

**Dr. B.R. Ambedkar Foundation lecture on  
Constitutional values and the promotion of labour welfare**  
by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India  
(New Delhi – November 30, 2009)

Shri Mukul Wasnik (Union Minister for Social Justice and Empowerment)  
Shri D. Napoleon (Minister of State for Social Justice and Empowerment)  
Office-bearers and trustees of the Dr. B.R. Ambedkar foundation,  
And Ladies and Gentlemen,

I am grateful for the invitation to deliver this lecture, which has been organised to commemorate the contributions of Dr. B.R. Ambedkar. I thought it fit to speak about how our constitutional text has been the basis for widespread social transformation in post-independence India. At the time of its drafting, the foremost objective of luminaries such as Dr. Ambedkar was to create a document that embodied the core features of a modern parliamentary democracy while at the same time containing the road-map for mitigating socio-economic inequality.

The vision and foresight shown by the drafting committee under the leadership of Dr. B.R. Ambedkar has stood the test of time. The textual incorporation of principles such as rule of law, equal protection before the law and a wide array of individual and group rights have proved to be the pre-conditions for creating the world's largest democracy. Like any deliberative democracy, the contents of our constitution have been frequently debated upon and even amended – but no one can deny the fact that Dr. Ambedkar was the main architect of our constitutional democracy.

His personal story is very compelling. He was born in a very humble background and faced the evils of caste-based discrimination such as untouchability and unjust exclusion from public places. However, despite these social disadvantages he went on to gain a first-class education and eventually earned a doctorate in law from Columbia University. After his return to India, he became the most eminent leader of the historically disadvantaged sections of Indian society and was instrumental in the formation of the Scheduled Castes Federation (SCF). In the pre-independence period, he made an articulate case for recognising the socio-economic exploitation that had been suffered by those outside the caste system. However, he never chose the path of 'agitationist' politics and instead relied on reasoning and an appeal to moral values. When India earned its independence, Dr. Ambedkar chose to work with the Congress Party and served with distinction as the Chairman of the Drafting Committee in the Constituent Assembly, and later as the first Law Minister of the Union of India. In his later years, he gave up his position in the Union Cabinet on account of the government's reluctance to reform family laws – which were aimed at combating the entrenched gender and caste-based discrimination in the private sphere. His untimely passing in 1955 drew tributes from all around the world.

Even though caste-based discrimination and violence still remains a fact of life in India today, there has been considerable progress for the historically disadvantaged sections. Numerous political parties have emerged on the strength of voters from the oppressed sections, and the benefits of education and economic development have also been gradually reaching these sections. The attainment of genuine social equality is of course a

gradually unfolding process but it was Dr. B.R. Ambedkar who set us on this path with a written constitution. It is not surprising that the invocation of his life and contributions continues to be a major factor in political mobilization, even today.

As suggested by the title of this lecture, today I would like to speak about the provisions in our Constitution which have a bearing on labour welfare. Being a representative of the judicial system, I will outline how the courts have interpreted and expanded the meaning of some fundamental rights, while often stepping into an activist mould. It is also important to keep in mind the substance of the Directive Principles of State Policy which touch on this area. I will also briefly examine how some legislations have been passed in recent years with the objective of improving the conditions of those engaged in the unorganised sector.

### **Application of fundamental rights**

The idea of ‘equal protection before the law’ embodied in Article 14 of our Constitution<sup>1</sup> serves as the philosophical foundation for equal treatment of similarly situated workers by the employer. This principle finds resonance in the idea of ‘equal pay for equal work’ enumerated in Article 39(d) which is further enforced through the Equal Remuneration Act, 1976. This statutory intervention also holds importance from the viewpoint of gender-justice since it was a clear command against discrimination between men and women who performed a similar quantum of work.

With respect to the liberties of individual workers and trade unions, the most significant rights are those enumerated in Article 19(1) which includes the ‘freedom of speech and expression’, the ‘freedom to assemble peacefully without arms’, the ‘right to form associations or unions’ and the ‘freedom to pursue a livelihood’. While ‘freedom of speech and expression’ is usually understood as a guarantee against the curtailment of citizens’ rights by the State, it is also possible to describe the methods adopted by trade unions such as demonstrations, picketing and strikes as forms of expression which can be subjected to ‘reasonable restrictions’ by the State.

**Right to demonstrate:** The question of the ‘right to demonstrate’ can be understood both in light of Article 19(1)(a) as well as Article 19(1)(c) in the Indian context. At one level the right to demonstrate can be understood as a form of expression since it draws attention to the grievances of workers and can facilitate ‘collective bargaining’ with the employers. Peaceful and orderly demonstrations enable workers to effectively communicate their demands not only to the employers but also to governmental agencies as well as the general public. The right to demonstrate can also be viewed as part of the ‘right to form associations or unions’ since such activities aid unionisation by way of drawing more members into the fold of the agitating union. Quite clearly, the government is within its powers to impose restraints on demonstrations, picketing and strikes with respect to the grounds enumerated in Article 19(2), 19(3) and 19(4).

It is quite understandable that for a demonstration to be effective it ordinarily has to be conducted in close proximity to the workplace. In *Kannan v. Superintendent of Police*,

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<sup>1</sup> Article 14 reads as follows: “*Equality before Law.- The State shall not deny any person’s equality before law or the equal protection of the laws within the territory of India.*”

*Cannanore*,<sup>2</sup> it was observed that a lawful demonstration or ‘satyagraha’ would lose all significance if workmen are asked to choose a place far away from the business premises of the employer. In *Kameshwar Prasad v. State of Bihar and Others*,<sup>3</sup> it was observed that to ban every type of demonstration would be a breach of the freedom of expression. However, reasonable restrictions can be imposed to prevent such demonstrations as would cause breach of public tranquillity. It must also be borne in mind that such activities can directly interfere with the employer’s business, especially when the workplace is a location for commercial exchanges.<sup>4</sup> Such a situation clearly involves a consideration of the employer’s right to conduct and continue trade or business, which is constitutionally protected under Article 19(1)(g).

As far as the ‘right to strike’ is concerned, it should not be understood as an absolute right which is an extension of Article 19(1)(c) since it is subject to statutory controls. Section 22 of the Industrial Disputes Act, 1947 lays down a prohibition against strikes in public utility services, except in circumstances where statutory notice has been given.<sup>5</sup> Section 23 of the same legislation prescribes a general prohibition of strikes in all industries, during the pendency of conciliation proceedings, arbitration or litigation between the workers and the management, concerning the issue at hand.

***Right to form associations or unions:*** The ‘right to form associations or unions’ has several dimensions, such as an individual worker’s right to join or leave an association, the freedom for a group of workers to organise and that of an existing trade union to expand its membership or dissolve itself. At the same time, the exercise of Article 19(1) rights by the workers’ are to be scrutinised and balanced with their impact on the employer’s right to conduct business or trade which is protected under Article 19(1)(g).

It was the Trade Unions Act, 1926 which was the first legislation to recognize the workers’ right to organise and it immunised the office-bearers of trade unions from exposure to charges of ‘criminal conspiracy’ and civil liability that could arise as a result of collective action. The procedure for registration of unions and the grant of ‘legal personality’ was laid down to enable the exercise of the ‘Right to form associations or unions’. However, a significant question which remains outside the statutory purview till date is that of how to ensure the ‘recognition of unions’ by employers. In order to ensure that workers’ interests are protected and pursued where there is a ‘multiplicity of unions’

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<sup>2</sup> (1975) 1 LLJ 83 (Kerala HC),

<sup>3</sup> (1962) 1 LLJ 294 (SC)

<sup>4</sup> For example, when employees’ unions engage in picketing in a shopping area, they directly discourage potential customers thereby affecting the employers’ business. In the context of a manufacturing unit, a demonstration conducted within working hours would obviously lead to loss of profits for the employers.

<sup>5</sup> Section 22(1) of the Industrial Disputes Act, 1947 reads as follows: “*Prohibition of Strikes and Lock-Outs. (1) No person employed in a public utility service shall go on strike in breach of contract-*

- (a) *without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or*
- (b) *within fourteen days of giving such notice; or*
- (c) *Before the expiry of the date of strike specified in any such notice as aforesaid; or*
- (d) *During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.”*

in the same establishment, it is desirable for the employer to engage with a union that is truly representative of the workforce.<sup>6</sup>

In industrial relations, it is a usual ploy for managements to follow a ‘divide and rule’ policy by conferring benefits on one union and extending ‘step-motherly’ treatment to others. The provision of basic facilities to unions can be seen as an essential limb of the ‘right to form associations or unions’ since the same enables unions to expand or ‘unionise’ further by enrolling more members. In the English decision in *Crouch v. The Post Office and Another*,<sup>7</sup> it was held that a smaller union should not be denied facilities by an employer, since granting exclusive privileges to larger unions creates an environment where the leaders of the recognised union can dictate terms to the rest of the workforce. This problem can become magnified if the leaders of the recognised union are outsiders who are likely to push their own agenda at the expense of the legitimate interests of the workers. The dilemma from the standpoint of an individual worker seems to be that even though it is desirable for an employer to recognise one representative union to ensure effective ‘collective bargaining’, there is also a need to ensure a level-playing field among unions in order to protect the diverse interests present in the workforce.

In the past there have been several legislative attempts<sup>8</sup> to incorporate provisions for the recognition of unions, but barring the exception of a few State-level legislations, there is no central legislation which lays down definitive criterion for granting recognition to a union.<sup>9</sup> In the absence of any Central legislation on the point, employers have traditionally refused to recognize trade unions mainly on five grounds:

- (i) Cases where office-bearers of the union were outsiders
- (ii) Trade Unions involved in political activities and with ex-employees and outsiders who are disapproved of by the management
- (iii) Unions that consist of only a small segment of the workforce in a particular industry and are hence unrepresentative
- (iv) Existence of several rival unions, i.e. the problem of ‘multiplicity of unions’
- (v) Non-registration of Trade Unions under the Trade Unions Act, 1926.

At this stage, I must emphasise the distinction between the fundamental right ‘to form associations or unions’ given by Article 19(1)(c), and the concomitant right to attain the

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<sup>7</sup> Cited from Colin Gonsalves, Ramesh Bhat and Francis Lewis, *Cases on Indian Labour Laws-Volume II* (New Delhi: Friedrich-Ebert-Stiftung, 1996) at p. 145-149

<sup>8</sup> In the Pre-Constitutional era, the recommendation of the Royal Commission on Labour (1929) for granting recognition to unions was sought to be implemented by the Trade Unions (Amendment) Act, 1947 which was never brought into force. Subsequently, the Trade Unions Bill introduced in Parliament in 1950 proposed a mechanism for recognition, but the bill lapsed. Another failed attempt was made in the form of the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 which proposed the creation of industry-level bargaining councils whose membership would be proportionate to the relative strength of various trade unions.

<sup>9</sup> Some States have enacted law on the point such as the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 which provides for the recognition of trade unions for certain undertakings and confers certain rights and obligations upon recognised trade unions while at the same time conferring certain powers on unrecognised trade unions as well.

objectives of forming such a union. This proposition was discussed in the matter of *All India Bank Employees Association v. National Industrial Tribunal*.<sup>10</sup> In this case, the appellant union had argued that they had a fundamental right to compel the employers (Banks) to disclose the status of ‘undisclosed reserves’ whose secrecy was protected by Section 34A of the Banking Companies Act, 1949. The employees’ union argued that knowledge of these reserves was needed to make a case for better wages for the bank employees. It was argued that the attainment of the legitimate objectives of a union such as bargaining to ensure better wages was a constitutionally protected right under Article 19(1)(c). The Supreme Court rejected this contention and held that while the ‘right to form unions’ was constitutionally protected, the attainment of the union’s objectives was a concomitant right, which could not be enforced by disregarding statutory provisions. In other words, workers have the constitutionally protected freedom to form a union, but no such right exists to compel the employer to recognise the union and engage in ‘collective bargaining’ with the same.

However, with the evolution of industrial jurisprudence, it is incumbent upon employers to ensure effective and genuine communications with the employees on the situation of the undertaking and about decisions which may affect their interests.<sup>11</sup> This position is also in consonance with Article 43-A in the Directive Principles of State policy which emphasizes the need to secure the participation of workers in the management of undertakings.<sup>12</sup> In *National Textile Workers’ Union v. P.R. Ramakrishnan*,<sup>13</sup> the Supreme Court had relied on this provision to uphold the right of workers to be heard in the winding up proceedings of a company.

**Rights against exploitation:** Article 23 of our Constitution<sup>14</sup> lays down a prohibition against ‘forced labour’, which is enforceable both against the State and private parties. The expression ‘forced labour’ includes a prohibition against slavery and bonded labour as well as trafficking in women, children or disabled people. The use of the words ‘begar and other similar forms of forced labour’ contemplate a prohibition against work of an involuntary nature without payment.<sup>15</sup> In interpreting the phrase ‘forced labour’, the idea of ‘force’ must be construed to include not only physical or legal force but also force

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<sup>10</sup> AIR 1962 SC 17; (1961) 2 LLJ 385 (SC)

<sup>11</sup> Ratio in *Peico Electronics and Electricals Ltd. v. Shri G.S. Baj and Another*, (Unreported), Cited from Colin Gonsalves, Ramesh Bhat and Francis Lewis, *Cases on Indian Labour Laws-Volume II* (New Delhi: Friedrich-Ebert-Stiftung, 1996) at p. 158-161

<sup>12</sup> Article 43-A was introduced by the Constitution (Forty-Second) Amendment Act, 1976. It reads as follows: “*Participation of workers in management of industries.- The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.*”

<sup>13</sup> AIR 1983 SC 75

<sup>14</sup> Article 23 of the Constitution reads: “*Prohibition of traffic in human beings and forced labour.-*

(1) *Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.*

(2) *Nothing in this article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste, class or any of them.*”

<sup>15</sup> Cited from: S.C. Srivastava, *Industrial Relations and Labour Laws*, 3<sup>rd</sup> edn. (New Delhi: Vikas Publishing House Pvt. Ltd., 1994) at p. 16

arising from the compulsion of economic circumstances which compels the worker to accept exploitative working conditions.

The understanding of Article 23 was expanded by the decision in *People's Union for Democratic Rights and others v. Union of India*<sup>16</sup> which was also followed in *Sanjit Roy v. State of Rajasthan*.<sup>17</sup> In that case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.<sup>18</sup>

Article 24 of the Constitution of India<sup>19</sup> is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasize the need to protect the health and strength of workers, and also to protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

### **Judicial Creativity and the expansion of 'Industrial Jurisprudence'**

Even though the rights of labourers are governed by several statutes, it is important to understand the scope of constitutional remedies that have been recognised in this area. In this respect, the decision in *People's Union for Democratic Rights v. Union of India*,<sup>20</sup> was significant in so far as it gave new dimensions to several areas pertaining to labour law. The case arose out of the denial of minimum wages to workmen engaged in various construction projects for the Asian games, the employment of children in the same and the non-enforcement of provisions of the Equal Remuneration Act, 1976, Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The case was admitted in the nature of a Public Interest Litigation on the basis of a letter sent to Justice P.N. Bhagwati. The dilution of the requirement of 'locus standi' enabled access to justice for the aggrieved workers who otherwise would have faced immense difficulties in approaching the Supreme Court. In addition to recognising the violation of Article 23 and 24, it was held that the non-observance of the above-mentioned statutes amounted to a violation of 'personal liberty' under Article 21. The reasoning advanced was that the protections conferred on the workmen by these legislations were intended to ensure the

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<sup>16</sup> AIR 1982 SC 1473

<sup>17</sup> [1983] 2 SCR 271

<sup>18</sup> Cited from G.B Pai, *Labour Law in India-Volume I* (New Delhi: Butterworths India, 2001) at p. 158-159

<sup>19</sup> Article 24 reads as follows: "*Prohibition of employment of children in factories, etc.- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.*"

<sup>20</sup> AIR 1982 SC 1473

basic human dignity of the workmen. Hence, if the workmen are deprived of their rights under these welfare-oriented legislations, the same amounts to a violation of Article 21 by the respondents, which included the governmental agencies who were obtaining the services of the workmen through contractors.<sup>21</sup>

The implication of this exercise in ‘Judicial creativity’ was that workers gained access to constitutional remedies in respect of statutory violations of the kinds mentioned above. Of particular interest is the expanded understanding of the ‘right to life and personal liberty’ under Article 21. Another example where this approach was used was the decision in *Bandhua Mukti Morcha v. Union of India*,<sup>22</sup> where Article 21 read with the Directive Principles enumerated in Articles 39, 41 and 42 were cited as the basis of the State’s obligation to identify, release and suitably rehabilitate bonded labourers under the Bonded Labour System (Abolition) Act, 1976.

Coming to the Directive Principles of State Policy enumerated in Part IV of the Constitution, Article 38<sup>23</sup> reflects the intent of the State to work towards an egalitarian society where there is equal opportunity for all citizens and social justice prevails. In this respect Article 39, 41, 42, 43 and 43-A are considered to be the ‘magna carta’ of industrial jurisprudence in the Indian context. Article 39 reinforces the idea of working towards social equality and also enumerates several principles that are sought to be enforced by way of statutes.<sup>24</sup> For instance, Article 39(a) recognises that all citizens have the right to an adequate means of livelihood, which corresponds to the idea of protecting

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<sup>21</sup> The key question in the case was whether a writ petition under Article 32 was maintainable for mere violation of labour laws. The Court of course went on to equate these instances of statutory violations with breaches of fundamental rights. Also see G.B Pai, *Labour Law in India-Volume I* (New Delhi: Butterworths India, 2001) at p. 159

<sup>22</sup> AIR 1984 SC 802

<sup>23</sup> Article 38 reads as follows: “*To secure a social order for the promotion of welfare of the people.-*

- (1) *The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice- social, economic and political- shall inform all the institutions of the national life.*
- (2) *The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”*

<sup>24</sup> To cite the language of Article 39: “*Principles of policy to be followed by the State.- The State shall, in particular, direct its policy towards securing-*

- (a) *that the citizens, men and women equally, have the right to an adequate means of livelihood;*
- (b) *that the ownership and control of the materials resources of the community are so distributed as best to subserve the common good;*
- (c) *that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*
- (d) *that there is equal pay for equal work for both men and women;*
- (e) *that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;*
- (f) *that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”*

the basic dignity of individuals that has been read under Article 21 as well. As mentioned earlier, there is a directive for ensuring 'equal pay for equal work' for both men and women, which corresponds to the idea of 'equal protection before the law' and is enforced by the Equal Remuneration Act, 1976. Article 39(e) also emphasizes the need to ensure that the health and strength of workers is not adversely affected and that they are not forced to enter unsuitable occupations. This is read in conjunction with Article 42 which lays down that the State shall make provision for securing just and humane conditions of work.

Article 39(f) enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop. These ideas are in consonance with the prohibitions against 'forced labour' and employment of children below the age of fourteen years, which have been laid down under Article 23 and 24 respectively. Article 39(f) places an obligation upon the State to provide for the sustenance and education of deprived children.

Article 41 highlights the State's responsibility to make effective provision for securing the right to work, the right to education and to public assistance in conditions of need. Article 42 also enumerates the State's obligation to make provision for Maternity Relief. The same is done by way of the Maternity Benefit Act, 1961 and the Employee's State Insurance Act, 1948 for factories coming under the latter legislation. Likewise, Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work. Article 43-A which was introduced by the 42<sup>nd</sup> Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments. The other principles enumerated in Part IV which have a bearing on Labour Laws are Article 45 that talks about the obligation to provide free and compulsory education for the promotion of educational and economic interests of weaker sections and Article 47 that emphasizes the need for improvement in the level of the standard of living and of public health.

### **Importance of creating protections in the informal sector**

We must also turn our attention to the legislations which have tried to advance the interests of a vast majority of our workforce, 91% of which is in the informal sector. The protections contemplated in statutes such as the Factories Act, Employees State Insurance Act and the Employees Provident Fund Act among others are only applicable in establishments that employ more than ten people on a regular basis. The rights of workers in the formal sector are also safeguarded to an extent by the bargaining powers of trade unions. Moreover, the reach of the insurance and pension-fund sectors has been confined to a small portion of the population which can afford to pay the requisite premiums or contributions.

For instance, it is common knowledge that construction workers are engaged for work on an ad-hoc basis and there is hardly any consolidation amongst them. The fact that most construction workers are placed in privately supervised settings makes it quite difficult for government agencies to monitor whether their safety, health and welfare-needs have been taken care of. The Building and Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 was enacted in order to respond to the special needs of those working in these sectors.

Since construction workers in the cities as well as smaller towns usually consist of a large number of migrants from the rural areas, they are often at the receiving end of discrimination and exploitation by employers. Even if the aggrieved persons complain to the authorities - in most cases there is no basis for showing a legal relationship between employers and workers, thereby making it very difficult to guarantee basic entitlements such as the payment of fair wages and the provision of proper facilities at the working sites. Keeping these realities in mind, the legislation had empowered the Appropriate Government to take specific measures for safeguarding the rights of the unorganised workers who are involved in the building and construction sectors. The Act provided for the creation of Welfare Boards in all States which have been given the responsibilities of administering social security schemes. The requisite funds are gathered through contributions from the government as well as employers.

The challenge of course has been the implementation of the statutory scheme since there are numerous practical hurdles in properly identifying the beneficiaries and ensuring that the earmarked funds reach the right persons. In recent times, the Unorganised Workers Social Security Act, 2008 has also been modelled on a similar philosophy of governmental intervention. The vast portion of our economy consists of small enterprises and operations, which depend on the services of 'self-employed workers', 'home-based workers' and those employed on a casual basis. In most of these small establishments, there is no reliable documentation or record-keeping. Individuals are engaged for work on an oral basis and there are no guarantees with regard to the remuneration and conditions of service. Instances of exploitation by employers and contractors are also widespread in the absence of any effective monitoring by government agencies.

Needless to say, the millions of unorganised workers are in dire need of a stable and reliable social security regime. The Unorganised Workers' Social Security Act contemplates the delivery of benefits to unorganised workers in instances of sickness, disability, maternity, unemployment, old age and the death of a family's breadwinner. The Act has defined 'Unorganised workers' in a wide and liberal manner so as to include those who are casually employed and receive daily or monthly wages as well as 'home-based workers' and even farmers who work on small land-holdings. Hence, the legislative intent is to expand the social safety net as widely as possible.

The machinery for implementing these schemes will consist of a National Social Security Board and State-level Social Security Boards. These Boards will perform the tasks of supervising the collection of contributions, maintenance of Social Security Funds and ensuring the proper dispersal of benefits. The nodal role will be played by the District-Level authorities who will be responsible for the registration of workers for the scheme and unique identification cards will be issued to the intended beneficiaries. In keeping with the philosophy of decentralisation, the actual registration of workers will be performed by Worker Facilitation Centres (WFC) which could be run by Panchayati Raj institutions, trade unions or recognised NGO's. The funds for the various schemes will be raised through contributions from the government, the employer and the workers. Since some categories of workers such as those who are Below Poverty Line (BPL) may not be able to make the necessary contributions, it has been suggested that the Central and State governments can raise funds through a special tax or cess.

While this statutory scheme is laudable, one can foresee some problems with its implementation. The foundational problem will be that of comprehensively identifying the intended beneficiaries. Since the intention is to reach out to those who are poor, illiterate and unorganised, special efforts will have to be made to generate mass awareness about the various schemes. There may also be difficulties in registering the workers on account of the suppression of facts by employers and contractors. Owing to the absence of any written records in small enterprises, government officials as well as NGO workers could find it hard to verify the fact of a person's employment in many cases. Employers may also be reluctant to accurately report the number of workers on account of social realities such as the prevalence of child labour and the pervasive exploitation of female workers. In the same vein, there may be obstructions to the timely collection of contributions from employers in the first place. There have also been problems with the dispersal of funds in many other government schemes such as the NREGS, where the wages meant for the workers have been siphoned off by intermediaries and corrupt officials. It has been suggested that this problem can be avoided by conferring benefits in a cashless form and relying on the unique identification cards of the intended beneficiaries.

Despite the potential problems with implementation, these progressive measures have created some attainable targets for our public institutions. If we can successfully expand our social security system to make it more inclusive and reliable, it will indeed be a major achievement for our democracy. With these words, I would like to thank you all for being such a patient audience and listening to me today.

Thank You!  
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