

**ADAPTING SOCIAL SECURITY TO 21ST CENTURY INDIAN ECONOMY: A CASE
FOR UNIVERSALISATION**

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ABSTRACT

Proliferation of social security has been one of the integral features of the modern industrialised world. In India too, social security has not only been enshrined as a constitutional mandate, but has also been embodied in a wide variety of legislation. Yet, multiplicity of legislation has created errors of harmonisation and engendered a regime riddled with variance in legal standards and rights of workers. Along with these inconsistencies and gaps, the centrality of the status of employment in extant regimes has excluded a large number of workers who fall through the crack. Such exclusion has been exacerbated by the occupation-centricity of these schemes that is ill-suited to the ongoing transformation in the labour economy and demographic changes. In view of these shortcomings, a shift to universal citizenship-based social security schemes is advocated. Delinking social security from occupation and predicating it on citizenship would extend these schemes to informal atypical workers and persons out of work and thereby make the constitutional right of social security a substantive entitlement for our citizenry.

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Introduction

“[T]he State is an association of citizens which exists for the sake of their general well-being, it is a proper function of the State to promote social security.”¹

Proliferation and institutionalisation of social security has been one of the integral features of the modern industrialised world. Dislocation and large-scale migration associated with industrial capitalism and consequent breakdown of kinship, communities and traditional networks of protection against catastrophic risks necessitated the creation of public assistance programmes to fill this void.² There had been public assistance schemes and reference to social security in pre-industrial era too. Elizabethan Poor Law of United Kingdom was a prominent example of pre-industrial state-sanctioned system of relief for the poor.³ Similarly, the first time the nomenclature of ‘social security’ was prominently used was in 1819 by Simon Bolivar in his speech to mark the independence of Venezuela when he remarked that “The most perfect system of government is one that produces the greatest amount of happiness possible, greatest amount of social security and greater amount of political stability.”⁴ Yet, it took the catastrophic risks of early industrial capitalism that led several European states to introduce organised state-led welfare systems in the late 19th century and the early 20th centuries, most notably with Germany introducing welfare payments in 1883.⁵ These social security schemes were also a part of the wider spectrum of policy that accompanied the emergence of modern welfare states.⁶

With the introduction and entrenchment of such public welfare schemes across the industrialised world, ‘social security’ acquired a certain nomenclatural and conceptual coherence. The concept of social security was referred to in the proclamations of the Italian Labour Party and the Soviet decrees. It found legislative recognition through the Social

¹ INTERNATIONAL LABOUR ORGANISATION (ILO), *APPROACHES TO SOCIAL SECURITY: AN INTERNATIONAL SURVEY* 80 (ILO: 1944)

² VICKI PASKALIA, *FREE MOVEMENT, SOCIAL SECURITY AND GENDER IN THE EU* 24 (Oxford: 2007)

³ Mark Blaug, *The Myth of the Old Poor Law and the Making of the New* 23 *Journal of Economic History* 151, 162 (1963)

⁴ JC VROOMAN, *RULES OF RELIEF: INSTITUTIONS OF SOCIAL SECURITY AND THEIR IMPACT* 111 (The Netherlands Institution for Social Research: 2009)

⁵ VICKI PASKALIA, *supra* n. 2, 25-26

⁶ VICKI PASKALIA, *supra* n. 2, 18

Security Act of 1935 in the United States. But beyond the nomenclature, the concept acquired concrete content through the Lord Beveridge Report on Social Insurance in the United Kingdom⁷. It defined social security to denote:

“the securing of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident, to provide for retirement through age, to provide against loss of support by the death of another person, and to meet exceptional expenditures, such as those connected with birth, death and marriage.”⁸

The Beveridge Report was followed by the International Labour Organisation (ILO) Report on Approaches to Social Security which provided substantive definitions of the concept wherein it stated:

“Social security is the security that society furnishes, through appropriate organisation, against certain risks to which its members are exposed. These risks are essentially contingencies against which the individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with his fellows. It is characteristic of these contingencies that they imperil the ability of the working man to support himself and his dependants in health and decency.”⁹

Thus, in its core sense, as defined by these two World-War-era documents, social security refers to public welfare programmes that aim to provide security to persons against risks such as unemployment, sickness, accident, etc., which inhibit a person’s ability to ensure subsistence for himself and his dependents. But as the journey from the Beveridge Report to the ILO Report indicates, social security evolved from its narrow conceptual origin of income protection to a more comprehensive security. Indeed, this is reflected in a variety of instruments ranging from social insurance to social allowances that have been introduced across jurisdictions. Indeed, the ILO Convention No. 102 of 1952 referred to nine different forms of benefits. James Midgley classified extant social security schemes into five different categories: social assistance, social insurance, provident fund, employer mandates and social allowances.¹⁰

⁷ VROOMAN, *supra* n. 4, 112

⁸ W.H. BEVERIDGE, SOCIAL INSURANCE AND ALLIED SERVICES 120 (HM Stationary Office, 1942) cited in VROOMAN, *supra* n.4, 112

⁹ INTERNATIONAL LABOUR ORGANISATION (ILO), *supra* n.1, 80 cited in Vrooman, *supra* n.4, 112

¹⁰ Kwong Leung Tang and James Midgley, *The Origins and Features of Social Security* in SOCIAL SECURITY, THE ECONOMY AND DEVELOPMENT (Kwong Leung Tang and James Midgley eds, Palgrave Macmillan 2008), 24-

India has been no exception to the global proliferation of legislative regimes on social security. Social security has been enshrined as a constitutional mandate through its inclusion as one of the Directive Principles of State Policies.¹¹ A wide variety of social security schemes have been introduced through different legislations at both central and state levels. Some of these legislations are sector-specific whereas others are aimed at providing comprehensive social security protection across sectors. The most prominent social security legislation at the central level include the Employees' State Insurance Act, 1948, a law on social insurance, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, a law on contributory savings, the Employees' Compensation, 1923, a law on employment injury compensation, and Payment of Gratuity Act, 1972, a law on gratuitous payment by the employer as a form of a retirement benefit. In addition, there are sector-specific instruments like the Unorganised Workers Social Security Act, 2008 and the Beedi Workers Welfare Fund Act, 1976 that seek to create schemes and mechanisms for workers of particular sectors or industries. These central laws have been supplemented by an array of social welfare legislations for workers at the state level.¹² These legislations have together set up an impressive regime of employment-based social security schemes for a vast number of Indian workers.

Yet, as this paper would argue, the existing legislative and administrative regime has evolved with certain fundamental flaws that undermine the core constitutional mandate of ensuring social security for workers. Through a review of the key legislative provisions, the paper argues that multiplicity of legislation has created errors of harmonisation and engendered a regime riddled with variance in legal standards and rights of workers, thus ensuring that a large number of workers fall through the crack and are left without meaningful social security protection.

Further, the paper critiques the centrality of status of employment in the existing social security regimes and makes a case for universal social security based on citizenship. The paper seeks to present a normative argument in favour of a universal social security

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¹¹ Article 41 requires the state to make effective provision for "public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

¹² See the Kerala Agricultural Workers' Act 1974, the Kerala Labour Welfare Funds Act 1975, the Kerala Fishermen's Welfare Fund Act, 1985, The Kerala Fishermen's and Allied Worker's Welfare Cess Act, 2007

based on constitutional and international human rights law. However, in addition, the paper shall essay a policy-critique of employment-based social security on the basis of the changing character of the labour economy and demography.

Plurality of Legislation and the Crisis of Harmonisation

As indicated in the preceding section, a diverse number of social security schemes have been introduced through different legislations both at the central and state levels in India. This plurality of social security schemes has undoubtedly enabled more extensive coverage for workers. For example, state-level schemes of the Kerala Government for fishermen and agricultural worker have extended social security beyond the ambit of the central social security legislation.¹³ Even at the central level, sector-specific laws like the Beedi Workers Welfare Fund Act, 1976 have sought to particularise social security protection to the specificity of the industry.

However, such plurality of legislation has created a regime riddled with variance in legal standards, thereby creating conflicts between different statutory schemes. Different threshold norms on applicability, different definitions on fundamental terms such as employee and wages, have raised confusion about the scope of the rights under these statutes and increased the costs of compliance for workers as well.

Such harmonisation errors are illustrated by the differences in threshold norms for the Employees' State Insurance Act, 1948 (hereinafter, ESIA) and Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [EPFMPA]. Section 1(4) of the ESIA states that the Act shall apply, in the first instance, to all factories and the Appropriate Government [which could be the Central or the State Government depending on the nature of the establishment] could extend it to any other class of establishment. Section 1(3) of EPFMPA, on the other hand, does not make the Act applicable to all factories but only to those factories that are engaged in any industry specified in Schedule I of the Act. Similarly, the numerical thresholds vary between the two statutes. Section 1(4), read with section 2(12) of the ESIA, suggests that a factory must have at least ten employees before it can be brought within the ambit of the Act. In contrast, Section 1(3) of EPFMPA sets a numerical threshold of twenty

¹³ See the Kerala Agricultural Workers' Act 1974, the Kerala Labour Welfare Funds Act 1975, the Kerala Fishermen's Welfare Fund Act, 1985

or more persons. Further, the power of extending the application of statutes to other classes of establishments has been left to different authorities under the two statutes. While the EPFMPA vests this power in the Central Government, under the ESIA, this power is enjoyed by the State Governments too.

As a result of these incongruities, the same establishment may be covered under one of these two statutes and not the other. For example, a factory with fifteen workers may be covered under the ESIA and not under the EPFMPA. Similarly, in many states, an educational establishment may be covered under EPFMPA since it has been notified by the Central Government and not covered by the ESIA due to absence of any notification by the State Government. These incongruities result in confusion and ambiguity for workers and employees about the scope of their entitlements and raise the cost of compliance with social security laws. Further, they also result in the enjoyment of uneven set of rights by different groups of workers. While these flaws do impose significant limitations on the utility of the extant schemes, they have been compounded by the impact of employment-centricity and the changing character of the labour economy.

The Crisis of Employment-Centricity

The vast number of social security legislation that operate in India in the field of social security have primarily been predicated around the status of employment. This has ensured that a substantial slice of the financing of such security schemes have been raised through employers' contributions. For example, both the ESIA and EPFMPA prescribe contribution by both the employer and the employee as a matter of general rule. Similarly, the Payment of Gratuity Act, 1972 vests the obligation to pay gratuity in the employer.¹⁴ However, the creation of employment-centric schemes has also resulted in many serious flaws that can potentially undermine the efficacy and viability of social security in India.

Firstly, centrality of status of employment for the application of social security schemes such as sickness benefits, medical benefits as is the case for ESIA in a political economy with a chronically high unemployment,¹⁵ precludes a sizeable chunk of the citizenry

¹⁴ See Section 4, Payment of Gratuity Act 1972.

¹⁵ For a discussion on unemployment in India, see Satya Paul, *Unemployment in India: Temporal and Regional Variations*, 28 (44) Economic and Political Weekly 2407 (October 30, 1993), Deepak Lal, *Determinants of Urban Unemployment in India* 23 (1) Indian Economic Review 61-81 (1988).

from the ambit of social security protection. It must be kept in mind that even a sustained period of high economic growth in the last two decades has been paralleled by a limited dent in unemployment.¹⁶ In fact, the Census data suggests that India's overall unemployment rate grew from 6.8 per cent in 2001 to 9.6 per cent in 2011.¹⁷ With an increasing backlog of overall unemployment, the pitfalls of excluding a large swath of unemployed people from social security are particularly acute as they impede the realisation of universal social protection of all. Thus, limiting social security to only employees institutionalises the absence of universal minimum standards of social protection for all citizens.

The absence of social protection for all citizens as a result of employment centrality is compounded by the changing nature of the labour economy and the contractualisation of work which is increasingly taking workers outside the scope of definition of employment. The Indian labour market has seen a sharp increase in informalisation of the workforce in the last few decades. The India Labour and Employment Report 2014 found that the share of contract workers in the organised manufacturing sector has increased from 13 per cent in 1995 to 34 per cent in 2011.¹⁸ Another striking illustration of the growing informalisation of work is found in the Reports of the National Commission for Enterprises in the Unorganised Sector, which stated that the entire increase in employment between two rounds of National Sample Survey in 1999-2000 and 2004-2005 took place in the informal sector.¹⁹ Juxtaposing this growing casualisation of work with the legal definition of employment lays bare the limits of an employment-centric model.

Employment has acquired a technical legal meaning through centuries of evolution in common law and not every worker fits the requirement.²⁰ Admittedly, the courts have moved away from the traditional control and supervision test as endorsed in *Dharangadhara*

¹⁶ Labour Bureau, Ministry of Labour and Employment, Government of India, *Report on Employment and Unemployment Survey (2009-2010)*, October 2010.

¹⁷ Rukmini S, *In India, unemployment rate still high*, THE HINDU, November 7, 2015, available at <http://www.thehindu.com/news/national/in-india-unemployment-rate-still-high/article7851789.ece>

¹⁸ INSTITUTE FOR HUMAN DEVELOPMENT, INDIA AND LABOUR EMPLOYMENT REPORT 2014: WORKERS IN THE ERA OF GLOBALISATION 6 (Academic Foundation: 2014)

¹⁹ Dipak Mazumdar, *Dissecting India's Unorganised Sector*, Economic & Political Weekly 27 (February 9, 2008)

²⁰ See *Collins v. Hertfordshire County Council* ([1947] K.B. 598, *Stevenson, Jordan and Harrison Ltd. v. Macdonald and Evans* [1952] T.L.R. 101, *Cassidy v. Ministry of Health* [1951] 1 T.L.R. 539, *Birdhichand Sharma v. The First Civil Judge, Nagpur and others* ([1961] 3 S. C. R. 161, *D. C. Dewan Mohideen Sahib and Sons. v. The Industrial Tribunal, Madras* ([1964] 7 S.C.R. 646, *Shankar Balaji Wage v. State of Maharashtra* ([1962] Supp. (1) S. C. R. 249, *Montreal v. Montreal Locomotive Works Ltd.* [1947] 1 D. L. R. 161, *Bank Voor Handel e nScheepvaart N. V. v. Slatford* [1952] 2 All E. R. 956, *U.S. v. Silk* 331 U. S. 704 (1947)

*Chemical Works v State of Saurashtra*²¹ to more comprehensive tests in recent cases such as *Silver Jubilee Tailoring House v Chief Inspector of Shops*²² and *Workmen of Nilgiri Cooperative Marketing Society v State of Tamil Nadu*.²³ Nonetheless, control has still remained an integral part of the test of relationship of employment as indicated in *Balwant Rai Saluja v Air India Ltd.*²⁴ The Apex Court applied the test of complete administrative control to determine the existence of a relationship of control. Earlier, the Supreme Court had distinguished between primary and secondary control in *International Airport Authority v International Air Cargo Workers' Union*²⁵ and asserted that primary control is necessary for employment.

If complete administrative control or primary control is to be seen as an essential feature of employment, a large section of the informal workers would fall outside the ambit of relationship of employment. The principal employer exercises very superficial control, if any at all, over most contract labour and home-based workers. As a result, most such contract labour, home-based workers and other dependent entrepreneurs may not fulfil the requirement of complete administrative control. This is one of the factors that has contributed to only less than 10 per cent of Indian workforce having social security protection.²⁶

Admittedly, both ESIA²⁷ and EPFMPA²⁸ use a very liberal definition and move away from the common-law test of relationship of employment. However, judicial emphasis on control as a marker of employment has often limited the scope of these definitions. This is illustrated by the recent Supreme Court's decision in *Managing Director, Hassan Co-*

²¹ AIR 1957 SC 264

²² (1974) 3 SCC 498

²³ (2004) 3 SCC 514

²⁴ (2014) 9 SCC 407

²⁵ (2009) 13 SCC 374

²⁶ Ramgopal Agarwala, Nagesh Kumar and Michelle Riboud, *Reforms, Labour Markets and Social Security Policy in India: An Introduction* in REFORMS, LABOUR MARKETS AND SOCIAL SECURITY IN INDIA (Ramgopal Agarwala, Nagesh Kumar and Michelle Riboud eds. Oxford: 2004) 2. See generally, KP Kannan and J. Brennan eds, *THE LONG ROAD TO SOCIAL SECURITY* (Oxford: 2013)

²⁷ Section 2 (9) of the Act includes persons employed through an intermediate employer within the definition of employee. *The broad scope of ESIA was exemplified in the case of Royal Talkies, Hyderabad v ESIC [(1978) 4 SCC 204] where the Apex Court explained that the clause 'in connection with the work of the establishment under s. 2 (9) implies a loose connection and it merely requires that "some nexus must exist between the establishment and the work of the employee." In words of the Court, he "may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure."*

²⁸ Section 2 (f) of the Act includes within the definition of employee a person engaged by or through a contractor.

*operative Milk Producer's Society Union Limited v Assistant Regional Director, Employees' State Insurance Corporation*²⁹ where workers were held outside the purview of employees as defined by ESIA on account of lack of supervisory control and 'consistency of vigil'. Thus, the shadow of common-law test of supervision and control continues to hang over these social security statutes as well, excluding a large number of informal sector workers in the process.

Another consequence of increased informalisation of work is that most existing schemes, even where applicable, may be in danger of being rendered ill-suited to workers.³⁰ Most extant social security schemes emerged to respond to the challenges of industrial economy and the quintessential worker, around whom such schemes were designed, was a wage worker who worked for the same employer over their working lives.³¹ The current models of contributory social insurance and provident fund schemes would be ill-suited in a post-industrial economy with labour flexibility, massive flux in employment and large number of self-employed entrepreneurs taking the place of wage workers.³² Frequent changes in employers, intermittent bouts of unemployment and low wages would raise the administrative cost of compliance with and minimise the benefits available under such schemes.³³ These changes in the labour economy also make continuance of the contributory principle that informs most social security schemes. The ability to pay contributions is seriously challenged in an economy characterised with high unemployment, insecure jobs and low wages.³⁴ Further, the centrality of employers' contribution in extant models needs a revision in an economy where a self-employed worker is becoming the typical worker.³⁵ It is pertinent to note in this context that the Unorganised Workers Social Security Act, 2008 does seek to extend social protection to atypical workers, particularly self-employed workers.³⁶ However, the Act does not spell out any concrete benefit and leaves the scope of entitlement

²⁹ (2010) 11 SCC 537

³⁰ Ramgopal Agarwala, Nagesh Kumar and Michelle Riboud, *supra* n.26, 5

³¹ Kwong Leung Tang and James Midgley, *supra* n.10, 40-41

³² See generally, Kim Van Eyck, *Flexibilizing Employment: An Overview*, Seed Working Paper No. 41, International Labour Office, 2003 at www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/.../wcms_117689.pdf

³³ See A Euzeby, *Social Security and Part Time Employment* 127 International Labour Review 545 (1988)

³⁴ VICKI PASKALIA, *supra* n. 2, 40.

³⁵ See D Pieters (ed), *CHANGING WORK PATTERNS AND SOCIAL SECURITY EISS YEARBOOK* (The Hague, Kluwer Law International, 2000)

³⁶ Section 2, Unorganised Worker Social Security Act 2008.

to the executive.³⁷ As a result, it fails to guarantee national minimum social security for informal workers.³⁸ Not surprisingly, it remains poorly implemented in most states.³⁹

Employment-based Social Security, Changes in Labour Economy and Demographic Changes

The preceding section referred to the changes in labour economy and the challenges posed by them to the continuing effectiveness of social security programmes. However, such transformation in labour economy, when combined with demographic changes, can potentially wreck the financial viability of social security as we know now. As indicated in the previous section, these schemes were developed in an industrial economy with mass wage employment and single breadwinner model.⁴⁰ But these fundamental assumptions are coming under tremendous strain due to transformational demographic changes. Reduction in mortality and fertility and consequent increase in longevity and decrease in growth rates in population has resulted in fast ageing of the average population in the industrialised world. According to a United Nations Report, globally the population of older persons has grown at a rate that is double that of the rate of growth of the world population.⁴¹ Even among the seniors, the percentage of those above the age of 80 would increase faster than those below the age of 80.⁴² Such ageing of the populace creates more burden on social welfare programmes due to higher spending on pension, healthcare and associated risks while also reducing the size of working-age persons to fund and support social security programmes. As a result, the very financial sustenance of many extant schemes is being threatened by these demographic changes.⁴³ While India is indeed on the right side of the demographic curve at this moment and the crisis may not immediately confront it, the same transition is underway

³⁷ Section 3, Unorganised Worker Social Security Act 2008.

³⁸ NATIONAL COMMISSION FOR ENTERPRISES IN THE UNORGANISED SECTOR (NCEUS), *THE CHALLENGE OF EMPLOYMENT IN INDIA: AN INFORMAL ECONOMY PERSPECTIVE* (Academic Foundation: 2009).

³⁹ See generally, KP Kannan and J. Brennan, *supra* n.26

⁴⁰ M. Sherraden, *Conclusion: Social Security in the Twenty-First Century* in *ALTERNATIVES TO SOCIAL SECURITY: AN INTERNATIONAL INQUIRY* (J. Midgley and M. Sherradeneds, Auburn House Greenwood Press: 1997), 121-140

⁴¹ United Nations, *World Population Ageing: 1950-2050* (2002), available at <http://www.un.org/esa/population/publications/worldageing19502050/>

⁴² H SADHAK, *PENSION REFORM IN INDIA: THE UNFINISHED AGENDA* 5-7 [Sage 2013]

⁴³ Kwong Leung Tang and James Midgley, *supra* n.10, 42-43; For more on impact of demographic changed on social security, see DE Bloom, *Social Security and the Challenge of Demographic Change*, 63 (3-4) *International Social Security Review* 3-21 (2010); and William A Halter and Richard Hemming, *The Impact of Demographic Change on Social Security Financing* 34 (3) *Staff Papers* (International Monetary Fund) 471 (1987)

in this country too. Therefore, social security design must anticipate the likely transformation and cater to it in advance.

The current models of social security schemes are also challenged by increased female labour participation. At one level, greater participation of women in the labour market means that social security must extend to personal support services to cater to the care work earlier done by women in our patriarchal structure, such as socialised child care and care for the elderly.⁴⁴ At another level, it also implies that current schemes must recognise the combination of paid work and unpaid household labour that women have to balance.⁴⁵ Consequently, these schemes must move away from models of continuous service and contribution as essential features of entitlement to social security since a large number of working women also spend substantial amount of time out of paid work due to their care work. An associated phenomenon that calls for the revision of the single-breadwinner model which informs most of the current schemes is the increased rate of divorce.⁴⁶ With rise in the number of single-parent families, enhanced protection for child-care and other familial responsibilities is also required. The European Commission's Report on Social Protection found that a divorced woman who took time out for child-rearing was comparably worse-placed in terms of pension entitlements.⁴⁷ This illustrates the need for enhanced protection for women in cases of divorce in particular and the limitations of current models in face of feminisation of labour and changes in family patterns.

Occupation-centric schemes of social security, with their focus on continuous service and regular contribution by beneficiaries, do not have the capacity for such innovation and are, therefore, inherently limited by their design in adapting to the new demographic and economic realities. Therefore, it is argued that economic sustainability, efficacy and equity would require that social security programmes transcend employment-centricity and embrace universalisation, thereby delinking themselves from occupational status. As such, universalisation would allow informal sector workers, atypical workers, self-employed and persons who are unemployed to register and claim benefits. Further, it would also expand the

⁴⁴ VICKI PASKALIA, *supra* n. 2, 40.. See also Thakur, Arnold and Johnson, Gender and Social Protection in Promoting Pro-Poor Growth (OECD 2009) available at <https://www.oecd.org/dac/povertyreduction/43280899.pdf>

⁴⁵ See JAMES, COX AND WONG, THE GENDER IMPACT OF SOCIAL SECURITY REFORM (2008: University of Chicago Press), Martha Macdonald, *Gender and Social Security Policy: Pitfalls and Possibilities* 4(1) *Feminist Economics* 1, 22 (1998).

⁴⁶ VICKI PASKALIA, *supra* n. 2, 40.

⁴⁷ VICKI PASKALIA, *supra* n. 2, 41.

pool of contributors for social insurance and other contributory programmes. The case for universalisation is, however, not just economic; on the contrary, as would be argued in the next section, it is a constitutional and international human rights mandate.

Universal Social Security: A Legal Mandate

This paper proposes several policy and economic justification for moving away from occupational status-based social security schemes to universal citizenship-based programmes in the long run. But the core thrust of this paper extends to the claim that social security is a universal human and constitutional right and by implication, universalisation must be seen as a legal mandate.

As indicated earlier, social security has been enshrined in the Directive Principles of State Policies.⁴⁸ While the Directive Principles are not justiceable on their own, they are seen as valuable aids for interpreting the scope and ambit of the fundamental rights.⁴⁹ Very significantly though, the Supreme Court of India has recognised social security as a part of the judicially enforceable right to life under Art. 21. In *Calcutta Electricity Supply Corporation (India) Ltd. v Subhash Chandra Bose*,⁵⁰ the Court held that the right to social security was an integral part of right to life. This was reiterated in *Regional Director, ESIC v Francis D'Costa*⁵¹ where the Court held that security against sickness and disablement was a part of the right to life under Article 21 of the Constitution. Social protection, as a part of the fundamental rights, was acknowledged again by the Supreme Court in *Consumer Education Research Centre (CERC) v Union of India*.⁵² Critically, apart from the CERC verdict where social protection was alluded to in the context of workers, assertion of social security as a fundamental right was not made contingent upon the status of employment. Even if these observations are to be seen as mere obiter dicta, they still constitute persuasive authorities on the status of social security under the matrix of fundamental rights within the Indian constitutional framework.

⁴⁸ Article 41 requires the state to make effective provision for “public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

⁴⁹ See *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180, *Delhi Transport Corporation v DTC Mazdoor Congress* AIR 1991 SC 101

⁵⁰ AIR 1992 SC 573

⁵¹ AIR 1995 SC 1811

⁵² AIR 1995 SC 922

A universal entitlement to social security as a fundamental right is also firmly entrenched in international human rights law. The Universal Declaration of Human Rights recognises social security as a human right in its Article 22, which states that “Everyone, as a member of society, has the right to social security” and in Article 25(1), which postulates that everyone has the “right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”⁵³

This normative recognition was buttressed by the inclusion of social security into treaty law through Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) under which State Parties ‘recognise the right of everyone to social security, including social insurance.’⁵⁴ The scope of this right was clarified by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 19 where it stated that “the right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights.”⁵⁵ It also emphasised that “all persons should be covered by the social security system.” It must be further noted that the CESCR enjoined State Parties “to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families” and included this obligation within the minimum core obligations that every state must immediately enforce up to the minimum essential level.⁵⁶ Therefore, even though many of the obligations under ICESCR can only be progressively implemented, states are required to ensure a minimum level of social security to all individuals without any delay.

It is pertinent in this context to note that the CESCR’s endorsement of social security is not occupation-centric and it recognises that social security must extend to all persons. Article 9 of ICESCR does not limit the right of social security to workers but speaks of “right of everyone to social security.”⁵⁷ This is reiterated in General Comment No. 19 where the

⁵³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 May 2016]

⁵⁴ Article 9, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 15 May 2016]

⁵⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19, available at: <http://www.refworld.org/docid/47b17b5b39c.html> [accessed 15 May 2016]

⁵⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *ibid.*

⁵⁷ *Supra* n. 50

CESCR asserts that all persons must enjoy coverage of social security schemes. While recognising that special needs of workers and other vulnerable groups must be addressed, it does not limit the right to occupational status.⁵⁸ Therefore, it would appear that international human rights law makes universal social security a categorical mandate for states. Since India has signed and ratified the ICESCR and none of its declarations and reservations pertain to Article 9, universalisation must be construed as a legal mandate for India.

The need for universal social security which goes beyond occupation-based models is also grounded in the ideal of social citizenship. T. H. Marshall, the renowned British sociologist, wrote in his seminal work, 'Citizenship and Social class,' that social rights are as much an integral constituent of citizenship as civil and political rights.⁵⁹ In other words, social rights were essential for social integration of each individual - an essential ideal of citizenship.⁶⁰ Universal social security, like the right to vote and other civil-political rights, would facilitate the nurturing of a sense of equal citizenship shared by everyone.⁶¹ Thus, universalisation of social security must also be seen as a necessary instrument for strengthening the democratic fabric of the country and assertion of citizenship.

Conclusion

This paper has argued that in spite of an impressive plurality of legislation-backed social security schemes that India has evolved, the effectiveness and coverage of current regimes are affected by variance in threshold norms on applicability, definitions of foundational concepts and consequent ambiguities about the scope of the rights and manner of compliance. Along with these inconsistencies and gaps, the centrality of the status of employment in extant regimes has excluded a large number of workers who fall through the crack and are left without meaningful social security protection. It has been argued that such exclusion of a sizeable chunk of workers from social protection negates the constitutional mandate and India's obligations under international human rights on providing social security to all persons.

⁵⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *supra* n.51

⁵⁹ T.H. Marshall, *Citizenship and Social Class* in INEQUALITY AND SOCIETY (Manza and Sander eds, Norton and Co.: 2009) 149

⁶⁰ VICKI PASKALIA, *supra* n. 2, 47.

⁶¹ Sunil Khilnani, *An Idea for India*, Livemint, November 19, 2010, available at <http://www.livemint.com/Leisure/gTnUezEaP7Izd7USQBI3TO/An-idea-for-India.html>

In addition, the paper has proposed that the occupation-centricity of these schemes are ill-suited to the ongoing transformation in the labour economy and demographic changes taking place in the industrialised and industrialising world. Informalisation of work, rise of atypical work and increase in average age of the population are likely to render occupation-centric social security schemes inadequate or inaccessible.

Therefore, the paper calls for a shift to universal social security schemes that are based on citizenship and not occupational status. Delinking social security from occupation and predicating it on citizenship would extend these schemes to informal atypical workers and persons out of work. As a result, the constitutional right of social security would become meaningful for our citizenry. Universal social security would also strengthen the compact between citizenry and state by strengthening a shared sense of citizenship among the populace.

The paper concedes that the adoption of universal social security would stretch existing financial resources at this juncture. Yet, it is an option that must be pursued for continued sustainability of the existing occupation-centric schemes would be under imminent threat due to new economic and demographic conditions. Further, it is arguable that universalisation may also expand the range of contributors to programmes thus adding to the existing resource base. Similarly, self-selection of beneficiaries combined with reduction in the administrative costs associated with targeting of beneficiaries may limit the increase in expenditure to manageable proportions.⁶² Finally, it must be pointed out that universal social security is a constitutional entitlement and financial considerations cannot trump over this claim to emasculate social security protection into an illusory rope of sand.

⁶² For a detailed discussion of universalisation, targeting and self-selection in welfare, see Thandika Mkandawire, *Targeting and Universalism in Poverty Reduction*, Social Policy and Development Programme Paper No. 23, UNRISD, 2005; Amartya Sen, *The Political Economy of Targeting*, Annual Bank Conference on Development Economics, World Bank; 1992; Lant Pritchett, *A Lecture on Political Economy of Targeted Safety Nets*, Social Protection Discussion Paper Series No. 0501, World Bank; 2005