisions within the Act that increase the inequality between the organised and unorganised sectors. Under section 12 of the POSH Act, the aggrieved woman is provided with immediate relief in the form of three months' leave or transfer. This is blatantly inapplicable in the unorganised sector.

- Social Insurance in India:

Social Insurance is another arm of social security as recognised by the International Labour Organisation, wherein contributory schemes find their place. Social insurance is a complementary part of the social assistance duties of a welfare state.

- Old Age insurance:

Atal Pension Yojna: Under this scheme, the beneficiaries are allowed to choose the amount of pension they wish to receive, and contribute accordingly. This scheme requires the beneficiaries to have a bank account and fall outside the purview of taxation. This scheme is said to have a special focus towards the marginalized and workers in the unorganized sector.

Pradhan Mantri Shram Yogi Maan-dhan (PM-SYM): While the previous scheme is general, this scheme is specifically tailored for unorganised workers such as street vendors, rickshaw pullers, home-based workers, rag pickers and so on. This is a voluntary and contributory pension scheme wherein upon attaining the age of 60 years, the worker will receive an assured monthly pension of Rs.3000/-. The monthly contribution from the worker varies according to the time of enrolment. However, it takes a melting approach and treats the organised and unorganised workers on the same level, when the latter are clearly more vulnerable. Unorganised workers, especially the groups eligible under this scheme have

⁴⁶ Karwa, S. (2022). *India's Workplace Harassment Law Has Failed Informal, Marginalised Workers*. [online] BehanBox. Available at: <https://behanbox.com/2022/10/03/indias-workplace-harassment-law-has-failed-informal-marginalised-workers/>.

lower wages that they can barely make ends meet, much less stowaway funds for the future⁴⁷.

National Pension Scheme for Traders and Self-Employed Persons (NPS - Traders): This scheme aims to fill the lacunae of the existing social security schemes that excluded the self-employed, particularly retail shopkeepers and traders. Similar to the previous scheme, this is also voluntary and contributory in nature, with the same amount of Rs.3000 being guaranteed. The scheme excludes traders above the age of 40 for eligibility, and the amount guaranteed is also viewed to be quite low⁴⁸. Another illustration of the government's policy towards the unorganised sector is a melting pot approach, with the pension being taxable.

Specified schemes: the Union Government has also envisioned old-age benefits for master craft persons and farmers. Farmers, in particular, are given contributory benefits for old age benefits as well as financial benefits to support the expenses of land-holding farmers.

- Death and Disability insurance:

Pradhan Mantri Suraksha Bima Yojana: This scheme is offered by the Finance Ministry and focuses on providing insurance to the poor and underprivileged with just a premium of Rs.12 per annum, in case of accidental death, or full or partial disability. While the scheme is definitely inclusive, with simple requirements and prevents middlemen from intervening with the flow of benefits, the Government is playing the role of a facilitator and the actual realisation of the benefits depends upon the insurance provider. To ensure a speedy grant of insurance, the medical check-up requirement is done away with. It is speculated that this can cause significant problems for the beneficiaries, as they lack adequate awareness to evade loopholes that the insurance provider may exploit. The other end of this scheme is the Pradhan Mantri Jeevan Jyoti Bima Yojana, which provides life insurance to unorganised workers on payment of Rs.330 per annum. However, this scheme lapses after 55 years of age, becoming counterproductive. Handloom Weavers and Handicraft Artists are also provided with health life, accidental and disability insurance coverage.

⁴⁷ Pan, S. (2022). The poor policy is failing the elderly in India's unorganised sector. *The Times of India*. [online] Available at: <https://timesofindia.indiatimes.com/blogs/developing-contemporary-india/poor-policy-is-failing-the-elderly-in-indias-unorganised-sector/> [Accessed 3 Mar. 2024].

⁴⁸ The Economic Times (2020). National Pension Scheme for traders fails to gain traction. *The Economic Times*. [online] 5 Jan. Available at: <https://economictimes.indiatimes.com/news/economy/finance/national-pension-scheme-for-traders-fails-to-gain-traction/articleshow/73107667.cms?from=mdr> [Accessed 3 Mar. 2024].

Sickness benefits for the unorganised sector: While organised workers are able to avail of paid leave on certain days, the unorganised sector is deprived of this benefit because of the inherent features of their jobs. Unorganised workers, especially those part of underprivileged sections of the society. Workers such as rag pickers, vegetable and fruit vendors, and agricultural workers are forced to forego their income for the day in order to recuperate from trivial illnesses that they may contract. In the absence of proper financial aid, the workers may be forced to access loan sharks or sell their limited assets and fall under further income insecurity. One article reveals that sickness is considered to be of low priority among the unorganized workers⁴⁹. However, it is a reasonable measure on the part of the government to provide at least a limited social safety net that allows the unorganised workers to meet their ends effectively.

With the expansion of the benefits under the ESI Act, of 1948 to unorganised workers through the Code on Social Security, 2020, one can expect the provision of sickness benefits to these workers as well. In the absence of a traditional employer-employee relationship, this means that the primary responsibility falls on the government. Contributory arrangements between the government, Non-governmental organisations and the different groups of unorganised workers can also be highly beneficial.

- Health Insurance:

- Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana (PM-JAY): The Health Insurance Scheme for BPL workers is A provision has been made for issuing a smart card, carrying a unique identification number, to each of these families. Both public and private health facilities will be utilized to provide medical services and there will be cashless transactions to ensure that there is no harassment of the beneficiaries. Each family would be entitled to health care worth 30,000 to 5,00,000 lakh rupees per annum. This scheme has elements of the Universal Health ID as each family is given a unique identification number and with this digitalisation, various hassles for this underprivileged community are minimised. However, the scheme has not avoided public criticism because of its reliance on private healthcare

⁴⁹ Rao, V. M., Rajasekhar, D., & J. Y. Suchitra. (2006). Unorganised Workers: Deprivation, Social Security Needs, Policy Implications. *Economic and Political Weekly*, 41(19), 1913–1919.
<http://www.jstor.org/stable/4418214>

providers and its treatment of healthcare as a commodity rather than a right of a person⁵⁰.

- Rashtriya Swasthya Bima Yojana: Despite the efforts to bring about a Universal Health Insurance Scheme in 2003, the same did not succeed. This scheme, initiated in 2008, is technology-enabled and allows the beneficiaries that is unorganised workers to utilise the services provided by any registered hospital across the country irrespective of where the beneficiary is currently residing. A remarkable feature of this scheme is the fact that it makes the choice between a public and private hospital accessible to BPL families. Further, it can also support the regulation of private health providers through its operation. This scheme invited widespread criticism due to its erroneous insurance-based approach.
- Unemployment insurance: Unorganised employment often includes those jobs that are seasonal in nature. This exposes the workers to the risk of unemployment and consequent income insecurity. It is imperative to provide inclusive unemployment insurance to those in unorganised employment as a welfare state. India offers non-monetary insurance in the following ways:
 - Mahatma Gandhi National Rural Employment Guarantee Scheme: One of the most popular schemes for countering unemployment in the country, it guarantees 100 days of employment annually to the beneficiaries. The same has been extended to 150 days and in case the same is not provided, the beneficiaries shall be provided with an unemployment allowance of 1/3rd of the wage range for the first thirty days and one-half thereafter. The scheme incorporates a balancing approach between social assistance and social insurance. The scheme, on the ground however, suffers issues with regard to implementation and adequacy. Several reports emerge wherein the beneficiaries are not provided with any actual work and are given the wages for the day⁵¹. The panchayats entrusted with the responsibility of

⁵⁰ Chetna Sarvesetty (2023). An Analysis of The Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana (PMJAY) Policy with Respect to the Various Theories of Development with a Special Focus on the Marxist Ideology. *SSRN Journals*. [online] doi:<https://doi.org/10.2139/ssrn.4528821>

⁵¹ Nair, S.K. (2023). Employment days under Mahatma Gandhi National Employment Guarantee Scheme at a five-year low. *The Hindu*. [online] 21 Jan. Available at: <https://www.thehindu.com/news/national/employment->

implementing the scheme at the grassroots level, lack the necessary planning and administrative capacity to do the same. But there are also significant financial constraints for funding the program, with recent budget cuts towards the scheme. Despite the exclusion of contractors and machinery from the purview of the scheme, in many places, the beneficiaries have not been employed. Several states also report that there are issues of discrimination against women and backward classes⁵².

- Aatmanirbhar Bharat Rojgar Yojana (ABRY): This scheme was to boost employment in response to the aftermath of the pandemic and incentivise the during the pandemic. This incentive is provided by the EPFO, taking away the financial burden from the employers. The scheme caps the eligibility for employees receiving not exceeding 15,000 per month. The Central Government will also be paying the employers' and employees' contributions payable for provident funds. The question here is how this translates to unorganised sector workers⁵³. There is no explicit exclusion of unorganised workers from the purview of this scheme. However, challenges such as the lack of an employer and employee relationship in the strict sense, might affect its operation. Setting this aside, it is an appreciable initiative and enabled notable employment generation after a trying time like the pandemic.

While there are a multitude of schemes introduced every year, they are riddled with overlapping and contradictions. Even if the policies seem good on paper, implementation and control mechanisms do not go hand in hand. This is a shared truth for both organised and unorganised workers. However, when it comes to the unorganised workers the state seems to be taken over by policy paralysis, with the specific needs of these workers going unaddressed. While there are efforts definitely being taken, there are still miles to go to

[days-under-mahatma-gandhi-national-employment-guarantee-scheme-at-a-five-year-low/article66416657.ece](#) [Accessed 7 Mar. 2024].

⁵² Dr. Mohd. Ashraf Ali, Dr. Mohd. A. A. and Ahmad, M. (2011). Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA): Issues and Challenges. *Indian Journal of Applied Research*, [online] 1(5), pp.18–20. doi:<https://doi.org/10.15373/2249555x/feb2012/8>

⁵³ Ministry of Labour & Employment (2024). *Aatmanirbhar Bharat Rojgar Yojana (ABRY) | Ministry of Labour & Employment*. [online] labour.gov.in. Available at: <https://labour.gov.in/aatmanirbhar-bharat-rojgar-yojana-abry> [Accessed 7 Mar. 2024].

secure to this section of society the promises offered in our Constitution.

RECOMMENDATIONS

- Conditional transfer programmes as in Brazil: extremely poor households are provided with conditional cash transfers. The cash is transferred provided that the pregnant women are given their prenatal care, healthy eating for nursing women, and pregnancy education, immunisation of children, a minimum attendance of 85% of children aged 6- 15 in elementary school. There are similar programs in India as well and the same is extended to a similar demographic. A similar conditional transfer program can be used to curtail employers in the informal sector. These programs can also be used to ensure the welfare of small business houses.
- In order to cater to the variation of employer and employee relationships in the unorganised sector, it is imperative to distribute the responsibility of social security between the employers, employees and the government on a wider scale than that of the organised sector. Special schemes and detailed legislation are the need of the hour given the increase in entrepreneurship. The requirements of the EPF Act, of 1948 have to be modified in order to realise effective results and mere subsumption is not sufficient.
- Classification of jobs based on exemption of tax and social security contributions. The heterogeneity that exists in the unorganised sector shows that we cannot apply a melting pot approach and ensure equity for each group within this vulnerable sector. Hence, the jobs have to be classified on the basis of tax exemption and social security contributions to be effective.
- For new parents, the Inclusion of years spent on child rearing or unpaid care work for the calculation of pension is a notable step that can help in ensuring income security in the elder years. Maternity allowance even during unemployment is indispensable to protect women in unorganised employment from economic insecurity.
- Recently, a database was created under the Aatmanirbhar Bharat Rojgar Yojana. Similar databases are necessary for the varying groups in this sector and can help in effective unionisation. The tools of collective bargaining thus become at least an

option for those in the unorganised sector.

- Making cover and contribution of self-employed mandatory. Many of the social insurance programs are voluntary in nature and are successful only when appropriate awareness is created. Many individuals lack the knowledge as to the availability of the schemes and India deals with a significant information gap every time a scheme is launched. Effective and standardised mechanisms are the need of the hour for the success of such voluntary programs. To counter the problems in creating mandatory programs for the underprivileged unorganised workers, assistance in the form of cash or kind can be provided. Mandatory schemes are found to have higher rates of effective coverage⁵⁴.
- Change in pension and allowances based on inflation is extremely important to ensure that the allowances and the insurance are sufficient to wade through contingencies.

CONCLUSION

In order to establish a robust social security framework for the unorganised workers in India, who constitute the majority of the workforce, it is crucial for the State to play a central role in providing social security. Effective legislations, detailed schemes, efficacious administration and management, and a proactive judiciary is the complete chain required for improving the living standard of those in the informal sector. Minimum social security floors are, however, yet to be mentioned. In this analysis, we discovered that some problems are not addressed at all, and some problems are, through schemes. While some schemes are good on paper, they lack effectiveness in their implementation. Overcoming the policy paralysis India is currently in and viewing social security as a right at all levels of government and society is the pressing priority.

⁵⁴ Agarwal, U. and Agarwal, S. (2018). SOCIAL SECURITY FOR DOMESTIC WORKERS IN INDIA. *Socio-Legal Review*, [online] 14, pp.47–60. Available at: <https://docs.manupatra.in/newslines/articles/Upload/33C4D30A-4721-4464-9DF2-5DFA4A769B80.pdf> [Accessed 3 Mar. 2024].

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