



INTERROGATING A FRAMEWORK FOR UNIVERSAL SOCIAL PROTECTION IN INDIA

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January 2021

SCIS Working Paper | Number 11

The Southern Centre for Inequality Studies
University of the Witwatersrand
South Africa

www.wits.ac.za/scis

About the author

Prof Ravi Shankar Srivastava has a forty-year career in teaching, research, and policy analysis. He has played numerous roles, including in the Planning Commission/National Institution for Transforming India (NITI Aayog) Ministries of Rural Development, Urban Development, Human Resources and Development, Small and Medium Enterprises, and Labour and Employment as well the University Grants Commission which promotes and regulates higher education in India. He has also been engaged in consultancy and advisory roles with nearly all major international and national agencies, including the World Bank, UNICEF, UNESCO, the ILO and others. He has undertaken more than 30 major research studies involving the organisations mentioned above, produced more than thirty reports, ten books and more than a hundred other publications. Key areas of interest include development economics; economics of health and education; human development; the informal sector and small enterprises; labour and employment; migration; social security and social protection; agricultural growth and rural development; poverty and minimum needs; decentralised planning; regional development; and economic geography.

Acknowledgements

The Future of Work(ers) Research Project at the Southern Centre for Inequality Studies is supported by the International Development Research Centre (IDRC), the Ford Foundation and the Friederich Ebert Stiftung South Africa.

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Recommended citation

Srivastava, R. 2021. Interrogating a framework for universal social protection in India. Future of Work(ers) SCIS Working Paper Number 11. Southern Centre for Inequality Studies, Wits University.

Abstract

The paper begins by dealing with conceptual issues around social security, social protection, and a social protection floor and argues for a rights based social protection floor for India. It then describes the broad social security or social protection system in place in the country. Since social protection systems are contingent on the characteristics and nature of work and employment relations, the paper uses existing data sources to elaborate on the (gendered) nature of the workforce. It also points out how existing social security systems reinforce labour market inequalities.

The paper goes on to discuss the nature of expansion of social security and social protection since the turn of the century. It describes two distinct phases: the first, from about 2002 to 2014 when these systems expanded due to grassroots movements, court judgments and government responses; the second, from 2014 onwards, when the new government turned its back on rights based social security, but populist pressures still led to the introduction of new measures, although the financial priority given to social protection declined.

Finally, the paper focuses on the current issues and challenges in moving towards a rights based social protection floor in India. It argues that such a social protection floor should combine worker-centric and citizen-centric features and comprise minimum guarantees for all at the base, with a second level of contributory social security. It considers the possible options for social protection – contributory and non-contributory and a universal basic income. It also analyses the consequences of the government's thrust on digital financialisation for benefit payments and on biometric identification of workers and argues that, while the introduction of a social security registration system for workers is essential, approaches currently being put in place impose high costs on the poorest, and do not build on adequate data privacy safeguards.

Introduction^{1,2}

Despite rapid global growth, poverty, deprivation, and vulnerability during crises still affect large numbers of people across the world, who also remain without access to adequate social protection. While globalization has led to increased opportunities, it has also led to greater inequalities and increased systemic risks for a large proportion of the global population, who are excluded from its benefits.

Social protection has been defined by the International Labour Office (ILO) as:

a set of public measures that a society provides for its members to protect them against economic and social distress caused by the **absence or a substantial reduction of income from work as a result of various contingencies** (sickness, maternity,

employment injury, unemployment, invalidity, old age or death of the breadwinner), the provision of healthcare and the provision of benefits for families with children. (ILO, 2004, author's emphasis)

Although sometimes used interchangeably with 'social security', social protection is generally seen as encompassing but wider than social security. The ILO and many other international organizations had earlier used the concept of 'social protection' to cover not only social security schemes which are statutory, but also non-statutory schemes (ILO, 2000; 2001). Since social protection covers various dimensions through the life cycle of the population, **its coverage extends to the entire population, through the entire life span**. While the protective role of social protection is easily understood, the role of social protection measures in stabilizing and promoting equitable growth is sometimes overlooked (ILO 2011a: XXII). UNICEF (2012) argues that social protection is an important instrument for equity and social inclusion.

I have argued that the concept of social protection has been anchored in human rights, set out in the Universal Declaration of Human Rights and subsequent UN conventions (Srivastava, 2013). The United Nations Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda, has elaborated on the human rights framework of social protection and argued that 'ensuring, at the very least, minimum essential levels of non-contributory social protection is not a policy option, but rather a legal obligation under international human rights law' (Sepúlveda and Nyst, 2012:18).

I view social protection measures as the set of **public** measures evolved by the state to meet its national and international obligations to eliminate poverty, deprivation and extreme vulnerability. The term social protection is also used in the context of progressive realization of basic human (socio-economic) rights of citizens to protect them against exploitation, poverty and deprivation. For workers, the sources of risk arise from changes in employment relations, labour rights and social security, along with changes in the coverage of social protection measures. But as already emphasized, social protection addresses vulnerabilities of all sections of the population, workers as well as non-workers. In order to avoid confusion, in this paper, social **security** refers to a class of public measures to protect workers and their dependents against risk-based contingencies, whereas social **protection** refers to a wider set of measures taken to protect citizens against risk and vulnerability, which extend to chronic deficits in the achievement of economic rights.

The notion of a socio-economic floor and a social protection floor has been discussed for several years. As is evident, a floor denotes the concept of an acceptable minimum. The World Commission on the Social Dimensions of Globalization (2004) noted that 'a certain minimum

level of social protection needs to be accepted and [be] undisputed as part of the socio-economic floor of the global economy' (WCDSGD 2004: page 110). After the economic crisis of 2008, the UN mooted the concept of the social protection floor.

The term 'social floor' or 'social protection floor' has been used to mean a set of basic social rights, services and facilities that the global citizen should enjoy. The term 'social floor' can correspond to the existing notion of 'core obligations' to ensure the realization of, at the very least, minimum essential levels of rights embodied in human rights treaties (ILO and WHO, 2009).

The ILO *Recommendation Concerning National Floors of Social Protection, 2012 (No. 202)* of June 2012 describes social protection floors as 'nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion' (ILO, 2012: para. 2).

Further, social protection floors should consist of at least the following four basic social security guarantees:

- access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meet the criteria of availability, accessibility, acceptability and quality;
- basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services;
- basic income security, at least at a nationally defined minimum level, for persons of economically active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability;
- basic income security, at least at a nationally defined minimum level, for older persons. (ILO, 2012; see also UN System Task Team, 2012)

The recommendation states that 'the basic social security guarantees should be established by law. National laws and regulations should specify the range, qualifying conditions and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid accessible and inexpensive complaint and appeal procedures should also be specified' (ILO, 2012: para. 7).

The two-dimensional social protection strategy within which the social protection floor is situated has been conceived of as a 'social security staircase', where

the floor level comprises a set of basic guarantees for all. For people with tax-paying or contributory capacity, a second level of benefits as a right (defined and protected regarding the minimum levels by law) can be introduced and, finally, for those with need or wish for high levels of protection, a ‘top floor’ of voluntary private insurance arrangements can be organized (but should be subject to regulation and public supervision in the same way as all private insurance schemes). (ILO, 2011b:138)

This paper argues for a feasible, rights-based and universal social protection floor in India, encompassing workers’ contributory elements and social security where possible. The second section of this paper reviews the existing broad social security and social protection arrangements. The third section outlines how the existing labour market structure challenges the extension of social security. The fourth reviews the developments in social security and protection in this century. The fifth outlines a major development in the form of a Code for Social Security and its implications for universal social security. The sixth section discusses key issues for embedding a rights-based universal social protection floor in India, including some of the major challenges and options under discussion or being implemented, and the conclusion follows.

Social Security and Social Protection in India

The Indian constitution contains all the ingredients obliging the state to move towards the realization of socio-economic rights. However, recognizing that the immediate fulfilment of economic rights may not have been possible for the nascent state, these were put in the ‘directive principles’ of the constitution. While these principles lay down directions and goalposts in the achievement of economic rights, they are not, by themselves, justiciable. The directive principles call for the state to provide adequate means of livelihood ‘within the limits of its economic capacity and development, mak[ing] effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want’, in Article 41; to make provisions for the ingredients of decent work in terms of conditions of employment and a living wage, according to articles 42 and 43; and to ‘regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties’, according to Article 47.

The Indian economy has a small section of workers with social security. Another small percentage of the remaining informal workers are relatively privileged, with a high level of income security and the ability to access adequate levels of social security through the market. Over time, the national government of India and its state governments have supplemented the narrow base of statutory schemes with a patchwork of non-statutory social protection schemes for the poor. For the bulk of the remaining workers – who face high levels of employment, health and income

insecurity – poverty and vulnerability coexist and feed into an ecosystem of rising inequality. In the absence of a comprehensive, basic, rights-based social protection system, gender, social origin, and life cycle issues reinforce the vulnerability of the very young and the old, workers, women and families which belong to socially discriminated groups. The National Commission for Enterprises in the Unorganised Sector (NCEUS) has shown that socially discriminated groups (SC, ST, Muslim) and women workers are over-represented among the poor and vulnerable. Moreover, women form a distinct group whose contribution as workers in own-account units and to social reproduction tasks is not recognized and, therefore, they are not considered eligible for social security. The precariousness of and lack of social protection for a large section of the workforce – circular migrants – were dramatically exposed during the nation-wide lockdown, imposed by the central government with four hours' notice in response to the Sars-Cov-2 pandemic. This led to widespread job losses across the country, with many workers, mostly circular migrants, also losing access to rental housing and shelter. Despite coercive efforts to keep workers indoors, many tens of millions of migrant workers, along with family members, fled their urban work destinations, covering thousands of kilometres on foot or by make-shift arrangements, exposing the glaring gaps in social security and social protection arrangements for the precariously employed in urban areas and also forcing attention onto the issue of portability in the social security and social protection arrangements that exist.

Systems of social security and social protection

India is not a signatory to the ILO Social Security Convention (No. 102), but has well established social security systems which, however, cover only a small percentage of workers, with varying degrees of effectiveness. The existing systems provide varying degrees of coverage in several of the nine branches of the convention, and principally cover formal workers in the organized sector which includes the public sector and private firms and establishments above a certain size. However, other measures have been taken from time to time to extend a modicum of social security to segments of the informal sector. The current social security system in India has three broad systems of social security (Srivastava, 2012 b).

The first and the most comprehensive system covers the public sector and provides old age security (provident fund or pensions and gratuity), supplemented by maternity benefits and so on, through statutory schemes. Recently, economic reforms have led to a reconsideration of some of these schemes. Since 2004, the pension scheme for new government employees has become a funded one instead of being a defined-benefit scheme as was the case earlier. The Central

Government Health Scheme, through which medical benefits are provided to employees is, however, non-statutory.

The second system covers the organized private sector and makes provision for provident fund, gratuity, medical cover and injury compensation, supplemented by some other benefits such as maternity benefit and injury compensation, again through statutory measures (Venkata Ratnam, 2006). Over a period of time, the ambit of these laws has been extended to improve portability and to cover more areas and types of establishments, and informal (casual, temporary and contract) workers in the organized sector.

Both first and second systems are based on employer and employee contributions, with some contribution also from government in the second case.³ These have now been subsumed under the new Code on Social Security discussed in the fifth section below.

While these two systems are for the organized sector, the third system of welfare funds has been put in place by central government and certain state governments to provide welfare and social security to workers in certain industries or occupations, principally those having an informal workforce. Welfare funds are created under state or national acts and are managed under the provisions of these acts. They are financed in various ways – worker contributions, employer contributions, levies and state contributions – and, depending upon their financial base, provide a number of benefits to their members. The most important of these welfare funds is the Fund for Building and Construction Workers which was created through a national umbrella legislation in 1996. The funds and the boards which manage them are created at the state level, which has, since inception, created problems in registering and providing benefits to migrant workers.

Social protection and social assistance

The fourth major system of social security/social protection comprises schemes that largely target poor individuals and households. Most of these schemes are state financed and principally non-contributory, and are meant for poor persons and workers. Here (as with welfare funds), the lead was initially taken by certain states, and followed by the centre. These schemes cover the poor old-aged population, widows, physically or mentally challenged persons, women in maternity, children, and other groups. Before the turn of this century, these schemes were not statutory. However, since then the growth of rights-based civil society movements, backed by crucial judgments of the Supreme Court of India which linked basic economic rights to the right to life (a fundamental right), led to legal entitlements to public employment, food, and nutrition. This led to increased coverage and higher public expenditure by central and state governments. In recent years, the

current central government has tried to expand the scope of contributory but non-statutory social security schemes providing life cover, accident insurance, and pensions. In addition, certain maternity benefits and hospitalisation insurance benefits for the poor are being extended through non-contributory schemes. These trends are examined in the fourth section of this paper.⁴

Labour market characteristics and existing patterns of social security

The extension of social security requires close consideration of the structure of the workforce. Tied to the structure of employment are the size and characteristics of the employers who could potentially be required to contribute to social security. This section considers some important characteristics of workers and employers. It then shows how the existing pattern of social security mirrors labour market characteristics and inequality. Universalisation of social security and social protection therefore calls for a different approach, which has been advocated by earlier commissions, and is discussed in the fourth section.

Characteristics of the workforce in India¹

Employment across sectors and industries

A large percentage of India's workforce is still rural and agricultural, and hence highly dispersed geographically. This continues to be so although the workforce structure has been changing over the past few decades. Agriculture remains the largest employer, but its share in total employment dipped from 69% in 1983 to 41% in 2018/19. Agriculture in India is predominantly small holding agriculture, with 85% of holdings smaller than two hectares. While the share of manufacturing in total employment has remained virtually stagnant, the share of construction (which is preponderantly informal) and services in total employment has increased.

Activity status and types of employment relationship

Employment relationships are predominantly characterized by either an absence or lack of a regular employer-employee relationship. The largest part of the workforce is still self-employed, although the percentage of self-employed workers in the workforce fell slightly from 57.3% to 51.4% from 1983 to 2018/19.⁵ Among male self-employed workers, own account workers predominate (41% of all male workers 2018-19), while among female self-employed workers, it is the unpaid contributory worker (30.4% of all female workers in that year). Casual employment is the next most important (29.1% workers in 1983 and 23.6% in 2018-19⁶). Workers employed for

¹ All employment estimates in this section are estimates computed from the National Sample Survey employment-unemployment unit data for the year stated (up to 2011-12), and Periodic Labour Force Survey data for 2017-18 and 2018-19.

a longer period, for wages or salary, have been increasing, but still comprise only about a quarter of all workers (24.8% in 2018-19, up from 13.6% in 1983). As one might expect, regular work is higher in urban areas.

Dependent workers (homeworkers): Workers who work in, or near, their homes, under various kinds of putting-out systems and sub-contracting arrangements (to one or more contractors) are included among the self-employed in India, in terms of their activity status. However, these workers differ from independent self-employed workers, and for all practical purposes, they constitute a category of disguised wage workers, although they use some part of their own capital. The ILO Home Work Convention (No. 177) categorises these dependent workers as homeworkers (also called outworkers).⁷ Homework is often embedded in value chains, both domestic and global, with the latter showing an enormous increase in presence in some industries.

Estimates of the numbers of homeworkers (based on a range of dependent relationships) and independent self-employed in rural and urban areas in the non-agricultural sector suggest that the number of male homeworkers increased from 3.4 million in 1999/00 to 5.4 million in 2009/10, and this reflected an increase in both rural and urban areas. Female homeworkers outnumbered male homeworkers, at 4.2 million in 1999/00 and 5.5 million in 2009/10 (Srivastava, 2012a; 2016). The share of female homeworkers among the total of self-employed is much higher among female self-employed workers, at 32.7% than among males (7.7%). Most homeworkers are concentrated in manufacturing. In 2011/12, 80.4% of all homeworkers and 92% of female homeworkers were in unorganized manufacturing.

Formal sector employment: In India, the term ‘organized sector’ is used to denote enterprises or establishments which have specific characteristics in terms of size, form of organization, use of power, seasonality and so on. This differs from the ILO, which has defined the categories ‘formal’ and ‘informal’ sector, leaving it to countries to evolve specific definitions of the formal sector in country-specific contexts (ILO, 2013a).

About 18.7% of the workforce was employed in formal sector establishments in 2018/19. Estimates show that formal sector employment has grown more rapidly in India since 2004/05, the period for which such disaggregation is available (Srivastava, Padhi and Ranjan, 2020). This should have implied that formalization and social security coverage of workers increased *pari passu*, but as we see below, this has not been the case owing to rising precariousness of employment in the formal sector.

Formal and informal employment: The growth in the numbers in the organized (formal) sector and its share of employment, discussed above, has not been accompanied by an increase in formal employment. The notion of formal and informal employment was first given shape by the ILO's 17th International Conference of Labour Statisticians in 1997. Informal workers include workers in paid jobs without job security or social security. The concept has been elaborated and countries have defined informal employment using one or both of these yardsticks (job security and social security) (Hussmans, 2004; ILO, 2013b). While NCEUS (2007; 2008) as well as the ILO (2018) use the non-availability of social security as the main criterion of informality, the non-existence of job security is, according to this author, a more fundamental criterion of informality in India. This paper relies on the job security criterion to assess informality because Indian social security laws have created social security entitlements, at least on paper, for all types of workers in formal sector establishments, even if such workers do not have minimal job security (Srivastava, 2016; Srivastava and Naik, 2016; Srivastava, Padhi and Ranjan, 2020).

Results show that while the number of employees grew in both categories (workers with a written contract and workers without any contract), the hired workforce, consisting of workers without contracts, experienced a much faster increase during 2004/05 and 2018/19. In 2018/19, out of 181.6 million employees, only 35.3 million (25%) reported having any written contract. We have shown that employment in the formal sector has increasingly become more precarious and it is regular, salaried jobs which are increasingly dissociated from a formal contract and job security (Srivastava, Padhi and Ranjan, 2020).

Part-time work: Part-time work is usually defined as work performed for less than a certain number of hours per week (usually 35 hours) (ILO, 2015). In India, part-time work has been endemic in self-employed activities, both within and outside agriculture, but there is also a growing trend for part-time waged and salaried employment, with employers preferring to split up the working days and offer half-day work (as in agriculture) or activity-based employment (as in employment by households).

The rural-urban distribution shows that there are more part-time workers in rural areas and among self-employed workers. Further, the data shows that there is a distinct gendered pattern in part-time employment. Part-time work is much more common among women workers – more than five times higher than for men. Overall, one in five or six women workers report themselves as part-time workers. This is not only the case for self-employed but also for regularly employed women workers as well as those who are casual workers.

Multiple job statuses: An important characteristic of the workforce in India is that a section of workers takes up multiple jobs, either sequentially or at the same time, sometimes across different spaces, and often involving a change in activity status from self-employed to casual and vice versa.

Firm estimates of the numbers of all such types of workers cannot be made. The NSS provided information until 2011/12 on principal status workers who also engaged in subsidiary status work. Estimates based on the 2011/12 survey show that 71.45 million principal status workers took up a different kind of subsidiary status job. As many as 29.2 million self-employed workers in agriculture combined it with other jobs: 2.9 million combined it with self-employment outside of agriculture, while 7.6 million, 4.2 million and 6.9 million self-employed agricultural workers worked as wage labour in agriculture, non-agriculture and public works respectively. On the other hand, 32.4 million casual workers worked as self-employed workers or as casual workers in another industry. Interestingly, even four million regular workers outside of agriculture combined this work with other types of work in the subsidiary status of self-employment in agriculture (about 2.6 million with self-employment in agriculture, 760 000 with self-employment outside of agriculture, and most of the rest with casual work).

Contract workers: ‘Contract labourers’ are those workers in India who have been hired in connection with work in an establishment through a ‘contractor’, whereas a contractor includes both those who have undertaken to supply workers to an establishment, and those who undertake any work in an establishment to produce a given result with the help of contract labour.⁸ Elsewhere in the world, contract workers are referred to as ‘dispatch workers or labour dispatch’, ‘labour brokerage’ or ‘temporary agency workers’ (ILO, 2015).

The only systematic source of data on registered contract labour available is for organized manufacturing, from the Annual Survey of Industries (ASI) in which factories registered under the Factories Act of 1948 are required to provide data on workers directly engaged by them or engaged through contractors.

Analysis of the ASI data shows that the incidence of contract labour has gradually increased since the 1970s. By the mid-1980s, about 12.1% of manufacturing workers were engaged through contractors. In 1998/99, 15.6% of workers were engaged in manufacturing. Since 1999/00, there has been a sharp increase in the number of contract workers in manufacturing, and in 2017/18, about 36% of the organised manufacturing workforce.

Migrant workers: Migrant workers are present in all employment types, but short-term and circular migrants form a large percentage of India's precarious workforce, working as casual, contract, and self-employed workers. India's 2011 census reported that there were 194 million migrant workers in India, but disaggregated analysis has shown that long-term migrants occupied a better niche, on average, amongst the labour migrants. The position was, however, quite different for short-term seasonal and circular migrants and even for long-term circular migrants who were employed in the informal sector. According to Srivastava (2020), there were an estimated 67 million occupationally vulnerable long-term circular migrants and 44 million short-term circular migrants in India in 2018. The percentage of such migrants in India's precarious workforce outside agriculture is estimated to have increased from 47% in 2004/05 to 57% in 2017/18 (Srivastava, 2020).

Gig and platform workers: Separate estimates of gig workers in India are hard to come by since they are not classified independently in surveys. According to one guesstimate, there are about three million gig workers — temporary workers including independent contractors, online platform workers, contract firm workers and on-call workers (Banik, 2020). The Indian government think tank, the National Institution for Transforming India, reported that the two major taxi hire companies Uber and Ola, created 2.2m million jobs, while a major temping company, Teamlease, reported about 800 000 jobs in the food delivery service (Nair, 2020). These jobs, with considerable ambiguity in the nature of work and employment relations, in India and worldwide, are a tiny percentage of India's total workforce of about 480 million, but are considered to be a high growth segment (Nair, 2020).

Petty employers: some characteristics of farm and non-farm unorganised enterprises

This section focuses on unorganised enterprises and briefly explores their magnitude, the education levels of their proprietors and their economic characteristics, all of which will have a significant bearing on the implementation of social security.

Size and magnitude

It is worth repeating that Indian enterprises are predominantly tiny, rural, and informal in character, and that organized-sector enterprises are a minuscule fraction of the country's enterprises.

The Sixth Economic Census, conducted in 2013 (MoSPI, 2018), covered all enterprises, public and private, except plantations and enterprises producing crops. It found 58.5 million in operation. Out of these, about 77.6% were engaged in non-agricultural activities that did not include public administration, defence or compulsory social security activities. Among them, 66.4% were own-

account establishments. About 108.4 million people worked in non-agricultural enterprises. Of these, 36.2% were employed in own account enterprises. About 94.6% of the non-agricultural enterprises were in the range of one to five people employed, while about 98.3% of enterprises employed fewer than 10 workers. Another 1.01% of enterprises had 10 to 19 workers. Only 0.65% of establishments (about 380 000) employed 20 or more workers.

According to the 70th round of the NSS survey of agricultural households⁹ for the agricultural year July 2012 to June 2013, rural India had an estimated 90.2 million agricultural households (enterprises). These agricultural households were about 57.8% of the total estimated number of rural households during the same period.

Thus, the total number of farm and non-farm enterprises in India is currently no less than 15 million, out of which organized sector establishments are no more than 0.3% to 0.4%.

Education and IT knowledge among employers and proprietors of own-account enterprises

Compliance with rules which require maintenance of records and filing details and returns, which are likely to be facilitated by access to computers and knowledge of IT, requires a minimum level of education, access to, and operational knowledge of computers and the internet.

There is no direct way of analysing the education level of employers or worker-proprietors, but the NSS provides the educational status of employers who are self-employed and workers in own-account enterprises. Among the latter, the head of household can be a proxy for the owner-proprietor. Amongst heads of households who are own-account workers, education levels are abysmal. More than two-fifths were illiterate and nearly one-third had only primary or middle level education. Although the education levels of self-employed employers are higher, even among them, nearly one-fifth were illiterate and more than a quarter had only primary or middle level education.

Further, the 70th round survey of agricultural households conducted by India's National Sample Survey Organisation (NSSO, 2013) provides information on the education level of heads of agricultural households. The status of farmers is even worse than that of own account workers. About 54% of farmers were illiterate and another 27% only had primary or middle level education. Farmers working more land fared only slightly better than farmers with smaller holdings.

The 73rd round NSSO survey (2015/16) reported that only 17.75% establishments with fewer than 10 workers used computers and 13.7 % used internet services. The corresponding figures for larger, incorporated enterprises, with 10 or more workers, were 55.9% and 50.2% respectively.

Income of self-employed workers and owner-workers

I used data from the 67th round of the NSSO to estimate the percentage of enterprises in each category for which the returns per family worker were below the national wage floor. The average daily returns to each family worker were below the wage floor for 29.5 million (51.8%) of enterprises. Among own-account employers, 25.5 million or 53%, had estimated daily returns below the wage floor; among establishment with fewer than 10 workers, 3.6 million or 43.7% earned below the floor; and the figures among establishments with 10 or more workers were 385 000 or 76.2%..

Based on these estimates, self-employed workers in more than half of unorganized-sector enterprises earn less per day from their enterprises than the minimum wage threshold defined by the national floor wage. In manufacturing, net income per self-employed worker was less than the floor wage in nearly 70% of enterprises.

Farmers

Most farmers are owner-cultivators and self-employed, and a large percentage of them also hire workers to supplement family labour in peak seasons. A number of farmers also additionally work as wage labourers themselves. Out of 82.7 million farmers surveyed in 2012 and 2013, only 12.1% neither hired in nor hired out labourers. A whopping 69.8% farmers hired in labour. Even in the category of the smallest farm-sizes (less than half a hectare), 57.2% of farmers hired in labour. At the same time, 50.2% of farmer households also hired themselves out as wage workers, and 32% of farmer households both hired in and hired out workers. In the triangular relationship which exists in the farm sector, the self-employed workers (employers, own account, or contributory) could also be wage workers for other farmers, who would be required, as their employers, to pay the social security contribution.

Further, I estimated net agricultural income for 2012/13 for all farm enterprises from the NSS 70th survey data, as total value of agricultural produce from crops, livestock and other allied activities less paid-out costs. This has been compared to estimates of the poverty line and a national floor wage, unless different assumptions. I found that nearly three-fifths of farmers have below subsistence levels of income, nationally.

Distributional implications of the existing social security structure

Given that the provisions of social security are restricted to the formal sector, its growth could be expected to mirror the growth of the formal sector in India. This is also because the government has made consistent efforts to expand the scope of social security coverage within this sector. Between 2004/05 and 2010/11, the number of workers in the formal sector with any type of social security increased from 28.1 million to 44.9 million. But as a percentage of workers in the formal sector, those with social security coverage declined from 53.2% to 51.5% over the corresponding period. An increase in employment of a precarious nature has kept social security out of reach of even many formal sector workers. The employment surveys allow us to cross-classify employees in non-agricultural work with different types of written contracts and availability or non-availability of social security. In 2018/19, only 5.6% of those without a written contract had any form of social security. Among those with a written contract, the percentage of those with social security improved with job stability and security. Only 7.4% workers with very short contracts (less than a year) had access to any social security. This increased to 15.9% for workers with written contracts of one to three years duration, while 86.1% workers with long term contracts (three or more years) had access to social security.

Available data shows not only that precariousness is growing as a share of the paid workforce, but also that, since women, lower castes, certain religious minorities and the poor have a dominant share of precarious jobs, a much smaller percentage of them have access to social security. As mentioned earlier, NCEUS (2007) showed the close congruence among work status, social status, and poverty status of workers. Among the extremely poor households, informal workers were over-represented, as were Scheduled Castes (SC)/Scheduled Tribes (ST), Muslim and Other Backward Class (OBC) households² (NCEUS, 2007:7).

As mentioned earlier, inequities in the labour market permeate access to existing forms of social security. Analysis of the 2018/19 Periodic Labour Force Survey data brings this out quite sharply.

- Among paid non-farm workers, the lowest percentage of workers receiving social security (17.3%) was from the SCs, followed in ascending order by STs(19.5%), OBCs (23.8%) and OBCs (39.3%). When all workers were considered, scheduled tribes had the lowest access

² Former low status untouchable caste groups are listed in schedules of the Indian constitution as per Article 341. Those groups which are included in this list (schedule) are called Scheduled Castes. . Similarly, indigenous communities are also listed in the constitution as per article 341 of the constitution of India. Those groups which are included in this list (schedule) are called Scheduled Tribes. The constitution describes specific measures that governments must take for their welfare. Other socially and educationally backward castes are the OBCs.

to any social security (5.6%), followed by 7.9% scheduled-caste workers and 8.6% OBC workers. Even among workers from other castes, only 16.6 % had access to social security.

- In terms of religious background, among paid workers outside agriculture, only 14.6% of Muslim workers had access to social security compared to 27.9% of Hindu workers. The highest percentage of workers receiving social security was from ‘Other Religions’ (30.6%). Among all workers across sectors and categories, the percentages reporting access to social security among Muslims, Hindus and ‘Other Religions’ were 6.1%, 10.7% and 13.1% respectively.
- Regarding gender, among paid non-farm workers, 25.8% of male workers accessed social security, but the proportion was higher among female workers (29.2%). However, this picture changes when considering all workers, among whom the proportion of female workers with social security (9%) was lower than that of male workers (10.7%).
- Better-off workers with a higher degree of economic security (coming from higher quintiles in terms of monthly per capita expenditure (MPCE)) are much more likely to access social security than the poorer workers. Among paid workers, access to social security is negligible among workers in the lowest quintile (only 4.9%), rising to 53 % for the highest quintile. Across all workers and sectors, the percentage with social security was only 1.4 % and 2.6 % in the lowest two quintiles, rising only marginally to 4.5% in the third quintile. In the fourth quintile, 9.9% of all workers had access to social security and this rose to 29.9% for workers in the highest quintile.

Conclusion

A social security system in India needs to take into account the structure of the workforce, its earnings, and the direction in which it is changing in India. Although the share of the workforce in agriculture has declined, the workforce is still predominantly rural and agricultural. Most workers do not have an employer, or in any case lack a stable employment relationship. Precariousness of the workforce outside agriculture has increased. The increased importance of global value chains in some industries has led to an increase in the number of homeworkers who are difficult to identify or regulate. Women workers predominate as contributory workers and homeworkers, as well as in part-time work. There is evidence that short term and circular migration has been increasing over the years, and forms a significant portion of the workers precariously employed outside agriculture. Many of these workers are interstate migrants. Moreover, analysis of the daily earnings of wage workers shows that a third have daily earnings below the national floor wage.

On the other hand, an overwhelming percentage of farm holdings and non-farm enterprises in India are extremely tiny and predominantly rural. A large percentage are own-account enterprises. Employers and owner-workers in own-account enterprises have low levels of education and familiarity with information technology which could facilitate future online transactions. A significant percentage of farmer households have multiple characteristics as self-employed workers, employers, and wage workers at the same time, and many tiny farm and non-farm enterprises in the informal sector are also employers of workers.

These characteristics point to the challenges in establishing an administratively and financially feasible framework of social security and social protection in India based on conventional time-tested contributory principles in more mature economies. The existing social security system is confined to the organized sector which has grown in recent years, but its growth is partially offset by the growing numbers of workers in the sector without any formal contracts, who are difficult to reach within the formal sector. The net outcome is that the existing pattern of social security fails to reach the more vulnerable workers and mirrors structured inequalities in the existing labour market.

A zig-zag course for universal social protection over the past two decades

In the first decade of this century there were also some significant proposals for rights-based social protection and universal social security on a rights basis (Srivastava, 2008; 2012b). This section discusses this push both for social security and for wider notions of social protection.

Push towards a right to social security, 2004 to 2013

The expansion of social security (for informal rural labour) was first argued for in India by the National Commission for Rural Labour in 1991, and then reiterated in another form by the Second National Commission on Labour (SNCL) in 2002 (SNCL, 2002).

The Second National Commission on Labour

The Second National Commission on Labour (SNCL), set up by the central government in 2000, submitted its report in 2002, and was undoubtedly the first major effort to examine instituting a comprehensive and universal social security system for India. The commission set up the Study Group on Social Security which gave a separate report which was examined by the commission and formed the basis for the commission's recommendations (SNCL 2002). The report of another study group set up by the commission, on an umbrella legislation for unorganised-sector workers, also had ramifications for the commission's recommendations on social security.

The SNCL examined, in depth, the meaning and evolution of social security globally. It also assessed the current context of globalisation, which increased the risks faced by the working poor. The commission came to the conclusion that both the Indian constitution and the global architecture implied that social security was a human right. Since the right to social security figured in the Directive Principles of the Indian constitution, the commission felt that social security could be construed to be a human right ‘in principle’.

In the context of India, the commission ascribed the widest meaning to social security, encompassing both its preventing and promotional aspects, and recognised that the need for social security arose not only from contingent risks but also from deprivation and deficits arising out of insufficient incomes and employment.

The commission also analysed the structure of the workforce in India, the enormous unorganised sector, and the casual and self-employed activity status of workers. It then examined the nature and depth of social insecurity facing different segments of the population, including workers, the young, the old-aged, women, and the disabled. It formed an opinion on prioritising social security amongst the population.

It recommended that every worker covered under the system should be provided with a card with a unique social security number containing details of wages, employment, employer, contributions and entitlement to benefits. The card would enable the employee to claim benefits wherever they were employed or living, from post offices or other bank counters or government offices. For all purposes, an integrated, single-window approach could be devised.

The National Advisory Committee and the National Commission for Enterprises in the Unorganised Sector

Since the SNCL had proposed enabling legislation, the precise contours of social security coverage were not specified. However, another proposal made by the National Advisory Council (NAC) to the United Progressive Alliance (UPA) government, in 2005, made some concrete recommendations in this regard. This proposal again intended to cover all workers in the unorganised sector as well as workers without any social security. It proposed social security in the form of health, life and permanent disability insurance plus maternity benefits without any contribution from workers, and an old age benefit scheme including pensions with contribution from workers.

NCEUS, set up by the UPA government to examine a range of issues with respect to the informal sector, was asked by the government to examine the recommendations of the NAC and to make its own recommendations. By virtue of its mandate, the NCEUS limited its analysis and recommendations to the unorganised sector and to unorganised or informal workers who did not have any access to employer-provided social security. Like the SNCL, the NCEUS also held the view that social security was a human right, and further argued that the right should be statutorily enforceable (NCEUS, 2006; 2007).

After a detailed examination of the type of insecurities facing the unorganised workers, and the structure of this workforce, the commission made out a case for a universal minimum social security package for unorganised workers, backed by a legislation. The social security system proposed by the commission was based on a social assistance-cum-contributory model, to which further industry, occupation level or state level add-ons were possible.

The commission's report was distinct from the earlier recommendations in several vital respects. Instead of suggesting an enabling umbrella legislation only, the commission recommended legislation which creates an entitlement to a 'National Minimum Social Security' package for all unorganized-sector workers as well as all unorganized workers in the organized sector who are not eligible for social security and who are below a certain income level or amount of land. As Kannan, Srivastava and Sengupta (2006) argue, the most important difference between the commission's proposal and other proposals is the legally enforceable entitlement, unlike the very many schemes floated by central and state governments at different times. Further, given the characteristics of unorganized workers, who often follow multiple vocations and are mobile between sectors and locations, the commission did not favour an approach which segmented the workforce into specific occupations and covered only certain listed occupations.

The commission went into the elements of social security and the minimum level of protection that should constitute this package. It favoured providing workers with health cover including maternity, old-age protection in the form of pension or provident fund, and life and disability cover, principally through a social insurance model under the universal minimum package.

Given the structure of the unorganized workforce, where workers were either self-employed or did not have a stable employment relationship, and widespread poverty, the commission recommended that the cost of social security may be borne by the central and state governments for workers below the poverty line, whereas workers above the poverty line would contribute one-third of the estimated annual premium for the social security package. The total cost of the national

minimum was estimated at about 0.6% of GDP, and the financial burden on governments (central and state) would be 0.48% of GDP on full coverage.

The Unorganised Workers' Social Security Act, 2008, which came into existence in response to the NCEUS proposals, does not provide for a national minimum to be provided to all unorganized workers within a definite time frame. Instead, it puts ten government schemes (including three new schemes, providing health insurance, life and disability cover, and old age pension to segments of households below the poverty line, which were introduced in response to the commission's recommendations), in a schedule to the act, making them statutory in nature. According to the act, it is up to each scheme to specify coverage, benefits, modes of financing, and grievance redress mechanism, if any. The original NCEUS draft provided for mandatory registration of all informal workers and issuance of smart cards, but the mandatory provision was missing in the final legislation.

In response to the NCEUS proposal to cover three basic dimensions of protective social security, the government introduced or extended three schemes (Srivastava, 2012b):

- A scheme providing life and disability insurance to one earner in a landless rural household (*Aam Aadmi Bima Yojana* or Common Man's Insurance Scheme), implemented through the Life Insurance Corporation.
- A health insurance scheme for the poor, called the *Rashtriya Swasthya Bima Yojana* (RSBY). The scheme was initially intended to cover rural households below the poverty line in phases, but was extended to various segments of informal workers, such as wage workers in the guaranteed public works programme (Mahatma Gandhi National Rural Employment Guarantee Programme). The coverage by the programme eventually exceeded 30 million households before it was subsumed by the National Health Protection Scheme.
- The government extended the National Old Age Pension Scheme to all old-aged persons (above 65 years) in poor rural families. The scheme was allocated Rs. 34.43 billion in 2008/09, as against Rs23.92 billion in 2007/08 because of expansion of coverage from 8.7 million to 15.7 million beneficiaries. However, the old age pension provided by the government remained woefully small, both in terms of coverage and the amount, leading to civil society demands and the formation of an expert group by the government in 2013.

The NCEUS recommendations clearly demonstrated that a universal system of social security was administratively and financially feasible. Backed by civil society and trade union pressure, it undoubtedly led to increased provision of protective social security measures to informal workers. But the government was averse to introducing a statutory scheme ensuring universal social security as an entitlement to all workers. It introduced legislation (the Unorganised Workers' Social Security Act, 2008), but the legislation did not create a statutory right to social security for unorganised workers. While there was an increase in the expenditure on specific social security programmes, the level remained far short of what was required to assure a minimum level of social security to all vulnerable workers.

Expansion in rights-based social protection

During the decade starting in 2003, there was also a significant push towards rights-based social protection, spanning health, education, employment and food security (Srivastava, 2012a; 2013).

Until the 1980s, Indian policy and discourse on expansion of social opportunity was not rights-based. This first arose in the context of education on the basis of judgments in the Supreme Court which interpreted the 'right to life' (a fundamental right in the Indian constitution) as a right to life with dignity, and indicated that access to basic education, health and food were part of a citizen's claim to a right to life with dignity. Using this broad interpretation, civil society initiatives sought to convert the rights to education, food, livelihood, health and shelter into legally enforceable entitlements, and these initiatives generated a momentum in the courts as well as in government, which resulted not only in the enunciation of new policies and programmes (or the expansion of existing ones), but also in constitutional changes providing legal entitlements in line with constitutional directives. This section argues that the new generation of policies and programmes began to provide the essential ingredients of a comprehensive social protection floor for India.

Children's education, nutritional status and good health

It was against this backdrop that a nation-wide programme to strengthen elementary public schooling (the *Sarva Shiksha Abhiyan*, or SSA) was first introduced in 2001, and the government brought in an important constitutional amendment in 2002, making the right to education of all children in the 6 to 14 year age group a fundamental right (Srivastava, 2003). The Indian parliament passed the Constitution 86th Amendment Act, which mandated the provision of free and compulsory education, by inserting Article 21A in the list of fundamental rights: 'The State shall provide free and compulsory education to all children of the age of 6–14 years in such a manner as the State may, by law, determine.'

However, for the article to become justiciable, the government needed to legislate a bill laying down the specific obligations of the centre and the provinces. The Right of Children to Free and Compulsory Education (RTE) was passed in 2009 and became operational on 1 April, 2010. The Act entitles every child within the age-group of 6 to 14 years to elementary education in a formal school which satisfies certain essential norms and standards. On the basis of the recommendation of the committee under the chairperson, Anil Bordia, the norms and framework of SSA have been modified to align them with the requirement of the RTE Act (MHRD, 2010; 2012).

Two other areas in which there was definite advance in creating entitlements for children was in the provision of mid-day meals to school-going children attending elementary classes, and creating a bundle of entitlements for preschool children through the Integrated Child Development Scheme.

Employment and livelihood security

Article 41 of the Indian constitution directs the government to, ‘within the limits of its economic capacity and development, make effective provision for securing the right to work’. The government has been making provisions for creating unskilled employment in rural areas and in times of need, but these provisions have been low, and have not been based on entitlements. This led to a campaign for a ‘guaranteed’ right to work, which became part of the manifesto of the current ruling coalition. It took several years of intense debate in the public realm, which ultimately produced a unique consensus across the political spectrum for the parliament to pass the National Rural Employment Guarantee Act 2005 (NREGA), which guarantees every rural household 100 days of wage employment and an unemployment allowance on failure to provide such employment, under hitherto unknown labour standards, information disclosure and social audit norms.

Health

The right to food (along with entitlements of children and pregnant mothers to nutrition) is an important basis for good health. But the right to health has itself been discussed both in the apex court and in policy circles. The Ministry of Health and Family Welfare put forward a draft National Health Bill, 2009, on the right to health. The draft bill provided for the central and state governments to ‘...[p]rovide free and universal access to health care services and ensure that there shall not be any denial of health care directly or indirectly, to anyone, by any health care service provider, public or private, including for profit and not for profit service providers, by laying down minimum standards and appropriate regulatory mechanism’ (Clause 3C). The bill also laid down

core obligations regarding underlying determinants of health (Clause 4) and elaborated on the right to health as including, inter alia, the right to food, housing, water and sanitation, and appropriate health care (Clause 9).

Food

The right to food has also been interpreted by the supreme court as being a corollary to the right to life, and Article 47 directly enjoins the state to raise the level of nutrition. Between 2009 and 2013, extensive discussions between the UPA government, civil society organisations, and the National Advisory Council to the government (headed by the chairperson of the UPA), first led to the introduction of the National Food Security Bill in parliament in 2011. The bill was referred to a parliamentary standing committee which submitted its recommendations in January 2013. After considering these recommendations and various other viewpoints, the Government of India approved a revised National Food Security Bill and the parliament enacted the National Food Security Act, 2013, which aims ‘to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith and incidental thereto’.

The act creates highly subsidized food-grain entitlements for ‘up to 75% of the rural population and up to 50% of the urban population’. It creates legal entitlements for children based on the Integrated Child Development Scheme (ICDS) package in most respects, as well as the Mid-day Meal Scheme. It also creates supplementary nutrition entitlements for pregnant and lactating women.

The act also addresses the question of appropriate institutional structures, and transparency, accountability, and grievance redressal in the implementation of the act.

Expenditure on social protection

Analysis shows that the central state’s expenditure on social sectors (education, health, housing, rural development, social security) increased from 0.97% of GDP in 2000/01 to 1.33% in 2005/06 and to 1.78% in 2009/10 (Srivastava, 2012a). Expenditure by states (as a percentage of GDP) increased only in the period 2005 to 2010). Real expenditure on social protection also increased at a significant rate (Srivastava. 2012b: 185). With the launch of the National Rural Employment Guarantee Programme (NREGP), central government expenditure on employment generation programmes saw a significant increase from 0.18% of GDP in 2004/05 to 0.64% of GDP in 2009/10. The period also saw an increase in the allocation to old age pension programmes and social security programmes (the *Rashtriya Swasthya Bima Yojana* being the main one), although the

total expenditure on protective social security was only 0.06% of GDP. There was some increase in rural and urban housing programmes, taking up 0.14% of GDP (up from 0.09% in 2004/05). The other set of schemes which took up a major allocation were the food and nutrition schemes, particularly the Public Distribution System (PDS). These absorbed 0.52% of GDP in 1999/2000, 0.82% in 2004/05, and 1.13% in 2009/10 (Srivastava, 2012b).

Push back and change since 2014

The social security trinity

Since 2014, central government has moved towards an architecture which combined a push towards financial inclusion and opening of no frills bank accounts through a scheme called the *Jan Aadhar Yojana* (People's Foundation Scheme), with a unique biometric-based identification number for every individual (*aadhar*), and the payment of benefits through bank accounts facilitated by mobile-based applications. This was famously described in the Economic Survey of 2015/16 as the Jan-aadhar-Mobile or JAM approach. The financial budget for 2015/16 announced three social security schemes which were to use this architecture, ostensibly as part of the government's intention 'to work towards creating a universal social security system for all Indians, especially the poor and the under-privileged', according to the budget speech of the finance minister (February 2015). This was to be done through three social security schemes providing modest benefits for accidents, accidental and natural death cover, and pensions.¹⁰ Two schemes were purely contributory, whereas the government promised an initial early-bird contribution, limited to Rs5000 over five years, for the third scheme. These schemes were limited in scope and carried a number of restrictive conditionalities (Srivastava, 2018). The JAM architecture has, since then, also been extended to many other programmes with an extensive but contested claim that it had improved targeting and reduced misdirection of subsidies.

Social populism and social protection in the run up to the 2019 elections

In the run up to elections in 2019, the government announced three contributory pension schemes for unorganised workers, farmers, and small traders respectively.¹¹ These schemes had common features, each open to workers in the respective category and 18 to 40 years old, offering a minimum monthly pension of Rs3000 (approximately US\$45) on a premium schedule, with a 50% government co-contribution. Although the government contribution was capped, the workers could opt for a higher contribution and a higher terminal pension. These pension schemes were an improvement over the earlier scheme announced in 2015, but were achieved by essentially limiting the scope of the schemes' coverage.

In September 2018, the Government of India rolled out a massive health insurance scheme called *Ayushman Bharat* which is billed as the National Health Protection Scheme. The scheme is eventually intended to cover 100 million poor families who will be identified in rural areas by the deprivation criteria of the Socio-economic Caste Census, and by occupational criteria in urban areas.¹² The scheme subsumed the RSBY, discussed earlier, and the Senior Citizen Health Insurance Scheme.

The scheme has a defined benefit cover of Rs500 000 per family per year. Benefits of the scheme are portable across the country. The payments for treatment will be done on the basis of a package rate. The expenditure incurred in premium payment will be shared between central and state governments. States will bear 40% of the cost of the scheme. States are permitted to implement the scheme in insurance or trust/society mode.

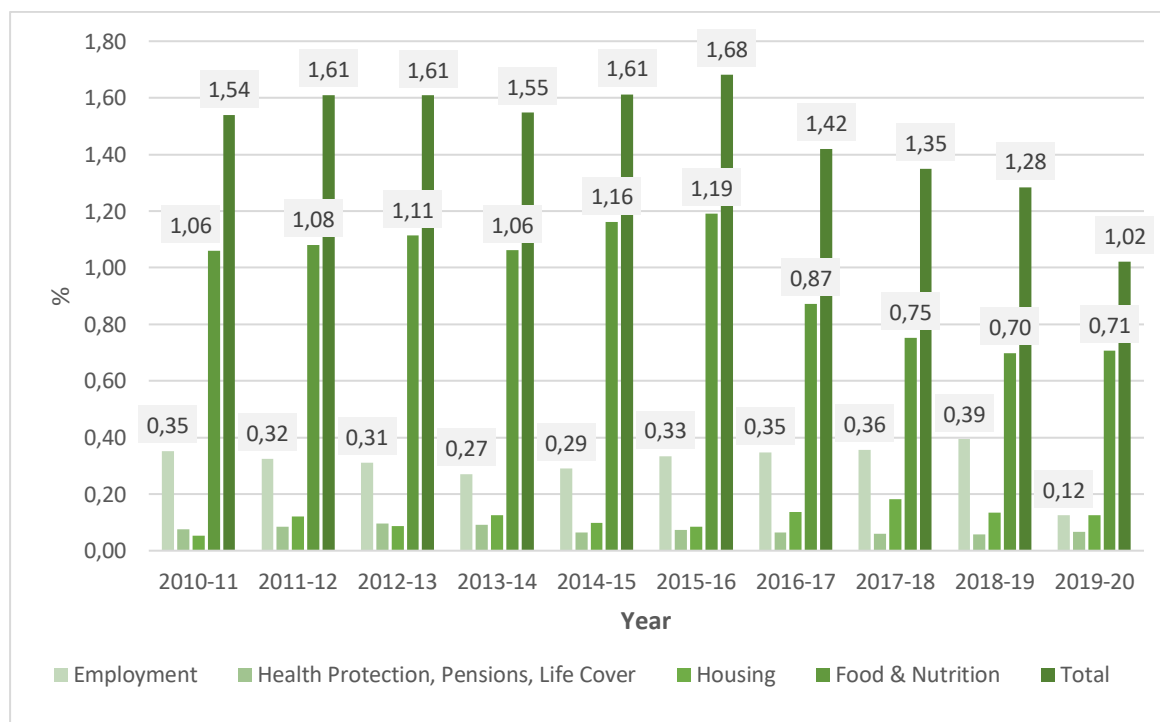
Although the National Democratic Alliance (NDA) government rolled out new contributory pension schemes and a new health protection scheme in the run up to the last general elections, it has shown a strong disinclination to bolster other non-contributory social protection programmes. The prime minister called the Employment Guarantee Programme a monument of the previous government's failure and no new scheme or programme has been introduced as a legal entitlement.¹³ The expenditure on social protection programmes, shown in figures 1 and 2, declines significantly after 2015/16, both as a percentage of total revenue expenditure and as a percentage of GDP.

Figure 1: Central government expenditure on major social protection programmes as a percentage of revenue expenditure



Source: Author's computation from the Annual Union Budget Documents, Ministry of Finance, Government of India

Figure 2: Central government expenditure on major social protection programmes as a percentage of GDP



Source: Author's computation from the Annual Union Budget Documents, Ministry of Finance, Government of India

The new Code on Social Security

The Government of India legislated the new Code on Social Security in October 2020. It merges nine central social security acts and aims to provide a common legislative framework for social security in India. The definitions given in the code show that its framework covers a wide range of workers, both formal and informal, in the organized and unorganized sectors. But it does not cover contributory workers, who are mainly women, and a large section of frontline nutrition and health workers, who have been described as ‘voluntary’ workers. There is also ambiguity about whether the act covers agricultural labourers.

The code has been legislated with limited goals, namely amalgamation and amendment of the existing statutes. An earlier draft of the code, published in 2018, had ambitiously aimed to create a unified framework for social security with the eventual goal of providing universal social security. The draft code cited the UN and ILO conventions, the Indian constitution, and the Indian commissions as rationale for this code. The draft code had significant deficiencies. It also provided for a large dose of privatization of the existing social security structure. But it could not be faulted on its key objectives. By contrast, the new code reproduces the extant distinction between social security measures available to formal sector workers and to informal sector workers. It does not provide any social security guarantee for informal and informal-sector workers.

Chapters III through VII of the code subsume five laws. The laws subsumed in chapters III to VI were meant for India’s formal sector workers in enterprises with threshold sizes of ten or more or twenty or more workers. These laws were discussed in Section 1 as statutory laws providing social security to India’s formal private sector workers. Chapter III of the code subsumes the Employees Fund Act and is applicable to establishments with twenty or more workers. It also works on a contributory basis and provides post-retirement benefits to workers. Chapter IV subsumes the existing Employees State Insurance Corporation Act. The Corporation Act provides medical care, sickness leave, invalidity benefit, maternity benefit, and, since 2008, unemployment benefit to insured workers. It traditionally covered industrial establishments in clusters but its geographical and sectoral coverage has been steadily expanding. Under the code, the Corporation will cover in establishments with ten or more persons employed. Chapter V of the code is again applicable to establishments employing ten or more employees and determines the employers’ liability to pay gratuity to long-term workers. Chapter VI relates to maternity benefits for workers not covered in Chapter IV but working in similar sized-establishments. Both gratuity and maternity benefit under Chapter VI are employer liabilities. Chapter VII relates to employment injury compensation of

those workers in specified occupations not covered in chapter III. The occupations and contingencies covered are provided in schedules of the code.

The workers covered in these chapters were already covered by statutory provisions, and together with workers covered in chapters III to VI comprise about 18% of the workforce. However, both the nature of discussions that took place in drafting the code and the institutional arrangements specified in the code show that there is a definite tilt towards weakening the tripartite structure of management of the social security structure and the funds discussed in previously. They provide greater flexibility to firms to opt out of the social security arrangements and for the central government to control the management of the boards and funds related to the social security provisions under chapters III and IV.

Chapter VIII of the code merges the current law on Building and Construction Workers Cess while Chapter IX subsumes the extant Law on Social Security for Unorganised Workers (referred to earlier) to cover the remaining unorganized workers. The novelty in this chapter is its coverage of platform and gig workers and the possible creation of a fund to finance social security for these workers through a levy on the aggregators. Clearly, Chapter IX provides a legislative framework for the largest percentage of workers who are not covered. It says that the centre and state can frame social security schemes for any segment of these workers. But it does not provide a definite financing mechanism, nor does it lay down any specific targets by which unorganized workers will be provided with social security. In other words, the chapter is broadly a reiteration of the empty provisions of the Unorganised Workers' Social Security Act of 2008. In effect, the code does not offer any definite blueprint for providing social security to the overwhelming majority of unprotected workers in the Indian workforce.

One of the basic features on the Indian workforce discussed in the third section is that a large part of it combines different kinds of jobs (for example, cultivation with agricultural labour, or agricultural labour with industrial labour or urban services). It is, therefore, mobile, both spatially and between sectors, and moreover a large part of the workforce does not have a stable employer-employee relationship. Increased informalization and precarity have to be addressed through labour policy, but that is not the focus of this paper. With the growth in the share of the industrial workforce, as pointed out in earlier sections, the precariousness of the workforce and its mobility have to be recognised and built into the social security framework. The code, however, divides the workforce into different segments and does not provide for different kinds of mobility even within each segment. It does not provide for an integrated registration mechanism for workers. In the

code, organized-sector workers will have their own registration systems, while, state-wise, building and construction workers and unorganised workers will have different registration mechanisms. Moreover, the different registration provisions, where they exist, will be linked with the biometric identification system, *Aadhar*, which has been widely contested. The important issues related to registration, portability, and biometric identification will be discussed later in this paper.

In short, the code, as it exists, does not provide any specific social security entitlements to unorganized workers, nor does it provide an adequate framework to cover them. There is no new funding mechanism specified in the code, except for the gig and platform workers, and the central government contribution, even in its existing form, is not a part of the Code. On the other hand, the reach of the central government in the management of the tri-partite boards and the funds of the 'Corporation' and the 'Fund' has been significantly strengthened, with the implication that the government may choose to deploy the funds in any manner that it wishes, in the years to come.

Going forward: key issues in embedding a rights based social security framework in India

This section touches on some of the important issues in moving towards a universal rights-based social protection regime in India within a reasonable time frame of five to 10 years.

Building bridges between worker based and citizenship based social protection

The approach to social security linked to the status of the worker recognizes the contingencies linked to her/his work status and also unique to it. But these contingencies are built on the notion of a standardized employment relationship, which is far more the exception than the rule. Indeed, 'employment' itself is a restrictive notion which does not recognize important categories of work that people in general, and women, in particular, do.

As discussed in the preceding sections, India has followed an approach of providing social security to a small segment of workers. The analysis shows that this approach only reinforces existing labour market inequalities. The social security code, which has now been legislated, does very little to tangibly expand the scope of social security.

On the other hand, citizen-centric approaches to social protection have steadily expanded. Food-based support for nearly two-thirds of the population, with targeted measures for children and pregnant and breastfeeding mothers, has been made a constitutional entitlement. Access to rural public employment in times of need is another area which now has statutory backing. These have been important advances, although, despite legislative backing, the political economy of the state

down to the grassroots level constantly attempts to whittle down the nature of these entitlements, and gaps were thoroughly exposed during the migrants' exodus following the lockdown in India.

There also have been non-statutory extensions to social protection in the form of a health insurance package, which, in principle, on complete extension, could be available to 500 million people or about 40% of India's population. Interestingly, as the contributory schemes under the Employees' State Insurance have tried to universalize their services to all workers in the formal sector, they are falling back on the government's health insurance package to provide hospitalization services to insured workers and their families. Non-contributory old-age pensions are another area where protection has been enhanced, in this case, more at the instance of state governments.

These developments are pointing in the direction of an evolving three-tier social protection structure. At the bottom is a social floor, comprising access to health and other essential services and a basic level of income, in cash or kind, to all individuals in need. At the next level, there are contributory provisions which will cover classes of workers with benefits in the case of work-related contingencies. Social security and protection at the first two levels must be based on legal entitlements which can be applied transparently by accountable structures, and the ability to settle grievances can quickly and inexpensively. At the highest level, individuals will be able to purchase marketed or insurable services. This 'staircase' approach, also discussed in the first section, is inclusive and also retains the link between work and social protection.

For a few years, the idea of a universal basic income (UBI) has gained some currency in India. The global arguments for and against a UBI are fairly well known (Standing, 2017). Its attractiveness comes from its universality and its consequently non-discretionary and non-paternalistic nature and administrative simplicity compared to other social protection arrangements. It is also supposed to be tailor-made for a future world where worklessness might become endemic, and essentially abandons any link between employment and social protection. The idea gained traction in India through a small experiment carried out by the Self-employed Women's Association (SEWA) in the state of Madhya Pradesh, where a small, unconditional income transfer, at about 30% of the poverty level, was given to residents in villages involved in the experiment in 2011/12, and the results were compared to control villages. The results were shown to have a number of beneficial effects (Jhabvala, Standing, Davala and Kapoor, 2014; Davala, Jhabvala, Mehta and Standing, 2016).

The basic argument that developed was that such transfers could replace conditional transfers being made in cash or kind under a number of schemes and could potentially be financed through savings on other subsidies (Mundle, 2016). A stronger advocacy for the idea of a UBI was made in the government's annual Economic Survey for 2016, which devoted a whole chapter to UBI under the rather pompous title: 'Universal basic income: a conversation with and within the Mahatma'. The document argued that the UBI was an excellent idea, also on grounds of administrative efficiency, gelling with the JAM architecture referred to earlier, but it was expensive. A UBI that reduced poverty to 0.5% would cost about 4.9% of GDP, assuming that those in the top 25% income bracket do not participate.¹⁴ The Survey points out that central schemes (large in numbers, inclusive of subsidies on food and fertilizer and social protection and basic infrastructure programmes) cost about 5.2% of GDP and suffered from misallocation, poor targeting and leakage. Out of this, subsidies to the non-poor constituted about 1% of GDP. Implementing UBI as envisaged above would mean removing subsidies for the non-poor and non-duplication with other social protection programmes for the poor which are poorly targeted and implemented with high leakages and centre-province cost sharing arrangements. However, the Economic Survey also suggests more modest and modified versions of the UBI, including for example, a gradualist approach with a road map for universalism or a UBI only for women.

The debate on the UBI re-emerged after the pandemic, which was followed by the lockdown. Many economists then made a strong case for unconditional, near-universal income transfers to alleviate economic distress. Others argued that the crisis was the appropriate time to implement a quasi-universal modified UBI, or what Dreze (2017) calls QUIT, which would be a fraction of the cost of the UBI without, for the time being, upsetting the existing social protection architecture in any significant manner (Bardhan, 2020).

A fully fledged discussion of the UBI is beyond the purview of this paper. But, in my view, the case for a UBI has to be based on the specific nature of development in a country in relation to markets, and provision of social infrastructure, services and social protection. The current Indian social protection schemes comprise a mix of cash and in-kind, conditional and unconditional transfers. However, in financial terms, the schemes are dominated by unconditional, in-kind transfers (via the PDS), followed by conditional in-kind transfers (nutrition support schemes, midday meal schemes and so on) and conditional cash transfers (public employment schemes, maternity benefit schemes). Unconditional but targeted cash transfers (such as old-age pension schemes for the poor) form a small component of the present social protection system in India.

The dominance of in-kind benefit programmes in the Indian social protection system exists because of the nature of the largest current social protection programme, namely the Public Distribution System (PDS). If the PDS is seen purely as a system of transferring subsidies to the consumer, it is likely to be costlier than a cash transfer system which is also attractive because it gives the consumer a greater choice. However, the gains for households from a cash transfer will not be unmitigated, as the real value of the subsidy will be eroded by inflation and unfavourable changes in relative prices of food-grains; the consumers may continue to consume fewer calories than required, thus delinking the cash transfer from the original objective of (household) food security. More significantly, this programme works with multiple objectives which include price support to farmers, price stabilization and food-grain sales to consumers at subsidized prices. The entitlement-based public employment programme, the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), is rather unique in that it self-selects individuals who need employment and are willing to engage in manual unskilled work in public works, and pays them a wage. The programme is linked to creating public and productive private assets through employment as well as a number of other objectives, and expenditure on it needs to be considered differently to other cash or kind transfer programmes. The schemes in India related to children (and mothers) also principally provide cash and in-kind benefits through the ICDS or the school system, with the objective of reducing intra-household misallocation and boosting demand for health and education services.

Thus, in each case, the cash/in-kind rationale of the schemes needs to be assessed carefully in light of the overall costs and benefits and the objectives of the scheme. Moreover, in a country such as India, basic services (health, basic education, water, sanitation, food) are inaccessible to a large percentage of the population, and their privatization is leading to further exclusion of the poor. There is a compelling need to increase public expenditure on these services, and a cash transfer, whose real value it would be difficult to protect, could well dilute the state's responsibility to ensure provision of these services. Indeed, it would be difficult to protect the real value of any cash transfer. The broader issue is to examine the integration of social security with a social protection floor contextualized in the Indian context, and cash transfers – for example, old-age pensions or maternity benefits - could well be an important part of this architecture (Dreze, 2018). This will require a detailed examination of the components, level and design of social protection, discussed below.

Contributory versus non-contributory schemes

As we have seen in the preceding sections, all previous commissions in India have recognized the need to build the social security or social protection system on both contributory and non-contributory principles. This is in recognition of the fact that the small base of formal employment limits the normal scope of contributory systems in India. Only 6% to 7% of workers are estimated to have formal contracts. Even if the system could be extended to workers engaged by formal establishments irrespective of the nature and length of their contracts, more than four-fifths of workers - who are self-employed, or engaged by petty enterprises or small holders in agriculture - would not be covered. Moreover, as we have argued above, a universal social protection system should also cover those vulnerable sections of the population who cannot be included in worker-centric schemes. Thus, the core of a universal system will have to be principally non-contributory schemes for the most precarious and poorest, with contributory elements built in for additional benefits or work-related schemes.

Public versus private provisioning

The sectors in which social protection is being proposed (health, education, pensions, life cover) are replete with private actors. At the same time, the public sector is either too sparse (as in health) or plagued with problems of quality, accountability, and responsiveness. There are also, undeniably, intermediate non-profit institutions, which play a facilitative or intermediary role, but their presence is much smaller than the profit-oriented sector's. The challenge in designing social protection in each of these sectors is whether, and to what extent, each of these sectors can be harnessed to meet the social obligations, and how (given that the final accountability rests with governments) they can be held accountable. The Right to Education Act in India puts the principal responsibility for schooling on the government sector but mandates that 25% of seats in private institutions be set aside for candidates from the weaker sections. The worker-based health insurance scheme, the RSBY (which was initiated in 2008 and since 2018 has merged with the scheme for poor households, *Ayushman Bharat*), was managed by public and private insurance agencies which were selected by state governments through a bidding process, and the state also empanels private and public health facilities which can provide hospitalization under the scheme. A similar model has been followed in the successor scheme, *Ayushman Bharat*. The management of corporates and social security funds has been a very contentious issue in the past, with the governments seeking discretionary use of these funds and also their deployment in the market. This has largely been resisted by fund managements, which so far have been tripartite in character.

But this may now change in a negative direction, as the central government has acquired greater control over the managements and administration of funds.

In short, privatization of funds and providers has been a highly contentious issue in the Indian context. The experience so far shows that programmes can be implemented through private agencies through memoranda of understanding or through a regulatory framework which also establishes an accountability framework, but the principal accountability must rest with governments and a larger government role in sectors such as social health protection and education favours more equitable outcomes, provided the quality of services can be maintained

Financial issues

Any universal and rights-based social protection system with the ingredients described above puts the focus on financial requirements and raising of financial resources. The modest universal national minimum package of social security measures envisaged by the NCEUS was estimated to cost 0.6% of GDP, with the cost to central and state exchequers at 0.48% of GDP. Examination of the financial requirements of a more ambitious social protection floor (Srivastava, 2013) showed that India could require additional financial resources ranging from 1% to 3.5% of GDP in the initial years, rising to 2.26% to 4.37% of GDP in the tenth year, to finance a social protection floor which could give a credible level of protection to the poor through entitlements. The bulk of this increase was to cater for increases on expenditure in the health sector, in which expenditure was slated to rise by 1.4% of GDP over a 10 year period.

This will require a concerted strategy to raise additional financial resources and reprioritise expenditure. In the past, some of the specific social protection programmes have been financed through levies called cesses (as in the case of the five welfare funds) and some of these have generated sizeable revenues. The other avenue has been a surcharge on direct tax, which is currently used to finance budgetary expenditure on education. There is also the possibility of scrutinizing and cutting back on subsidies and tax concessions given to the rich or to firms where such concessions have a weak economic rationale. The past increases in social protection expenditure took place in a climate of strong growth and revenue buoyancy, and with some degree of political commitment, which cannot be anticipated in the present scenario.

Implications for a rights-based framework in a quasi-federal structure

Social protection falls in the concurrent domains of the central government, provincial states and local bodies (the third tier of government) in India, and the three tiers of government also have a vital role in designing and implementing schemes for social protection. The concurrent nature of

social protection programmes and resource availability allows the centre to design and fund social protection programmes with a smaller or equal share of the financial burden being borne by the states. The same scheme also allows the central government to legislate on social protection programmes, but in that case the bills usually need to be approved by a few state legislatures before they are enforceable across the country.

Programmes from central government reduce the flexibility that states have in designing their own schemes (since central schemes also pre-empt the states' fiscal space) as well as states' ability to implement the central programmes with desired flexibility. The results can be suboptimal as the design of the scheme may not be appropriate for the particular state and states may have neither the wherewithal to develop their own schemes nor the incentive to implement the central schemes well. A similar logic holds for local bodies, especially large urban bodies which have a larger tax base and the capacity required to address social protection issues. On the other hand, the diversity of schemes across states, centre and local bodies with different entitlements creates a hierarchy of rights for citizens and non-citizens. In a rights-based framework, the different levels of government must constitutionally share the obligations arising out of the legislation and create a common base of entitlements for all citizens, including migrants. This architecture, involving the right mix of centralization and decentralization in design and resources, is complicated and requires careful reflection and analysis. The NCEUS (2006; 2007) had envisaged such a scheme by holding the centre and states responsible for a minimum package of social security entitlements, beyond which there could be add-ons at the state or sectoral levels.

Portable social security registration and issues around digitising financial transactions and unique identification

The modern architecture of social security and social protection in India is being built around the unique (biometric) identification of potential beneficiaries and financial transfers using digital technologies. Neither digitisation nor unique identification are peculiar to social protection frameworks, but are part of larger frameworks being promoted globally with multiple objectives and far-reaching implications for personal and financial security, as well as privacy, financial cost and efficiency. In the Indian case, the use of unique identification along with digital financial transfers in social protection has been promoted by government to ostensibly increase public savings by cutting down costs of intermediaries and leakage through misidentification. As discussed above, the Government of India (as well as the states) has promoted financial inclusion, unique biometric identification, and financial transfers through mobile applications as key parts of its social protection delivery system, which a former chief economic advisor to the government

called the JAM trinity. This section briefly touches upon some of the issues around digitization and biometric identification.

Digitisation and the cost of financial transfers to the poor

The Government of India and India's central bank have been aggressively promoting financialization of the economy through digitization. Ambitious targets for digitization have been developed. A recent high level committee on 'Deepening of digital payments', set up by the Central Bank and chaired by Nilekani, a former head of a leading global IT company, submitted its report in May 2019. While projecting very ambitious targets for digital payments, the committee acknowledged there were challenges with the direct benefit transfer (DBT) mechanism. These included lack of returns management (that is, the DBT not being successfully credited to a beneficiary), processing errors, connectivity issues and authentication failures in *Aadhaar* payments. It also noted a lack of a dedicated grievance redress mechanism and lack of awareness as major impediments.

However, the core issue limiting the benefits of digital transfers and escalating its costs and security concerns is the digital divide in Indian society due to illiteracy and lack of ownership or familiarity with mobile apps and internet based technologies – all of which also continue to be high cost for the poorest sections.

Despite the steady growth of school education, there are sizeable numbers of people whose use of such technologies is restricted because they lack of literacy and basic education. According to a survey carried out in 2017/18, nearly 10% of female workers and rural workers had fewer than five years of school education. Among casual workers, nearly one in seven lacked education up to the primary level.

The ownership and use of mobile phones has steadily increased, but ownership of smart phones is more restricted although data traffic has also increased rapidly. The Telecom Regulatory Authority of India estimated 1 160 million wireless subscribers in February 2020. However ownership of and ability to use internet-enabled devices shows a much sharper digital divide (Pandey, 2020). While in urban areas, it was estimated that there were 104 internet subscriptions per 100 people (with many individuals having multiple connectivity), the figure for rural areas is a little over 27. There is also a gender divide in mobile ownership, with a report claiming that while 79% of men own a mobile phone in the country, the number for women is 63% (GSMA, 2020).¹⁵ A very sharp divide also exists across the states of India.

A survey carried out by the National Sample Survey of India brings out the stark divide between rural and urban areas, genders, and quintile groups in the ability of the population age 15 years and above to use computer and internet services. In the rural areas, only 15.1% of individuals could use internet; this was 40.6% in urban India. The percentage of men using the internet (29%) was nearly twice as high as the percentage of women (16.5%).¹⁶

The really significant divide is between wealthier and poorer individuals. In rural areas, only 7.7% of individuals aged 15 and older in the poorest consumption quintile, and 20.8% in urban areas, could use internet, compared to 26.8% for the highest quintile in rural areas, and 64.6% for the highest quintile in urban areas (Computed by the author using data from India's National Sample Survey 75th Round conducted in 2017-18)).

The low percentage of ownership of and ability to use digital technologies means that the poor are exposed to security risks which are unknown to the more educated and wealthier groups. As is well known, the new technologies adopted by financial institutions are making them increasingly vulnerable to risks such as phishing, identity theft, card skimming, vishing, SMSishing, viruses and trojans, spyware and adware and so on. According to one estimate, bank fraud in India via cybercrimes amounted to Rs. 715 billion in 2019. But this is probably the tip of the iceberg and many cybercrimes go unreported or unrecorded, and the nature of the crimes which involve the poor take very different forms. As far as they are concerned, being forced to use digital transfers, they have to resort to shared mobiles and help from a variety of informal intermediaries, whose services they acquire at a cost, and often a high cost. These costs, substantially higher for them, are not factored into the normal risks associated with the use of digital technologies.

The use of unique identification – cutting down leakages or increasing exclusion?

The move to provide a citizens' identity card in India gained impetus from 2003 with the New Citizenship Rules notified by the Home Ministry. Subsequently, the Unique Identification Authority of India (UIDAI) came into existence in 2009. According to the Registrar General of India, the UIDAI is expected to eliminate duplication of the UID number, after which the cards will carry the number. The UID is a card carrying a unique identification on which the person's biometric and demographic details, including beneficiary status and benefits received, could be stored. It has also been claimed that the *Aadhar* will not be a citizenship card and only an identity number (Ministry of Home Affairs, n.d.). The UIDAI has taken upon itself the role of enrolling people and issuing UIDs to them, with data being collected through bodies (including private entities) appointed as 'registrars', of whom the Registrar General is only one. The UIDAI has made

large claims for its project, particularly on behalf of the poor and programmes meant for them such as the PDS, MGNREGA, and access to health services.¹⁷ The main claim is that the UIDAI will correct targeting of benefits, thereby eliminating leakage.

There are presently a number of issues relating to the *Aadhar*, including its overlap with the National Population Register and UIDAI, technological feasibility (given that similar exercises have either failed or been given up, or have not been accepted even in technologically advanced countries), and privacy issues (dealt with later in this paper). Here, I focus on the use of the UID number to claim financial inclusion and various other social protection entitlements. These claims are important since the UIDAI claims to resolve in one stroke three issues central to social protection: providing claimants with verifiable identity, a **claim** to an entitlement, and an actual entitlement. These claims can be contested, and below I briefly review the relevant issues and evidence.

As far as claims to an entitlement are concerned, these claims are actually established by independent criteria, and the UID can only help or hinder this to the extent that the demographic and other verifiable details in the UID data base relate to the criteria. In some cases, such as that of migrants, where discrimination can be exercised on the basis of place of residence, the UID data can actually serve to reinforce discrimination.

A large number of claims have been made about the efficacy of the *Aadhar* in weeding out ineligible beneficiaries through the unique identification process that it bestows. This claim is highly exaggerated. A number of studies have shown that *Aadhar* and biometric identification have not been able to root out intermediaries and commissions in schemes such as Prime Minister's housing scheme for the poor, Prime Minister's Awas Yojana (PMAY), MGNREGA, and *Swachh Bharat* (Clean India) (Sagar, 2018; Masiero and Das, 2019; Khera, 2017). Even as this paper was being written, two scams manipulated, respectively, a farmer income support programme in the State of Tamil Nadu and another for school scholarships in Jharkhand to include ineligible beneficiaries and siphon off funds (Nath, 2020; Angad, 2020). But the other side of this is the exclusion of the poorest eligible beneficiaries due to non-registration, failure of bank and *Aadhar* linkages and of the biometric identification system, and failure of devices meant to carry out the authentication (Chhetri and Bharadwaj, 2019; Masiero and Das, 2019; Khera, 2017; Sagar, 2018; Sen, 2019; Munjuluri et al., 2019). Indeed, while *Aadhar*-linkage is (mostly) able to assist in weeding out duplication, exclusion of the poorest and those the poorest regions due to technical errors

continues, as does quantity exclusion (provision of quantities less than the entitlement of the household) due to corruption and local power equations.

Issues around biometric identification and privacy with Aadhar

As mentioned above, the *Aadhar* project was initiated in 2009 by the then United Progressive Alliance government, to authenticate a person's identity through their unique biometrics such as fingerprints and iris scans. The project provided each individual with a unique identification (UID) number which was considered reliable identity proof, which could potentially prevent duplication of identities. The UID details (biometric and demographic) were captured by UID centres or outsourced agencies, which potentially had access to the biometric data, although the data itself was encrypted and stored by the UIDAI in the Central Identities Data Depository.

The UID project was rapidly expanded by the new National Democratic Alliance, which governed from 2015 onwards, and was linked to all sorts of other transactions, such as bank accounts, IT accounts, ration cards, muster rolls in public employment programmes, school scholarships and so on. The UIDAI stored information regarding each event requiring biometric identification and was responsible for setting up protocols for data safety and security. But the UID authority had no statutory backing, and the personal details captured for UID were periodically open-sourced on a number of portals, leading to well-founded fears regarding privacy and security. There were also apprehensions that the UID details could, without adequate protection, easily turn into a state surveillance tool. Finally, as noted earlier, as schemes which required biometric identification grew, so also did apprehensions that the UID, rather than helping to reduce leakage, was leading to significant exclusion of the poor and the eligible from schemes and entitlements. It should be noted that the *Aadhar* project took off and grew exponentially without any statutory backing whatsoever.

The *Aadhar* was initially challenged in India's supreme court on two main grounds: first, that the collection of data without adequate safeguards interfered with the citizen's right to life and liberty guaranteed by the constitution. This issue was referred to a larger bench of the supreme court in August 2015. Another issue that was raised was whether the UID could be made mandatory for citizens for government benefits and services entitled under law. An interim order of the court said that the UID could only be used for seven government schemes.

Subsequently, government enacted the *Aadhaar* Act, 2016, through a route by which the legislation could be passed by a simple majority only in the lower House of Parliament as part of the budget (as a money bill). Subsequently the government issued several notifications making *Aadhar*

mandatory for various schemes, including the linking of *Aadhaar* with the personal account number (PAN) required for income tax payments. This act, whose route to legislative approval must be questioned, was again challenged in the Supreme Court, including the provision through which it has been issuing notifications to make *Aadhaar* mandatory for various schemes. But the supreme court, in June 2017, upheld the validity of the *Aadhaar* Act and also the move to link *Aadhaar* with individuals' PAN numbers..

The question of whether the right to privacy was a fundamental right for Indian citizens was, in the meanwhile, examined by a larger bench of the apex court, with the government arguing that the Indian constitution did not guarantee the right to privacy as a fundamental right. The supreme court judges gave a unanimous judgment in August 2017, with a one-page order declaring that: 'The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.'

The judgment goes a long way in addressing the privacy and surveillance risks associated with the *Aadhaar* scheme. Legal experts have held the opinion that the identification database that *Aadhaar* builds will not be easy to reconcile with the framework for privacy drawn up in the judgments, and that *Aadhaar* will have to meet the challenge of privacy as a fundamental right. Given the growing evidence that state governments are already using *Aadhaar* to build databases to profile citizens, the security of data and limitations of data convergence and profiling may be areas for future privacy-related challenges to *Aadhaar*. The judgment also has ramifications for various other important issues pending before the court in which privacy issues are also being raised.

The lead judgment in the supreme court verdict called for the government to create a data protection regime to protect the privacy of the individual. It recommended a robust regime which balances individual interests and legitimate concerns of the state.

In July 2017, a 'committee of experts', chaired by Justice B. N. Srikrishna, was set up to examine various issues related to data protection in India. The committee submitted its report, along with the Draft Personal Data Protection Bill, 2018, to the Ministry of Electronics and Information Technology in July 2018. The committee sought to distinguish personal data protection from the protection of sensitive personal data, since its processing could result in greater harm to the individual. Sensitive data is related to intimate matters where there is a higher expectation of privacy (such as caste, religion, and sexual orientation of the individual). The committee proposed setting up a regulatory authority to enforce regulation of data protection. Currently, the usage and transfer of personal data of citizens is regulated by the Information Technology (IT) Rules, 2011,

under the IT Act, 2000. The rules hold the companies using the data liable for compensating the individual in case of any negligence in maintaining security standards while dealing with the data. The expert committee, in its report, held that while the IT rules were a novel attempt at data protection at the time they were introduced, the pace of development of digital economy has revealed their shortcomings. For instance, the definition of sensitive personal data under the rules is narrow, and some of the provisions can be overridden by a contract. Further, the IT Act applies only to companies, not to the government.

The draft bill proposed by the committee allows processing of data by fiduciaries if consent is provided. However, in certain circumstances, processing of data may be permitted without consent of the individual. These grounds include: (i) if necessary for any function of Parliament or state legislature, or if required by the state for providing benefits to the individual, (ii) if required under law or for compliance with any court judgement, (iii) to respond to a medical emergency, threat to public health or breakdown of public order, or (iv) for reasonable purposes specified by the authority, related to activities such as fraud detection, debt recovery, and whistle blowing.

Following the recommendations of the expert committee, the government introduced the Personal Data Protection Bill, 2019, in parliament. Compared to the bill proposed by the expert committee, the government has significantly enlarged its own role in the nomination of the regulators and in accessing personal data (Vaishnav, 2019). For example, the central government can exempt any of its agencies in the interest of the security of the state, public order, the sovereignty and integrity of India, or friendly relations with foreign states. Processing of personal data is also exempted from provisions of the bill for certain other purposes such as prevention, investigation, or prosecution of any offence, or for research and journalistic purposes. Further, personal data of individuals can be processed without their consent in certain circumstances such as if required by the state for providing benefits to the individual, legal proceedings, or to respond to a medical emergency.

In an interview with a leading financial daily, the Economic Times, Justice Srikrishna, the chair of the expert committee, criticised the government bill, calling it ‘dangerous’ and a piece of legislation that could turn the country into an ‘Orwellian state’, noting that the government had removed the safeguards present in the original draft, and could at any time, as per the bill introduced in parliament, access private data or government agency data on the grounds of sovereignty or public order, with dangerous implications. The bill has since been referred to a select committee of the parliament and is under its consideration.

Conclusion

A universal registration system with a unique social security ID and digital payment systems are in the interests of workers since they can provide a basis for portability of registration at the workplace, deduction of social security contributions, and payment of benefits. However, lack of infrastructure and basic financial literacy imply that simple and offline solutions need to be built in. More importantly, the architecture presently proposed, with *Aadhar* as the basis, does not adequately address security and privacy concerns and imposes large costs on the poor, although this is an area which is still understudied. Data privacy is a growing international concern, particularly as states and commercial entities intensify the use of data for unwarranted purposes, including surveillance. In sum, there has to be a blend of online and offline technologies, and information required for portability should be firewalled from other types of data and information. This needs to be a major preoccupation in India for those concerned with a framework for universal social security in India.

Conclusion

This paper makes a distinction between worker-based social security and social protection in a citizen-centric framework. Given the structure of the labour market in India, it argues that worker-based expansion of social security will remain limited and will more-or-less reproduce the inequities in the labour market. It therefore makes the case for a rights-based framework which integrates workers' social security with social protection. Since 2009, and Recommendation 202 approved by the ILO in 2012, a nationally contextualized social protection floor is deemed to be a global priority. India made substantial progress between 2002 and 2013 in the expansion of a rights-based social protection regime. This expansion occurred due to a number of factors – grassroots movements, favourable interpretations by the apex court, support from an important section within the ruling coalition, and strong economic growth. The current government has been much less favourably inclined towards a rights-based regime, although it has been compelled to retain the thrust of the earlier social protection agenda, and has added some elements of its own. Its main thrust was on social security schemes contributed to by poor unorganised workers, but the failure of these schemes led to their modification by introducing elements of government contribution. The government has now brought in an important Code on Social Security by merging and modifying central social security legislations. But the code does not provide a framework for universalizing social security and the financial memorandum to the code does not commit any finances towards the code.

The Code on Social Security, 2020, was presented in parliament nearly six months after the very severe national lockdown which exposed the dramatic precarity in Indian labour markets, particularly among the circular migrants. An estimated 40 to 50 million interstate circular migrants, along with 20 to 30 million intrastate migrants, left their destination areas for their native places, in many cases walking back thousands of kilometres. Several hundred died during the long march. Even as precarity and destitution loomed, it became clear that the circular migrants in particular could neither access social security measures, nor the social protection measures that had been instituted for poorer citizens. This was mainly because of lack of entitlements in destination areas. This precipitated an intense debate in India on registration and portability of entitlements, as well as cash transfers, not only as an emergency measure, but as a pillar of the social protection system. The previous section of this paper touched on several of these issues along with the key ingredients of a rights-based social protection system, which we argue should integrate a worker-based social security framework with a citizen-based social protection framework.

It should be obvious, however, that making a case for a rights-based social protection system and for its key ingredients does not necessarily automatically lead to its adoption and implementation. To take such a naïve view would be to completely ignore the political economy of globalization, privatisation and financialization, on the one hand, and the inherent structure of the state, reflected in its macro policies, as well as the nature of the current political regimes.

Notes

¹ Research support provided by Rahul Ranjan is gratefully acknowledged.

² This section draws on the author's earlier work (Srivastava, 2013).

³ The main social security legislations, principally applicable to the formal sector, are: The Workmen's Compensation Act, 1926; the Employees' State Insurance Act; the Employees' Provident Fund and Miscellaneous Provisions Act, 1952; Maternity Benefit Act, 1961 and Payment of Gratuity Act, 1972.

⁴ NCEUS (2006) estimated the total number of persons covered under various social security schemes as about 6% of the total number of unorganized and informal workers in the year 2000, with small and large NGOs providing some social security cover to an additional 2% of the workforce in the unorganized sector. These numbers are likely to have increased somewhat in recent years under individual schemes formulated by governments, but the social security coverage of workers in the unorganized sector is woefully inadequate.

⁵ The self-employed include both independent self-employed and the dependent self-employed, usually homeworkers. This category is also dealt separately.

⁶ Analysis is drawn from NSS 38th Employment & Unemployment Survey (1983) and Periodic Labour Force Surveys (PLFS 2018-19).

⁷ The ILO Convention No. 177, adopted in 1996, defines a homemaker as a person who carries out work for remuneration in premises of his/her choice other than the workplace of the employer, resulting in a product or service as specified by the employer, irrespective of who provided the equipment, material or inputs used. Thus, strictly speaking, a homemaker need only be 'working at a place of his/her own choice', but in this analysis I have considered as homeworkers only those dependent workers who work in their dwelling places.

⁸ The Contract Labour (Regulation and Abolition) Act (1970).

⁹ An agricultural household, in the 70th round of the survey, was defined as a household receiving value of produce greater than ₹3000 from agricultural activities (such as cultivation of field crops, horticultural crops, fodder crops, plantation, animal husbandry, poultry, fishery, piggery, bee-keeping, sericulture and so on.) and having at least one member self-employed in agriculture either in the principal or subsidiary status during the previous 365 days.

¹⁰ These include the *Pradhan Mantri Suraksha Bima Yojna* (PMSBY) covers both natural and accidental death risk cover of Rs.2 lakh for a premium of just Rs.12 per year. The Atal Pension Yojana (APY), will provide a defined pension, depending on the contribution and its period. To encourage people to join this scheme, the government announced a contribution of 50% of the beneficiaries' premium, limited to Rs.1 000 each year, for five years for new accounts opened before 31st December, 2015. All these schemes built upon earlier schemes – the Svavlamban scheme and the *Aam Admi Bima Yojana* – which were partially modified and woven into the financial inclusion architecture. Notably, the three schemes introduced were all contributory schemes although they contained an element of subsidy.

¹¹ *PM Shram Yogi Maan Dhan Yojana, PM Kisan Pension Yojana and PM Karm Yogi/Laghu Vyapari Maan Dhan Yojana* respectively.

¹² In the rural areas, the beneficiaries will be those in the deprivation categories (D1 through D7) identified in the Socio-economic Census database for rural areas. For urban areas, 11 defined occupational categories are entitled under the scheme. In addition, RSBY beneficiaries, in states where it is active, are also included.

¹³ After demonetization, introduced by the government in 2016, and the current pandemic, there was a surge in unemployment and the government had to willy nilly take recourse to the MGNREGA and the PDS to provide a safety net to people without jobs and without food. This prevented what would have been a much sharper decline in social protection expenditures. The 2020/21 figures are not reflected in figures 1 and 2.

¹⁴ Dreze (2017) comments that this and similar ideas constitute quasi-universal income topping (QUIT) and are fundamentally different from UBI.

¹⁵ The *Mobile Gender Gap Report* (2020) was released in March by GSMA, an association of industry organisations representing interests of mobile network operators worldwide.

¹⁶ Computed from NSS 75th round data, 2017/18

¹⁷ See the working papers on the UIDAI website (<http://uidai.gov.in/>). The site also contains information on other aspects of the functioning of the UIDAI.

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