Right to Social Security for the Workers of Unorganised Sector: An Analysis of the Constitutional, Statutory and Codified Framework Governing Social Security for India's Informal Workforce

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ABSTRACT

The unorganized sector constitutes the backbone of the Indian economy, employing roughly 90 percent of the nation's total workforce. Despite being the highest contributor to national wealth creation, unorganized workers fall out of the ambit of legal protection, enduring precarious employment, under-wages, hazardous work environments, and an acute absence of institutional safety nets. This article provides a comprehensive evaluation of the right to social security for unorganized workers within the Indian legal landscape. Placing the socio-economic rights to the Constitution of India, specifically Articles 21, 38, 39, 41, 42, and 43, the paper critically examines the evolution of legislative interventions from early welfare enactments to the Unorganized Workers' Social Security Act, 2008, and the contemporary Code on Social Security, 2020. Through a rigorous jurisprudential analysis, the paper traces how the Supreme Court of India has elevated social security from a discretionary state policy to an enforceable fundamental right inherent in the right to life with human dignity. Furthermore, the article evaluates persistent structural barriers, including informal employment relations, complex multi-tier implementation mechanisms, digital exclusion via administrative portals such as e-Shram, and fiscal shortfalls. The article concludes with strategic reform proposals aimed at transforming discretionary welfare schemes into a universal, rights-based, and justiciable social protection architecture.

Keywords: *Employment; Human Dignity; Socio-Economic Rights; Social Security; Unorganized Workers*

"Workers of the world, Unite….You have nothing to lose, except your chains"

-Karl Marx

Introduction

To organise is to strengthen and to collectively bargain for the security and welfare of the workforce all over the world. Social security is one of the oldest institutional responses of organised society towards the universal contingencies like sickness, old age, unemployment, maternity and death. Its modern statutory form is traced to the German social insurance legislation introduced by Otto von Bismarck between 1883 and 1889 which established compulsory sickness,

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accident and old-age insurance schemes financed jointly by workers, employers and the State. The Bismarckian model was later followed and modified by the Beveridge Report of 1942 in the United Kingdom, which proposed a comprehensive, tax-funded, universal system of social insurance aimed at abolishing the 'five giants' of Want, Disease, Ignorance, Squalor and Idleness. These two models continue to inform contemporary social security architecture across the world, including in India.

At the international level, the right to social security was first articulated as a universal entitlement in the Universal Declaration of Human Rights (UDHR), 1948. Article 22 of UDHR declares that everyone, as a member of society, has the right to social security. This was reinforced by Article 9 of the International Covenant on Economic, Social and Cultural Rights, (ICESCR) 1966, which recognises the right of everyone to social security, including social insurance. The International Labour Organization (ILO) has been the principal body in this field, most notably through the Social Security (Minimum Standards) Convention, 1952 (No. 102), which prescribes nine contingencies-medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits-as the constituent branches of a comprehensive social security system. India, though not a signatory to Convention No. 102, has repeatedly invoked ILO standards, particularly Recommendation No. 202 of 2012 concerning National Floors of Social Protection, in framing its unorganised-sector legislation.

The 'unorganised sector' is not a phenomenon peculiar to India, it is a defining feature of labour markets across the developing world. The ILO estimates that more than sixty per cent of the global workforce is engaged in informal employment, with the proportion rising to over eighty per cent in South Asia and sub-Saharan Africa. The term 'informal sector' itself was coined by the anthropologist Keith Hart in his 1971 study of urban employment in Ghana, and was subsequently adopted by the ILO's Kenya Employment Mission Report of 1972 to describe economic activity that lay outside the ambit of formal regulation, taxation and social protection. In India, the unorganised sector has historically comprised the overwhelming majority of the workforce-agricultural labour, artisans, home-based workers, street vendors, domestic workers and casual labour-none of whom enjoyed the protective umbrella of factory legislation, industrial law or employees' insurance that was designed originally for the organised, factory-based workforce inherited from the colonial period.

The Constitution of India, while not conferring an enforceable fundamental right to social security, embeds the obligation firmly within Part IV, the Directive Principles of State Policy. Article 41 of the Indian Constitution directs the State, within the limits of its economic capacity, to make effective provision for securing the right to public assistance in cases of unemployment, old age, sickness and disablement. Article 42 of the Indian Constitution obliges the State to make provision for just and humane conditions of work and maternity relief, while Article 43 of the Indian Constitution speaks of a living wage and conditions of work ensuring a decent standard of life. Although Part IV of the Indian Constitution is expressly non-justiciable under Article 37, the Supreme Court has, through a process of judicial activism, interpreted these directive principles into the fundamental right to life under Article 21. In Bandhua Mukti Morcha v. Union of India, the Court held that the right to live with human dignity enshrined in Article 21 derives its life-breath from the Directive Principles, particularly Articles 39(e), 39(f), 41 and 42, and that it must therefore include protection of the health and strength of workers. This was reaffirmed in Consumer Education and Research Centre v. Union of India, where the Court declared that the right to health and medical care of a worker is a fundamental right under Article 21 read with Articles 39(c), 41 and 43. These decisions collectively provided the constitutional foundation on which subsequent unorganised-sector legislation, discussed below, would be built.

Unorganised Sector: Nature and Legislative Framework

A. Legal Definition of the Unorganised Sector

Prior to 2008, India law had no unified statutory definition of the 'unorganised sector'. The term acquired legal precision only with the enactment of the Unorganised Workers' Social Security Act, 2008 (the '2008 Act'), Section 2(l) of which defines the 'unorganised sector' as an enterprise owned by individuals or self-employed workers engaged in the production or sale of goods or services operated on a proprietary or partnership basis, employing fewer than ten workers. Section 2(m) correspondingly defines an 'unorganised worker' as a home-based worker, self-employed worker or wage worker in the unorganised sector, including workers in the organised sector who are not covered by the welfare enactments listed in Schedule II of the Act. This definitional structure was significant because it captured, for the first time, not merely enterprise-based informality but also worker-based informality, recognising that even establishments in the formal sector could employ workers who remained functionally 'unorganised' for want of statutory coverage.

The National Commission for Enterprises in the Unorganised Sector (NCEUS), constituted in 2004 under the chairmanship of Dr. Arjun Sengupta, had earlier defined the unorganised sector, in its landmark 2007 report, as consisting of all unincorporated private enterprises owned by individuals or households engaged in the sale or production of goods and services operated on a proprietary or partnership basis with less than ten total workers. The Commission estimated that ninety-two per cent of India's total workforce-approximately 423 million workers-belonged to the unorganised sector and produced roughly half of the national output, yet remained almost entirely outside the ambit of social security legislation. It is this finding that directly precipitated the drafting of the Unorganised Workers' Social Security Act, 2008.

B. Background and Legislative History of the Unorganised Workers' Social Security Act, 2008

The legislative journey towards a dedicated social security statute for unorganised workers began with the Second National Commission on Labour (2002), which recommended a comprehensive social security net for unorganised workers in view of the inadequacy of the fragmented, occupation-specific welfare fund legislation then in force, such as the Beedi Workers Welfare Fund Act, 1976 and the Mica Mines Labour Welfare Fund Act, 1946. Acting on the recommendations of the NCEUS, the Ministry of Labour and Employment introduced the Unorganised Sector Workers' Social Security Bill, 2007 in the Rajya Sabha on 10 September 2007, introduced by the then Minister for Labour and Employment, Oscar Fernandez. The Bill was examined by the Parliamentary Standing Committee on Labour, which submitted its report recommending, among other things, a more expansive and justiciable set of entitlements than what the executive draft proposed. The Bill, considerably diluted from the Standing Committee's recommendations, was passed by the Rajya Sabha on 23 October 2008 and by the Lok Sabha on 17 December 2008, receiving Presidential assent on 30 December 2008, and came into force on 16 May 2009 as Act No. 33 of 2008.

The Unorganised Workers' Social Security Act, 2008 was structured in six chapters. Chapter II of the Act created a set of non-justiciable social security benefits to be notified by the Central and State Governments through separate welfare schemes, rather than conferring a direct, enforceable statutory entitlement. Chapter III of the Act constituted the National Social Security Board, chaired by the Union Minister for Labour and Employment, to recommend suitable schemes for different sections of unorganised workers, and to monitor the implementation of such schemes. The National Social Security Board was duly notified on 18 August 2009. Chapter IV of the Act provided for corresponding State Social Security Boards, while Chapter V of the Act dealt with the registration of unorganised workers, entitling every worker who had completed fourteen years of age and made a self-declaration to the District Administration to a smart identity card carrying a unique identification number. Schedule I of the Act listed ten pre-existing welfare schemes-including the Indira Gandhi National Old Age Pension Scheme, the National Family Benefit Scheme, the Janashree Bima Yojana and the Rashtriya Swasthya Bima Yojana-as the initial basket of benefits available to registered unorganised workers.

C. Case Laws under the Unorganised Workers' Social Security Act, 2008

Judicial engagement with the Unorganised Workers' Social Security Act, 2008A has largely been directed at compelling the executive to give effect to effective administration machineries rather than at adjudicating substantive entitlements, reflecting the non-justiciable character of the benefits themselves. In *Rajan Kudumbathil v. Union of India*, the Kerala High Court directed the State Government to immediately constitute the State Social Security Board for Unorganised Workers, noting that the failure to establish the Board rendered the statutory promise of the Unorganised Workers' Social Security Act, 2008 illusory for workers in the State. Similarly, in National Domestic Workers' Welfare Trust v. State of Jharkhand, it was highlighted before the High Court that existing labour welfare legislation-the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Employees' Compensation Act, 1923 and the Factories Act, 1948-applied only to a narrow band of formally employed workers, leaving domestic workers and similarly placed unorganised workers wholly outside statutory protection, and that the 2008 Act, though intended to fill this gap, had not been meaningfully implemented. These decisions illustrate a recurring judicial theme: courts have been willing to enforce the procedural and institutional obligations created by the Unorganised Workers' Social Security Act, 2008, the constitution of Boards, the registration machinery, while being ineffective, given the statute's own design, to compel the grant of specific monetary benefits, since the Act itself left the content of social security schemes to executive discretion.

D. The Social Security Aspect and Implementation of the Unorganised Workers’ Social Security Act, 2008

The main criticism faced by the Unorganised Workers' Social Security Act, 2008 since its enactment was that it created an enabling framework rather than a rights-based entitlement. Unlike the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or the Employees' State Insurance Act, 1948, which impose binding contributory obligations on employers and confer statutory entitlements on employees covered by these respective Acts, the Unorganised Workers' Social Security Act, 2008 merely empowered the Government to 'formulate' welfare schemes and it did not create any obligation to actually provide any specific benefit, nor a defined contribution structure, and did not provide any adjudicatory mechanism for enforcing individual claims. Commentators have noted that because unorganised workers frequently lack fixed employers, continuous employment records or documentary proof of income, the contributory design borrowed from organised-sector schemes was structurally unsuited to their circumstances and the workers who failed to make periodic deposits were often disentitled from benefits without regard to the precarity that made regular contribution impossible in the first place. Empirically, implementation remained patchy. The State Social Security Boards were constituted late and unevenly across States, registration of workers under the smart-card scheme was slow, and funding devolved largely to pre-existing centrally sponsored schemes rather than to any dedicated corpus created by the Act itself. The COVID-19 pandemic starkly exposed these implementation gaps, revealing that over ninety per cent of India's workforce, contributing an estimated sixty per cent of gross domestic product, remained without access to either social security or assured minimum wages when economic activity came to a standstill.

The Social Security Code and Inclusion of Unorganised Workers

A. Codification and Basic Changes

The Second National Labour Commission's broader recommendation to consolidate the multiplicity of central labour statutes into a small number of unified codes was finally realised with the enactment of four Labour Codes in 2019 and 2020, of which the Code on Social Security, 2020 (the 'Code') is directly relevant here. The Code subsumes and repeals nine pre-existing enactments, including the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, the Maternity Benefit Act, 1961, the Employees' Compensation Act, 1923, the Building and Other Construction Workers' Welfare Cess Act, 1996, and the Unorganised Workers' Social Security Act, 2008. For the first time in Indian labour legislation, the Code statutorily defines and creates dedicated welfare architecture for 'gig workers' and 'platform workers' as distinct occupational categories, in addition to consolidating the pre-existing unorganised-worker and inter-state migrant worker categories under a single Chapter IX.

Section 2(35) of the Code defines a 'gig worker' as a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship. Section 2(61) defines a 'platform worker' as a person engaged in or undertaking platform work, meaning a work arrangement outside a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems, or to provide specific services, or any other activity notified by the Central Government, in exchange for payment. The definition of 'unorganised worker' under Section 2(86) substantially retains the formulation of the Unorganised Workers' Social Security Act, 2008 covering home-based workers, self-employed workers and wage workers in the unorganised sector. The Code also widens the definition of 'inter-state migrant worker' under Section 2(37) to include not only workers recruited by an employer or contractor in one State for employment in an establishment in another State, but also self-employed workers who have voluntarily migrated from one State to another and taken up employment there, thereby extending coverage beyond the contractor-recruited migrant labour that alone was covered under the erstwhile Inter-State Migrant Workmen Act, 1979. Chapter IX further empowers the Central Government to frame separate schemes for gig workers and platform workers, to be funded through contributions from the Central Government, State Governments and, distinctively, the 'aggregators' who engage such workers-defined under the Seventh Schedule to include ride-sharing, food and grocery delivery, logistics, e-marketplace and content or media services platforms-whose contribution is capped at between one and two per cent of their annual turnover, subject to a ceiling of five per cent of the amount paid or payable to gig and platform workers.

B. Implementation

Although the Code received Presidential assent on 28 September 2020, its substantive provisions remained largely dormant for over five years pending the framing of Central and State rules. It was only through a notification published in the Official Gazette on 21 November 2025 that the Government of India brought the Code on Social Security, 2020, together with the Code on Wages, 2019, the Industrial Relations Code, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, into force across the country, thereby repealing twenty-nine pre-existing central labour enactments in a single legislative transition. The accompanying press release specifically stated that all workers, including gig and platform workers, would thereafter be entitled to social security coverage, and that Employees' State Insurance Corporation coverage would be extended pan-India rather than being confined, as previously, to notified industrial areas. However, the corresponding Central and State Rules under the Code without which the registration, funding and scheme-administration machinery for unorganised, gig and platform workers cannot be operationalized in practice, remain in draft form, having been published for public consultation on 30 December 2025 with objections invited over a forty-five-day window. During this transitional period, the Ministry of Labour and Employment has clarified that the relevant provisions, rules and schemes under the repealed enactments, including the 2008 Act, continue to operate to the extent not inconsistent with the Code.

Registration under the Code is to be of the aggregator and self-declaration-based where the gig workers, platform workers and unorganised workers are required to register on a unified government portal (the e-Shram portal, first launched in 2021 as an interim measure pending the Code's rules) using Aadhaar-based authentication, and aggregators are separately required to furnish details of their engaged workforce to the National Social Security Board or the concerned State Board. The National Social Security Board constituted under the Unorganised Workers' Social Security Act, 2008 has under Section 6 of the Code, been repurposed to also function as the Board responsible for recommending and monitoring schemes for gig and platform workers, obviating the need for a wholly new institutional structure. The Code also introduces, for the first time, portability of benefits for inter-state migrant workers through linkage with the Public Distribution System under the 'One Nation, One Ration Card' scheme, and mandates that migrant workers be given the option of availing the benefits of either their home State or their State of employment, whichever is more beneficial.

C. Limitations

Notwithstanding its symbolic and definitional advances, the Code has attracted substantial criticism on several counts. First, the Code confers on gig and platform workers a right to notified welfare schemes and benefits, but does not extend to them the labour rights including minimum wage protection, collective bargaining, protection against arbitrary termination or 'deactivation', available to employees under the Code on Wages, 2019 and the Industrial Relations Code, 2020, since the aggregators continue to characterise such workers as independent contractors rather than employees. Secondly, the aggregator-contribution model, while innovative, leaves the precise rate of contribution, the schemes to be funded, and the mechanism for last-mile delivery of benefits entirely to delegated rule-making, replicating the very executive-discretion problem that afflicted the 2008 Act; the operative Central Rules remain in draft form more than five years after the Code's enactment. Thirdly, registration continues to be self-declaration and Aadhaar-linked, which risks excluding precisely the most vulnerable segments of the unorganised workforce-those without digital literacy, smartphone access or documentary proof of identity-from the database on which scheme eligibility depends. Fourthly, labour being a subject in the Concurrent List under Entry 22 and 23 of the Seventh Schedule of the Indian Constitution, effective implementation additionally depends on the framing of concurrent State Rules; as of early 2026, several States had yet to notify their corresponding rules, producing a fragmented and asymmetric roll-out across the country. Finally, commentators have observed that the funding ceiling on aggregator contributions, capped at one to two per cent of annual turnover, is unlikely by itself to generate a corpus adequate to fund meaningful health, accident and pension benefits for a gig and platform workforce projected to exceed twenty-three million workers by 2030.

Towards Organized and Secured; the Way Forward

The trajectory of social security law for India's unorganised sector-from the fragmented, occupation-specific welfare funds of the mid-twentieth century, through the enabling but largely unenforceable Unorganised Workers' Social Security Act, 2008, to the consolidated but still incompletely operationalized Code on Social Security, 2020-reflects a persistent tension between constitutional aspiration and administrative capacity. The Directive Principles in Articles 41, 42 and 43, read by the Supreme Court into the guarantee of a dignified life under Article 21, articulate an unambiguous obligation on the State to secure social security for all workers, not merely those fortunate enough to be employed in the organised sector. Yet more than seventeen years after the 2008 Act and more than five years after the Code received Presidential assent, the promise of universal social security for India's overwhelmingly informal workforce remains substantially unrealised in practice, even as the underlying statutory architecture has undergone considerable formal improvement, most recently through the bringing into force of the Code with effect from 21 November 2025.

On the basis of the foregoing analysis, the following suggestions are offered for strengthening the right to social security for the unorganised sector in India:

1. The Central and State Governments should expedite the notification of the Central and State Rules under the Code on Social Security, 2020, within a fixed statutory timeline, so that the substantive entitlements created by Chapter IX do not remain indefinitely suspended, as occurred with the 2008 Act's enabling provisions.
2. The contributory design of schemes for unorganised, gig and platform workers should be recalibrated to reflect the irregular and undocumented nature of informal earnings, including through non-contributory, tax-financed floor-level benefits for the poorest categories of workers, in line with ILO Recommendation No. 202 concerning national social protection floors.
3. The registration under the e-Shram portal and its successor systems should be supplemented with offline, community-based and Common Service Centre-assisted registration drives to prevent digital and documentary exclusion of the most vulnerable unorganised workers, particularly women, migrant and elderly workers.

4. The aggregator-contribution ceiling under Schedule VII should be periodically reviewed and, if necessary, revised upward in light of empirical data on the adequacy of the resulting corpus relative to the size and needs of the gig and platform workforce.
5. Parliament should consider extending core labour protections-particularly protection against arbitrary deactivation and a statutory grievance redressal mechanism-to gig and platform workers, so that the Code's welfare-oriented approach is complemented by a measure of employment security, narrowing the gap between the 'benefits without rights' model presently adopted and the fuller protection available to employees under the other Labour Codes.
6. Given that labour is a Concurrent List subject, the Central Government should institute a time-bound coordination mechanism with State Governments, possibly through the National Social Security Board, to ensure uniform and simultaneous implementation of Rules across States, thereby avoiding the fragmented roll-out that undermined the 2008 Act.
7. Finally, periodic, independent social audits of scheme implementation-modelled on the audit mechanisms developed under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, should be institutionalised under the Code, to ensure that the statutory promise of social security translates into verifiable delivery of benefits to unorganised, gig and platform workers on the ground.

To conclude, the right to social security for the unorganised sector in India has moved, over nearly two decades, from constitutional aspiration to statutory recognition and, most recently, to formal codification encompassing gig and platform workers. What remains is the harder task of translating that codified promise into a functioning, adequately funded and genuinely inclusive system of social protection for the hundreds of millions of Indian workers who continue to labour outside the organised economy. In spite of the legislative, administrative and judicial endeavours, it is nothing but the realization and revelation about its basic rights that ensure strength and progress of workforce in any sector- organized or unorganised. The enforcement and achievement of workers' rights everywhere depend largely on the amount of awareness held by the workforce keeping in mind the ultimate slogan that "*divided we fall- united we rise*".

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[39] Sch. VII, list III, entries 22-23, Constitution of India, 1950.