

## EXAMINING THE LEGAL LACUNAE IN LABOUR LEGISLATION: A STUDY ON SOCIAL SECURITY PROTECTION FOR UNORGANISED WORKERS IN INDIA

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### INTRODUCTION

The unorganized sector is where most people in India work. There are no spoken contracts, no job security, and pay that is not always regular. The organized sector has protections in place through labour laws and other institutional processes. Still, unorganized workers are not mainly covered by formal social security systems.

Laws do not generally cover the working conditions of unorganized workers; rather, they are defended by informal agreements. These workers include agricultural labourers, construction workers, domestic workers, road merchandisers, and gig workers, who contribute significantly to the economy but remain socially and economically marginalised.

In recent times, like similar as migration, profitable instability, and the rise of informal and gig- based employment have further boosted the need for a robust social security frame. Although legislative measures similar as the Unorganised Workers' Social Security Act, 2008 and the law on Social Security, 2020 have been introduced, their performance remains limited and largely scheme- based rather than rights- driven.

This study seeks to examine the legal frame governing social security for unorganised workers in India, identify gaps in legislation and perpetration, and estimate the effectiveness of being weal mechanisms.

### AIM OF THE STUDY

The current research deals with the influence of social security policies on workers in India's unorganized sectors, with the intention of assessing how far these social security policies protect the rights of the said workers. In conducting this assessment, the focus will be placed on two major policies: the first being the Unorganized Workers' Social Security Act 2008 and the other being the Code on Social Security, 2020. The crucial question will be whether or not

these social security laws give enough social security benefits to these workers.

### OBJECTIVES OF THE STUDY

1. An assessment of the law on Social Security, 2020 in terms of scope and application in providing social security benefits to unorganized, gig, and platform workers and identification of flaws in the implementation of the same.
2. An examination of the legal and institutional frameworks pertaining to

social security laws relating to unorganized workers, their welfare schemes and administrative mechanisms.

3. An assessment of the elaboration of labour law in regard to unorganized workers and the transformation that has taken place from the period of minimal protection for them to special regulations for them related to social security.
4. To examine the socio-economic situations of unorganised workers, emphasizing challenges similar as income volatility, absence of formal job connections, and lack of social protection.
5. To critically analyze the scheme-based characteristics of contemporary social security legislation and determine their capacity to offer enforceable and effective protection.
6. To look at how constitutional provisions and judicial interpretation have shaped and expanded social security entitlements.
7. To pinpoint significant challenges in execution, encompassing structural deficiencies, administrative inefficiencies, and legal voids.
8. To study new trends in the job market, especially gig and platform-based jobs, and how they affect social security content.
9. To suggest changes that would make India's social security system for unorganized workers more complete, based on rights, and enforceable.

#### LITREATURE REVIEW:

1. The book 'Labour and Industrial Law' by P. L. Malik provides a complete analysis of Indian labour laws, including the latest Labour Codes. The four Labour Codes have been included, along with a thorough relative analysis that traces the repealed laws to the new provisions. This book is especially relevant in

understanding the shift from conventional labour laws to a codified approach, concentrating on the coverage of unorganized workers in the law on Social Security, 2020.

2. In The Precariat: The New Dangerous Class, Guy Standing analyses the emergence of precarious labour across the globe. Unorganized labourers are described as being part of a 'Precariat' who lack job security, social protections, and economic stability. This proposition can be used as a base for studying unorganized labourers in India.
3. Labour Reforms & Informal Sector: A Framework for Growth and Welfare" is an article published by the Press Information Bureau, wherein the strategy for labour reforms taken over by the government has been estimated. The article discusses the increase in social security provisions, digitalization of processes through various means like the e-Shram portal, and addition of informal sector workers within formal systems of welfare.
4. The Indian Express stressed various reports on the analysis of employment pattern and issues concerning the labour force, and such analyses shed light on the growing insecurity that informal or unorganized workers experience. The lack of security in employment, income unstableness, and lack of any institutional protection were the crucial focus of these analyses.
5. Santosh Mehrotra in his works on labour markets and informal employment discusses the structural challenges faced by unorganised workers in India. He emphasises issues similar as lack of social security coverage, low implementation of welfare schemes, and the need for a comprehensive policy framework to address informal sector vulnerabilities.

6. Jeemol Unni in her article on Social Security for Informal Workers provides a critical examination of the Unorganised Workers' Social Security Act, 2008. She argues that the Act is largely scheme-based and lacks enforceable rights, thereby limiting its effectiveness in providing meaningful protection.
  7. The "Unorganized Workers' Social Security Act, 2008" is the first instance of an effort to secure social security for unorganized workers through legislation. But academics have remarked that this act facilitates welfare policies but does not create any obligations, therefore making it a policy-oriented legislation rather than rights-oriented legislation.
  8. India's Social Security Code, 2020 amalgamates various labour acts and provides coverage for unorganised, gig, and platform workers. Despite being a major legislative reform, the literature indicates that it is constrained by its scheme-based approach and slow implementation process.
  9. The Constitution of India, 1950, especially Article 38, Article 39, Article 41, and Article 43, offers the constitutional framework for social security. These articles require that the state secure welfare, means of livelihood, and social justice. But their non-justiciability has been heavily criticized in legal literature.
  10. The judiciary has contributed to the development of social security by interpreting the basic human rights in the Constitution. The judgment rendered by the Supreme Court in the case of *Olga Tellis v. Bombay Municipal Corporation* expanded the scope of Article 21 to include right to livelihood.
  11. In *Bandhua Mukti Morcha v. Union of India*, the Court emphasised the State's obligation to cover vulnerable labourers and ensure humane working conditions, supporting the significance of labour welfare measures.
  12. In *People's Union for Democratic Rights v. Union of India*, the Court held that non-payment of minimum salary amounts to forced labour under Article 23, thereby extending constitutional protection to informal workers.
- RESEARCH GAP:**
1. Most research papers analyse the welfare scheme-oriented model followed by the State and do not critically analyse the lack of rights-based law that guarantees social security rights to unorganized labour. There is minimum academic literature devoted to converting social security from a policy to a legally recognized right.
  2. Although both the Unorganised Workers' Social Security Act, 2008 and the Code on Social Security, 2020 have taken much attention in the existing literature, the focus on the practical operation of these Acts has not been adequately addressed in terms of effectiveness and responsibility.
  3. There is a lack of comprehensive research integrating constitutional principles, statutory provisions, and judicial interpretation to assess the overall legal framework. The purpose of the judiciary in bridging legislative gaps has not been adequately explored in relation to unorganised workers.
  4. Numerous studies highlight the existence of welfare schemes but do not sufficiently examine issues of availability, awareness, exclusion errors, and administrative inefficiencies, which significantly affect the realisation of benefits on the ground.
  5. Emerging forms of employment similar as gig and platform work have not been considerably analysed in the environment of social security, despite their growing significance in India's labour market.

6. There is limited focus on responsibility and enforcement mechanisms, including the role of institutions, monitoring bodies, and grievance redressal systems, which are crucial for effective implementation of social security measures.

### RESEARCH QUESTIONS:

The central problem this research addresses is

1. What is the range and nature of social security for unorganised workers in India?
2. How does the Constitution safeguard social security and labour welfare for unorganised workers?
3. How effective is the Unorganised Workers' Social Security Act, 2008 in providing protection to unorganised workers?
4. Does the Code on Social Security, 2020 adequately address the gaps in the before legal framework?
5. What are the major challenges in the implementation of social security schemes for unorganised workers?
6. To what extent are unorganised workers able to access and benefit from existing welfare schemes?
7. What role has the judiciary played in expanding and guarding social security rights for unorganised workers?

The research gap and problem addressed by the current research are both researchable and analysable. The results generated by this research will be of great significance to the policy and legal system that governs social security of unorganized workers in India. This study will help in enhancing and ensuring that social security interventions are enforced in a manner that ensures justice and economic security of unorganized workers as well as enhancing governance on the part of the state institutions.

### HYPOTHESIS

To achieve the above-stated objectives, the following research hypotheses are formulated:

1. The lacunae in legislative and institutional frameworks governing social security for unorganised workers produce significant barriers in accessing welfare benefits, thereby undermining effective protection and coverage.
2. The existing social security system for unorganised workers in India, being largely scheme-based, fails to give enforceable legal rights, resulting in limited accessibility, rejection of beneficiaries, and ineffective implementation.
3. The Code on Social Security, 2020, despite its broader scope, continues to suffer from structural deficiencies and does not adequately ensure comprehensive and universal social security coverage for unorganised, gig, and platform workers.

### RESEARCH METHODOLOGIES AND TECHNIQUES

#### Research Design

This research is non-doctrinal (empirical) in nature. Fieldwork has been accepted to understand the practical realities faced by unorganised workers in accessing social security benefits. The study is based on both primary and secondary data, enabling a comprehensive analysis of the legal framework and its implementation.

#### Primary data

The present study is primarily based on primary data collected through a questionnaire method. The responses are brought in from unorganised workers engaged in various sectors such as construction, domestic work, street vending, and other informal occupations.

The approach used to collect data is a structured questionnaire-based survey, consisting of questions relating to:

- Awareness of social security schemes
- Accessibility of welfare benefits
- Registration and documentation issues

- Challenges faced in availing benefits
- Overall satisfaction with existing social security mechanisms

### Secondary data

The data which has formerly been collected, published, or compiled by other researchers, institutions, or organisations is referred to as secondary data. In the present study, secondary data includes:

#### a) Case Law (Precedents)

Judicial decisions play an important role in analysing the legal framework. The researcher has referred to relevant case laws to understand the judicial approach towards labour welfare, social security, and protection of unorganised workers.

#### b) Data from books, journals, and internet:

There are a vast number of public resources out there that can be a precious source of information for the research. This includes periodicals, journals, sites, blogs, forums, and seminars by others.

### LIMITATION OF THE STUDY:

This research is geographically limited to the Sholinganallur area in the Chennai district, Tamil Nadu. The primary data collection through a questionnaire-based review has been conducted simply among unorganised workers engaged in various informal sectors within Sholinganallur and its immediate vicinity. Thus, the findings of this study may not completely represent the conditions and experiences of unorganised workers in other regions of India.

### PROPOSED CHAPTER OUTLINE:

#### Chapter 1: Introduction

#### Chapter 2: Evolution and Economic Significance of the Unorganised Sector in India

Historical development of the unorganised sector, its role in the Indian economy, employment patterns, and socio-economic characteristics of unorganised workers.

#### Chapter 3: Existing Legal Framework for Social Security in India

Analysis of the Unorganised Workers' Social Security Act, 2008, the Code on Social Security, 2020, and other relevant labour legislations along with constitutional provisions relating to social security.

#### Chapter 4: Social Security Schemes and Socio-Economic Challenges

Study of various welfare schemes for unorganised workers, empirical analysis of accessibility and awareness, and challenges such as lack of coverage, administrative inefficiency, and exclusion.

#### Chapter 5: Legal Analysis of Gaps in Social Security Framework

Examination of legal lacunae, scheme-based nature of laws, lack of enforceable rights, constitutional implications, and role of judicial interpretation in addressing these gaps.

#### Chapter 6: Comparative Legal Framework

Comparative study of social security systems in countries such as the United States, United Kingdom, European Union, and selected Asian jurisdictions to identify best practices.

#### Chapter 7: Proposed Reforms, Recommendations and Conclusion

Suggestions for legal and policy reforms, development of a rights-based framework, strengthening institutional mechanisms, and concluding observations.