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# Evolution of Social Security in India

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## ABSTRACT

*The International Labour Organization defines Social Security as 'The security that society furnishes through appropriate organization against certain risks to which its members are exposed'. The right to social security is a critical component of International Labour Standards. Thus, it is essential to promote economic growth while safeguarding the right and well-being of workers. Starting from pre independence era many steps were taken to uphold the social security. Many social security legislations such as Employee Compensation Act, Employees State insurance Act, Employees Provident Funds and Miscellaneous Provisions Act, Maternity Benefit Act, Payment of Gratuity Act, Payment of Bonus Act etc., have been enacted to strike a balance between economic growth and the protection of worker's rights. However, the issue of wage disparity, occupational health and safety, gender inequality and problems of informal Labour continues. Thus, necessary steps should be taken to address the gap and challenges in the Labour law and Social Security.*

**Keywords:** Social Security Code, Retrenchment, gig workers.

## I. INTRODUCTION

Labour law refers to the law which deals with the rights and responsibility of the workers. Labour law includes elements such as employment, employment relationship, wages and remuneration, conditions of work, health and safety, trade unions, industrial relations, welfare, Social Security and Special provisions for occupational or other groups.

On the other hand, the concept of Social Security is based upon the ideas of Human dignity and social justice. According to The ILO Social Security (Minimum Standards) Convention No. 102 of 1952 defines Social Security as 'The result achieved by a comprehensive and successful series of measures for protecting the public (or a large sector of it) from the economic distress, that , in the absence of such measures , would be caused by the stoppage of earning in sickness , unemployment or old age and after death ; for making available to that same public medical care as needed; and for subsidizing families bringing up young child. This definition explains Social Security as an outcome of comprehensive and effective set of measures which aims at

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protecting the economic and social well-being of the workers. In *Ahmedabad Pvt. Primary Teacher's association v. administrative officer and others*<sup>3</sup>, the Supreme Court of India stated the necessity for Social Security measure. Further Sir William Beveridge in *Freedom from Want* has stated that unemployment, Disability, Loss of livelihood, Retirement, Marriage, Funeral expense, Childhood, Physical disease, or incapacity are the eight kind of primary conditions which demand Social Security.

### **(A) Objective of Social Security**

Compensation, Restoration and Prevention are the major objectives of social security.

1. Compensation includes security of income. It is to avoid the double calamity that an individual and his/her family faces during the period of the contingency of risks.
2. Restoration is an extension of compensation. Restoration commutates restoration of his/her earlier condition by reemployment etc.,.
3. Prevention includes measure taken to avoid the loss of productive capacity due to sickness, invalidity to earn or unemployment.

## **II. EVOLUTION**

Series of Legislative development helped in improving the Labour conditions, protecting their rights, and providing Social Security. The evolution of Social Security in India can be divided two segments which includes Pre- Independence Period and Post-Independence Period.

### **(A) Pre- Independence Period:**

The Social Security initiatives were very limited before the independence and these initiatives were community based and included traditional system of support within the local communities. In the 19<sup>th</sup> Century, industrialization started in India, and this led to a development of new class of industrial proletariats. However, this development created new problems relating to health and safety which created a demand for enactment of some social security legislation to protect the workers.

The first sickness insurance law in the world was introduced in the year 1883, however the Social Security movement in India began only after 1920's. From 1850 there was a large industrialization in India, but welfare of the workers was not considered as they were unorganized.

However first Fatal accident act was passed in India in the year 1885 following the English

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<sup>3</sup> 2004 SCC OnLine SC 64

Fatal Accident Act, 1845. Under this act, Whenever the death of a person has been caused by wrongful act, neglect, or default then such injured party is entitled to maintain an action and recover damages in respect of the party who would have been held liable if the death had not ensued. Thus, when the death of a person is caused by the wrongful act or neglect act or default of another person, then the legal representative of the deceased person can maintain an action for damages.

After the First World War, Indian National Movement forced British Government to think about the employees working condition and accordingly Workmen Compensation Act, The Payment of Wages Act, Minimum Wages Payment Act, Maternity Benefit Act were introduced. After the second World War, Dr. B. R. Ambedkar was introduced as the “Labour Member of Viceroy’s council”. Later in 1937, a contributory Health Insurance Scheme was formulated where government will also contribute towards medical scheme in which employer and employee would contribute. In 1937, Bombay Textile Enquiry Committee recommended the formulation of Health insurance scheme where employer, employee and state government will contribute towards the fund.

In 1947, Industrial Dispute Act was Enacted. This act was enacted by Central Legislative Assembly to prevent and settle industrial dispute. In *Workmen of Dimakuchi Tea Estate V. The Management of Dimakuchi Tea Estate*<sup>4</sup>, the court scrutinized the act and determined that securing good relation between the employer & workmen, Investing & settlement of Industrial Dispute, Preventing illegal strikes, preventing lockouts, granting reliefs to workman in case of layoff & retrenchment, providing machinery for settlement of industrial dispute, promoting collective bargaining, improving the service conditions and granting relief to workman in case of transfer & closure of undertakings are the objective of Industrial Dispute Act, 1947.

#### (B) Post- Independence Period:

After the Independence many Social Security legislation have been enacted. In 1948 Employees’ State Insurance policy has been modified and “The Factories Act 1948” was enacted with an object to regulate the working condition of a manufacturing establishments. Further the interim Government formulated a five-year programme for the welfare of the labour class and to raise the standard of living of the workers. The feature of this programme includes organization of health insurance, revision of workmen’s compensation Act, central law for maternity benefit etc.,

Many Legislative measures have been adopted by the Government of India by way of Social

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<sup>4</sup> 1958 AIR 353

Security Schemes which includes Employee Compensation Act, Employee State Insurance Act, Employees Provident Funds and Miscellaneous Provisions Act, Maternity Benefit Act, Payment of Gratuity Act and Payment of Bonus Act.

By enacting those statutes, state has translated the objective of Directive Principles of State Policy to statutes for safeguarding the interest of workers against Sickness, unemployment, old age, and accident. The sixth plan was also focused upon the effective implementation of different legislative enactments and regarding labourers.

THE EMPLOYEES' COMPENSATION ACT, 1923 was enacted with an objective to provide compensation for the workers for the injury caused by an accident in the course of employment. In *B.T. Shipping London Ltd. v. Anati Narayanan*<sup>5</sup>, the court stated that "the objective of the Employees Compensation Act is to ensure that in case of injury or permanent disablement or death of a workman by accident arising out of and in the course of employment, his employer pays him compensation in accordance with the provisions contained in this act".

THE EMPLOYEES' STATE INSURANCE ACT, 1948 was enacted with an object of introducing the health insurance scheme for the industrial workers. This act provides benefit in case of sickness, maternity, and employment injury to workman. In *Delhi Gymkhana Club Limited v. Employees State Insurance Corporation*<sup>6</sup>, it was held that the object of the ESI Act is to provide certain benefits to the employees in case of sickness, maternity, and employment injury and to make provisions for certain other matters thereto.

THE MATERNITY BENEFIT ACT, 1961 was enacted with an object to regulate the employment of women employees for certain periods before and after childbirth and provide maternity and certain other benefits. In *Smt Richa Shukla v. State of UP and Ors.*<sup>7</sup>, it was stated that the employer is liable to pay an average of daily wage for the period of absence to the women who avail her maternity benefit.

EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952 was enacted with an object to secure the right to work to education and to public assistance in case of unemployment, old age, sickness, and disablement.

THE PAYMENT OF BONUS ACT, 1965 has been enacted to pay bonus to persons employed in certain establishment. The primary objective of the act includes statutory liability on the employer to pay bonus, to prescribe minimum and maximum bonus, payment of bonus as per

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<sup>5</sup> 2001 ACJ 2096

<sup>6</sup> 2014 SCC OnLine SC 853

<sup>7</sup> 2018 SCC OnLine Del 7058

the scheme and to provide redressal mechanism for enforcement of liability. In *Jalan Trading v. Mill Mazdoor Sabha*<sup>8</sup>, the Supreme Court held that the purpose of the Bonus Act was to maintain peace and harmony by allowing workers to share prosperity and to prescribe the maximum and minimum rate of bonus, as well as the scheme of set-off and set-on and not only to secure the Labor's right but also to ensure a reasonable degree of uniformity.

THE PAYMENT OF GRATUITY ACT, 1972 was enacted to provide economic security to an employee on retirement or at the termination of employment due to death or disablement. In *Lalappa Lingappa & Ors v. Laxmi Vishnu Textile Mills Ltd.*,<sup>9</sup> it was stated that the Gratuity Act was enacted to introduce a scheme for payment of gratuity for certain establishment as a measure of Social Security.

THE FACTORIES ACT, 1948 was enacted to regulate the working conditions in factories to regulate health, working hours, annual leave, safety and to provide special provision in respect to children and women working in the factories.

EMPLOYMENT EXCHANGE, 1959 was enacted to provide compulsory notification of vacancies to employment exchanges.<sup>10</sup>

THE CINE WELFARE FUND ACT, 1981 was enacted with an object provide finance for several activities which promotes the welfare of cine- workers.

THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICES) ACT, 1996 was enacted with an object to regulate the employment and condition of service of building and other construction workers and to provide health, safety, and welfare measures and for other matters connected therewith or incidental thereto.<sup>11</sup>

UNORGANISED WORKER'S SOCIAL SECURITY ACT, 2008 was enacted with an object to provide social security and welfare of workers and for other matters connected therewith or incidental thereto.<sup>12</sup>

### III. CONSTITUTIONAL DIMENSION

The Part IV (Directive Principles of State Policy) of Indian Constitution contains provisions envisioning Social Security. Article 41,42 and 43 contains specific reference to Social Security

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<sup>8</sup> 1967 AIR 691

<sup>9</sup> 1981 AIR 852

<sup>10</sup> N. Haragopal v. T. T. Devasthanam and Ors., (1986) IILLJ 278 AP

<sup>11</sup> M/S. Dewan Chand Builders & Contractors v. Union of India & Ors, (2012) 1 SCC 101

<sup>12</sup> National Domestic Worker's Welfare v. State of Jharkhand & Ors,

Measures. The purpose of these provisions can be achieved by the state in its governance and policy by enacting appropriate laws. However, the laws which gives effect to Directive Principles are subject to the Constitutional limitations and if it violates such limitations, it must be held unconstitutional.<sup>13</sup>

According to Article 41 the state can make provisions for securing the Right to work to education and public assistance in case of unemployment, old age, sickness, disablement and in case of undeserved want. The term Public Assistance in Article 41 includes granting of public appointments to political sufferers and disables person.<sup>14</sup> As per Article 42 state can make provisions for just and humane working conditions and for maternity relief. Maternity Benefit Act was made in consonance with the provisions of Article 42.<sup>15</sup> Article 43(3) allows the state to make provisions to secure the full employment of leisure and economic and social opportunities. Thus, State shall endeavour to secure by sustainable legislation or by economic organization or in any other way to all workers, agricultural, industrial, or otherwise, “a living wage”.<sup>16</sup> Further Article 39(f) expects the state to protect the children and youth working in the industrial establishment. Article 14 and 21 became the source of Social Security measures as Right to Life includes Right to livelihood also. In *National Textile Workers Union V. P R Ramakrishnan*,<sup>17</sup> Supreme Court observed the importance of workers on a socialist pattern of the society and their contribution toward capital in the enterprise. Thus, social security measures should be taken to protect the working sector of the society.

*In D. S. Nakara v. Union of India*<sup>18</sup>, Supreme Court held that the constitutional goal of setting up a socialist state and the assurance in the Directive Principles of State Policy is to provide security when it is mostly needed and when it is least available.

In *Consumer Education and Research society V. Union of India & Ors.*<sup>19</sup>, Supreme Court ensured the importance of protecting the health benefit of the workers by maintaining the health record of the workers. The court further held that right to health of the workers fall under the ambit of Article 21 read with 39(e), 41 and 43 and it should be protected to make the life of the workmen meaningful and purposeful. Thus, right to Social Security is a right under Article 21 of the Indian Constitution.

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<sup>13</sup> Upendra Baxi, ‘The little Done, the vast Undone- some reflection on reading Granville Austin’s The Indian Constitution ‘ (1967) 9 Journal of the Indian Law Institute 362

<sup>14</sup> Sukhnandan Thakur v. State of Bihar, 1955 SCC OnLine Pat 145

<sup>15</sup> Anshu Rani v. State of Uttar Pradesh & ors.,

<sup>16</sup> Food Corporation of India v. Food Corporation of India, 99 (2005) CLT 150

<sup>17</sup> AIR 1983 SC 75

<sup>18</sup> AIR 1983 SC 130

<sup>19</sup> 1995 3 SCC 420

The constitutional activism has judicially shaped the social security laws by integrating Right to life with policy of Social Justice. Under the constitution, Social Security is a multi-layered responsibility of Government, Civil society, corporate sector, and the public.

#### **(A) Social Security code, 2020**

After receiving the President's assent, this code was successfully passed by the parliament in the year 2020. The code on social security consolidated all the preexisting social security laws and extended the same to all employees in the organized and unorganized sector. The main objective of this code was to regulate the organized and unorganized sector and extend the benefits provided by Social Security measures to all the employees and workers who are working in different organizations. This code integrates 9 Labour laws which were enacted for the purpose of safeguarding the social security of the workers into one integrated code. Thus, it includes Employee Compensation Act, Employee State Insurance Act, The Employees Provident Fund and Miscellaneous Provisions Act, The Employees Exchange (compulsory notification of vacancies) Act, The Maternity Benefit Act, The Payment of Gratuity Act, The Cine Workers Welfare Fund Act, The Building and Other Construction Workers Cess Act and The Unorganized Workers' Social Security Act. This act ensures secured income and access to proper health care to all establishments including unorganized sector. This code established a formal definition of a new categories of employees which are outside the traditional employer employee relationship. This definition helps to protect the gig workers who are currently not included under any formal social security plans. The major provisions of this code are maintenance of record, applicability of provisions of Employees' Provident Fund, widening the scope of applicability of Employees State Insurance Corporation, setting up funds for Social Security, fixing basic salary for all the employees, providing all statutory benefits to the permanent employees, granting maternity leave, and providing gratuity.

#### **(B) Problems faced during implementation of Social Security Code**

The challenge is mainly due to the size and diversity of the country along with the corruption and bureaucratic hurdles. Lack of awareness about those Social Security measure is also an important problem. The government has attempted to increase the awareness among the beneficiaries through awareness campaigns, but it is still a significant challenge. Another challenge is inadequate funding of social security scheme as implementing of such schemes compound high administrative cost. Lack of adequate data infrastructure also make it difficult to implement a Social Security measure. Thus, government must address these issues to ensure that the benefits of the schemes reach the intended beneficiaries. This can be achieved through



increased awareness campaigns, better funding, reducing administrative costs, addressing corruption, and developing a comprehensive database of beneficiaries. By addressing these challenges, India can create a more equitable and inclusive society, where the citizens can lead a dignified life.

#### **IV. CONCLUSION**

Social Security is an important part of the development at all the levels of the existent society and it will lead towards a better social and economic growth. However there are several challenges in implementing several Social Security schemes. Government must address these issues in order to achieve the object of the implemented schemes. Only when such issues are addressed, the benefit of the scheme will intend to reach the beneficiaries. However various implementation challenges can be addressed by increasing awareness, reducing administrative cost, addressing corruption, better funding, and developing comprehensive database of the beneficiaries. Even when several challenges arise, government is committed to address these issues and provide social security benefit to all the citizens of the country. The code of social security, 2020 is a major step taken by the government to ease the compliance and inclusion of major portion of the working sector. However separate regulatory authority may help to monitor and track the efficacy of the scheme. Such proper monitoring of this code would help to enhance the welfare of the workers.

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