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Designing a Universal and Comprehensive Social Security Floor for Informal Sector Workers

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Summary:

In this policy brief, we examine the provisions of the Code on Social Security Bill, 2019 insofar as they apply to workers in the informal sector. We note that there is a lack of clarity in the Bill on the definition of an informal sector worker. The Bill refers to those in establishments with fewer than ten workers as unorganised sector workers. It also contains a definition of “wage worker” and “platform worker.” Neither of these terms encompass the large numbers of workers – including those with regular wages – who lack the protection of any form of social security net. We also note that the Bill, as it stands, does not provide for any enforceable rights for those in the informal sector; rather, the Bill provides that welfare for the informal sector will be delivered by way of schemes framed by the State and Central government.

We therefore believe that there is a need to define the types of social security provided by the State and the private sector. There is a need to define floor level social security measures provided by the State – in particular, universal health services and basic income security for all. There is also a need for the State to step in to identify a greater role for those who engage the services of informal workers in providing social security. Finally, it is important to understand the parameters for the private sector to design suitable savings and insurance products for those in the informal sector as well.

About Social Protection Initiative:

The Social Protection Initiative at Dvara Research is a policy initiative that aims to conduct research that will inform the design and implementation of a universal social security system. We believe a universal social security system is one that protects households and individuals against the vulnerabilities faced across the life cycle. At the same time, it is important to keep in mind India’s unique demographic and economic realities. These vulnerabilities are the outcomes of complex interactions of being exposed to a threat, of a threat materializing, and of lacking the defences or resources to deal with a threat.

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Introduction

The Code on Social Security Bill, 2019 [“the Bill”], introduced in Parliament in December 2019, is the most recent attempt to rationalise patchwork of social security legislation into a comprehensive Code. One of the key differences between the 2019 Bill and the versions in 2018 and 2017 is the chapter on unorganised sector workers. Earlier versions of the Bill provided for equal social security benefits for all categories of workers. However, the 2019 Bill treats informal sector workers as a separate category and provides that the government will frame schemes for their welfare.

As we have noted in our comments to the Ministry of Labour in 2019,² there is a lack of clarity on who informal sector workers are, meaning that there is a further lack of clarity on whom the interventions target. Further, it is unclear why informal sector workers are treated as a separate class from organised sector workers, or why informal sector workers receive far less protection under the Statute. Under the Bill, welfare for unorganised sector workers is to be provided by schemes designed by the Central or State governments, while formal sector workers have clear entitlements to provident fund, gratuity, employees’ state insurance and maternity benefits. This is deeply problematic, as informal sector workers comprise more than 75% of the workforce.³ There is an urgent need to evaluate the structure of social security available to unorganised workers.

In this policy brief, we discuss:

- i. The many definitions of informal sector workers, and whether social security should be universal
- ii. Unorganised workers in the Code on Social Security Bill, 2019
- iii. Design principles for social security interventions by the state and the private sector.

1. Who is an Informal Sector Worker?

The following definitions in the Bill are of interest.

- *S. 2(35): "gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship;*
- *S. 2(77): "unorganised sector" means an enterprise owned by individuals or self-employed workers and 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 workers is less than ten;*
- *S. 2 (82) "wage worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.*

²Dvara Research, Comments submitted to the Ministry of Labour and Employment on the Draft Labour Code on Social Security, 2019 (24 October 2019), available at

<https://www.dvara.com/research/wp-content/uploads/2019/10/Comments-submitted-on-the-Draft-Labour-Code-on-Social-Security-2019.pdf>

³Government of India, Periodic Labour Force Survey 2017-18, India (May 2019), available at

http://www.mospi.gov.in/sites/default/files/publication_reports/Annual%20Report%2C%20PLFS%202017-18_31052019.pdf [“PLFS”]

S. 113 allows persons to self-identify as unorganised sector workers.

- The National Commission for Enterprises in the Unorganised Sector (2007)⁴ proposed two definitions for unorganised sector workers. These are as follows:
 - o *"The unorganised sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers"*.
 - o *"Unorganised workers consist of those working in the unorganised enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/ social security benefits provided by the employers"*.

Based on these definitions, the NCEUS found that about 86% of India's workforce in 2004-05 would fall within the unorganised sector.

- The Periodic Labour Force Survey 2017-18 (PLFS) relies on the definitions by the 17th International Conference of Labour Statisticians for workers in the informal sector. The report lists some categories of informal workers, including:
 - o *own-account workers and employers who have their own informal sector enterprises;*
 - o *contributing family workers, irrespective of whether they work in formal or informal sector enterprises;*
 - o *employees who have informal jobs ... whether employed by formal sector enterprises, informal sector enterprises, or as paid domestic workers by households;*
 - o *members of informal producers' cooperatives; and*
 - o *persons engaged in the own-account production of goods exclusively for own final use by their household, such as subsistence farming or do-it-yourself construction of own dwellings.*⁵

The PLFS also considered only proprietorships and partnerships as informal sector enterprises.

- The ILO Recommendation No. 202 defines the informal economy as covering *"all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangement."* The Recommendation also clarifies that *"informal work may be found across all sectors of the economy, in both public and private spaces."*

We note that the Bill classifies informal sector enterprises by size of the establishment, rather than in terms of access to social security. This definition may leave out many workers from statutory social protection measures. According to the PLFS 2017-18, only 22.8% of Indian workers are in regular wage or salaried employment. 52.2% are self-employed, while 24.9% are in casual labour. The PLFS notes that 68.4% of workers employed outside of agriculture are employed in these informal sector enterprises. Further, 71% of regular wage employees have no written job contract, while 49.6% of regular wage employees were not eligible for any form of social security. Restricting social protection measures only to those in informal sector enterprises, as defined in the Bill, would leave many workers out of coverage. Moreover, it is unclear why the Bill carves out gig workers and platform workers as a separate category from informal sector workers.

⁴National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, India (2007).

⁵Ibid. at page 27.

We further note that terms “informal sector worker” does not encompass all those in need of social protection. The PLFS found that about 9% of workers were unemployed. Further, India has an old age dependency ratio of around 9.3%, which is likely to increase to 12.4% by 2026.⁶ Many others may not be in the workforce for reasons of age, disability, or the need to provide unpaid care work at home. There is a need to include all these classes of individuals within the protection of a formal social security net. We therefore propose that any social security floor be made universally applicable to all persons.⁷

2. Informal Sector Workers Under the Code For Social Security Bill, 2019

S. 109 of the Bill reads:

(1) The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to—

- (i) life and disability cover;*
- (ii) health and maternity benefits;*
- (iii) old age protection;*
- (iv) education;*
- (v) housing; and*
- (vi) any other benefit as may be determined by the Central Government.*

(2) The State Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to—

- (i) provident fund;*
- (ii) employment injury benefit;*
- (iii) housing;*
- (iv) educational schemes for children;*
- (v) skill upgradation of workers;*
- (vi) funeral assistance; and*
- (vii) old age homes.*

Unlike the 2018 Draft, the present Bill does not treat unorganised and organised sector workers in exactly the same way. Instead, while organised sector workers are covered under the chapters on provident fund, employees’ state insurance, gratuity, old age and maternity benefits, unorganised workers are only provided for under Chapter VII.

Chapter VII is based on the Unorganised Workers Social Security Act, 2008 (“UWSSA”). As with the UWSSA, the Bill does not provide for content of the rights referred to in S. 109. Rather, these are left to the discretion of the executive, which is to frame schemes.

This is problematic – schemes do not provide for justiciable rights which citizens can enforce in court. Further, they may be modified at any time, at the discretion of the government, and even to the detriment of the end

⁶ Technical Group on Population Projections constituted by the National Commission on Population, Office of The Registrar General & Census Commissioner, Population Projections for India and States 2001-2026, India (2006).

⁷ IFMR Finance Foundation & IFMR Research -Centre for Microfinance, Comprehensive Social Security for the Indian Unorganised Sector, India (December 2013), available at http://ifmrlead.org/wp-content/uploads/2015/OWC/CSS_Report.pdf

beneficiary.⁸ Moreover, since schemes cannot be enforced in Court, their implementation depends on the availability of funds from the government. As reports have shown, the budget allocations for schemes vary wildly from year to year,⁹ meaning that the implementation of many important schemes is haphazard at best. Further, while the Bill provides for self-identification as an unorganised sector worker in s. 113, it does not clarify what the implications of such registration – or the failure to do so – might be.

Finally, the Bill does not envisage any role for the employer (except in the case of platform workers in s. 114). This is problematic, as it may mean that employers do not take responsibility for social security of their workers by keeping them in casual work arrangements. We note that the Contract Labour (Regulation and Abolition) Act, 1970 only applies to establishments with more than 20 workers and does not apply where work is of an “intermittent” or “casual nature.” Where work is contracted out to contractors and sub-contractors, it could become impossible to ascertain where the liability for workers’ welfare may lie.

In sum, we identify three key concerns with the Bill in its present form:

1. The Bill does not elaborate on the content of social security rights for the informal sector. Instead, it leaves this to the discretion of the government. This in turn means that there is little certainty on what citizens may be entitled to. Moreover, the government schemes referred to do not confer any justiciable rights on citizens.
2. This means that there is a stark difference in the types of rights formal sector workers receive and those available to informal sector workers. In this respect, the Bill is not an improvement over the Unorganised Workers Social Security Act, 2008.
3. There is a need to envisage a framework that assigns responsibility to different entities – such as employers and contractors – in providing and delivering social security to workers. This is particularly relevant for those in the formal sector.

3. Designing Social Security Floors For India

A. Social Security Provided by the Government

As noted above, there is a need for social protections to be made available universally, and not only to informal sector workers. A number of rights, including the right to health,¹⁰ shelter,¹¹ and old-age pensions¹² have been read into the right to life under Article 21 of the Constitution. Further, the Directive Principles require the State to provide for the right to work,¹³ just and humane conditions of work¹⁴ and a living wage¹⁵.

Many international instruments also relate to the need to provide for social security and basic economic rights to citizens. The International Labour Organisation’s Recommendation No. 202 on Basic Social Security Floors and Recommendation No. 204 on the Transition from the Informal to the Formal Economy both refer to the need to put systems in place to protect the needs of informal sector workers. Further, the UN Sustainable Goal No. 8

⁸ Kolhapur Cane Sugar Works v Union of India, (2000) 2 SCC 536

⁹ See, Accountability Initiative, Budget Briefs, India (2006-2020), available at <https://accountabilityindia.in/budget-briefs/>

¹⁰ Vincent Panikurlangara v Union of India, AIR 1987 SC 990

¹¹ Chameli Singh v State of UP, (1996) 2 SCC 5490

¹² Ashwani Kumar v Union of India, (2019) 2 SCC 636

¹³ Article 41, Constitution of India, 1949

¹⁴ Article 42, Constitution of India, 1949

¹⁵ Article 43, Constitution of India, 1949

refers expressly to “full and productive employment and decent work for all.”¹⁶

To give effect to these obligations, it is necessary for the state to put social security mechanisms in place. We refrain from making any specific recommendations with respect to the content of the social security floor to be provided by the government. Further research is required to evaluate the needs of those outside formal social security nets and how this should be delivered. However, we suggest the following design principles for a state-provided social security floor:

1. Floor level social protections should be made available to all persons and not only those in the workforce.
2. The social security tools available to those in the formal sector may not be appropriate for all persons. Instruments such as PF or Employees’ State Insurance require regular payment of contributions from wages and a lack of liquidity. These may not be appropriate for those workers with seasonal occupations or those who earn much less than minimum wage.
3. Particular attention must be paid to providing basic income security. The Code on Wages, 2019 provides that minimum wages are to be determined by skill and geographical region,¹⁷ not by consumption requirements of individuals. As the PLFS highlights, many workers earn far less than the national floor level minimum wage of Rs. 176.¹⁸ There is, therefore, an urgent need to ensure that the social security floor provides enough income security for persons to meet their consumption requirements.
4. There is a need for both clarity and certainty in entitlements due to persons. As set out above, this can be provided by ensuring that social security floors are enshrined in statutes that set out basic entitlements. Some matters, such as the rupee amount of a transfer or the delivery architecture for a payment, may be determined by subordinate legislation. However, the content of social security rights must be set out in statute.
5. Any social security policy must account for migration within India and the need for workers to be able to access benefits in different states. We note that the Bill does not make any express reference to migrant workers, nor any reference to the Inter-State Migrant Workers Act, 1979. This must be remedied and clear guidelines framed for migrant workers’ access to benefits.
6. There must be a simple and accessible grievance redressal mechanism available to persons.
7. There may be a need to stipulate mandatory contributions by the employer and employee for social security. These contributions must take the volatile and seasonal nature of informal sector work into account and allow for flexibility in payments.

¹⁶UN General Assembly Resolution No. 70/1, Transforming our world: the 2030 Agenda for Sustainable Development (25 September 2015)

¹⁷S. 6, Code on Wages, 2019

¹⁸The PLFS notes that workers engaged in public works were paid the lowest wages - between Rs. 138 to Rs. 158 for men and Rs. 119 to Rs. 144 for women.

B. Defining the role of the Private Market

Savings tools offered by the private sector must serve to smooth consumption and adjust for risk across a person's lifetime.¹⁹ A recent report by Dvara Research noted that low-income households need access to liquid investment products to help manage financial shocks. These households also need access to suitable pension products to provide income security in old age. Many social security financial products, including those offered by the government,²⁰ are in fact unsuitable. Indeed, many endowment products offer a negative real rate of return.²¹

We note that private players have an important role to play in enabling individuals to make financial decisions for their own future, and that there is a need to understand the types of financial products that should be offered to informal sector workers. As with the content of state-provided social security floors above, we refrain from making specific recommendations with respect to the content of financial tools that should be offered by the private sector. Further research is needed into the types of financial services needed by workers in the informal sector. However, we suggest the following here:

1. Social security interventions by the private sector must be offered in addition to, rather than instead of, social security offered by the State.
2. Suitability must be a guiding consideration while designing interventions for those in the informal economy. Any product offered must be suitable for the worker.
3. As with state-provided benefits, there is a need for products to be flexible and allow for payouts or contributions suited to the workers' needs and occupations.
4. Further, products must account for an individual's choice to distribute risk over his or her lifetime. This could include a person's need for short term liquidity, or insurance against seasonal financial shocks, or long-term financial planning.
5. Workers' ability to make deposits into a savings instrument must be kept in mind. Financial products or services must be designed to account for seasonal variations in income and to account for financial shocks that affect a person's cash flows.
6. Finally, there must be efficacious and easily accessible grievance redressal mechanisms available to users of the privately provided social security tools.

4. Conclusion

In its present form, the Code on Social Security Bill, 2019 does not provide adequate social security coverage to workers in the informal sector. This policy brief identifies some of the concerns with the Bill as it stands. We propose that there is a need for a universal social security legislation that covers all persons. We also reason that there is a place for private players to play an important role both in terms of offering avenues for last-mile delivery of state sponsored social security as well as in offering affordable risk protection products. Further research is needed to determine the content of these interventions from the State and the private sector. A comprehensive effort towards streamlining ownership and governance of social security schemes would represent a significant step forward in India's ability to provide adequate, reliable, and affordable social protection options for its population.

¹⁹Ananth, B. & Mor, N. Finance as Noise Cancelling Headphones (24 June 2009), The Wall Street Journal; Rai, S. et. al., Universalizing Complete Access to Finance: Key Conceptual Issues in Ananth, B. & Shah, A., Financial Engineering for Low Income Households (India: 2013) at 1-24

²⁰Kumar, N. Old wine in a new bottle? – An analysis of the Pradhan Mantri Shram-Yogi Maandhan. Dvara Research Blog (5 February 2019) available at <https://www.dvara.com/blog/2019/02/05/old-wine-in-a-new-bottle-an-analysis-of-the-pradhan-mantri-shram-yogi-maandhan/>

²¹George, D. et. al., A Strategy for Comprehensive Financial Inclusion, India (January 2020), available at <https://www.dvara.com/research/wp-content/uploads/2020/01/A-Strategy-for-Comprehensive-Financial-Inclusion.pdf>