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SOCIAL SECURITY FOR UNORGANISED WORKERS IN INDIA

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Social Security for Unorganised Workers in India

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Citizens Rights Collective (CiRiC)

The study on "Social Security for Unorganised Workers in India" was done as part of the European Commission supported project: "Securing rights and sustainable livelihoods through collective action and education for people dependent on the informal economy in India."

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FOREWORD

The world of work for majorities of Indians is full of fragility and vulnerability. Ever-increasing flexibilities in the labour markets push workers into further vulnerabilities with regard to wages, “working conditions” and “bargaining ability”. The vast majorities of our workers in India, over 93% of them, fall in the category of the “informal sector” – with no regularity of wages, measly, if any, forms of social security and rights, and little prospect of joining the ranks of regular wage workers.

To construct a fair and just world for millions of wage workers we need to constitute a constitutionally enshrined and justiciable “right to work”, in addition we need to make good on a promise of a decent minimum wage with provisions of indexation. The labour laws regime should unequivocally ensure equal wages for equal work; the recognition, reduction and redistribution of unpaid care work of women; and a universal social security cover with social security and right to food, education, health, shelter, decent work, pensions, maternity benefits, life and disability cover.

As part of the European Commission supported project to work on “*Securing rights and sustainable livelihoods through collective action and education for people dependent on the informal economy in India*” it was felt that a study should be undertaken on the issue of social security for unorganised workers that could inform ongoing interventions and engagements to ensure rights of working people.

We are thankful that Vaibhav Raaj took up the responsibility of researching the subject and writing up the report. Colleagues at Citizens Rights Collective (CiRiC) assisted the study and in bringing out this publication.

We look forward to any comments and suggestions.

In solidarity,
Sandeep Chachra,
ActionAid Association

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Members of the Workers' Solidarity Network and the Working Peoples' Charter are thanked for their support in developing some important arguments in the report. Meena R. Menon guided the drafting of this report and reviewed it. Gratitude is also expressed to Professors Ravi Srivastava and Praveen Jha, Baba Adhav, Ramendra Kumar, Sudhir Katiyar, Dr Chirashree Dasgupta and others for sharing their insights on the subject. Special thanks are due to Chandan Kumar and Ananya Basu for their support in the writing of the report.

ABBREVIATIONS

DPSP	:	Directive Principles of State Policy
EPF	:	Employees' Provident Fund
FDI	:	Foreign Direct Investment
GoI	:	Government of India (the Central Government)
HLEG on UHC	:	High Level Expert Group on Universal Health Coverage
ICDS	:	Integrated Child Development Scheme
ILO	:	International Labour Organization
IMF	:	International Monetary Fund
MDMS	:	Mid-day Meal Scheme
MoHUPA	:	Ministry of Housing and Urban Poverty Alleviation
MoLE	:	Ministry of Labour and Employment
NAC	:	National Advisory Council
NAFUS	:	National Fund for the Unorganised Sector
NCAER	:	National Council for Applied Economic Research
NCEUS	:	National Commission for Enterprises in the Unorganised Sector
NCL-I	:	First National Commission on Labour Report, 1969
NCL-II	:	Second National Commission on Labour Report, 2002
NCRL	:	National Commission on Rural Labour
NCSEW	:	National Commission on Self-employed Women and Women Workers in the Informal Sector
NFSA	:	National Food Security Act
NREGA	:	National Rural Employment Guarantee Act

NSSO	:	National Sample Survey Organisation
NSSWF	:	National Social Security and Welfare Fund
NUHHP	:	National Urban Housing and Habitat Policy
OBCs	:	Other Backward Castes
PMO	:	Prime Minister's Office
RTSSC	:	Right to Social Security Campaign
SC	:	Scheduled Caste
SEWA	:	Self-Employed Women's Association
SSA	:	Sarva Shiksha Abhiyan
ST	:	Scheduled Tribe
TPDS	:	Targeted Public Distribution System
UPA-I	:	United Progressive Alliance (2004-09)
UWSSA	:	Unorganised Workers' Social Security Act
VIKAS	:	Vishwakarma Karmik Suraksha Khata
WPC	:	Working Peoples' Charter

INTRODUCTION

More than 45 crore workers are presently working in Indian industries, homes, farms, roads, their own homes and every other place where society needs them. However, according to Indian legal norms more than 42 crore of these workers fall in the category of informal workers who survive on Rs 20 a day -- a cruel metaphor for minimal wages and no rights! The government needs them to run rails, roads, power houses, ration shops and for almost all the things it does. Big capital needs them to produce for domestic and international markets and contribute to India's GDP growth. Small businesses need them to break-even and expand competitively. The middle class needs them for clean houses, cooked food, reliable transport, child care and recreation. Big farmers need them to sow, harvest and sell food grains and agricultural exports. Small farmers need them to share the workload on their farms. And the Indian Army needs them too, for more or less similar reasons.

The life of informal workers

These workers exist whenever they are required. They work on all days of the week, often more than 8 hours a day mostly without minimum wages in all kinds of unhygienic and dangerous conditions, residing at a stone's throw from their workplace even if it is a dumping ground, largely away from their families as migrants, without identity or citizenship rights and generally at the cost of their dignity and well-being literally from the time they are old enough to speak till the time they die of old age, disability or disease. In the absence of a clearly-defined employer-employee relationship the present legislative and policy frameworks do not compel the state to protect and promote their incomes.

Risks of unemployment and underemployment

The best example of an informal worker is an individual worker earning a daily income that is sufficient to provide for his/his daily individual needs for the days on which he/she has employment. A question that arises here is: How do informal workers provide for themselves on the days and in the phases when they do not have employment? Such periods of unemployment constitute a significant portion of a worker's lifecycle. For example, during childhood before they attain an employable age. Another example is a phase when they might want to attain higher education even after reaching an employable age. For a woman worker, who is more often than not denied the chance to get higher education in India, childbirth in the youth can prevent her from being gainfully employed (we remain cognisant that women in India are seldom relieved of unpaid work responsibilities of care and other domestic work even during childbirth). Then, there is the fag end of a worker's life in which he/she might not be able to work due to old age or disease.

In addition to these natural phases of possible unemployment during a worker's lifecycle, there are periods of unemployment resulting from their inability to guard against various kinds of risks including disease, disability, retrenchment, social conflict and displacement due to public or private actions. In sum, there are myriad natural and artificial scenarios in which a worker may not be able to earn enough to support his/her daily needs. In addition, there are many other life events and long term needs such as marriage and starting a family, acquisition of movable and immovable assets and other social obligations.

The role of the state

We understand that even if informal workers can provide for their individual selves during periods of employment, they need additional income and support for periods of unemployment. However, in 2007 the National Commission for Enterprises in the Unorganised Sector (NCEUS) showed that more than two-third of India's citizens survived on less than Rs 20 a day. Since then not much has been achieved to improve the lives of this impoverished majority, which often remains invisible in official statistics and national accounts. In fact, the most recent estimates suggest that it has become even more difficult to find employment in India. Moreover, government policies have been directed at the shrinking formal employment. The Government of India itself is the largest purchaser of contract services that entail low wages and no social security. The share of wage cost in gross value of output in the Indian economy declined sharply from 9 per cent in 1973-74 to roughly 2 per cent in 2011-12. This means that economic growth increasingly became capital-intensive, workers' real wages are either stagnant or falling and that rampant informalisation of employment is facilitating downward pressure on the wages of both organised and informal workers.

As informal work has become the new normal in a flexible labour market in India, workers face aggravated risks during periods of unemployment. Thanks to the freedom of association and collective bargaining, formally employed workers have traditionally been able to negotiate for state and employers' support in the form of job security, timely promotions, regular pay, periodic revisions of variable allowances, regulated work hours, paid leave, enhanced pay for overtime work, bonuses, provident fund, gratuity, various forms of health, life and disability insurance, maternity benefits and old age pensions. These protective institutions and measures are scarcely available to 93 percent of the working population of India. In fact, the proposed Draft Codes on Labour Laws, if they materialise as legislations, will effectively dismantle these protections even for formally employed workers.

Locating this report

This report addresses these subjects in four chapters with the aim of reinvigorating the policy and politics of

social security in India. It builds on existing literature and analyses to advance some arguments.

Chapter 1 focuses on the demographic and social composition of unorganised workers to underscore a peculiar social reality. The level of economic deprivation and graded marginalisation among the workers is so far-reaching and historically entrenched that precariousness has become a norm rather than an exception. The chapter examines policy attempts to ascertain the definitional characteristics of unorganised workers through major investigative interventions. It further updates NCEUS' (2007) enumerative findings to underscore the major characteristics of unorganised workers in India's population. The sectoral composition of the livelihoods of unorganised workers shows a declining share of agricultural employment and rising informality in industry between 1993-94 and 2011-12. A critical reality of the labour market in India is highlighted in the social composition of unorganised workers, where poverty and vulnerability move with the historically marginalised identities of Dalits, Adivasis and Muslims irrespective of the sector or employment they move to. While the lack of legal protection for unorganised workers' rights is well known, this chapter looks at the failure of NCEUS' historic attempts to regulate their conditions of work and access to social security. In this context, large-scale migration for work complicates the route to policy resolutions of precariousness.

Chapter 2 tackles some political conceptual debates inherent in the policy discourse on social security in India. It invokes the unrealised constitutional vision of social justice where structurally normalised precariousness proscribes the means for unorganised workers to organise for their rights. It does not help that modern capitalism has found a convenient symbiosis with such structures of adverse socioeconomic inclusion in the mainstream. Further, the chapter criticises the artificial distinction between 'work' and 'non-work' based on political expediencies of policy. This distinction operates in a system of graded inequality to fragment the working class in a cynical competition for limited resources. In this context, the chapter revisits the parameters of policy approach to social security.

Chapter 3 lays out the historical trajectory of the efforts to legislate on social security for unorganised workers since the mid-1990s. It critically examines the shifts in policy outlook to the constituencies of unorganised workers since independence. It includes a brief review of the implementation of the Unorganised Workers Social Security Act, 2008.

Chapter 4 concludes the report with an appraisal of the state's contemporary attempts in designing policy for universal social security. This attempt is embodied in the 2018 Draft Labour Code on Social Security and Welfare. While the Draft Code itself is a document under negotiation, it is important in

understanding how the present dispensation aims to continue or break from the past approaches to social security as outlined in the previous chapters.

The appendix gives recommendations on social security developed by the Right to Social Security Campaign of the Working Peoples' Charter.

The report seeks to inform the outlook and strategies of civil society campaigns for social security. It builds largely on existing research on the subject and draws from the ongoing efforts of the Working Peoples' Charter in their Right to Social Security Campaign.

CHAPTER 1

UNORGANISED WORKERS: THE NORMALISATION OF A PRECARIOUS EXISTENCE

Unorganised workers in India are most often presented as a complex majority of the working population identifiable through statistics of poverty, exclusion and fiscal burden. Major government reports underscore the coincidence of pervasive poverty in India with unregulated forms of unorganised or informal employment. Construction workers, street vendors, domestic workers, fisher folks, agricultural workers, brick kiln workers and such employment categories in India are concurrent representations of poverty and vulnerability as well as the limited success of the state's social welfare policies. Most of this economically marginalised population also belongs to historically socially marginalized categories of women, Dalits, Adivasis, other backward classes (OBCs) and Muslims. Hence, precariousness of labour is not only a market outcome but it is also a testimony of the persistence of exclusionary structural features of Indian society.

We explore these themes by using the statistical data available on unorganised workers. A conscious endeavour here is to the recognition of the democratic rights and political agency of unorganised workers in state policy and discourse. This owes to the position that the prime concern of the provision of a national minimum social security to unorganised workers is not a technical-economic but a political question. It is the political and moral value placed on the lives of a certain category of citizens by the state that

determines the intent and extent of provision of social security to them. This is best reflected in the state's contrasting budgetary approaches to the aspirations of private big business and the aspirations of the workers of India. In financial year 2013-14, the central government allowed tax concessions to the tune of Rs 5,73,000 crore to the corporate sector. This amount is twice the sum required to provide a slew of social security benefits to more than 40 crore unorganised workers in one year.¹

This chapter begins by tracing the evolution of the understanding and definition of the unorganised sector and workers in three key reports of the central government. In this section, we follow the shift in the state's view of unorganised workers as politically empowered democratic agents of change to a perennially destitute majority. In the early decades of independence, the unorganised sector was seen as a transitional sector to be gradually incorporated in the organised category through planned economic and legislative efforts. However, by the turn of the 1980s the unorganised sector had acquired a quasi-permanent status in the state's labour market discourse.

The subsequent sections of the chapter advance the discussion focusing on specific features of unorganised workers/sector. The sections on population size, sectoral distribution and

1. Based on the calculations of the Working Peoples' Charter (WPC) in 2016-17.

occupational categories directly correspond to the section on social composition. The enormous population of unorganised workers is a testimony of the failed redistribution of gains of India's economic growth, lack of political will by the state to pass protective legislations for unorganised labour² and the normalisation of socioeconomic and political exclusion through its sheer pervasiveness across the country. The sectoral distribution of unorganised workers coupled with statistics on their general poverty and vulnerability suggests that the precariousness of work conditions is arguably attached to historical social categories irrespective of their sector of employment. This leads us to the social composition of unorganised workers wherein we find that those who were oppressed in India before independence, continue to remain so even in independent India.

It is the women, Dalits, Adivasis, OBCs and Muslims who constitute most of the unorganised workforce. Given their nature of employment they remain not only socioeconomically marginalised but they are also excluded from most affirmative action policies³ designed with the organised sector in mind. The fundamental facts of the social composition of the unorganised workforce is enough to argue that 'traditional' oppressive structures of caste, patriarchy and religion are successfully deployed even in modern sectors of industry and services to the advantage of capital.⁴

By refusing to decisively intervene against this phenomenon, the state demonstrates a peculiar power of 'non-decision' which naturally works to the advantage of 'traditional elite castes' even under globalised capitalism. Rampant privatisation of erstwhile state domains in the economy and society amounts to practical delegation of governance responsibilities to private entities. Within this framework, keeping the unorganised workers out of

the ambit of protective labour legislations and social security institutions (such as EPFO), perpetuates traditional oppression in modern forms. The section on legal protection presents some corroborative findings on laws pertaining to conditions of work and social security of unorganised workers.

Internal migration further challenges the state's capacity to provide social security to unorganised workers. This chapter cites critical studies that point to the size and nature of the problem. Uneven regional development has been the hallmark of capitalist development in India wherein the states with favorable capital investments enjoy economic growth at the cost of bypassing sending states in investments despite their vast reservoirs of cheap labour. Therefore, the patterns of migration discussed in the section on migration also indicate a dependency system among the Indian states. Unwilling to constructively engage with the challenges of internal migration, central policies lack intent and capacity to balance uneven regional development, especially by protecting the interests of migrants (and by extension their sending states) in the dynamic national labour market.

We conclude the chapter by recognising that the condition of unorganised labour in India presents a challenge not only for policy but also civil society. Successful political organisation for the rights of unorganised workers has mostly eluded the traditional organisations of labour. As argued earlier, being 'unorganised' is as much rooted in the state's social and economic policy as it is in working class politics. While the state's failure in guaranteeing national minimum social security for unorganised workers has been the subject of many reports and studies, the present report brings out the political aspect of this discussion. This chapter is an exercise in establishing the fundamental features of the unorganised sector and workers who play an instrumental role in shaping state policies and working class politics.

2. For instance, see the journey of the Unorganised Workers' Social Security Act, 2008 in this report.

3. For instance, the affirmative action policy of reservation in public sector jobs for Dalits and Adivasis does not extend to the organised private sector.

4. Harris-White and Gooptu (2001: 90) argue: 'Work is organized through social institutions such as caste and gender. Capitalism is not dissolving this matrix of social institutions but reconfiguring them slowly, unevenly and in a great diversity of ways. The matrix still affects the tasks most people do, the kinds, terms and conditions of the contracts they are offered and either settle for or refuse.'

1.1 Definition and Description of the Unorganised Sector/Workers

The definitions of the unorganised sector and workers in three key reports of the Indian government reflect a rather slow evolution of its understanding and cognition of the significance and conditions in state discourse. In recognition of these workers' issues the movement has moved from a passing notice to a comprehensive realisation of the crises that pervade their lives owing to government failure to regulate their working conditions and providing them social security.

In 1969, NCL-I divided the entire Indian workforce into urban and rural labour- the urban sector was mainly identified as non-farm employment in the organised sector and the rural mainly consisted of agricultural labour. NCL-I did not attempt a definition of the unorganised sector or workers but sought to describe the category as:

'those 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' (Gol, 1969: 417).

This description is remarkable in foregrounding the fact that unorganised workers are in fact like all other citizens, active agents empowered by a young democracy to politically organise for their rights guaranteed in the Indian Constitution. By this logic their status of being 'unorganised' conveys as much a political question as a socioeconomic one. Albeit recognising a limited set of workers in occupation types and population, NCL-I stressed that while socioeconomic factors might explain the dismal conditions of unorganised workers, a resolution of their issues was ultimately contingent on their capacity to politically organise for their rights.

The government's subsequent commissions and reports increasingly leaned towards characterising the unorganised sector and workers with the conditions of their work and living -- typically precarious work and lack of social security and dignity.

In 1987, the National Commission for Self-Employed Women pointed to the peculiar plight of unorganised women workers confined to drudgery under difficult socioeconomic conditions including those of unpaid family labour. The National Commission for Rural Labour set up in 1987 added the dimension of the majority of the workforce subsisting in the face of agriculture's declining capacity to support their livelihoods and the unavailability of sufficient and suitable non-farm opportunities in rural areas.

An estimation of the size and features of the unorganised workers traditionally rested on the identification of informal enterprises in India. There was lack of clarity on the status of those workers who could not establish direct employment in either a formal or an informal enterprise. This resulted in obscuring the conditions and status of a large number of contract workers, self-employed workers and casual workers. Some headway was made in shifting the basis of the definition of the unorganised sector/workers from enterprises to forms of employment in a workshop jointly organised by the National Council for Applied Economic Research (NCAER) and the Self-Employed Women's Association (SEWA) in 1997. It was recognised that 'the informal sector included all workers in informal enterprises, some workers in formal enterprises, self-employed workers, and those doing contract work for informal or formal sector enterprises and contractors' (Gol, 2002: 599).

Taking cognisance of the complexity and unresolved issues in the earlier debates, NCL-II decided not to rely on the enterprise-based definition of the unorganised sector/workers. Instead it chose not to define the sector altogether but rely on a descriptive approach in the identification of unorganised workers. The description of the unorganised sector/workers by NCL-II while pointing to their precarious work and living conditions, notably also included the 'lack of government support' as a signifier of their unorganised status (Gol, 2002: 601). Hence, a significant improvement in the unorganised category could be effected by suitable state legislations regulating their conditions of work and guaranteeing a minimum level of social security.

NCL-II did delve into an important nuance of the debate surrounding the often inter-changeable use of the terms 'unorganised' and 'informal' to describe the

sector/workers. It referred to scholars' reservations about using the term 'unorganised' since it largely pertains to a size-based categorisation of enterprises. It tends to overlook the nature of employment within these enterprises. On the other hand, the term 'informal' connotes a plethora of employment types and situations where irrespective of the organised or unorganised status of the employing enterprise, the worker's form of employment can be unorganised or informal. It also brings into the fold of the informal sector swathes of occupation types that elude identification in the enterprise-based approach. In the words of NCL-II:

'In the broader sense, the number of workers employed in an enterprise cannot be the basis of defining the unorganised sector because such an enterprise based definition does not take into account the vast masses of unorganised labour who work as agricultural workers, cultivators, construction workers, self-employed vendors, artisans, traditional crafts persons, home-based workers, traditional service workers, workers depending on the common property resources such as forests and fisheries and others. Almost the entire non-agricultural activity in rural India is unorganised. All these sectors are mostly unorganised in terms of organisation, employment and labour participation' (Gol, 2002: 601-602).

NCL-II also pointed out that there were deep interlinkages between the unorganised and the organised sectors in the globalised Indian economy wherein neither sector can be understood in isolation from the other. This fact notwithstanding, protective legislations for labour in the organised sector almost generally deny similar protections to unorganised labour in India.

With no regulation of their working conditions by the state and the dismal living conditions of a majority as the Indian labour market was expected to become more flexible under liberalisation policies, NCL-II stressed on the need for an umbrella legislation to offer basic minimum social security to unorganised workers.

NCEUS took a major leap in 2007 by attempting to provide clear definitions of the terms 'unorganised sector' and 'unorganised' workers. It defined the unorganised sector as:

'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 and with less than ten total workers' (NCEUS, 2007: 3).

Unorganised workers were defined as:

'Unorganised workers consist 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' (NCEUS, 2007: 3).

These definitions undoubtedly constitute a commendable attempt to crystallise and resolve key longstanding debates on definitional and statistical issues⁵ regarding the unorganised sector/workers. They successfully widen the coverage of the unorganised category to accommodate the hitherto excluded income-generation activities as pointed out by NCL-II as well. However, given the vast size and internal diversity of the unorganised sector/workers, no definition can encapsulate all key descriptions of the category. With this in mind, the subsequent sections of this chapter discuss certain key features of the unorganised sector/workers. The discussion in this chapter is limited to laying out the fundamental features of unorganised employment in key statistics. The next chapter is dedicated to deepening an understanding of the state's approach towards unorganised workers as implicit in its reports and policies.

1.2 Population Size

The enormous population size of unorganised workers is a testimony to the failed redistribution of gains of India's economic growth, the lack of political will to pass and effectively implement

5. While this report does not go into the nuances of the statistical issues related to the informal economy, a detailed review of these issues by NCEUS can be found at: http://nceuis.nic.in/Report_Statistical_Issues_Informal_Economy.pdf

protective legislations for unorganised labour and the normalisation of socioeconomic and political exclusion through its sheer pervasiveness across the population. The features of marginalisation and the unorganised nature of the workers obtain normalisation in the sheer size of the population.

Through rigorous statistical exercises, NCEUS established that approximately 92 percent of India's workforce remained in the unorganised sector/employment as of 2004-05 (NCEUS, 2007: 4). The Right to Social Security Campaign (henceforth RTSS) updated the population estimate by using 2009-10 figures. We find that the proportion of informal or unorganised workers remains above the earlier NCEUS estimates at 92.83 percent of the total workforce of 46.02 million (Table 1.1).

Figure 1.1 shows a marginal increase in the number of unorganised workers and the simultaneous decline in the number of workers in organised employment.

Moreover, there was a noticeable increase in unorganised employment within the organised sector (Figure 1.2).

By 2014-15, the number of workers employed in India had increased to 47.29 crore with the number of unemployed workers at 1.08 crore. The ILO notes that employment in the unorganised sector declined from 86.3 percent in 2004-05 to 82.2 percent in 2011-12. At the same time, informal employment within the organised sector rapidly rose. The net effect of these changes was that the share of unorganised workers in the total workforce remained stagnant at around 92 percent in 2011-12. Within the overall category of informal workers, the largest group was own-account workers (32.2 percent), followed by informal employees in the informal sector (30.0 percent) and contributing family workers (17.9 percent).⁶

In this context, it is important to note three salient features regarding the workforce and employment scenario in India. One, almost all the growth in employment is unorganised employment, apparently

at the cost of organised employment. Two, employment generation rates are unable to match the rate of increase in the workforce.⁷ The saga of 'jobless growth' has continued from the UPA regimes to the present NDA government.⁸ Three, given these two features, there is a marked scarcity of jobs in the Indian labour market, particularly those that can offer decent living standards.

1.3 Sectoral Distribution of Unorganised Workers

The sectoral distribution of unorganised workers coupled with statistics of their general poverty and vulnerability suggests that precariousness of work conditions is arguably attached to historical social categories irrespective of their sector of employment.

The majority within the category of unorganised workers historically subsisted in the agrarian sector. As labour moved out of agriculture (even if seasonally) to the industry and services sectors, the unorganised nature of their work remained largely unchanged (Figure 1.3). The most precarious features of agricultural employment including low wages, unregulated conditions of work and lack of social security persist in the new sectors. This can be read as the state's approach to certain sections of the population, mainly women, Dalits, Adivasis, OBCs and Muslims. It does not matter if these sections find employment in agriculture or in the so-called modern sectors of industry or services. The denial of their entitlements by the state also moves with them.

1.4 Social Composition of the Unorganised Workforce

The social composition of unorganised workers shows that those who were oppressed in India before independence; continue to remain so even in independent India. Women, Dalits, Adivasis, OBCs and Muslims constitute most of the unorganised workforce. Given their nature of employment they remain not only socioeconomically marginalised but are also excluded from the most affirmative action policies designed with the organised sector in mind.

6. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_496510.pdf

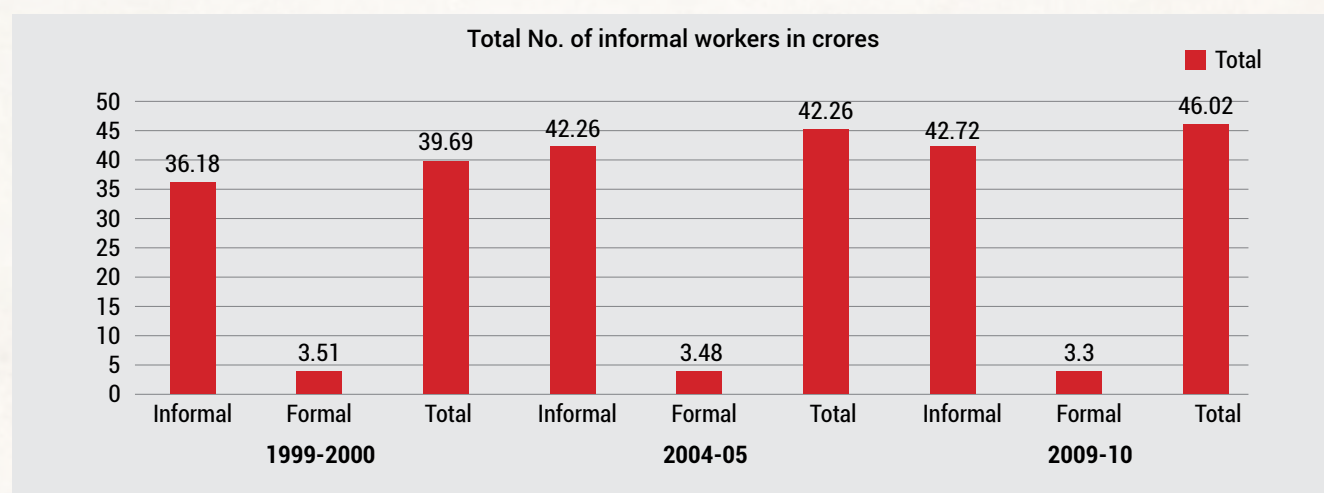
7. <http://www.thehindu.com/opinion/op-ed/job-growth-at-a-snails-pace/article8581472.ece>

8. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_496510.pdf

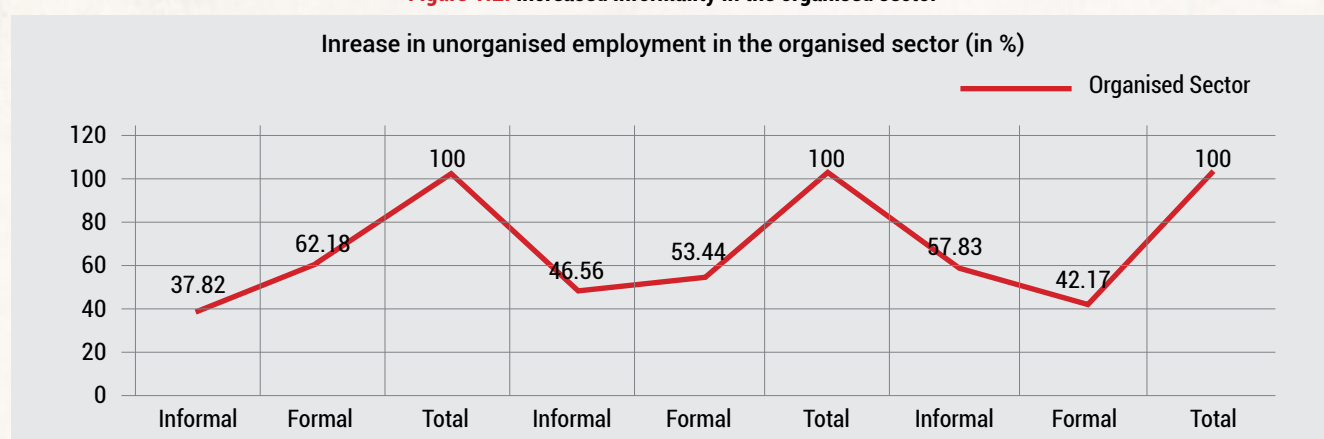
Table 1.1. Population Size Estimates of Unorganised and Organised Workers in the Indian Workforce

Sector		1999-2000			2004-05			2009-10		
		Informal	Formal	Total	Informal	Formal	Total	Informal	Formal	Total
Unorganised Sector	No. of workers (in crore)	34.13	0.14	34.27	39.35	0.14	39.49	38.51	0.23	38.74
	Percentage	99.59	0.41	100	99.65	0.35	100	99.41	0.59	100
Organised Sector	No. of workers (in crore)	2.05	3.37	5.42	2.91	3.34	6.25	4.21	3.07	7.28
	Percentage	37.82	62.18	100	46.56	53.44	100	57.83	42.17	100
Total	No. of workers (in crore)	36.18	3.51	39.69	42.26	3.48	45.74	42.72	3.3	46.02
	Percentage	91.16	8.84	100.00	92.39	7.61	100.00	92.83	7.17	100.00

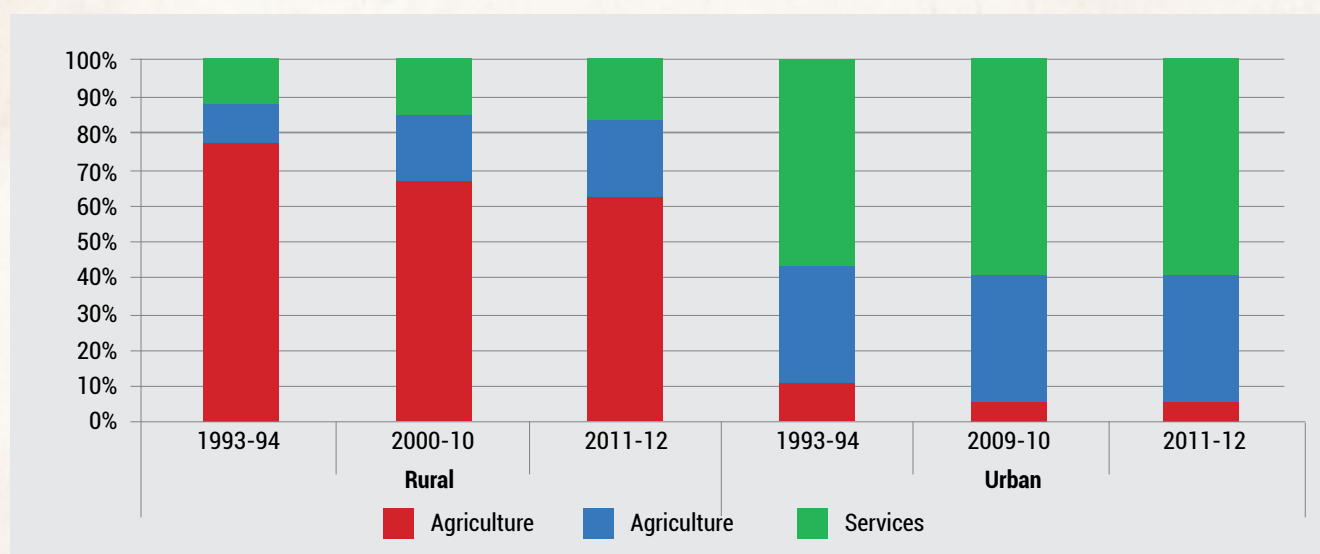
Source: NSSO and calculations done by the RTSS team.

Figure 1.1. Marginal changes in the population size of unorganised and organised workers

Source: NSSO and calculations done by the RTSS team.

Figure 1.2. Increased informality in the organised sector

Source: NSSO and calculations done by the RTSS team.

Figure 1.3. Different aspects of structural transformation and sectoral employment shares (%), 1993-94 to 2011-12⁹

Source: National Sample Survey, various rounds.

A commendable contribution of NCEUS was the correlation of poverty and vulnerability of a majority of the Indian population with its status as unorganised workers; 79 percent of the roughly 423 million unorganised workers in 2004-05 belonged to the category of poor and vulnerable (NCEUS, 2007: 7). A notable feature of this poor and vulnerable population is that a majority belongs to the historically marginalised social categories of Scheduled Castes (Dalits), Scheduled Tribes (Adivasis), OBCs and Muslims. NCEUS found that of the total population of various social groups within the unorganised workers' category, 88 percent Dalits and Adivasis, 80 percent OBCs and 84 percent Muslims were poor and vulnerable in their economic status.

It must be noted that these patterns of socioeconomic exclusion are historical fact of Indian society. They mark significant continuity in identity-based exploitation and the conspicuous failure of state policy in overcoming this despite express constitutional commitments. It needs to be noted that NCEUS only takes into account the parameters of an official poverty line that has remained highly contentious for its method of estimation as well as for its failure to account for multi-dimensional poverty in India (NCEUS, 2007: 8). This data also reveals that unorganised employment itself is a practical marker

for poverty and vulnerability where nearly 55 percent of even those who do not belong to historically marginalized categories of Dalits, Adivasis, OBCs and Muslims are also poor and vulnerable by their sheer informal status of employment.

Further, Dalits (61.5 percent) and Adivasis (25.1 percent) constitute the highest proportion in the category of bonded labour (NCEUS, 2007: 105). Constituting significant majorities among agricultural labourers, Dalits and Adivasis are also considered the most vulnerable within this major occupational category (NCEUS, 2007: 121). Their vulnerability remains high even if they belong to a slightly better off category of small and marginal farmers. In agriculture, the Dalits, Adivasis and OBCs are also highly dependent on informal sources of financial lending which are known to perpetuate exploitative terms of transactions often responsible for debt traps and inter-generational bondage (NCEUS, 2007: 136).

NCEUS paid special attention to the specific conditions of Muslim workers whose land-holding status, educational status, economic backwardness and general labour market vulnerabilities placed them closer or below the conditions of Hindu Dalits. NCEUS found that Muslims -- both OBCs and other men and women -- were highly unlikely to find employment in the organised sector in India (NCEUS, 2007: 21). They

9. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_496510.pdf

Table 1.2: Percentage distribution of expenditure classes by social identity, informal work status and education (2004-05)

Sl.No.	Economic Status	STs/SCs	Social Categories (Percentage share in own total)			(Percentage of Un-organised Workers)	Education	
			All OBCs except Muslims	All Muslims except STs/SCs	Others (with out STs/SCs, OBCs and Muslims)		Illiterates	Primary and below primary
1	Extremely Poor	10.9	5.1	8.1	2.1	5.8	8.1	5.0
2	Poor	21.5	15.1	19.2	6.4	15	19.0	14.2
3	Marginally Poor	22.4	20.4	22.3	11.1	19.6	22.2	19.4
4	Vulnerable	33	39.2	34.2	35.2	38.4	36.9	40.0
5	Middle income	11.1	17.8	13.3	34.2	18.7	12.8	18.9
6	High income	1	2.4	2.2	11	2.7	1.0	2.5
7	Extremely poor and poor (1+2)	32.4	20.3	27.4	6.5	20.8	27.1	19.2
8	Marginal and Vulnerable (3+4)	55.4	59.6	57.1	46.3	57.9	59.1	59.4
9	Poor and Vulnerable (7+8)	87.8	79.9	84.5	54.8	78.7	86.2	78.6
10	Middle and High Income (5+6)	12.2	20.1	15.5	45.2	21.3	13.8	21.4
	All	100.00	100.00	100.00	100.00	100.00	100.00	100.00
	All (Million)	302	391	138	252	423	270	164

Note 1: Refers to person aged 15 and above.

Source: 61st Round 2004-2005, Employment-Un employment Survey: Computed.

Source: NCEUS (2007: 7).

fared worse than Hindu Dalits and Adivasis who made limited gains in employment due to affirmative action policies. Both Muslim men and women predominantly rely on self-employment for their livelihood, indicating a peculiar pattern of religious discrimination in the Indian labour market (NCEUS, 2007: 22). Along with Adivasis, Muslims see the highest incidence of child deprivation labour wherein economic deprivation is seen associated with incidence of child labour and out-of-school children (NCEUS, 2007: 101). This fact alone jeopardises not only the present but also the future well-being of the Muslim community as a whole. NCEUS has taken due note of the recent and parallel efforts at understanding the challenges to the well-being of the Muslim community including that of the Sachar Committee's findings. Its own findings about the Muslim community from the labour market perspective closely complement and corroborate the assertions of the Sachar Committee report.

1.5 Legal Protection for Unorganised Workers' rights

By refusing to decisively intervene against the deployment of 'traditional' oppressive structures of caste, patriarchy and communalism in the labour market to the advantage of capital, the state demonstrates a peculiar power of 'non-decision'. It naturally strengthens the position of 'traditional elite castes' even under globalised capitalism. Rampant privatisation of the erstwhile state domains in the economy and society amounts to practical delegation of governance responsibilities to private entities. Within this framework, keeping the unorganised workers out of the ambit of protective labour legislations and social security institutions (such as EPF), perpetuates traditional oppression in modern forms.

It is a well-known fact that the Directive Principles of State Policy (DPSP) in Part IV of the Indian

Constitution lay down broad goals for policy-based assurances of decent conditions of work and social security for all workers in India. It is thanks to the constitutional vision enshrined in these principles, the many international conventions, particularly ILO's, that have been ratified by India and the interventions of the organised working class movements, that the Parliament and state governments have passed multiple legislations to regulate the conditions of work and social security mechanisms for labour in India. We now present NCEUS' findings that the protective cover of these legislations by and large excludes all the unorganised workers.

1.6 Conditions of Work

NCEUS did a detailed review of existing central legislations for regulating conditions of work in the country. It found that the existing laws can be broadly divided into three categories -- laws applicable to all sections of unorganised workers; laws applicable to some sections of unorganised workers; and laws which can be applicable to unorganised workers subject to relaxations in employment criterion. The review went on to examine each of the central laws for their potential application for unorganised workers and found limited import for the interests of unorganised workers.

In addition, NCEUS also took note of the legislative efforts at the state level that attempt to regulate the conditions of labour including those in unorganised employment. It made special mention of the Kerala Agricultural Workers' Act, 1974 and the Maharashtra Mathadi, Hamal and Other Manual Workers' (Regulation of Employment and Welfare) Act, 1969. It found the scope of Shops and Establishments Act in its various state-level versions to have limited coverage of the unorganised workers' populations in the states (NCEUS, 2007: 163).

In sum, the NCEUS report found that the existing regulatory framework for labour conditions caters almost exclusively to organised workers and very small sections of unorganised workers in specific cases. In its view, the regulations that exist are not suited to the specific needs of unorganised workers. Even if some suitable regulations exist, the dismal state of their implementation leaves most of the unorganised workers out of the ambit of legal protection when it comes to their conditions of work.

1.7 Social Security

NCEUS published a separate report dedicated to the issue of social security of unorganised workers in 2006. It found that the social security framework in India operated at three levels between central and state provisions. Level one consists of universal programmes and schemes for basic social or human development as in literacy, healthcare, drinking water and sanitation. Level two consists of social and human development schemes and programmes targeted at the socioeconomically weaker sections of the population irrespective of their employment status. The third level, as per NCEUS should be constituted of a national minimum social security programme for unorganised workers. Till 2008, the third level mainly consisted of the various occupation-specific welfare boards/funds and some social security schemes set up at the central and state levels to provide relief to some key employment sectors of unorganised workers. In 2008, the central government enacted the Unorganised Workers' Social Security Act (UWSSA) that envisaged a federal set-up for formulating, delivering and monitoring social security benefits to unorganised workers across the country. The Act, however, remains largely unimplemented till date. As a result, the many recommendations of NCL-II and NCEUS notwithstanding, unorganised workers in India remain devoid of social security.

1.8 Migration

Uneven regional development has been the hallmark of capitalist development in India wherein the states with favourable capital investments enjoy economic growth at the cost of sending states thanks to their investments despite vast reservoirs of cheap labour in the sending states. Therefore, the patterns of migration discussed in this section also indicate a dependency system among the Indian states. Unwilling to constructively engage with the challenges of internal migration, central policies lack intent and capacity to balance uneven regional development, especially by protecting the interests of migrants (and by extension their sending states) in the dynamic national labour market.

Large scale internal and international migration of workers for employment is a common feature of the Indian labour market. It can also be argued that given the involvement of frontier national agencies of more than one country in the processes of international

labour migration, there is a semblance of regulation of the basic conditions of migration. ILO has been able to develop an 11-stage formula for understanding and advocating regulatory mechanisms in the process of international migration. However, unfair labour practices and frequent cases of human trafficking are still common risks faced by workers seeking international employment opportunities. Many national and international actors are deeply engaged in advocating policies for minimising these risks.

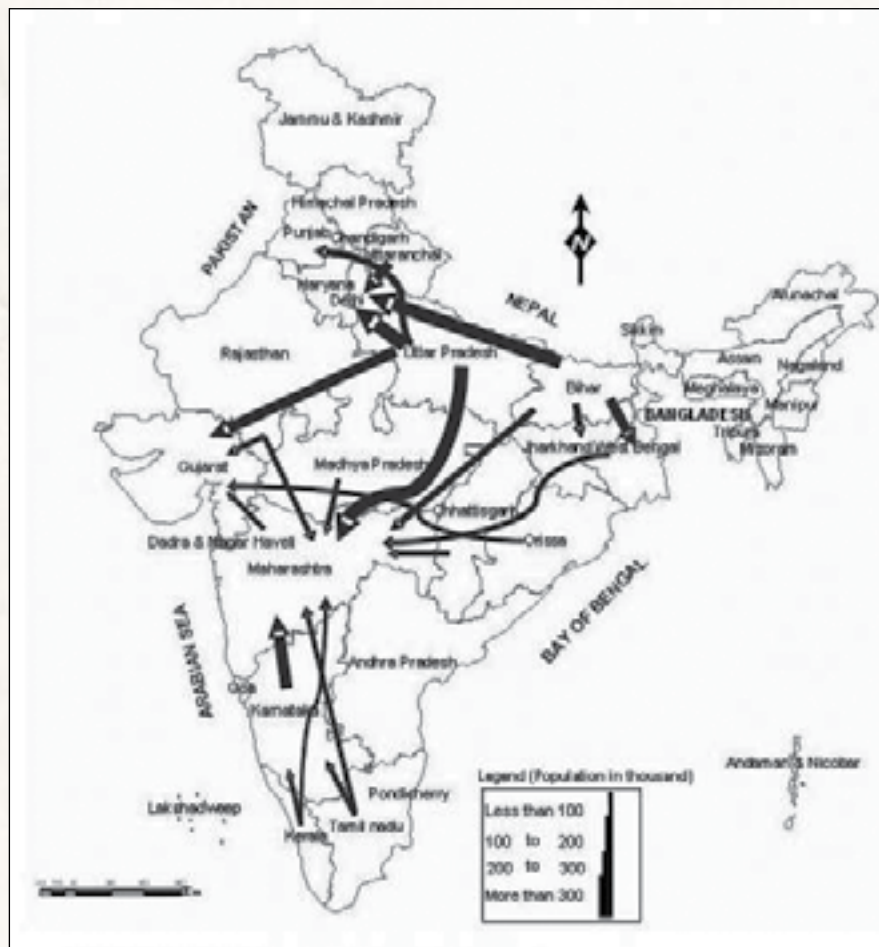
Internal Migration and Unorganised Employment. In this report we focus on internal migration of labour between and within the states and territories of India. This links directly to our agenda of achieving social security for workers under the jurisdiction of the central government. It has been recognized both in NCL-II and in NCEUS reports that the majority of the poor, migrant workers inevitably find work in the unorganised sector in destination areas. It is also

widely known that migrants, particularly seasonal ones, are employed at the bottom of the ladder in the most arduous, insecure and lowest paying jobs.

Migration Corridors. Agricultural workers and their family members often migrate from rural areas of eastern Uttar Pradesh and Bihar to the farms of Haryana and Punjab. This is one of the most important rural-rural migration corridors in India. The rural-urban migration corridors lead from regions of low industrial development like Jharkhand, Odisha and West Bengal to modern urban agglomerations of industry such as Mumbai, Delhi-NCR, Surat and Bangalore (see Map).

Migrant Population. It is difficult to directly arrive at an estimate of the migrant population in India using standard statistical sources like the Census and NSSO. Some broad estimates of internal migration in India are available only in Census 2001 and the

Migration corridors for internal migration



Source: <http://www.migrationpolicy.org/article/internal-labor-migration-india-raises-integration-challenges-migrants>

2007-08 National Sample Survey (NSS). According to the 2001 Census data, India had about 191 million internal migrants differentiated into categories of inter-district migrants (76.8 million) and inter-state migrants (42.3 million). The Census data does not provide a clear distinction between temporary and seasonal migration. On the other hand, the NSS data places the number of short-term migrants at 15 million which can be contested as a gross underestimate by other sources that place the number at 100 million (Abbas and Varma, 2014).

The major reason for migration among women is marriage (70 percent of female migrants). However, this does not conceal the fact that many of these women do participate in the labour market as migrant workers as well. On the other hand, male migration is mostly in search of employment wherein 56 percent of urban male migrants are known to have migrated for work. It is also noted that high-vulnerability inducing short-term migration is more frequent among socially deprived groups of Dalits, Adivasis, women and children (NCEUS, 2007: 96).

Given the lack of details and clarity in estimates on migration from these sources, one would do well to incorporate the learnings of other micro and macro studies that reveal significant participation of migrant labour in India's economy. By one estimate, seasonal migrants contribute as much as 10 percent to India's GDP (Deshingkar and Akter, 2009). Other studies point out that leading sectors of informal employment in India's economy such as construction, domestic work, textile and brick manufacturing, transportation, mining and quarrying and agriculture are main destinations for migrant labour (Abbas and Varma, 2014). Migrant workers typically suffer more difficult conditions of work and high levels of insecurity even in the organised sectors of manufacturing (Sen and Dasgupta, 2009). Their conditions of living are highly precarious given the failure of urban planners to accommodate their needs in the expansion of industrial agglomerates (NCEUS, 2009; Samaddar, 2015). The overall conditions of life and work of migrant workers coupled with unregulated employment systems that force many of them into debt traps effectively constitute conditions of forced labour in many industries such as brick kilns (Majumder, 2015).

1.9 Conclusion

This chapter laid out the salient features of conditions of life and work of unorganised workers in India. The numerical majority of the Indian workforce is unorganised. Its vast population, occupational, socioeconomic, cultural and regional diversity pose a paramount challenge to its political organisation despite the increasingly dismal living conditions of this population. Its majority character coincides with most of the social identities which are historically socioeconomically marginalised. Its unorganised nature is evidence of the calculated exercise of the power of non-decision making of the Indian state favouring the sustenance of the traditional elites in old and new structures of social power. The features of marginalisation and their unorganised nature obtain normalisation in the sheer size of the population. The occupational diversity and employment relations inevitably obey a top-down logic wherein the political and economic decisions of the elites determine almost all aspects of informal workers' lives.

The reality of profound internal social and cultural gradation within the population of unorganised workers is instrumentalised in a cynical hierarchy of oppression and exclusion across gender, caste, religion, linguistic and class lines. In this, certain sections of the oppressed population take part in oppressing other categories within the larger framework of the liberalised political economy. In effect, graded inequalities based on caste promote complex internal differentiations in the working population.

Moreover, the phenomenon of migration dynamically alters the articulation of the oppressive systems into ever new forms to the extent where preliminary perceptions fail to identify the essential continuity of exclusionary structures of caste and patriarchy. On the other hand, the limited capacity of formal political institutions and civil society platforms to organise and represent informed views of such a vast and mobile population further hamper prospects of any improvements.

In the next chapter, we delve deeper into the political nature of the issues concerning unorganised workers and the role of state policy in perpetuating their marginalisation.

CHAPTER 2

THE MEANING AND REALISATION OF THE RIGHT TO SOCIAL SECURITY

"Ask those who are unemployed whether what are called fundamental rights are of any value to them. If a person who is unemployed is offered a choice between a job of some sort, with some sort of wages, with no fixed hours of labour and with an interdict on joining a union and the exercise of his right to freedom of speech, association, religion, etc., can there be any doubt as to what his choice will be? How can it be otherwise? The fear of starvation, the fear of losing a house, the fear of losing savings, if any, the fear of being compelled to take children away from school, the fear of having to be a burden on public charity, the fear of having to be burned or buried at public cost are factors too strong to permit a man to stand out for his fundamental rights. The unemployed are thus compelled to relinquish their fundamental rights for the sake of securing the privilege to work and to subsist,' Dr B. R. Ambedkar (cited in Jayal, 2013: 148-149).

Ambedkar's words from his famous 'Memorandum and Draft Articles on the Rights of States and Minorities' of 1947, have lived on to most powerfully describe the precarious existence of unorganised workers in 21st century India. Borne out by statistics presented in the first chapter, we reiterate some general features of the unorganised workers' population of contemporary India.

Long and uncertain periods of unemployment and underemployment are a regular feature of unorganised workers' lives due to irregularity and non-availability of

employment. These workers constitute the numerical majority of the Indian population today. Four-fifth of them can be classified as poor and vulnerable by the most reductionist standards of measuring only economic poverty. Denied the protection of most of the labour laws, unorganised workers surrender their fundamental rights and dignity to survive on a day-to-day basis. Denied a formal identity as workers, they are confined to invisible drudgery in the underbelly of industrial agglomerations, the dying farms of rural India, construction sites in small towns and cities and almost everywhere across the country in a national blind spot of social policy planning.

Constituting the vast reserve army of labour, they are pitted against each other to depress wages and impose inhuman conditions of work. In this ruthless competition for survival, the only resource they can muster to outstrip the others, besides reducing the cost of their labour power, is their primordial identities of caste, gender and religion. These primordial identities play a destructive role in propelling a hierarchy of exclusion within the unorganised workers. Excluded from most redistributive gains of economic development, deprived social groups fight each other in the name of caste, religion and region in desperate attempts to corner the scarce employment opportunities and social benefits. And in this conundrum, the idea that dies a slow death is the dream of building 'The United States of India' that Ambedkar so deeply cherished.

It is also not uncommon to see vested interests feeding on divisive tendencies both in rhetoric and in policies. The debates around caste-based reservations, migrant workers in Mumbai and Delhi, religious minorities' claims for special attention in policy or simply the demand for old age pensions have all seen the political elites excusing state failures and pitting one social group against another in a fight for space in welfare and redistributive policies. Since the struggle for social and economic welfare has been abstracted from concrete parameters of well-being to a politically constructed competition between social identities over artificially limited fiscal resources of the state, politics in India sees the denial of benefits to one group as a victory for another group, even if the latter has not materially gained from the denial. So upper castes are made to believe that there is an automatic gain in their employment opportunities if reservations are denied to the socially marginalized groups even if the material background is an overall decline in the availability of employment opportunities in the economy.

Similarly, deprived sections of the Hindu population are made to believe that religious minorities in the country are cornering disproportionate resources in the economy leading to their deprivation. In effect, the political class is perennially engaged in rescuing the state from its constitutional and social obligations of welfare for all. Therefore, it has been an uphill task for workers to reorient the discourse to universal guarantee of social and economic rights as a simple citizenship entitlement.

However, there has been a positive transformation in the discourse on social and economic rights through progressive Supreme Court judgments since the 1980s and civil society movements around the right to work, food and education over the last couple of decades.

In the Indian Constitution, while civil and political rights have been enshrined as justiciable in the

Fundamental Rights, social and economic rights which include the right to social security have been relegated to the non-justiciable category of the Directive Principles of State Policy (DPSP). It is DPSP's vision that all the citizens of India should be afforded a minimum level of social security by the state.

'The Directive Principles call for the state to provide for adequate means of livelihood; within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want' (Article 41); make provisions for the ingredients of decent work in terms of conditions of employment and a living wage (Articles 42 & 43); and 'regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties' (Article 47) (Srivastava, 2013: 16).

For the successful realisation of DPSP's vision, it is of utmost important that the core features of political democracy are adhered to in the polity. Ambedkar outlined them as: 'that the individual is an end in himself, that the individual has inalienable rights guaranteed by the Constitution; that the individual should not have to relinquish any of these rights as a condition of receiving a privilege; and that the state should not delegate its powers to private persons to govern others' (Ambedkar cited in Jayal, 2013: 148). The description of the conditions of life and work in the first chapter, besides some familiarity with the dominant discourse of 'economic growth' is sufficient to realise that most of the conditions for a functional political democracy are presently strained if not absent in India. Most importantly, there is a de facto devolution of governance responsibility to private capital/persons under the present sway of free market ideologies.¹⁰ Contemporary polities the world over are witness to the transformation of the state from a guarantor of democratic rights to a mere

10. See, for instance, Cowan's (2015) article, 'Fragmented Citizenships in Gurgaon' in which he discusses how democratic institutions are routinely bypassed in governance and urban planning. As the state has withdrawn from its traditional mediator role between capital and labour, workers have to inevitably negotiate their citizenship entitlements as paid services from private entities. 'For the majority of Gurgaon's history, official governance of the city has been shared between the state commissioner, the zilla parishad, and HUDA, a situation of centralisation which, through bypassing the obfuscations of regular democratic representation, provided the state commissioner and private developers space to develop the city untroubled by democratic procedure.'

facilitator of the agenda of private capital. Citizenry, en-masse, particularly the working classes, are suffering disenfranchisement and are unable to raise popular demands through democratic channels (Harris, 2012: 30).

It is in this backdrop that the demand for a national minimum security must be raised. As subsequent sections of this chapter discuss, the notion of social security and its constituent elements have been widely debated in global and Indian civil societies. There is recognition of the past efforts of the Indian state for providing fragmented and minimal social security through a plethora of schemes and legislations. However, there is also a general realisation that many of these efforts have failed to produce desired outcomes. We saw in Chapter 1 that most of the Indian unorganised workers are subsisting under acute social and economic distress. Therefore, a compelling case can be made for comprehensive social security provisions to be made to all people at the earliest. Concrete proposals for this have been made by high level government committees as well as in a 2008 Act.¹¹ Before we assess the import and success of these proposals and Act, it would be instructive to outline the parameters of such an assessment from the point of view of this report

2.1 All Citizens as Workers

The first chapter discussed the difficulties in identification, definition and description of unorganised work. The efforts made so far by government commissions have centered their descriptions around three core features of unorganised workers -- lack of political organisation, precarious conditions of work and living and lack of access to social security and other protective institutions of the state. Besides these general features, there is also an attempt to identify the workers as belonging to various sectors of employment such as agriculture, construction, manufacturing, home-based production, domestic work and so on. Traditional categorisations of the workforce into rural and urban or agricultural and non-agricultural are gradually giving way to a broad distinction between organised and unorganised, with the former progressively diminishing in size.

There is scholarly engagement with issues of the definition of work and their role in determining the exclusion or inclusion of certain sections of the population, particularly women. The latest among the government's landmark reports, the NCEUS report, takes note of the inadequacy of existing official databases such as the Census and NSSO in accurately enumerating and describing the conditions of life and work of unorganised workers. Many scholars have before and since pointed to the lack of effort on the part of the government to bridge this knowledge gap despite the recommendations of successive labour commissions and others. It can be safely argued that despite NCEUS and others' best efforts at investigating and identifying the categories of unorganised workers, we are unable to identify all workers with their diverse positions and social security requirements in an exhaustive manner. Hence, the risk of large scale exclusion of various categories of unorganised workers from policy frameworks persists.

Here, we do not go into the debates around developing existing and new statistical systems to overcome the challenges. It is nonetheless imperative to underscore some conceptual and political fallouts. To attempt a division of the population between workers and non-workers effectively sustains the invisibility of unpaid work largely carried out by women. At the same time, it is also likely to result in policy loopholes where states of unemployment, underemployment and unpaid work remain unaddressed. As argued before, these states constitute regular features of the life-cycle of unorganised workers owing to macroeconomic factors and both social and personal vulnerabilities.

In the case of NCEUS and its proposed bill for the social security of unorganised workers, it has been pointed out that in its attempt to fit the target population to its definition of unorganised workers, NCEUS has left out more than 85 million unpaid family workers and about 14 million farmers from the proposed social security cover (Neetha, 2006: 3498). In doing this, NCEUS has provided a major setback to its own stated purpose of recommending social security provision for 'all' unorganised workers. This problem is understood as much as an issue of catering to the dominant policy consensus on targeting benefits and limiting the fiscal

11. Reviewed in detail in Chapter 3.

burden as of trying to fit the social reality of 'work' into neat brackets that are fiscally and politically convenient for policymakers.

We are made aware in debates around women's work that pre-existing notions of work drawn from mainstream economics have traditionally failed to recognise personal and relational aspects of work (Himmelweit, 1995: 2) and by extension critical social relations that shape the nature and outcome of work. That women and other such workers do not act as model self-seeking, goal-oriented maximisers, is not a problem with the workers' behaviour but with the theories that attempt narrow compartmentalisation of complex social realities. The result of this problem is that a large productive section of society is categorised as 'non-workers' in theory. In practice, policies unproblematically relegate this population to the category of 'dependents' whose welfare concerns then turn into a burden on the remaining members of society.

We contend that a simple fact of the life of working class people in India is that there is no survival without work (Jhabvala, 1998: L-7). Neither the state nor society in India have historically redistributed resources in a way that enables people to survive without working be they children, old persons or the disabled. Therefore, an artificial construct of 'non-work' or 'dependent' should definitely not create another fault line in society. Such a categorisation is highly demeaning and socially unjust.

In sum, we are of the position that all citizens are workers as long as contingencies such as sickness, maternity, employment injury, unemployment, invalidity, old age, death, the need for long-term medical care and supporting families with children, do not proscribe their participation in the labour market (See NCEUS, 2006: 16). If there are any citizens who forego participation in productive and socially reproductive activities owing to positive contingencies such as abundance of wealth, they are a numerically negligible minority in the population. Therefore, if the state is sincere in at least notionally expanding its understanding of 'work' as discussed earlier, it would not shy away from realising that almost all citizens of India are workers in some capacity or the other.

2.2 State Paternalism and Structural Transformation

The Indian Constitution does not provide its citizens social and economic rights which include the right to social security. Citizenship status in India only guarantees civil and political rights. Therefore, the state in India has historically resorted to the construction of 'exceptional' categories to deliver social and economic welfare. These categories may include conceptual varieties of the poor, women, children and socially marginalised groups on a case by case basis. The formation and existence of each of these categories is in itself a testimony to the insufficiency of the civil and political rights to attain full citizenship without social and economic rights. It is by establishing extreme levels of vulnerability that these categories are expected to establish their 'needs' and not 'rights' for welfare provisions. Even after their needs have been credibly established and articulated, the state is not obliged to provide for these under the law of the land. We see from NCL-I to NCEUS that despite the repeated demonstration of the poor and vulnerable state of unorganised workers, the response from the state has been fragmented and ineffective at best.

This situation primarily owes to the original failure of not making social and economic rights justiciable in the Indian Constitution. It was done with the 'alibi of underdevelopment' and the promise of 'progressive realization' (Jayal, 2013: 165, 168). This allowed political parties and the government unlimited flexibility in deciding the content of social welfare, the criteria for eligibility, the accountability structure for outcomes and the financial commitment to social welfare (Jayal, 2013: 165). The contestations on these issues have continued since independence till date, revived every time a piecemeal policy measure for social welfare is demanded or proposed. The contestations, notably, are not only conceptual or ideological, but also deeply entrenched in the electoral incentive structures of political parties for their respective vote banks.

'Even as welfare appears to stand outside the domain of political contestation, electoral populism—from promises of subsidized rice and clothes in the 1970s, to free water and electricity to farmers in the 1980s, to television sets and notebook computers today—is

projected and received as a form of welfare, even if it is part of a top-down regime of political incentives in elections, and entrenches further the relationship between the citizen and her elected representatives as one of giver and receiver, benefactor and beneficiary' (Jayal, 2013: 169).

The limited philosophy of social welfare in India has been mired in the ideas of charity and state paternalism. These promote regressive social relations based on clientelism that suffocates the potential for social transformation. Social and economic welfare when received as state largesse and not rights-based entitlements does not advance the integration of the marginalised into the mainstream. Instead the construction of 'exceptional categories' for disbursement of social welfare based on political discretion undermines the equalising agenda of citizenship. The 'beneficiaries' of such a social policy are reduced to a lower level of citizenship frozen in that state by the category tags that do little to address the sources of their vulnerability. For instance, it has been argued that the adoption of a monolithic construct of 'unorganised workers' in state policy may prove counter-productive. One, it de facto attributes a permanent status to the unorganised category which has been promised progressive inclusion in the organised category with all attendant benefits since independence. Effectively, it may suggest a tacit legitimisation of rampant deregulation of the labour market promoting casualisation of labour (Kerswell and Pratap, 2016: 229).

Two, a blanket definition of a highly diverse population of unorganised workers can obscure the specific vulnerabilities attached with various occupations and social identities. Three, a minimal social security cover may be promoted as a substitute for large-scale measures for social change such as land reforms, building infrastructure for agriculture, curbing corporate monopoly in both industry and agriculture, increasing protected/formal employment especially through regulation of small, medium and micro enterprises and their linkages with global value chains, making urban planning inclusive for workers and ensuring regional parity in economic growth (Kerswell and Pratap, 2016: 243).

Mindful of these concerns, the present report views national minimum social security as an immediate

relief to trigger a progression in public discourse and action on structural issues. NCL-I saw the collective political agency of the workers as an engine for the transformation of their own state. However, Ambedkar cautioned us against making unfair expectations of a working population that is trapped in deeply oppressive social relations. The loss of a few days of wages may cause irreparable damage in an unorganised worker's life. These workers cope with perennial social and economic risks to their lives without any safety nets or support structures. They are unable to afford additional risks attached with political organisation in the face of traditional structures of social power. Moreover, pervasive vulnerability in society tends to normalise the state of deprivation, submission to exploitative systems and above all a deep pessimism about a dignified existence. Therefore, political rights in a democracy can only be meaningfully exercised when social and economic rights exist to ensure survival with dignity.

This report views the right to social security as a conduit for activating political agency among unorganised workers. It is a starting point for public action for larger structural changes that will address root causes of poverty and vulnerability. To make this beginning we need to first exit the entrenched structures and discourse of a paternalistic state. Workers need to be seen and planned for as citizens with social and economic rights and not as beneficiaries. The aspirations of social security need to be transferred from DPSP to the category of Fundamental Rights in our Constitution, for the cost of a never-arriving 'progressive realization' is too huge to bear. The social wages due to the workers must be delivered as public provisioning of basic necessities of life and social assistance for the indigent, besides respectable money wages. The fiscal cost incurred for this should be seen as social investment in recognition of all forms of work that the citizens of the country put in economic and social reproduction activities.

An exit from the regressive outlook of state paternalism and charity towards social security requires the transformation of the political economy towards a more egalitarian society in the long term, and the formal recognition of the demand for a national minimum social security as a universal citizenship entitlement for all in the short-run.

2.3 Parameters of Evaluating Social Security Coverage

Population Coverage

The foregoing sections made a case for the right to social security to be transformed into a universal social and economic right protected by the courts. A fundamental right has to be universally available to all citizens of the state. This leads us to a position that any programme for providing a national minimum social security to unorganised workers should have universal coverage if it is to be made into a right. A review of academic and civil society debates over the recent decades reveals that there is wide consensus on universal coverage of social welfare schemes as against a targeted approach. Unlike ideologically rigid positions, this consensus is built on robust scientific examinations of the experience of implementing existing social policies. It takes into account not only the fiscal ramifications of this position but also its social and cultural dimensions. Moreover, a case is made to calibrate the expansion of coverage over a timeline that allows maneuvering space to the state for mobilising financial resources and upgrading institutional delivery mechanisms. It also considers larger questions of building national solidarity to support stable political regimes that can sustain the equilibrium between imperatives of human development and economic growth. In India, the challenge of providing social and economic rights in an intensely competitive global economy is recognised as much an economic question as a political one. In this section, we review an extensive body of literature from recent decades to present arguments for universal coverage.

Errors of Exclusion in Targeted Policy Design. India was witness to a most vibrant debate on policy design for a social security scheme in the run-up to the legislation of the 2013 National Food Security Act. Numerous scholars and activists pointed to the glaring failures of the state in making the Targeted Public Distribution System (TPDS) work for those who need it the most. It has been pointed out that TPDS suffers alarming levels of exclusion of vulnerable populations from its coverage. As of 2004-05 only four out of the 27 states could ensure that the policy-based exclusion of TPDS was not higher than 33 percent. Targeting led to the effective exclusion of as many as 52 percent of the agricultural worker

households across India (Ramachandran and Rawal, 2010: 125). These households belonged to the most vulnerable social strata including Scheduled Castes and Tribes, landless and near-landless households and households in the lowest expenditure classes. Such exclusion was not limited in impact and has been documented as adversely impacting the growth of the agricultural sector itself (Utsa, 2007: 3134).

In sum, many scholars concur that targeting has led to exclusion of the needy populations and universal coverage can overcome this problem of targeting (Duggal, 2006; Himanshu and Sen, 2011; Jha and Acharya, 2016: 103). Universal coverage will work better not only for food security schemes but also other social protection schemes if provided as a part of a comprehensive package of social security services and goods. It has been understood that old age pensions or for that matter any social security relief as a standalone measure is unable to attract people to participate unless it is made part of a larger social protection package which strives towards universal coverage (Loewe, 2014: 97).

Addressing Challenges of Multi-Dimensional Poverty. Over the recent decades another subject of rigorous debate in the Indian civil society has been the identification of the poor. Referring to this debate, NCEUS recognised that prevailing government norms on targeting use an outdated unidimensional understanding of poverty based on consumption expenditure (NCEUS, 2007: 8). The much-anticipated alternative based on the findings of the Socio-economic Caste Census is yet to be incorporated in government systems. It leaves us to believe that contemporary targeting works with a highly limited understanding of 'who is poor?' Further, the statistical deficiencies regarding unorganised workers compound the problem of targeting any scheme meant for them. It would thus make sense to avoid shooting in the dark on the matter of social security that concerns the life and death of millions.

Avoiding Additional Burden for the Marginalised. It has been observed that while targeting benefits have been theoretically justified in dominant policy discourses, the criteria for inclusion often end up laying additional burden and costs on already stressed populations, particularly women. Macro designs making the eligibility for benefits contingent

on certain abstractly designed 'socially responsible' behaviour may fail to take into account the micro social realities where such behaviour is made difficult owing to social conditions external to the beneficiary (Townsend, 2009: 305). In such cases, deeper research is necessary to either design interventions at the local level that facilitate easy compliance with the inclusion criteria or the design of such criteria should be flexibly delegated to local democratic institutions.

It has also been noted that targeting might lead to some unintended consequences such as an increase in domestic violence against women when social transfers are made to women in the households (Thakur et al., n.d. : 173)

Improving the Quality of Services and Goods. While the fiscal burden of welfare is often borne in the name of the poor, the quality of the services thus delivered depends on the participation of the politically vocal middle class (Jayal, 2013: 195). Therefore, targeting that makes the quality of social security services irrelevant to the middle classes is highly likely to also adversely impact the quality of the services delivered.

Decreasing Reliance on Inadequate Institutional Systems of Targeting and Delivery. The Indian experience with delivery of social security-related services has revealed that owing to complex institutional structures, many a times the administrative costs overtake the actual expenditure on benefits (O'Keefe and Palacios, 2006: 3486). It can be argued that given the complications surrounding the targeting of benefits, targeting inevitably contributes to an increase in the cost of institutional functioning and service delivery. Not having considerable resources to spend on devising complicated systems of exclusion will definitely be a step towards simplification of delivery systems.

Overcoming the Limitations of the Traditional State-Labour Relations. In the conventional triad of capital-state-labour in industrial relations, the state as a mediator between capital and labour limits its interventions only to recognised employer-employee arrangements to the detriment of the majority of unorganised workers (Agarwala, 2008: 385). The only alternative for social security for unorganised workers

remains occupation-specific targeted mechanisms which while relatively effective still exclude most of the informal workers. On the other hand, universal policies can overcome this traditional framework in reaching out to all informal workers. However, in the post-independence model of the labour-state relationship in India, the state has bypassed the universal provision of social security in favour of collective bargaining and compulsory adjudication as contingent tools of labour welfare (Agarwala, 2008: 387). Given this fact, unorganised labour took an obvious fall when it came to the state's recognition of their rights. So, unless the state is seeking a transformation of the traditional relations with labour to accommodate the concerns of the unorganised sector, universal social security guaranteed by the state is the only credible alternative for informal workers.

Making the Social Context Investment-friendly. It has also been noted that in the European context as capital pushed for more flexibility in the labour market it also sympathised with the idea of state-provided universal minimum social security as it provides a ceiling in labour market competition (Agarwala, 2008: 385). 'Social protection programmes (especially if they are universal), have a beneficial effect on social cohesion and political legitimacy, which are key ingredients for an investor-friendly environment with potentially positive effects on different types of investments including foreign direct investment (FDI). They may also have a positive influence on individual and institutional behaviour, in terms of risk-taking, labour mobility, long-term planning, accountability and financial sector development. The prospect of participating in earnings-related social protection schemes can contribute to greater labour market formalization, with possible positive spin-off effects on income levels and state revenues' (Hujo, 2014: 8).

Curbing Clientelism and Strengthening Democracy. Local government institutions have been found to be most suited for identifying target beneficiaries for service delivery within their constituencies. However, lack of clarity in policy design vis-a-vis their specific roles in service delivery, financial management and most importantly accountability in cases of failure of realisation of policy objectives in their constituencies, has been seen as severely undermining the benefits of decentralisation. In societies like India, rent-seeking

and clientelism in the delivery of public services have historically marred the outcomes of the most well-intended policies (Devranjan et al., 2007: 15).

Dignifying Social and Economic Rights. 'Anything less than universalization is demeaning to those who need such public provisioning, or else services provided by the state are likely to be stigmatized as inferior' (Jayal, 2013: 15). It has been argued earlier in this chapter that the construction of 'exceptional categories' to disburse social and economic welfare is based on their own admission of humiliating conditions of existence. As a result, social and economic entitlements, even if received by these categories, undermine their claim as equal citizens.

Need for National Solidarity for Political Sustainability. 'It is a clear lesson from the earlier history of the development of welfare states that for pro-poor policies to be politically sustainable they must move away from targeting only the poorest, towards becoming universal social and welfare policies. Only then will they receive firm backing from the middle classes and enable sustained improvement of poverty' (Lerche, 2012: 21). Lerche draws attention to the importance of clarifying the position on targeted versus universal debate in policies for the campaign of social protection to gain credibility. It is also important to devise political formulations for social alliances that are capable of successfully moving the state to action in a democratic set-up like India (Lerche, 2012: 21). Lerche argues that universal welfare policies have been the rallying point for social alliances between the middle classes and the working poor which in turn has formed the basis of stable welfare regimes in countries.

The False Dichotomy of Targeted and Universal Public Provision. 'The opposition between universality and selectivity in public provision is not quite the binary it appears to be, for universalism and targeting stand at opposite ends of a continuum that moves from full universality to universally available and free, to universally available but not universally free, to modestly costed and heavily subsidized' (Jayal, 2013: 194). Variations in the design of social security schemes across the spectrum of universality may also be useful in catering to the diverse needs and capacities of the large population of workers (Rao et al., 2006: 3488). Srivastava (2013: 138) discusses various approaches

and positions of traversing the spectrum of universality within the design of schemes to achieve efficiency and minimise losses as universal coverage for social protection is progressively strived for.

Nathan (2014: 19) cites the example of universal health insurance for social protection being successfully introduced in countries like Germany, Japan and South Korea even when they were low-income or low middle-income economies. He makes an important point that universal coverage of social protection should not be understood as absolute but as a system that efficiently utilises both self-selection and easily verifiable, broad criteria for exclusion (Nathan, 2014: 21). However, Kannan (2015: 30) warns against falling for the rhetoric of universal with such internally-built exclusion criteria that reduce the 'universal' tag to a misnomer. He cites the example of the new Pradhan Mantri Suraksha Bima Yojana which is for 'accidental death' only and not for accidents -- the incidence of the former is acutely low among the potential population to be insured. It is also important that to make self-selection work, the quality of services and benefits should not be deliberately deteriorated.

Components of Social Security

NCEUS (2006: 121) categorises unorganised workers' social security needs into two sets: '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 sense of absence of adequate fall-back mechanisms (safety nets) to meet such contingencies as ill health, accident, death, and old age.'

It has been contended that a response to these two kinds of needs can be a combination of social security measures that meet the twin objectives of income promotion and protection against risks. Further, such measures need to take into account the recognition of the right to social security as a basic human right (ILO Recommendation 202: 2012) The UN has also in principle recognised the right to livelihood wherein the state and the economy are expected to ensure that a person's earnings accrued during his/her working life should suffice for his/her entire lifetime and also of his/her family.

Srivastava (2013: 78-111) lays out a description of the constitution of a comprehensive social protection floor in line with the guiding frameworks of the UN Chief Executives' Board document of 2009 and ILO Recommendation 202. The elements include dimensions of income security over the entire life cycle (childhood, working age and old age) and adequate access to health and other essential services, including drinking water and sanitation, food and shelter (Ibid: 78). While the guiding frameworks allow flexibility to national governments, they recommend clarity in entitlements and statutory guarantee of provisions. Such a framework contains an unmistakable synergy with the original Directive Principles of State Policy in the Indian Constitution. It forwards the idea of a national social protection floor that combines the agenda of income-promotive social security with contingent social security in a comprehensive package.

Children's Education, Nutritional Status and Good

Health. Building on the gains of Sarva Shiksha Abhiyan (SSA), the Indian Parliament made the right to education a fundamental right through a constitutional amendment in 2002 and passed an act in 2009: 'The State shall provide free and compulsory education to all children of the age of 6–14 years in such a manner as the State may, by law, determine' (Srivastava, 2013: 79). Children's nutritional and health needs were taken up in sustained campaigns like the Right to Food Campaign, India. The campaigns were able to secure progressive judgments from the Supreme Court leading to the expansion of nutritional coverage of all children under the Mid-day Meal Scheme (MDMS) and the Integrated Child Development Scheme (ICDS).

Employment and Livelihood Security. The National Rural Employment Guarantee Act (NREGA), 2005 guarantees every rural household 100 days of wage employment and an unemployment allowance. This particular legislation was the result of civil society's long and arduous struggle. It enabled the government to break new ground when it came to introducing radically new labour standards and information disclosure and social audit norms (Srivastava, 2013: 84).

Food. The Supreme Court has made a much-needed leap in its judgments while reading the right to food

as a component of the fundamental right to life under Article 21 of the Indian Constitution. Since the beginning of the 2000s, the Right to Food Campaign has been successful in sustaining unprecedented public discourse on social and economic rights in India through mass mobilisations for the demand for right to food. Not unexpectedly its agenda was resisted not only by the state committed to fiscal contraction policies but also many global financial and trade institutions like the World Trade Organisation (WTO). Nonetheless, the campaign was successful in achieving a National Food Security Act (NFSA) in 2013. However, given the string forces of opposition, the larger agenda for making right to food a universal right was not met in the Act. The Act still promises coverage of about three-fourth of the population.

Health. Even though NFSA advanced the movement for nutritional and some aspects of health security, right to health has still eluded legislation. Comprehensive proposals for securing the health needs of people have been made by a High Level Expert Group on Universal Health Coverage (HLEG on UHC, 2011) which constructed the Vision 2022 for universal health coverage (Srivastava, 2013: 95).

Housing. Seen as a basic human right by the International Covenant on Economic, Social and Cultural Rights, the housing policy in India is unable to address issues of rural-urban differences in the absence of a rights-based approach (Srivastava, 2013: 101). Like many of the entitlements discussed earlier, there have been concerted efforts at developing policy guidelines for housing but a significant movement towards a rights-based policy is yet to come even after the creation of a separate Ministry of Housing and Urban Poverty Alleviation (MoHUPA) in 2005. The ministry did formulate a National Urban Housing and Habitat Policy (NUHHP), which was approved by Parliament in 2007. This recognises housing as a basic need especially in the face of the dismal conditions of urban slums. However, several issues mar its implementation.

Similarly, the Working Group on Rural Housing for the 11th Five Year Plan recognised the right to adequate shelter as a constituent of the right to life. However, the move towards a suitable legislation for this has been slow in coming.

Contingent Social Security, Old Age Protection/Social Pensions. The constituents of a social security package cater largely to capability deprivation-led needs of the people albeit not without significantly mitigating the risks posed by adversities. Many of the elements of social security mentioned here have either achieved the status of a fundamental right or received statutory backing with expanded coverage and entitlements owing to pressure from civil society. However, the domain of contingent social security, particularly from the vantage point of unorganised workers, has faced a peculiar non-committal attitude from the state. As underscored before, recommendations for contingent social security for unorganised workers have been made by three key government bodies, the National Commission for Rural Labour (1991), NCL-II and NCEUS. NCEUS, in particular, has done great service to this cause by bringing hitherto unseen clarity in conception and delivery systems for social security to unorganised workers. It should suffice to point out here that despite the recommendations, UWSSA that was passed in 2008 failed to set a national minimum standard of social security with clearly articulated components to be delivered universally in a set timeframe (Srivastava, 2013: 88). The Act is unclear on the coverage of benefits, nature and quantum of entitlements, financing, federal division of implementation and monitoring responsibilities, and most importantly, a timeline for its operationalisation. A detailed review of NCEUS's recommendations and their limitations as well as UWSSA's provisions form a part of the third chapter of this report.

In sum, we contend that all the components mentioned here are undoubtedly desirable for a social protection floor in India. However, even as the other elements of social security have received the attention of the state in varying measures from a rights-based perspective, contingent social security for unorganised workers appears to suffer the most from government apathy. The discourse on unorganised workers' social security is gradually gaining ground but it has been relegated to a policy blind spot of the state. With uncertainty surrounding the real import and implementation of UWSSA for almost a decade, the momentum for unorganised workers' social security needs to be rebuilt from scratch. This report is an attempt on the part of the Right to Social Security Campaign to take up this task.

Financing

In 2011, in the Ministerial Declaration adopted at the UNESCO Conference of Ministers in charge of Social Development in South Asia, India committed to 'prioritize financing for social protection measures in national expenditure plans' (UNESCO cited in Srivastava, 2013: 78). Whether the Indian state has done enough to fulfil this commitment in its annual budgets is discussed in the next chapter. For now, it can be safely said that there are no signs of such a progression when we see the current state of unorganised workers. This section complements the earlier arguments for a right to a national minimum social security by presenting a few key arguments for financing social security programs by the state.

To begin with, we would like to object to the historic 'alibi of underdevelopment' for the denial of a right to social security. Scholars have argued that while the fiscal stress argument can be looked into, low GDP or per capita income, by no historical or conceptual means, precludes the possibility of the creation of adequate fiscal space for social security provisions in developing countries like India (Jha and Acharya, 2016:104). Citing fiscal stress as a reason for limiting social expenditure in developing countries is seen as an ideological cloak to impose the agenda of the Washington Consensus, much like the refrain of an 'ageing population' being used in developed countries to cut social expenditure (Sakthivel and Joddar, 2006: 2107). This is particularly worrisome for the interests of the poor and vulnerable unorganised workers because despite numerous schemes and multiple high level committees recommending social security measures, the actual coverage of social security among Indian workers is very low.

In fact, it has mostly been a question of the political outlook on issues prioritising human development over interests of international financial capital. Jhabwala (1998: L-7) points out that a critical determinant of the state's approach to financing also lies in the conception of the beneficiary itself. If beneficiaries are seen as merely being poor, needy and unemployable, the financial costs of providing social security to them is naturally seen as a burden on the other productive members of society. However, if the beneficiaries are seen as productive members of society who necessarily input their labour through their lifetime into economic production and social

reproduction, whether paid or unpaid, regular or contingent, organised or unorganised, any costs incurred for maintaining their decent living standards can be seen as an investment in compensating and promoting a healthy workforce. Thus, the perspectives and positions on financing social security essentially derive from prevailing social norms on which consensus is built through political processes. While contemporary regimes are comfortable with discourses invoking 'pro-poor' terminologies, the recognition of their productive role in society in an alternative 'pro-worker' discourse is often considered politically motivated and detrimental to 'economic growth'.

Generous tax-financing of pensions for public sector (organised) employees is justified as, among other things, compensation for lower salaries and limited rights for wage-bargaining compared to private sector employees (Hujo, 2014: 19). By that logic similar compensation in terms of financing social security should be offered to unorganised workers who subsist under similar constraints albeit with drastically lower socioeconomic status and without opportunities of exiting for alternative forms of employment. However, the quantum of money disbursed as pensions and other benefits under welfare schemes particularly to unorganised workers is generally only a small fraction of similar benefits received by employees in the organised sector (Gopal, 2006: 4483).

In the case of unorganised workers, the state has no alternative but to contribute towards the social security expenses of unpaid and unemployed workers, especially those below the poverty line (Neetha, 2006: 3499). Non-contributory social pensions have been especially effective in terms of poverty reduction, equity and redistribution with relatively low costs and if provided as part of a larger social protection package they can help overcome challenges of adequacy, universal coverage and financial sustainability (Hujo, 2014: 24). If the role of pensions and other social security measures is duly recognised by states as promoting coping and resilience in the face of market volatilities and economic crises, political choices to channel financial resources towards them on priority can be strongly justified.

It has also been found that owing to complex institutional structures for the delivery of social security benefits, many a times the administrative costs are more than the actual expenditure on benefits (O'Keefe and Palacios, 2006: 3486). Therefore, the quest for financial viability and sustainability also includes institutional innovations to simply the systems of delivery. Therefore, it is important that the financial plan for the operationalisation of service delivery is integrated in the policy design.

This report acknowledges that the fiscal space available for designing social policy is very dynamic where fiscal choices are not exclusively based on a state's political choices. That said, scholars have consistently offered solutions for issues related to social security financing (See, for instance, Jha and Acharya, 2016; Srivastava, 2013:112).

General Policy Design

Since we have articulated the question of social security as a political choice for the state to meet its objectives of social justice and human development, it is critical that the policy design is sensitive to these objectives in line with a group-differentiated approach to citizenship entitlements. The aspiration embodied in much of the discourse on social security in India, is that of equality and dignity. However, scholars and activists pursuing these questions are also aware of the profound social cleavages of caste, religion and patriarchy that obstruct uniform outcomes of policies across social groups and regional geographies. Therefore, while the outcomes expected in policy design will create a level-playing field in the labour market with special attention to deprived groups, the approaches for realising these outcomes for Dalits, Adivasis, women and Muslims will require that the design is informed by the peculiarities of their historical deprivation.

Social Realities Precede Theory. Given the political predominance enjoyed by neoclassical theories of economics in the contemporary global political economy, policy designs tend to subjectively alter the facts of social realities to best fit the dictums of a neoclassical approach. Therefore, they often neglect the diverse social experiences of various identities leading to divergences of outcomes from the objectives professed in the design. A case in point

is the increase in domestic violence in Bangladeshi households after the introduction of cash transfers to women. It has been suggested that integrating questions of gender or for that matter caste, cannot be through simplistic 'add women and stir' tweaks to policy design. Instead the need is to break out of set theoretical prescriptions in accordance with the specificity of the social conditions of the target population (McKay, 2005: 2).

Mainstream economists have argued against state interventions such as universal old age pensions based on an abstract theoretical argument that such interventions will discourage individuals from saving for old age during the productive years of their lifecycle (McKay, 2005: 26). Fiscal contraction in social expenditure the world over is a result of similar abstract theorising and subsequent prescriptions from dominant financial institutions such as the International Monetary Fund (IMF). However, such policy choices are profoundly flawed for their lack of understanding of human behaviour in developing world contexts such as that in India. In the Indian labour market, it cannot be assumed that gainful employment is available to all during their productive years and the income received from that is sufficient to meet an individual's immediate subsistence needs and also leave a surplus as savings. NCEUS' finding that more than three-fourth of the Indian population survives on less than Rs 20 a day is a simple and frontal rebuttal of the underlying assumptions of such theoretical positions.

Old age pensions in India are required because most of the unorganised workers go through considerable periods of underemployment and unemployment during their productive years despite their perennial quest for decent work. Most of those who find employment often slip through the cracks in labour laws and end up receiving less than the state-mandated level of minimum wages.

Decentralisation with Tripartite Decision-making Bodies. Local government institutions have been found to be the most suited for identifying target beneficiaries for service delivery within their constituencies. However, lack of clarity in policy design about their specific roles in service delivery, financial management and most importantly accountability in case of failure of realisation of policy

objectives in their constituencies, have been seen as severely undermining the benefits of decentralisation. In societies like India, rent-seeking and clientelism in the delivery of public services have historically marred the outcomes of the most well-intended policies (Devranjan et al., 2007: 15). Hence, policy designs will do well to complement decentralisation efforts by creating accountable institutions in which all stakeholders, particularly workers, can participate in the interest of democratic accountability. Experience with tripartite models in welfare boards as endorsed in NCEUS and UWSSA should be set up for policy design and implementation.

Information Systems. The availability of data on the unorganised workforce in India is highly deficient; this has also been recognised by many scholars and activists. Successive government commissions including NCL-II and NCEUS have recommended developing a robust database of unorganised workers to facilitate informed policymaking. However, there has been little movement in this direction by the Indian state and such a delay is likely to have a grievous impact on millions of workers who may get left out of the state's welfare systems owing to their invisibility in data.

2.4 Conclusion

Social and economic rights including the right to social security are indispensable for the realisation of full citizenship. Their relegation to non-binding DPSP in the Indian Constitution has led to cynical instrumentalisation of social and economic entitlements by vested interests to foment fissures in society. A liberal political democracy warrants seeing citizens as an end in themselves who are entitled to the full realisation of their human potential through inalienable rights. In India, the liberalisation of governance systems poses a challenge in meeting the conditions of the democratic functioning of society.

A claim to universal national minimum social security rests on the premise of recognition of various forms of labour, above and beyond the mainstream conception of 'work'. This is critical for the recognition of unorganised workers, particularly women and unpaid, underemployed and unemployed workers. Such a transformation in the policy outlook is of utmost importance in the Indian context since

major projects for fundamental social transformation such as land reforms and inclusive urbanisation have failed to redistribute resources in society. While this reality allows vested interests to promote state paternalism in social policies for political advantage, the recent discourses on the right to food, education and work, etc. advance a credible challenge to such an outlook. New mass mobilisations by informal women workers and civil society have re-articulated the project of achieving social and economic rights as a conduit for activating the political agency of unorganised workers en-masse.

The movement for the right to social security as a social and economic right gains from earlier campaigns. Civil society and policy experts in India have been able to generate considerable consensus on key issues in the design of social policy including population coverage, components of social security, financing of services, goods and delivery institutions and social imperatives for a larger policy design. Universal coverage of right to social security, albeit via a calibrated expansion and differentiated bundles of benefits, is considered widely desirable. Key elements of social security, that address capability deprivation, have seen significant progress in government provisions owing

to landmark Supreme Court judgments and mass actions by civil society. Rights to education, nutrition, food and work, etc. are successful instances of this progress. However, contingent social security, particularly linked to the precarious conditions of work of unorganised workers, has suffered a peculiar apathy from the state. Therefore, a strong case can be made for a right to social security which embodies critical elements of contingent social security. The state's attitude towards such a demand is more a function of its political outlook than its fiscal abilities. Unorganised workers have already borne irreparable costs due to the state's alibi of underdevelopment and the promises of a progressive realisation of social and economic rights. There is credible evidence from international experience that the level of national economic development has not been able to obstruct public provisioning of social security benefits. Thus, the Indian state would do well to revisit the constitutional ideals to move the right to social security from DPSP to fundamental rights. At the same time, it will also be instructive to learn from the experience of implementing earlier social policies and investing in a policy design that prioritises specific social contexts over theoretical prescriptions of western financial institutions.

LEGISLATING SOCIAL SECURITY IN INDIA

This chapter has three main sections. The first section discusses the evolution of an understanding of the needs and solutions required for ensuring minimum decent conditions of work and social security for unorganised workers. The second section reflects on the understanding developed in various government reports and in the recommendations made in proposals for policy formulation for unorganised workers. The third section reviews the provisions and imports of the Unorganised Workers' Social Security Act, 2008 in light of the policy recommendations discussed earlier. The chapter uses tabulated discussions for facilitating comparative reviews across the timelines of various reports and bills.

3.1 State Discourse on Unorganised Workers

Discourse in the government and in civil society on the issues of unorganised workers picked up in the latter half of the 1980s. Since 1988, there have been at least five major government reports recommending policies for regulating unorganised workers' conditions of work and social security unorganised. An important departure in this discourse has been the conception of unorganised workers/sector as a distinctive and quasi-permanent feature of the workforce in India. We have noticed a paradigm shift in the state's approach to the unorganised sector, wherein the post-independence expectation (as acknowledged in NCL-I) of progressively bringing it in the ambit of laws and policies meant for the organised sector is replaced by an admission of the reality that such inclusion has by and large eluded policy implementation. In line with this, these reports advocate separate legislations for unorganised

workers. Further, with increasing awareness about the conditions of work and the social security needs of unorganised workers, the approach of these reports has focused on the profound internal diversities of unorganised workers owing to their geographical locations, occupational positions and socioeconomic backgrounds.

From NCSEW to NCEUS, we notice consistently increasing recognition of the specific challenges faced by women, Dalits, Adivasis, religious minorities, persons with disabilities, rural populations, migrants and other such categories. At the same time, there also appears to have been an effort to move beyond the traditional categorisations of rural and urban, agricultural and non-agricultural, etc. So, in effect, the workforce appears divided into two primary categories of organised and unorganised. Within this, various commissions and civil society have done well to recognise the interdependencies between the two sectors as well as the fluidity of the workforce across formal and informal forms of employment.

NCL-I is used here as a reference point to underscore this shift in the discourse. As discussed in earlier chapters, NCL-I was significant in recognising the need for organising unorganised workers to be able to inform policy for their distinctive needs and aspirations. It saw a sincerer implementation and coverage expansion of existing laws and policies with constructive participation of the workers themselves as a way out of their invisibilisation in the policy discourse. For this it advocated institutional reforms with the objective of increasing access to unorganised workers. At the same time, the state was exhorted for the protection and promotion of

workers' capacities to exercise their democratic rights individually and collectively. However, NCL-I's approach lacked clear policy recommendations for legislative and institutional reforms catering to the unorganised sector. This can be seen as a limited yet much needed start of the state's engagement with unorganised workers' distinctive issues.

The following decades saw the state's policies for unorganised workers refracted through the lens of state paternalism for poverty alleviation. Towards the late 1980s we saw the revival of state concern for unorganised workers from specific vantage points of women's rights and the condition of rural labour. NCSEW's intervention is seen as critical for problematising the notion of 'work' in the policy discourse. It is here that NCSEW successfully underscored the structural exclusion of women from property rights being aggravated by the simultaneous devaluation of their labour in the realms of the 'family' (including reproductive functions) and the larger economy. Making a strong case for gender parity and dignity for unorganised workers, NCSEW's recommendations exposed the inaction of the state since NCL-I.

This was also a time when vibrant new farmers' movements mainstreamed the agenda of rural development in national politics. The state was forced to acknowledge the failure of 'trickle down' policies with NCRL bringing to light the adverse results of systemic neglect of agricultural workers, migrants and other rural occupations in state policies. Rural workers and migrants constituted the largest share of unorganised workers whose conditions of work and social security requirements largely escaped any regulatory and welfare arms of the state. NCRL recommended their proper identification, enumeration and protection by overdue legislative interventions by the state. Here we note an early instance of a demand for separate legislation for unorganised workers which was partly due to the distinct conditions of agricultural workers but not without a tacit admission of the state's failure to expand the coverage of labour laws beyond the organised non-agricultural sector.

It was around the time of the NCRL report that India embraced the policies of liberalisation, privatisation and globalisation. The logical adverse fallout of the regulation for decent work conditions and provision of

social security has been widely documented. As the state underwent fiscal contraction to create space for private capital, it led a systematic deregulation of the labour market. Thus, the expectation of the gradual incorporation of unorganised workers in the formal sector was rendered meaningless. As informalisation in the organised sector started increasing, the state's lip service to fulfilling the recommendations of its own committees deteriorated the working and living conditions of millions of workers.

NCL-II came at a time when de facto deregulation of the Indian labour market through state actions and judicial pronouncements had relegated most of the Indian population to conditions of extreme poverty and vulnerability. A few years after NCL-II, NCEUS quantified the pandemic levels of socioeconomic deprivation in the fact that more than three-fourth of the population lived on less than Rs 20 a day. NCEUS' recommendations attempted to salvage the situation by reminding the state that the largely negative outcomes of liberalisation for the working population needed to be countered by a minimum level of state protection. NCEUS conceived an umbrella legislation to regulate the conditions of work and provide social security to all the unorganised workers.

It was a chance for the BJP-led central government of the time to show the people that liberalisation, even if irreversible in mainstream thinking, could be implemented differently than the former Congress-led regimes. However, the efforts in the direction of operationalising NCL-II's recommendations, including a pilot programme, bore far from satisfactory results. With no concrete measures to allay the pain of a starving population, the government's slogans of 'India Shining' rang hollow. In its wake came the UPA-I government which gave limited but critical space to civil society through NAC in the processes of policy formulation.

NCEUS was mandated by the UPA-I government to do a comprehensive review of the conditions of unorganised workers in the country. Although NCEUS has received its own fair share of criticism, its role in foregrounding the contributions and trepidations of unorganised workers in sustaining a rapidly growing national economy are highly commendable. In a series of reports, NCEUS was able to re-articulate the discourse on poverty alleviation and social security

in India. It demonstrated that the livelihood activities of unorganised workers were indispensable if India wanted to continue on the path of high economic growth. At the same time, it was these very activities and occupations in the formal and informal sectors that bore an unmistakable correspondence to sub-human conditions of work and high levels of poverty and vulnerability. For all the preceding analysis and efforts by the state, unorganised workers largely subsisted at the peripheries of the society unattended by state institutions and exploited by employers. Like the NCL-II, the NCEUS combined the challenges of providing social security to unorganised workers with the objectives of regulating their conditions of work. Its approach was informed by a deep understanding of the internal occupational and social diversities of the workforce and the distinctive position of agricultural and non-agricultural workers. NCEUS submitted two separate bills for addressing the conditions of work and social security requirements of agricultural and non-agricultural workers.

NCEUS's recommendations and legislative proposals got a lukewarm reception by the UPA-I government. The government integrated the separately proposed bills for agricultural and non-agricultural workers into a single bill in 2007 that overlooked key policy design

and social elements of NCEUS' proposals. It was the same bill that was ultimately passed by Parliament as the Unorganised Workers Social Security Act, 2008 (UWSSA). Many have defended the value of the final Act which they consider a bold first step in the direction of providing social security to unorganised workers. Substantive flaws in the Act aside (discussed later in this chapter), it is hard to buy this 'first step' argument. Table 3.1 gives a detailed illustration of a deep political non-commitment by the Indian state to the cause of unorganised workers' protection and social security. It took the state, five comprehensive reports at the national level and eight different bills -- all developed with herculean efforts in research and consensus building across a country as large as India -- to take a 'first step' whose direction is unclear. The commissioning and submission of all these reports and bills took decades of struggle on the part of unorganised workers. If the state attributes such minimal value to the lives of the people who build this country brick by brick, we have no choice but to face a crisis of democracy as it functions in India today. By turning a deaf ear to the most enlightened advice of numerous experts in these commissions, the state appears adamant on compelling working people to seek charity and not rights

Table 3.1: Evolution of an understanding of unorganised workers' needs and solutions in major government reports

Year	Institution/Report
1969	NCL-I
Main Recommendations	<ul style="list-style-type: none"> a) First hand detailed surveys from time to time to understand the problems of the different categories of unorganised labour. b) Legislative protection by the state for unorganised/ unprotected labour. c) Simplification of legislative and administrative procedures applicable to small establishments. d) Expediting education and organisation in unorganised labour. e) As there is no alternative to the existing implementation machinery, what exists should be reinforced, and the inspection system should be strengthened. f) Steps for the protection of workers against middlemen, and development of self-help through cooperatives. g) Cooperatives should pay adequate wages and bonus, and give employment opportunities to the underemployed and unemployed among them.
1988	National Commission on Self-employed Women and Women Workers in the Informal Sector (NCSEW)
Main Recommendations	<ul style="list-style-type: none"> Enlarging the definition of work done by women to include all paid and unpaid activities performed within the home or outside as an employee or on 'own account.' Devising strategies which will enhance their ownership and control over productive assets. More stringent observance of existing labour laws and the introduction of deterrent penalty clauses. Simplification of judicial procedures, particularly to enable unorganised workers to obtain legal redress without undue harassment.

Year	Institution/Report
	<p>Fixing a minimum wage, and passing legislation to regulate conditions of employment, social security and security of employment for domestic workers.</p> <p>Minimum wage rates and piece rates to be increased keeping in view the requirements of women workers and their families.</p> <p>Widely prevalent wage discrimination against women workers despite existing legislation needs to be corrected.</p> <p>The setting up of an Equal Opportunities Commission under a central law, and also that such a commission should have wide powers of investigation, direction, advice and monitoring.</p> <p>For ensuring due coverage of workers, particularly women, by legislations on conditions of work and social security, tripartite boards must be constituted with due representation of workers with powers to monitor and regulate implementation.</p> <p>A separate wing should be set up in the Labour Department for unorganised workers with adequate number of women employees at various places.</p> <p>To justifiably account for the reproductive functions of women universal maternity benefits and childcare should be the responsibility of all employers (through a levy system) and the state.</p> <p>A comprehensive law on health and safety be formulated and enacted.</p>
1991	National Commission on Rural Labour (NCRL)
Main Recommendations	<p>Creating infrastructure to improve productivity and employment.</p> <p>Enforcement of minimum wages and social security.</p> <p>Introduction of a central legislation for agricultural labour providing security of employment, prescribed hours of work, payment of prescribed wages and a machinery for dispute settlement.</p> <p>Introduction of a system of registration and providing identity cards to these workers.</p> <p>Creation of a Welfare Fund with employers' contributions in the form of a cess on land, and a nominal contribution from agricultural labour.</p> <p>Specific recommendations for various categories of workers, including handloom workers, beedi workers, construction workers, brick kiln workers, toddy tappers, fishermen, leather workers, sweepers and migrant labourers.</p> <p>Comprehensive amendments to the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW) to protect migrants, with clearly laid out responsibilities for contractors, sub-contractors and principal employers.</p>
2002	NCL-II
Main Recommendations	<p>Major overhaul of labour laws for their simplification and wider coverage of small enterprises.</p> <p>An umbrella legislation for the social security of unorganised workers.</p>
2007	NCEUS (Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector)
Main Recommendations	<p>Ensuring minimum conditions of work for both agricultural and non-agricultural unorganised workers through two separate legislations.</p> <p>Rights-based universal national minimum social security scheme covering life, health and disability, maternity and old age protection funded through a National Social Security and Welfare Fund (NSSWF) to be provided for mainly by the central government besides the employers', state governments' and workers' contributions.</p> <p>Special programme to address specific credit and other needs as well as debt relief for small and marginal farmers with emphasis on accelerated land and water management for equitable and sustained rural development.</p> <p>Improving institutional credit flows to the non-agricultural sector.</p> <p>Encouraging livelihood promotion through strengthening self-help groups and micro-finance institutions.</p> <p>Creating a statutory National Fund for the Unorganised Sector (NAFUS) for the overall integration of the unorganised sector's credit and promotional needs.</p> <p>Expanding employment through strengthening self-employment programmes and universalisation of NREGA.</p> <p>Increasing employability through skill development.</p>

3.2 The Legislative Evolution Towards Unorganised Workers Social Security

Table 3.2: Summary of the legislative evolution towards Unorganised Workers Social Security, 1997-2007.

Year	Proposing Institution/Body	Proposed Bill/s	Following Recommendations of
1997	Ministry of Labour and Employment (MoLE)	A comprehensive legislation for regulation of employment, conditions of service and provides for welfare measures of agricultural workers	National Commission for Self-employed Women and Women Workers in the Informal Sector (NCSEW) 1988; National Commission on Rural Labour (NCRL), 1991
Highlights	Focus: conditions of work and social security. Sectoral Differentiation: agricultural workers. Coverage: covered wage workers only; registration of labourers and issue of identity cards. Benefits: included regulation of hours of work, overtime rates, payment of 'prescribed' wages, continuity of employment, child-care facilities, safety measures as prescribed; prohibited unfair labour practices against trade union activities. Financing: unclear. Organisation and Service Delivery: Agricultural Welfare Boards and a three-tier structure for dispute resolution.		
2001	Private Member's Bill (Hannan Mollah)	A comprehensive legislation for regulation of employment, conditions of service, and provision of welfare measures of agricultural workers	MOLE Bill 1997
Highlights	Broadly similar definitions, coverage and provisions as the 1997 MoLE bill; additionally, system of enforcement by inspectors and a two-tier dispute resolution structure.		
2002	NCL-II	Unorganised Sector Workers (Employment and Welfare) Bill	NCL-II 2002
Highlights	Focus: conditions of work and social security. Sectoral Differentiation: single umbrella legislation to be integrated into relevant existing laws to cover employment both in the agricultural and non-agricultural sectors, which were to be listed in the schedule appended to the Act. Coverage: recognition and protection of all types of unorganised sector workers regardless of industry, occupation, work status and personal characteristics. Benefits: included social security, health and safety, working hours, holidays, prohibition of child labour, workers' right to access common natural resources for developing and increasing their productivity through work, traditional rights related to work and space, protection from unfair labour practices, retrenchment without a reasonable cause, education, training and skill development. Financing: unclear. Organisation and Service Delivery: proposed organisational structure of Central Board-State Boards-Employment-based boards at state levels with district level boards and worker facilitation centers at the local level for implementation, dispute resolution, timely payment of minimum wages, income promotion and protection measures for self-employed workers in the Act.		
2004	MoLE	Unorganised sector Workers Bill (revised in 2005)	NCL-II 2002
Highlights	Focus: conditions of work and social security. Sectoral Differentiation: all sectors. Coverage: covered both wage workers as well as self-employed workers (although only those in scheduled employment) in all sectors. Benefits: provisions for minimum conditions of work, including an eight hours work day with a half an hour break, overtime at a rate twice the ordinary wage rate; and payment of wages at prescribed rates not less than the statutory minimum wages. Financing: social welfare schemes under the Act to be funded by central and state governments with workers' contributions. Organisation and Service Delivery: followed the central and state boards with the structure of worker facilitation centers for implementation; no separate dispute resolution mechanism.		

Year	Proposing Institution/Body	Proposed Bill/s	Following Recommendations of
2005	National Centre for Labour; National Campaign Committee for Unorganised Sector Workers	Two Bills proposing comprehensive legislation for regulation of employment and conditions of service, social security and welfare of unorganised sector workers	Based civil society engagement with various issues and types of unorganised workers over the years
Highlights	<p>Focus: conditions of work and social security.</p> <p>Sectoral Differentiation: exclude agricultural, plantation, sericulture, horticulture, poultry farming, animal husbandry workers and other allied workers and persons employed in factories and mines.</p> <p>Coverage: cover wage workers, homebased and out-workers duly registered under the Act.</p> <p>Benefits: provisions for regulation of working conditions, provision for continuity of employment, bonus and social security, non-discrimination and provisions against harassment of women workers; right to have a uniform social security card; occupational and other safety measures; vocational training and guidance and ensuring special protection for migrant workers.</p> <p>Financing: unclear.</p> <p>Organisation and Service Delivery: implementation through tripartite boards and inspection powers to trade unions with dispute resolution councils and appellate authorities in place.</p>		
2005	National Advisory Council (NAC) (forwarded by PMO)	Draft Unorganised Sector Workers' Social Security Bill	Based on engagement with various stakeholders in the civil society and government in the NAC
Highlights	<p>Focus: dedicated bill for social security; does not cover conditions of work.</p> <p>Sectoral Differentiation: single bill for both agricultural and non-agricultural workers.</p> <p>Coverage: all workers in the unorganised sector and workers without any social security.</p> <p>Benefits: health, life and permanent disability insurance plus maternity benefits without any contribution from workers; old age benefit schemes with pension but with contribution from workers.</p> <p>Financing: (i) levy and collection of cess, tax or fees, (ii) grants and loans from the central and state governments, and (iii) contribution from workers.</p> <p>Organisation and Service Delivery: National Social Security Authority (corporate body) with state-level 'facilitation agents' for implementation of schemes through district-level committees and local organisations of unorganised workers designated as 'Workers' Facilitation Centers.'</p>		
2005	NCEUS	Unorganised Sector Workers' Social Security Bill	Based on, inter-alia, the MoLE and NAC bills of 2005
2005	NCEUS	Unorganised Sector Workers' (conditions of work and livelihood promotion) Bill	Based on, inter-alia, the MoLE and NAC bills of 2005
2007	NCEUS	Agricultural Workers' Conditions of Work and Social Security Bill	NCEUS' review of all preceding recommendations and its own findings
Highlights	<p>Focus: conditions of work and social security.</p> <p>Sectoral Differentiation: only for agricultural workers.</p> <p>Coverage: registers agricultural workers only; must be 18 years of age; set monthly income at Rs 7,000 in 2007.</p> <p>Benefits: include physical conditions of work, duration of work and payment of wages for agricultural workers; mandates the central and state governments to implement a package National Social Security Scheme with health insurance, life and disability cover and old age security to which all agricultural workers would be entitled. Allows central and state boards to formulate additional schemes.</p> <p>Financing: constitution of National Social Security and Welfare Fund; total estimated outlay of scheme for agricultural workers Rs 19,400 crore.</p> <p>Organisation and Service Delivery: establishes a national board for unorganised workers and state boards only for agricultural workers; state boards responsible for delivery of mandatory minimum social security benefits; creates a dispute resolution council and conciliation committees at district and sub-district levels.</p>		
2007	NCEUS	Unorganised Non-agricultural Workers' Conditions of Work and Social Security Bill	NCEUS' review of all preceding recommendations and its own findings

Year	Proposing Institution/Body	Proposed Bill/s	Following Recommendations of
Highlights	Focus: conditions of work and social security. Sectoral Differentiation: only for unorganised non-agricultural workers. Coverage: registers unorganised non-agricultural workers only; must be 18 years of age; set monthly income at Rs 7,000 in 2007. Benefits: include physical conditions of work, duration of work and payment of wages for wage workers and homeworkers; mandates the central and state governments to implement a package of National Minimum Social Security Scheme to which all unorganised workers would be entitled. Financing: constitution of National Social Security and Welfare Fund; total estimated outlay of scheme for unorganised non-agricultural workers Rs 12,950 crore. Organisation and Service Delivery: establishes national board for unorganised workers and state boards only for non-agricultural workers; state boards responsible for delivery of mandatory minimum social security benefits; creates a dispute resolution council and conciliation committees at district and sub-district levels.		
2007	Gol	Unorganised Sector Worker's Social Security Bill	NCEUS recommendations and bills
Highlights	Focus: only social security. Sectoral Differentiation: uniform for all sectors covering unorganised workers. Coverage: registers unorganised workers (does not differentiate); must be 14 years of age; allows central or state governments to set qualifying limits on monthly incomes. Benefits: allows the central government to formulate suitable welfare schemes for different sections of the unorganised sector relating to life and disability cover, health and maternity benefits, old age protection and any other benefit decided by the government. Financing: does not include the formation of any National Social Security and Welfare Fund or any financial estimates of outlay required. Organisation and Service Delivery: establishes a national board and state boards for all unorganised workers (including agricultural workers); no dispute resolution machinery proposed.		

3.3 The Unorganised Workers Social Security Act, 2008

Over the decade before UWSSA actually became a law, more than ten versions of the social security for unorganised workers bill came from the central government and other bodies. Legislative efforts intensified after UPA-I came to power and NCEUS was constituted under government's mandate of a common minimum programme. The Unorganised Sector Workers' Social Security Bill, 2007 was introduced in the Rajya Sabha on September 10, 2007 and was referred to a Standing Committee on Labour chaired by S. Sudhakar Reddy. The committee did a thorough review of the bill using NCEUS and others' previous recommendations. It not only redrafted the bill for the government but also majorly improved upon its drawbacks. However, for reasons ostensibly based on UPA-I's electoral calculations and not expressly articulated by the government, the final version of UWSSA passed by the Lok Sabha on December 17, 2008 practically ignored most of the Standing Committee and NCEUS' inputs. The final version of the law was a grave disappointment for unorganised workers for various reasons.

Some managed to sustain an optimistic outlook in describing the law as 'the first step that will, hopefully, trigger a process of mobilisation of public opinion for a more comprehensive social security entitlement to workers in the unorganised sector' (Saxena, 2009: 281) while others who did not mince words termed it as an 'exercise in futility' (Sankaran, 2009).

A review of this law could have been more sympathetic given the gigantic and critical task it aimed to accomplish. However, a blatant and blanket rejection of the aspirations of about half a billion workers contributing more than 60 percent to the national product, is hard to swallow. More so because: one, what is being asked for is not conspicuous freebies but constitutionally mandated minimum entitlements as citizens of the country; two, the legislation itself, for all its weaknesses, was delayed by at least a quarter century if not since independence; and three, as the government of the day chose to nearly completely overlook the recommendations of its own commissions (NCEUS) and NCL-II, let alone the countless struggles of civil society for decades. In all, as an ardent advocate of workers' rights put

it, 'one is struck by total lack of legislative policy or intent' (Sankaran, 2009). The most glaring illustration of this non-committal approach of the government is the fact that the law itself does not mandate any time-bound implementation of even the few schemes that its Schedule I has. Not surprisingly, as of date, about a decade after UWSSA became a law, there is little by way of its implementation on the ground. Subsequently, there is little review of its implementation.

In terms of the import and value of the law itself for unorganised workers, the recommendations of the Standing Committee on Labour (henceforth the Committee) provide a comprehensive evaluation. This section bases its review mainly on these recommendations. A few other criticisms by civil society are cited where necessary.

Time-frame for Implementation. The Committee recommended a phased expansion of coverage across various states and areas of the states for different schemes under the Act within six months from the date of the President's assent. The Act left it to the executive discretion of the government to bring its provisions into force.

Definitional Issues. The definition of 'employer' in the Act by not including 'natural or juridical' as recommended by the Committee has left a loophole for a variety of employers to escape accountability under the Act. A few other definitional issues in the Act can potentially exclude agricultural workers or workers with more than one simultaneous employer.

Further, given the inherent difficulty of perfectly defining unorganised workers or the sector, there is a risk of excluding categories of workers like anganwadi workers who do not fit into sectoral definitions per se.

Additionally, the Act is confusing regarding the definition of 'family' which leans towards a narrow understanding of nuclear families that are not necessarily the norm in case of unorganised workers (Saxena, 2009).

Identity Cards. While the Act does talk about portable smart identity cards, it is unclear if a single card can be used to access benefits disbursed by a variety

of ministries and agencies of the central and state governments under the present design of the Act.

Benefits. The Act is unclear about the composition of the 'national minimum social security' package to be delivered to all unorganised workers. It appears to have brought the existing 'poverty alleviation' schemes of the central government into the ambit of the Act. All these schemes mentioned in Schedule I have variable benefits and limited coverage as of now. The Act fails to reorganise and streamline even these limited schemes to fulfil the mandate of national minimum social security to unorganised workers. The Committee had recommended that at the most within three years of the Act coming into force, all the relevant schemes' coverage should be expanded to all eligible workers. The Act makes no such commitment.

Funding. Both the Committee and NCEUS recommended the formation of dedicated national and state level funds for unorganised workers' social security. The final Act totally skips this critical recommendation and allows unlimited flexibility thus creating uncertainty regarding the funding of the national minimum social security benefits. This evasion includes dereliction on the part of the central government to at least provide assured funds for the maintenance of the national minimum levels even as states variously attempt to improve upon the minimum.

Role of Trade Unions and Civil Society Organisations. There is widespread consensus on the adoption of the tripartite model of design and implementation of social security schemes to ensure adequate representation to the workers. Both NCEUS and the Standing Committee argue for trade unions and other workers' organisations to be incorporated in the national and state level boards under the Act. They have also been deemed the most suitable actors for local level implementation and monitoring of the schemes, if they are accorded the status of Workers' Facilitation Centers under the Act's design. However, there is a glaring exclusion of trade unions and civil society organisations in the final design of the Act. They appear to have been deliberately kept out to weaken the role of workers' representatives (Sankaran, 2009).

National and State Social Security Boards. While the government removed the 'advisory' tag from these boards, their powers and composition remain limited. The Standing Committee emphasised the need for strengthening their role in the implementation of the Act. However, the government appears to have paid little heed to such advice.

Synchronisation with Existing Schemes. The actual efficacy of the Act remains clouded by its reluctance to clarify how its provisions will sync with the existing programmes of the central and state governments

CONTEMPORARY DIRECTION OF THE SOCIAL SECURITY POLICY

The Ministry of Labour and Employment (MoLE), Government of India published a revised Draft Labour Code on Social Security and Welfare (henceforth, the Code) on March 27, 2018.¹¹ The purpose of the Code was to simplify, rationalise, consolidate and amend all existing labour laws related to social security (15 labour laws including the EPF Act, the ESI Act, the Maternity Benefit Act, the Payment of Gratuity Act, the Employees Compensation Act, the Unorganised Social Security Act and various welfare cess /fund acts) into one Code on Social Security and Welfare.

In MoLE's own words, the core principles that have been incorporated are:¹²

- (a) Universalisation of the entire workforce
- (b) Integration of fragmented schemes
- (c) Decentralisation of administration
- (d) Rights-based approach

It is the third draft Code in a series of four separate codes proposed to be made into laws to amalgamate the existing 44 different central laws on the subject of labour. The other two draft codes that preceded the Draft Labour Code on Social Security and Welfare (DLCSSW) cover laws related to industrial relations and wages. The last of the four codes was published on July 20, 2018. It covers laws related to occupational safety, health and working conditions.

MoLE held discussions with workers, employers and

other stakeholders on DLCSSW since the publication of the first draft to come out with a revised draft in March 2018

4.1 A Framework for a Review of the Code

This report is cognisant of the fact that the Code in its draft form can at best reveal the intentions and direction of the present government's policy on social security. As we will see later in this chapter, trade unions have been able to negotiate key changes in the second draft. In this light, this chapter teases out the broad policy directions on some important issues contained in the Code. This is done as an exercise to answer some fundamental questions that may be useful in enriching public discussions on this policy. This is done while being fully aware that the final policy may acquire a distinct shape and approach when it is legislated upon.

Among the multiple possible vantage points for reviewing the Code, we choose a direct approach in trying to answer questions that a common worker may pose to the Code.

In subsequent sections, we lay out the provisions of the Code on the following aspects:

1. Nature of benefits that come under this Code
2. Quantum of each benefit to be received under the Code

11. This chapter reviews the Code with reference to the most updated draft published on March 27, 2018 and available on the Ministry of Labour and Employment's website at: <https://labour.gov.in/sites/default/files/SS%20Code%202018-03-28.pdf>

12. As per the presentation made by the Ministry of Labour and Employment on the first draft of the Code. These principles are implied but not explicitly stated in one place in the presentation made on the second Draft of 2018.

3. Eligibility criteria for receiving the benefits
 - a. Among various employment types
 - b. Among employment sectors
 - c. 'Dependent' family members
 - d. Among internal and international migrant workers
 - e. Definition of 'beneficiary' as 'scheme member'
4. Means of participation in social security schemes:
 - a. VIKAS card
 - b. Employment and income challans
 - c. Contributions
5. The institutional structure of the new social security regime:
 - a. Ways of funding schemes under the Code

- b. Role of private agencies in its implementation
- c. Power-sharing between the center and states under the new regime
6. Proposed time-frame for implementation
7. Grievance redressal mechanisms

This chapter first summarises the provisions of the Code. This is followed by a preliminary critical commentary in light of the issues raised in the other chapters.

4.2 Nature of Benefits

Clause 24.5 of Part D of the Code lists the types of schemes to be designed under the new framework. The nature of benefits under these schemes is supposed to correspond to the benefits currently provided under EPF, ESIC and UWSSA (Table 4.1).

Table 4.1: Summary of various beneficiary schemes and situations guiding the benefits.

	Name of the Scheme	Benefits	Situations under which benefits shall be provided
(a)	Pension Scheme	Superannuation pension and retirement pension	Upon cessation of employment due to superannuation or retirement
		Family pension to family members	Upon death of the pensioner
(b)	Dependents' benefit Scheme	Dependents' benefits to a scheme member's dependents	Upon death of the scheme member during work life
(c)	Disablement benefit Scheme	Disablement benefits to a scheme member	A scheme member who meets with an accident during service or work life
(d)	Sickness Benefit Scheme	Providing for periodical cash payments to scheme members	In case scheme member contracts sickness that requires confinement
(e)	Maternity Benefit Scheme	Providing periodical or other payments in the form of maternity assistance	In case of confinement or miscarriage or sickness arising out of a pregnancy, confinement, premature birth of a child or miscarriage to a woman scheme member
(f)	Medical Benefit Scheme	Provision of medical treatment and attendance to scheme members and their immediate families	Any condition of the scheme member or his immediate family which requires medical treatment and attendance
(g)	Unemployment Benefit Scheme	Providing an unemployment allowance to a scheme member; providing measures for re-employment of persons rendered unemployed	In case of loss of job or earning due to lay-off, retrenchment or any other eventuality specified in the scheme
(h)	Provident Fund Scheme	Providing Provident Fund benefits to scheme members wherein the members' contribution can be invested and made available.	Upon any eventuality specified in the scheme
(i)	International workers' pension scheme	(a) Superannuation pension or retirement pension to international workers;	Upon cessation of employment due to superannuation or retirement

Source: Labour Code on Social Security, 2018 Version 2.1, published on March 27, 2018, pp. 81-82.

The Code does not commit itself to a specific bundle of benefits that constitute the social security floor in the government's view. The details of the benefits are to be contained in (yet to be framed) subordinate legislations promulgating a plethora of schemes for various benefits. Dedicated chapters address details of gratuity and maternity benefits. The details of the schemes, where specified, are largely based on existing schemes and programmes, and do not stretch beyond these in terms of the nature of benefits.

In addition, as per Clause 22.2, existing welfare funds like the building and other construction workers fund and the beedi workers fund are to be reconstituted under each state board under the framework of the Code. This re-organisation comes with the proposal of two new sectoral funds – for domestic workers and agricultural workers. At the same time, the existing funds have been re-imagined as Contribution Augmentation Funds (Clause 22.1) where money is credited through budgetary allocations or cess. These funds are considered instrumental for categories of workers for whom the establishment of a clear employer-employee relationship may not be possible. However, in an introduction to the second draft of the Code, it is clarified that the provision of cess collection has been included only as an alternate mechanism for the collection of contributions from workers and employers. In cases, where cess is levied, the employers' contribution rates may be accordingly reduced. Such augmentation funds have been proposed only for workers classified in the Socio-Economic Category IV based on their registration details.

It is germane here to point out that the Code envisions differential treatment of different classes of workers based on a 4-level socioeconomic categorisation of those who register (Clause 11A.3). The classification is based on the following broad criteria: (a) Income (b) Source of income of household (c) Social profile, (d) Demographic profile (e) Immovable assets owned (f) Land holding, and nature of land held (g) Movable assets of such kind as may be stipulated (h) Nature of dwelling (i) Occupation (j) Nature of employment (k) Nature of disabilities or adversities of the breadwinner (Clause 11A.4).

Further details on the methodology of such a categorisation have been left to future stipulation by

the appropriate government. The present draft just clarifies that Socio-Economic Categories (SEC) I, II, III and IV, will contain workers from the strongest to the weakest socioeconomic status, in that order. Special provisions have been made for SEC IV category workers. For instance, workers in this category are exempted from paying the additional 'administrative charges' (Clause 38.2.b). Further, both employees and self-employed workers categorised under SEC IV are also exempt from contributing towards their social security accounts (Clause 20.3).

On the question of the nature of existing benefits under 16 schemes with organisations like EPFO and ESIC Part T on the Transitional Provisions states that the existing schemes and funds and their respective organisations will cease to exist under the Code. The assets, liabilities, rights, accumulated funds and ongoing litigations, etc. will be apportioned to the state level bodies under a new institutional framework.

4.3 Categories of Workers That Will Benefit

Types of Employment

Clause 2.42 of the Code provides the definition of 'employee' to be covered under the provisions. It effectively covers a wide range of 'paid employment:'

- 1) part-time worker
- 2) casual worker
- 3) fixed term worker
- 4) piece rate worker including commission worker
- 5) apprentice not covered under the Apprentices Act, 1961
- 6) informal worker
- 7) outworker
- 8) seasonal worker
- 9) wage worker
- 10) domestic worker
- 11) home-based worker
- 12) a railway servant as defined in Clause (34) of Clause 2 of the Railways Act, 1989 (24 of 1989), excluding those:

- a. permanently employed in any administrative district or
- b. sub-divisional office of a railway
- 13) a master, seaman, a captain or other members of the crew of a ship or an aircraft registered in India
- 14) a person recruited by a company for work abroad
- 15) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle registered in India, and who is employed outside India
- 16) any worker employed or engaged on 'retainer-ship fee' basis

Employees covered under the Army Act, 1950 (46 of 1950) or the Air Force Act, 1950, or the Navy Act, 1957, Apprentices Act, 1961 and employees of the police force and prisons are excluded from the purview of the Code.

Others are covered under 3 types of 'workers' category (Clause 2.140):

- (a) an employee
- (b) a non-employee
- (c) an international worker

Besides continuing with exclusions in these categories of employees, the category of 'worker' also excludes those providing 'honorary services' – effectively the unpaid work of 'house-wives/house-husbands' in running their households.

Sectors of Employment

Clause 2.15 of the Code lists the sectors of employment that are covered under the definition of 'business', as:

- 1. any factory
- 2. any mine
- 3. any plantation
- 4. any shop
- 5. a provision of service, but excluding services provided by an employee
- 6. any contractor or sub-contractor

- 7. any charitable activity or advocacy
- 8. any activity by a Non-Governmental Organisation
- 9. any religious service or activity
- 10. any activity by a political party or a trade union
- 11. any educational institution
- 12. any agriculture, horticulture, animal husbandry, fishery,
- 13. operations of railways, waterways, airlines or any other transport service
- 14. any trade, commerce or manufacture
- 15. any adventure or concern in the nature of trade, commerce or manufacture
- 16. any transaction in connection with, or incidental or ancillary to, any trade, commerce or manufacture, adventure or concern

Dependent Categories

Clause 2.37 lists the types of kin who may benefit from the provisions of the Code:

- 1) a widow/widower, a biological or adopted son (or transgender) who has not attained the age of 25 years, an unmarried biological or adopted daughter
- 2) parents
- 3) a biological or adopted offspring who has attained the age of 25 and who is infirm, if wholly dependent on the earnings of the deceased person at the time of his death
- 4) if wholly or in part dependent on the earnings of the deceased person at the time of his death –
 - a) a minor biological or adopted daughter, married or widowed
 - b) a minor brother, minor transgender sibling or an unmarried sister or a widowed sister if a minor
 - c) a widowed daughter-in-law
 - d) a minor offspring of a pre-deceased son
 - e) a minor offspring of a pre-deceased daughter where no parent of the said offspring is alive
 - f) a grand-parent if no earning parent of the person is alive

- g) parents of the spouse if the spouse is not alive

The Clause leaves out the category of abandoned and divorced women.

4.4 Worker as a Scheme Member

Not all workers who register under the Code, automatically become beneficiaries of the schemes. Three critical conditions have to be met by every worker to avail or continue to avail benefits under the Code.

The first condition is that every worker is required to register in an Aadhar-based registration system for a social security account called Vishwakarma Karmik Suraksha Khata (VIKAS) (Clause 11). That this registration is mandatory and failing in being registered can bar a worker from not only accessing social security benefits but also from legal employment in general. Clause 11.4 clearly states that 'No – (a) entity shall employ any worker beyond such period as may be stipulated; or (b) contractor shall undertake execution of any work for an entity or provide services of contract workers to any entity; unless the said worker or workers are registered.' On the positive side, the VIKAS account is meant to enable portability of benefits for internal (Clause 31) and international migrants (Clause 20.5, etc.).

The second condition is amply clear in the definition of 'scheme member': "scheme member" means a covered worker in respect of whom subscription towards the Scheme under consideration are or were payable under this code and who is, by reason thereof, entitled to the benefits provided under the concerned Scheme' (Clause 2.111). In other words, only those workers are treated as scheme members or beneficiaries under the Code who have: one, completed all processes of registration to activate a VIKAS account; and two, are able to make or draw contributions from the account as per the terms of the Code.

While SEC IV workers may be exempt from this requirement, workers from other categories who fail to make contributions regularly also fall out of the Code's security net.

The third condition for becoming a scheme member under the Code is the periodic filing of a return-

cum-challan by (a) own account worker, (b) head of household, that employs domestic help for running the household, (c) employer of establishment belonging to the unorganised sector (d) landlord, and (e) any entity liable to pay cess under this Code (Clause 37.2). The return-cum-challan is required to have details of income, employment and the form of livelihood as may be specified in the rules to be prescribed later. Failure to furnish such challans by any of the above entities is bound to be penalised. Moreover, those workers who are found unable to comply with the requirement of filing the returns for any reason will after a stipulated period lose their registration as scheme members.

An implied benefit of such a system of registration, contributions and filing of returns by both workers and employers is the development of an authoritative mapping of the plethora of employer-employee relationships, registration of nearly 500 million workers in the organised and unorganised sectors and partial formalisation of all paid work through social security and other protections offered in the Code.

4.5 The Universalisation of Contributory Social Security

The primary sources of funding social security schemes under the Code are only the contributions made by workers (through a stipulated share of their monthly wages) and employers (through stipulated contributions, or cess) (Clause 2.32 and DLCSSW, 2018: 11). Without going into the details of the means for calculating the contribution liabilities, involving 'deemed wages', 'benefit wages', 'ceiling wages' and the national minimum wage, we describe the rate of contribution for various categories of workers, employers and other employing entities.

The contribution per worker to be made by employers and various forms of employing entities is capped at 17.5 percent of the deemed wage of every worker employed by them. Further, depending on any cess levied or exemptions provided by appropriate governments, the contribution by employers can be relaxed partially or completely.

For the four categories of workers further divided along lines of employees (all types of wage workers with established employer-employee relationships)

and non-employees (self-employed workers), the rates of contributions as laid out are given in Table 4.2 (Clause 20.3).

Workers are also allowed to make 'voluntary contributions' over and above their 'dues' (Clause 2.136).

The other source that may contribute in supporting SEC IV workers (who are exempt from making contributions) is described as the Contribution Augmentation Fund (Clause 22.1). As pointed out earlier, the source of money for this fund is budgetary allocations and cess.

Besides this general role of the fund, the central government is expected to reconstitute the existing and some new sectoral welfare funds under the state boards for the following 15 sectors (Clause 22.2):

- (a) Building and other construction workers Contribution Augmentation Fund
- (b) Iron ore mine workers' Contribution Augmentation Fund
- (c) Aluminum ore mine workers' Contribution Augmentation Fund
- (d) Manganese ore mine workers' Contribution Augmentation Fund
- (e) Chrome ore mine workers' Contribution Augmentation Fund
- (f) Copper ore mine workers' Contribution Augmentation Fund
- (g) Zinc ore mine workers' Contribution Augmentation Fund
- (h) Mica mine workers' Contribution Augmentation Fund
- (i) Limestone mine workers' Contribution Augmentation Fund
- (j) Dolomite mine workers' Contribution Augmentation Fund
- (k) Beedi workers' Contribution Augmentation Fund
- (l) Audio-visual workers' Contribution Augmentation Fund
- (m) Domestic workers' Contribution Augmentation Fund

(n) Salt workers' Contribution Augmentation Fund

(o) Agricultural workers' Contribution Augmentation Fund

An important point to note about these Augmentation Funds is that these funds will also be recipients of the income generated out of the 'professional investment' of the accumulated funds in each of these categories (Clause 22.7).

4.6 A Brand New National Social Security Administration

Part B of the Code lays out a whole new institutional framework for the design and implementation of social security schemes across all states of the country. The new system has the following bodies in order of hierarchy:

- 1) National Social Security Council of India
 - a) Regulator General of Social Security of India
 - b) Central Advisory Committees
- 2) Central Social Security Board
 - a) Director General of the Central Board
 - b) Executive Committee
- 3) State Social Security Board
 - a) a Commissioner of Social Security in each State
 - b) Standing Committees
 - c) Medical Benefit Council
 - d) State Advisory Committees

The National Council is to be headed by the Prime Minister and constituted of key representatives of central and state governments along with representatives of employers, workers and experts (Clause 3.3). Similarly, the state social security boards will be headed by the chief ministers of the respective states (Clause 3.9). The Code goes on to detail the constitution and functions of each of these bodies. Going into these details is beyond the scope of this chapter. However, it is important to briefly discuss the hierarchy set for the new institutional structure.

Part S of the Code lays out the hierarchical relationship among all the bodies of the new system. It can be comfortably concluded from this and various parts

of the Code that the National Council chaired by the Prime Minister will reign supreme above all the other bodies including those in the states (Clause 144). This top-down system is further confirmed by the Order of Precedence outlined in the Code (Clause 146.2) as:

'Order of Precedence for the purpose of the provisions of this Part shall be:

A. National Council and thereafter Central Board and thereafter a State Board, and

B. Central Government and thereafter a State Government'

As is clear from the ongoing developments in negotiations on the provisions of the Code, and given that labour remains a concurrent subject in the constitutional system, the exact shape of the final institutional framework may be very different from the proposed model in the Code.

Delivering Social Security Services

While the more than 200-page-long Code delves deep into many aspects of the proposed national system of social security, here we attempt to draw attention to a critical provision of the Code regarding the role of service delivery. Part K of the Code lays out the various roles in the service delivery system that may be performed by what have been called the 'intermediate agencies'. Some of these roles can include any fund manager agency, point of presence agency, service delivery agency, benefit disbursement agency or recordkeeping agency (Clause 2.62 and Clause 88.1).

To get a sense of the type of entities that may play the role of intermediate agencies, we look at Clause 88.2:

'The intermediate agency, for grant of license, shall satisfy the eligibility norms as may be stipulated, including minimum capital requirement, past track record, ability to provide guaranteed returns, cost and fees, geographical reach, customer base, information technology capability, human resources and such other matters as may be stipulated.'

The nature of eligibility criteria offers an indication that such roles may be taken up by private

companies with a credible presence in consumer and capitals market. The Code relies on an observation by NCL-II (DLCSSW, 2018: 203) which talks about the international experience in outsourcing and subcontracting delivery services under such systems and the need for India to adapt similar practices providing autonomy to the agencies. When it comes to intermediate agencies, the Code, at no point makes it explicit that key functions will be 'outsourced' or 'subcontracted' to private companies. However, with the indicative criteria for the selection of the intermediate agencies and their control resting with the Central Board, we can expect large corporate players to be the main beneficiaries of this new service delivery 'market' being created under the Code. That private companies will enter this market with 'for-profit' ventures is clear from the eligibility criteria laid out for them.

With these key aspects of the provisions of the Draft Code on Social Security and Welfare (2018), we conclude the summary of key imports of the Code for workers, employers, governments and third-party entities. The following section gives a brief preliminary comment on the Code based on the information available till now.

4.7 A Preliminary Comment on the Code

This is a preliminary commentary on the Code as at the time of the publication of this report, the Code was a draft and some outcomes of the ongoing negotiations suggest that we can expect some major changes in its coverage. For instance, recently the government dropped the provisions of subsuming the institutions and resources of ESIC and EPFO in the new institutional structure of the Code in response to demands by trade unions.¹³ News reports in fact claim that the entire provision of forming the Prime Minister-headed National Council at the top of the new institutional structure has also been dropped. However, it remains to be seen how the outcomes of these negotiations translate in a revised draft of the Code that may be published soon. In this light, we attempt to work with the broad policy contours laid out by the two drafts of the Code instead of examining the specific details of each provision.

13. <https://www.news18.com/news/business/labour-minister-drops-contentious-clauses-in-new-social-security-code-1952683.html>

To begin with, the Code is a welcome move to standardise and unify the disparate institutional systems linking a plethora of social security schemes currently in force. It is also commendable that, at least in principle, the Code envisages a gradual movement towards universal social security. The definitions included in Part A of the Code appear to indicate an inclusive approach towards highly diverse populations, sectors and forms of employment particularly of unorganised workers. A longstanding demand of the unorganised workers that their status as 'workers' be recognised is sought to be addressed through the massive registration system for half a billion workers envisaged through VIKAS accounts. Further, the Code is fair in making registration mandatory for employers including recruitment intermediaries as well as households employing domestic workers. In terms of the nature of benefits, the Code attempts to integrate a large number and types of benefits into an integrated system. A clear commitment to making the benefits portable comes as a huge relief for migrant workers. The vexed issue of funding of social security schemes has also been frontally addressed albeit in favor of a contributory system. In fact, the Code tries to allay employers' fears of rising cess collection by governments by clarifying that cess will be a mechanism of secondary choice where employer-employee relationships cannot be ascertained. Moreover, the Code lays detailed obligations, penalties and grievance redressal systems for realising the effective implementation of the schemes.

Having laid out the broad positive imports of the policy framework embodied in the Code, it is important to also put forth some concerns of common workers.

Chapter 1 of this report builds on NCEUS' findings to emphasise the social conduits of the fundamental elements of economic vulnerability for workers in the labour market. It concludes that irrespective of the type of employment, the indicators of vulnerability and inequality move in tandem with the movement of marginalised social groups across sectors and forms of employment – be it the organised sector or the unorganised sector. So, women, dalits, adivasis and

religious minorities continue to be at the bottom of the socioeconomic status even if they move to relatively better organised sectors/forms of employment. Appreciating the historic resilience of the oppressive social structures of caste, gender and religion, and the evident limitations of post-independence policies to bring about equality for these groups in the labour market, it is only fair to assert that a welfare or social policy needs to mainstream affirmative actions for these groups within larger institutional frameworks. Even as the Code attempts to address the internal differentiations of the working population through the socioeconomic categories, the sizeable Draft of the Code has no mention of the word 'caste', no mention of 'religion', four mentions of 'gender', two of 'transgender', one mention of 'discrimination' (in the context of maternity benefits) and no mention of 'inequality'. The category of SEC IV does include social status among the criteria for inclusion. However, without a meaningful reference to labour market inequalities based on social identities, it leaves too much to hope that the marginalised social groups will find equitable treatment within SEC IV.

The Code also tries to unambiguously link social security with employment by correlating employers and entities' obligations with their investments in ensuring Occupational Safety and Health (OSH). The matter of OSH is especially important for unorganised workers and this has been addressed in the fourth Draft Code on OSH published in July 2018. However, early comments on the OSH Code find that it will 'exclude at least 95% in any sector that the code covers which employs fewer than 10 workers, according to the Sixth Economic Census, 2013-14, although the share will be much less if we exclude own-account establishments, but the exclusion will still be significant.'¹⁴ Hence, the linkages between social security and employment through the OSH Code in effect, remain tentative at this stage.

It is important to tie the question of social security to employment for at least two key reasons. One, social security benefits are a component of social wages that are every workers' right to ensure that they can sustain themselves and their families over

14. <https://www.livemint.com/Opinion/1ssCkngxUDXarDBszRKA4K/Opinion--Workers-safety-code-excludes-more-workers-than-it.html>

long periods when they might be unable to work due to reasons of age, disability or death. Two, delinking social security from a person's work (paid or unpaid), may feed into the patronage politics of a benevolent state and project social security as a freebie than as a right. However, the Code fails to take the next logical step after recognising women's unpaid work as 'honorary services' by slotting unpaid workers into

the category of dependents. Unpaid workers are not recognised as legitimate claimants of a genuinely universal social security even as they effectively subsidise the cost of labour in the larger economy through their unpaid work. In doing so, the Code persists with the artificial distinction between 'work' and 'non-work', where the state refuses to recognise 'work' that is not commodified by the market.

APPENDIX

The Working Peoples' Charter (WPC) has been consistently advocating for a basic minimum social security package to be universally provided to all workers through its Right to Social Security Campaign.

The National Convention on Social Security held on 23 November, 2017, with representation from 18 states of India, recommended that the central government provide the following:

1. Old Age Protection. All old aged persons (men and women), widows and physically/challenged persons, not under a formal social security cover, should be provided with a pension which is at the level of half of the national minimum wage. The age of eligibility for pension must be revised to 50 years for women and 55 years for men in the informal sector. Within this, special relaxations must be made for particularly vulnerable workers in various occupations and social groups.
2. Health and Maternity. The universal health package should be made available through the public health system and should cover OPD and diagnostics. Women must be unconditionally entitled to a maternity benefit for nine months (three months before delivery and six months after delivery) at an amount not less than half the minimum wage.
3. Life and Disability Cover. Workers must be provided an insurance of Rs 100,000 for death by natural causes and Rs 200,000 for death or permanent disability due to accidents. This

should be along the lines of the provisions of the Construction Workers' Welfare Board.

Further, the government should take the following steps for the implementation of social security programmes

4. 4. Ensure, within six months, that all informal workers are provided with ID cards for social security which should be solely based on self-declaration. Such registrations should not use biometric identification systems. Also, these must be independent of all existing identification cards, such as Aadhar and U-WIN. The union budget must bear complete fiscal responsibility for this process.
5. A single ministry should be created which will be responsible for the provision and implementation of social security. All necessary funds for the programmes should be transferred to the Unorganised Workers Social Security Fund.
6. Amendments should be made to the Unorganised Workers Social Security Act (UWSSA) 2008 to make the provision of universal social security schemes rights based and with universal coverage. Portability must be ensured. Nonetheless, the UWSSA 2008 Act should be implemented in its full spirit.
7. The creation of the National and State Social Security Boards should be mandatory under the Act and should be done within six months. The boards should be given the necessary powers.

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