

# Grand 'Unorganised' Opera

**J John**

Unorganised Workers' Social Security Bill 2007 was debated and passed by rajya Sabha in October 2008 and by the Lok Sabha in December 2008. The President gave her assent on 30 December 2008. The Ministry of Labour has also issued rules based on the Act. The Act has been criticised by many as a useless piece of legislation on various grounds, with the most serious condemnations coming from none other than the Chief Justice of India. The criticisms against the Act include that it does not guarantee any justiceable right to social security for workers, contains no provision for the creation of a social security fund, excludes more than 90 percent of the workers by delimiting eligible unorganised workers to only those living below the poverty line (BPL) and precludes 'unemployment and disruption of livelihood' within the possible social security benefits to workers. This critique, though not exhaustive, addresses some of the main features of the Act.

Wouter van Ginneken, an ILO expert on social security, in his article, 'Extending Social Security: Policies for Developing Countries' in *International Labour Review* (Vol. 142, No. 3 (2003): 277-94) has defined social security as the 'benefits that society provides to individuals and households - through public and collective measures - to guarantee them a minimum standard of living and to protect them against low or declining standards arising out of a number of basic risks and needs'. Social security is a public measure and it provides protection against low and declining standards, arising out of the contingencies in life; these are available to all individuals and households, van Ginneken further points out that for any social security scheme to be relevant and effective, it should have four constituent parts, namely, coverage, benefits, financing and administration. Does the Unorganised Workers' Social Security Act 2008 satisfy these requirements?

The Act has six chapters. Chapter 1 includes the scope of coverage and the definitions of terms; Chapter II names the social security schemes and identifies the sources of funding; Chapter III and IV deal with the constitution of national and state Social Security Boards and their powers; Chapter V deals with the registration of unorganised workers and the eligibility for receiving social security benefits; and Chapter VI deals with miscellaneous provisions, including the powers of the central and the state governments to make directions and lay rules. It has two schedules: Schedule I, with the names of the social security schemes for unorganised workers, and Schedule II, with a list of Acts applicable to unorganised workers.

The key definition is that of the unorganised worker. The Act defines unorganised worker as a 'home-based worker, self employed worker or wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act'. This definition presupposes definitions of a number of terms including 'home-based worker', 'self-employed worker', 'wage worker' and 'unorganised sector'. A home-based worker is defined as 'a person engaged in the production of goods and services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs'. The 'self-employed' worker has been defined as 'any person, who is not employed by an employer, but engages himself or herself in an occupation in the unorganized sector subject to a monthly earning of an amount notified by the Central or State Government from time to time or holds cultivable land subject to such ceiling as

may be notified by the State government'. The definition of a 'wage worker' is 'a person engaged for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or one or more employers, whether in cash or in kind, whether as a homebased worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be'. Notwithstanding the broadness of these definitions, six major deficiencies are worth examining.

The Act is premised on a clear distinction between 'organised' and 'unorganised' sectors, despite contrary arguments that such firm distinctions cannot be drawn and that these form a continuum with clear inter-linkages. Contrary to the usual practice of defining unorganised as a residue of the organised, the Act defines organised as a residue of the unorganised. This has been done by defining the unorganised sector as establishments that employ less than 10 workers. This has major implications. First, it legalises a priori an Act so far considered outside the legal framework. Enterprises in the organised sector were defined as those complying with the statutory and administrative requirements of registration and reporting, and the residue of the unorganised, by implication, as outside the legal and administrative framework. A natural correction would have been to extend the applicability of the existing laws to all establishments. Such a move would have made redundant the enactment of a law exclusively for unorganised workers. Second, there are labour laws in India, which do not use an enterprise-based definition and, therefore, are universally applicable to all workers, irrespective of the number of workers in an enterprise. The applicability of such laws is made void by this Act. The Act does not give any clarity on what the state means by 'social security' or any of the benefits it proposes.

The definitions exclude workers dependent on livelihood systems such as forest workers and fish workers, who cannot be brought within the ambit of home-based workers, self-employed workers and wage workers. For instance, most of the traditional fish workers in India follow a sharing system, in which the catch is shared among the boat owner and the crew. This excludes them from being considered as 'workers' because they do not receive wages. By specifying (Section 2(m)) that the category of the unorganised worker 'includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to the Act, it effectively limits the applicability of the Acts referred to in the schedule, and consequently takes away certain rights all workers enjoy de jure. The Acts mentioned in Schedule II are The Workmen's Compensation Act 1923; The Industrial Disputes Act 1947; The Employees' State Insurance Act 1948; The Employees' Provident Fund and Miscellaneous Provisions Act 1952; The Maternity Benefit Act 1961 and The Payment of Gratuity Act 1972. For instance, the benefits under The Workman's Compensation Act and The Maternity Benefit Act are now denied to those workers in establishments that employ less than 10 workers.

In this Act, the unpaid women workers are not covered because they do not fall within the definitions of home-based workers, self employed workers or wage workers.

A justiciable right is one in which the aggrieved individual can seek remedy in a court of law. To make a right justiciable, it should be defined and be available for the individual for a sufficiently long period of time. Although the stated objective of the Act is to provide social security and welfare to the unorganised workers, the Act does not confer any defined right to social security for them. In the Act, social security schemes are not included as part of the body of the Act and are given in a schedule. This essentially means that schemes can be changed at any point of time by a notification, and

not after discussion in the Parliament, thereby denying the workers the benefit of consistency and justiciability. It is a well laid out legal principle that the government should not arrogate to itself powers to change provisions of an Act unilaterally. The government should have abided by the advice of the Parliamentary Standing Committee on Labour, which said, "In the garb of overcoming operational difficulties on a day-to-day basis, the government cannot be allowed to make substantial changes, including the addition or deletion of the schemes from the Bill itself."

Social security is public provisioning for contingencies in life and, therefore, should be managed by a public agency. However, many of the schemes are operated by private insurance agencies. Mahatma Gandhi Bunkar Yojana is operated by ICICI Lombard. The Act should have categorically stated that no social security scheme will be private insurance-based. The Employees State Insurance Corporation offers health coverage to workers. The government should consider extending the ESIC schemes to all workers rather than inviting private sector firms to manage health schemes for unorganised workers, in which the contribution by the government will be a transfer of public funds to private agencies. There is evidence that workers are not able to claim insurance from these private providers.

There is an inherent structural contradiction in the Act. Chapter V Section 10 (1) that deals with the registration of workers says, "... every unorganised worker shall be eligible for registration subject to the following conditions, namely, (a) he or she shall have completed fourteen years of age; and (b) a self-declaration by him or her confirming that he or she is an unorganised worker." However, most of the schemes are available only for BPL workers. A person earning more than Rs 12 per day in a village is not considered BPL as per the current BPL norms. This leaves a large proportion of the deserving poor outside the safety net of the social security rights in Section 3(1). For dalits, adivasis, marginal farmers, fishers and forest workers, whose employment is organically linked to livelihood systems, any natural or manmade disruption could force them into situations of poverty, hunger and indebtedness. Such eventualities have not been considered admissible for social security.

The prescribed amount in the pension schemes provided under this Act is ridiculously low. The benefits and protections of healthcare, maternity leave and pension should be need-based and not minimum. Medical care cannot be limited by a monetary ceiling. In cases where the pension is not defined, the criteria for assessing the pension amount should be 50 percent of the last wage earned by the employee.

Though the Act has been introduced by the Ministry of Labour, the social security schemes mentioned in the schedule are managed by various ministries. Moreover, Chapter IV Section (8) gives the record-keeping functions of the provision of social security for unorganised workers to the district administration, the panchayat and to the local urban bodies. Though the Unorganised Workers' Social Security Act has been introduced by the Ministry of Labour, no role has been given to the labour administration to implement the Act. For effective implementation of any Act, a nodal ministry is essential, to bring coherence and consistency to the delivery of social security rights and a well-defined administrative mechanism. The national and the state Social Security Boards are not vested with enough powers to administer social security schemes. These raise serious questions on the commitment of the government about the delivery of social security benefits to the unorganised workers.

The government seems to presume that the unorganised workers are not organised and they are incapable of being represented by a trade union or any other organisation. The National Social Security Board has provision only to have 'seven members representing unorganized sector workers' (Section 5(2)(c)(i)) and the State Social Security Boards have 'seven members representing unorganized workers' (Section

6(2)(c)(i). (Note the difference: at the national level, the representatives are from the unorganised sector and for the states, they are from the unorganised workers—a proof of the careless drafting of the Act.) Importantly, there is no role for trade unions or any other organisations.

To this extent, the Act, deliberately disfavours unionisation of unorganised workers and leaves the room open for the arbitrary selections of unorganised workers to the national and state Social Security Boards.

Of great import is the fact that the 2008 Act does not provide for the creation of a Social Security Fund. This is notwithstanding the strong recommendation by the Parliamentary Standing Committee on Labour for the creation of a Social Security Fund.

The absence of a financial memorandum to the 2008 Act as well as the non-allocation of funds for social security for unorganised workers in 2008-09 and 2009-10 budgets casts doubts on the genuineness of government's intentions in delivering social security rights to the unorganised workers in India. The Act should have provided for the creation of a Social Security Fund, and a financial memorandum for budgetary allocation for the Fund.

Despite a strong recommendation from the Parliamentary Standing Committee on Labour, the Act does not provide for a grievance redressal mechanism.

The Unorganised Workers' Social Security Act 2008 has inherent structural gaps and inadequacies that make the Act totally ineffective in providing social security to the unorganised workers. Worse, it is discriminatory and takes away rights emanating from existing legislation. The government should either repeal the Act or modify it thoroughly to ensure the right to social security of the unorganised workers in India. □□□ *[abridged]*

*[Source : Labour File]*