

A Study of Social Security Laws and Policy Relating to Labour in Organized Sector in India

Chapter I

INTRODUCTION

I. Evolution of the Problem

This study is focused upon the laws and policy relating to “Social Security”¹ of the industrial workers (labour) in the organized sector² in India. At the dawn of industrialization “Labour”³ as a concept was considered a mere factor of production along with land and capital. No thoughts were devoted legally or socially for the protection of the workman who contributed his manual, intellectual work for production. History is witness to the fact that the first ever “demand” that was put forth by the working community was that of “just and humane” condition of work and not wages. The concern for the workmen in India regarding social security of the workman is a matter of gradual evolution. Such evolution can be studied in three phases:

1. The British Era: Roughly from late 1880-1947
2. The post Independence Era: from 1947
3. The Liberalization, Privatization and Globalization Era

a. The British Era: From late 1880 -1947

The need to legislate to protect the interest of workers and also to ensure the smooth process of production in enterprises was recognized by the British. The British Government enacted certain welfare legislation but the intention behind that enactment was to merely protect the interest of their worker. Indian labour was exploited heavily during the British reign. However, in 1880, the Indian textile were influencing the market and offering a unbendable completion to the British market. Thus this gave rise to the

¹ “Social Security” is a program where the government provides monetary help to people who are incapable to earn for living due to old age , disabled or unemployed”-Webster Dictionary

² Enterprises or places of work where the terms of employment are regular and therefore people have assured work. They are registered by government and have to follow its rule and regulations which are given in various laws such as Factories Act, Minimum Wages Act, Payment of Gratuity Act etc. workers enjoy security of employment, benefits like paid leave, provident Fund, Medical Benefit etc.

[https://in.answer.yahoo.com>question;www.answers.com>Definitions_of_organ...;Ruchika_Gupta_Department_of_Higher_Education,_New_Delhi,_India,_“A_Comparative_Study_between_Organized_and_Unorganized_Manufacturing_Sector_in_India_Journal_of_Industrial_Statistics_\(2012\),1\(2\)222-240_at_mospi.nic.in>upload>JIS_2012>com...visited_on_10.6.15_at_20:15hours](https://in.answer.yahoo.com>question;www.answers.com>Definitions_of_organ...;Ruchika_Gupta_Department_of_Higher_Education,_New_Delhi,_India,_“A_Comparative_Study_between_Organized_and_Unorganized_Manufacturing_Sector_in_India_Journal_of_Industrial_Statistics_(2012),1(2)222-240_at_mospi.nic.in>upload>JIS_2012>com...visited_on_10.6.15_at_20:15hours)

³ “labour” as a concept means expenditure of physical, mental efforts contributing for providing goods and services in an economy.” Cambridge Dictionary, Cambridge University Press, 1995

enactment of the Factories Act 1883. This Act was passed by the British Government to make the Indian labour costlier because of the pressure brought by the textile magnates of Manchester and Lancashire⁴. Through this the labour had to face excessive working hours. Further there was no provision for safety, welfare, holidays, leave etc. Indeed, social security was known for its absence⁵. One of the significant features of this period was passing of the Fatal Accident Act in 1855 on the model of the (English) Fatal Accident Act, 1846⁶. The First World War in 1919 led to a number of new developments, the world turned to peace and reconstruction and brought into being in 1919 the International Labour Organization⁷. In the very same year of its establishment ILO adopted the Maternity Protection Convention 1919 envisaging payment of maternity benefit. Later between 1921 and 1941 ILO adopted as many as 17 Conventions⁸. I.L.O influence for compensation legislation in India led to the passing of the Employee's Compensation Act 1923⁹. This was followed by the enacted of the Provident Fund Act, 1925¹⁰ and Maternity Benefit legislation¹¹ and The Employers' Liability Act¹².

The Royal Commission on Labour to enquire into the working condition of Industrial labour was also appointed in 1929¹³. The commission also recommended that maternity benefit legislation on the lines of (Bombay) Maternity Benefit Act, 1929 should be enacted in the other provinces. However, no legislative step except on the maternity

⁴ History of Labour laws in India available at <http://cyberadvocate.in/mod/page/view.php?id=309> (last visited on 25/6/2015 4:11 P.M)

⁵ S.C Srivastav, *Social Security and labour laws*13 (Eastern Book Company, Lucknow)

⁶ The Fatal Accident Act provide compensation to legal representative of the deceased person in case of death caused by actionable wrong. Thus the provisions of the Act are inadequate as compensation is restricted to only certain class of dependant. Sibling of the deceased cannot claim compensation.

⁷ It was set up in 1919 which aimed at the welfare of the workers globally.

⁸ Such as Workmen's Compensation (Agriculture) Convention; Workmen's Compensation (Accident) Convention; Workmen's Compensation (Occupational Diseases) Convention; Sickness Insurance (Industry) Convention; Sickness Insurance (Agriculture) Convention ; Old Age Insurance (Industry etc.) Convention; Old Age Insurance (Agriculture) Convention; Invalidity Insurance (Agriculture) Convention; Survivors' Insurance (Industry, etc.) Convention; Survivors' Insurance (Agriculture) Convention; workmen's Compensation (Occupational Diseases) Convention (Revised); Unemployment Provision Convention; Maintenance of Migrants Pension Rights Convention; Ship-owners Liability (Sick and Injured) Convention; and Sickness Insurance (Sea) Convention all these convention are adopted by the ILO from 1921-1936

⁹ Employees Compensation Act, 1932 is basically based on the U.K pattern. The Act imposes an obligation upon employers to pay compensation to workers for any injury caused in the course of his employment including death, disablement and occupational diseases.

¹⁰ Provident Fund Act 1925 enacted than was made applicable to railways and government industrial establishments only.

¹¹ In 1929, the Maternity Benefits Act was enacted in Mumbai. On the Royal commission recommendation the maternity benefit legislation was passed in Ajmer Merwara in 1934, Delhi in 1937, Madras and U.P in 1938. Besides these provincial legislations the period also witnessed central legislation viz., Mines Maternity Benefit Act 1941. These legislation provided for payment of maternity benefit to women employed in mines.

¹² It was passed in 1938 which was aimed at abrogating the doctrine of common employment.

benefit (at provincial level) was taken. However, various committees were appointed viz., Cawnpore Labour Enquiry Committee by the Government of U.P in 1937, Bombay Textile Labour Enquiry Committee by the Government of Bombay in 1937 and Bihar Labour Enquiry Committee by the Government of Bihar in 1938. These committees also endorsed the recommendation of the Royal Commission on Labour and pleaded for early adoption of health/sickness insurance schemes¹⁴. India witnessed a huge development process and the labour policy being implement in the other countries between¹⁵ in consequence the Third Labour Ministers Conference was held in the year 1942 at Delhi, through this the Labour Minister in order to protect the interest of the worker recommended for the implementation of scheme of sickness benefit and agreed to advance loan for the implementation of that scheme in industries¹⁶ established in India. A milestone in the area of social insurance was reached by appointment of a committee¹⁷ in March 1943 by the government of India.

b. The Post Independence Era from 1947

Crucial labour laws governing the various aspect of work were passed in quick succession after Independence. After independence the labour welfare movement acquired new dimension. Government of India enacted numerous legislations in order to ensure security to the workers.¹⁸

¹³ The Commission, inter alia, recommended a scheme of health insurance of industrial workers on a contributory basis financed by the employers and by small deduction from the wages of the workers *also see* <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

¹⁴ The question was again taken up by the Government of India at the first Labour Ministers' Conference at New Delhi in 1940. The conference suggested ascertaining the view of employers and workers on the issue of contribution towards health and insurance funds. This was followed by the second Labour Ministers' Conference in 1941 which decided to take concrete steps for evolving health insurance Scheme for industrial workers. But no concrete step was taken during this period *also see* <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

¹⁵ Such as Beveridge Report of British Social Insurance and Allied Services, Marsh Plan (Report on Social Security) and Wagnur-Murray Dingal Bill in England, Canada and U.S.A respectively- Aggarwala, A.N.: Ten Years of Social Security Moment in India, Economic Essays (Rudra Memorial Volume), p.256.

¹⁶ Such as cotton, jute, textiles and heavy engineering

¹⁷ Committee was presided over by Professor B.P.Adarkar through which Health Survey and Development Committee was appointed with Sir Joseph Bhole as chairman. The committee was helpful in formulation of the Schemes by Adarkar this was later examined by M. Stack and R.Rao in 1945 the ILO expert and endorsed a scheme with certain modification such as (i) creation of separate administration for medical and cash benefits; (ii) addition of maternity benefits and workmen's compensation in the health insurance and scheme and (iii) expansion of the scheme in all perennial factories and non- manual workers.

¹⁸ For example the government passed Employee's Compensation Act, Employees' Provident Fund Act,(EPF), Employees' State Insurance Act, Maternity Benefit Act, and Payment of Gratuity Act

Employee's Compensation Act 1923 is completely employers' liability where the workers contribution is none and at state level Compensation Commissioners are appointed to execute the Act¹⁹.

The ESI 1948 is a social insurance and in this scheme both medical and cash benefits are provided by corporation²⁰ to the workers. EPF²¹ and Gratuity are paramount Social security in old age. The Maternity Benefit Act 1961 is especially designed to protect the interest of the women workers. It provides them security at the time of pregnancy for the workers it provides them security at the time of pregnancy and delivery²². Social security is a subject of concurrent list so the Central Government constituted enactments for the workers and the state government bears the responsibility of their effective enforcement through Labour Department.

The constitution of India enriched a list of Fundamental Rights and Directive Principles of State Policies for achievement of social order based on justice, liberty, equality and fraternity. The constitution made specific mention of duties that the state owes to labour for social regeneration and economic upliftment. The state owes a duty towards ensuring social security for the aged people, for the disabled, for the vulnerable section etc.”²³

Thus from the above it is evident that some of the labour legislation enacted during the British regime. British government had enacted laws only dealing with particular categories of Industries and these laws did not cover within its ambit the whole working class. Mentioned may be made of such laws dealing with providing compensation to the workers uncertain emergencies²⁴.

In order to provide facilities related to health, recreational, education, and other welfare related matters there are many provision dealing with the same also it is the duty of the Government to sensitized the workers about all the available facilities, schemes etc which is being endorsed by the Government for the benefit of the workers. Nonetheless,

¹⁹ Recent amendment in the Act has replaced the 'workmen' word with 'employee' to make it gender neutral.

²⁰ the Employees' State Insurance Corporation (ESIC)

²¹ The EPF Act is handled by the Employees' Provident Fund Organization (EPFO) which is an autonomous body.

²² Twelve weeks leave, medical bonus, one month leave after miscarriage etc. advantages are given through the Act. The Maternity Benefit Act and Gratuity Acts are handled at departmental level and factory inspectors check the proper implementation of these Acts.

²³ Constitution of India, art. 14 H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2nd edn., 2015).

²⁴ In case of injury, accident, closure, Lock-off, lay out, retrenchment.

the initiatives undertaken by the authorities have proved to be inadequate towards achieving the desired goals.

c. The Liberalization, Privatization and Globalization Era:

With Liberalization²⁵, Privatization²⁶ and Globalization²⁷ securing a firm foothold and special economic zones (SEZ) being the order of the day, India has silently and imperceptibly shifted towards privatization. The result is a paradigm shift in terms & conditions of employment, deemphasizing the social security labour laws on one hand and an effort to cover the entire country under the The Pradhan Mantri Suraksha Yojana, this scheme is mainly for accidental death and full disability it covers insurance upto Rs. 2 lakh and for partial disability it covers insurance up to Rs. 1 lakh. Pradhan Mantri Jeevan Jyoti Bima Yojana on the other aims to provide life insurance cover and provides 2 lakh in case of death for any reason and Atal Pension Yojana on another address old age income security need²⁸. There is also the Unorganized Workers Social Security Act 2008²⁹.

The social security laws in India are in consonance with the international convention³⁰.

The laws with regard to ensuring protection to the workers time and again have been criticized owing to lack of inadequate legislation and also lack of responsibility on the part of executives. Although there are many schemes and policies adopted by the Government however they have not yielded into effective outcome because of the reason that there has been no proper planning undertaken towards the framing of the said policies, schemes etc. meant for the safeguard of the workers.

²⁵ Liberalization means government removes all kind of restriction like licensing, quota system to start a business so that one can start it easily. Cambridge Dictionary, Cambridge University Press, 1995

²⁶ If a government privatizes an industry, company or services that it own and controls, it sells it so that it becomes privately owned and controlled: Cambridge Dictionary, Cambridge University Press, 1995

²⁷ Globalization is the process by which financial and investment develop globally.

²⁸ The Pradhan Mantri Suraksha Yojana, Atal Pension Yojana, Pradhan Mantri Jeevan Jyoti Bima Yojana all these schemes covers the unorganized sector but it does not bar the organized sector workers to take advantage of it.

²⁹ Which seeks extend the social security dragnet to the unorganized labour. Though it covers unorganized sector but it does not bar the organized sector to take advantage of it.

³⁰ The laws in India are in accordance with the recommendation given by International Labour Organization.

II. STATEMENT OF THE PROBLEM

The era of the liberalization, privatization and globalization of the Indian economy in the last one and half decades have presented unparalleled challenges to the policy maker in government, industry and service sector to compete in the global market, with competitive edge necessitating the industry to improve its productivity and quality of products. This objective cannot be achieved unless and until the workers are highly satisfied with the working environment and welfare facilities which have an important impact on industrial relation. It has become important to find what improvement or progresses are made to enhance their working capacity in an organized sector. The issue is whether the social securities laws are effective enough to strengthen the dragnet of social protection of the workers and in turn improve their efficiency and productivity in the organized sector. These legislative instruments³¹ were made to meet the existing social need and problem but the state could not foresee the course of social progress in a dynamic society, which has made these apparently progressive laws regressive. The unification of administrative responsibility in respect of the existing social security legislation is both necessary and desirable. The ESI Act and Workman Compensation Act do not extend to whole working class. The workers have to put in long working hours without any safety and security. There are no comprehensive social security laws and policies or no such things as one umbrella coverage for all workers and they need to be more efficient to cover entire working class. The government has adopted the non interference policies toward the demand of the workers.

Hence this study is undertaken to know the Social Security laws and Policy Relating to Labour in Organized Sector in India and to suggest suitable measures to further enhance and improve them.

III. HYPOTHESIS

With the LPG era there is a shift in employment and labour policy. As a natural consequence there are changes in the government policy on social security that are not uniform and require reexamination. The implementation of social security legislation has not got full success in achieving the goal. It appears that the insufficient social security provision in the existing legislation might not have helped the workers in improving their

socio-economic condition. There is an overlapping provision among the existing social security schemes³² thus some inherent contradictions between the laws need to be addressed and a more effective, comprehensive and stream lined social security law covering all workmen is the call of the hour.

IV. RESEARCH QUESTION:-

1. What is the present labour policy relating to social security in India?
2. Are there social security benefits linked with terms and condition of employment in organized sector?
3. Can there be a gender differential social security policy?
4. What are the judicial trends?
5. What are implementation issues?
6. What are the changes in the social security Laws in an organized sector?

V. OBJECTIVE OF THE RESEARCH

The objective of the study is to examine whether law relating to social security of the labour in the organized sector has undergone changes keeping parity with the policy changes and to find out the effectiveness of such a change.

VI. SIGNIFICANCE OF THE STUDY

The result of proposed research will be to analyse the labour policy in organised sector in India with particular reference to social security laws based on thorough comparative analysis with other countries, labour rights and the standard and its impact on social and economic development.

The outcome of the research may be of great help to the central as well as state government and also various bodies³³ working towards social security's in India.

³¹ Employee's Compensation Act, 1923, Employees State Insurance Act, 1948, Maternity Benefit Act, 1961 Employees Provident Fund and Misc. Provisions Act, 1952, , Payment of Gratuity Act, 1972,

³² Such as in case of survivors Benefit payable under the ESI scheme and survivors pension under the EPF scheme. The Maternity benefit of similar quantum for women workers are provided by the ESI scheme as well as by the Maternity Benefit Scheme and the Maternity Benefit Act 1961...etc

³³ such as ILO, ministry of labour and employment, Government of India, organization of chief labour commissioner, IOM etc

VII. LIMITATION AND BOUNDARY OF THE STUDY

The research will be confined to analysis of the laws dealing with social security's starting from 1880 i.e during British period up till now.

VIII. METHODOLOGY

For the proposed study the following approaches will be adopted. To achieve the objective of the study and to examine the causes, the consequences and the interpretation of the relevant legal statute and legal practices and to test the developed hypothesis the study will be based on the doctrinal method. Through doctrinal research the researcher will try to find out what the law is on a particular issues and it will be concerned with analysis of the legal statutes and the law that has been developed and applied. The researcher will try to analyze the legal structure and legal frame work and policy and case laws relating to social securities laws in organized sector and for this the researcher will give emphasis on substantive laws, rules, doctrine, concept and judicial pronouncement on the legal proposition of the appellate court and other conventional legal materials such as parliamentary debates revealing the legislative intent policy and doctrine. The researcher will not only make analysis of statutory provision and judicial pronouncement but also look into secondary materials such as research articles, text and journal books on the subject.

IX. CHAPTERISATION

The present research work has been divided into Ten Chapters including Introduction and conclusion along with suggestive recommendation. A brief summary of the chapter has been mentioned below.

The First chapter Introduction, the introductory chapter provides a brief overview of the topic Title "*A Study of Social Security Laws and Policy Relating to Labour in Organized Sector in India*" along with detailed synopsis of the research.

The Second chapter on "*The Theoretical and Conceptual Framework*". This chapter provides brief concept of Social security along with social security measures. Various definition of social security by eminent jurist, ILO, National Labour Commission etc has been narrated. This chapter also try to analyse the theories of labour welfare.

The Third chapter deals with the "*Evolution and Development of the Concept 'Social Security' in Organised Sector in India*". This chapter provides brief introduction

to the Social security, its origin and development in India in post and pre-independence era.

The Fourth chapter “*Social Security Laws in India: A Critical Assessment*” makes a comprehensive and critical study of legislative framework of social security in India.

The Fifth chapter is dedicated to throw light on “*National Policy on Social security of Labour in Organised Sector*”.

The Chapter Sixth “*A study of the Five Year Plan vis-a vis Social Security of labour in Organised Sector*” deals in detailed the Five Year Plan from the very beginning the First Five Year Plan till Twelve Five Year Plan.

Chapter Seven “*A study of the budgetary allocation for Social Security*” provides budget allocation of last year years from 2012-2017 for implementation of the social security scheme in India. Judicial response to social security is dealt in detailed under chapter Seven “*A study of the Shifting Contours of Judicial Response*”.

Chapter Eight “*Social Security*” in organized sector in Japan, China, Germany and Korea”. This chapter consist and compare the social security laws in Japan, China, Germany and Korea

Finally the Ninth Chapter deals with the *Conclusion and Summation* towards the study.

X. LITERATURE REVIEW

Sharma, A.M, “Aspect of Labour Welfare and Social Security”, Himalaya Publishing House, 11th Edition, Reprint(2012), in this book an attempt is made to scrutinize the labour welfare in an easy and interesting manner. Since independence, India has taken to the path of rapid industrialization and economic growth. Consequently, giving rise to great number of industries, a large workforce and a new industrial society. All these factors have considerable bearing on the growth of the labour welfare movement in our country. The ideal of a welfare state has added new dimension to the labour welfare philosophy. An attempt has been made in this book to place before the reader a systematic body over the year, with particular emphasis on its vast scope, variety and concepts, principles and practices of labour welfare and personnel services.

Jetli, K. Narinder, “India Manpower Employment and Labour Welfare 1947 to 2007”, Published by New Century Publication (2007), this book examines the whole gamut of labour related issues during the post independence period. This book is prearranged into,

three parts, part 1 provides a broad introduction to various facets of Indian labour since 1947. It describes demographic trends, employment policies and strategies, constitutional provision legal frame work and institution pertaining to labour and its welfare, current labour policy issues, labour laws pertaining to women and their empowerment and approaches of WTO and India on topic connected to labour. Part 2 contain glimpses of India's five year plan from first five year plan (1951-56) to tenth five year plan (2002-2007). Lastly Part 3 comprises edited extracts from India's five-year plans on matter related to manpower, empowerment and labour welfare.

Jagdish, "Labour Welfare Administration: Theories and Legal Provisions", published by Akansha Publishing House (2004), , this book deals that Labour welfare is a generic concept, subsuming several fields of development that fall under economic development, industrial growth, social justice and democratic growth. This book encompasses twelve chapters pertaining to labour welfare administration. The material is based on authoritative secondary sources. The employers, administrators, organizers and field activists, teaching and training community, concerned with and working in the field of labour welfare administration will find this book useful and informative.

Deodhar, S. D, & Puneekar. S. Saraswati, "Labour Welfare, Trade Unionism and Industrial Relation" Himalaya Publication House (2004), this book attempts to investigate the labour welfare in simple and fascinating mode. This book dwells on the compilation of facts concerning labour problems, labour welfare movement and labour Industrial problem.

Reddy, R. Jayaprakash, "Labour Welfare and Personnel Service", published by APH Publishing Corp- New Delhi (2004), this book deals that the Welfare of the labour is considered to be the key factor in the growth and development of any industry. This book gives in depth information on different fronts of labour welfare. It covers historical perspectives of labour welfare, welfare services, industrial housing, industrial safety worker's education and financing of welfare services.

Yadav, L.B, "Reading in Social and Labour Welfare", published by Anmol Publication Pvt. Ltd, New Delhi(2002), this book is based on labour welfare. The author also attempted to examine the concept and scope of labour welfare and also discusses the historical background of labour welfare. This book in three volumes brings together rich

information on all vital issues relating to social and labour welfare. This book also attempted to show the clear view on labour welfare in Indian Railways.

Joseph B., Joseph I, Varghese R.,” Labour Welfare in India” Kanishka Publisher (2009) ,this book deals that the India's labour force ranges from large numbers of illiterate workers to a sizeable pool of highly educated and skilled professionals. Labour welfare activities in India originated in 1837. They underwent notable changes during the ensuing years. This article is a description of these changes and the additions, which were included over this period. On the whole, it paints a picture of the Indian Labour welfare scène.

Mishra Shobha and Manju (Dr), “Principles for Successful Implementation Labour Welfare Activities from Police theory to functional theory” Journal of Indian Research(2007), this book gave a brief account of labour welfare activities. This book comprises the definition of labour welfare, scope of labour welfare activities, objectives and theories of labour welfare. The author describes that labour welfare activities in an industrialized society has far reaching impact not only on the work force but also all the facets of human resources. This author also made an attempt to show that, the success of welfare activities depends on the approach, which has been taken into account in providing such activities to the employers. Welfare policy should be guided by idealistic morals and human value.