

## Chapter IV

### Social Security Laws in India: A Critical Assessment

#### 4.1 Introduction

Social security is one of the indispensable needs in a welfare state like India. It depends on the perfection of human pride and social equity. Law in this way turns into an instrument of social and monetary equity and endeavors to anchor it. It accommodates government disability against danger of need, illness, obliviousness, messiness and inaction by social protection enhanced by semi social protection and social help or by mix of all or any of these devises relying on the assets of the state.<sup>137</sup>

The reliance on government disability differs according to the need and earning status.<sup>138</sup> In India, vastly a larger part of the workforce is devoid of any formal social security protection. The entire working force is not covered by the existing social security legislation.<sup>139</sup> Hence there is an urge to extend social security even to the workers in the unorganized sector.

Various labour legislation that is enacted are not appropriate, and were not proposed to be relevant to the employments in the unorganized sector, yet none of the laws that shape the base of the Social Security system covers the entire unorganized sector even the recently enacted unorganized Workers Social Security Act, 2008. It is therefore, the need of the hour to study and evaluate the legislation relating to social security in India. There is a dearth of social. Be that as it may, there isn't even one treatise which manages the subject in an exhaustive way. Thus, this chapter attempts to analyze the existing legal framework of social security laws in India along with critical assessment

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<sup>137</sup> Under this category may fall the Employee's Compensation Act, 1923.

<sup>138</sup> S. Mishra, Labour and Industrial Law 407 (Central Law Publication 25<sup>th</sup> edition, 2010).

<sup>139</sup> According to Government of India, National Sample Survey Organization (NSSO) India 2000-2001 Out of an estimated work force of about 397 million, only 28 million are having the benefit of formal social security protection. Also see <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

## 4.2 Social Security and the Law

As discussed earlier the idea of Social Security is as old as the historical backdrop of humanity itself and in each general public do discovered men desire for Social Security. Social Security is given by institutional and non-institutional agencies in India. Likewise as stated and discussed in previous chapter, past days the joint family, the guilds, the caste based and community based bodies provided some sort of security for certain contingencies whenever and wherever required by the event of concealed event because of different elements, natural or human, contingent on their ability however it was not in deliberate way.

Presently due to Globalization the joint family system is deteriorated or family ties are broken, the guilds and caste based associations have lost their hang on their individual; there is migration of family members to better places looking for employment and furthermore for their individual safety at times; religious institutions are being assaulted by different religious of by so called radicals who have confidence in skepticism prompting public pressure, loss of human lives and making unconventional weak to specific individual from the general public; and so forth. Such change in the society has incited the government to take up better Social Security measures.

The International labour Organization was established on the principles of anchoring general harmony and social equity which fortify the public opinion for giving Social Security measures. Amid the 20<sup>th</sup> Century there were fundamentally two Social Security enactments Viz., Employee's Compensation Act, 1925 and Employees State Insurance Act, 1948 which provide assurance or security to the industrial workers in different possibilities, for example injury caused in due or in course of employment, medical maternity and funeral benefits etc.

The ILO<sup>140</sup> Publications and Beveridge Report on Social Insurance and Allied Services of England likewise reasonably affected the Social Security programs in India. The Social Security Laws are not deliberately created and endeavors were not made by the former Governments, the outcome is abuse treachery and weakness to average workers. When the situation with regard to industrial workers on Social Security laws is

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<sup>140</sup> Though the ILO was established long back in the year 1919 it could not influence the Government of India in passing Social Security laws because at that time the British were ruling the country. The Indian trade Union movement was also very weak and unable to bring pressure on the Government for the enactment of the important Social Security laws for the benefit of the poor, weaker and unorganized people.

so melancholy, anyone could envision the situation of unorganized workers to whom the Social Security law is utterly nil. The advancement of Social Security law in any country relies on numerous components like economic, social, political and religious pressures of trade unions, technical assistance and international support and so on.

Social security legislation in India derives their strength and spirit from the Directive Principles of State Policy.

**Article 21 Right to life and liberty**<sup>141</sup> - The Constitution of India ensures fundamental rights under Part III of the Constitution. Out of the six fundamental rights, Article 21- is the heart of Part III. Time and again Supreme Court has held in numerous cases that right to adequate livelihood is also included within the ambit of right to life.<sup>142</sup>The major objective of social security is to guarantee adequate means of livelihood to all. . In other words, right to social security is inherent in right to life. There are many provisions under the Constitution of India that deals with social security. Those articles are Articles are 24,<sup>143</sup> 38<sup>144</sup>, 39<sup>145</sup>, 41<sup>146</sup>, 42<sup>147</sup>, 43<sup>148</sup>, 43-A<sup>149</sup>.

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<sup>141</sup> According to the Constitution of India, art. 21: "No person shall be deprived of his life or personal liberty except according to procedure established by law". H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>142</sup> In *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180, The Supreme Court held that the term 'life' in Art. 21 does not mean mere animal existence of a person.

<sup>143</sup> According to Constitution of India, art 24 "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment". available at M.P. Jain, *Indian Constitutional Law*, (Wadhwa and Co., Nagpur, 2003

<sup>144</sup> According to the Constitution of India, art. 38 " State to secure a social order for the promotion of welfare of the people shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. In particular, state shall strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations". See H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>145</sup> According to the Constitution of India, art. 39 lays down certain principles of policy that is required to be followed by the State- "The State shall, in particular, direct its policy towards securing the citizens, men and women equally, have the right to an adequate means to livelihood; That the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; That there is equal pay for equal work for both men and women; that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; That child are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment". See H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>146</sup> The Constitution of India, art. 41 –provides every citizen the Right to work, education and public assistance. See H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>147</sup> According to the Constitution of India. art. 42 "the State shall make provision for securing just and humane conditions of work and for maternity relief".

<sup>148</sup> According to the Constitution of India, art. 43 "the State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural

Constitution of India provides provision which deals with the relationship between Union and State. There are subject mentioned in the Schedule<sup>150</sup> in the Constitution through which the Union and the State makes laws respectively. The subjects are ascribed in three list of the schedule i.e Union list, Concurrent List and State List. The matters of workers interest is ascribed in the Union List, which means that only the union can make laws in this regard, the entries 13,<sup>151</sup>28,<sup>152</sup>55,<sup>153</sup>61,<sup>154</sup>65,<sup>155</sup> and 94.<sup>156</sup> deal with it. The State List, entry 9.<sup>157</sup> Empower the State to make laws for the welfare of the people. And The Concurrent List, entries 20,<sup>158</sup>21,<sup>159</sup>22,<sup>160</sup>23,<sup>161</sup>24,<sup>162</sup>25,<sup>163</sup>36,<sup>164</sup> and 45<sup>165</sup> mandates both the Union and state to make legislation for the welfare of the worker.

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opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co operative basis in rural areas”

<sup>149</sup>According to the Constitution of India, art 43A “The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry”

<sup>150</sup> Constitution of India part XXII, schedule VII

<sup>151</sup> Constitution of India, Schedule VII Entries 13 deals with “Participation in international conference, associations, and other bodies and implementing of decision made there” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>152</sup> Constitution of India, Schedule VII entries 28 deals with “Port quarantine, including hospitals connected therewith; seamen’s and marine hospitals” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>153</sup> Constitution of India, Schedule VII Entries 55 deals with “Regulation of labour and safety in mines and oilfield” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>154</sup>Constitution of India, Schedule VII Entries61 deals with “Industrial disputes concerning union employees “ see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>155</sup> Constitution of India, Schedule VII Entries65 deals with “Union agencies and institution for- a) professional, vocational or technical training, including the training of police officers; or b) the promotion of special studies or research; or c) scientific or technical assistance in the investigation or detection of crime” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>156</sup> Constitution of India, Schedule VII Entries 94 deals with “ Inquiries, surveys and statistics for the purpose of any of the matters in this list “ see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>157</sup> Constitution of India, Schedule VII Entries 9 deals with “Relief for disabled and unemployable “see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>158</sup> Constitution of India, Schedule VII Entries 20 deals with “Economic and Social Planning” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>159</sup> Constitution of India, Schedule VII Entries 21 deals with “Commercial and industrial monopolies, combines and trust” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>160</sup>Constitution of India, Schedule VII Entries 22 Trade unions; industrial and labour disputes available at H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>161</sup> Constitution of India, Schedule VII 23 Entries deals with “ Social Security and social insurance; employment and unemployment” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>162</sup> Constitution of India, Schedule VII Entries 24 deals with “Welfare of labour including condition of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pensions and maternity benefits” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>163</sup> Constitution of India, Schedule VII Entries 25 deals with “ Education, including technical education, medical education and universities, subject to the provision of entries 63,64,65 and 66 of list I; vocational and technical training of labour” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>164</sup>Constitution of India, Schedule VII Entries 36 deals with “Factories” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>165</sup>Constitution of India, Schedule VII Entries45 deals with subject “Inquires and statistics for the purpose of any of the matters specified in the list II or list III” see H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

Part IV are not only the directive and the guidelines provided to the state towards attaining the objectives of a welfare state but at the same time it is by way of this provisions that achieving the goals of socio-economic justice can be realized. In the words of Justice Ramaswamy in *Air India Statutory Corporation v. United Labour Union*<sup>166</sup> the learned Hon'ble Justice held that the right to work and adequate livelihood is one of the significant rights by way of which the poor workman can realize the constitutional goals of achieving economic and social liberty.<sup>167</sup>

Although Part IV of the Constitution is not justifiable however they are very much important in the administration of the country. The duty is imposed upon the state to incorporate these guidelines at the time of enacting legislations. The learned Apex court had in numerous cases held <sup>168</sup>that it is the duty of the State to ensure adequate safeguards to the workers in order to achieve social and economic justice. The constitutional goals of achieving social and economic justice have been enumerated under the Preamble,<sup>169</sup> Article 14,<sup>170</sup> Article 15 and Article 17<sup>171</sup> 21.

Several recommendations were made on Social Security at the Fifth Asian Trade Union seminar held at New Delhi from 30th November, to 3rd December, 1977. Consequently in 1995, the Government of India introduced for the first time adopted a scheme such as the National Social Assistance Programme (NSAP).<sup>172</sup> The

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<sup>166</sup> AIR 1997 SC 645.

<sup>167</sup> *Ibid* Justice Ramaswamy had held that, "only through fundamental right guaranteed by the constitution of India such as right to work, right to livelihood, just and humane conditions of work, living wage, a decent standard of life, education and leisure each individual can secure and realize the economic and social freedom"

<sup>168</sup> Such as *PU.D.R. v. Union of India* AIR 1982 SC 1473, *National Textile Workers Union v. Ramakrishnan* AIR 1983 SC 75, *A.B.S.K. Sangh (Rly) v. UOI* AIR 1981 SC 298, *Chandra Bhavan Boarding v. State of Mysore* AIR 1970 SC 2042

<sup>169</sup> The Constitution of India, Preamble is read as "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:- JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation". See H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015)

<sup>170</sup> The Constitution of India, art. 14. "Prohibits discrimination on grounds of religion, race, caste, sex or place of birth". See H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015).

<sup>171</sup> According to the Constitution of India, art.15 "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to- (a) access to shops, public restaurants, hotels and palaces of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". See H.M. Seervai, *Constitutional Law of India* 288 (Universal Law Publishing, 2<sup>nd</sup> edn., 2015)

<sup>172</sup> . The programme has, so far, three main components: the National Old Age Pension Scheme, the National Family Benefit Scheme, and the National Maternity Benefit Scheme it encompasses a national policy for social assistance

recommendation of various National Committees and Commissions<sup>173</sup> and judicial pronouncements reshaped the social security policies and legislation in India.

### **4.3 Social Security Legislation in India**

There are many legislations dealing with Social security legislations for workers in India.<sup>174</sup> In addition they are many laws dealing with unorganized sectors in India.<sup>175</sup>

Each legislative enactment provides provisions for social security benefit by covering various risks and contingencies to which a worker is exposed. Hence, an attempt has been made in this chapter to critically analyze the overall perspectives of social security enactments.

#### **a. The Employees' Compensation Act, 1923**

Employees are the main source of national production and economy. Thus, it is for the welfare of the whole nation that employee ought to be given their due. With a view to improve the status of workman a number of legislation regarding management and social insurance were introduced. The Employees' Compensation Act<sup>176</sup> is one of such measures which were introduced for the benefit of the workmen. This act has been subsequently amended from time to time according to the needs felt by the government and hue and cry of the working class. The Act clearly stipulates that certain class of employer is under an obligation to provide compensation to the workers in case of injury that has resulted because of some accident. The purpose of the Act is not only confined to provide compensation to the injured workmen whose injury has been sustained during the course of the employment but also to prevent such accidents from happening in future. Thus preventive measures should be adopted by the employer in order to prevent

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benefits to poor households in the case of death, old age and maternity *Also see* <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

<sup>173</sup> such as First National Commission on Labour (1969), Second National Commission on Labour 2000, The National Commission on Rural Labour (NCRL), 1991 etc

<sup>174</sup> Such as The Employees' Compensation Act, 1923, The Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Maternity Benefit Act, 1961, The Payment of Gratuity Act, 1972, The factories Act, 1948.

<sup>175</sup> Minimum Wages Act, 1948, The Unorganized Sector Worker's Social Security Act, 2008, National Rural Employment Guarantee Act, 2005.

<sup>176</sup> The Employees' Compensation Act, 1923 earlier known as "Workmen's Compensation Act" came into force on 1<sup>st</sup> day of July, 1924, the word "workmen" was replaced as "Employees" from January 2010.

accidents in future thus enabling the workers to work in anxiety and risk free environment.<sup>177</sup>

The minimum amount of compensation for death has been enhanced from Rs.80,000 to Rs 1,20,000/- in case of death, from Rs. 90,000 to Rs 1,40,000 in case of disablement and from 2,500/- to 5,000/- towards funeral expenses.<sup>178</sup> The maximum amount of compensation for death and permanent total disablement can go upto Rs. 9.14 lakh and 10.97 lakhs respectively depending on age and wage of the employees. The employees shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment without any ceiling. A new Section 25A has been added through which the Commissioner shall dispose the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision thereof within the said period to the employee. The wage ceiling limit for working out compensation has been increased from Rs.4,000/-to Rs.8,000/-per month.<sup>179</sup>

As per the Employees' Compensation (amendment) Act 2017, section 17 A has been added. Now, "Every employers shall immediately at the time of employment of an employees, inform the employees of his right to compensation under thus Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employees." Further, under section 18 A penalty for the contravention of the Act has been increased from present Rs. 5000/- to Rs 50,000/- which may extend to one lakh rupees. In an appeal as per Section 30, the amount of dispute has been revised to go for an appeal from Rs 300/- to Rs 10,000/- or such higher amount notified by the Central Government, so as to reduce litigation.

### **Evaluation of the Compensation Act: An Analysis**

As stated above the primary objective of the Employees' Compensation Act is to provide compensation to the employees. However, under this Act, the employees who have insured themselves under the 1948 Act,<sup>180</sup> are excluded from the provisions of

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<sup>177</sup> Government of India, Report of the Royal Commission on Labour in India (1931), p. 298.

<sup>178</sup> Employees Compensation Act, 1923, sec 4.

<sup>179</sup> The amendment was notified on 23.12.2009 and made effective from 18.01.2010

<sup>180</sup> The Employees State Insurance Act, 1948, covers insurance in case of disability and provides advantage to the dependent's of the deceased. Further the individual serving in Armed Forces are also covered by this Act.

Employees' Compensation Act. The definition of "Workman"<sup>181</sup> under the Act does not cover casual employees. The act is examined mostly by the employees who have time and again criticized the loopholes existing in the said act. Employees time and again have grumbled that the provisions of the Act don't appear to be reasonable for them. Employees don't comprehend as to why just they are considered capable to pay full remuneration against a mischance for which they are not personally responsible. Further, they say that if there should arise an occurrence of fatal injury regardless of worker's own fault causes demise, the employers is by and large considered in charge of such death and demand for full compensation to the deceased's dependants.

From the point of the workers, the deformity of the Act is particularly its applicability which needs to be scrutinized. The operation of the Act should be enhanced, especially as to small establishments where endeavor is all the more ordinarily made to avoid the payment of compensation to the workers for one reason or the other. The grater organization, be that as it may, follow up the Act, and pay the compensation to the workers as reference to in the Act. However, they likewise don't frequently report especially in occurrence of minor injuries. In seasonal factories and mines the cases of accidents are frequently settled on minor payments and few instances of mishap go unreported. Contract labours are severely misused by their employers as they are generally kept away from payment of compensation. Another essential weakness of the Act is that there is no liability at present of the employer to report non-fatal injury cases to the concerning commissioner.

The worker and his family migrate to the village with no data or any address and in the event of mischance it is hard to trace their whereabouts as the service cards which are required to be mainlined in the register of the establishment are not maintained making it extremely hard to discover their particulars. In addition to this vast majority of the laborers are uneducated and unmindful and in few cases they don't comprehend their

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<sup>181</sup> Section 2 (n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is--

- (i) a railway servant as defined in section 3 of the Indian Railways Act, 1890(9 of 1890), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
- (ii) employed 1[2[in any such capacity as is specified in Schedule II. whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of 3\*[the Armed Forces of the Union] 4\*\*\*; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them

privilege of compensation and, subsequently, get no compensation. As *Mr. Shiva Rao* rightly observed, “Beyond a point, it does not pay a workers in India to demand fulfillment of right.”<sup>182</sup>

The employer frequently takes the advantage of the above mentioned shortcoming with respect to labour and regularly decays in paying compensation. Moreover, the worker is poor and they fear to knock the door of the court due to expensive legal expenditure incurred in the litigation which encourages the employee to pay compensation or settle such cases with his own terms and condition. Plus, the Act makes no provision for therapeutic help while the labour turns into the casualty of any mishap which in it turns makes difficult to his dependents to meet out the circumstance successfully. *Mr. A.N. Agarwal* rightly comments: “The compensation to the worker remains merely on paper.”<sup>183</sup>

#### **b. The Employees’ State Insurance Act, 1948**

Apparent from the preamble the ESI Act is designed to confer benefit to the weaker section in situation of distress.<sup>184</sup> This Act provides benefits against sickness, maternity, employment, injury, disablement, dependents and unemployment. Despite the fact that the Act “is a pre constitution one, it is a post independence measures and shares the passion of the Constitution<sup>185</sup> for social justice initially it applied to non-seasonal factories but has subsequently been extended to other categories of establishments, particularly in the services sector. At present, it likewise applies to shops, hotels, restaurants, cinemas, road transport undertakings, newspaper establishments, and educational and medical institutions with more than 20 employees.<sup>186</sup> In several states, the minimum number of employees to come within the ambit of the Act has been reduced from 20 to 10 in the case of shops and establishments.

The edge in regard of the quantity of workers for factories has additionally been diminished from 20 to 10, independent of whether power is utilized in the manufacturing process or not. The ceiling wage of employees covered by the Act is Rs 15,000 per

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<sup>182</sup> Dr. U.C. Kulshrestha , *Labour Problems & Social Welfare* 213 (Lakshmi Narain Agarwal Publication revised Edition 2005 ).

<sup>183</sup> *Ibid*

<sup>184</sup> *Royal Talkies v. E.S.I Corporation* (1978 Lab IC 1245, 1248 SC)

<sup>185</sup> Article 38, 39,41,42,43 and 43-A of the constitution shows concern for workers and their welfare.

month, which has been relaxed to Rs 21,000 per month<sup>187</sup> for employees with inability. The ceiling wage is amended every now and then to deal with inflation, however once an employee has been secured, she remains covered for the entire service period. The ESI Corporation has likewise chosen to broaden the advantage of the ESI Schemes to the workers deployed in the construction sites situated in the implemented areas under ESI Schemes w.e.f 1<sup>st</sup> August, 2015.

In spite of the fact that the ESI Act, 1948, extend to the whole of India<sup>188</sup>, the ESI scheme (ESIS) has not been executed in specific areas of the country where there is insufficient grouping of establishments covered by the Act. Along these lines, the ESI scheme does not cover the following five classifications of establishments and workers, namely,

- a) Employees of central and state governments,
- b) Employees in factories with less than 10 workers,
- c) Employees in establishments in non-implemented areas
- d) Seasonal factories and
- e) Workers drawing more than Rs 21,000 per month.

To serve ESI scheme presently, there is no month to month wage roof for inclusion under ESI for person with permanent disablement. The ESI scheme is currently operated in 830 centers situated in 31 States/ Union Territories. As on 31.03.2017, 3.19 crore insured persons and 12.40 crore beneficiaries are covered under the scheme. The number of factories and establishment covered by the end of the year had gone up to about 8.98 lakh.<sup>189</sup>

The scheme provides two type of social security cover namely:-

- a) Medical care<sup>190</sup> and
- b) Cash Benefits<sup>191</sup>.

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<sup>186</sup> Initially the scheme was made applicable only to factories using power and employing 10 or more person. Now the coverage extended to non power using factories employing 20 or more person see M.P. Jain, *Indian Constitutional Law*, (Wadhwa and Co., Nagpur, 2003)

<sup>187</sup> The ESI raised the monthly wage limits to Rs 21,000/- from the existing Rs 15,000/- for coverage with effect from 1<sup>st</sup> January 2017. (ESI wage limit raised retrieved on 07.08.2017 at 8:29 P.M)

<sup>188</sup> Employee State Insurance Act, sec 2. the word 'except the state of Jammu & Kashmir have been omitted by the Act of 1970.

<sup>189</sup> see Government of India, Annual Report 2017-18, Ministry of Labour & Employment.

<sup>190</sup> Medical care is provide to the insured person and their family member through a vast network of panel clinics

By and by, because of the high rate of migration of labour, relative legal illiteracy and additionally absence of mindfulness activities to educate women workers of their rights under the Act, the advantage of the Act are not benefited of by women workers, in many instances

### **Critical Evaluation:-**

While as a compound protection the ESIS has been esteemed in its initiation, restriction and troubles have been experienced about its execution. The dimension and nature of therapeutic consideration has not been observed to be satisfactory in many areas, the dual managerial control of the state government and the corporation has added to the tribulations of overseeing health services, which is independent from anyone else a scary errand. The disappointment is more prominent in areas where great foundation is lacking, and in establishments having well- managed health care system for its senior employees who gain compensation over the ceiling and who are not constrained to join the ESIS, then again, the scheme has been perceived as extremely helpful where alternative facilities don't exist, and where the centre are staffed by true and skillful experts. The ESI Scheme has been valued by non-regular employees, for example casual and contract workers, whom employers normally like to exclude from any protection.

### **c. Employees Provident Funds & Miscellaneous Provision Act, 1952**

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952<sup>192</sup> is a welfare measures in the arena of retirement benefits. The main purpose of the act is to grant monetary help to the employees and their dependents in case they are not in a position to maintain a standard a living. The Act endeavors to provide security to the employees at times of old age, disability and death of the employee (incase he is the sole earning member in the family) and certain other unforeseeable happenings.

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<sup>191</sup> The cash benefit includes Maternity benefit, sickness benefit, disablement benefit; Benefit after retirement, dependent's benefit, funeral expenses, rehabilitation allowance and standard benefits see Employees State Insurance Act, 1948 S.C. Srivastav, *Social Security and labour laws*, ( Eastern Book Company, Lucknow)

<sup>192</sup> The Employees' Provident Fund came into existence with the promulgation of the Employees' Provident Fund Ordinance on 15<sup>th</sup> November, 1951 it received the assent of the President on 4<sup>th</sup> March 1954. It was replaced by The Employees' Provident Fund Act, 1952the The Employees' Provident Fund Bill was introduced in the parliament as Bill number15 of the year 1952 as a Bill to provide for the institution of provident funds for employees in factories and other establishments. The Act now referred as the Employees' Provident Fund & Miscellaneous Provision Act, 1952 which extend to whole of India except Jammu & Kashmir. The Act and schemes framed there under are administers by a Tri-partite Board know as the Central board of trustees, Employees' Provident Fund, consisting of representatives of Government (Both Central and State), Employers and Employees.

Employees Provident Funds and Miscellaneous Provisions Act is the smallest social security enactment with only 22 provisions all together in the country. This Act covers three schemes.<sup>193</sup> The operational piece of social security schemes in India are dealt with by the schemes, while the Act gives a statutory base to these schemes. The Act can comprehensively be divided into two noteworthy parts on the basis of their significance:

1. Its application and development of machinery to implement the provisions.
2. the framing and implementation of provident funds law

The schedules take care of other provisions like –

- Schedule I (section 2(i) & 4): List of industries to which the Employees Provident Funds and Miscellaneous Provisions Act 1952 applies.
- Schedule II (section 5(1-B)): Matters for which provision may be made in a scheme.
- Schedule III (Section 6-A (5)): Matters for which provisions may be made in the pension scheme.
- Schedule IV (Section 6-C, (6)): Matters to be provided for in the Employees Deposit Linked Insurance Scheme.

The applicability of this Act is restricted to the establishments/industries enlisted in the schedules.<sup>194</sup>

### **Critical Evaluation:-**

After enactment of Employees State Insurance Act, 1948, a Medical benefit Scheme for the sorted out working class in selected industries, the country passed legislation Employees Provident Fund Act, 1952. The establishment of Provident Fund however not considered unequivocally as a social security measure is incorporated in the programmes of social security, because of the provincial contemplation of the erstwhile British

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<sup>193</sup> Such as Employees' Provident Fund Scheme, Employees' Deposit Linked Insurance Scheme, 1976, Employees Pension scheme. Employees' Provident Fund Scheme, 1952 provides for financial assistance by allowing partial withdrawal to subscribers in situation like illness, invalidation, etc. According to the revised scheme payment of the benefit amounts to 20 times of the wages or based on the deposit in the Provident Fund, whichever is less. With the increase in the wages ceiling from 6500/- to 15000/- from 01.09.2014, the maximum benefit has become 3 lakh and an additional 20 % of the benefit amount calculate is also paid. *available* at <https://www.world.tax/articles/introduction-to-the-social-security-system-in-india.php>

<sup>194</sup> The EPF & MP Act made a modest beginning of applying itself to only six class of establishments in the country in 1952. Today it applies to 180 classes of industries and other establishment.

Government world over. Colonial kings never offered anything to the states, yet removed something from the provinces. So is the situation with Provident Funds. Collecting the money of the workers, be it the Employees share or the Employers share, spending it for the Government, and going back to the worker when he leaves the services with interest have been controlling standards of Provident Funds from the very moment since they have built up anywhere in the world. As it were, the worker has turned into an agent to the Government at an exceptionally less expensive rate of enthusiasm, under the camouflage of investment fund for the future or constrained by reserve funds for what's to come. The inconspicuous future has dependably been frequenting every individual, for future has no settled date.

Be that as it may, for the Provident Fund subscribers the fixed date of future is either death or retirement.

India had the impact of British Economic philosophy and along these lines began a foundation of Provident Fund path back 1952, i.e., five years after in the wake of accomplishing opportunity. In spite of the fact that, amid 1952 itself the government felt to have a Pension Scheme for the working class it couldn't turn out with a Pension Scheme until 1995. In any case, an endeavor toward this path has cleared in 1971 with a scheme of Family Pension Scheme, 1971. The Employees Pension scheme, which came after a lot of interest and consultations, is yet not free from criticism, dissatisfaction and unfavorable remarks. Everybody who was financially stable made sure that the Pension Scheme is struck down obviously without truly knowing the advantage of the scheme.

There are numerous suggestions on stretching out the the advantage to a countless unprotected working class. Ironically nothing has seen the light of the day nor do we discover any guide to approach the unprotected and revealed parcel. Solid proposals to enhancing the managerial courses of action are likewise not found in the literature reviewed.

The Employees Provident Fund organization is a body corporate with autonomous Board. A few advisory groups for its effective functioning assist the Board. The organization has Zonal, Regional, and Subordinate Regional Offices for effective benefit delivery and for decentralized administrative network. Notwithstanding, the self-sufficiency of the Board is long way from reality for there are in excess of 45 areas where central Government controls the everyday working of the Board. Practical independence

is subsequently not there for the Board. Board in this manner can't take some policy decisions for the simple fear of Central Governments interventions.

The inclusion and enlistment of the workers by the Employees' Provident Fund Organization is guided by the statutory provisions of the Act and is employer centric. The provident fund commissioners do not go on a coverage drive and cover the establishments on all alone. There are stray cases in the entire organization where the regional provident fund commissioners have started inclusion drives individually to meet the annual action plan. In majority of the cases, it is left to the employer to cover his workers if he fulfills the test of employing 20 or more persons in his establishment and if the establishment falls within the class of the establishments notified in the schedule. Appropriately it is discovered that the number of the workers reported by various agencies do not tally with the number of the covered workers reported by the Employees' Provident Fund Organization. Particularly the number of the Small Scale industries working in the country and the number of registered companies cross the number of establishments covered by the organization. It is additionally discovered that the organization does not have any information regarding the working of the establishments in the country. Inspector is required to maintain a minor enroll of the organization on which an Inspector is required to do the field studies and list the establishments employing less than 20 which is coverable under the Act. This isn't entirely pursued. Indeed, even it is discovered that a few area does not contain any valuable data to cover the establishment in occasion of its employing more than 20 persons. There was no reason found why the Cinema Halls employing 5 or more persons have been broadened the benefits by the rule and no other organized activities like Hotels, Restaurants, and Petrol Pumps and other Shops and Establishments with the same employee's strength. All establishments other than Cine Theatres require having 20 or more persons utilized to extend the inclusion under the Employees Provident Fund and Miscellaneous Provisions Act. The system of intentional exposure of the employees' by the establishments and their being in the schedule of industries is yet a non-starter in this manner overcoming extreme reason for the enactment.

#### **d. The Maternity Benefit Act, 1961**

The Maternity Benefit Act, 1961,<sup>195</sup> was enacted to provide maternity benefits to the women at the time of delivery of child and thereafter for certain period of time. The Act reaches out to factories, mines, plantations, establishment belonging to government, shops and establishments, and establishments to which the provisions of this Act have been blatant to be applicable. The Employees State Insurance Act additionally accommodates maternity benefits to particular employment sectors. Factories and establishments which are secured by the Employees State Insurance Act, 1948, do not fall under this Act, since the maternity benefits of the ESI Act will apply to those factories and establishments. The Mines Maternity Act, 1911, and Plantation Maternity Benefit Act, 1951 make provisions for Maternity Benefits. The Working Journalist (Conditions of Service) and Miscellaneous Provisions Rules, 1957 also provides for maternity protection.

In order to avail the benefit under the Act the woman ought to have worked for a period of at least 80 days in a year instantly going before the date of her expected delivery. The most extreme time frame for those institutions covered by this Act for which a woman is qualified to maternity benefit is 26 weeks<sup>196</sup> of which she can just take maternity leave a month and a half (6 weeks) before the date of delivery.

Government strategies related to maternity and child care are Maternal and Child Health Centers, Integrated Child Development Service, Cash Benefit Schemes, Indira Gandhi Matritva Sahyog Yojana which is a Conditional Maternity Benefit Program, Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers.<sup>197</sup>

#### **Critical evaluation:-**

The execution of the Act has been impeded and set apart with disquietude both with respect to the government and employers. Without a compelling checking framework, there is no way to guarantee inclusion. The vagrant idea of these laborers likewise represents an issue. Likewise, the utilization of the expression “maternity

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<sup>195</sup> The Act came into force on 12th December, 1961. Object of the An Act is to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.

<sup>196</sup> The Maternity Benefit (amendment) Act has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks

benefit” itself is frequently misjudged. The Act accommodates “maternity benefit” in two ways – maternity leave and medical bonus for delivery and postnatal care. Both these parts are fundamental to support woman

Under the Act, the employer is prohibited from terminating or suspending the women employee from services incase such employee is on maternity leave. Even during her pregnancy if she is given notice of discharge or dismissal, she is yet qualified for her maternity benefit and medical bonus. Net unfortunate behaviour, which must be imparted to the woman in writing, disentitles her from claiming her maternity benefit and medical bonus. The State government is enabled to make rules of what comprises net unfortunate behavior. The lacunae in these provisions are protection of employment per se during pregnancy, which are not under maternity leave. The Act mandates the keeping of registers by employers, in order to evade benefit to the women the names of women workers are not entered in the register or the women are employed through contractors.<sup>198</sup> In seasonal factories, employers don’t keep up any record or service registers and don’t pay benefits on the ground that the qualifying period for which the women should have worked is not satisfied.<sup>199</sup>

The Act mandates the appointment of Inspectors who are given the capacity of administering execution of the Act however the number of inspectors is deficient with lacking women inspectors on the job. Further, the number of inspections under the Act is also insufficient.

Section 4<sup>200</sup> of the Act, denies the woman the right to get employed promptly after her pregnancy for about a month and a half (6 weeks) for no legitimate reason. This section prohibits an employer from employing a woman amid a month and a half (6 weeks) instantly after the date of her delivery, miscarriage or medical termination of her pregnancy and also prohibits a woman from working in any establishment during the 6 weeks after her delivery. This prohibition is with no authenticity and must be canceled with prompt impact.

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<sup>197</sup> Shashi Bala, *labour Market Participation of Working Women Post Maternity*, NLI Research studies Series No. 095/2012, V.V. Giri National labour Institute.

<sup>198</sup> C.L Patel, *Justice for Women*, Central India Law Quarterly.

<sup>199</sup> *ibid*

<sup>200</sup> According to Maternity Benefit Act 1961- Sec 4 “No employer shall employ a woman in any establishment during the six weeks immediately following the day of her delivery [miscarriage or medical termination of pregnancy].The period referred here in means the period of one month immediately preceding the period of six weeks, before the

Numerous social researcher is of the sentiment that the ongoing change in the Act i.e Maternity Benefit Amendment act 2017 will advance man controlled society as entire responsibility of child caring are on the mothers'. The provision for paternity leave is quiet in the alteration. Also, the study highlights that many private organizations may not prefer to employ women workers for reasons that the employers have to grant maternity benefit to women. In any case, it is worth to make reference to that there is no wage limit for coverage under the Act. The Act covers perpetual workers, full-time workers, workers with identifiable employers and/or designated places of work, who form a tiny segment of the workforce especially in rural India. The unorganized sector i.e. temporary and casual workers and those employed through sub-contracting, outsourcing and so on — are not viably secured under this Act in view of the accentuation on an identifiable manager and work environment.

#### **e. The Payment of Gratuity Act, 1972**

Another old age benefit being given through a central legislation is the payment of gratuity under the Payment of Gratuity Act, 1972.<sup>201</sup> The act applies to factories, mines oilfield plantation, ports, railways and shop and establishments having a minimum of 10 employees. To be eligible, the employee has to have a minimum service of five years. It provides 15 days wages for each year of service to employees in an establishment having a minimum of 10 workers.

By a change in the year 1994, the wage ceiling as an eligibility condition for gratuity was rejected. In any case, it may be noticed that the pattern to pay gratuity to workers in some industries, follows negotiation with employers.

#### **f. The Factories Act 1948**

The primary protest of the Act is to guarantee adequate safety measures and to promote the health and safety of the workers and further, deal with welfare facilities. Provisions in regard to health of the workers relate mainly to hygienic environment, well ventilations, control of temperature etc. Elimination of dust and fumes, artificial humidification, overcrowding, lighting, drinking water facilities, latrines, urinals and

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date of her expected delivery; or any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6."

<sup>201</sup> The Payment of Gratuity Act was passed by Indian Parliament in 21 August 1972. The act came in force on 16 September 1972.

spittoons.<sup>202</sup> Besides, every factory has to make effective arrangements to provide and maintain a sufficient supply of clean drinking water;<sup>203</sup> and where 250 or more workers are working, employers are required to provide cool drinking water in hot weather.<sup>204</sup> Provision regarding safety of workers relate to the fencing of machinery, easing of new machinery, testing and examination of appliances and plants such as hoists, lifts, cranks, chains and pressure plants, supply of safety appliances to workers, precautions against dangerous fumes and in case of fire etc.<sup>205</sup> The Act also lays down the conditions under which young persons and women may be employed.<sup>206</sup>

Provision with respect to welfare facilities covers such things as washing facilities for storing and drying clothes, facilities for sitting, first aid appliances, canteens in case of factories employing over 250 workers, suitable shelters or rest rooms, lunch rooms.<sup>207</sup> The Act likewise concedes capacity to state governments to make rules requiring the representative of workers in any factory to be associated with management in regard to welfare factory to be associated with management in regard to welfare arrangement of the workers.<sup>208</sup> The execution of the Act is under the jurisdictions of the State Governments. It is implemented through the Factory Inspectorates. Any laborer can complain to the Inspector about conditions inside the factory, and the source from which the complaint has come is not supposed to be disclosed unfortunately, the implementations mechanism of the Act is unsatisfactory. Each factory inspector has more than a thousand factories under him. These infrastructural facilities accessible to him are absolutely deficient. This Act, in its updated form, has an extremely wide meaning of `worker`. Anyway contract and ad hoc workers don't get the benefits given to perpetual workers. It imposes confinement on employment of women during the night, especially the period between 7.00 p.m. to 6.00 a.m.

### **Critical Evaluation:-**

Sections 23 and 27 of the Factories Act prohibit women from handling perilous devices. Be that as it may, all these provisions are not applied in practice for a section of the workers. Additionally, the Act is applicable only to manufacturing units, organized as

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<sup>202</sup> The Factories Act, 1948, Sec 11 to 20

<sup>203</sup> The Factories Act, 1948, Sec 18 (1).

<sup>204</sup> The Factories Act, 1948, Sec 18 (3)

<sup>205</sup> The Factories Act, 1948. Sec 21 to 41

<sup>206</sup> The Factories Act, 1948. Sec 23

<sup>207</sup> The Factories Act, 1948, Sec 42 to 48

factories. The provisions of this Act do not apply to the vast masses of workers in the unorganized sector employed in smaller manufacturing units and other sectors.

While the Act permits for State Governments to vary these limits by notification, it mandates that the notification cannot make a variation which allows a woman worker to work between 10 p.m and 5 a.m. Prohibiting women workers from working at night, based on sex is unreasonable and amounts to discrimination by the State since it take away the right of choice of a woman worker to work at night and legitimizes the role of the State in enacting arbitrary laws which curtails the freedom of association and right to opportunity and employment of women at any time they choose. This restriction has brought about a decline of the employment of women workers by employers since it implies adding more individual to the muster rolls as one entire shift of workers becomes unavailable for work. No prohibition through protective legislative can be made which denies women their entitlement to equality of opportunity and treatment.

Vide the Factories (Amendment) 2005 permit the women to work at their required timing. However, several other laws including the Mines Act, 1952<sup>209</sup>, Beedi & Cigar Workers (Condition of Employment Act, 1966,<sup>210</sup> and the Shop & Establishment Act<sup>211</sup> prohibits night work of women. The It and ITES industries were permitted to employ women after 8 P.M on condition that they are provided with transportation upto their doorstep with adequate security measures in play. It is fundamental that the law is amended as soon as possible in order that women are able to do night work along with effective regulations to protect the health, safety and welfare of the women workers.

#### **4.4 Social Security in unorganized sector**

The unorganized sector deals with those workers who have been excluded from the purview of social security legislations owing to their temporary nature of employment, illiteracy, unawareness etc. Also the initiative adopted by the government towards safeguarding the interest of the workers employed in unorganized sector is adequate.

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<sup>208</sup> The Factories Act, 1948. Sec 50 (b)

<sup>209</sup> Mines Act Prohibits employment of women in any mines above ground except between the hours of 6 A.M and 7 P.M

<sup>210</sup> Under the Beedi & Cigar Workers (Condition of Employment) Act 1966 no woman shall be required or allowed to work in any industrial premises except between 6 A.M & 7 P.M.

<sup>211</sup> Under the Shop & Establishment Act women is prohibited to work after 9: 30 P.M.

### **i. Minimum Wages Act, 1948**

The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefits of unorganized labour. It was enacted for fixing, reviewing and reviving the minimum rates of wages in the scheduled employments where workers are engaged in the unorganized sector. Under section 3 of the Act, the appropriate Government has been empowered to fix the minimum rates of wages payable to employees employed in the scheduled employments and in an employment added to either Part I or Part II of the Schedule by notification under section 27.

The Minimum Wages Act is meant to ensure that the market forces and the laws of demand and supply are not allowed to determine the wages or workmen in industries where workers are poor, vulnerable, unorganized and without bargaining power. The minimum rates of wages are fixed, keeping in view the minimum requirements of a family, and wages at these rates are to be paid by all employers irrespective of their capacity to pay. The Appropriate Government is empowered under Sections 13 of the Act to fix the number of hours per day. Besides, provision has been made for weekly holiday and payment of overtime wages etc. In regard to any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

A distinction is made between „minimum wage“ which is the statutory “minimum wage”, “fair wage” and “living wage”. The minimum wage fixed by most governments provides bare subsistence and is at poverty-line level. The minimum wage, fair wage and living wage has been introduced in the report of the Committee on Fair Wages and the need-based minimum wage was defined in the 15th session of the Indian Labour Conference held in January 1957.

#### **Critical analysis:-**

In spite of the fact that this Act is a legitimately protection for unorganized sector workers it is often found that among construction workers, beedi workers, agarbatti workers, agricultural workers, workers in small shops and hotels, compensation really paid to the workers are beneath the endorsed least wages settled by the legislature for the particular business..

The Act helps unorganized workers who are working in the scheduled employments. Regardless over 94% of India’s working population is part of unorganized

sector out of which about 60% of the workforce in the unorganized sector is independently employed or locally established.<sup>212</sup> In this way, they stay outside the purview of The Minimum Wages Act, 1948, in spite of the fact that they establish the dominant part in the area.

Though the legislation is enacted to provide social benefit but the minimum wage permitted by law isn't uniform since it fluctuates starting from one employment to another and the government can fix a different minimum wage for different industries or even similar industries in different localities. It is appropriate to agricultural, non-agricultural and to rural and in addition urban workers.

Due to the absence of unionization, low literacy levels of women workers, and lack of implementation infrastructure it is often easy for the employers to violate the provisions under this Act. Lack of adequate numbers of inspectors for ensuring the implementation of the Act, in the unorganized sector, is one of the reasons that the provisions of the Act are constantly violated.<sup>213</sup> Women are exploited even more than the male workers and in many employments get even less wages than that the male workers. The contractors or the agencies take advantage of the absence of workers organizations and the poor bargaining power of women workers and exploit the workers by taking a portion of their wage. Thus the workers who are already not getting the minimum wage settled with the fewer amounts that is given to them by the contractor or the agencies. Thus, unionization, accessibility of legitimate complaint redressal systems and legal awareness are important to thwart this procedure of exploitation of the woman worker.

## **ii. Minimum Wage Code**

To bring a wave of labour reforms, the present sitting Government for the first time introduced in Lok Sabha the draft code on wage Bill in August 2017. Thereafter, it was referred to the select committee for scrutiny. The bill seeks to combine the all existing legislations on wages into sole legislation that deals with only wages<sup>214</sup> as the existing provisions of the Minimum Wages Act and the Payment of Wages Act do not cover substantial number of workers. The applicability of both these Acts is restricted to

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<sup>212</sup> See. Government of India, Labour Laws & other Labour Regulation, Planning Commission of India (2007).

<sup>213</sup> T.S. Papola; G.S Mehta; Vinoj Abraham, *Labour Regulation in Indian Industry*, Volume 3, Labour Regulation and its impact A review of Studies and Documents, 2008.

scheduled establishments. However, the new Code on Wages ensure minimum wages to all and timely payment to employees irrespective of the sector without any wage ceiling. The code provides central government to set minimum wages for certain employments including railways and mines and State governments to set minimum wages for all other employments.<sup>215</sup> It seeks to cross the threshold of scheduled mentioned in the Minimum Wages Act and the Payment of Wages Act in terms of scheduled employments and establishments.

An appellate authority is being created between the claim authority and the judicial forum for the speedy disposal of cases with cost efficient. It also provides for rationalization of penalties for different types of violations.

### **iii. The Unorganized sector Workers' Social Security Act 2008**

The unorganized sector accounts for over 90% of our workforce. They are as entitled to protection and welfare/security as workers in the privileged sector of the workforce. There is a wide variety of employment in this sector. Condition vary, level of organization vary. The nature of the relation with employers varies. There is an expanding sector of those who are self-employed, or are on contract, and work from home. It is difficult to have separate laws for each employment. This will only result in endless multiplication of laws, and oversight of one or the other of the employment. An Umbrella legislation that covers whatever is basic and common and leaves room for supplementary legislation or rules where specific areas demand special attention.

Thus, The Umbrella legislation<sup>216</sup> for the unorganized sector workers` employment and welfare should be seen as an enabling legislation that will lead to the growth of the economy, improve the quality of employment, provide a decent life to the workers and integrate them with the growing opportunities in the country. The essence of the proposed Umbrella legislation is removal of poverty of the working population of India through

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<sup>214</sup> Such as Payment of Wages Act, 1936, the Minimum Wages Act, 1949, the Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976, into one code. Also see <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

<sup>215</sup> Minimum wages must be revised by the central or state governments at an interval of five years. The overtime rate to be at least twice the normal rate of wages of the employee.also see <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

<sup>216</sup> Unorganized Workers Social Security Act 2008 is an Act to provide social security and welfare measures to the worker in an unorganized workers (meaning home based workers or daily wage workers). This act received the assent of the President of India on 30<sup>th</sup> December 2008.

improving their productivity, quality of work enhancing income earning abilities and increasing its bargaining power.<sup>217</sup>

The Act is the outcome of the Second National Labour Commission's recommendation, an Act to consolidate and amend the laws relating to the regulation of employment and welfare of workers in the unorganized sector in India and to provide protection and Social Security to these workers. The objective of the Act is to ensure welfare and guarantee social security to the workers working in unorganized sectors.<sup>218</sup>

The act provides for the constitution of National Social Security Board at the Central level. The task of this Board shall be to examine the laws dealing with social security and accordingly make recommendations to bring in necessary reforms to the various laws and policies in the area of unorganized sectors.

The main drawback of this Act is that the definition clause of the Act is silent in regard to "Social security" and the word "welfare" is used interchangeably.<sup>219</sup>

#### **iv. The National Rural Employment Guarantee Act, 2005**

This Act<sup>220</sup> for the first time makes the right to work a fundamental right a new radical deal for India's poor. This landmark legislation was passed by the Lok Sabha on Aug 23 and the Rajya Sabha on Aug 24, 2005. The legislation had received wide support among political parties, social movements and the public at large.

Intervening in the debate on Bill in the Rajya Sabha, Prime Minister Dr. Manmohan Singh argued for rationalizing subsidies, improving the investment climate and accelerating the pace of industrialization to maintain the economic growth of seven to eight percent to fund schemes such as Rural Employment guarantee which was described as the most important piece of legislation in independent India. It marks a new beginning

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<sup>217</sup> See Government of India, Report of the Second National Commission on Labour, Planning Commission 2002 p. 766 (i)

<sup>218</sup> "it will build a social security for unorganized workers. The issues of income security, employment security and working conditions will have to be addressed through other legislation *available at* <http://pmindia.nic.in/nac/communocation> (last Visited on 10th October 2016 at 5:24 P.M)

<sup>219</sup> T. S. Sankaran, "A critique of India's unorganized Workers' Social Security Act, 2008" *available at* [www.sacw.net](http://www.sacw.net), (last Visited on 8<sup>th</sup> August 2018 at 5:50 PM) also see [http://www.cedl.ac.in/download\\_voltwo.php?id=9](http://www.cedl.ac.in/download_voltwo.php?id=9)

<sup>220</sup> The National Rural Employment Guarantee Act, 2005, which was late renamed to Mahatma Gandhi National Rural Employment Guarantee Act. The Act was first proposed in 1991 by P.V. Narshimha Rao. In 2006, it was finally accepted in the parliament and commenced implementation in 625 districts of India.

in the efforts for social equity and justice. He hoped that in the next four of five years it would cover all rural districts.<sup>221</sup>

This Act assure income security to rural families and provides each household 100 days of definite wage employment in a year. Within the household entitlement, all adult members of a rural household have volunteer for unskilled manual labour. In order to avail benefit under this Act one has to register for rural household for Wage Employment and obtain a Job Card upon submitting an applicant to the concerned Gram Panchayat or the Programme Officer. Women will get priority to the extent that one-third of person who are given employment are women who have asked for work.

The core aim of the NREGA is to enhance livelihood security of household in rural areas of India. However, MGNREGS is likely to have had a much smaller impact on the rural job market and rural wages due to insufficient budget allocation, shift to supply driven programme, poor wage rate as the MGNREGA wages are lower than minimum wages in most stages which could push marginalized section to take up vulnerable and hazardous job. The study reveals that there is delay in wage payment<sup>222</sup>

#### **4.5 Conclusion**

Social security is a thorough methodology intended to deal with hardships, assure the individual and his dependents bare basic necessities like fooding, clothing and shelter. The aim of social security is also to prevent individual from any vulnerabilities. There are numerous social security laws in India that provides to safeguards to workers in the organized sectors. Furthermore, piecemeal initiatives have been adopted by the government towards safeguarding the interest of the workers working in unorganized sectors. Thus, the need of the hour is to formulate effective laws covering workers working in both the organized and unorganized sectors. Since a large section of the population is workers working in unorganized sectors thus, the government cannot turn a blind eye and keep them deprived from their basic rights i.e. of right to live and right to minimum wages. In the absence of law of lacks and proper regulation of organizations the workers suffer from numerous hardships which becomes a major hurdle for him to even get two squares of meal a day for himself and his family members. Unless and until all

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<sup>221</sup> E.C. Thomas, " Job Guarantee for Rural Poor", Employment Newspaper, 15-21 Oct, 2005

<sup>222</sup> Delayed payment increased from 39 % in 2012-13 to 73 % in 2014-15. As of 2016-2017 total amount of wage pending is Rs 11000 crore.

these aspect is taken care of by the government the desire to achieve the constitutional goals; i.e; justice: social, economic and political will.