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Social Security: A Woman's Human Right

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What is Social Security?

Social security, in its broadest sense, implies an overall security for a person within the family, work place, and society in general. It includes measures designed to ensure that all citizens receive certain basic standards of personal security which consist of: their basic needs (such as adequate nutrition, shelter, education, health care, clean water and food supplies); protection from contingencies (such as illness, disability, accidents, death, unemployment, medical care, child birth, child care, widowhood, and old age), protection against natural disasters; and an environment free from violence (including sexual harassment and domestic violence). These basic measures would enable them to maintain an adequate standard of living consistent with prevalent social norms and the ability to support their dependents adequately. By extension of these basic measures, social security includes protection of livelihoods, guarantee of work, and adequate, fair wages, because without these, other contingency benefits have no meaning.

Right to social security represents an important legal guarantee aimed at ensuring the right of everyone to live a life with dignity. Implementation of this right is an essential pre-condition for realisation of other human rights like right to an adequate standard of living, right to health, and other rights enshrined in various human rights instruments. Thus, recognition of social security as a human right represents an essential transformation from needs-based charity to rights-based social justice.

The paper specifically looks at the right to social security from a woman's perspective. While critically examining the right to social security as articulated in existing human rights instruments, it attempts to expand the understanding of this right as a human right from a gender perspective based on our experiences of working in South Asia on women's economic, social and cultural rights, particularly with respect to social security for women in the unorganised sector in India.¹

¹PWESCR is member of the Working Group for Social Security Now, a national campaign in India comprising of more than 500 members including civil society organizations, people's groups and trade unions. Through this campaign a demand for comprehensive social security for the unorganised sector is being made. (See www.socialsecuritynow.org)

Social Security is Women's Issue

It is important to understand the political, socio-cultural, and economic spheres in which women are situated in order to elaborate on the importance of the right to social security as women's 'freedom and entitlement'.² The multiple patriarchal controls on women within families and in societies adequately illustrate the marginal status of women. Gender based inequalities which women face are accentuated by several layers of discrimination based on class, caste, region, religion, sexuality, and education. Gender disparity remains stark and is reflected in the various spheres in myriad ways.

- *Women are the poorest in all sections of society*

The neo-liberal paradigm has caused an increase in poverty, hunger and lack of basic resources for a large majority of people. Women, in general, and the poorest among them in particular, have borne the brunt of the ensuing hardships caused by economic reforms to a disproportionate extent. Women still constitute 70% of the world's poor.

Women and men experience poverty differently and often become poor through different processes. Social values and gender relationships have a great influence on economy, but these are usually ignored. Men and women may not make the same decisions, nor are they politically

and economically equal. For instance, in times of poverty and inflation, household resources decline. It seems austerity is a female responsibility—men tend to maintain their social and personal expenditures, while women are expected to make ends meet with fewer resources, by working longer hours within and outside the home.

- *Women are the shock absorbers when social services are cut*

Women in society, be they workers, producers, consumers, wives, or mothers, are the shock absorbers of economic and structural adjustment programmes sometimes at immense cost to their own well-being. By cutting public services, the governments implicitly rely on the "invisible" women to pick up the slack. A hospital, for example, may become more efficient by streamlining its costs and releasing patients early to be looked after at home. But, in effect, the efficiency of the medical institution is achieved by transferring costs and labour from the productive to the reproductive economy, where women's additional and unpaid work in caring for patients at home enables the hospital to declare itself efficient in being able to manage more patients with less hospital care.

- *Most women work*

Most women work but they are not seen as workers. Their work remains 'invisible.' Worse, they have no rights, social benefits or protections as workers. Most women work for income as well as subsistence. They work at home taking care of all

The Human Development Index of 2005 estimates that \$16 trillion of the global output is "invisible," of which \$11 trillion is the invisible contribution made by women.³

²Draft General Comment on The Right to Social Security (article 9) by the Committee on Economic, Social and Cultural Rights, 2006

³See UNDP, Human Development Index of 2005, page 319, Table 29.

household work including care giving to children, elderly, and sick. In today's market economy, they are solely responsible for the production of human capital, the most important asset for any nation. Yet, most women are left unprotected.

- *Most women work in the informal sector without any protection*

Traditional support systems are fast vanishing and traditional means of livelihood are increasingly becoming unfeasible and inadequate. Work is moving from the formal to the informal sector. More and more women are entering into informal sectors (which is characterised by unregulated, poorly skilled, low-paid and unwaged work) and are being forced to work in hazardous and precarious conditions for longer hours. Yet they earn barely enough to meet their survival needs. They have nothing to fall back upon in times of contingencies such as unemployment, sickness, accidents, child birth, family events such as marriages or deaths, widowhood, and old age and are forced into a vicious cycle of debt and deprivation. State regulations and protections are further weakening due to pressures exerted by the neo-liberal economic regime. Mechanisms used to attract foreign investors often rely on a trade-off at the expense of small businesses in the informal sectors which are predominantly where women work. It is appalling that women, the providers of social security to families, societies and nations, generally lack access to any type of social security protection themselves. Such socio-economic vulnerability combined with failure of the state to protect them weakens

the position of women in demanding their rights.

- *Gender based discrimination*

Existing household dynamics, especially in context of the division of labour and distribution of the family's resources, works at a disadvantage for women while privileging men, putting women in a vulnerable position even in familial and social contexts. Women on the whole are accorded lower status than men in families and in society. They own few or no assets and have fewer opportunities to improve their life. In today's free market-based economy, a woman is under 'multiple burdens' which frequently enforces and socially compels her to earn a subsistence as well as continue to be wholly responsible for all household work including childcare and taking care of the aged.

- *Free Market Economy Adversely Affect Women*

The dominant patriarchal environment with prescribed gender roles and restrictions hinder or reduce women's capacity to participate and negotiate equally in the given market economy. This perpetuates social and economic exclusion that women already face. Further, women are now compelled to compete in a much larger market which adds to their disadvantage because they lack the skills, competence and resources that have traditionally been accorded to men,

Anita, 23 years old, lives in Pune. She gets up early in the morning at 3.30 AM to do her household chores, take care of her sick husband, cook for her children, and then walk 8 miles to reach her place of work. She works in a garment unit and earns INR 3000 per month. She has to reach the work place at 8 AM. If she is late by even 5 minutes, half of her day's wages are deducted. She works till 6 PM and sometimes 7 PM, and then again walks back 8 miles to reach home where she has to start the cycle of cooking, taking care of her ailing husband and looking after her children again. She goes to bed by 11 PM or midnight only to get up at 3:30 AM the next morning. Public transport is a luxury she cannot afford.

and their binding to cultural and traditional norms further reduces their ability to compete equally. Hence the market does not assist in changing women's low status, but reinforces existing inequalities. Right to social security should ensure skill building that will allow women to participate in all markets equally. In India, such skill/ vocation training initiatives such as jute bag making, handicrafts etc., generally have a low job status in scope of the larger market. Such jobs manage to provide subsistence income but continue to keep poor women in poverty.

- *Lack of Ownership and Control over Resources and Assets*

Women usually are not land owners and do not own property. Even if in some cases they have legal ownership over a piece of land, they do not have control over it. Without any assets, including property and skills, they have no 'market value.' They do not have access to credit when they need it the most as most women cannot offer anything by way of collateral. Assets are a form of guarantee and means of security in times of crisis. Without assets, women are unable to fight poverty and this gets them into a vicious cycle. Right to social security should address needs of women in emergency situations and help women own and control resources and assets.

While expanding the scope of the right to social security it is essential that all these nuances of women's realities are taken into account,

otherwise a large section of women will be left without any actual protection. This will have adverse impact particularly on the most vulnerable among them.

Right to Social Security under International Human Right Law

Articles 22 and 25 of the Universal Declaration of Human Rights affirms the right to social security to everyone in order for them to lead a dignified life. These articles ensure an adequate standard of living for everyone which includes food, clothing, housing, medical care, social services, and security in the unforeseen event of unemployment, sickness, disability, widowhood, old age or other reasons for lack of livelihood.

The right to social security is framed under article 9 of International Covenant on the Economic, Social and Cultural Rights (ICESCR). This is further elaborated as General Comment 19 ((E/C.12/GC/19)⁴ by the Committee on Economic Social and Cultural Rights. General Comment 19 (GC 19) defines the right to social security in terms of access and maintenance of benefits to secure protection and to provide adequate income security in times of economic distress, access to health care and family support for children and adult dependents. It also covers protection for nine contingencies as

⁴General Comment No 19, Committee on Economic, Social and Cultural Rights, Adopted on 23rd November 2007, E/C.12/GC/19

defined by ILO Convention 102. GC 19 recognizes, besides contribution-based social insurance, the need for non contribution based social security provisions to ensure that everyone is 'adequately' covered. It also recommends community based self help groups as measures to provide social security to members of the community.

By disregarding women's unpaid work, GC 19 considers women only as a vulnerable group in need of special protection and does not recognize them as economic agents. Women not only need protection because their earnings are interrupted but also because they are not always engaged in paid work and therefore, may not have earnings at all. Community based self help schemes indirectly rely on women's 'invisible' work. This as a form of social protection for families and communities can move state responsibility onto already over worked and over burdened women.

Other international human rights instruments too ensure the right to social security. Under Article 5 (e) (iv) of International Convention on the Elimination of All Forms of Racial Discrimination, State parties are obligated to guarantee the right to social security and social services to everyone without any distinction. Article 26 (1) of the Convention on the Rights of the Child, 1989, says that State parties are under an obligation to recognize for every child "...the right to benefit from social security, including social

insurance..." The Convention also reaffirms the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development⁵. The Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) obligates States Parties to take appropriate measures to foster the right to social security for women and reiterates that States parties should introduce maternity leave with pay and take appropriate measures to eliminate discrimination against women. The ILO Convention on Social Security (Minimum Standards) Convention 1952 (No. 102) elaborates on nine different types of social security and covers corresponding contingencies. These include medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalid benefit, and survivor's benefit.

Normative Content and Elements of the Right to Social Security

Women and Social Security: Learnings from India

Universality: Social security is envisaged as a universal right by Article 9 of ICESCR, which accrues to everyone. Every individual should get social security irrespective of the nature of work and whether they are engaged in paid work or not.

⁵See CRC, Article 27(1)

Most women work whether paid or unpaid. Women do a lot of unpaid work within the household and in family farms and enterprises. Despite its obvious economic and social worth, much of the work that women do remains 'invisible' in national accounting and censuses. It is not recognized as 'productive' work and is not taken into account while defining the 'informal sector' and assessing its contribution to the GDP. Several categories of paid work where women dominate are also generally excluded.

Social security regime in India, for example, covers only workers in the formal sector, who constitute a mere 8% of the total workforce.⁶ As India integrates with the global neo-liberal economy, work is increasingly moving from the formal to the informal sector. The informal sector in India, which according to National Sample Survey 1999-2000, is about 92% of the total workforce in the country comprises of over 390 million workers. These figures would be much larger if the unpaid work done by most women was recognised and included. Nearly 95% of all female workers in India are engaged in the informal/unorganised sector. None of the bills in circulation regarding social security for the unorganised sector workers take unpaid women workers into account. Additionally, most of these bills have left out several categories of paid work where women are dominant.

⁶According to the National Sample Survey 1999-2000

Right to Social Security must ensure that all women receive social protection equally. The coverage accorded by existing forms of social security are employment based and exclude those who are most vulnerable such as the unemployed, the workers of the unorganized sector and engaged in unpaid work. There is a need to protect those excluded from coverage of social security particularly in the informal sector and mainly in rural areas. Ensuring non-discriminatory outcomes for women, migrant workers, the disabled, Dalits, and tribals is critical in the move towards providing social security to all.

- a. **Right to social security must be made available to all equally.**
- b. **Work defined in terms of paid/wage employment should not be the only criteria or a means to access this right.**
- c. **All women, whether paid or unpaid, should be eligible for social security entitlements.**
- d. **All categories of women must be included in the social security system including unpaid workers, domestic workers, sex workers, entertainment workers, migrant workers – seasonal and permanent, street vendors, pre-agricultural, and workers in hunter-gatherer communities.**

Availability and Accessibility: Social security must be available and accessible to everyone. Some

dimensions and interrelated elements of this are:

i. Respect for Equality and Non-discrimination: Social security benefits must be accessible to all, especially the most vulnerable and marginalised sections of the population, equally and without discrimination, in law or in fact, on any of the prohibited grounds.⁷

An implication that follows the guarantee under Article 9 of ICESCR is that social security must accrue to all persons as individuals and as independent citizens. However, many national regimes continue to make disparate treatment between men and women, and also between married, unmarried and single women. In this regard, a clear distinction needs to be made between family benefits and benefits to a family or household. Family benefits generally entail child care, care for elderly, maternity benefits etc as outlined in article 10 of ICESCR.

The assumption that household entitlements would automatically benefit all members of a family equally is flawed as it ignores the internal dynamics of households and violates the equal right of men and women to the enjoyment of all economic, social and cultural rights. However, benefits repeatedly are being targeted in national and international law as benefits to a family or household. Benefits of social security should accrue to women irrespective of her being a mother, a

wife, a daughter, within the family or outside. Women are equal citizens with human rights. Generally, social services and benefits reach women as dependents of male members (as the daughter of, or wife of, or mother of someone). Men are seen as the primary provider/ bread winners and women are seen as dependents. Social security as a right should reach all women independently and not as dependents of male members.

For instance, Rama Devi, a 65 year old woman from rural Rajasthan, India, was never involved in paid employment, and was not entitled to pensions under the State schemes or social assistance because her son works in the Indian Army. This makes her ineligible on the basis of family income criterion as she is seen as a dependent of her son. However, her son does not provide her any financial support. The state does not recognize her as an independent citizen. At this age, she is looking for paid work, in order to survive.

All women should be entitled to social security benefits as independent citizens and not as dependents on male earning members or as part of the family/ household.

Linking social benefits to paid work and making loss of paid work as a prerequisite to receive any social protection is disadvantageous to women. Unpaid work is a reality for a large number of women. This factor

⁷The grounds prohibited as per Article 2.2 of the ICESCR are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Bihari Lal is a landless peasant and father of three children aged 13, 11 and 8. He earns his livelihood by harvesting land for the local farmers. In order to maximise his earnings during the harvest season, he wants to reap as many fields as he can. For this purpose, he makes his wife, Pushpa, and their three children work along with him. Bihari Lal is the only one paid as the contract is based on the size of the field and not number of workers. Pushpa's work is unpaid although it contributes to the household income.

needs to be highlighted while formulating laws and subsequent policies on social security if there is to be any semblance of equality and non-discrimination. By disregarding women's unpaid work, women are only perceived as a 'vulnerable group' in need of protection and their need for social security is defined in terms of interruption of earning. By not taking into account all the countless unpaid women or by making them part of vulnerable groups or dependent on paid workers, undermines universality and equality principles of human rights.

ii. Economic accessibility: It is crucial that social security provisions are economically affordable and accessible to all.

Contribution based social insurance models for social security are financed by contributions of workers, employers and the government and generate "earned" benefits for workers and their families. They usually provide for various contingencies that interrupt or stop earnings such as illness, unemployment, maternity old age and so on, where the benefit that the individual derives depends on the amount and duration of their contribution towards such programmes. Social security should be de-linked to private and market based insurance schemes because the market is completely volatile and cannot guarantee social security as a right.

Right to social security must ensure that:

- a. Employment status of a male member in the family must not be the criterion for availability of entitlements to women**
- b. Women are not treated as dependents on male family members and assumed that they are automatically covered by social security coverage to households**
- c. Social security provisions must accrue to women as individuals**

Rajamma, 42, lost her husband and two sons in the Tsunami. She was lucky that her daughter survived and she could find her. But both mother and daughter are left with no assets or money. In addition, Rajamma lost her hand and one eye after the Tsunami making her incapable of working. She could not obtain any compensation money as she lost her ration card⁸ which was the only proof of her identity she had. Now, mother and daughter, both are struggling to survive.

⁸For implementation of Targeted Public Distribution System (TPDS), a food subsidiary program in India, Family Identity Cards (Ration Cards) have been issued to all the head of families with details of members in the family listed in the card in the following Category: Below Poverty Line (BPL), Antyodaya Anna Yojana, Annapurna Scheme Above Poverty Line (APL). More information on this can be got from the website www.india.gov.in, the national portal of India.

Linking social security with work and making it contribution based deprives a large section women engaged in unpaid work out of its purview. It contradicts with the principle of universality—right to social security for all. It may be reiterated that in countries like India where many people are denied their basic human existence and survival, any contributory kind of system cannot be relied on. It automatically denies the right to social security to millions of men and women who are not working, who do not have any capacity to contribute and who do not have any other support to rely on. From the women’s perspective, depending solely on an insurance

Asha, 25, lost her husband during the 1999 Kargil war. Her husband, Sanjay, was serving the Indian Army. She received some monetary compensation after his death but soon after was compelled to marry Amit, Sanjay's younger brother, because her in-laws were of the view that the compensation money she had received needed to remain within the family. But Asha did not want to remarry. She wished to continue her studies which she could not do earlier because of her early first marriage. Now, her parents are also not ready to support her leaving her alone in her struggle.

based model to provide for old age, disability pensions, unemployment benefits, maternity entitlements etc. would not be enough since most of them are engaged in either unpaid or low paying jobs and do not control the money.⁹

Most women workers have interruptions in their working life due to child birth and domestic work. Many spend much of their working lives outside paid employment due to this. Their capacity to contribute to such schemes, that too on a regular basis is low, which then adversely affects the quantum of benefits they may get. And even when women are engaged in paid work, they may not still control the money.

Therefore, core obligation of right to social security should include a floor level¹⁰, non-contributory security available to everyone as a critical safety net.

In general women are not land or property owners. Right to social security must ensure:

Farzana, a widow aged 44 years, lives in the Yamuna Pushta slum situated near the heart of Delhi along with her son where most of the houses are shanties This slum caught fire a few years back burning whatever few assets she had, including her only proof of identity - a ration card and she could not receive the compensation announced by the government at that time. She somehow managed to rebuild a temporary jhuggi (hut). Thereafter, the police caught her son and harassed him claiming that he is an illegal migrant from Bangladesh. She has no proof to show that they hail from Midnapur, West Bengal, or that they are citizens of India and not 'illegal' immigrants.

⁹General Comments also emphasis the need for non contribution based social security schemes to ensure adequate coverage for all. (E/C.12/GC/19). Under Core Obligation it recognizes minimum essential level of benefits to include essential health care, basic shelter and housing, water and sanitation, food stuffs and basic form of education.

¹⁰Floor level social security or the minimum level of protection (also referred to as ‘existential minimum’ or ‘subsistence level’, Riedel, p 27 and as Core Obligation) should be non contributory and should cover food security, health care, adequate housing and provision for education, especially for the girl child, water and sanitation, child care and, maternity entitlements, unemployment benefits, training and retraining, pensions-old age, family and disability for all.

a. **Benefits are not tied to land or property and should not require a physical property address to receive it.**

b. **Hostels and support services for women's housing**

iii. *Information accessibility and the right to participate:* Accessibility includes the right to seek, receive and impart information regarding right to social security. Access to information, both regarding entitlements and procedures, is important to enable women to effectively claim their right. This becomes more important in context of women from marginalized sections who because of being in position of disadvantage are unable to obtain or seek any information. Often they do not have access to or expertise to engage in traditional means of obtaining information like reading newspaper or using sources like radio, television, etc.

State parties should communicate information to women on their right to social security in a women friendly way.

The right of individuals and groups to participate in decision making processes that may affect exercise of their right to social security must be integral to any policy, programme or strategy concerning social security. For instance, legislations in India such as the Building and Other Construction Workers Act, (Regulation of Employment and Working Conditions) 1996 espouses the equal participation of workers and employers in administration and implementation of schemes, dispute resolution etc. Despite this

women are mostly excluded from decision making at all levels and seldom have a say in important issues that affect their working conditions.

Right to social security must ensure that women workers are adequately and proportionately represented in administration and implementation processes of this right at all levels.

iv. *Respect for procedural rights:* Rules and procedures that govern the eligibility to receive social security benefits or their termination must be reasonable, fair and simple. Persons aggrieved by an adverse legal rule or administrative decision must have access to speedy, affordable and effective legal remedies for the enforcement of their rights. However, many women are unable to obtain effective remedies for their grievances because of their own lack of awareness about the legal system (considering the formal legal machinery in India is complex and complicated) or the lacunae within the existing justice delivery mechanism.

A simple women friendly procedure for redressal of grievances should be adopted by State parties.

Sexual harassment and violence is a threat faced by all women in the private and public sphere. Without protection from these threats there is no real social protection. Right to social security should take into account the peculiar conditions in which women work, in both the formal and the informal sectors. Absence of a clear

employer-employee relationship, absence or non-feasibility of an internal complaint mechanism in informal sector should be addressed.

Right to social security must ensure that complaint and redressal mechanisms against sexual harassment at workplace are put in place, keeping in mind the specific concerns of women workers in the unorganised sector. The employment security of a female worker-complainant must be guaranteed.

Making State Accountable

Human right framework obliges State parties to create favourable conditions to respect, protect and promote people's entitlements. However, emergence of several non-state actors and shrinking responsibilities of State under the pressure from international agencies like World Bank and IMF, makes this process challenging. There is an urgent need to strengthen the democratic process to influence State and hold it accountable for recognizing, protecting and enforcing human rights – especially those in the sphere of economic, social and cultural rights.

In India, presently, under the garb of development, poor are displaced for construction of dams and flyovers. They are evicted so that cities could be modernized. Poor women are deprived their access to natural resources so that subsidies could be given to big corporate giants. Fish

workers are denied the right to fish or even access the ponds, rivers or sea because of the large scale privatization of water and water bodies in the wake of globalization. Such shifts move people in masses from self reliance to welfare dependency and to a situation of hopelessness.

In recent years, there is more awareness around women's issues. Women and their realities are "seemingly" being more integrated in national policies and legislations. However, in most cases women are still seen as victims in need of special protection. Welfare or protection approach view women as vulnerable or 'victims' or beneficiaries therefore fail to recognize women as contributors to the economy with equal rights. State policies pay lip services when it comes to addressing women's concerns. For instance, in its Eleventh Plan Approach Paper the Government of India clearly aims at an inclusive and faster growth and identified the need for 'gender balancing'. However, it has been critiqued on its failure to address the issues of widening gender disparities, 'dynamics of exclusion' and non recognition of macroeconomic issues of human development¹¹. Women's unpaid work is another major exclusion in this approach paper. The state, therefore, on one hand pay lip service to gender issues but at the same time continues to violate women's rights by acts of commission and omission. A 'gender neutral' or 'protectionist

¹¹Hirway Indira (2006) Where is Gender in Eleventh Plan Approach paper? EPW Vol. XLI No. 32 August 12- 18 p. 3464-3466

approach' is against the principle of substantive equality. Social Security as a human right should be enjoyed by all women equally and not as dependents of males or as victims in need of protection.

General obligations

Article 2 of ICESCR describes the nature of general legal obligations undertaken by States parties to the Covenant. A principal obligation reflected in Article 2 (1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The social security regime in India, as has already been mentioned, covers only workers in the formal economy. **As part of its obligation of progressive realization, it is incumbent on the State to take measures to extend this coverage to those working in the informal sector and those who are not engaged in paid employment.**

Specific obligations

While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations on the State¹². The right to social security, like all human rights, imposes three types of obligations on States parties: the obligations

to *respect, protect and fulfill*. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right¹³.

In India, the government is evading its responsibility to provide social security for more than a billion of its citizens despite making promises for the same in the CMP¹⁴. The Bill on Social Security for unorganized workers is pending now for several years. Recent debate on the Bill on Social Security for Unorganized Workers in India has pointed out the decreasing responsibility of state and it has been critiqued that State is bringing social assistance 'schemes' under this Bill rather than social security as a right thus diluting the entire purpose of this law¹⁵. Right to Social Security needs to stress the fact and not overlook ground realities in countries like India where the neo-liberal paradigm is compelling the government to withdraw its responsibilities as a 'welfare state'.

Many women are involved in production of goods and services for self consumption, home based, pre-harvest and post-harvest operations and other tasks like grazing cattle, making cattle dung cakes, collecting fuel, fodder, dairying and livestock rearing, fishing, hunting, cultivating foods and vegetables, food preservation and biodiversity

¹²See CESCR, General Comment No.3, Para 1.

¹³See CESCR, Substantive Issues Arising in Implementation of the ICESCR, General Comment No. 15, Para 25 & 26.

¹⁴Common Minimum Programme of the present UPA government

¹⁵See documents of 'Social Security Now' Campaign www.socialsecuritynow.org

conservation such as collecting and processing of medicinal plants, seed collection and their storage. Natural resources are therefore, means to life for several. Lack of these violates peoples basic right to livelihood and means to a life with dignity.

Right to Social Security should protect the rights to water, land and forests, of Dalits, Adivasi, tribal and indigenous men and women and special provisions should be made to ensure right to food, livelihood and housing of migrant, rural and urban poor. Women should have access to and control over natural resources.

Core obligations and Elements

It is incumbent upon every State party that it fulfils a minimum core obligation to ensure satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the ICESCR¹⁶. There is also a need for a comprehensive elaboration of the right to social security. The classical approach has been defining social security within the parameters of the nine major social risks identified in the ILO Convention No. 102. However this is too narrow an approach because it looks at social security as a right only for those engaged in paid work and the consequent loss of work as the starting point for extending social security. This approach assumes

that every one can engage in paid work and also assumes that all work does pay a living wage that would provide adequate standard of living. Such narrow definition is not in consonance with the conception of social security as a human right, which construes it as an all-embracing right.

In relation to right to social security, with particular focus on women's needs, the following are certain elements we have identified on the basis of our experience of working in this sector in India:

1. Floor level social security:

Women are mostly engaged in either unpaid or low paying jobs therefore depending solely on contribution based, social insurance schemes to provide for old age and disability pensions would not be enough, as a woman's capacity to contribute to such schemes on a regular basis is low.

Right to social security must ensure floor level social security as core obligation for all women, irrespective of their ability to contribute. A floor level social security which covers food security, health care, adequate housing and provision for education, especially for the girl child, child care and maternity entitlements, unemployment benefits, training and retraining, pensions-old age, family, disability and survivors' etc., must be available to everyone irrespective of their work status

¹⁶See CESCR, General Comment no.3, Para 10.

(employed/unemployed/paid/unpaid).

2. Livelihood Security: Insecurity of livelihood is a big vulnerability that most women face. Livelihood is more than work, it implies survival strategies for poorest and vulnerable sections of society. While employment can provide livelihood, most livelihoods of poor are based on multiple activities and sources of food, income and security that may include informal sector work, use of common property resources, rearing of livestock and reliance on social networks for mutual support as well as reliance on other mechanisms for coping in time of crisis¹⁷. However, these other mechanisms are diminishing either because of social transition patterns or because of neo-liberal policies being adopted by the government where by land, forests, lakes and other natural resources are being taken away from the poor.

In an employment situation, women are usually the last to be hired and the first to be fired. They are often employed in work which is seasonal in nature. They are predominant in sectors where there is steady loss of employment without creation of new avenues for work due to factors such as technological changes, coming in of big companies, increased imports, forced displacement and government policy. What is therefore required in the long run is strengthening and enhancing livelihood rather

than creating employment alone. Enhancing livelihood implies making poor women self reliant while generating employment means making them dependent solely on market forces to survive.

Economic security, livelihood strategies and social security are inextricably inter-linked. Guarantee of employment and year long availability of work is also a basic social security need for women in the present context. In India, National Rural Employment Guarantee Act has been enacted recently and ensures at least 100 days employment to poor families. However, it has been critiqued for certain lacunae relating to its formulation and implementation.

Right to social security should ensure adequacy in following way:

- a. **Women are guaranteed year long employment with the goal of enhancing livelihood**
- b. **Women's right to natural resources should be ensured**
- c. **Focus should be laid on generating livelihood rather than work for poor women**

3. Unemployment Benefits:

Unemployment has always been recognized as a contingency which social security provisions must cover. All citizens must be entitled to unemployment benefits. **Women**

¹⁷Chambers R. and Conway G (1992) Sustainable Rural Livelihoods: Practical Concepts for 21st Century IDS Discussion Paper 296 IDS Brighton and Chambers R. (1995) Poverty and Livelihood: Whose reality counts? IDS Discussion paper No 347 IDS Brighton

must be entitled to unemployment benefits as individuals, irrespective of the employment status of any other family member.

4. Wages: Social security provisions will have no meaning until workers are paid wages to ensure an adequate standard of living. Fair wages and equal remuneration for equal work are rights that inextricably linked to the right to work, the right to adequate standard of living and the right to social security¹⁸.

For the majority of women engaged in paid economic activity, being a woman results in her being paid less than men for the same work. Even though the principle of equal remuneration for work has been accepted in the legislation of many countries including India, more remains to be done to ensure its adherence to in practice to overcome the gender- segregation in the labour market¹⁹. Gender based wage disparities exist across all sectors and all occupations.

Right to social security must ensure that:

- a. All workers are paid living wages which enable them to have an adequate standard of living
- b. A floor level wage must be fixed based on the living needs
- c. All women workers have equal remuneration available to them

5. Maternity Entitlements: The most productive years of a woman's life

are the reproductive years. Absence of maternity benefits including maternity leave often means that a woman has to quit her job to bear children. Additional medical expenses and loss of employment makes women economically vulnerable. Absence of maternity entitlements also means that a woman is unable to take care of her nutritional needs before and after pregnancy and take adequate rest, and is compelled to start working soon after child birth. This neglect of the woman's health during pregnancy and child birth are seen to be the cause of the high level of maternal mortality rates. Unpaid women workers are even in a more precarious state. Further privatization of health care makes access to health care difficult for majority of people.

Right to social security must ensure that:

- a. Maternity entitlements are available to all women whether employed or not
- b. These maternity entitlements include paid maternity leave of at least 12 weeks
- c. Leave must be paid as per the living wages
- d. Additional schemes for financial support during childbirth so as to promote the health of mother must be considered

Child Care: Women, in addition to the paid work they do, also have the burden of unpaid, unrecognized

¹⁸See ICESCR, Article 7(a)(1) and CEDAW, Article 11(1)(d)

¹⁹See CEDAW, General Recommendation No. 13, Equal remuneration for work of equal value.

family and domestic work. The absence of child care provisions further increases the burden of work on women and affects their health and their participation in the labour market.

Absence of child care provisions also mean that women often have no choice but to leave the child with a slightly older sibling. It has been seen that these older siblings are usually the girl child, who as a result herself misses out on the care and nurturing that she may need and most importantly the opportunity to attend school.

The provision for necessary support services, particularly the establishment and development of child care facilities, to enable parents to fulfil family obligations along with work responsibilities and social participation, is an integral part of social security, particularly from the point of view of women.

Right to social security must include childcare provisions and must ensure the availability and access of resources to meet the nutritional needs of mother and child.

6. Pension and Old Age Support:

Many women retire from work at an early age due to weak or ill health or simply because they stop getting employment (this is especially so in construction work etc). Old age pension is an important social security requirement for

women. Its absence implies women being unprotected and unwanted dependents.

Article 9 of ICESCR implicitly recognizes the right to old-age benefits. Moreover, in so far as respect for the rights of older persons requires special measures to be taken, States parties are required by the Covenant to do so upto the maximum of their available resources.²⁰ In order to give effect to these provisions, States parties must guarantee the provision of disability benefits, family and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.

Further more, States parties should provide floor level, non-contributory old-age benefits and other assistance for all older persons on their reaching the age prescribed in national legislation, irrespective of whether they have been able to contribute to pension related schemes and the quantum of their contribution.

In India, there is no national legislation prescribing the age of retirement for the workers in the unorganised sector. The determination of the age of retirement of workers after which they would be entitled to at least floor level old age benefits is important.

The floor level old age and other pensions need to be calculated on the basis of present day living needs, and

²⁰See, CESCR, General Comment 6, The economic, social and cultural rights of older persons, Para 10.

in the case of workers on the basis of the last wages received and not an arbitrary sum. Under the National Old Age Pension Scheme in India, destitute old age persons having little or no regular means of subsistence from their own source of income or through financial support from family members or other sources, are eligible to get old age pension of Rs.400/- per month. This is insufficient and cannot provide for a decent and adequate standard of living.

Right to social security must include

- a. Adequate pension to retired women workers, widows and single women and should have provisions for old age support
- b. The amount of pension must be based on living wages

7. Health Care: For women, whether in paid employment or not, the only resource they can fall back upon is their own health and ability to work. In this regard, they are the most vulnerable because their health and nutritional needs very often form the least priority within the family.

Women in the poorest households hardly receive any medical attention. Right to health is a crucial component of the right to adequate standard of living²¹. Health care is an integral component of social security.

Right to social security must ensure:

- a. Health care, which provides protection during minor and major illnesses and accidents
- b. Mental health care needs of women are addressed by strengthening primary health care services including mental health care component
- c. Widespread shelters and short stay homes and other support service (counselling, legal aid, job training etc.) by the state for girls and women survivors of domestic violence or trafficking
- d. Holistic support to women affected by HIV / AIDS
- e. Special provisions for differently abled women

8. Skill Development: Women workers are usually at the lowest paid end of any sector, and they are usually termed as unskilled. Women are the most affected by the changes due to mechanisation. In the agricultural sector for instance, the introduction of tractors, harvesters, insecticides, high yielding variety seeds and mechanical cotton pickers has meant that tasks traditionally performed by women and providing them livelihood have been appropriated. Men have substituted women in activities in which machinery has displaced manual labour. The shift of emphasis from

²¹For more see UDHR, Article 25(1); ICESCR, Article 12; and CESCR, General Comment No.14, Substantive Issues Arising in the Implementation of the ICESCR.

subsistence to commercial and market oriented production has also had a massive negative impact on women because it has marginalised women's participation, knowledge and inputs. Efforts must be made to ensure that women are being trained to compete in the competitive market economy. One of the obligations that State parties have with regards the right to work, is to implement technical and vocational education which is crucial in order to implement the right itself²².

Right to social security must guarantee that opportunities for skill development would ensure labour market entry and upward mobility to all women on a widespread and continuous scale.

Conclusions

While concluding it may be said that while expanding the scope of right to social security under Article 9 of ICESCR, the changing socio-economic situation and its impact on women in the global south needs to

be taken into account. Any policy to ensure social security to all must respect provisions of substantive equality. Rights of women should be given priority while determining the span of the right to social security within the human rights framework. Specific focus should be laid on the situation of women within the household, the workplace and society, all of which are based on an inegalitarian structure and are driven by patriarchal assumptions.

Many civil society organizations are making demands to address the issue of social security. In India, a demand has been made for a comprehensive legislation on social security for the unorganized sector. Bills have been drafted and re-drafted several times. These draft Bills on the rights of social security for unorganized workers provide for various social security measures; however, none of them cater specifically to the demands of women. Issues and concerns of women should be given special emphasis while developing laws, policies and programmes at all levels from the local to international.

²²For more see ICESCR, Article 6(2) and CESCR, General Comment No. 18, The Right to Work.

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PWESCR is an international advocacy and educational initiative in the area of women and economic, social and cultural rights (ESCR). From its base in India, PWESCR works to promote women's human rights of by addressing issues connected to dignity, women's poverty, work and livelihood.

PWESCR's Goals

- To build leadership and capacity of groups, organisations, activists and other actors in the field of human rights and economic justice to promote women's ESCR;
- To establish links and foster collaborations in order to enhance learning, as well as develop shared strategies to advocate problem-solving alternatives at all levels in the context of gender.

PWESCR Believes

- All human rights are universal, indivisible, and interdependent. Civil and political rights are interdependent on economic, social and cultural rights and vice-a-versa;
- Women's economic and social empowerment are key to the full realisation of women's human rights;
- Gender analysis is crucial to advance all ESCR;
- Human rights mechanisms are an organising, mobilising and empowering tool in addition to an international legal framework;
- An intersectional analysis ensures that women from marginalised communities are not left behind.

PWESCR's Objectives

- To promote women's human rights, especially in the context of economic, social and cultural rights by bringing a gender framework to policy, law and practice at local, national, regional and international levels;
- to strengthen standards and full implementation of government's commitments within the international human rights framework.

PWESCR's Strategies to achieve its goals

- Action-oriented research to provide deeper analysis of women's economic, social and cultural issues and to facilitate new strategies for defending human rights;
- Collaboration between various networks and organisations to work at all levels for the actualisation of women's human rights;
- Provide technical assistance and impart human rights education to individuals and to groups on monitoring and self-representation skills through leadership development programmes;
- Provide human rights education and training to enable participation of other social organisations in the monitoring of human rights including treaty bodies such as the ICESCR and CEDAW.

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