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REVISITING SOCIAL SECURITY FOR UNORGANISED WORKERS IN INDIA

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ABSTRACT:

Social Security for unorganized workers has always been a serious issue. The basic purpose of the social security is to protect the workers in certain contingencies which are beyond their control but has massive impact on their sustainability. Despite traditional risks like natural disasters, climatic changes, health hazards etc. the workers of the unorganized sector also suffered from economic risks. The pure economic risks includes work related sickness, injury, disability, death, unemployment etc. among the working individuals. The economic security of wage earners, casual workers, self-employed workers mostly depend upon their ability and opportunity to find and hold the job and the way in which the insecurities like sickness, disabilities and death due to accidents and other misfortunes of similar nature would be minimized. The present paper highlights the concept, historical perspective, laws and social security code, 2020 regarding the requirement of social security and finally makes an appeal to all the concerned stakeholders especially policy makers and implementing authorities that effective implementation will definitely provide a respite not only to the labourers but also to their employers as new social security policy is a brave and bold attempt that tries to bring e-commerce and gig economy within the ambit social security net and therefore it needs to be implemented effectively.

Keywords: Social Security, Unorganised sector, Unorganised worker

I. INTRODUCTION

The flexibility in the labour market has compelled the policy makers to accommodate social security needs of the workers in their reform movement. It is a challenge to a developing economy like India to extend the social security benefits to the workers of the unorganized sector as majority of them are deprived of even basic social security as it is clearly exposed during Covid 19 pandemic. The social security system in our country is dualist in nature as only a small proportion of workforce that is working in the organized sector are in a privileged position and have access to protective social security benefits whereas the majority of the workforce working in unorganized

sector remains unprotected due to varied reasons¹. The worker's work life and social life has reciprocal influence on each other's as work life of the worker enriches his social life whereas good social life enhances the productive capacity of the workforce. Therefore social security is considered as a means to achieve human development which in turn contributes to the economic growth. The absence of meaningful social security arrangements does not merely pose problems for the individual workers and their families but also has wider ramifications for the economy and society. From the economic point of view it debilitates the worker's efficiency and his/her ability to contribute in increasing production and productivity whereas low earning power coupled with vulnerabilities leads to poverty which reduces the aggregate demand in the economy that led to dissatisfaction and disaffection especially when a segment of the society is well-endowed and seen to be prospering². More than 90% of the work force is in the unorganized sector there is more need for sustaining a higher rate of growth of the economy. A workforce having higher capability and security could contribute to higher growth through higher purchasing power. Therefore the mutually reinforcing nature of this relationship needs to be recognized and exploited³. The social security measures have introduced an element of stability and protection in the midst of stresses and strains of modern life.

II. CONCEPT OF SOCIAL SECURITY:

The concept of social security is based on the ideals of human dignity and social justice. The idea behind the social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be provided the protection against certain hazards. It is an incentive for development and its costs is offset by gains in productive efficiency⁴. Further the state is under an obligation to provide a sort of guarantee to the workers to compensate them in case of loss of income during any period which may be caused due to sickness, employment injury, old age, invalidity, unemployment or due to any other similar reason⁵. The workers particularly of

¹ R.C. Datta and Mily Sil, Contemporary Issues on Labour Law Reforms in India, An Overview; ATLMRI Discussion Paper No. 5/2007, Tata Institute of Social Sciences, Mumbai, p.17

² NCEUS, Report on Social Security for Unorganised Workers, May 2006, para 2.13

³ Ibid, para 2.25

⁴ Government of India, Report of National Commission on Labour 1, 1969, p.162

⁵ Ranjinderjit Pawar, Landless Agricultural Labourers and the Law, Deep and Deep Publication, New Delhi, 1995, pp. 68-69

unorganized sector have limited means and hardly provide effective security against these contingencies and it is a fact that they do not have the capacity or foresight to carry out the plan of saving or insurance to meet unforeseen contingencies. Further the concept of social security is the ramification of socio-economic justice. It serves as an important element of social change and sacrifices the individual interest for achieving the welfare of the general interest especially of the down-trodden section of the society. The social security measures protect the interest of workers during the spells of misfortunes. The effects of social security on employer-employee relations are invisible and indirect but its importance can be realized in its absence than presence. The negation of human element will manifest in apathy, tension, and low morale, go slow and bad relationship that leads to low productivity.

The International labour organization (ILO) defines the term as the security that society furnishes through appropriate organization against certain risks to which its members are exposed. These risks involve the contingencies against which the individual of small means and meager resources survive by his own ability or foresight alone or even in private combination with his fellows like sickness, maternity, invalidity, old age and death⁶ whereas lord William Beveridge defines social security as the security of an income to take place of earnings when they are interrupted by way of unemployment, sickness or accident to provide against loss of support by the death of another person and to meet exceptional expenditures that are connected with birth, death and marriage i.e. the social security means, security of income up to a minimum but the provision of an income shall be associated with treatment designed to bring the interruption of earning to an end as soon as possible⁷.

The social security is provided through schemes that must have essential characteristics such as these measures must be established by law to impose the obligations upon the concerned public authorities to ensure their proper implementation and protection must be adequate both in terms of quantity and quality and last but not the least these benefits must be provided through three major ways such as social assistance, social insurance and public services i.e. through the universal benefit schemes. The main constituents of social security are social assistance and social insurance. The social assistance schemes provide benefits to the needy people and generally these schemes

⁶ ILO, Approaches to Social Security, Montreal Geneva, 1942, p.81

⁷ William Beveridge, Social Insurance and Allied Services, Report 1942, p.120, para300

are financed by central, regional and local government funds. The means tests are applied in providing a social assistance to the deserved beneficiaries⁸. The social insurance schemes provide benefits to persons of small earnings but it involves the contributive efforts of the insured with subsidies from the state and the employer⁹. The social assistance schemes provide a supplement to social insurance for the needy people who cannot afford social insurance.

The main objective of providing social security is the standardization of income for the maintenance of life at an optimum level so that during risks the individual and his family should not subject to a double calamity involving both destitution and loss of health, limb, life or work. It is designed to provide certain services like medical care, re-employment, rehabilitation so as to restore him to earlier condition and to avoid loss of productive capacity and thus increases the material, intellectual and moral well-being of the community.

III. WHO ARE ENTITLED TO SOCIAL SECURITY: A QUESTION?

Now the question arises who are in actual need of social security. The present social structure in labour market clearly depicts that there is a dire need of social security to the workers particularly of unorganized sector as their problems can be divided into categories. The first category arises out of deficiency or capability deprivation in terms of inadequate employment, low earnings, low health and educational status among other factors that is related to general deprivation of the poorer section of the population. The second category arises out of adversity due to an absence of adequate full back mechanisms to meet contingencies such as ill-health, accident, death and old age¹⁰. The unorganized workers make a significant contribution to the national wealth but unfortunately they do not have sufficient access to social security. The unorganized workers are described as those who have not been able to organize in pursuit of a common objective because of the constraints such as casual nature of employment, ignorance and illiteracy, small size of establishments with low capital investment per person employed, scattered nature of establishments and superior strength of the employer operating singly or in combination. The contract workers, casual labour,

⁸ Danny Pieters, Social Security: An Introduction to the Basic Principles, Kluwer Law International, 2006, p.6

⁹ Meenakshi Gupta, Labour Welfare and Social Security in Unorganised Sector, Deep and Deep Publications, New Delhi, 2007, p.85

¹⁰ NCEUS Report on Social Security for unorganized workers, May 2006, para 2.12

labour employed in small scale industry, handloom/power-loom workers, employers in shops and commercial establishments; sweepers and scavengers; workers in tanneries; tribal labour; building and construction workers and other unprotected labour in service sector etc. are some of the illustrative categories of unorganized workers. The general features of the unorganized sector like low wages and low earnings, high percentage of employment of women, employment of family labour, existence of child labour, migrant labour, bonded labour, contract labour, piece-rate payments, home based work or contractual work, seasonal or intermittent employment, lack of organization into trade union, lack of collective bargaining, dependence on others for supply of material, less access to capital, existence of health hazards in many occupations justifies the need of social security as one of the measure to improve their vulnerability. Further the unorganized nature of workforce, dispersal nature of operational processes and lack of institutional back up reduces their bargaining power and their ability to take full benefits from the laws that are enacted for their benefits. The low skill level of this workforce further hinders their scope to move vertically in the occupational ladder to improve their financial situation¹¹. The condition of their family further worsen when it has to face either foreseen or unforeseen contingency like sickness, marriage, accident or death of the bread earner etc. It is not only the worker who is affected alone in the contingencies but his family and those who are economically dependent on the worker are also adversely affected.¹² The increased risk of bodily harms, injuries, loss of limbs and life demands specific and adequate health and safety measures at the workplace along with an ideal social security net.

IV. HISTORY OF SOCIAL SECURITY IN INDIA:

While analyzing the history of social security it was observed that it is as old as the history of mankind. The quest for survival has compelled the man to devise the ways to protect him against the various eventualities of life. Earlier the needs of human beings were limited but the social and economic insecurities compelled them to live in a family as such the concept of social security found its evolution. During pre-industrial era the institutions like joint family system, craft guilds, religious establishments provided these securities to those who were unable to maintain

¹¹ Dr. A.Selva Kumar, Status of Unorganised Labour, Discovery Publishing House Pvt. Ltd.,New Delhi, 2009,p.47.

¹² Hitesh Bhatia, Introduction to Social Security,Manglam Publications,Delhi, p.4.

themselves. In India the concept of social security was also well known as the joint family system provides economic and emotional security and the institution of craft-community and guilds, customs, rights and responsibilities of individuals and occupational groups were associated with the panchayati system provides security¹³.

In Modern India the history of social security can be grouped into two categories i.e. in the colonial India and in independent India. In the colonial period the Britishers policy was to protect the social system. During the first pre-war period the Indian Labour Legislations were in infancy and sole object for their enactment is to protect the interest the interest of the employers rather than that of workers. The factory system was started with the establishment of cotton mills in Bombay in 1851 and jute mills in Bengal in 1855 and in these factories the conditions of workers was pathetic, without any safety and security provisions. In order to safeguard the economic interest of the British industrialist the government of British India had passed various legislations¹⁴ to curb the growing competition of India's industries but most of these legislations were related to specific workers i.e. the workers working in the factories¹⁵, mines¹⁶, plantations¹⁷ etc rather for general class of industrial workers or for their welfare. Moreover the poor supervision and implementation by the provincial government did not yield the desired results.

After the attainment of independence the complete change was observed in the approach of labour legislations as these were enacted keeping in mind the workers' perspective. When the constitution of India was enforced another phase of social security was observed as the various provisions laid down in the constitution stress on the socio- economic security. The basic concepts of social justice and welfare state had influenced the enactment of the labour legislations¹⁸. The object of the preamble has been elaborated in the Directive Principles of state Policy under part IV of the constitution required a special mention as they are relevant and has strong influence on social security legislations. It¹⁹ directs the state to secure a social order based on social, economic and

¹³ Report of the Second National Commission on Labour, 2002 quoted in Prof. Ahmedullah Khan, Law relating to Social Security in India(with U.K. and U.S.A Social Security Systems) Asia law House, Hyderabad,2014

¹⁴ English Fatal Accidents Act,1846; Fatal Accidents Act,1855; Indian Merchants Shipping Act,1859; Workmen's Breach of Contract Act,1859; The Employers and Workmen's (Disputes) Act,1860

¹⁵ The Factories Act, 1881; The Factories Act, 1891; The Factories Act,1911

¹⁶ The Mines Act,1901

¹⁷ The Island Emigration Act, 1892

¹⁸ The Industrial Disputes Act, 1947; The Factories Act, 1948 etc.

¹⁹ Article 38, Constitution of India

political justice for the promotion of welfare of the people whereas Article²⁰ directs the state to incorporate in its policy certain principles like adequate means of livelihood; proper distribution of ownership and control of the material resources of the community for common need; to prevent the concentration of wealth and means of production to the common detriment; equal pay for equal work for both men and women; health and strength of the workers and children of tender age are to be protected etc. It requires the state to make provisions for securing the right to work, to education and to provide public assistance in certain cases²¹ that are significant measures of social security. It directs the state to make provisions for securing just and human conditions of work and for maternity relief²². It also requires that the state shall endeavour to secure work, a living wages, and conditions of work that ensures a decent standard of life²³. Further it obligates the state to raise the level of nutrition and standard of living²⁴. It was observed that for achieving these objects the framers of the Indian Constitution deliberately placed the provisions concerning social security and labour welfare under concurrent list of seventh schedule²⁵. It empowers the governments both at the Union and State level to make laws for the social and economic development of the workers. The National Commission on labour has recommended raising the status of social security as fundamental rights²⁶ under the constitution of India.

V. SOCIAL SECURITY FOR WORKERS: PRESENT POSITION

India being a welfare state has been committed to provide social security to its citizens. Under the present social security system the small segments of workers working in the organized sector are well protected through a series of social security and welfare legislations whereas a large segment of workers working in unorganized sector are unprotected due to the absence of legal protection regarding their wages, employment, health and safety measures. The inherent characteristics of unorganized sector further hinder them to avail the benefits from most of the promotional social

²⁰ Ibid 39

²¹ Ibid 41

²² Ibid 42

²³ Ibid 43

²⁴ Ibid 47

²⁵ The Constitution of India, Seventh Schedule / Concurrent List, Item No. 23 (Social Security and Social insurance; employment and unemployment) and Item No. 24 (Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, Invalidity and old age pensions and maternity benefits)

²⁶ Report of Second National Commission on Labour, 2002, para 8.30

security measures. The present paper highlights important legislation containing social security provisions to the workers of unorganized sectors. The organized sector workers in India are well protected by primary social security legislations²⁷.

Recently all the social security legislations for organized and unorganized sector are consolidated in Social Security Code, 2020 with an object to extend social security to all employees and workers of either sector. Earlier the main legislation dealing with the workers of the unorganized sector is the **Unorganized Worker’s Social Security Act, 2008** is now repealed and chapter IX of Social Security Code, 2020 contains the provisions that provide social security not only to unorganized workers but it also covers gig and platform workers. The code applies to the workers working in the unorganized sector as home-based worker, self-employed worker or a wage worker and also covers workers in the organized sector. The code defines the ‘unorganised sector’ as an enterprise owned by the individuals or self-employed and those engaged in the production or sale of goods or providing service of any kind, whatsoever and where the enterprise employs workers, the number of such worker is less than ten. The platform worker as defined by the code means a person who is engaged in or undertaking a platform work and gig worker means a person who is earning from the activities that falls outside of traditional employer-employee relationship. For the welfare of workers of unorganized sector the code on social security empowered the central government to formulate the suitable welfare schemes for unorganized workers in the matters concerning life and disability cover; health and maternity benefits; old age protection, education and any other benefit as may be determined by central government. The code provides for the constitution of the social security boards at the national and state level and assigned them the powers to discharge the assigned functions. The responsibility is conferred upon the respective boards to advice, monitor and review the schemes for different sectors of unorganized sector.

The limitations of the Unorganised Workers Social Security Act was cleared in the Social security code as act did not define the term social security although the main object behind its enactment is to provide them social security. The code clearly defines the term social security as measures of protection afforded to employees, unorganized workers, gig workers and platform workers to

²⁷ The Employees’ Compensation Act, 1923;The Employees State Insurance Act, 1948;The Employees’ Provident Funds and Miscellaneous Provisions Act,1952;The Maternity Benefit Act,1961;The Payment of Gratuity Act; The Employees’ Compensation Act, 1923:

ensure access to health care and to provide income security especially in cases of old age, unemployment, sickness, invalidity, work injury, maternity and loss of breadwinner by means of the rights and schemes framed for their welfare. But the definition of the terms ‘self-employed’ and wage workers provides limits that must be prescribed by the government regarding the monthly earnings or extent of land holdings or monthly wages still create a suspicion on the intention of the legislatures that whether it is designed for the workers of the unorganized sector or for the general poorer section of the society. Earlier the Unorganised worker social security act, 2008 conferred limited powers on social security board that extends only to recommend and advice social security schemes but the code on social security provides them effective powers to monitor, implement or enforce social security schemes and also review the expenditure from the funds and accounts. The code on social security enumerated the funding arrangement i.e. about social security fund to meet the cost of social security, a separate chapter on offences and penalties, grievances redressal mechanism and dispute settlement. Actually the unorganized workers social security act suffers from a serious lack of legislative policy and intent as it appears as an eye wash which has neither the capacity to address nor the inbuilt provision to provide solutions to the needs of the unorganized sector and fails to recognize the social security as a human right but the code on social security, 2020 recognized the social security as the right of a worker.

VI. CONCLUSION AND SUGGESTIONS:

Thus social security is most appropriate mechanism adopted by civilized societies to protect the unorganized sector workers in exigencies. For the welfare of the workers there is a requirement to make an amendment of the stringent and archaic labour laws as it was placed long on the policy agenda but the situation created by Covid-19 pandemic exposed the ground reality as workers of unorganized sector lacks the basic coverage of social security nets and distress was created among the workers as establishments in which they were working were closed and they were compelled by the circumstances to leave the cities to their hometowns. The economic distress due to pandemic placed the concerns for labour at the centre of policy initiative. The consolidation of all the existing social security laws in social security code brings down the number of laws applicable to labour sector. The basic purpose is to cover each and every worker in a social security net and tried to create a situation that these laws does not make any hindrance in the creation of new job opportunities, moreover simplification of procedure is another measure element of change and

regulatory regime be now less problematic and less regressive for the employers and employees. Eventually the integration of laws makes the distinction between organized and unorganized sector goes narrower and truly a single regime governing all workers. It tried to create an environment where worker and the employer can come together and they will be able to take the implementation in a win-win situation. Now it is recognized as the right of the worker that brings the progressive social revolution in the society and a step towards the establishment of a welfare state envisaged in our constitution.