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## Labour regulations in India: Improving the social security framework

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# **Working Paper 331**

## **Labour Regulations in India: Improving the Social Security Framework**

**Anwarul Hoda  
Durgesh K. Rai**

**January 2017**



**INDIAN COUNCIL FOR RESEARCH ON INTERNATIONAL ECONOMIC RELATIONS**

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## Abstract

An important segment of labour regulations concerns the protection aspects of social security. These regulations provide safety nets or fall back mechanisms to enable workers to cope with crises that affect households from time to time, such as illness, employment injury, death or old age. This paper critically reviews and analyses existing regulations in India that provide fall back mechanisms and evaluates how they compare with systems in selected comparator countries and measure up against the minimum standards recommended in various ILO Conventions. These regulations are important not only from the point of view of the welfare of society but also from the perspective of efficiency of the work force in any activity. The analysis reveals serious shortcomings in the social security legislation and programmes in the country insofar as they apply to the unorganised workers. The paper concludes by making recommendations on alternative approaches to redress the deficiencies.

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# **Labour Regulations in India: Improving the Social Security Framework**

Anwarul Hoda<sup>1</sup> and Durgesh K. Rai<sup>2</sup>

## **1. Introduction**

In the context of developing countries, social security generally evokes the notion of a comprehensive framework of public policy encompassing several elements including employment generation, food security, housing, land distribution, health care, drinking water and sanitation, education, skill development and social insurance. Dreze and Sen (1991) make a broad distinction between two different aspects of social security, ‘promotion’ and ‘protection’. While promotion is related to the long term task of improving normal living conditions, protection is concerned with shielding the population from a decline in living standards due to ill-health, accident, death or old age. Labour regulations are generally concerned with the protection aspects of social security, embodying laws and programmes that provide fallback mechanisms to enable employees to cope with crises that confront households from time to time. Regulations covering social security are important not only from the point of view of the welfare of society but also from the perspective of the productivity of the work force in any activity such as manufacturing (ILO 2001).

This paper aims to evaluate critically the social security framework in labour regulations in India. Section 2 analyses the main social security legislation in India, covering benefits related to employment injury, health care, maternity, disability and death, unemployment and old age (provident fund, pension and gratuity), that workers in registered factories and other formal sectors, referred to as the organised sector, are entitled to. Section 3 examines the legislation and programmes that apply to the unorganised workers, which accounts for the overwhelming majority of the work force. Section 4 analyses how the existing social security legislation and programmes in the country measure up against the standards recommended in the ILO Conventions and compare these with systems that exist in five industrialised and emerging economies of Asia. Section 5 identifies the gap and makes recommendations for overcoming the shortcomings.

## **2. Existing social security legislation**

Five main laws have been enacted to provide social security benefits to workers in India, viz., the Employees’ Compensation Act, 1923; Employees’ State Insurance (ESI) Act, 1948; Employees’ Provident Funds and Miscellaneous Provisions Act, 1952; Maternity Benefit Act, 1961; and Payment of Gratuity Act, 1972. We describe below the principal provisions of these Acts, and the schemes in force under them. We also include a brief outline of the National

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Pension System (NPS), which has been an important addition to the social security framework in the country.

## **2.1 Employees' Compensation Act, 1923**

In 2009, the name of the original Act, the Workmen's Compensation Act, 1923, was changed on the basis of the recommendations of the Second National Labour Commission to make it gender neutral. Initially, the coverage of the Act included workers only in factories and in the transportation sector, but several state governments have expanded the coverage to other areas such as agriculture, horticulture, irrigation, etc. Unlike some other social security laws in India, there is no limitation on the number of employees or salary of worker as a condition for the coverage of an establishment/worker under the Act. All injuries sustained or occupational diseases contracted during the course of duty are covered by the legislation. Apart from temporary disablement of less than three days, compensation is denied to a worker if an injury is suffered while under the influence of alcohol or due to disregard of safety rules.

The Act provides for payment of compensation by the employer to employees in the event of death or permanent or temporary disablement. In the event of death, compensation is to be paid to the dependants. The legislation lists out the dependants on an inclusive basis so as to include not only the spouse, widowed mother and minor children but several other relatives if it can be shown that they were actually dependent on the earnings at the time of death.

The law provides for compensation to be paid for death or disablement of the employee, and prescribes the criteria for calculating the amount of compensation. The injury may result in temporary or permanent disablement, and when the disablement is permanent, it may be partial or total. A schedule to the Act (Schedule I) lists out the injuries deemed to result in permanent, total disablement and those that are considered to constitute permanent, partial disablement. Another schedule (Schedule III) provides the list of occupational diseases that are contracted while discharging duties, which expose employees to particular types of risks.

In all cases, the compensation is a multiple of the wages, which should include all privileges and benefits, such as the contribution paid by the employer towards any pension or provident fund. Schedule IV of the Act also lists out the factors, which have to be taken into account for working out the lump sum equivalent of the compensation amount in case of permanent disablement and death. The factors depend upon the age of the employee and are numerically the highest (228.54) for an employee aged 16 years and the lowest (99.37) for one aged 65 and above. In the case of death, an amount equivalent to 50 per cent of wages will need to be multiplied by the relevant factor to calculate the compensation. In the case of permanent disablement, the compensation is higher, and the factor (from Schedule IV) is to be multiplied by 60 per cent of the wages. Alternatively, the Act provides for fixed amounts of compensation of Rs.1,20,000 in the case of death and Rs.1,40,000 in the case of permanent total disablement, with the stipulation that either the calculated amount or the fixed amount would be paid, whichever is more. For permanent, partial disablement such as loss of fingers or toes, the compensation is reduced on the basis of the percentage of loss of earning capacity. Schedule I lays out the assumptions to be made about the loss of earnings capacity for various categories

of permanent or partial disablement. To give an example, if a worker aged 32 years loses a thumb in an accident, and her salary is Rs 10,000 per month, the compensation will be calculated as shown below:

Rs 10,000 (salary) x 0.6 (loss of earning capacity for full disablement) x 0.3 (percentage of loss of earning capacity from loss of thumb according to Schedule I) x 203.85 (factor in Schedule IV for an employee aged 32 years)

In the case of temporary disablement, the employee gets a half-monthly payment of 25 per cent of the monthly wages.

The employees insured under section 2(14) of the ESI Act 1948 (see paragraph 2.2 below) are not entitled to get any benefit under the Employees' Compensation Act, 1923. With the expansion of coverage of the ESI Act, the number of accidents compensated under the Employees' Compensation Act has shown a declining trend (Labour Bureau, 2012).

The Employees' Compensation Act, 1923, is administered by state governments, which appoint compensation commissioners who have the responsibility to decide cases and determine compensation.

## **2.2 The Employees' State Insurance (ESI) Act, 1948**

This legislation is the most comprehensive social security legislation in the country, covering medical care, sickness, maternity, employment injury, disablement, dependants and unemployment. Government establishments in receipt of benefits substantially similar to those available under the Act were excluded from its purview. It applied initially to non-seasonal factories but has subsequently been extended to other categories of establishments, particularly in the services sector. At present, it also applies to shops, hotels, restaurants, cinemas, road transport undertakings, newspaper establishments, and educational and medical institutions with more than 20 employees. In several states, the minimum number of employees to come within the ambit of the Act has been reduced from 20 to 10 in the case of shops and establishments. The threshold in respect of the number of workers for factories has also been reduced from 20 to 10, irrespective of whether power is used in the manufacturing process or not. The ceiling wage of employees covered by the Act is Rs 15,000 per month, which has been relaxed to Rs 25,000 per month for employees with disability. The ceiling wage is revised from time to time to take care of inflation, but once an employee has been covered, she remains covered for the entire service period.

Although the ESI Act, 1948, covers the whole country, the ESI scheme (ESIS) has not been implemented in certain areas of the country where there is insufficient concentration of establishments covered by the Act. Thus, the ESI scheme does not cover at least five categories of establishments and workers, namely, employees of central and state governments, employees in factories with less than 10 workers, employees in establishments in non-implemented areas, seasonal factories and workers drawing more than Rs 15,000 per month.



The central and state governments have made separate arrangements for the social security of their employees.

Although the ESIS is not universal and has important exclusions even within the organised sector, it still has substantial coverage. As on March 31, 2015, there were 17.9 million employees covered by the ESIS and about 1.3 million coverable employees in geographical areas to which the scheme has not been extended.

To implement the Employees' State Insurance scheme, the Government of India has established a corporate body, known as the Employees' State Insurance Corporation (ESIC). Employees of covered establishments are referred to as insured persons.

The ESI scheme is financed by contributions mainly from employers and employees, with the former paying 4.75 per cent and the latter 1.75 per cent of the wages. Expenditure on medical care is shared between the ESIC and state governments in the ratio of 7:1, with a ceiling of Rs 2000 per insured family (as on April 1, 2014). State governments are expected to share expenditure outside the ceiling to purchase equipment and vehicles for ambulances, to provide training for nurses and dispose of biomedical waste. The annual reports of the ESIC show that the programmes are well funded and savings from contributions are utilised to make capital investments. The ESIC has set up a network of hospitals, including super-specialty hospitals, and is in the process of setting up new ones. The Corporation also has tie-up arrangements with private hospitals for investigation and treatment.

The following are the main benefits available to insured persons from the ESI scheme:

### ***Medical benefit***

Medical care under the ESIS includes preventive, curative and rehabilitative services, and is provided in clinics for outpatients and in hospitals for in-patients. For in-patient services, tie-up arrangements have been made with reputed institutions, which also provide sophisticated diagnostic services. Medical care is also provided in lieu of a small charge to retired persons as well as to permanently disabled persons.

### ***Sickness benefit***

Sickness benefit is paid @ 70 per cent of the daily wage, provided qualifying contribution has been paid for a minimum period of 78 days. The maximum duration of sickness benefit is 91 days spread over two benefit periods. Persons suffering from diseases like tuberculosis or mental diseases can get extended sickness benefit for a period of two years at a higher rate of 80 per cent of the average daily wage, provided they have been employed for a period of two years and paid contribution for 156 days in four contribution periods.

### ***Maternity benefit***

Maternity benefit is payable @ 100 per cent of the daily wage for a maximum period of 12 weeks for confinement, six weeks for miscarriage, and another one month for sickness arising

from pregnancy. In places where necessary medical facilities are not available under the ESIS, a medical bonus of Rs 5,000 becomes payable for meeting confinement expenses, subject to a maximum number of two confinements.

### ***Disablement benefit***

When the disability is temporary, cash benefit is payable @ 90 per cent of the average daily wage for the period of such disability, after the initial period of three days. When the employment injury is permanent, whether partial or total, a periodic cash payment is made for the whole life, on the loss of earning capacity as certified by a medical board constituted for the purpose. The payment is revised from time to time to take inflation into account.

### ***Dependants' benefit***

As in the Employees Compensation Act, 1923, the ESI Act has a very inclusive definition of dependants, and besides the spouse and minor children, a widowed mother, unmarried daughters, sons below 25 years in age, a widowed daughter-in-law, a parent other than widowed mother, a minor child of a predeceased son, and a paternal grand-parent are also covered. In the event of death as a result of employment injury, dependants' benefit becomes payable @ 90 per cent of the average daily wage of the employee at the time of death and is divided among the dependants in the ratio prescribed in law. It is provided that the minimum amount of monthly payment to eligible dependants shall not be less than Rs 1200. Further, as in the case of disablement, the rate of monthly payment is revised from time to time to neutralise the effect of inflation.

### ***Unemployment Allowance***

Under the ESI Act, 1948, the Government of India has also introduced an unemployment insurance scheme known as the Rajiv Gandhi Shramik Kalyan Yojana (RGSKY) with effect from April 1, 2005. This scheme entitles the insured persons to receive an unemployment allowance equal to 50 per cent of the average daily wages for a maximum period of twelve months if the concerned person loses employment involuntarily as a result of retrenchment from or closure of the factory or establishment. Insured persons who have become invalids (to the extent of more than 40 per cent) as a result of injury not related to employment are also entitled to unemployment allowance. A condition of eligibility for unemployment allowance is that the ESIS contribution in respect of the insured person should have been paid for a minimum of three years prior to the loss of employment.

## **2.3 Employees' Provident Funds and Miscellaneous Provisions Act, 1952**

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is a central legislation, which provides the framework for introducing schemes for provident funds, pension funds and deposit-linked insurance funds for employees working in factories and other establishments. The Act applies to all factories in classes of industry specified in schedule I where 20 or more persons are employed. Government has also been empowered to extend the application of the Act to any other establishments/class of establishments with 20 or more

employees. Since 2011 there are 187 classes of industry including all enterprises in the manufacturing sector and most in the services sector above the cut off limit of 20 employees. In addition, there is provision for the Act to apply in respect of an establishment in which the employer and the majority of employees have agreed on a voluntary basis that the provision of the Act should be made applicable.

At present, there are three schemes in operation for the purpose of giving old age benefits to employees of covered organisations, namely, Employees' Provident Fund Scheme, Employees' Pension Scheme and Employees' Deposit Linked Insurance Scheme. They are all administered by the Employees Provident Fund Organisation (EPFO).

### ***Employees' Provident Fund Scheme***

The Employees Provident Fund scheme is applicable compulsorily to 187 industries and classes of establishment specified in Schedule I of the Act and activities notified by the central government, which employ 20 persons or more. Of the employees in these establishments, only those getting wages of Rs 15,000 or less have the obligation to subscribe to the provident fund. Those with higher monthly earnings may also join voluntarily with the employer's agreement. There is also a provision in the Act for voluntary coverage of establishments by the Employees Provident Fund Scheme. Voluntary coverage for employees of firms with fewer than 20 workers is also possible if the employer and a majority of employees agree to contribute. According to the Annual Report (2014-15) of the Ministry of Labour and Employment, 7,95,827 establishments and factories were covered under the scheme as on March 31, 2014, with a membership of 1178.13 lakh. Both the employers and employees are required to contribute to the Fund @12 per cent of the wages each, which has been reduced to 10 per cent for establishments manufacturing brick, beedi, jute, coir and guar gum. For purposes of calculation, the basic salary and dearness allowance are deemed to constitute wages. The subscribers are entitled to withdraw the full amount in their account with interest at the end of service, but they can also make partial withdrawals earlier for meeting obligations such as education or marriage of children.

### ***Employees' Pension Scheme***

All employees contributing to the Provident Fund Scheme are also eligible for the pension scheme, which is financed by transferring 8.33 per cent of the employers' contribution from the provident fund. The central government also contributes to the pension fund @ 1.16 per cent of the employees' wage. Pension is admissible to employees on superannuation at the age of 58, provided they have rendered service for a minimum period of 10 years of service. Pensionable salary is the average monthly pay drawn during the period of 12 months preceding the date of exit from the membership of the Employees' Pension Fund. The rate of pension is determined on the basis of the pensionable remuneration and the length of service rendered. In the event of death of the pensioner, pension is payable to the family at the prescribed rate. For a pensionable service of 33 years, the pension works out to about 50 per cent of the wages being drawn at the time of retirement. After the pensioner's death, there is provision for family pension.

### ***Employees' Deposit Linked Insurance Scheme***

All employees who contribute to the provident fund are automatically entitled to the Deposit-Linked Insurance Scheme. For this scheme, employers make a contribution at the rate of 0.5 per cent of the basic wage plus dearness allowance; employees are not required to make any contribution. The insured amount payable to the employee's dependants in the event of death is 20 times the wages or the deposit in the provident fund, whichever is less. Since the maximum salary covered by the scheme is Rs.15,000, the maximum amount payable is now Rs.3 lakh. In addition, the beneficiary is also entitled to 20 per cent of the calculated amount.

### **2.4 The Payment of Gratuity Act, 1972**

Another old age benefit being given through a central legislation is the payment of gratuity under the Payment of Gratuity Act, 1972. The Act applies to factories, mines, oilfield, plantations, ports, railways and shops and establishments having a minimum of 10 employees. To be eligible, the employee has to have a minimum service of five years. The gratuity to be paid by the employer to the employees at the end of service is 15 days' pay for every completed year of service, with a maximum entitlement of Rs 10 lakh. In the case of employees with monthly wages, the 15 days' wages are calculated by dividing the monthly rate of wages last drawn by 26 and multiplying the quotient by 15.

The central government is responsible for administration of the Act in respect of establishments including factories belonging to it and in respect of major ports, mines, oilfields and railway companies. Establishments with branches in more than one state are also under the control of the central government for the purposes of the Act. All other establishments are under the control of the state governments. The appropriate government appoints the Controlling Authority under the Act for the establishments under its jurisdiction.

### **2.5 The Maternity Benefit Act, 1961**

This Act applies to factories, mines, plantations and circus establishments and shops and establishments having a minimum of 10 employees, except that in establishments covered by the Employees' State Insurance Act, 1948, employees qualified to claim benefit under section 50 of that Act will not be entitled to the benefit under this Act. There is no wage limit under the Maternity Benefit Act 1961. As in the ESI Act, the Maternity Benefit Act, 1961, entitles women employees to leave at full pay for a period of 12 weeks, out of which six weeks have to be prior to and including the date of delivery and the remaining after that period. In order to be eligible for the benefit, the employee must have worked for a minimum period of 80 days. Other benefits include immunity from termination of service during pregnancy, except on charges of grave misconduct and a medical bonus of Rs 3,500.

The central government is responsible for administering the Act in respect of mines and circus industries and the respective state governments for factories, plantations and other establishments.

## **2.6 The National Pension System (NPS)**

NPS was initially introduced for the mandatory participation of new employees of the central government (except those in the armed forces) and autonomous bodies under the central government who joined service on or after January 1, 2004. In 2009, it was opened up for voluntary participation by corporates (the corporate model) and by all citizens (the all citizens model). Both the corporate and all citizens' models are relevant in the context of old age benefits under the social security system in the country. In the corporate model, there is provision for flexible contribution. The employer and employee may make equal or unequal contributions or either of them may be the sole contributor. The all citizens model is similar, except that they may join as individuals or as an employee-employer group.

In the NPS in general, there are two types of account, Tier I and Tier II. Tier I contributions by employer/employee are non-withdrawable and are meant for retirement benefit. Tier II, on the other hand, is a voluntary savings facility from which the subscribers are entitled to withdraw funds whenever they wish. At any point before 60 years of age the subscriber is required to invest at least 80 per cent of the pension wealth to purchase a life annuity from any IRDA regulated life insurance company while withdrawing the remaining 20 per cent as a lump sum.

While the contribution by the employer in both models are voluntary, the NPS does strengthen the social security system somewhat by creating a platform on which both employers and employees may jointly contribute towards old age benefits for employees.

## **3. Social security benefits for the unorganised sector**

### **3.1 Early initiatives**

As would be observed from the foregoing account, in India, it is mainly the organised sector that benefits from social security legislation. For a long time, the approach of the central government towards social security of the employees in the unorganised sector was hesitant and half-hearted. The following enactments have established welfare funds, which are to be used for undertaking activities for the welfare of workers:

- a) The Mica Mines Labour Welfare Fund Act (1946)**
- b) The Lime Stone and Dolomite Mines Labour Welfare Fund Act (1972)**
- c) The Iron Ore, Manganese Ore and Chrome Ore Mines Labour Welfare Fund Act (1976)**
- d) The Beedi Workers Welfare Fund Act (1976)**
- e) The Cine Workers Welfare Fund Act (1981)**

These funds are administered by the Ministry of Labour & Employment in the Government of India and are used for the welfare of workers in the sectors to which they relate, such as by providing health care, housing, educational and recreational facilities in selected places in the country where there is a concentration of workers in these sectors. Of the welfare benefits provided, health care is the only element that qualifies as social security. Ten hospitals and 274

dispensaries have been set up to provide basic healthcare as well as reimbursement of expenses on treatment of serious diseases, such as cancer, heart ailment, kidney transplant, tuberculosis, mental diseases and leprosy. Other social security benefits include the coverage of beedi and cine workers under a group insurance scheme, which envisages entitlement to benefits for natural death (Rs.10,000); accidental death (Rs.25,000) and partial disability (Rs.12,500 for beedi workers only).

The funds for the welfare schemes are generated by levying a cess on the products covered by the legislation listed above. In 2013-14, the total collection of cess was about Rs.288 crore and the total expenditure Rs.187 crore. With more than 87 per cent of total expenditure, health received the maximum amount followed by education and housing (Ministry of Labour and Employment, 2016).

In the post-reform period after 1992, the central government undertook several initiatives for social security for workers in the unorganised sector but the approach remained fragmented. One of the major initiatives was the enactment of The Building and Other Construction Workers' Welfare Cess, Act, 1996. The Act provides for the constitution of welfare boards by state governments and for the levy of a cess at rates between 1-2 per cent on construction works to raise resources for them. The government has notified the cess at the rate of 1 per cent. As on 30/09/2015, a total amount of Rs.21985.07 crore had been collected but the expenditure has lagged far behind at Rs.4152.99 crore, indicating very poor utilisation of funds (Ministry of Labour and Employment, 2016).

It is important to note here that apart from the welfare funds managed by the Ministry of Labour & Employment in the Government of India mentioned above, a number of state governments have come up with initiatives at their level. The most prominent initiatives at the state level have been taken in Kerala, where the state government has established a number of welfare funds that provide social security benefits, including old age pension, to diverse groups of workers, including toddy tappers, head load workers, cashew workers, khadi workers, coir workers, fish-workers, handloom workers, liquor shop assistants, beedi workers, tailors and construction workers. The state government has also established a number of other schemes such as the Kerala Agriculture Workers Welfare Pension, Kerala Tree Climbers Welfare Scheme, Kerala Unorganised Retired Workers Pension Fund Scheme, Kerala Migrant Workers Welfare Scheme, etc.

It was only after the establishment of the National Commission on Enterprises in 2004 that the social security needs of the unorganised sector received comprehensive attention and a number of schemes were initiated. Some of these addressed the social security needs specifically of the unorganised sector, while others targeted the poorer sections of the population, serving the interests of the workers in the sector also.

### **3.2 National Commission on Enterprises in the Unorganised Sector**

In 2004, the central government set up the National Commission on Enterprises in the Unorganised Sector (NCEUS) to recommend measures to enhance the competitiveness of the

unorganised sector in the emerging global environment. The concern was for the welfare of self-employed workers and those in informal, micro and small enterprises. One of the terms of reference of the Commission was to review the social security system available for labour in the informal sector and to make recommendations for expanding their coverage.

In its report, NCEUS (2006) suggested a comprehensive approach to secure social security benefits (covering hospitalisation and maternity benefits, life insurance and old age security) for the unorganised sector, based on defined contributions from beneficiaries and the government. The defined contribution was to be Rs.3 per worker per day, in principle payable equally by the worker, employer and the government, but in practice, the government was to pay the employer's share as well. The Commission suggested a division of the total annual premium of Rs.1095 into a premium of Rs.380 for health benefits and maternity cover, Rs.150 for life insurance, and Rs.565 for old age security.

In the case of health and maternity benefits, the idea was that negotiations would be held with an insurance provider on the nature and extent of benefits that would be possible but the expectation was that minimum benefits would be Rs.15,000 for hospitalisation, Rs.1,000 for maternity benefit per delivery, Rs.25,000 as personal accident cover in the event of death, and sickness cover for registered workers during treatment in a hospital. Regarding old age security, the Commission recommended a monthly pension of Rs.200 to all BPL old aged (60 +) workers and a provident fund to all other workers, out of the contribution of Rs.565 per worker.

The comprehensive scheme recommended by NCEUS was not implemented but a momentum was created to provide social security to workers in the unorganised sector, which led to the enactment of 'The Unorganised Workers' Social Security Act, 2008, and the introduction of several large programmes described below.

The Unorganised Workers' Social Security Act, 2008, is a framework legislation, which mandates the central government to formulate and notify ('shall formulate and notify'), from time to time, suitable welfare schemes for unorganised workers on matters relating to

- (a) Life and disability cover
- (b) Health and maternity benefits
- (c) Old age protection
- (d) Any other benefit as may be determined by the central government.

The state governments are generally advised ('may formulate and notify') to notify, from time to time, schemes for unorganised workers, including schemes relating to

- (a) Provident fund
- (b) Employment injury benefits
- (c) Housing
- (d) Educational schemes for children

- (e) Skill upgradation of workers; funeral assistance and
- (f) Old age homes.

The Act also provides for the establishment of the National Social Security Board by the central government and state social security boards by state governments to recommend suitable schemes and to review the implementation of schemes in operation. It also requires the registration of the unorganised worker by the district administration upon application.

According to the Act, an unorganised worker means a home-based worker, self-employed worker or a wage-worker in the unorganised sector and includes a worker in the unorganised sector not covered by The Employees Compensation Act, 1923, The Industrial Disputes Act, 1947, The Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Maternity Benefit Act, 1961, and The Payment of Gratuity Act, 1972.

The Unorganised Workers Social Security Act (UWSSA), 2008, listed 10 social security schemes for unorganised workers, which were in existence at the time of enactment and are described below.

The following social security schemes were established for the unorganised sector up to 2008:

- (i) The Indira Gandhi National Old Age Pension Scheme (IGNOAPS), launched in November 2007, envisages a monthly pension of Rs. 200 (age group of 60-79 years) and Rs.500 (80 years or above) for persons in BPL families.<sup>3</sup>
- (ii) The National Family Benefit Scheme (NFBS) is one of major components of National Social Assistance Programme (NSAP) which came into effect on August 15, 1995. NFBS entitles families in BPL households to a lump sum payment of Rs.20, 000 in the event of death of the primary bread winner.<sup>4</sup>
- (iii) The Janani Suraksha Yojana was launched in April 2005 by modifying the National Maternity Benefit Scheme (NMBS). It entitles new mothers to a cash benefit of Rs.700-1400 in rural areas and Rs.600-1000 in urban areas for institutional delivery. The beneficiaries in low performing states such as Uttar Pradesh and Bihar are entitled to receive higher amounts.<sup>5</sup>
- (iv) The Janshree Bima Yojana was introduced on August 10, 2000 covering 45 occupational groups including beedi workers, brick kiln workers, carpenters, cobblers, construction workers, handicraft artisans, handloom weavers and other vocations in the age group of

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<sup>3</sup> As on December 31, 2015, there were 152 lakh beneficiaries under the scheme (Ministry of Rural Development, 2016).

<sup>4</sup> Up to December 2014, there were 1.58 lakh beneficiaries reported under the scheme (Ministry of Rural Development, 2015).

<sup>5</sup> During 2014-15, there were 1.04 crore beneficiaries under the Janani Suraksha Yojana (Ministry of Health and Family Welfare, 2015b)



18-59. The premium for the scheme was Rs.200 per member out of which 50 per cent was met from the Social Security Fund set up by the Government of India and maintained by the Life Insurance Corporation of India. The remaining 50 per cent was to be paid by the member or the nodal agency concerned. A department or agency of the State government or an institution designated by it acts as the nodal agency. The benefits included Rs.30,000 on natural death, Rs.75,000 on death or permanent disability due to accident and Rs.37,500 on partial disability due to accident. As noted in Serial no (vi) below, this scheme has now been amalgamated into the Aam Admi Bima Yojana (AABY).

- (v) The Rashtriya Swasthya Bima Yojana (RSBY) was launched on October 1, 2007, for BPL families in the unorganised sector, entitling them to smart card based cashless insurance cover of Rs.30,000 per family per annum. The Government of India contributes 75 per cent of the estimated annual premium, subject to a maximum of Rs.565 per family per annum, and the remaining 25 per cent comes from the state governments. The beneficiary is required to pay Rs.30 per annum as registration/renewal fee. The insurance providers are selected from public and private insurers by the state/implementing agency through a tendering process.

Until March 31, 2014, the RSBY had been implemented in 28 states and union territories and 3.85 crore smart cards had been issued. The RSBY has been extended to building and other construction workers, railway porters, street vendors, beedi workers, domestic workers, sanitation workers, mine workers, rickshaw pullers, rag-pickers, auto/taxi drivers and MGNREGA beneficiaries who have worked for a minimum of 15 days.

- (vi) Another major programme, the Aam Admi Bima Yojana (AABY), administered through the Life Insurance Corporation of India (LIC), was launched on October 2, 2007, providing for death and disability in the age group 18-59 originally for rural landless households. Subsequently, the Jan Shree Bima Yojana was amalgamated into AABY, which now provides death-cum-accident cover also to 48 identified vocational groups against 45 groups covered originally by the Jan Shree Bima Yojana (See serial no iv above). Like the erstwhile Jan Shree Yojana, the AABY provides an insurance cover of Rs.30,000 on natural death, Rs.75,000 on death in accident, Rs.37,500 for partial permanent disability and Rs.75,000 for total permanent disability. The scheme also provides for an additional benefit of scholarship of Rs.100 per month per child for up to two children. Of the annual premium of Rs.200, 50 per cent is contributed from the Social Security Fund created by the central government and maintained by the LIC and the remaining by the member or the nodal agency.

Up to 30 June, about 4.52 crore beneficiaries had been covered and the outgo towards premium was Rs.569 crore in 2012-13, Rs.269 crore in 2013-14 and Rs.341 crore in 2014-15. There is also substantial outgo towards scholarship, having amounted to Rs.119 crore, Rs.279 crore and Rs.275 crore in 2012-13, 2013-14 and 2014-15 respectively (Ministry of Finance, 2015).

- (vii) For handloom weavers, two separate schemes were introduced in 2005-06, namely, the Health Insurance Scheme (HIS) and the Mahatma Gandhi Bunkar Bima Yojana (MGBBY) under the Handloom Weavers Comprehensive Welfare Scheme (HWCWS).<sup>6</sup>

Under the HIS implemented through ICICI Lombard General Insurance Co Ltd, the premium payable initially was Rs.1,000 for a family of four, and was shared between the weaver who paid Rs.200 and the government (Ministry of Textiles), which paid Rs.800. The benefit was hospitalisation expenses up to a limit of Rs.15,000 and outpatient expenses up to Rs.7,500. With effect from September 30, 2014, the HIS is being implemented on the RSBY platform, with the addition of the benefit of outpatient treatment up to Rs.7,500. Thus, the benefits in the RSBY for handloom weavers include hospitalisation (Rs.30,000) and outpatient treatment (Rs.7,500). The premium of Rs.750 per weaver is payable by the central and state governments in the ratio of 75:25, and the weaver pays only a registration fee of Rs.30 per annum.

The MGBBY is implemented through the Life Insurance Corporation of India. The total premium per weaver is Rs.470, of which Rs.290 is paid by the Government of India, Rs.100 by the LIC from the Social Security Fund and only Rs.80 is payable by the weaver. The benefits are Rs.60,000 for natural death, Rs.1,50,000 for accidental death or total disability and Rs.75,000 for partial disability.

- (viii) The Handicraft Artisans' Comprehensive Welfare Scheme (HACWS) was implemented during the Eleventh Five-year Plan. This scheme has two components: (i) the Rajiv Gandhi Shilpi Swasthya Bima Yojana (RGSSBY) and (ii) the Aam Admi Bima Yojana (AABY) for Handicraft Artisans, adopting the pattern of HIS and MGBBY respectively. Both the components were launched in 2007 and 4,038 artisans have been covered under AABY during the year 2014-15 (Ministry of Textile, 2015).<sup>7</sup>
- (ix) The National Scheme of Welfare of Fishermen was started in 1991-92 by combining two different schemes – Janta Accident Policy and National Welfare Fund for Fishermen. This is a comprehensive welfare scheme, which encompasses housing, drinking water, training and extension. One of the components is group accident insurance for active fishermen, who are insured for Rs.2,00,000 against death or permanent disability and Rs.1,00,000 for partial permanent disability and a cover of Rs.10,000 for hospitalisation due to accident. The annual premium of Rs.65 per head is shared equally by the centre and the states.<sup>8</sup>
- (x) Pension to master craftsmen is granted to those craftsmen who have won national awards.

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<sup>6</sup> In 2013-14, there were 1749,452 and 574,818 beneficiaries under HIS and MGBBY (Ministry of Textiles, 2014).

<sup>7</sup> Data is not available for coverage under RGSSBY.

<sup>8</sup> In 2014-15, there were 421,450 beneficiaries under the scheme (Department of Animal Husbandry, Dairying, and Fishing, 2016).

### 3.3 Social security schemes for the unorganised sector established after 2008

A major social security programme undertaken specifically for the unorganised sector, the Swavalamban Yojana, was launched on September 26, 2010, as a scheme under the National Pension Scheme (NPS) administered by the Pension Fund Regulatory and Development Authority (PFRDA). Under the scheme, government was to contribute Rs.1000 per year for five years, starting with the year 2010-11, to each account of employees who joined the NPS with a minimum contribution of Rs.1000 and a maximum of Rs.12,000 per annum.<sup>9</sup>

However, a more ambitious old age pension scheme, the Atal Pension Yojana (APY), was implemented with effect from June 1, 2015, for persons in the age-group of 18-40, having a savings bank account. Although the scheme is universal, it is of great relevance to workers in the unorganised sector. The scheme envisages a guaranteed minimum pension of Rs.1,000, Rs.2,000, Rs.3,000, Rs.4,000 or Rs.5,000 per month on attaining 60 years in age until death, provided the beneficiary pays the contribution per month fixed for the guaranteed amount opted by them. The rate of contribution varies with the age at which the beneficiary begins payment and the guaranteed pension amount for which they opt. On the beneficiary's death, the spouse gets the pension until his/her death. After the demise of both the subscriber and the spouse, the nominee is entitled to receive the pension wealth as accumulated until the age of 60 of the subscriber. Up to August 5, 2016, more than 31 lakh people had joined the scheme.<sup>10</sup>

As in the case of Swavalamban scheme, the central government has granted an incentive for those joining the scheme before March 31, 2016. The central government will make a co-contribution of 50 per cent of the total prescribed contribution, up to Rs.1,000 per annum, for five years for those who joined the scheme before March 31, 2016 .

The Pradhan Mantri Jeevan Jyoti Bima Yojana is another universal scheme introduced on June 1, 2015, by the central government, which is relevant for workers in the unorganised sector. The premium payable is Rs.330 per member and the benefit is Rs.2 lakh on their death from any cause . As on August 1, 2016, the total number of persons enrolled under the scheme is 3.037crore. Until that date, 36,639 claims had been made, of which 31,654 claims were disbursed.<sup>11</sup>

The Pradhan Mantri Suraksha Bima Yojana (PMSBY) is another universal scheme introduced on June 1, 2015 for death or disability due to accident, which is appropriate for the unorganised sector. All savings bank account holders in the participating banks in the age group of 18-70 years are eligible to join the scheme. The premium is Rs.12 per member per annum and the benefit Rs.2 lakh for death or serious disability and Rs.1 lakh for partial disability. As on

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<sup>9</sup> By March 31, 2014 the Swavalamban scheme had 2.8 million subscribers, against 6.5 million subscribers for all pension schemes (Pension Fund Regulatory and Development Authority, 2014).

<sup>10</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=148445>

<sup>11</sup> <http://www.jansuraksha.gov.in/Files/Performance/PMJJBY-01.08.2016.pdf>

August 1, 2016, 9.617 crore people were registered under the PMSBY, 7,190 claims were received and 4,711 disbursements made.<sup>12</sup>

In 2010-11, the government introduced a scheme for maternity benefit, on a pilot basis in 53 districts, under the Indira Gandhi Matritva Sahayog Yojana (IGMSY). Pregnant and lactating mothers receive a grant of Rs. 4000 (increased to Rs. 6000 from July 2013) as a cash incentive for improved health and nutrition. The idea was also to partly compensate for wage loss to women prior to and after delivery.

#### **4. Evaluation of the existing social security schemes**

In order to evaluate the existing security system in India, we see first how they measure up against the standards recommended in the ILO's Social Security (Minimum Standards) Convention, 1952 (No 102) and the subsequent conventions. We do not consider whether or not India has ratified them because the purpose is not to analyse whether or not India is living up to its treaty obligation. The purpose is to see where India stands in respect of minimum standards of social security approved by the community of nations. Since these conventions are only about minimum standards, as the title of the ILO Convention No 102 expressly indicates, for a fuller assessment, we also proceed to compare the main features of our system with those of systems in selected comparator countries. It would have been ideal if we had included a good number of countries at various levels of development and in different regions of the world for the purpose of this comparison. However, due to space constraints, we have restricted the comparison to a subset of five industrialised or industrialising Asian countries. These countries have been successful in achieving growth and development in recent decades and a comparison of the social security systems for workers in these countries can help in the appraisal of the Indian system. Another self-imposed limitation of our analysis, again for the reason of keeping it brief, is that we look only at six main pillars of social security systems, that is, those relating to old age, medical care, sickness, maternity, employment injury and unemployment.

##### **4.1 Old age benefit**

###### ***ILO Conventions and old age benefits available in India***

The key requirements of ILO conventions on old age benefits relate to coverage, proportion of previous earnings and the amount of insurance contribution to be borne by the employee. With regard to coverage of old age pension, Convention 102 provided some degree of latitude to require that 50 per cent of all employees or 20 per cent of all residents or all residents with means below the prescribed limit or 50 per cent employees in industrial workplaces employing 20 persons or more be covered. However, Convention 128 raised the requirement of coverage

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<sup>12</sup> Ibid

to all employees or 75 per cent of economically active population. Convention 102 provided for periodical payments equal to at least 40 per cent of the reference wage; Convention 128 raised it to 45 per cent. The reference wage for the standard beneficiary (man with wife of pensionable age) is the previous earnings of the beneficiary. Another requirement in Convention 102 is that the total insurance contributions borne by the employee must not exceed 50 per cent of the total financial resources allocated to the protection of employees.

There are three main schemes providing old age benefit in India, the Employees' Pension Scheme, which apply compulsorily to 187 industries and classes of establishment, and the two optional schemes, viz., the National Pensions Scheme (NPS) and the Atal Pensions Yojana (APY). These schemes taken together still fall short of the ILO Convention requirement that old age benefit must cover all employees. Even the Employees' Pensions Scheme leaves out establishments with less than 20 employees in the 187 categories of industries and establishments covered by it. The NPS does not envisage compulsory contributions by the employers in either the all-citizens model or the corporate model; in the APY too, almost the entire burden of financing old age benefit falls on the employee. The entire unorganised sector does not have old age pension even approaching the standard laid down by the ILO conventions. There is only the old age pension of Rs 500 per month for senior citizens (above 60 years in age) in the BPL categories under IGNOAPS, which is more in the nature of social assistance than an old age pension scheme for workers and employees.

#### ***Old age benefit in comparator countries***

China: Insurance for compulsory old age benefits for urban employees has two components, the basic pension insurance and mandatory individual account. All employees in urban enterprises, self-employed persons, part time employees in urban areas and casual workers are covered by both. The workers' contribution in the mandatory individual account is 8 per cent of gross earnings and none for basic pension component. The employer makes no contribution to the mandatory individual account but pays into the basic pension insurance amounts that vary widely in different regions, going up to 20 per cent in some regions. The minimum pension, which includes both basic pension and individual account, varies from region to region but is normally between 40 per cent and 60 per cent of the average local monthly wage during the previous month. There are separate regional programmes covering rural and non-salaried urban residents, with non-contributory and individual account components. In the non-contributory account, the central government provides 50-100 per cent of the total cost and the local governments make additional contributions. The local government provides a subsidy of 30-60 yuan into the individual account. The insured persons make a contribution of 100-2000 yuan a year into the individual account according to 12 scales, while the local government provides an annual subsidy of 30-60 yuan. A unified pension programme covering the whole of mainland China is being envisaged.

Japan: There are two components of pension, the national pension programme and the employees' pension insurance. The national programme covers all residents up to 59 years of age, including self-employed persons who run unincorporated business with up to four workers, and provides for voluntary coverage up to 64 years. The employees' pension

insurance covers employees below 70 years in industry and commerce but excludes most self-employed persons. For the employees' pension insurance, both employers and employees contribute 8.737 per cent to 9.150 per cent of the monthly wages each. Under the national pension programme, the full pension payable on reaching 65 years of age is at present fixed at 772,800 Yen, which amount is reduced for early pension and enhanced for deferred pension according to a set formula. Under the employees' pension insurance, the pension is based on the insured's average monthly wage over the full career multiplied by a coefficient determined by the insured's date of birth multiplied by the number of months of coverage.

Malaysia: The Employees' Provident Fund (EPF) is the main source of old age as well as disability benefits. Private sector employees and public sector employees not covered by separate public sector schemes are covered by the EPF. Voluntary coverage is provided for household workers, self-employed workers and foreign workers. Generally, the insured person pays 11 per cent and the employer 13 per cent of the monthly earnings into the fund. There are two types of account in the EPF, Account 1 and Account 2, and contributions received from both employers and employees are allocated to these accounts in the ratio of 70:30 respectively. A part of Account 1 balance may be used to invest with an external manager and a part of the account 2 balance may be used for education, critical illness or to purchase a house. Retirees may withdraw the entire amount with interest, may opt for a monthly pension or may choose other options or combinations thereof.

South Korea: All employed and self-employed persons, including farmers and fishermen, are covered by social insurance. The contribution to social insurance by the employee is 4.5 per cent of the gross monthly earning and by employers 4.5 per cent of the gross monthly payroll. Self-employed persons pay 9 per cent. As regards benefits, the basic monthly pension amount (BPA) after 20 years of coverage is 1.41 times the sum of the national average indexed monthly wage in the three years before the first pension payment and the insured's average monthly wage over the total contribution period. An increment is applied to the amount thus worked out for each year of coverage exceeding 20 years. The factor of 1.41 will be reduced by 0.015 a year until it reaches 1.2 in 2028.

Thailand: Social insurance provides for old age benefits for employed persons in the formal sector. There is provision for voluntary coverage of self-employed persons too but agricultural, forestry and fishery employees, as well as temporary and seasonal workers are excluded. Thailand is unique in providing for voluntary coverage of informal sector workers. For old age benefits, employees and employers contribute 3 per cent each of the monthly earnings or payroll. In the informal sector system, each person has to contribute 100 bahts a month for old age, sickness, disability and survivors' benefits. In the formal sector, the retiree is eligible for 20 per cent of the average monthly wage in the last 60 months before retirement. The pension is increased by 1.5 per cent of the monthly wage in the last 60 months for each 12-month period of contributions exceeding 180 months. Thus, for a pensioner who has worked for 35 years, the basic pension of 20 per cent will be enhanced by another 30 per cent. In the informal sector, a lump sum is paid plus the balance of any contributions made. Besides, old age pension is

given by way of social assistance of between 600 baht to 1,000 baht per month according to age.

The old age benefit schemes in Japan and South Korea have comprehensive coverage: in Japan, it covers not only employees but all residents; in South Korea, it covers all self-employed persons including farmers and fishermen. These are evolved and high income societies, which cannot be a model for us. However, it is apparent that developing countries are also moving towards comprehensive coverage even though all employees do not have the same or similar benefits. In China, different programmes apply to employees in urban enterprises on the one hand, and non-salaried urban and rural residents on the other. Earlier, the latter were covered by separate regional programmes but now a unified scheme for the whole mainland is on the anvil. In Malaysia, all employees are covered by the EPF, which offers the facility of conversion to a pension programme. In Thailand, there is a separate arrangement for informal sector workers who receive a lump sum payment on retirement rather than a pension. In India, workers in the informal and unorganised sector receive no old age benefit in the form of either a lump sum payment or pension, except the meagre old age pension of Rs. 500 per month for persons in the BPL category under IGNOAPS. The periodic payments that they receive under the APY cannot be regarded as a social security benefit as they are based largely on their own contribution, which is far more than the ceiling of 50 per cent stipulated in the ILO conventions. In the NPS too, there is no compulsion on employers to make any contribution.

## **4.2 Medical care**

### ***ILO Conventions and medical care in India***

ILO Convention 102 required medical care to be made available to a proportion of employees, economically active population, residents or employees in industrial workplaces as described above for old age benefits. ILO Convention 130 raised the standard of coverage so as to require that all employees or 75 per cent of the economically active population or 75 per cent of all residents are covered. Convention 130 also added dental care and medical rehabilitation to those listed in Convention 102; countries are now expected to provide for preventive care, general practitioner care, including domiciliary visit, specialist care and essential pharmaceutical supplies, hospitalisation where necessary, dental care and medical rehabilitation.

Medical care provided by the ESIC in India fulfils the requirement regarding the scope of medical care, except the provision of domiciliary visit by the general practitioner. But the ESIC does not have full coverage even for non-seasonal factories and the categories of services to which it has been extended. It does not cover establishments with less than 10 employees and it does not provide benefits in geographical areas to which it has not been extended. The medical care provided by the RSBY falls well short of the requirement as only hospitalisation costing up to Rs 30,000 is provided for, and there is no provision for out-patient treatment. Moreover, the RSBY facilities are available only to BPL categories. India also has a universal healthcare system encompassing primary health centres in rural areas and hospitals in urban centres, which are mandated to provide services virtually free of charge. But these centres and

hospitals are overcrowded, often short of medical supplies and without the full complement of doctors and other medical personnel in position, and they cannot be said to provide assured access to the population. India falls short of ILO standards here also.

### ***Medical care in comparator countries***

China: Medical insurance has two components – social insurance and individual medical savings account. All employees in urban areas are covered, whether in government organisations, enterprises, social groups or non-profit organisations. No contribution by the insured is to be made to the pooling fund for social insurance, but generally 2 per cent of gross wages is to be paid to the individual account. The employer pays about 6 per cent of the total payroll, out of which 70 per cent is for the pooling fund and 30 per cent to the insured's individual account. The government subsidises administrative costs. Insured workers receive medical benefits at accredited institutions on a fee for service basis. The individual account pays for the medical benefits up to 10 per cent of the local average annual wage and the pooling fund pays above 10 per cent but up to 600 per cent of the local average annual wage. Self-employed persons may join on a voluntary basis on payment generally of 10 per cent of their gross earnings.

There is separate medical insurance for rural and non-salaried urban employees. Employees pay an average flat rate contribution of 90 yuan a year. A combined annual matching contribution is made by the central and local governments of 360 yuan (2015) per person. The insured person is reimbursed for medical costs up to 600 per cent of the local average annual income.

Japan: All residents up to the age 75 not covered by employees' health insurance are covered by national health insurance. The employees' health insurance programme is managed by an occupational health insurance society or by associations of employees of firms in industry and commerce employing five or more people. Self-employed persons are excluded but there is provision for voluntary coverage of employees of firms with less than five employees as well as of agricultural, forestry or fishery workers. For national health insurance, the average annual contribution by each insured person was 84,265 yen and for each household 143,362 yen in 2012 and there is no contribution by the employer. Self-employed persons make the same contribution to the national insurance programme. For employees' health insurance, the contribution of the employee in 2014 was 5 per cent of monthly earnings according to 47 wage classes for association managed programmes and 3.98 per cent for society managed programmes. The contribution of employers in that year was 5 per cent of the payroll, according to 47 wage classes for association managed programmes and 4.76 per cent for society managed programmes.

National health insurance and employees' health insurance cover all types of medical expenses, including surgery and hospitalisation, but the insured person has to share a part of the cost, varying between 10 and 30 per cent, depending on income and age-group.



Malaysia: There is no separate insurance programme for medical care of employees and the expectation is that the employer would pay for it. However, employees are entitled to withdraw savings from Account 2 (see section under old age benefit for details) to pay for treatment of a critical illness, if the employer does not meet the expenses. The EPF Board has designated 55 illnesses as critical. It needs to be mentioned here that the Ministry of Health provides public health care services with some cost sharing by beneficiaries.

South Korea: All Korean citizens and employees are covered for medical and long-term care benefits. Low income citizens are covered by a medical aid programme. The insured persons pay 3 per cent of the gross monthly earnings for medical benefits and 0.19 per cent for long-term care. Employers also pay 3 per cent of the monthly payroll for medical benefits and 0.19 per cent for long-term care. Benefits include medical treatment, surgery, hospitalisation and medicines. These services are provided by doctors, clinics and pharmacists under the control of the National Health Insurance Service (NIS). The insured person pays 20 per cent for hospitalisation and 30 per cent to 60 per cent for outpatient care. Long-term care benefits include in-home services and institutional care in licensed nursing homes.

Thailand: Medical benefits are provided under separate programmes for social insurance and universal health coverage. In the formal-sector system, all employed persons are covered except agricultural, forestry and fishery employees and temporary and seasonal workers. Voluntary coverage is envisaged for self-employed persons in the formal sector and for all informal sector workers. The insured person in the formal sector system pays 1.06 per cent of gross monthly earnings towards sickness and maternity benefit and 0.44 per cent towards disability and survivors benefits. Employers and the government pay separately in the same proportion. In the informal sector system, no contribution is required from workers beyond what has already been paid by them by way of old age, disability and survivors' benefits. For the universal coverage scheme, (medical benefits only) neither employers nor employees pay anything and the entire cost has to be met by the government.

For the formal sector, the benefits include treatment, hospitalisation and other necessary expenses and the insured is required to register with a hospital under contract with the healthcare system to receive benefits from the hospital. An important aspect of the benefits is that no part of the cost is borne by the beneficiary. The informal sector receives medical benefits only under the universal coverage scheme.

No single pattern emerges in the medical care insurance benefits systems in the group of developed and emerging countries of Asia discussed above. However, the programmes of China and Thailand have some features that India could learn from. Both these countries have comprehensive coverage: in China, the programmes cover urban and rural employees, both salaried and non-salaried; in Thailand employees in both the formal and informal sectors come within their purview. Furthermore, in China, for rural and non-salaried workers, it is the central and local governments who make a matching contribution instead of the employers. In Thailand, for the formal sector, the government and employers make equal contributions. In the informal sector, workers have to make nominal contributions only.

### **4.3 Sickness benefit**

#### ***ILO Conventions and sickness benefit available in India***

Convention 102 required periodical payments of at least 45 per cent of the reference wage but Convention 130 raised the requirement to at least 60 per cent. As in the case of old age and medical care benefits, Convention 130 requires the coverage of sickness benefit to be extended to all employees.

The insured persons in the organised sector are paid more by the ESIC, 70 per cent for 91 days and extended benefits for a longer period at the rate of 80 per cent in the case of serious and prolonged illness. But there is no sickness benefit for employees in the unorganised sector who are covered by the RSBY. Because of the lack of guarantee of sickness benefit for employees in the unorganised sector, India cannot be said to be in compliance with ILO Conventions in respect of sickness benefit.

#### ***Sickness benefit in comparator countries***

China: Sickness benefit is paid to all employees in urban enterprises for up to six months each year at the rate of 60 per cent to 100 per cent (on the basis of the length of service) of the insured's last monthly wage. Beyond six months, the rate is reduced to 40 per cent to 60 per cent until the employee recovers or is alternatively assessed to be suffering from a permanent disability. Paid sick leave is not guaranteed to rural workers and there is evidence to suggest that a substantial proportion of these workers do not have access to such leave.

Japan: Under employees' health insurance, the insured is paid a sickness and injury allowance of 66.67 per cent of the average daily basic wage after a three-day waiting period and for up to 18 months. If the insured person receives wages during sickness, the allowance is suspended or reduced.

Malaysia: Under Malaysia's employment law (Employment Act, 1955), if the sickness does not entail hospitalisation, employees are entitled to 14 days of paid sick leave in every calendar year in the first two years of employment, 18 days if the employment is up to five years and 22 days if it is for five years or more. In case of hospitalisation, the entitlement is for up to 60 days in a year.

South Korea: There is no statutory provision guaranteeing sickness benefit. Sick leave benefits are usually negotiated between the employer and the employee and the terms are stated in the employment contract.

Thailand: There is an entitlement under labour law for statutory sick pay for 30 days. After the statutory period, in the formal sector system, 50 per cent of the insured's average daily wage in the highest paid three months of the nine months before the sickness is paid for up to 90 days for each illness. The total period allowed in each calendar year is 180 days. In the informal sector, 200 baht a day is paid for up to 30 days a year.

## **4.4 Maternity benefit**

### ***ILO Conventions and maternity benefit in India***

As in the case of all other benefits, the coverage of employees envisaged in the original Convention 102 has been expanded in subsequent conventions. Convention 183 requires that the standards laid down for maternity benefit in that convention should be applied to all women employees.

Under Convention 183, women employees are entitled to maternity leave for 14 weeks, during which period not less than two-thirds of previous earnings must be paid. Convention 102 envisages periodic payments corresponding to at least 45 per cent of wages, besides medical care including prenatal, confinement and post-natal care by medical practitioners or by qualified midwives and hospitalisation where necessary.

Insured persons under the ESIC receive better benefits as they are entitled to 100 per cent of wages, besides full medical care. Although at present the duration of maternity leave is only 12 weeks instead of 14 stipulated in Convention 183, proposals are on the anvil to raise it to 26 weeks. Where the Indian system falls short of the Convention requirement is in respect of the unorganised sector in which no maternity leave with full pay is guaranteed. It must be mentioned, however, that all citizens receive full medical care plus a modest bonus payment during institutional delivery.

### ***Maternity leave in comparator countries***

China: In all urban enterprises, workers are paid 100 per cent of the average monthly wage for up to 98 days for the birth of a child, including 15 days before birth in normal cases and an additional 15 days for complicated deliveries.

Japan: A maternity allowance of 66.67 per cent of the average daily basic wage is paid for 42 days before and 56 days after childbirth. The allowance is suspended or reduced if the insured receives wages.

Malaysia: The insured person receives her existing wages or the rate set by the Ministry of Labour, whichever is greater, for at least 60 days by way of maternity benefit.

South Korea: The insured is paid 100 per cent of wages for 90 days, of which 45 days must be after childbirth. The employer bears the cost of the first 60 days.

Thailand: In the formal sector system, the maternity benefit is 50 per cent of the insured's average daily wage in the highest paid three months in the nine months before maternity leave and is paid for up to 90 days for each childbirth. In addition, a lump sum benefit of 13,000 baht is paid as child birth grant in the formal sector system.

While in the developed countries of Asia, maternity benefit by way of payment of full wages or a substantial proportion thereof during absence from duty for childbirth is guaranteed for all

women, there is no such guarantee for rural and non-salaried urban workers in China and in the informal sector system in Thailand.

#### **4.5 Employment injury**

##### ***ILO Conventions and benefits in India for employment injury***

While Convention 102 required employment injury benefits to be given to 50 per cent of all employees or 50 per cent of employees with 20 workers or more in industrial workplaces, Convention 121 expanded the coverage to all employees. The latter convention has also raised the required periodic payments upwards to at least 60 per cent of the reference wage in the event of incapacity to work or invalidity. In case of death of the breadwinner, the widow or dependent children have to be paid 50 per cent of the wages of the deceased.

In the case of temporary disability, the ESIC provides for the periodic payments to be as much as 90 per cent of the reference wage. For permanent disablement, the periodic payment is made for the whole life, the rate of payment being determined by a medical board after assessing the extent of disablement. In the case of death, the dependants are entitled to receive 50 per cent of the wages. Going by the ILO Conventions, the bulk of the organised sector in India is thus well protected against employment injury.

Employees in factories and some other establishments not covered by the ESIC are entitled to receive lump sum benefits but not periodic payments under the Employees' Compensation Act, 1923. For the unorganised sector, earlier the Janshree Bima Yojana, AABY, and the MGGBY (for handloom weavers and handicraft artisans) were in operation, entitling workers to lump sum rather than periodic payments linked to wages. These have been superseded by the universal schemes, the Pradhan Mantri Jeevan Jyoti Bima Yojana and the Pradhan Mantri Suraksha Bima Yojana, which, as described earlier, grant more substantial benefits. Since these schemes envisage lump sum rather than periodic payments and, in any case, cover only a small proportion of the unorganised sector, India falls short of compliance with the ILO conventions on employment injury.

##### ***Protection for employment injury in comparator countries***

China: For temporary disability, 100 per cent of wages of the insured are paid for up to 12 months. For permanent disability, the benefit is given according to the assessed liability, which is classified in 10 degrees. For degrees 1- 4, a lump sum of 27 months' wages are paid plus a monthly pension of 90 per cent of wages. For degree 10, 7 months' wages are payable as a lump sum.

Japan: Disability pension is payable from both the National Pension Programme and Employees' Pension Insurance. For Group I disability, 966,000Yen a year is paid from the National Pension Programme and for Group II, 772, 800 Yen a year. The benefit receivable from Employees' Pension Insurance is 125 per cent of the old age employees' pension for Group I disability and 100 per cent for Group II.

Malaysia: The social insurance system covers work related injury for which contributions have to be made @ 0.5 per month of monthly earnings by the insured person and @ 1.25 per cent of the payroll by the employer. For temporary disability, the benefit is 80 per cent of the wage of the insured person during the medical leave. For total disability, 90 per cent of the daily wage is paid and for partial disability, a percentage of the full pension is paid according to the assessed degree of disability.

South Korea: There is a separate social insurance programme for work related injury into which the employer pays 0.6 per cent to 34 per cent of the annual payroll according to the assessed degree of risk in the employment. The employees do not make any financial contribution to the programme. For temporary disability, 70 per cent of the average daily wage of the insured is paid if the worker is unable to work and is undergoing medical treatment. If medical treatment continues beyond 24 months, the payment is enhanced to between 70.4 and 90.1 per cent according to the assessed degree of disability. For permanent disability, the benefit varies on a scale of grades one to seven according to the assessed disability. The annual pension is the average daily wage in the last three months of the insured multiplied by factors of 138 to 329, according to the assessed degree of disability. Insured persons with an assessed degree of disability of four to seven have the option to choose between pension and a lump sum payment.

Thailand: There is a separate law relating to workmen's compensation, requiring employers to pay a contribution of 0.2 per cent to 1 per cent of annual payroll, according to the degree of risk. No contribution is paid by employees. For temporary disability, 60 per cent of the monthly wage is paid for up to one year. For 100 per cent, permanent disability, 60 per cent of the average monthly wage is paid for up to 15 years, according to a schedule provided in law. For permanent partial disability, 60 per cent of the average daily wage of the insured is paid for a period of two months to 10 years, according to a schedule provided in law.

In China and Thailand, there appears to be a gap in the coverage for protection against employment injury as all employees are not covered. In China, the protection does not extend to rural and non-salaried urban workers and, in Thailand, workers in the informal sector system are similarly excluded. The situation in this respect is similar to India where the unorganised sector is largely excluded from the purview of ESIS, which provides for periodic payments in the event of invalidity or death due to worker injury.

#### **4.6 Unemployment benefit**

##### ***ILO Conventions and unemployment benefit in India***

Convention 102 provided for payment of at least 45 per cent of the previous earnings and Convention 168 has raised it to 50 per cent. As regard coverage, the requirement in Convention 102 was that 50 per cent of all employees must be covered, but this was raised to 85 per cent in Convention 168. Countries where the economy is insufficiently developed had the alternative option of covering 50 per cent of employees in industrial workplaces employing 20 persons or more. This option has been retained in the later Convention.

Under the RGSKY, not only 50 per cent of industrial workplaces with 20 employees or more, as required by the convention 168 but all such workplaces are covered. Since 50 per cent unemployment allowance is given to all, it can be asserted that India is in full compliance with the standard of ILO conventions.

#### Unemployment benefit in comparator countries

China: Separate contributions are made for unemployment benefits by the employee @ 1 per cent of gross earnings and by the employer @ 2 per cent of the payroll. The benefit is paid for up to one year if the insured has been covered for five years, for 1.5 years for coverage up to 10 years and up to two years for more than 10 years' coverage. All employees of urban enterprises and institutions are covered and self-employed persons are explicitly excluded.

Japan: All employees are covered, except those in agricultural, forestry and fishery establishments for whom there is provision for voluntary coverage. Separate contributions of 0.5 per cent of monthly earnings by the insured person and of the payroll by the employer are made for unemployment insurance. The unemployment benefit payable is 50 per cent to 80 per cent of the daily wage after a waiting period of seven days for 90 to 330 days according to the length of coverage and other factors such as age and reasons for unemployment.

Malaysia: There is no unemployment benefit programme in Malaysia.

South Korea: There is a separate insurance programme for unemployment, with employees paying 0.695 per cent of gross annual wages and employers paying 0.9 to 1.5 per cent of the annual payroll. The unemployment benefit paid is 50 per cent of the daily earnings after a seven-day waiting period for up to 90 days for those with up to six to 12 months' coverage and for up to 240 days for those with more than 10 years' coverage.

Thailand: Unemployment insurance is covered by the social insurance system to which the insured persons contribute 0.5 per cent of gross monthly earnings and employers 0.5 per cent of the monthly payroll. The benefit for involuntary employment is 50 per cent of the insured's average daily wage in the highest paid three months in the nine months before unemployment and is paid for up to 180 days.

Just as unemployment benefit is not available to the unorganised sector in India, the rural and non-salaried urban workers in China and the informal sector workers do not get any protection against unemployment. In fact, in Malaysia even corporate employees do not have a social insurance against unemployment.

### **5. Recommendations: filling the gaps in the social security laws and schemes in India**

The social security system in the country is comprehensive but there are a number of deficiencies and shortcomings, mainly in respect of the unorganised sector. We give below an assessment of the social security system in the country and identify the gaps that need to be filled. Our suggestions for redressal are based on our assessment of the minimum levels of

social security that must be provided to all workers at the current stage of development of the country.

### **5.1 Old age benefits**

Employees of factories engaged in any industry specified in Schedule I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and other establishments employing more than 20 employees, which have been notified by government, have the benefit of provident fund, pension, and deposit linked insurance schemes. Generally, the contribution to provident fund is made at the rate of 12 per cent of basic salary and dearness allowance, which has been reduced to 10 per cent for certain industries. The pension fund that enables payment of pension has been carved out by allocating 8.33 per cent from the employers' contribution to the provident fund. In addition to provident fund and pension, employees also get the benefit of a deposit linked insurance scheme, which is financed by a payment by the employer of one per cent of the basic pay plus dearness allowance of the employee. Employees of establishments with 10 or more employees also get the benefit of payment of gratuity at the rate of 15 days' wages for every completed year of service. This benefit is given at the time the employee leaves service and is subject to the condition that an employee must have at least 5 years of service. None of these benefits is available to employees in the unorganised sector. In fact, it is difficult to envisage these benefits for the unorganised sector because only a small proportion of employers in the sector can be identified.

In practical terms, the only old age benefit schemes to which the employees in the unorganised sector can contribute is the APY. Unlike the normal provident fund (and pension fund) schemes for employees in the organised sector, there is no employers' contribution whatsoever in the APY. This creates a big deficit in social security for the unorganised sector and it is here that the central government needs to step in. It is well known that employees whose income is low find it very difficult to save for the future as it involves a big sacrifice of current consumption. Employees of the organised sector have the attraction that an equal contribution is made by the employer but there is no such attraction for employees in the unorganised sector in the APY. No doubt that the central government has introduced an incentive for eligible employees but the incentive is subject to serious limitations. First, it has been granted on a one-off basis: the incentive will be denied to those who enter the age group of 18-40 years after March 31, 2016. This limitation does not make sense as a long-term policy for incentivising the population to save for old age. Second, those who receive the benefit from the government at the outset will stop receiving it after five years. In the absence of continued government contribution there would be a pressure to discontinue the subscriber's contribution as well. We have to bear in mind that the segment of population for which the government benefit is targeted (non-income tax payees) is likely to be vulnerable in terms of an assured income. The need, therefore, is first to extend the benefit to all those who open their account in future including those who have opened their account after March 31, 2016. In principle, it is equally important that the government contribution is not limited to five years but continued until the subscriber attains 60 years of age. Such payments will incentivise subscribers including the unorganised sector employees to sustain their own contribution and help build a corpus that would yield a higher

pension, providing sustenance in old age.<sup>13</sup> In view of the financial implications for the central government, we suggest that government adopt an incremental approach. While the decision to extend the benefit beyond March 31, 2016 should be taken immediately the decision to stretch the contribution beyond the initial years may be taken in due course taking into account the financial position of government.

Gradual improvement of old age benefits for a segment of the population can be considered only if the employers can be identified for sharing the financial burden. This is not the case for the unorganised workers who will therefore have to rest content with whatever old age benefits are implemented for the entire population such as the APY scheme with or without improvement suggested above. But some improvement would seem to be feasible in respect of workers in the organised sector who are at present left out because of the condition of the number of employees being more than 10 or 20 in the covered establishments. The pattern here is not uniform in the country: some states have extended the benefits of EPF Act to factories and other establishments having 20 or more employees while others have done so for establishments having 10 or more. A policy initiative from the government of India is needed to extend the application of the EPF Act to all covered establishments with 10 or more employees.

## **5.2 Health care**

For the establishments covered by the Employees State Insurance Act, 1948 health care benefits are indeed remarkable. In return for employers' contribution of 4.75 per cent and employees' share of 1.75 per cent of gross salary, employees get medical treatment without any per capita limit. To provide treatment to insured persons, ESIC has a vast network of dispensaries, hospitals and panel clinics, diagnostic centres and super speciality hospitals, which can undertake open heart surgery, neuro surgery, bone marrow transplant and kidney transplant. Facilities are also available in these hospitals for specialised investigations such as the CAT scan, MRI, and angiography. The ESIC also has a panel of specialised hospitals to which the insured persons can be referred.

We have to bear in mind, however, that all units even within the covered sectors do not get the ESIC benefits as a threshold of the number of employees applies in many cases for establishments to be eligible. For instance, initially the Act applied to shops, hotels, restaurants, cinemas, road transport undertakings, newspaper establishments, and educational and medical institutions with more than 20 employees. In several states the minimum number of employees has been reduced from 20 to 10 in the case of shops and establishments only. The practice on the threshold is not uniform within States and all employees even in the organised sector are not included.

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<sup>13</sup> The budget provision for 2016-17 is Rs. 200 crore (Ministry of Finance, 2016) and the number of subscribers on March 31, 2016 was about 24.61 crore (Pension Fund Regulatory Development Authority, 2016). If the government incentive is extended as we propose our estimate suggests that about 2 million subscribers would be added every year so that the number of subscribers on March 31, 2020 would be about 1.05 crore and the annual financial liability of the government about Rs. 850 crore.



One other gap in the services provided by the ESIC to insured persons to which we have referred earlier is that benefits are not available in non-implemented areas and this shortcoming needs to be redressed first. No doubt action is being taken by the central government to expand the coverage to non-implemented areas. In the meantime, alternatives should be explored in these areas for empanelling existing private and public hospitals, dispensaries and clinics to deliver the full range of health care services to the insured persons.

However, the bigger gap is that the ESIC benefits are not available to the entire unorganised sector. In stark contrast to the organised sector, employees in the unorganised sector have access only to RSBY facilities for cashless treatment as patients in empanelled hospitals up to Rs 30,000, provided they belong to the BPL category. RSBY benefits have been extended without the BPL restriction to several categories of workers, such as construction workers, street vendors, etc. In some categories of workers, such as handloom weavers and handicraft artisans, RSBY type health insurance has been provided with the additional benefit of coverage of outpatient expenditure up to Rs.7,500. The gap in medical benefits available to workers in the organised and unorganised sectors is too big to be left without purposive efforts by government to eventually eliminate it. We have to bear in mind also that in India public expenditure on health is way below that in other emerging countries. According to World Bank (2016), in 2014, such expenditure as proportion of the GDP was 1.41 per cent in India against 3.83 in Brazil, 3.10 in China, 3.69 in Russia, 2.30 in Malaysia, 5.62 in Thailand.

However, completely closing the gaps, either between organised and unorganised workers within India and between India and other emerging countries, can be only a long term aim and what can be attempted is a progressive effort to narrow it down. The aim should be to extend the RSBY benefit to the APL category in the not too distant future, say about five years. As a matter of fact the RSBY needs to be extended so as to cover outpatient expenditure up to Rs. 7,500 per year. As a first step the existing RSBY benefit could be extended to all unorganised workers other than the categories which have already been brought within its purview. We have estimated that the annual premium for all unorganised workers would come to Rs. 3,543 crore including those who are already covered. On the basis of the current share of 75:25 between the central and the state governments the central share would be Rs. 2657 crore.<sup>14</sup>

A widely recognised deficiency of the RSBY is that day-to-day medical expenses for minor illnesses are not covered at all and substantial expenses incurred by the insured persons are left unreimbursed. As pointed out by Kannan & Jain (2013), for the working poor, it is as important to provide for out-patient care as for in-patient care. The same authors point out that the incidence of the former is likely to be much less than that of the latter. In order to eliminate this deficiency, the scope of RSBY for the unorganised sector will need to be expanded to cover

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<sup>14</sup> According to NSSO data the total number of unorganised workers in 2009-10 was 387.4 million which translates into 77.5 million households. As on March 31 2014, 3.85 crore smart cards under RSBY were issued (Ministry of Labour and Employment, 2015) and the central budget provision for 2014-15 was Rs. 1319 crore (Ministry of Health and Family Welfare, 2015). This gives the central share of per capita premium of Rs. 343/annum. Multiplying 77.48\*343= Rs. 2657 crore.

outpatient expenses up to Rs.7,500, as has been done for handloom weavers and handicraft artisans.

We have also to think of employees in the organised sector who are left out of ESIC benefits because of the prescribed threshold of 10/20 employees even for covered classes of establishments. As we have suggested in the case of old age benefits a policy initiative from the Government of India is called for to put the threshold for the application of the ESI scheme in all covered establishments at the uniform level of 10 employees on a nation-wide basis.

### **5.3 Maternity, sickness, death and disability, unemployment benefits**

We have seen that workers in the organised sector get sickness benefit under the ESIC, extended sickness benefit for prolonged and serious illness, maternity benefit, disability benefit, dependants' benefit in the event of death of the employee, as well as unemployment allowance in case of retrenchment or closure of the employers' firm. What makes the life of workers in the unorganised sector fraught with uncertainty is that they have no protection against the perils of sickness, unemployment and invalidity. They get only lump sum payments in case of permanent disability or death.

We propose that government should work towards enhancing social security incrementally in these areas. We suggest that as a first step government should provide for the working women who have to forgo their earnings during the period of maternity. We consider two weeks' wages as the minimum for this purpose. Drawing an inspiration from the experimental scheme introduced in 2010-11 under the IGMSY we propose the payment by the government of two weeks' wages as maternity benefit. It is difficult to envisage putting this burden on employers who for the most part cannot be identified outside of the organised sector and the government will have to bear the full financial liability. The number of beneficiaries in the Janani Suraksha Yojana give us a good measure of the population in need and on this basis the annual financial implications would work out to about Rs. 5219 crore per annum.<sup>15</sup> Two weeks' wages calculated on the basis of minimum wage in the area could be added to the grant of Rs. 1400/600 for which the beneficiaries of Janani Suraksha Yojana are eligible at present for delivery in hospitals.

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<sup>15</sup> During 2014-15, there were 1.04 crore beneficiaries under the Janani Suraksha Yojana. Assuming the average minimum wage to be Rs. 10,000/month two weeks' benefit comes out to Rs. 5000.  $10438905 \times 5000$  is approximately 5219 crore.

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