

***A STUDY OF SOCIAL SECURITY LAWS AND POLICY RELATING TO LABOUR***  
***IN***  
***ORGANIZED SECTOR***  
***IN***  
***INDIA***

**A THESIS SUBMITTED TO THE UNIVERSITY OF NORTH BENGAL FOR THE AWARD  
OF THE DEGREE OF DOCTOR OF PHILOSOPHY IN LAW**

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## DECLARATION

I declare that the thesis entitle “*A Study of Social Security Laws and Policy Relating to Labour in Organized Sector in India*” has been prepared by me under the guidance of Prof. Gangotri Chakraborty, Professor of Department of Law, University of North Bengal. No part of this thesis has formed the basis for the award of any degree or fellowship previously.

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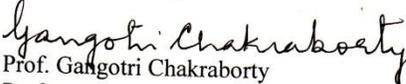
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This is to certify that Ms. Pramita Gurung has pursued research on the topic entitled "*A Study of Social Security Laws and Policy Relating to Labour in Organised Sector in India*" under my supervision for more than two years and fulfilled the requirement of the Ordinances relating to the Doctor of Philosophy 2009 in Faculty of Arts Commerce and Law of the University of North Bengal. She has carried out her work in the Department of Law, University of North Bengal. She has completed her work and the thesis is ready for submission. To the best of my Knowledge and belief, the thesis contains the original work done by the candidate and it has not been submitted by her or any other candidate to this or any other University for any degree previously. To the best of my knowledge she has cleared an anti plagiarism test by showing 10% similarity. In habit and character the candidate is a fit and proper person for award of Ph. D. degree.

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## ABSTRACT

At the dawn of industrialization “Labour”<sup>1</sup> 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, mental, work for production. History is witness to the fact that the first ever “demand” that was put forth by the working community was “just and humane” condition of work and not wages.

Labours, all over the country plays a considerable role in a planned economy as it is recognised as an important source of production, their protection against risks of want, disease, ignorance, squalor and idleness are utmost important. Due to Industrialization, Urbanization and Privatization social security to labour has assumed considerable importance. Social security is one of the basic needs in a welfare state. It is based on the social justice, social equity and human dignity. Legislation, therefore, becomes an instrument of social and economic justice and attempts to secure it. The right of the workers is also protected under the constitution of India and other labour legislation.

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 Act<sup>2</sup>.

The ESI 1948 is a social insurance and in this scheme both medical and cash benefits are provided by corporation<sup>3</sup> to the workers. EPF<sup>4</sup> 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 delivery<sup>5</sup>. Social security is a subject of concurrent list so

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<sup>1</sup> “labour” as a concept means expenditure of physical, mental efforts contributing for providing goods and services in an economy.” Merriam-Webster Dictionary

<sup>2</sup> Recent amendment in the Act has replaced the ‘workmen’ word with ‘employee’ to make it gender neutral.

<sup>3</sup> the Employees’ State Insurance Corporation (ESIC)

<sup>4</sup> The EPF Act is handled by the Employees’ Provident Fund Organization (EPFO) which is an autonomous body.

<sup>5</sup> 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.

the Central Government constituted enactments for the workers and the state government bears the responsibility of their effective enforcement through Labour Department.

India, being a welfare state, has taken upon itself the responsibilities of extending various benefits of Social security and social Assistance to its citizens. The social security legislation in India derives their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. They constitute an important step towards the goal of a welfare state, by improving the living and working conditions and guarding people against the uncertainties of the future. These measures are also important for every industrialization plan, because not only do they enable workers to become more efficient, but they also reduce wastages arising from industrial disputes. The man-days lost on account of sickness and disability also constitute a heavy drain on the slender resources of the worker as well as on the industrial output of the country. Lack of social security hinders production and prevents the formation of a stable and efficient Labour force. Social security is, therefore, not a liability, but a wise investment, which yields good dividends in the long run. The social security provides protection to working class against contingencies like retirement, illness, maternity, aging, death, disablement and similar conditions. There are numerous legislations that ensure social security that have been active since 1880 during British era.

Feeling of security enhances employee's efforts to develop them for future work change. In the above context this thesis makes an attempt to focus upon whether the available social security law and policy are effective enough to enable the workers to become more efficient.

## **PREFACE**

Labours, all over the country plays a considerable role in a planned economy as it is recognised as an important source of production, their protection against risks of want, disease, ignorance, squalor and idleness are utmost important. Due to Industrialization, Urbanization and Privatization social security to labour has assumed considerable importance. Social security is one of the basic needs in a welfare state. It is based on the social justice, social equity and human dignity. Legislation, therefore, becomes an instrument of social and economic justice and attempts to secure it. The right of the workers is also protected under the constitution of India and other labour legislation.

It is therefore, the need of an hour to study and evaluate the social security laws and policy in labour. A sincere attempt has been made in this research work to highlight the problem faced by the labour, the laws to safeguard their interest and the judgement given by various Hon'ble Court. However, there is not even one treatise which deals with the subject in a comprehensive compoment. Most of the available literature is scattered and approach the subject or any branch of it from sociological or economic view point. The need for study is mainly to bring challenges ahead which create awareness, increase stakeholder participation and finally mobilizing resources. There must be urgent steps by everyone one of us including government civil society and private sector of the future generation by safeguarding the right of the workers in both organised and unorganized section at global, national and local level.

If the governments commit itself towards combating the issues that the labourer are facing in organised and unorganized sector then it is sure that there will be boom in the production which will indeed boom the economy of the nation. However, this thesis just attempts to fill the gap.

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## TABLE OF CONTENTS

	Pg. No.
<b>DECLARATION</b>	
<b>CERTIFICATE</b>	
<b>ABSTRACT</b>	<b>i-ii</b>
<b>PREFACE</b>	<b>iii</b>
<b>ACKNOWLEDGEMENT</b>	
<b>LIST OF TABLES</b>	<b>A</b>
<b>LIST OF ABBREVIATION</b>	<b>B-D</b>
<b>LIST OF CASES</b>	<b>E-H</b>
<b>CHAPTER-I.....</b>	<b>1-11</b>
Introduction	
<b>CHAPTER II.....</b>	<b>12-26</b>
<b>THEORETICAL AND CONCEPTUAL FRAMEWORK OF SOCIAL SECURITY</b>	
2.1 Introduction	
2.2 Concept of social Security	
2.3 Definition	
2.4 Social security Measures	
2.5 Theories of labour Welfare	
2.6 Conclusion	
<b>CHAPTER III.....</b>	<b>27-38</b>
<b>EVOLUTION AND DEVELOPMENT OF THE CONCEPT OF “SOCIAL SECURITY” IN ORGANIZED SECTOR IN INDIA</b>	
<b>3.1</b> Introduction	
<b>3.2</b> Social Security: A Definition	
<b>3.3</b> Essential Characteristics of Social Security	
<b>3.4</b> Evolution and Development of the concept of “social security”	

### 3.5 Conclusion

## **CHAPTER IV.....39-63**

### **SOCIAL SECURITY LAWS IN INDIA: A CRITICAL ASSESSMENT**

#### 4.1 Introduction

#### 4.2 Social Security and the Law

#### 4.3 Social Security Legislation in India

- a) The Employees' Compensation Act, 1923; Critical Evaluation
- b) The Employees' State Insurance Act, 1948; Critical Evaluation
- c) Employees Provident Funds & Miscellaneous Provision Act, 1952; Critical Evaluation
- d) Maternity Benefit Act 1947: Critical Evaluation
- e) Payment of gratuity Act: Critical Evaluation
- f) The Factories Act, 1948

#### 4.4 Social security in Unorganized Sector

- a) Minimum Wage Act, 1948; critical evaluation
- b) The Unorganized Sector Workers Social Security Act, 2008
- c) The National Rural Employment Guarantee Act, 2005

#### **4.5 Conclusion**

## **CHAPTER V.....64-98**

### **NATIONAL POLICY ON SOCIAL SECURITY OF LABOUR IN ORGANIZED SECTOR**

#### 5.1 Introduction

#### 5.2 Historical Aspect of Labour Policy

#### 5.3 Salient Features of Labour Legislation

#### 5.4 Development of Labour Policy in Five Year Plan

#### 5.5 Recent Development of Labour Legislation

#### 5.6 Scheme Related to Maternity Benefits by Central Government

#### 5.7 Labour Law Reform in India

#### 5.8 Conclusion

**CHAPTER VI.....99-108**

**A STUDY OF THE FIVE YEAR PLAN VIS-À-VIS SOCIAL SECURITY OF  
LABOUR IN ORGANIZED SECTOR**

- 6.1 Introduction
- 6.2 First Five Year Plan (1951-1956)
- 6.3 Second Five Year Plan (1956-1961)
- 6.4 Third Five Year Plan (1961-1966)
- 6.5 Fourth Five Year Plan (1969-1974)
- 6.6 Fifth Five Year Plan (1974-1978)
- 6.7 Sixth Five Year Plan (1980-1985)
- 6.8 Seventh Five Year Plan (1985-1990)
- 6.9 Eight Five Year Plan (1992-1997) and Nine Five Year Plan (1997-2002)
- 6.10 Ten Five Year Plan (2002-2007)
- 6.11 Eleventh Five Year Plan (2007-2012)
- 6.12 Twelve Five Year Plan (2012-2017)
- 6.13 Conclusion

**CHAPTER VII.....109-123**

**A STUDY OF THE BUDGETARY ALLOCATION FOR SOCIAL SECURITY**

- 7.1 Introduction
- 7.2 Last Five Year Budgetary allocation for Social Security in India
- 7.3 Summary of Budget 2018-19 on Education Health and Social Protection , medium and Micro Enterprise (MSMS) & Employment and Employment Generation
- 7.4 Conclusion

**CHAPTER VIII.....124-172**

**A STUDY OF THE SHIFTING CONTOURS OF JUDICIAL PERCEPTION**

- 8.1 Introduction
- 8.2 Social Security : Fundamental Rights & Directive Principles of State Policies
- 8.3 Constitutional Prohibition: Contract Labour

- 8.4 Judicial Protection to workers Rights of Provident Fund & E.S.I Act
- 8.5 Judicial Approach on Employees Provident Fund and Miscellaneous Provision Act, 1952
- 8.6 Judicial Approach on Maternity Benefit Act, 1947
- 8.7 Judicial Approach on Factories Act
- 8.8 Judicial Approach on Minimum Wage Act
- 8.9 Judicial Approach on Compensation for Workers
- 8.10 Judicial Approach on Retrenchment, layoff, Transfer, Closure
- 8.11 Judicial Approach on Workers Relating to Gratuity
- 8.12 Other related cases
- 8.13 Conclusion

**CHAPTER IX.....173-188**

**“SOCIAL SECURITY” IN ORGANIZED SECTOR IN JAPAN, GERMANY, CHINA AND KOREA**

- 9.1 Introduction
- 9.2 Social Security in Japan
- 9.3 Social Security in Germany
- 9.4 Social Security in China
- 9.5 Collective Bargaining and settlement of Industrial Disputes : A Comparative Studies
- 9.6 Condition of Employment: A Comparative Studies
- 9.7 Condition of work hours /leave : A Comparative Studies
- 9.8 The Role of Legislation and Policies in Women’s Employment in India, China, Japan & Korea
- 9.9 Conclusion

**CHAPTER X.....189-203**

**SUMMATION AND SUGGESTION**

**BIBLIOGRAPHY**

**ARTICLE**

## LIST OF TABLES

TABLES	SUBJECT	Pg. No
<b>Table 1.1</b>	Summary of the current Social security scheme in India	<b>69</b>
<b>Table 2.1</b>	Sum insured under the scheme	<b>94</b>
<b>Table 3.1</b>	Total union budget outlay for social security under various scheme	<b>111</b>
<b>Table 3.2</b>	Budget outlay for major social security scheme as percentage (%) total budget expenditure	<b>112</b>
<b>Table 3.3</b>	Budget outlay for major social security scheme as % of gross domestic product	<b>113</b>
<b>Table 3.4</b>	Creation of National Platform of unorganized worker and allotment of an Aadhar seeded identification number	<b>113</b>
<b>Table 3.5</b>	National Health Protection Scheme /RSSY/RSBY	<b>114</b>
<b>Table 3.6</b>	Swavalamban Scheme	<b>115</b>
<b>Table 3.7</b>	Government contribution to Aam Admi Bima Yojana	<b>115</b>
<b>Table 3.8</b>	Atal Pension Yojana	<b>116</b>
<b>Table 3.9</b>	Interest Subsidy to LIC for pension Plan for Senior Citizens	<b>116</b>
<b>Table 3.10</b>	budget allocation for last five year for publicity and awareness of Pradhan Mantri Jeevan Jyoti Bima Yojana and Pradhan Mantri Suraksha Bima Yojana	<b>117</b>
<b>Table 3.11</b>	Indira Gandhi National Old Age Pension Scheme (IGNOPS)	<b>117</b>
<b>Table 3.12</b>	National Family Benefit Scheme	<b>118</b>
<b>Table 3.13</b>	Indira Gandhi National Widow Pension Scheme (IGNWPS)	<b>118</b>
<b>Table 3.14</b>	Indira Gandhi National Disability Pension Scheme (IGNDPS)	<b>119</b>
<b>Table 3.15</b>	Anapurna Scheme	<b>119</b>

## **ABBREVIATION**

A.L.R	:	Aligarh Law Journal
A.J.A.L	:	Australian Journal of Asian Law
AJS	:	American Journal of Sociology
A.I.R.	:	All India Reporter
AIBP	:	The Accelerated Irrigation Benefits Programme
All.	:	Allahabad
AIBP	:	Accelerated Irrigation Benefit Programme
AYUSH-	:	Ayurvedic, Yoga, Unani, Siddha and Homeopathy system of health.
APY	:	Atal Pension Yojana
ARWSP	:	The Accelerated Rural Water Supply Programme
Bom.	:	Bombay
Bomb. L.R.	:	Bombay Law Reporter
BSUP	:	Basic Services for Urban poor
Cal.	:	Calcutta
CAPART	:	Council for Advancement of People's Action and Rural Technology
CSRE	:	The Crash Scheme for Rural Employment
Cr.P.C.	:	Criminal Procedure Code
DDP	:	Desert Development Programme
ed.	:	Edition
EPFO	:	Employees' Provident Fund Organization ()
H.C.	:	High Court
i.e.	:	That is
ICDS	:	Integrated Child Development Services
IGMSY	:	Indira Gandhi Matritva Sahyog Yojana
IJS	:	Indian Journal of Secularism
I.L.O	:	International labour Organization
L.J	:	Labour Journal

IHSDP	:	Integrated Hosing and Slum Development Programme
IRDP	:	Integrated Rural Development Programme
Ibid.	:	Ibidem
Id.	:	Idem
J.	:	Journal
J.I.L.I.	:	Journal of Indian Law Institute
J.I.R	:	Journal of Indian Research
JLI	:	Japan Labor Issues
JNNURM	:	Jawaharlal Nehru National Urban Renewal Mission
Ltd.	:	Limited
M.P.	:	Madhya Pradesh
Mad.	:	Madras
Mat. L.R.	:	Matrimonial Law Reports
NCRL	:	The National Commission on Rural Labour
NIRDPR	:	National Institute of Rural Development and Panchayati Raj
N.J.R.S	:	Nordic Journal of Religion and Society
NP-NSPE	:	National Programme of Nutritional Support to primary
NSAP	:	National Social Assistance Programme
Ori.	:	Orissa
PMSBY	:	Pradhan Mantri Suraksha Bima Yojana
PMKVY	:	Pradhan Mantri Kaushal Vikas Yojana
PMGSY	:	Pradhan Mantri Gram Sadak Yojana
PMAY-G	:	Pradhan Mantri Awaas Yojana- Gramin
NSAP	:	National Social Assistance Programme
NRHM	:	The National Rural Health Mission,
p.g	:	Page
Pvt.	:	Private
RGGVY	:	Rajiv Gandhi Gramin Viduyati Karan Yojana
TCS	:	Total Sanitation Campaign (TSC)
S.C.	:	Supreme Court Cases
Sec.	:	Section

SFDS	:	Small Farmer Development Scheme
S.R.R.N	:	Social Science Research Network
SSA	:	Sarva Shiksha Abhiyan (SSA)
TRYSEM	:	Training of Rural Youth for Self-Employment
Viz.	:	Videlicet
Vol.	:	Volume
v.	:	Versus

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## O

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*Partap Narain Singh Dev v. Shri Niwas Sabata* (1976) ILLJ 235

*Payment of Wages Inspector v. Suraj Mal Mehta*(1969) ILLJ 762 SC

*People's Union for Democratic Rights v. Union of India,* AIR 1982 SC 1473

*People's Union for Democratic Rights v. Union of India,* AIR 1982 SC 1473

*Promod Kumar and Others v. National Aluminium Company Ltd.* (2002) III LLJ 657 Ori

## R

*Randhir Singh v. Union of India,* AIR 1982 SC 879

*Regional Provident Fund Commissioner v. Hooghly Mills Company Limited* (2012) 2  
SCC 489

## G

*Royal Western India Turf Club Ltd. v. ESI* (2016)4SCC521

*Royal Talkies, Hyderabad v. Employees State Insurance Corporation*(1978 )4 SCC204

## S

*Salomon v. Salomon* (1896) AC 22

*Sarla Verma v. Delhi Transport Corporation*2009) 6 SCC 121

*Secretary, Haryana State Electricity Board v. Suresh*(1999) 3 SCC 601

*Siddheswar Hubli v. Employees State Insurance Corporation*(1998)LabIC214 (Ori.)

*Standard Vacuum Refining Company Ltd. v. Their Workmen*(1960) 2 LLJ 233 (SC)

*State of Maharashtra and another v. Sarva Shramik Sangh, Sangli* AIR 2014 SC61

*Steel Authority of India Ltd. v. National Union Water Front Workers* 2001, 111 LLR 349

## U

*Unnikrishnan v. State of A.P* A.I.R. 1993 S.C. 2178

*Unichoy v. State of Kerala* 1961 ILLJ 631 SC

*Uttar Pradesh State Electricity Board & Another v. Hari Shanker Jain*(1978)4 SCC 16

## W

*Workmen v. Firestone Tyre and Rubber Co* (1976)1 LLJ 493 SC

*Works Manager Central Railway Workshop v. Vishwanath* (1970) ILLJ 351

# **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”<sup>1</sup> of the industrial workers (labour) in the organized sector<sup>2</sup> in India. At the dawn of industrialization “Labour”<sup>3</sup> 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

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<sup>1</sup> “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

<sup>2</sup> 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)

<sup>3</sup> “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 Lancashire<sup>4</sup>. 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 absence<sup>5</sup>. 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, 1846<sup>6</sup>. 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 Organization<sup>7</sup>. 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 Conventions<sup>8</sup>. I.L.O influence for compensation legislation in India led to the passing of the Employee's Compensation Act 1923<sup>9</sup>. This was followed by the enacted of the Provident Fund Act, 1925<sup>10</sup> and Maternity Benefit legislation<sup>11</sup> and The Employers' Liability Act<sup>12</sup>.

The Royal Commission on Labour to enquire into the working condition of Industrial labour was also appointed in 1929<sup>13</sup>. 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

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<sup>4</sup> 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)

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

<sup>6</sup> 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.

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

<sup>8</sup> 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

<sup>9</sup> 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.

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

<sup>11</sup> 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.

<sup>12</sup> 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 schemes<sup>14</sup>. India witnessed a huge development process and the labour policy being implement in the other countries between<sup>15</sup> 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 industries<sup>16</sup> established in India. A milestone in the area of social insurance was reached by appointment of a committee<sup>17</sup> 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.<sup>18</sup>

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<sup>13</sup> 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>

<sup>14</sup> 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>

<sup>15</sup> 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.

<sup>16</sup> Such as cotton, jute, textiles and heavy engineering

<sup>17</sup> 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.

<sup>18</sup> 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 Act<sup>19</sup>.

The ESI 1948 is a social insurance and in this scheme both medical and cash benefits are provided by corporation<sup>20</sup> to the workers. EPF<sup>21</sup> 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 delivery<sup>22</sup>. 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.”<sup>23</sup>

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 emergencies<sup>24</sup>.

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,

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

<sup>20</sup> the Employees' State Insurance Corporation (ESIC)

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

<sup>22</sup> 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.

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

<sup>24</sup> 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 Liberalization<sup>25</sup>, Privatization<sup>26</sup> and Globalization<sup>27</sup> 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 need<sup>28</sup>. There is also the Unorganized Workers Social Security Act 2008<sup>29</sup>.

The social security laws in India are in consonance with the international convention<sup>30</sup>.

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.

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<sup>25</sup> 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

<sup>26</sup> 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

<sup>27</sup> Globalization is the process by which financial and investment develop globally.

<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> 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 instruments<sup>31</sup> 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 schemes<sup>32</sup> 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 bodies<sup>33</sup> working towards social security's in India.

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<sup>31</sup> 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,

<sup>32</sup> 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

<sup>33</sup> 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, 11<sup>th</sup> 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.

## Chapter II

### Theoretical and Conceptual Framework

#### 2.1 Introduction

The basic idea of social security is to ensure sustainable human devolvement to prevent deprivation and vulnerability. At all times in each society, at each stage of development, there are sick individual requiring treatment and care, and individual who are unable to figure for his living.<sup>34</sup> It was rightly pointed out by the *Sir William Beverage* in his Beverage report that, there are five “giants’ evils” on the road of social progress.<sup>35</sup> such as

- i) Want<sup>36</sup>,
- ii) Disease<sup>37</sup>,
- iii) Ignorance<sup>38</sup>,
- iv) Squalor<sup>39</sup> and
- v) Idleness.<sup>40</sup>

The worry created by these giants has crossed the bounds wherever people couldn’t have controlled them singly or in little teams. In order to fight the above five evil giants a proper system of sickness and unemployment benefit was in need. This would include a proper national health services, family allowance and a full employment policy.<sup>41</sup>

Social security concept is not new to India. Human needs were confined and social, economic and emotional security were essentially founded absolutely on joint families system, craft, guilds, churches, charitable, philanthropic and different spiritual establishments. In some countries poor houses were conjointly established.<sup>42</sup> However, with the industrialization and growth of society the system of voluntary charity tested to be inadequate and unsatisfying thus, the establishment of social insurance was fondled. Due to industrialization commercial melancholy, industrial mishaps, closure of industries crippled the staff as they become incapacitate to work. In this case the State plays a major role in providing security to the staff. It is notable that social insurance principles were

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<sup>34</sup> Government of India, Report of Committee on labour welfare, (1969),p. 255.

<sup>35</sup> Sir William Beveridge, Report of social insurance and Allied Service,6 (Beveridge. London, HMSO, 1942)

<sup>36</sup> Too many people are living below poverty line

<sup>37</sup> Many people suffered from poor health because they could not afford medical treatment

<sup>38</sup> Too many children left school at 14 without any qualification and went into low paid jobs.

<sup>39</sup> Many people lived in overcrowded scheme and there was a shortage of good housing.

<sup>40</sup> Unemployment was very high before the war and caused poverty.

<sup>41</sup> *Supra*

<sup>42</sup> British Poor Law Act, 1601

accepted as the main basis for enactment of social security legislation, directed mostly to the workers in organized sector.

Almost all the independent countries have enacted social security measures rendering to their resources and capacity to pay.

The Constitution of India was drafted to uphold the ideals that inspired the struggle for freedom i.e 'human freedom in all its majesty'.

“The memorable wellsprings of social protection thought are found in the beginning of a modern upheaval in the twelfth century. Social insurance schemes were also found in the guild benefit societies.<sup>43</sup>The introduction of the German sickness and maternity insurance in 1883 was the initial governmental programme. In 1889 the German programme was broadened to incorporate invalidity, old age and death benefit. Today social insurance has spread throughout the world. It is a vital component of social democracy in social insurance which lay the answer to the challenge of totalitarianism.”<sup>44</sup>

The social protection goes about as an essential part in providing social, economic and lawful security to the voters of a rustic as well as the economic staff once they face the contingency. The socio-economic class play arduous role for the development of the country and that they contribute to the national income. Adequate protection against sure risks and hazards to their lives are vulnerable.

Hence, the thought of 'social security' is a multi-dimensional subject which supports the ideals of social justice and dignity of human being.

Since many decades there has been a constant demand to deal with unforceable event that at some point of time is encountered by every human being. Social protection has been provided in India to an extent. The significance of social security has acquired attention especially within the western countries. Social Security acts as a means to uplift economic condition, the demand for this has stated gaining attention since the past decade.

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<sup>43</sup> Supra, Note 1 p. 264

<sup>44</sup> Syndey H. Ash: *Social Security and Related Welfare Programmes*, pp.15-16

The right of Social security is one of the significant human rights set out in the Universal Declaration of Human Rights, which the General Assembly of the United Nations adopted and proclaimed on December 10, 1948.<sup>45</sup>

A significant milestone in acceptance and promotion of the rights of social security was earlier reached with the establishment of International Labour Organization in 1919,<sup>46</sup> which revived the interest of the government as well as public. The need for providing social security benefit was recognized by the International Labour organization since its inception. Of the twenty-eight social security Convention, Convention (No 102) concerning minimum Standard of Social security is significant as it is regarded as one of the major social instrument that covers the entire social welfare<sup>47</sup>. India has however, ratified only six out of the eighth convention<sup>48</sup>. The public opinion towards protection of workers against employment injuries was becoming stronger which urged the Indian assembly to appoint a committee for framing legislation on the subject of compensation payable to the worker dealt in ILO Convention No.16. The committee submitted its final recommendation in 1922. The Royal Commission on Labour in India examined the provision and made number of recommendation for its improvement. This was the beginning of social security legislation in India. The Employee's Compensation Act<sup>49</sup> is perhaps the first legislation which may be described as a social security measure in a broad sense.

With the passage of time, social security legislation has undergone a revolution in regard to its objectives and scope.

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<sup>45</sup> The Universal Declaration of Human Rights proclaimed that each and every member of the society has a right to social security and this can be only achieved through the cooperation of both national and international authorities.

<sup>46</sup> I.L.O played a significant role in evolving universally acceptable principles and standards of social security which guided the developments in the field of social security throughout the world.

<sup>47</sup> contingencies like sickness, unemployment, old age, death, employment, injury, invalidity etc are dealt by this convention

<sup>48</sup> There are Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labor Convention, 1957 (no. 105), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No.111), Minimum Age Convention, 1973 (No.111), Minimum Age Convention, 1973 (n0.138) and Worst Forms of Child Labour Convention, 1999 (No. 182). India has not ratified the core/ fundamental Convention, 1948 (No.87) and Right to Organize and Collective Bargaining Convention, 1949 (No. 98.) the main reason for non- ratification of ILO Convention No 87 & 98 is due to certain restrictions imposed on the Government servants.

<sup>49</sup> The labour Commission of (1969) agrees on Social Security that, the term 'Workman' may be replaced by the term 'employee' so as to make the Act applicable to all categories of employees. Thus it is Renamed as Employees compensation Act

After India achieved independence the First Five Year Programme under the Prime Minister ship of Late Pdt. Jawaharlal Nehru was launched dealing with welfare related matters<sup>50</sup>.

Social security received new vigor and strength in the hands of Professor B.P.Adarkar who framed a scheme that provide health insurance to workers. The scheme was later modified by the I.L.O experts, *Mr M. Stack* and *Mr. R. Roa* (who were invited by the Government of India to examine it), which resulted in the enactment of the Employees' State Insurance Act, 1948.

The same year also witnessed the passing of the coal mines Provident Fund and Bonus Schemes Act, 1948,<sup>51</sup> which was followed by passing of the Employees' Provident Fund Act, 1952<sup>52</sup>. The Mines Maternity Benefit Act<sup>53</sup> was enacted in 1941 for the benefit of women employees in mines. The enactment of Employee's Compensation and Maternity Benefit legislations did not appear a part of deliberate planning for inception of social security movement. Whatever social security legislations were passed neither based on the international pattern of evolution of the schemes nor on the internal needs of protection according to well-defined schemes of priorities.<sup>54</sup>

Seven year later maternity benefit became the responsibility of the corporation under the Employees' State Insurance Act, 1948. In 1961 the Maternity Benefits Act, 1961<sup>55</sup> was passed. Another significant legislative measure was taken in 1972 when the Payment of Gratuity Act was passed. This Act regulates the payment of gratuity to industrial employees.

Further, the industrial Disputes (Amendment) Act, 1953 provides for unemployment relief in case of retrenchment and layoff. The 1956 and 1957 amendments Acts extend the employment benefit in cases of transfer and closure. The 1976 and 1982 amendments have further widened the scope of unemployment relief. However, these

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<sup>50</sup> The features of the first Five Year programme were to organize health insurance scheme, review of Employee's Compensation Act and Maternity Benefit. Coverage of those who are not covered under the scheme are also the features of this plan year.

<sup>51</sup> To provide for compulsory contributory provident fund for the employees in coal mines only

<sup>52</sup> To provide for the institution of provident funds for the employees in factories and other establishments.

<sup>53</sup> It provided that women workers giving birth to a child must abstain from work compulsorily for four weeks immediately after child birth and also made it obligatory to pay cash benefit for eight weeks of which not less than four weeks should succeed the date of delivery

<sup>54</sup> Varandani, G. " *Social Security For Industrial Workers In India*", Deep & deep Publication (1989), pg71

<sup>55</sup> This act applies to every establishment whether factory, mines or plantation except where the Employees' State Insurance Act is applicable.

social security benefits are available to a very limited section of society. The labour policies of the Government also started in various Five Year Plans.

## **2.2 Concept of Social Security**

The need of the Social security depends upon the circumstance and nature of its mankind which changes according to the change in the society. Thus, the Government should enact legislation or implement the schemes according to the changing need of the society. Concepts of social security differ from country to country and time and again as there is no firmness to formulate the legislation. The growth and development of national economy will profitably affect the social security scheme. Whatever may be the scope of social security it is now considered in almost all the countries of the world as an indispensable chapter of an national disease. Social security may provide for the welfare of persons who become incapable of working by reason of old age, sickness and invalidity and are unable to earn anything for their livelihood. It has been considered essential for workers, though with the development of the idea of welfare state, its scope should be widened to cover all section of society.

The term “social security” varies from country to country. So it's completely different meanings not solely in several countries rather for various classes of persons also even among constant country. The socialist countries offer complete protection to each and every subject of the country from the female internal reproductive organ to topographic point. In different countries, Social Security is extended to the poor voters by means that of assorted schemes adopted by the government keeping pace with the adequacy of resources of the government. In U.S.A. the term “social security” is employed to denote maturity, survivors, in validness and insurance schemes that perform underneath the management of the national. In Britain, the term “social security” encompasses supplementary benefit and social welfare Schemes, and it's comprehensive of social insurance Schemes, Industrial Injury theme and conjointly supplementary benefit Schemes underneath that even supplementary advantages square measure provided to the staff. It conjointly includes the theme of family allowance underneath that children’s allowances square measure provided to the survivors and dependents of the deceased staff. In Newzealand, the term “social security” is employed in relevance the functions of Department of Social Security and a Comprehensive theme of advantages

and health care services for the staff is regulated and ruled by the relevant provisions of the Social Security Act of 1938.

It is found that the approach towards the labour changed according to the time and industrial development, from a long time 'labour' is considered as one of the factors of production process. But now the 'labour' has got importance in the organizational and industrial sector. In order to appreciate the nature and concept of Social security, it is necessary to examine the meaning given from time to time.

The working conditions of the labour were miserable in India. Thus various committees were appointed in order to address the problem of this working group. Constitutional Reforms Committee recommended for the appropriate laws to ensure fair rent and fix tenure to agricultural tenant's<sup>56</sup> National trade Union Federation demanded for the freedom to form association etc as enshrined in the Constitution of India as Fundamental Right<sup>57</sup>.

Though, through the adoption of the Constitution of India, the farmer of the constitution has rightly protected the interest of the citizen through various provision enshrined in the Fundamental rights and Directive Principles of state policies but numerous debates is held for its effective implementation in order promote social justice and equality

Again in 1945 the special committee that was set up, through which there were a constitutional debate on the fundamental rights and their enforceability<sup>58</sup> In response to it *Prof.M.Venkitarangaiah* made a distinction between the civil, social and economic right.

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<sup>56</sup> The constitutional Committee explained the pathetic condition and the necessity to ensure the right of workers. It said that certain fundamental rights of the working classes should be specifically declared so that Indian Parliament should make suitable laws to ensure fair rent and fixity of tenure to agricultural tenants from whom industrial workers are recreated, for the maintenance of health and fitness of workers, securing a minimum wage for them, the protection of motherhood, welfare of their children and the economic consequences of old age, infirmity and unemployment. See Report on Indian Constitution Committee 1917-1918.

<sup>57</sup> Constitution of India, art.19.

<sup>58</sup>) Through the London Round Table Conference Sessions and joint Committee meeting on Constitutional Reforms, the Indian National Congress passed a resolution on declaration of fundamental rights at 45<sup>th</sup> session held in Karachi in March which was modified in its 47<sup>th</sup> Session in Calcutta in 1933 and consequently adopted in the head "Fundamental Rights and Duties and Economic Programme." This was based on the idea political freedom must include real economic freedom of the starving to abolish exploitation of the masses. One of the head under this resolution was related to labour which protect the right of the worker by ensuring decent standard of living, suitable legislation on living wage, hygienic working condition, limited working hours, dispute settlement machineries and maternity leave to women workers and so on. Constituent Assembly Debates, Volume II, available at <http://parliamentofindia.nc.in/ls/debates/vol7p1d.htm> (last visited on 12/2/2016 at 4:30 PM)

Finally after a long debate on the Fundamental right by the Sapru Committee in its “Constitutional Proposals” strongly recommended that the rights are justifiable as well as non-justifiable.<sup>59</sup> Finally, Sri *B.N.Rao*, Member of Constituent Assembly there was insertion of chapter on Fundamental Rights<sup>60</sup>

It is evident from the above that they were appointment of many committees and long debate to protect the interest of the workers and provide social security in Constitution as fundamental right. However, duty was imposed to the State to make legislation; schemes relating to Social Security were made subject in Concurrent list and mandatory provision on the Directive Principles of State Policy<sup>61</sup>.

Government of India, through a planning commission adopted a First Five Year plan through which the recommendation was made to the authorities to make laws and schemes to for the betterment of the labour force.<sup>62</sup> However, the labour policy changed after the constitution was amended and the word “socialist” was added in the preamble of the constitution, through constitutional amendment in 1954.

However, in 1957, planning commission on the working group felt the need of the comprehensive social security scheme to protect the interest of the entire working force and recommended for the same<sup>63</sup> but could not get the desired outcome.

### **2.3 Definition**

The social security is not a fixed concept. It varies from country to country depending upon the cultural factors and development over time.

Social Security, according to Lord Beveridge, “is an attack on five giants, viz., Want, disease, ignorance, squalor and idleness” the concept of social security is essentially related to high ideals of human dignity and social justice. In a modern welfare

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<sup>59</sup> *Ibid Constitutional Assembly debate Volume II*

<sup>60</sup> A right is divided into two parts i.e Part A & B for the draft scheme placed before the members of Constitutional Assembly. According to him, Part A must be the fundamental principle of state policy and those were non-justifiable. The scheme include that the state shall secure to each citizen the right to work; education; protect the individual at the time of old age, sickness or disablement and also right to rest and leisure. Further the state shall ensure that the strength and health of workers. It also prohibits exploitation of the vulnerable section of the society such as abolishment of child labour. It was discussed in the debate that none of the above provisions is stable for enforcement by the courts” and has given the status only as ‘moral precepts having education value”. Constituent Assembly Debates, Volume II, available at <http://parliamentofindia.nc.in/ls/debates/vol7p1d.htm> (last visited on 12/2/2016 at 4:30 PM)

<sup>61</sup> Constitution of India, the Concurrent List, List III -VII Schedule Item No.23 and 24

<sup>62</sup> Government of India, *Working group of the First Five Year Plan 1974-1978* (Planning Commission)

state comprehensive social security scheme take care of person from “womb to tomb”. It is one of the pillar on which the structure of the welfare state rest.<sup>64</sup>

Social security programmes are increasing and is being accepted as the useful and necessary instruments for the protection of labour force. It is a wise investment which yields good dividends in the long run.<sup>65</sup>

According to New Zealand Royal Commission Social Security means that each individual should be provided with opportunities in order to ensure a way of life at par with his fellow human being<sup>66</sup>.

As per *National Commission on labour* 'Social- Security' deals with providing safeguards to the individual at the time of enforceable event<sup>67</sup>.

According to the *Weber and Cohen*, “Social Security is a controversial and dynamic subject with various facets-philosophical, theoretical, humanitarian, financial, administration, social, economic, political, statistical, actuarial, medical and legal.”

*According to Friedlander* Social security is a security which is to be provided to the society in individual in order to deal with various event and occurrence in life.<sup>68</sup>

*W.A. Robson* defines social security somewhat comprehensive as follows :

"Social security is a way of ensuring freedom from want or poverty which is one of the formidable obstacles in the way. or progress. Social security implies insurance against those misfortunes to which an individual remains exposed even when the

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<sup>63</sup> Government of India, *Recommendation of Study Group on Social Security*, (Planning Commission, 1957)

<sup>64</sup> A.M Sharma, *Aspect of Labour Welfare and Social security* 183 (Himalayan Publishing House, Mumbai, Reprint 2006)

<sup>65</sup> ILO defines Social Security as the security that the society furnishes through appropriate organization against certain risks to which its member is exposed. These risks are essentially contingencies against which the individual is unable to effort by their own ability or through any means. The aforesaid term has later been redefined by the I.L.O itself in the following words: “It is convenient to regard as social security services only such schemes as provide a citizen with benefit designed to prevent or cure disease, to support him when unable to earn and restore him to gainful activity”

<sup>66</sup> Social security, according to *New Zealand Royal Commission* should ensure that-everyone is able to enjoy a standard of living much like that of the rest of the community, and thus is able to feel a sense of participation in and belonging to the community see ILO, *Introduction to Social Security*, International Office’, Geneva

<sup>67</sup> The *National Commission on labour* defined the concept of 'Social- Security' as “security that envisages each member of the community shall be protected by collective action against social risks causing undue hardship to meet the basic need. This concept is based on ideals of human dignity and social justice. The underlying idea behind social security is that a citizen should be given protection against certain hazards who has contributed or is likely to contribute to his country's welfare

<sup>68</sup> *Friedlander* defines Social security as “a programme of protection provided by society against the contingencies of modern life- sickness, unemployment, old age, dependency, industrial accidents and invalidism against which the individual cannot be expected to protect him and his family by his own ability or foresight.

condition of society as a whole improves. It does not include the various measures for improving the condition of society full employment minimum wage, factory laws, public health, housing, education and so forth"<sup>69</sup>

*Maurice Stack* defines social security taking note of environmental differences in various countries. He observes that:-

"Each country must create, consume and build up are intellectual, moral and physical vigor of its active generation, prepare the way for its future generations and support the generation that has been discharged from productive life. This is social security, a genuine and rational censor of human resources and values"<sup>70</sup>

The underlying idea and philosophy of Social Security, according to *J. S. Clark*, is "Community planning, community responsibility, community standard of citizens' duties and citizens' rights". It aims to banish poverty and to provide a minimum level of well-being of the people and to make wants under all circumstances unnecessary.<sup>71</sup>

*Ronald Mendelson*, a British writer expressed that social security system refers to : "Any form of organization designed to ensure income security for the whole or for the substantial portion of community by means of compensation to persons for lack of income from their own efforts or those of their bread winner, and also of health services designed to restore the sufferer to full earning capacity and to prevent him and his dependents from incurring under costs of maintenance of health"<sup>72</sup>

According to *Sri V. V. Giri*, the former President of India, the social security is "the security that the state furnishes against the risks which an individual of small means cannot, today, stand up to by, himself or ever in private combination with his fellows."<sup>73</sup>

Thus the above definitions stress one or other aspects of social security. These aspects include income maintenance, medical care and covering of various contingencies and risks. The latest trend in the definition seems to require provisions of preservation of acquired standard of living and ensuring minimum social security to those individuals in the society who are exposed to various inevitable social and economic risks despite general prosperity and who by their own means cannot provide for the same. The benefits

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<sup>69</sup> W.A Robson, *Social Security* 428 (Fabian Society by George Allen & unwin: London, 1895)

<sup>70</sup> Maurice Stack, 'The meaning of Social Security' W. Hoper and W.J. Coner. "Reading in Social Security" P.41

<sup>71</sup> Mongia, Dr. J.N., *Reading in Indian Labour and Social Welfare*, 353 ( Atma Ram & Son, new Delhi, 1976).

<sup>72</sup> Ronal Mendelsohn, *Social security in the British Commonwealth*, (Athlone P; First Edition, 1954)

<sup>73</sup> Giri, V.V., *Labour Problem in Indian Industry*,247 (Asia Publishing House, Reprinted Bombay, 1960)

generally covered by social security schemes, as reflected or inferred from various aforesaid definitions are unemployment benefit, health benefit, survivor's benefit, maternity benefit and so on. The definitions address the ever increasing role of the state in general and the role of employers and the labour in particular. The degrees of the shares of each depend on merits of each case and on the expediency of the situation. Further to understand properly the concept of social security; it is worthwhile to study the activities which are outside the pale of social security. Many activities of state are loosely linked with and promote social security which immediately is not social security activities.

The hypotheses of labour welfare reflect the development of the idea of welfare. Prior, the Government needed to propel the modern associations to give fundamental enhancements to their employees. Such impulse was vital since the businesses used to abuse the labour and treated them in an out of line way. With the progression of time, the idea of welfare has experienced changes.

#### **2.4 Social Security Measures**

The development of industrialized networks made it clear that a great many people need to rely upon the ability to work. In full time work they address their issues for that day, and at whatever point they are not ready to be grinding away, for any reason, they confront hardships. It is to meet this sort of need the idea of standardized savings was created. As per ILO report entitled – "Ways to deal with Social Security" government managed savings is the security that society outfits, through suitable association, against specific dangers to which its individuals are uncovered. The dangers are basically possibilities against which the people of little means can't adequately give by their own particular capacity or premonition alone or even in private blend with others. As indicated by Lord Beveridge, standardized savings is an attack on five goliaths, for example, needs malady, numbness, griminess and inaction.

Standardized savings may for the most part be characterized as security given by the state to its individuals against opportune accidents over which a man has no control. This assurance is given through appropriate association. Hence government managed savings is the security, which the general public particularly the state and businesses, outfit through suitable associations to the individual individuals from the general public who are presented to specific dangers. Government managed savings measures shift from

nation to nation. Social security measures vary from country to country. But the common characteristics of social security are:

- i) They are established by law;
- ii) They provide some form of cash payment to individuals to replace at least a part of the lost income that occurs due to such contingencies as unemployment, maternity, work injury, invalidism, sickness, old age and death;
- iii) The benefits or services are provided in three major ways such as social insurance, social assistance and public service.<sup>74</sup> The different government managed savings benefits ordinarily given have been sketched out hereunder.

## 2.5 Theories of Labour Welfare

In this respect, a concise description of the different theories of representative welfare has been sketched out hereunder.<sup>75</sup>

- i) The Police Theory of Labour Welfare
- ii) The Religious Theory of Labour Welfare. This has two aspects: (a) atonement (b) Investment aspects.
- iii) The Philanthropic Theory
- iv) The Trusteeship Theory
- v) The Placating Theory
- vi) The Public Relations Theory, and
- vii) The Functional Theory of Labour Welfare

### **The Police Theory or Compulsion Theory:**

This Theory trusts that without impulse and periodical supervision and dread of discipline manager won't give even the base welfare offices to the laborers. Man is childish and dependably endeavors to accomplish his goals, even at the cost of welfare of other or abuse of others, those are under him. So to enhance welfare, the state should find a way to forestall abuse of the laborer and offer a base standard of welfare. This

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<sup>74</sup> Hasan, n. , *The Social Security System of India*, 252-256 (Chand and Company, Delhi, 1972).

<sup>75</sup> Moorthy, M.V., *Principles of Labour Welfare*, 28 (Gupta Bros (Books) Visakhapatnam, 1968)

hypothesis stresses on fear and not on the soul of welfare which ought to manage factor. So this hypothesis of impulse prompts:

- i. Making arrangement of laws with respect to least welfare for laborers.
- ii. Supervision and usage of law through appropriate specialist.
- iii. Punishment to managers, who defies the laws.

In the nations where, least arrangement of security and work conditions are not given sufficiently and where the laborers are ignorant, all things considered some degree measure of impulse through laws winds up basic. In any case, in creating nations, where businesses can without much of a stretch do as such, impulse isn't fundamental.

### **The Religious Theory:**

This theory trusts that a business needs to take up welfare exercises in the desire for future advantage either in this life or in some future life. In this way, as indicated by this hypothesis any great work is viewed as 'a venture' both the sponsor and the recipients are remunerated, a few people take up welfare exercises in a soul of expiation for their transgressions. To put it plainly, the considerate demonstrations of welfare are dealt with either as a venture or atonement.

Individual is primarily stressed over his own welfare and only alternatively, with the welfare of others when man offers wealth or stock to different people to accomplish 'Kalyan' or 'Mukti' or 'Moksha' is the goal behind such act. We go over various trusts and benevolent individuals in India which work in light of this conviction.

The religion premise of welfare can't be objective, on a very basic level it depends on philanthropy as isn't useful for the recipient over the long haul. Notwithstanding, these administrations and offices are willful and it relies on the perspectives of manager.

### **The Philanthropic Theory:**

'Philanthropic' signifies 'adoring humankind', Man is accepted to have an instinctual encourage by which he endeavors to expel the agony of others and advance their prosperity. This drive might be a fairly ground-breaking one and may instigate him to perform respectable penances.

Truth be told, the work welfare development started in the early long stretches of the Industrial Revolution with the help of such givers as Robert Own. Boss is the imperative factor of association. He is in charge of the prosperity of his laborers.

### **The Trustship Theory:**

As indicated by this hypothesis, the industrialist or boss holds the aggregate modern bequest and benefit accumulating from them in trust. He utilizes all properties and bequest for himself, for the advantage of laborer and furthermore for the general public. Specialists in the association resembles a minors, they are uninformed as a result of absence of training and are not ready to care for their own particular intrigue. Boss in this way, has the ethical duty to take care of the enthusiasm of their wards, who are the specialists. To give offices to the specialist is an ethical commitment and no lawful authoritative. So manager appreciate giving offices to his laborer. He utilizes the assets under his control for the prosperity of the laborers. This hypothesis trusts laborer as never-ending minors and industrialists as interminable gatekeepers.

This hypothesis trusts that higher generation is of advantage for both the administration and the work. The work will show signs of improvement compensation and maybe an offer in the benefits. This is useful approach of welfare having effectiveness as its protest, which builds efficiency. This hypothesis trusts that both the gatherings have an indistinguishable point as a top priority that is higher creation through better welfare, and this will support work's investment in welfare programs.

### **The Placating Theory:**

The assuaging hypothesis depends on activist approach of the work. This hypothesis trusts that work bunches are more aware of their rights and benefit their requests for higher wages and better guidelines can't be overlooked. Convenient and periodical audit of work welfare measure can make solid air in the association. This approach will expand participation of the specialist for accomplishing the targets of the association. This hypothesis is unsound; however it has frequently been followed up on to anchor the specialists participation.

### **The Public Relation Theory:**

The Public Relation hypothesis depends on the suspicion that the work welfare development might be used to enhance relations between the administration and work. A great relation between the worker and the administration brings effectiveness in work and profits. So work welfare program under this hypothesis functions as a kind of an ad and help an industrialist to develop great and solid advertising. A commercial or display and work welfare program may assist an industrialist with projecting to people in general great picture of the organization. His business, creation and also modern connection may enhance subsequently a two crease advantage to the organization. In any case, one thing is here that, welfare may have a tendency to end up a reputation stunt.

### **The Functional Theory:**

Under the Functional Theory welfare measures is utilized as a way to anchor, save and build up the proficiency and efficiency of work. Clearly if a business takes great care of his specialists, they will have a tendency to wind up more effective and will in this manner venture up creation. In any case, this relies on the sound collaboration amongst administration and association and their approach about the development and advancement of industry.

### **The Development of People Theory:**

As indicated by Lawrence Appley improvement of individuals is a definitive question of any business association, with the goal that the administration should build up the general population i.e. laborers the individuals who are working in the association. By giving the better wages and sufficient offices to the laborer, administration can help the specialists for their social and conservative advancement and created individuals i.e. laborer will create more in the association. This hypothesis trusts that the administration should help to the specialists for their financial improvement through work welfare measure and work should help to the administration for higher creation through high proficiency and diligent work.

Hypothesis of advancement of individuals is imperative one in present day culture of industrialization. Both the work and the administration should help each other for their own advancement; it will prompt improvement of country. This hypothesis might be portrayed as Labor Management Co-task Theory

## **2.6 Conclusion**

The objective of social security is to protect the poor and vulnerable section of the society. Social security may entail smoothing consumption and reducing risk or spreading income over the life cycle. Access to social security has become a fundamental human Right to which every individual is entitled as a member of the society. Social security concept is not new to India. Human needs were confined and social, economic and emotional security were essentially founded absolutely on joint families system, craft, guilds, churches, charitable, philanthropic and different spiritual establishments. With the passage of time, social security legislation has undergone a revolution in regard to its objectives and scope. The Constitution of India was drafted to uphold the ideals that inspired the struggle for freedom i.e 'human freedom in all its majesty'. Even the definition of the term "social security" by various jurist also stress one or other aspects of social security i.e include income maintenance, medical care and covering of various contingencies and risks.

## Chapter III

### Evolution and Development of the concept of “social security” in Organized sector in India.

#### 3.1 Introduction

The idea of social security has developed over some undefined time frame. In the crude social orders it was humanity's battle against weakness to shield him from the caprices of nature or finding the fundamental necessities of day to day life. In ancient age its Joint family system that dealt with the social security needs. With the rapid industrialization, there was a separation of family setup destructing the customary system urging the need of social security. In this way, the idea of social security continued developing and enlarging as there is no commonly accepted definition of the term.<sup>76</sup>

Social security is essential for the individual's development and society. It is regarded as one of the essential human rights<sup>77</sup>. Protection of those rights will help to accomplish different formative objectives of the nation.<sup>78</sup> The notion of social security is extremely old, however the terms, the laws and foundations worked around it with the end goal to standardize the idea. Social security conveys means to deals with the emergencies situation and such security is to be provided by the state<sup>79</sup> yet it additionally reaches out to security by state in the event of possibilities.

The expression “Social Security “was first authoritatively utilized in the title of the unified state's enactment the Social Security Act of 1935-despite the fact that this Act initiated programmes to meet the danger of old age, death, disability and jobless as it were. It showed up again in an Act passed in New Zealand in 1938 which united various existing and new social security benefits. It was in 1941 in the wartime documents known as the Atlantic Charter<sup>80</sup>, of the eight points of the Atlantic Charter, one directly bear on

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<sup>76</sup> Government of India, *Report of the Working Group on Social Security for the Eleventh Five Year Plan 17* (2007-2012) Planning Commission.

<sup>77</sup> Though not one of the Constitutional fundamental *available* at Rights <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

<sup>78</sup> Government of India, *Report of the working group on social security for Twelfth Five year plan* (2012-2017) Planning Commission

<sup>79</sup> Contingencies include the following: (a) unemployment, (b) sickness, (c) maternity, (d) invalidity, (e) old age, (f) death, (g) emergency expenses etc. *See Report of National Commission on Labour II*, Chapter 8, para 54

<sup>80</sup> This Atlantic Charter was a joint declaration released by U.S President Franklin D. Roosevelt and British Prime Minister Winston Churchill on August 14, 1941 following a meeting of the two heads of state in Newfoundland. The Atlantic charter provided a broad statement of U.S and British war aims. It is not a treaty between the two powers. Nor it a final and formal expression of peace aims. It was only an affirmation, as the document declared, “Of certain

Labour Standards, Economic Advancement, and Social Security. As per the fifth clause of the Charter the two prerequisite necessary to bring cooperation amongst the countries working in the economic field are to enhance the labour norms and to work toward achieving social security. The ILO was quick to embrace the term, awed by its incentive as a straightforward and capturing articulation of one of the most profound and most widespread desires of individuals all around the world.<sup>81</sup>

In the Indian context, various authorities characterize the concept of social security distinctively and henceforth there is no commonly accepted definition of the term. As of late some new ideas such as safety nets, social protection and social funds have developed. Extensively, all these concepts are a piece of all-pervasive term social security, which comprises mainly two elements: security related to jobs or work in general and income security.<sup>82</sup> In perspective of this, a broad idea of social security in India incorporates, the sum of all government regulations and provisions that aim at upgrading the general population's living conditions, including enactment/acts/laws, regulation, and planning in the fields of old age, wage, unemployment, health care, and also income security measures such as food security, employment, education and health, housing, social insurance, and social assistance.

### **3.2 Social security: A Definition**

Social security has procured a more extensive understanding in few countries than in others. Essentially it may be interpreted as meaning which protect the interest of the individual through proper policy and effective welfare measure that help the people to overcome their economic and social distress<sup>83</sup>.

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common principles in the national policies of their respective countries on which they based their hopes for a better future for the world."

<sup>81</sup>ILO, *Introduction to Social Security*, International Office', Geneva Pg. 3 Para 2

<sup>82</sup> Government of India, Working Group Paper on Social Security (Planning commission, New Delhi, 2007).

<sup>83</sup> Economic and social distress would be caused by substantial reduction of earnings due to sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children. *see Supra*.

## **Definition by Sir William Beveridge**

In 1942, *Sir William Beveridge* headed a committee that reviewed the national schemes of social insurance in Great Britain amid the post war period<sup>84</sup>

Further his report is viewed as the foundation stone of the present social security system as he has proposed that social security system would play a role in reducing inequality and preventing poverty if social security is intended to fulfill the need to annul need by guaranteeing that every citizen willing to serve as indicates by his power has consistently a pay adequate to meet his obligations.<sup>85</sup>

Keeping into consideration of the Beveridge Social security can be viewed as providing adequate safeguards in terms of income at the time of certain contingencies' in life owing to happening of an event in the life of an individual. Under such circumstances his income might get reduced thus the state should ensure security to such an individual and help him to come out of such a situation.

## **ILO defines social security as follows:**

“The security that society outfits, through appropriate organization, against specific risks, to which individual, are uncovered. These risks are essentially contingencies against which the individuals cannot afford by him”.<sup>86</sup> These risks are being sickness, maternity, invalidity, old age and death. It is the qualities of these contingencies that they imperil the ability of the working man to support himself and his dependents in health and decency. The society owes duty towards the remaining members in case they face certain event that is detrimental to their life<sup>87</sup>.

As per aforementioned definition it established the existence of an organization which endeavor towards social security. Nonetheless the definition does not provide much as the definition does not deal with other facets of life such as political, economic,

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<sup>84</sup> In Beveridge Report social security is characterized as the security of an income when the individual earning capacity is interrupted by unemployment either by sickness, accident, retirement, disability or death. Available at Sir William Beverage, *Report of social insurance and Allied Service*, Beveridge.

<sup>85</sup> Dr. S.C. Srivastava, *Treatise on Social Security and Labour Law*, 5 (Lucknow Eastern Book Company, 1985).

<sup>86</sup> ILO, *Approach as to Social Security*, 81 (Geneva 1942) also see <http://www.allsubjectjournal.com/download/3947/5-8-17-548.pdf>

<sup>87</sup> As per International Labour Organization, The Preamble of the Constitution refers to protect the interest of the workers against sickness, disease and injury arising out of their employment, pension for old age protection of the interests of workers. This is the first time social security is recognized as a right officially. Subsequently Universal

religious etc. which are very pertinent to a humans life. The definition is only confine to dealing with situation and events that an individual may encounter which ultimately leads to reduction of his income or resources. The definition only deals with situations that endanger the individuals and his dependants.<sup>88</sup>

As per the contention of ILO social Security is a multi-winged and multi-faceted concept. It is a social need of the people which ought to be started with birth and should proceed till death.<sup>89</sup>

As per *National Commission on labour* 'Social- Security' deals in providing safeguards to the individual at the time of enforceable event<sup>90</sup>

### **Definition by Fried Lander**

*According to Friedlander* Social security is a security which is to be provided to the society in individual in order to deal with various event and occurrence in life.<sup>91</sup>

As indicated by him the idea of social security is used depict as a program of security to guarantee the supported offer to working class by covering certain risks to which a man is exposed in which these dangers are to such an extent that an individual with pitiful profit can't bear.

### **Definition by Giri (V.V.)**

*V.V. Giri* defines Social security as "Social security, as currently understood, is one of the dynamic concepts of the modern age which is influencing social as well as economic policy. It is the security that the state furnishes against the risks which an

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Declaration of Human Rights also recognized right to social security by stating that every member of society has a right to social security. See also *supra* n.2.

<sup>88</sup> Besides this definition ILO Social Security (Minimum Standards) Convention No.102 of 1952 defines Social Security to mean "The outcome accomplished by an extensively and successful and arrangement of measures for securing people in general (or a large sector of it) from the economic distress, that, in the absence of such measures, would be caused by the stoppage of earning in sickness, unemployment or old age and after death; for making available to that same public medical care as needed; and for subsidizing families bringing up young children *also available at* M .K Srivastava, *Agriculture Labour and the Law* 151 (New Delhi: Deep & Deep Publication, 199).

<sup>89</sup> Meenakshi Gupta, *Labour Welfare and Social Security in Unorganized Sector 80* (Deep & Deep Publication, New Delhi, 2007).

<sup>90</sup> The *National Commission on labour* defined the concept of 'Social- Security' as "security that envisages each members of the society shall be protected against social risks which cause undue hardship to meet the adequate need through available resource and this can be achieved only through collective action". see Government of India, *Report of National Commission on Labour* (Ministry of Labour & Employment).

<sup>91</sup> *Friedlander* defines Social security as "a programme of protection provided by society against the contingencies of modern life- sickness, unemployment, old age, dependency, industrial accidents and invalidism against which the individual cannot be expected to protect himself and his family by his own ability or foresight.

individual of small means cannot, today, stand up to by himself or even on private combination with his fellow countrymen.<sup>92</sup>

*Sinfield* describes Social security situational i.e., as a state of complete protection against the loss of resources.<sup>93</sup>

### **3.3 Essential Characteristics of Social Security**

social security is to provide security in the event of old-age, unemployment, sickness during such situation an individual is not in a position to sustain himself and his family members thus security should be provided in order to help such an individual . In most of the case the social security is provided to an individual by the schemes the following are the prerequisite that should be incorporated in the various schemes that may be introduced time and again by the government.

- i. In the first and foremost place any such scheme should incorporate provision on providing monetary benefits to the individual in case he suffers any loss owing to happening of some event.
- ii. These schemes should be endorsed by way of an enactment. It should also clearly mention the obligations or the duty of the state and any enforcement agency towards implementation of the said schemes.
- iii. It should be managed by both public as well as private organization
- iv. The benefits of the schemes should be available as and when required to the person who is in need of the same<sup>94</sup>

### **3.4 Evolution and Development of the concept of “social security”**

Social security existed from the time immemorial designed to have its own social system in the form of joint family setup, craft guilds, philanthropy etc<sup>95</sup>. While due to Industrialization, Urbanization and Privatization this lost its significance.

#### **Pre-Independence Era:-**

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<sup>92</sup> V.V.Giri, *Labour Problem in Indian Industry* 269 ( Asia Publishing House, Bombay, 1972 )

<sup>93</sup> Danny Pieters, *Social Security: An Introduction to the Basic Principles* 2(Kluwer Law International).

<sup>94</sup> Amoriand Doshi, *Labour Problems and Social Welfare in India*, 333 ( Kitab Mahal Pvt. Ltd. 1966).

<sup>95</sup> Mmuria and Doshi, *Labour Problem and Social Welfare in India*, 339 (Kitab Mahal Pvt. Ltd. Allahabad 1966).

Social security is not a development after independence or after the adoption of the Indian Constitution. Social security existence was there in the form joint family, the caste and the community. It is through these agencies the individual were protected during the time of economic calamity. Along with Vedas and the ancient scriptures, religion also encouraged people to maintain harmony in the society. Kautilya's Arthashastra, manumriti, yagyavalka and Sukranty also talks about the directive principles of state policy.

Among Islamic religion charity was in the form of Khairat and Sadaquah which given in the name of Allah and in certain occasion such as Id-ul-Fitr. Zakat was also paid at the rate of 2.5 percent by the Islam who possess a minimum amount of wealth.

With the industrialization and urbanization, the social set up completely changed. The duty was caste on the state to provide social security after the adoption of Constitution of India through directive Principles of state policies. Through which the Industrial legislation originated.<sup>96</sup>

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 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 Lancashire<sup>97</sup>.

The conditions in those mills were pathetic the labourer had to face excessive working hours. Further there was no provision for safety, welfare, holidays, leave etc. for workers. Indeed, social security was known for its absence<sup>98</sup>. The employees were prone to more accidental injury due to insufficient safety measure. Thus in order to protect their interest, Fatal Accident Act, 1855 was enacted. Through this act the compensation were

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<sup>96</sup> The Apprentice Act was enacted to enable children to learn trades, crafts and to seek employment to earn the living after attending the age of major. This was the first law that was introduced in India relating to labour. Also see S.R Samanth, *Industrial Jurisprudence*, 54 (M/s N.M Tripathi P.ltd., Bombay).

<sup>97</sup> 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) and *available at* <https://dokumen.tips/documents/chapter-2-historical-development-of-indianlabour-.html>

<sup>98</sup> S.C Srivastav, *Social Security and labour laws13* (Eastern Book Company, Lucknow)

paid to the worker and his dependants in case of death or the injury they face at the time of their employment.<sup>99</sup>

In 1859, two legislation were enacted i.e. Indian Merchant Shipping Act<sup>100</sup> and Workmen's Breach of Contract Act<sup>101</sup> accordingly in 1860, Employers and Workmen (Disputes) Act were enacted which act as a mechanism to settle disputes between employer and employee.<sup>102</sup> The workers of the plantation labour rights were protected through Island Emigration Act 1892 and Indian Mines Act, 1901 were subsequently enacted keeping into consideration of the health and safety of the workers in mines.

Thus from the above it is evident that the 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. 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.<sup>103</sup>

The First World War in 1919 prompted various new improvement, the world swung to harmony and reconstruction and brought into being in 1919 the International Labour Organization<sup>104</sup>. In the very same year of its foundation, ILO adopted the Maternity Protection Convention 1919 envisaging payment of maternity benefit. Later between 1921 and 1941 ILO adopted as many as 17 Conventions<sup>105</sup>. One of the important reform that was brought during the Montague- Chelmsford Reforms was the enactment

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<sup>99</sup> Compensation was given only if it is proved in the Court of Law that the accident was not obvious neglect of workers.

<sup>100</sup> This Act was envisaged for regulating employment of seamen and to provide for their better health

<sup>101</sup> This Act was passed which provided for criminal penalties for workers for breach of contract of service.

<sup>102</sup> This Act was the forerunner of Industrial Disputes Act, 1947 which played an important role in modern industrial life.

<sup>103</sup> Laissez-faire was the ruling doctrine of the day

<sup>104</sup> With a sole aim to provide welfare of workers globally ILO was established in 1919. since its inception India is a member of ILO.

<sup>105</sup> workmen's Compensation (Occupational Diseases), Workmen's Compensation (Agriculture) Convention, 1921; Workmen's Compensation (Occupational Diseases) Convention, 1925; Workmen's Compensation (Accident) Convention, 1925; Sickness Insurance (Agriculture) Convention 1924; Sickness Insurance (Industry) Convention, 1927; Invalidity Insurance (Agriculture) Convention, 1933; Survivors' Insurance (Industry, etc.) Convention 1933; Old Age Insurance (Agriculture) Convention, 1933; Old Age Insurance (Industry etc.) Convention, 1933; Survivors' Insurance (Agriculture) Convention 1933; Convention (Revised), 1934; Unemployment Provision Convention, 1934; Maintenance of Migrants Pension Rights Convention, 1935; Sickness Insurance (Sea) Convention, 1936 and Ship-owners Liability (Sick and Injured) Convention, 1936.

of Employees Compensation Act, 1923<sup>106</sup> followed by enactment of Provident Fund Act, 1925<sup>107</sup>, Maternity Benefit legislation<sup>108</sup> and the Employers' Liability Act<sup>109</sup>.

The Royal Commission on Labour to enquire into the working condition of Industrial labour was also appointed in 1929<sup>110</sup>. 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 benefit (at provincial level) was taken. However, various committees were appointed<sup>111</sup> during this period to look into the condition of the workers health.<sup>112</sup>

1919-1942 was marked as the major labour reform in the history as there was an amendment in the previous legislation<sup>113</sup> and new legislation was enacted accordingly<sup>114</sup>. These enactment addresses to certain industrial set up.<sup>115</sup> Through this legislation enactment the workers rights were protected in term of working condition, the workers were granted intervals during the working hours, holidays, bonus. Amid 1942-1946 India couldn't bear to overlook the development and the social security plans in other countries<sup>116</sup> consequently the Governemnt of India held a Third Labour Ministers

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<sup>106</sup> This Act was based on the pattern of U.K legislation, through this an employer is impose liability to pay compensation to workers in the case of death or disablement or occupational diseases that occurred during his employment. Under this Act the dependant or the survivor is entitled to claim compensation.

<sup>107</sup> This Act is enacted with a view to set up a fund which is to be maintained by Government and semi- government organizations. It was made applicable to railways and government industrial establishments. Also

<sup>108</sup> in 1929, the government of Bombay adopted the Maternity Benefits Act followed by central Provinces in 1930. On the basis of Royal commission recommendation on Labour, maternity benefit legislation was passed in Ajmer Merwara, Delhi, Madars and U.P in the year 1934, 1937 and 1938 respectively. Besides these provincial legislations the period also witnessed central legislation such as Mines Maternity Benefit Act 1941 which benefited women employed in mines.

<sup>109</sup> This Act was passed in 1938 which was aimed at abrogating the doctrine of common employment and assumed risk also see <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

<sup>110</sup> 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.

<sup>111</sup> such as 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 insurance schemes

<sup>112</sup> 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

<sup>113</sup> Indian Merchant Shipping Act, 1923; Assam Labour and Emigration Act, 1893; Indian Mines Act, 1901; Factories Act, 1911 improved up in their scope and object. Employers and Workmen (Disputes) Act, 1860 and Indian Fatal Accident Act, 1855 were reenacted as Workmen's Compensation Act and Indian Trade Disputes Act.

<sup>114</sup> Tea District Emigrants Labour Act, 1932; Indian Mines Act, 1923 and Indian Factories Act, 1934.

<sup>115</sup> Mines Maternity Benefit Act, 1941; Indian Motor Vehicles Act, 1939; Indian Dock Labourer's Act, 1934

<sup>116</sup> Such as Beveridge Report of British Social Insurance and Allied Services, Wagnur-Murray Dingal Bill and Marsh Plan (Report on Social Security) in England, U.S.A and Canada respectively available at Agarwala, A.N.: Ten Years of Social Security Moment in India, Economic Essays (Rudra Memorial Volume), p.256.

Conference in the year 1942 in 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 industries<sup>117</sup> in India. A milestone in the area of social insurance was reached by appointment of a committee<sup>118</sup> in March 1943 by the government of India.

Adoption of International labour Organization brought changes in the existence labour legislation<sup>119</sup>. Apart from that after First World War, there was a shift in the outlook of the British Government towards the Indian workers. Indians were offered an opportunity to an organization on neighborhood subject called exchanged subjects which paved a way in the growth of industrialization.

Social security stepped into sound footing after Second World War extending the duty towards the Government authorities to protect the interest of the workers through Defence of India Rule<sup>120</sup>. Subsequently the Government started taking interest on initiating labour policy. The committees<sup>121</sup> were appointed accordingly by the Government who submitted their report taking into the consideration of the condition of the labours and on the basis of their recommendation the policy, schemes or legislation were framed accordingly.<sup>122</sup>

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<sup>117</sup> Such as cotton industries, textile industries, jute industries and heavy engineering industries.

<sup>118</sup> Committee was presided over by Professor B.P.Adarkar followed by the appointment of Health Survey and Development Committee under the chairmanship of Sir Joseph Bhore. The committee was helpful in formulation of the Schemes by Adarkar which was later examined by the, M. Stack and R.Rao ILO experts in 1945 and endorsed a scheme with some modification by including maternity benefits and workmen's compensation in the health insurance and scheme, establishing separate administration that deal with medical and cash benefits and covering perennial factories as well as to non- manual workers.

<sup>119</sup> Children (Pledging of Labour) Act, 1933; Payment of Wages Act, 1936; Employees Liability Act, 1938; Employment of Children Act, 1938; Weekly Holidays Act, 1942 are some of the new enactments passed during this period relating to labour. These new legislations extend to the entire working class as distinguished from workers in specific industry.

<sup>120</sup> Rule 81-A

<sup>121</sup> Dr. B. R Ambedkar appointed a 'Standing Committee' in order to formulate a scheme for health insurance for individual workers. With regard to this another committee was also appointed to make survey to examine the conditions of health and health organizations that were in existence than. Government of India appointed E.S.I. Review Committee in 1966 and its recommendation were considered by Government of India and again referred to provincial governments. But no evidence was available to show that these efforts would become fruitful. The Textile Labour Enquiry Committee formulated sickness insurance scheme and recommended in its report that a compulsory and contributory insurance scheme in which the employer, the workers and the state to contribute has to be put in motion at Bombay and Allahabad initially and extended to other cotton textile centers in the province. Though the centre forwarded such schemes to states, none was implemented due to lack of interest of the provinces. Professor B.R.Adarkar also supported its report. Government of India again deputed Ms.M.Stack and Rao ILO expert to examine Adarkar Report under which they suggested certain modifications. The modified Adarkar Plan is now know as Employees State Insurance Act, 1948

<sup>122</sup> The tendency in planning social security to extend all the employees, employed or self employed, rural or urban in one scheme for assuring maintenance in case of inability to work were highlighted in The two ILO publications viz; 'Approaches to social security—an International Survey' and 'Social security— Principles and Problems Arising Out of War' available at ILO, *Introduction to Social Security*, International Office', Geneva

### **Post Independence period:-**

It was after Indian Independence the worker rights were protected. Crucial labour laws governing the various aspect of work were passed in quick succession. After independence the labour welfare movement acquired new dimension. In most of the case the social security is provided to an individual by the schemes the following are the prerequisite that should be incorporated in the various schemes that may be introduced time and again by the government.

- i. In the first and foremost place any such scheme should incorporates provision on providing monetary benefits to the individual in case he suffers any loss owing to happening of some event.
- ii. These schemes should be endorsed by way of an enactment. It should also clearly mention the obligations or the duty of the state and any enforcement agency towards implementation of the said schemes.
- iii. It should be managed by both public as well as private organization
- iv. The benefits of the schemes should be available as an when required to the person who is in need of the same<sup>123</sup>

Indian Government took keen interest to provide the security to workers and passed a Several<sup>124</sup>. In order to make employers' liable to pay the compensation to the employees and his dependant for the injury caused arising out of and in the course of employment Employee's Compensation Act 1923 was enacted and at state level Compensation Commissioners are appointed to execute the Act<sup>125</sup>. The ESI Act 1948<sup>126</sup> is a social insurance and is a contributory type scheme in which both medical and cash benefits are provided by the Employees' State Insurance Corporation (ESIC). EPF<sup>127</sup> and Gratuity both is paramount Acts for the Social security in old age.

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And ILO, *Approach as to Social Security*,81 (Geneva 1942)

<sup>123</sup> Amoriand Doshi, *Labour Problems and Social Welfare in India*, 333 ( Kitab Mahal Pvt. Ltd. 1966).

<sup>124</sup> Such as Industrial Disputes Act was enacted in 1947 introduced an adjudicating system ; Employees Compensation Act; Employees' State Insurance Act,1948, Payment of Gratuity Act

<sup>125</sup> Recent amendment in the Act has replaced the 'workmen' word with 'employee' to make it gender neutral.

<sup>126</sup> Compulsory health insurance and benefits was introduced in the event of sickness, employment injury maternity and so on to the workers.

<sup>127</sup> The EPF Act is handled by the Employees' Provident Fund Organization (EPFO) which is an autonomous body.

The Government has also enacted the legislation for the protection of workers working in the Mica and coal mines.<sup>128</sup>

The Maternity Benefit Act 1961 is especially for 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 delivery<sup>129</sup>. 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 uplift.

The word social security is not explicitly mentioned in Indian Constitution but the framer of the constitution leaves no doubt that they are concern of the right of the citizen to enjoy social security by the provision of the Fundamental Rights and Directive Principles of State policy<sup>130</sup>. Thus the concept of social security is implicit in the Constitution.

Two fundamental rights relating to working class are under Article 23 & 24 which lays down certain provision against exploitation of weaker section of the society and prohibition of employment of children in factories. Apart from these two provisions the Article 38<sup>131</sup>, 39<sup>132</sup>, 41<sup>133</sup>, 43<sup>134</sup>, 47<sup>135</sup> of the Directive Principles of State Policy of Indian

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<sup>128</sup> Such as Mica Mines Labour Welfare Fund Act, 1946 and Coal Mines Provident Fund and Bonus Scheme Act, 1948 were enacted and these provided for levy of a cess on the output of the industry to finance housing and such other projects like nutrition, provision for water supply, educational and recreational facilities etc. of workmen employed in that sector.

<sup>129</sup> 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.

<sup>130</sup> To implement the ideals in the Directive Principles of State Policy both the Central as well as State Government are empowered to enact legislation in relation to 'labour' as embodied in list III( the concurrent list of seventh schedule of Indian Constitution.

<sup>131</sup> According to Constitution of India, art. 38 "the state should 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". M.P. Jain, *Indian Constitutional Law*, (Wadhwa and Co., Nagpur, 2003)

<sup>132</sup> According to Constitution of India, art. 39 "the state should in particular direct its policy towards securing, inter alia, 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". M.P. Jain, *Indian Constitutional Law*, (Wadhwa and Co., Nagpur, 2003)

<sup>133</sup> According to Constitution of India, art. 41 "the state shall make provision for securing just and humane conditions of work and for maternity relief" M.P. Jain, *Indian Constitutional Law*, (Wadhwa and Co., Nagpur, 2003)

constitution in Part IV refers to the State's obligation to make laws. These Articles in the constitution of India assure social security and socio-economic justice to the citizen.

Thus from the above it is evident that the 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 emergencies<sup>136</sup>.

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

### **3.5 Conclusion**

The concept of Social security is not new concept in India. It was in existence in ancient times in different forms but with the change of time, it changed accordingly. With industrialization and development social security no longer confined to the individual issue it became a issue to safeguard universal human values and more particularly safeguard of the working class. The ILO laid down the standards to uniform the condition of labour of the entire nation. The word social security is not explicitly mentioned in Indian Constitution but the framer of the constitution leaves no doubt that they are concern of the right of the citizen to enjoy social security by the provision of the Fundamental Rights and Directive Principles of State policy.

Thus from the above it is evident that some of the labour legislation is enacted during the British regime and all these early legislation was enacted in connection with specified classes of industries and did not extend to entire working class. Thus the comprehensive labour legislation covering the entire working class is a need of an hour.

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<sup>134</sup> According to Constitution of India, art. 43 "the state should endeavor to secure to all workers work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, etc". M.P. Jain, *Indian Constitutional Law*, (Wadhwa and Co., Nagpur, 2003)

<sup>135</sup> According to Constitution of India, art. 47: the state should regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. M.P. Jain, *Indian Constitutional Law*, (Wadhwa and Co., Nagpur, 2003)

<sup>136</sup> In case of injury, accident, closure. Lock-off, lay out, retrenchment.

## 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.

## Chapter V

### National Policy on Social Security of Labour in Organized Sector

#### 5.1 Introduction

Labour has an essential job in amassed productivity and policy is required to help the conditions of laborers which make their top level input towards this goal. A nation, while drafting an arrangement, must be aware of its subtleties. The initial step towards drafting a policy is to identify the area of problem and then undertake a comprehensive analysis and address for the effective policy. At that point, the existing policies must be scrutinized to decide their deficiencies<sup>223</sup>. Simply after these steps have been attempted, a working strategy can be confined, which appropriately address to the particular issues raised by using best practices to overcome the issue that torment the current regulation. Finally those draft policy must be discharged for legitimate thoughts involving all stakeholders. A policy, so drafted, is considerably more prone to be viable. The primary responsibilities with regard to the Five Year Plans is to adopt a feasible way out which can help in realizing the commitment of the government towards nation building by way of adopting workable policies<sup>224</sup>.

India embarked on the economic change in the year 1990s designed to abridge the role of Government in production, doling out a more important role to domestic private and foreign sector in economic activity, and intensifying their integration with the world economy.<sup>225</sup> Social security policy reforms have attracted increasing attention over the past decades in industrialized as well as developing countries alike. In the industrialized countries, these reforms have been mainly discussed against the background of a rapidly ageing population and hence, the fiscal sustainability of the pension systems mostly based on defined benefit principle. The share of population over 60 is projected to rise from 7.5 percent in 2000 to 10.3 per cent by 2020.<sup>226</sup> With Industrialization, Urbanization and Privatization an increasing segment of new entrants to the workforce emerged i.e casual,

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<sup>223</sup> United Nation Environment Programme, UNEP'S New Way Forward: Environmental and Sustainable Development, Lin Seun ed , 1195, Pg.157

<sup>224</sup> available at <http://www.economicdiscussion.net/labour/policy-labour/labour-policy-of-the-government-india-economics/29326> (last accessed on 18.8.2017 at 10.15 P.M)

<sup>225</sup> Dr. Y.v. Reddy, *Reforming India's Financial Sector: Changing Dimension and Emerging Issues*, May 9, 2006, available at <https://rbi.org.in/scripts/BSSpeechesView.aspx?Id=281> (last Visited on 14/2/2017 at 11:10 A.M)

<sup>226</sup> Ramgopal Agarwala, Nagesh Kumar and Michelle Ribound , *Reforms, labour Market and Social Security Policy in Indian India: An Introduction* (OUP India Publication, 2004)

contractual or self employed in the informal sector while neither of these categories of the workers is covered by social security that existed than.

With Liberalization, Privatization and Globalization 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.

The social security legislations in India are inconsonance with the International standards and as per suggestions of International Labour Organization. However, social security legislations in India have been criticized for having vague policies towards social security. Further lack of effective implementation of the policies by the policy makers is another reason that has been criticized. Although the government has adopted many schemes, however, owing to lack of proper vision and a roadmap towards the implementation of such schemes the result has not yielded any positive outcome. The working group of labour policy<sup>227</sup> established by the planning commission had also highlighted that the various schemes on social security are such that cannot yield effective results for reason that there is lack of through planning on the part of the policy makers.<sup>228</sup> Thus, unless and until all the major factors that impede the proper implementation of the social security schemes needs to be properly examined. The first step in this regard can be unification and harmonization of labour laws.

The era of the liberalization, privatization and globalization of the Indian economy in the last one and half decades have displayed unparalleled challenges to the policy maker in government, industry and service sector to contend in the global market, with competitive edge requiring the industry to enhance its productivity and quality of products This objective cannot be achieved unless and until the workers are highly satisfied in their workplace. Welfare facilities which impact on industrial relation has turned out to be essential to discover what improvement or progresses are made to upgrade their working capacity in an organized sector.

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<sup>227</sup> Government of India, Report of working group for the 11<sup>th</sup> five year plan (2007-2012) under the chairmanship of Prof B.L. Mugekar.

<sup>228</sup>As a matter of fact, there is no policy on social security; no plan for social security and Five year plans are practically silent about this important aspect, though the Indian constitution visualizes a regime of a social security in a welfare state such as India.

There are no comprehensive social security laws and policies or no such things as one umbrella coverage for all workers and they should be more proficient need to be more efficient to cover entire working class.

Labour welfare is one of the major aspects of the national programmes towards bettering the dominant part of workforce and tricking a life hit and work environment of direct solace for the class of population.

The expression "welfare" is exceptionally adaptable and in addition for reaching. It incorporates welfare of labour as well as his family members. The Government has made various rules, regulations and Acts for the improvement of workers life.<sup>229</sup>

However, the Government has made these Acts for the improvement of condition of workers. Several schemes have been developed in India through enactments and policies to provide Social Security to workers in the organized as well as the unorganized sector but the execution of Labour Welfare and security schemes is not satisfactory. Numerous provisions and the Sections of the Act are conflicting and do not provide clear meaning of the Act.

Therefore, it is extremely fundamental to reconsider and reformulate legislation after every five years. The only committees were appointed to review the policy depending upon the existing condition of the workforce and make recommendations but those recommendations are not appropriately adopted. Hence this chapter tries to analyze the National Policy on social security in organized sector.

## **5.2 Historical aspect of Labour Policy**

George Santyana, philoshoper, poet and cultural critic, has magnificently mentioned, "Those who cannot remember the past are condemned to repeat it", and "Only the dead have seen the end of war"<sup>230</sup>.

India has a long and illustrious history with reference to the labour policy that incorporates the facets of trade unionism, collective bargaining, and the liberalization.

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<sup>229</sup> The Government has made legislation for the betterment of labours life in organized sector such as The Factories Act 1948, The Payment of Wages Act 1936, The Employees State Insurance Act 1948, The Industrial Employment Act (Standing Orders) 1946, The Employees Compensation Act 1923, , The Employees' Provident Fund & Miscellaneous Provision Act, 1952, The Employees Provident Funds Family Pension Fund and Deposit-linked Insurance Fund Act, 1952. The Government has made the following Act for the betterment of labours life in an unorganized sector: The Payment of Gratuity Act, 1972, The Minimum Wages Act 1948, The Unorganized Sector Worker's Social Security Act, 2008, National Rural Employment Guarantee Act, 2005.

There is an elegant interconnection among government and trade unionism in India. India moon-faced the experiment of choosing between free collective bargaining and socialist dialogue and India decided on the latter. As a nation, India was for socialism and therefore, the labour soon embraced it, however, the certain issue still persisted in terms of the conflict between the requirement and aspirations of work against India as a country. The issues with organized labour that seems to be maintained until these days is that it is a very minuscule part of the entire labour, besides it is fragmented in a bunch of unions; the normal AITUC was fragmented into AITUC, INTUC, HMS and UTUC between 1947-49<sup>231</sup>. Post-independence, India had to face increasing productivity and achieve self-sufficiency; against this back-drop strife would result in impediments in achieving this goal. Hence, the stress on state-controlled bargaining to avoid strikes or lock outs is most extent doable. This system had limitations in terms of staggering delays and therefore, the behaviour of aggrieved parties in the service<sup>232</sup>. Keeping in mind the assorted short comings and conditions of the labour the government did represent two national labour commissions. This report would be that specialize in the comparatively additional important recommendations of the report of the two national commissions of labour and then the liberalization and its effects.

The primary national labour commission started in 1966 under the chairmanship of Justice Gajendragadkar, submitted their report in 1969. The commission noted the distinct shift from agricultural employment to different sectors and this shift to urbanization had thrown up challenges of providing adequate housing, transport, civic amenities and proper distribution of the gains/resources. They moreover noted the existence of labour legislations sans sufficient social control that imposed sanctions like appointment of welfare officers. Among other things, they furthermore noted the matter of employment for 'children of the soil' and provision of employment for those whose lands were espoused to for development. The second national commission on labour was started under the chairmanship of Ravindra Varma in 1999, that submitted their report in 2002. Among other things they observed the decision for rationalization of labour legislations, provisions for flexibility, to come up with a unified legislation for minimum protection of the workers employed in unorganized sector. One amongst the noteworthy

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<sup>230</sup> Lonesome Lozer, available at <https://lonesomelozer.wordpress.com/tag/those-who-cannot-remember-the-past-are-condemned-to-repeat-it-george-santayana/> (visited on October, 29, 2017)

<sup>231</sup> Oscar A. Ornati, "Problems of Indian Trade Unionism", the ANNALS of the American Academy of Political and Social Science, March 1, 1957

<sup>232</sup> *Ibid*

recommendation strengthens to create the establishment of collective bargaining in India by creating facilities for union recognition.

In addition to the India's opposition to the International Labour Organization convention on the right to strike, the philosophical shift within the framework of the conviction of judiciary that was rather more protecting the labour in the pre-liberalization era delivered some important landmark judgments post liberalization associated with the contract labour, the right to strike that has laden the interests of the workers and trade unions normally. The Supreme Court of India has reaffirmed the independence of the executive in case of privatization, been crucial for the workers right to protest/strike, obligatory restraints on public protests, validated the usage of the contentious Essential Services Maintenance Act and also reversing earlier judgments on creating the contract labour permanent<sup>233</sup>

### **5.3 Salient Features of Labour Legislation:**

Before dealing into the policy of the government for the improvement of the workforce it is important to lay down the salient features of the labour legislation as through this features the policy is framed accordingly by the Government of India. Salient features Labour legislation is based on certain fundamental principles such as:-

- a) Social Equity<sup>234</sup>
- b) Social Justice<sup>235</sup>
- c) National Economy<sup>236</sup> and
- d) International Uniformity.<sup>237</sup>

Proper and effective laws can be very useful towards safeguarding the interest of the workers. Unless and until the laws are proper and effectively implemented the workers will be subjected to exploitation as per the whims of his employer. The Labour policy is being formulated as per the directives enumerated under Part IV of the

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<sup>233</sup> Girish Balasubramanian; Manoranjan Dhal, 'Industrial Relations Situation in India: A Report'; Japan Labor Issues, vol.1, no.3, November- December 2017.

<sup>234</sup> Social equity is a concept that applies concerns of justice and fairness to social policy i.e equal access to health care, equal opportunities for employment etc.

<sup>235</sup> Another principle on which the labour legislation is enacted is based on the social justice. Social Justice means equal distribution of wealth, opportunities and privilege within society.

<sup>236</sup> The national economy is an essential for implementing labour legislation in the country. Thus general economic situation of the nation must given top priority for enacting welfare measures.

Constitution. The aim is to realize the constitutional goals of achieving justice: social, economic and political.

The economy growth of the country not only leads to increase the production but combat social evils such as poverty, unemployment etc. Thus Seventh Plan recommended utilization of available human resources for development. Thus this can be achieved only through proper policy plan and implementation.<sup>238</sup> The following table 1.1 shows the existing social security schemes in India.

**Table. 1.1**  
**Current social security schemes in India**

<b>FUND SOURCE</b>	<b>EXAMPLES</b>	<b>ELIGIBILITY</b>
Taxpayer Funded	IGNOPS, AABY, IGNDPS, NFBS, RSBY	Select category of BPL
Health related, taxpayer funded	Government health schemes	All citizen
Employer (Legislation based)	Maternity benefit, gratuity, Employee Compensation	Organized sector
Fund ( Employer + Employee)-under law	EPF, EPS, EDLI, ESI Schemes	Organized Sector
Cess Based	Beedi worker welfare schemes	Concerned workers
Voluntary	PMJJSY, PMSBY	Those who opt
State/ local bodies/ ministries	Old age pension, disabled pension, Bunkar Bima	Selected beneficiaries

<sup>237</sup> International uniformity is another principle on which labour laws are based.

<sup>238</sup> Also see <http://www.economicdiscussion.net/labour/policy-labour/labour-policy-of-the-government>

#### 5.4 Development of Labour Policy in Five Year Plan

The planned economic development in India began in 1951 with the First Five Year Plan(1951-56) and till date India have Twelfth Five Year Plan (2012-2017). The Five Year Plans are centralized and integrated national economic programs.

The First Five Year Plan<sup>239</sup>, with regard to labour problems circled around two objective; one to works towards the welfare of the working class and second towards the growth of the nation with emphasis on rights of the workers.<sup>240</sup> The plan focused on agriculture, power and transport and price stability. It was a successful plan as the objectives of rehabilitation of refugee, food self sufficiency and control of prices were more or less achieved, with this aim the government launched a schemes i.e Community Development Programme (CDP) in 1952 for overall development of rural areas and people participation.

The Second Five Year Plan<sup>241</sup> focused on rapid industrialization, heavy and basic industries. The industrial policy 1956 was based on the establishment of a socialistic pattern of society as the goal of economic policy. The Government aim was to make a relation between the increases in wages with increase in production. The Second Plan explicitly provided that income more than the minimum wage ought to be viewed with the results. Thus, keeping this into consideration the Minimum Wages Act was enacted in 1948 in order to enable fixing and revision of wages for certain categories of employment. However, the authorities were conscious of various loopholes in the said Act. Besides this enactment significant steps were adopted by the government: the first one is workers' participation in management and Joint management councils<sup>242</sup> which were started for experimental purpose. The second one was a Scheme for workers' education<sup>243</sup>.

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<sup>239</sup> First Five Year Plan (1951-1956) was launched in 1951 which mainly focused in development of the primary sector. It was based on the Harrod-Domar model with few modifications.

<sup>240</sup> Such as workers' right to form association, organization and collective bargaining etc.

<sup>241</sup> The Second Five Year Plan (1956-61) simple aggregative Harrod Domar Growth Model was again used for overall projections and the strategy of resource allocation to broad sector as agriculture & Industry was based on two & four sector prepared by Prof. P.C. Mahalanobis. Plan is also called Mahalanobis Plan.

<sup>242</sup> The Council through mutual consultation settles disputes between employers and workers and brings harmonious relationship between them.

<sup>243</sup> The scheme includes training of teacher and administration. Through this scheme government aims to help the worker to gain self-confidence through which they increase their ability to take advantage of protection available to them labour laws.

Based on the experience of the first two plan agriculture was given top priority to support the exports and industry. Under the Third Five Year Plan, labour policy was planned to render immediate and long term need of a planned economy. The Third Five Year Plan<sup>244</sup> aim was to make India a ‘self-reliant’ and ‘self generating’ economy. It has been stated in the Third Five Year Plan that due to the development of industrial sector it necessitated the formulation of sound labour policies to safeguard the interest of the workers.<sup>245</sup> Thus, the government in their endeavor constituted many committees towards formulation of effective labour policies. In this regard the Trade unions<sup>246</sup> were acknowledged as a vital branch of the industries and a significant group contributing towards the economy of the country. Besides this the Third Plan had assigned a commission to examine the issues dealing with bonus claims and accordingly to formulate policies with regard to the same. Beside this the during this plan the Intensive Agriculture Development Programme (IADP) to provide loan for seeds and fertilizer to farmers were launched in amid the year 1960-61. Intensive Agriculture Area programme<sup>247</sup> (IAAP) to develop social harvest in agriculture area was launched during 1964-65. Along with this scheme Credit Authorization Scheme (CAS)<sup>248</sup>, High yielding variety programme (HYVP)<sup>249</sup> and Green Revolution<sup>250</sup> was launched by the Government of India during 1961-1966. The Third Plan highlights that irrespective of having a scheme on subsidized housing for the workers the scheme proved to be a failure. Thus, the plan proposed to adopt a new policy in order to provide decent housing facilities for the industrial workers as early as possible.

The first two years of plan saw record production. The last three years did not measure up due to poor monsoon. Implementation of Family Planning Prorammes was

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<sup>244</sup> Government of India, Third Five Year Plan (1961-66), Planning Commission.

<sup>245</sup> *Ibid*

<sup>246</sup> According to the Code of Discipline, a trade union should be recognized in an establishment with at least 15 per cent of the workers enrolled as members for a continuous period of six months. In the case of several unions, the union with the largest membership will be recognized. Once a union is recognized he shall represent the worker for a period of two years.

<sup>247</sup> The core aim of the IAAP was that “much greater emphasis should be given to the development of scientific and progressive agriculture in an intensive manner in the area which has high production potential”. The idea was to cover at least 20% of the cultivated area of the country. The emphasis was on the import crops such as Wheat, Rice, Millets, Cotton, Sugarcane, Potato, Pulses etc. IAAP paved the way for Green Revolution in the country.

<sup>248</sup> Under CAS all commercial banks had to obtain prior approval or authorization of the RBI before granting a loan of Rs 1. Crore or more to a single borrower. It was launched in 1965 and was withdrawn in 1989.

<sup>249</sup> The High Yielding Variety Programme was launched in 1996-67 with an objective to attain self sufficiency in food by 1960- 71. The main aim of the programme was to increase the productivity of food grains by adopting latest varieties of inputs of crops.

<sup>250</sup> The Green revolution was launched to increase the productivity. However, It was confined to wheat production.

the major target of the Fourth Five Year Plan<sup>251</sup>. The Government under this plan launched Rural Electrification Corporation to provide electricity in rural areas in 1969, Scheme of Discriminatory Interest Rate<sup>252</sup> in 1972, Accelerated Rural Water Supply Programme (ARWSP)<sup>253</sup>, Drought Prone Area Programme (DPAP) in 1973<sup>254</sup>, Crash Scheme for Rural Employment (CSRE)<sup>255</sup> and Marginal Farmer and Agriculture Labor Agency (MFALA)<sup>256</sup>. In the backdrop of economic crises arising out of run-away inflation fuelled by hike in oil prices and failure of the Government takeover of the wholesale trade in wheat the Fifth Five Year Plan was prepared and launched by D.P.Dhar. It proposed to achieve two main objectives such as 'removal of poverty (Garibi Hatao)' and 'attainment of self reliance' under this Five Year Plan the Government of India launched Small Farmer Development Scheme (SFDS)<sup>257</sup>, Command Area Development Programme (CADP)<sup>258</sup>, Twenty Point Programme<sup>259</sup>; National Institute of

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<sup>251</sup> Government of India, Fourth Five Year Plan (1969-74), Planning Commission.

<sup>252</sup> This scheme provides loan to the weaker section of the society at a concessional interest rate of 4 %.

<sup>253</sup> The Government of India introduced ARWSP in 1972 to assist the States and Union Territories in order to accelerate the pace of coverage of drinking water supply.

<sup>254</sup> The basic objective of the programme is to minimize the adverse effect of drought on production of crops and livestock. The programme also aims to promote overall economic development and improving the socio-economic conditions of the resource poor and advantaged sections inhabiting the programme areas.

<sup>255</sup> The Crash Scheme for Rural Employment (CSRE) spanned from 1971-72 to 1973- 74. This scheme aimed at employment generation in all the districts through the execution of labour intensive projects and creation of durable assets in consonance with the local development plans.

<sup>256</sup> MFALA was launched in 1973 to provide technical & financial assistance to marginal farmer.

<sup>257</sup> Small Farmer Development Scheme (SFDS) was launched in 1974 to provide technical & Financial assistance to marginal farmer

<sup>258</sup> The Command Area Development programme was launched in 1975 to narrow the gap between irrigation potential created and actually utilized in major and medium irrigation scheme

<sup>259</sup> The Twenty Point Programme was initially launched by Prime Minister Indira Gandhi in 1975 and was subsequently restructured in 1982 and again in 1986. With the introduction of new policies and programmes it has been finally restructured in 2006 and it has been in operation at present. The Programmes and schemes under TPP- 2006 are in harmony with the priorities contained in the National Common Minimum Programme, the Millennium Development Goals of the United Nations and SAARC Social Charter. The restructured Programme, called TPP-2006 was approved by the Cabinet on 5<sup>th</sup> October, 2006 and operated w.e.f 1.4.2007. the objective of this scheme is to eradicate poverty and to improve the quality of life of the poor and the underprivileged population of the country

Rural Development<sup>260</sup>; Desert Development Programme<sup>261</sup> Food for Work Programme<sup>262</sup>; Antyodaya Yojana<sup>263</sup> and Training Rural Youth for Self Employment TRYSEM<sup>264</sup>.

The Sixth Five year plan focused on increase in national income, modernization of technology, ensuring continuous decrease in poverty and unemployment.<sup>265</sup> During this Sixth Five Year Plan the Government launched NREP<sup>266</sup> which also continued in the Seventh Five Year Plan as an important component of anti-poverty strategy. For the first time a chapter on women and development appeared in the Sixth Five Year Plan (1980-85), it was felt that there should exist a separate schemes which motivate the women to come together and engage themselves in the economic activity, thus DWCRA<sup>267</sup> was launched, Rural Landless Employment Guarantee Programme<sup>268</sup>, in order to aware the farmer to use the improved instruments of agriculture Farmer Agriculture Service Centers (FASCs) was set up in 1983--1984 during this plan year. Along with the above National Fund for Rural Development<sup>269</sup> was also launched during this plan.

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<sup>260</sup> National Institute of Rural Development and Panchayati Raj (NIRDPR) is an Indian institute for research in rural development launched in the year 1977. it aims to provide Training, investigations and advisory for rural development

<sup>261</sup> Desert Development Programme (DDP) was launched in the year 1977-78. The basic object of the programme is to minimize the adverse effect of drought and control desertification through rejuvenation of natural resource base of the identified desert areas. The programme strives to achieve ecological balance in the long run. The programme also aims at promoting overall economic development and improving the socio-economic conditions of the resource poor and disadvantaged sections inhabiting the programme areas.

<sup>262</sup> Food for Work Programme was launched in the Year 1077-78 to provide food grains to labour. However this programme was harshly criticized by the Planning Commission and the Comptroller and Auditor General of India. Presently the Food for Work is one and the same as the part of MGNREGA Act which guarantees the 'Right to Work' and ensure minimum 100 days work for the rural poor as a livelihood security.

<sup>263</sup> It is a scheme of Rajasthan, providing economic assistance to poorest families.

<sup>264</sup> TRYSEM was launched in 1979 as a separate national scheme for training rural youth for self employment. Huge backlog of unemployment among the rural youth was the reason for the launch. Forty youth, both men and women were to be selected in each block and trained in both skill development and entrepreneurship to enable them to become self employed.

<sup>265</sup> The labour policy adopted in the Sixth Plan was oriented towards establishment of harmonious relations between employers and workers, to accelerate the rate of industrial development and to create expanding opportunities for employment, to raise the living standard of workers in general and the weaker section in particular.

<sup>266</sup> The National Rural employment Programme replaced the food for work Programme. It was launched in October, 1980 and became a regular plan programme from April 1981 with a view to significantly increase employment opportunities in rural areas. This was viewed as the major step towards poverty alleviations.

<sup>267</sup> DWRCRA was launched in September 1982 with an object to improve the socio-economic, health, and educational status of rural women by providing financial assistance and creating employment opportunities for them to become self-reliant and raise their standard of living. The target group of DWRCRA is the same as that under IRDP, i.e. the families living below the poverty lines.

<sup>268</sup> RLEGP was launched on August 15, 1983 with the object of a) Improving and expanding employment opportunities for the rural landless with a view to providing guarantee of employment to at least one member of every landless household up to 100 days in a year and b) creating durable assets for strengthening the infrastructure as to meet the growing requirements of the rural economy.

<sup>269</sup> NFRD was set up in 1984 to mobilize fund from individual, corporate and non-corporate bodies for undertaking rural development activities. The Fund accrued were to be utilized for implementing projects in the field of rural development. Since the contribution to the NFRD was too small to get tangible result, the Government approved the winding of the NFRD. No contribution in the NFRD was received beyond April 2004. The funds available under NFRD

However, the Seventh Five Year Plan was very successful it aimed at accelerating food grain production, raising productivity and increasing employment opportunities with focus on 'Food' work & productivity'. Numerous schemes was adopted during this Seventh Five Year Plan (1985-90) such as Comprehensive Crop Insurance Scheme<sup>270</sup>; Council for Advancement of People's Action & Rural Technology (CAPART)<sup>271</sup>; Self Employment Programme for the Urban Poor (SEPUP)<sup>272</sup>; National Drinking Water Mission (NDWM)<sup>273</sup>; Service Area Account<sup>274</sup>; Jawahar Rozgar Yojana<sup>275</sup> (JRY); Agriculture & Rural Debt Relief Scheme (ARDRS)<sup>276</sup>; Scheme for Urban Micro Enterprise (SUME)<sup>277</sup>; and Scheme of Housing and Shelter Up-gradation (SHASU)<sup>278</sup>.

The major objective of the Eighth Five Year Plan<sup>279</sup> is to create employment, check population growth, and overall human development such as Primary health facilities, Drinking Water & Vaccination in all villages, Growth and diversification of agricultural activities etc. In the Eighth Five Year Plan the Government announced the new Industrial Policy whereby it de-licensed most industries, reduced import tariffs, opened door for foreign direct investment, introduced a market determined exchange rate system. The plan was launched with twin objectives of alleviation of poverty and unemployment. This plan period saw launching of many flagship programmes such as National Renewal

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was transferred to CAPART for taking up well-identified project fitting the basic objectives of NFRD over a period of 2 years

<sup>270</sup> In the event of failure of crop due to natural calamities a comprehensive Crop Insurance Scheme provide financial assistance to the farmer. It was introduced in 1985. The participation in the scheme was voluntary and the states were free to opt for the scheme. All framers who availed crop loans from Commercial Banks, regional Banks and Cooperative Banks for growing wheat, paddy, maize, pulses and oilseeds were eligible for coverage under the scheme. CCIS remained under implementation till 1999. to enlarge the coverage in terms of farmers (loanee and non-loanee both), more crops and more risk, 'National Agriculture Insurance Scheme (NAIS)- Rashtriya Krishi Bima Yojana) was introduced in 1999-2000

<sup>271</sup> CAPART was constituted in 1986 and since its inception has initiated various programmes in rural development directly through NGOs in every State and large number of districts in the country, CAPART was formed by amalgamating two agencies the ' Council for Advancement of Rural Technology' (CART and People's Action for Development India (PADI). CAPART is an autonomous body registered under the Societies Registration Act, 1860 and is functioning under the aegis of Ministry of Rural development, Government of India.

<sup>272</sup> SEPUP was set up in 1986 to promote self employment through credit and subsidy.

<sup>273</sup> NDWM was launched in 1986. It was renamed as Rajiv Gandhi National Drinking Water Mission in 1991.

<sup>274</sup> Service Area Account was launched in 1988 for rural credit.

<sup>275</sup> JRY was launched in April 1, 1989 by merging National Rural Employment Program (NREP) and Rural Landless Employment Guarantee Programme (RLEGP), it was a consolidation of the previous programme and it was largest National Employment Program of India. Yojan was implementing on rural scale. Since April 1, 1999 this Yojan was replaced by Jawahar Gram Samridhi Yojna. Later from September 25, 2001, Jawhar Gram Samridhi Yojan was merged with Sampoorna Grameen Rozgar Yojan.

<sup>276</sup> This scheme exempt Bank loan upto 10000 for rural artisan and weavers

<sup>277</sup> SUME was launched in 1990 to assist urban small enterprise.

<sup>278</sup> SHASU was launched in 1990 to provide employment by shelter up-gradation.

<sup>279</sup> Eighth Plan (1992-1997).

Fund<sup>280</sup>; Employment Assurance Scheme (EAS)<sup>281</sup>; Member of Parliament Local Area Development Scheme (MPLADs)<sup>282</sup>; Scheme for Infrastructural Development in Mega Cities (SIDMC)<sup>283</sup>; District Rural Development Agency (DRDA)<sup>284</sup>; Mahila Samridhi Yojna<sup>285</sup>; Child labour Eradication Schemes<sup>286</sup>; Prime Minister Integrated Urban Poverty Eradication Programme (PMUPEP)<sup>287</sup>; Mid day Meal Scheme<sup>288</sup>; Group Life Insurance Scheme for Rural Areas<sup>289</sup>; National Social Assistance Programme<sup>290</sup>; Ganga Kalyan Yojna<sup>291</sup>; Kastoorba Gandhi Education Scheme<sup>292</sup>; and Swaran Jayanto Shahari Rojgar Yojna<sup>293</sup>.

The Ninth Five Year Plan<sup>294</sup> focused on “Growth with Social Justice & equality”. The Plan recognizes the integral link between rapid economic growth and the quality of life of the mass of the people. It also recognizes the need to combine high growth policies with the pursuit of our ultimate objective of improving policies which are pro-poor and are aimed at the correction of historical inequalities.

The Ninth Plan was motivated towards attainment of below mentioned goals in the area of labour policy:

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<sup>280</sup> The Government of India had announced to establish a NRF as a part of the slew measures announced in the New Industrial Policy of 1991. The Fund was later established in February, 1992 for a period of 10 years. The main objective of the Fund was to provide a social safety net to the workers who are likely to be affected by technological up-gradation and modernization in the Indian Industry.

<sup>281</sup> EAS was introduced w.e. f 2<sup>nd</sup> October, 1993 in the rural areas of 1778 blocks of 261 districts in which the Revamped Public Distribution System was in Operation (RPDS). The primary objective of this scheme is to provide gainful employment during lean agricultural season in manual work to all able bodied adults in rural areas who are in need and desirous of work, but cannot find it.

<sup>282</sup> MPLADS is a scheme formulated by Government of India on 23 December 1993 that enables the member of Parliament to recommend developmental work in their constituencies with an emphasis on creating durable community assets based on locally felt needs

<sup>283</sup> This scheme provide project for water supply, sewage, drainage, urban transportation, land development and improvement slums in metro cities.

<sup>284</sup> Through this scheme a financial assistance is provided to rural people by district level authority.

<sup>285</sup> This scheme encourages rural women to deposit in post office scheme.

<sup>286</sup> This is the major scheme for the rehabilitation and eradication of the Child labour. A major programme was launched on 15 the August 1994 for rehabilitating child labour working in hazardous occupation. At present the scheme is operational in 266 districts in 20 States around 3.39 lakhs children through 7311 schools.

<sup>287</sup> This scheme was launched to eradicate urban poverty.

<sup>288</sup> The Mid day Meal Scheme is a school meal programme of the Government of India designed to better the nutritional standing of school-age children nationwide, the programme supplies free lunches on working days for children in primary and upper primary classes in government, government aided, local body, Education Guarantee Scheme and alternate innovative education centers.

<sup>289</sup> This scheme provides insurance in rural area for low premium.

<sup>290</sup> This scheme was launched to assist BPL people

<sup>291</sup> This scheme provides financial assistance to farmers for exploring ground water resources.

<sup>292</sup> This scheme was launched to establish girl's school in low female literary areas.

<sup>293</sup> SJSRY came into effect on 1<sup>st</sup> December 1997. The scheme strives to provide gainful employment to the urban unemployment and under employed poor, through encouraging the setting up of self- employment ventures or provision of wage employment.

<sup>294</sup> Government of India, Ninth five Year Plan (1997-2002), Planning Commission.

- i. Primacy to agriculture and rural development with a view to generating adequate productive employment and eradication of poverty;
- ii. Accelerating the growth rate of the economy with stable prices;
- iii. Ensuring food and nutritional security for all, particularly the vulnerable sections of society;
- iv. Providing the basic minimum services of safe drinking water, primary health care facilities, universal primary education, shelter, and connectivity to all in a time bound manner;
- v. Containing the growth rate of population;
- vi. Ensuring environmental sustainability of the development process through social mobilization and participation of people at all levels;
- vii. Empowerment of women and socially disadvantaged groups such as Scheduled Castes, Scheduled Tribes and Other Backward Classes, as these groups are important contributors towards the economic development of the nation. Promoting and developing people's participatory institutions like Panchayati Raj institutions, cooperatives and self-help groups;
- viii. Strengthening efforts to build self-reliance.

There is no denying the fact that there was a boost in the Indian economy owing to the reformed policy. There was a rise in the growth rate from 5.8% in the Seventh Plan (1985 to 1990) to 6.8% in the Eighth Plan. And yet there are many dimensions in which performance has lagged behind expectations. Faster growth has not reduced poverty as much as it should have, nor has it created the number of high quality jobs we need to satisfy the aspirations of our increasingly educated youths. Growth has not been as regionally balanced as it should have been. The deficiencies in social development indicators have also continued and our low level of social development is a major concern.

The Eighth Plan had identified peoples' initiative and participation as a key element in the process of development, particularly in improving the effectiveness of development outlays which has been declining over the years. It had also recognized that the role of the Government should be to facilitate the process of peoples' involvement by creating right types of institutional infrastructure, particularly in rural areas. The progress on this front has not been entirely satisfactory principally due to the fact that the other tiers of the

Government were not fully integrated into the development strategy. The process of social mobilization and development of peoples' initiatives cannot be achieved without the active support and involvement of the political system at all levels. The Panchayat Raj bodies in rural areas and Nagar Palikas in urban areas will have to be directly involved in the development process. People's involvement via their elected representatives will be realized through genuine democratic decentralization.

The Government of India during Ninth Five Year Plan have adopted programme such as Bhaya Shree Bal Kalyan Policy for the up-liftmen of female chlds; Annapurna Yojna<sup>295</sup>; Swaran Jayanto Gram Swarojgar Yojana<sup>296</sup>; Jawahar Gram Samridhi Yojan<sup>297</sup>; Jan Shree Bima Yojna<sup>298</sup>; Pradhan Mantri Gramodaya Yojana<sup>299</sup>; Antyodaya Anna Yojna<sup>300</sup>; Pradhna Mantri Gram Sadak Yojna<sup>301</sup>.

During the Tenth Five Year Plan it was felt that the present infrastructure for improving labour productivity and for ensuring the welfare of workers covers only a very small segment of the labour force. Thus the main object of the Tenth Five Year Plan<sup>302</sup> is to increase the coverage of the labour market institutions. The essential condition for this is the provision of gainful employment to the entire labour force

However, certain recent trends make the attainment of these objectives a more challenging task. The growth of population in the working age group is at a substantially higher pace than that of the average population. Agriculture used to provide employment to a major part of the workforce.

However, the number of workers deployed in agriculture activities has not increased in recent years and it has even declined in certain parts of the country. The pace of growth of jobs in the organized sector has slowed down primarily because number of jobs in the public sector (which has a three-fourth share in organized sector jobs) has reduced and employment elasticity in the private sector has decreased significantly.

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<sup>295</sup> Through this scheme 10 kg of food grains is given to elderly people.

<sup>296</sup> This scheme provides self employment in rural areas.

<sup>297</sup> This scheme was launched for village infrastructure.

<sup>298</sup> This scheme provides food security to poor.

<sup>299</sup> It provides basis needs of rural people.

<sup>300</sup> It provides food security to poor.

<sup>301</sup> Through this scheme all villages are connected with nearest pukka road.

<sup>302</sup> Government of India, Tenth Five Year Plan (2002-2007), Planning Commission.

The economic policy in general and labour policy in particular, must facilitate the opening up of new employment avenues. In agriculture and related sectors, there is need to create more employment opportunities in horticulture, animal husbandry, poultry, and development of watersheds. However, the non-agricultural sectors of the economy will have to absorb the bulk of the increase in labour force. The labour sector has to focus at those kinds of establishments where much of the labour finds work. However, during this plan year the Government of India launched Universal Health Insurance Scheme<sup>303</sup>; Vande Mataram Scheme (VMS)<sup>304</sup>; National Food for work Programme<sup>305</sup>; Kastoorba Gandhi Balika Vidyalaya<sup>306</sup>; Janani Suraksha Yojana<sup>307</sup>; Bharat Nirman<sup>308</sup>; National Rural Health Mission<sup>309</sup>; Rajeev Gandhi Grameen Vidyuti Karan Yojna<sup>310</sup>; Jawahar Lal Nehru National Urban Renewal Mission (JNNURM)<sup>311</sup> and National Rural Employment Guarantee Schemes (NREGS);

The Eleventh Five Year Plan<sup>312</sup> aimed “Towards Faster & More Inclusive Growth”, placing highest priority on education. India will believably march ahead to join the front ranks of the great nations of the world overcoming the challenges of ensuring that everyone has an access to education and skill building in their activity.

The Eleventh Plan provides an opportunity to restructure policies to achieve a new vision of growth that will be much broader based and inclusive, bringing about a faster

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<sup>303</sup> UHIS was launched by the Government of India on 14<sup>th</sup> July 2003. In addition the Rashtriya Swasthya Bima Yojana (RSBY) was rolled out from 1<sup>st</sup> April 2008 by the Government to provide the health insurance coverage for BPL families.. The schemes also have been extended to the Unorganized sector workers such as MNREGA workers, street vendor, beedi & domestic workers etc.

<sup>304</sup> This scheme aimed at checking spiraling maternity, mortality rate in country. This scheme envisages provision of free out-patient department services, including antenatal check-up of all pregnant women and family planning counseling to new mothers regularly by the government and private doctors at their facilities on the 9<sup>th</sup> of every month.

<sup>305</sup> NFWP was launched by minister of rural development; central government on November 14, 2004 in 150 of the most backward districts of India with the objective of generating supplementary wage employment.

<sup>306</sup> KGBV is a residential girls’ secondary school run by the Government of India for the weaker section in India.

<sup>307</sup> JSY was launched on 12 April 2005 which aims to decrease the neo-natal and maternal deaths happening in the country by promoting institutional delivery of baby. This is a safe mother-hood intervention under the NRHM.

<sup>308</sup> It is an Indian business plan for creating and augmenting basic rural infrastructure. It comprises project on irrigation, roads (Pradhan Mantri Gram Sadak Yojana), housing (Indira Awaas Yojana), water supply (National Rural Drinking Water Programme), electrification (Rajiv Gandhi Grameen Vidyutikaran Yojana) and telecommunication connectivity.

<sup>309</sup> NHM was launched by the Government in 2013 subsuming the National Rural Health Mission and National Urban Health Mission. It was further extended in March 2018 to continue till march 2020.

<sup>310</sup> RGGVY is implementing in Indian states mostly to provide benefits to households below the “poverty line” through a free connection but chargeable consumption of power. The main object of the scheme are i) electrifying all villages and habitations as per new definition. ii) providing access to electricity to all rural household.iii) providing electricity connection to Below Poverty line families free of charges.

<sup>311</sup> JNNURM is a scheme to improve the infrastructure in the urban areas and thereby improving the quality of life.

<sup>312</sup> Eleventh Plan (2007-2012)

reduction in poverty and helping bridge the divides that is currently the focus of so much attention.

The first steps in this direction were initiated in the middle of the Tenth Plan based on NCMP adopted by the Government. These steps must be further strengthened and consolidated into a strategy for the Eleventh Plan.

Governments at different levels ensured that the improved levels of health and education are in fact implemented to determine the growth potential in the longer term.

The Eleventh Five Year plan mainly focused their concerned to the primitive tribal groups, adolescent girls, children in the age group 0 to 3 and others who do not have strong lobbies to ensure that their rights are guaranteed. Whereas the private sectors, including farming, small scale enterprises and the corporate sector, had a critical role to play in achieving the objective of faster and more inclusive growth.

Under the Eleventh Five Year Plan Government of India launched a scheme such as Rashtriya Swasthya Bima Yojna<sup>313</sup>; and Aam Aadmi Bima Yojna<sup>314</sup>.Rajiv Awas Yojna.<sup>315</sup>

The objective of the Eleventh Five Year Plan was faster and inclusive growth and the initiatives taken in the Eleventh Plan period have resulted in substantial progress towards both objectives.

Reducing poverty is a key element in our inclusive growth strategy and there is some progress in that regard. This plan period saw launching of many flagship programmes such as MGNREGA, Pradhan Mantri Awaas Yojana- Gramin (PMAY-G)<sup>316</sup>,

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<sup>313</sup> This scheme aims to provide health insurance coverage to the unorganized sector workers belonging to the BPL category and their family member shall be beneficiaries under this scheme.

<sup>314</sup> This scheme came into effect on 1<sup>st</sup> January 2013.

<sup>315</sup> This scheme was launched to make India slum free in 5 Years. The main objectives of the scheme is to improve and provide housing, basic civic infrastructure and social amenities in intervened slums. Enabling reforms to address some of the causes leading to creation of slums.

<sup>316</sup> Pradhan Mantri Awaas Yojana-Gramin aims at providing a pucca house, with basic amenities, to all homeless households living in Kutcha and dilapidated house, by 2022.the immediate object is to cover 1.00 crore household living in Kutcha house/ dilapidated house in three years from 2016-17 to 2018-19. The minimum size of the house has been increased to 25 sq.mt (from 20 sq.mt) with a hygienic cooking space. The unit assistance has been increased from Rs.70,000 to Rs. 1.20 lakh in plain and from 75,000 to Rs 1.30 in hilly states, difficult area and IAP district. The beneficiary is entitled to 90.95 person day of unskilled labour from MGNREGS. The assistance for construction of toilet shall be leveraged through convergence with SBM-G, MGNREGS or any other dedicated the source of funding. Convergence for piped drinking water, electricity connection, LPG gas connection etc. different Government programmes are also to be attempted.

National Social Assistance Programme (NSAP)<sup>317</sup>, Pradhan Mantri Gram Sadak Yojana (PMGSY)<sup>318</sup>, The National Rural Health Mission (NRHM)<sup>319</sup>, Integrated Child Development Services (ICDS) Scheme<sup>320</sup>, Mid Day Meal (MDM)<sup>321</sup>, Sarva Shiksha Abhiyan<sup>322</sup>, JNNURM<sup>323</sup>, Accelerated Irrigation Benefit Programme (AIBP)<sup>324</sup> and Other

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<sup>317</sup> The National Social Assistance Programme (NSAP) represent a significant step towards the fulfillment of ideas enshrined in Article 41 of the Constitution of India. this policy aims to provide social assistance to the poor who are unable to meet the basic need of life. NSAP at present, of Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi National Widow Pension Scheme (IGNWPS), Indira Gandhi National Disability Pension Scheme (IGNDPS), National Family Benefit Scheme (NFBS) and Annapurna.

<sup>318</sup> The primary objective of the Pradhan Mantri Gram Sadak Yojana (PMGSY) is to provide Connectivity, by way of an All-weather Road (with necessary culverts and cross drainage structures, which is operate throughout the year), to the eligible unconnected Habitations in the rural areas with a population of 500 persons and above in plain areas. In respect of the Hill states (North –East, Sikkim, Himachal Pradesh, Jammu & Kashmir and Uttarakhand), the Desert Areas (as identified in the Desert Development Programme), the tribal (Schedule V) areas and selected Tribal and backward Districts( as identified by the Ministry of Home Affairs and Planning Commission) the objective would be to connect eligible unconnected Habitations with a population of 250 persons and above.

<sup>319</sup> The National Rural Health Mission (NRHM) ensure effective healthcare to individual, household, community and so on. Despite considerable gains in health status over the past few decades challenges still remain. There has been a progressive decline in budgetary allocation for public health in the country from 1.3% of GDP in 1990 to 0.9 % in 1999. Rising inequities are another area of concern.

<sup>320</sup> The Integrated Child Development Services (ICDS) Scheme is one of the flagship programme of the Government of India launched on 2nd October, 1975. It is one of the world largest and unique programmes for early childhood care and development. The object of the scheme are to improve the nutritional and health status of children in the age group of 0-6 years; to lay the foundation for proper psychological, physical and social development of the child; to reduce the incidence of mortality, morbidity, malnutrition and school dropout; to achieve effective co-ordination of policy and implementation amongst the various departments to promote child development; and to enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

<sup>321</sup> Mid Day Meal in schools has had a long history in India. In 1925, a Mid Day Meal programme was introduced for disadvantaged children in Madras Municipal Corporation. By the mid 1980s three states viz Gujarat, Kerela and Tamil Nadu and the UT of Pondicherry had universalized a coked Mid Day Meal Programme with their own resources for Children studying at the primary stage by 1990-91 the number of states implementing the Mid Day Meal programme with their own resources on a universal or a large scale had increased to twelve states.

With a view to enhancing enrollment, retention and attendance and simultaneously improving nutritional levels among children, the National Programme of Nutritional Support to primary Education (NP-NSPE) was launched as a centrally Sponsored Scheme on 15<sup>th</sup> August 1995, initially in 2408 blocks in the country. by the year 1997-98 the NP-NSPE was introduced in all blocks of the country. From the year 2009 onwards balanced and nutritious diet to children of upper primary group increased the quantity of pulses from 25 to 30 Grams, vegetables from 65-75 grams and decreased the quantity of oil and fat from 10 grams to 7.5 grams.

<sup>322</sup> Sarva Shiksha Abhiyan (SSA) is an government programme which aimed at the universalization of elementary education “ in a time bound manner”, as mandated by the 86<sup>th</sup> Amendment to the Constitution of India making free and compulsory education to children between the ages of 6 to 14 a fundamental right. SSA started on 2002 and has been operational since 200-2001. The SSA focuses mainly on access to education, social and gender equity and quality of education imparted to the children.

<sup>323</sup> Jawaharlal Nehru National Urban Renewal Mission (JNNURM) was launched in 2005 as the first flagship scheme of this Ministry. JNNURM implemented by MOHUPA has two components e.g Basic Services for Urban poor (BSUP) and integrated housing and slum Development Programme (IHS DP) which aimed at integrated development of slums through projects for providing shelters, basic services and other related civic amenities with a view to providing utilities to the urban poor.

<sup>324</sup> The Accelerated Irrigation Benefits Programme (AIBP) was launched during 1996- 1997 to give loan assistance to the states to help them complete some of the incomplete major/ medium irrigation projects which were at an advanced stage of completion and to create additional irrigation potential in the country. The surface Irrigation Schemes of north-Eastern states, Hilly States of Sikkim, Uttaranchal, Jammu and Kashmir, Himachal Pradesh and Koraput, Bolangir and Kalandhi districts of Orrissa have also been provided Central Loan assistance (CLA) under this programme since 1999-2000.

water resources programme, Rajiv Gandhi Gramin Viduyati Karan Yojana (RGGVY)<sup>325</sup>, Rajiv Gandhi Drinking Water (Rural Drinking Water)<sup>326</sup>- NRDWP. Total Sanitation Campaign (TSC)<sup>327</sup>, Rashtriya Krishi Vikas Yojana<sup>328</sup> Accelerated Irrigation Benefit Programme (AIBP) and Other water resources programme, Rajiv Gandhi Gramin Viduyati Karan Yojana (RGGVY), Rajiv Gandhi Drinking Water (Rural Drinking Water)- NRDWP and Total Sanitation Campaign (TSC), Rashtriya Krishi Vikas Yojana.

Some of the major national policy are discussed in detailed such as national Policy for the Empowerment of women, child labour policy, The National Rural Employment Guarantee Act, 2005 etc.

## 5.5 New Developments in Labour Legislation

Industrial peace, increasing productivity and providing adequate protection to the workers were the changes that were designed as an effective labour policy. In order to settle disputes between the employers and employee conciliation of disputes and adjudication through tribunals has been attempted and this is now regarded as the most effective measures to settle disputes between them as it time consuming, less expensive than the regular court procedure. This structure proved to be a great success to reduce conflicts between the employers and the employees and to safeguard the protection of the

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<sup>325</sup> Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) was launched by the Government of India for creation of rural Electricity Infrastructure & Household Electrification, in April 2005 for providing access to electricity to rural households. The states of Delhi, Goa and union Territories of Andaman & Nicobar Islands, Chandigarh, Dadar & Nagar Haveli, Daman & Diu and Pondicherry have not participated in RGGVY Programme as they had achieved 100% electrification of Villages. In remaining 27 states, RGGVY Projects for 579 districts have been sanctioned as on 2012 see Government of India, Press Information Bureau, Ministry of Power dated 14.05.2012

<sup>326</sup> The Accelerated Rural Water Supply Programme (ARWSP) was introduced in 1972-73 by the Government of India to assist the states and Union Territories to accelerate the pace of coverage of drinking water supply. The programme was given a missionary approach with the launch of the Technology Mission of Drinking Water and Related Water Management, also called the National Drinking Water Mission (NDWM) in 1986. The NDWM was renamed as the Rajiv Gandhi National Drinking Water Mission (RGNDWM) in 1991.

<sup>327</sup> Rural Sanitation came into focus in the Government of India in the World Water Decade of 1980s. The Central Rural Sanitation Programme was started in 1986 to provide sanitation facilities in rural areas. It was a supply driven, highly subsidy and infrastructure oriented programme. The main objective of the schemes are to bring about an improvement in the general quality of life in the rural areas; to accelerate sanitation coverage in rural areas; generate felt demand for sanitation facilities through awareness creation and health education; cover school/Anganwadi's in rural areas with sanitation facilities and promote hygiene education and sanitary habits among students; encourage cost effective and appropriate technologies in sanitation; Eliminate open defecation to minimize risk of contamination of drinking water sources and food; convert dry latrines to pour flush latrines, and eliminate manual scavenging practice, wherever in existence in rural areas.

<sup>328</sup> Concerned by the slow growth in the Agriculture and allied sectors, this scheme was launched in August 2007 as a part of the 11<sup>th</sup> Five Year Plan by the Government of India. It seeks to achieve 4% annual growth in agriculture through development of Agriculture and its allied sectors. The objectives of the programme is to incentivize the states that increase their investment in Agriculture and allied sectors; to provide flexibility and autonomy to the States in planning and executing programmes for agriculture; to ensure the preparation of Agriculture Plans for the districts

workers. However, it also resulted in huge cases being filed. Nevertheless, negotiations, conciliation and voluntary arbitration acted as a facilitator towards rise of trade unions that proved to be useful for the betterment of the workers.

**i. National Policy for the Empowerment of Women 2001**

The principle of gender equality<sup>329</sup> that is enshrined in the Indian Constitution in its preamble, Fundamental Rights and directive Principles has provided the State with a mandate to adopt measures of positive discrimination in favor of women. It is evident from the above discussion on Five Year Plan that from the Fifth Five Year Plan (1974-78) onwards there has been a shift in the approach to women's issues from welfare to development, and commitment of the Ninth Five Year Plan and other Sector Policies relating to empowerment of Women. Indian laws, development policies, plans and programmes have aimed at women's advancement in different spheres through the decades since independence. One of the more recent initiatives of the State for the empowerment of women is the *National Policy for the Empowerment of Women 2001*.

The National Commission for Women was set up in 1990 in order to safeguard the rights of the women. The women participation in decision making at local level are provided through reservation of seats in the local bodies of Panchayat and Municipalities for women through 73<sup>rd</sup> and 74<sup>th</sup> Amendments (1993) in the constitution of India

The Policy recognizes that there continues to exist a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the ground reality of the status of women in India, on the other. The Policy also refer to the analysis made by the study in the Report of the Committee on the Status of Women in India, "Towards Equality", 1974, the National Perspective Plan for Women 1988-2000 and the Shramshakti Report 1988

The Policy focuses on poverty eradication, mobilization of poor women along with necessary support measures to enhance their capabilities. In order to enhance women's access to credit for consumption and production, the Policy envisages the establishment of new, and strengthening of existing micro-credit mechanisms and micro-finance institutions.

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and states; to achieve the goal of reducing the yield gaps in important crops; to maximize returns to the farmers; to address the agriculture and allied sectors in an integrated manner.

<sup>329</sup> Article 14, 15, 15 (3), 16, 39 (a), 39 (b), 39 (c) and 42 of the *Constitution of India*.

It recognizes the new challenges posed by the gender impact of Globalization. It acknowledges that benefits of the growing global economy have been evenly distributed, leading to wider economic disparities, the feminization of poverty, increased gender inequality through often deteriorating working conditions and unsafe working environment especially in the informal economy and rural areas.

## **ii. Child Labour Policy**

Children are a valuable asset for any society. They constitute a vast portion of our populace. As per 2017 revision of the world Population Prospects, the persons below the age of 14 years account for 28.6% (male 190,0754,426/ female 172,799,553) of the total population.<sup>330</sup>

The Child's natural place is at school and the playground. However many children are unfortunately denied these basic development opportunities in childhood. Due to poverty, irregular income streams for the family, ignorance, lack of access to social security, education, health facilities, food security etc they are unfortunately denied the basic development opportunities in childhood. ILO has observed that child labour can compromise the productive capacity of workers during adulthood and thereby constrain both national economic growth and efforts to reduce poverty<sup>331</sup>.

Recognizing that child labour is the outcome of multiple causes and has multiple dimensions, Government of India enacted legislation.e Child labour (Prohibition and Regulation) Act 1986 and prepared the National Policy on Child labour 1987 to tackle the problem with a multi-pronged approach. The important pillars of the national policy on the elimination of child labour have been as under:

- a. Legislative Action Plan--**Strict and effective enforcement of legal provisions relating to child labour under various laws.
- b. Convergence of government developmental programmes –** Focus on converging various developmental initiatives to alleviate poverty, provide access to social security, health and education, economic and social empowerment of the child workers and their families.

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<sup>330</sup> International Institute for Population Sciences, National family Health Survey (NFHS) IV, Ministry of Health and Family, Government of India(2016)

<sup>331</sup> ILO, World report on Child Labour, International labour Organization (2013)

- c. **Project based plan of action** – Implementation of National Child Labour Project Scheme (NCLPS) in the areas of high concentration of child labour.
- iii. **The National Rural Employment Guarantee Act, 2005**

The new employment guarantee Act provides indispensable lifelines to the millions of poor in the rural areas of the country. National Rural Employment Guarantee Act, 2005 is the first Social Security measures in respect to right to work which guarantee every one member of the rural household 100 days of wage employment in a year who are willing to do unskilled manual work.<sup>332</sup>

The Centre has taken responsibility to provide financial assistance to the scheme and the States have to implement it. The minimum wages as applicable in various States under the Minimum Wages Act, 1948 would apply to the programmes. However, the Centre would ensure a minimum rate of not less than Rs. 69 a day in every State, where it was lower.<sup>333</sup>

The minimum wages offered for manual work in the each State varied from Rs. 100 to Rs. 200. The Act also provides for unemployment allowance if the job, under the scheme, is not provided within a specified period. The UPA government has already made available about Rs. 10,000 crores for implementation of the scheme in the current financial year.<sup>334</sup>

Under this Act within the household entitlement, all adult members of a rural household have the right to demand employment. 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.

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<sup>332</sup> Dr.Manmohan Singh said this legislation will give bargaining power to the poorest of the poor and help those belonging to the scheduled castes, Scheduled tribes, landless class and women. Village panchayats would play a pivotal role in the implementation of the National Employment Guarantee Scheme and money would not be a constraint in accomplishing the commitments made by the UPA Govt in this regard. One third of the proposed jobs would be reserved for women. Also see <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

<sup>333</sup> E.C Thomas, Job Guarantee for the Rural Poor, *Employment Newspaper*, 15-21 October, 2005

<sup>334</sup> *Ibid*

In spite of the existence of these beneficial laws, the benefits and facilities prescribed under these laws are denied to them in most cases. It can be said that more than 90% of our workforce does not enjoy the minimum protection and security that they need. This is a situation which should shame all those who talk of care and commitment to the rights and welfare of labour, as well as all those who bear responsibility for ensuring the rights and welfare of the people in the society.<sup>335</sup>

#### **iv. Life Insurance Corporation of India**

During the year 1956, the Life Insurance Provision Ordinance was promulgated whereby the management and control of life insurance business in India was vested in the Central government. The main purpose of this corporation is to provide protection to a family in the event of premature death of its bread winner. Further, life Insurance Policies, combine the element of savings for old age with family protection. Some of the savings-linked insurance plans of the Life Insurance Corporation are discussed below.

By and large, Life Insurance Corporation is helping the people by mobilizing their small savings through its savings-linked insurance plans. These plans are provided on group as well as individual basis. The corporation offers its group savings-linked insurance scheme to employer employee groups. Premiums are generally contributed by the employees concerned, which are deducted from their monthly salaries. The premium has two components risk and savings.<sup>336</sup> The accumulated savings are paid on retirement whereas in case of death before retirement, insurance sum is payable together with the accumulated savings. The other form of scheme is savings linked insurance plans for individuals known as endowment type plans where the sum assured is payable at maturity or earlier death.<sup>337</sup> Another important concept under Life Insurance Corporation is pension plans for individuals.<sup>338</sup>

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<sup>335</sup> *Ibid.*

<sup>336</sup> Risk part provides insurance cover and saving part accumulates at an attractive rate of 10 % per year

<sup>337</sup> In some cases, the sum assured payable on death and maturity may be different. For instance, in the case of *Jeevan Mitra Policy*, the sum payable on death is double, whereas in case of *Double Endowment Policy*, the sum payable at maturity is double. In case of *Money Back Policy*, maturing benefits are paid in installments during the term of the policy by way of survival benefits in addition to the life cover. These are also some plans, which suit to the special circumstances of the individuals. For instance, *Bhavishya Jeevan Plan* is a specially designed endowments plan for professionals who have a limited span of high income. Similarly, *Jeevan Griha Plan* which is available in double and triple cover may be suitable for those who obtain housing loan and need a collateral security for ensuring repayment of loan in the event of their premature death.

<sup>338</sup> . Under this scheme, New Jeevan Dhara Plan is a deferred annuity plan where the individual builds up a fund during deferral period by way of regular premium or a single premium. The annuity vests when the deferral period is over and then the policy holder would have option for various types of annuity such as payable for life, payable for

Recently, Prime Minister of India announced a special insurance plan for agricultural workers in India i.e Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)<sup>339</sup> under which each worker has to contribute a rupee per day and the government will contribute the remaining amount.

Group Superannuation Scheme of the LIC guarantees, regular post retirement income. Under this scheme, the corporation offers funding of pension benefits. These schemes are broadly of two types-Defined Contribution Scheme and Defined Benefit Scheme<sup>340</sup>. Majority of schemes introduced in India are Defined Contribution type. In general, superannuation schemes provide an option to the members at retirement to commute a part of their pension for lump sum. The option is also given to choose type of annuity. The corporation provides many types of annuities such as payable for life, payable for a certain period and for life thereafter, joint life, and last survivor with full or part reversion of pension to the spouse and so on.

During the year 1988, the corporation introduced a special annuity plan known as Annuity payable for life with return of capital on death. Generally, this is also offered as an optional pension by superannuation funds and is very popular as the member gets pension so long as he survives and on his death the family gets lump sum equal to the capital sum invested for purchase of annuity.

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certain period and so on. *New Jeevan Akshay Plan* is an immediate annuity is available. The Jeevan Surksha Plan offered to the individual is specially designed pension plan. This plan is available in three types- with life cover, without life cover and endowment. Under the life cover policies if death of policy holder occurs during deferment period at least 50 % of the target pension is paid to the spouse during his/her life time. Among other options stated in case of the *New Jeevan Dhara Plan*, an additional option is available in case of Jeevan Suraksha i.e., full pension is paid to the principal annuitant and on his death spouse gets percent pension so long as he/she survives. The option for commutation of pension up to percent is also available. Under endowment type *Jeevan Suraksha Plan*, if death of annuitant occurs during the term of policy, the spouse would have option for 25 percent commutation and balance of the sum assured is utilized to pay pension to the spouse. On maturity of the policy the annuitant would have option as available under other types of the plan. Under this plan, the policy holders will get income tax rebate.

<sup>339</sup> PMJJBY is a one year life insurance scheme, renewable from year to year, offering coverage for death. The cover under this scheme is for death only and hence benefit will accrue only to the nominee. The cover period is 1<sup>st</sup> June of each year to 31<sup>st</sup> May of subsequent year.

<sup>340</sup> The pension benefits schemes are broadly of two types of defined contribution schemes and Defined Benefit Scheme. Under Defined Contribution Scheme a defined level of contribution is made by the employer, which is accumulated till the retirement of each employee. Under the Defined Benefit Scheme, benefits are fixed in advance and generally depend on a formula based on service and terminal salary.

## v. General Insurance Corporation of India

Since 1972 onwards General Insurance Corporation of India is in operation with four operating companies<sup>341</sup>. This Corporation has introduced few important Social Security schemes. Personal Accident Insurance/Social Security Scheme is one such scheme<sup>342</sup>. Under this scheme, they need not pay any insurance premium to the corporation. The entire premium of the scheme is borne by the Government of India.

Hut Insurance Scheme for Poor Families in Rural India is one such other scheme<sup>343</sup>. The scheme provides relief to the poor families in rural areas when their huts and belongings are destroyed by fire.

Another such scheme is Medical Insurance Scheme<sup>344</sup>. This is a contributory scheme and the premiums will be based on the age of the person and the total amount to which he/she is willing to take policy. This scheme provides medical benefits to the people without any age restriction and also covers the children above three years. .

Cancer Insurance Scheme is a collaborative scheme provided jointly by the New India Assurance Company Limited and Indian Cancer Society and covers only the members of the Cancer Society<sup>345</sup>.

India being mainly an agrarian country its population mostly lives in rural areas and is engaged in a wide variety of agriculture based operations. In this sector an individual works as long as his/her physical ability permits and as soon as his/her physical ability weakens he/she will retire from doing physical labour. For such retirees there is no guaranteed pension, except old age pension offered by the state governments. Thus,

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<sup>341</sup> Such as National Insurance Company Limited, New India Assurance Company Limited, Oriental Insurance Company Limited, and United India Insurance Company Limited. Also see <http://www.icsi.in/Study%20Material%20Professional/NewSyllabus/ElectiveSubjects/IL%202526P.pdf>

<sup>342</sup> This scheme aimed at poor families. This scheme covers all the people in the age group of 18- 60 years whose total family income from all source do not exceed Rs 7,200/-

<sup>343</sup> Under this scheme the hut dwellers need not pay any premium to the corporation, the entire premium cost is borne by the Government of India. The family whose annual income does not exceed Rs 48000/- is covered under this scheme. In the event of loss due to fire, the insurance company will pay Rs. 1,000/- for the hut and Rs 500/- for the belonging.

<sup>344</sup> This scheme is popularly known as Mediclaim, which was introduced in the year 1986.

<sup>345</sup> The annual premium under this policy is Rs 100/- and is payable along with Rs.100/- per year by way of membership fee. The maximum limit for medical expense covered is Rs 50,000/- in aggregate, which includes medical expenses for diagnosis and treatment.

the Old Age Pension is aimed mostly for the elderly people residing in Rural India.<sup>346</sup> The pension provided under this scheme varies from state to state and this mainly depends on the allocation of budget under the Welfare Activities of the state.

## **5.6 SCHEMES RELATED TO MATERNITY BENEFITS BY CENTRAL GOVERNMENT**

### **1. Indira Gandhi Matritva Sahyog Yojana (IGMSY)**

Indira Gandhi Matritva Sahyog Yojana (IGMSY) which seeks to address the issues regarding the woman's compulsions to work right up to the last stage of pregnancy and resumption of work soon after child birth. Therefore, it is a mitigating measure to provide part compensation of wage loss as maternity benefit to women during pregnancy and lactation period.

The basic objective of the proposed scheme IGMSY is to improve the health and nutrition status of pregnant and lactating women and infants by:

- Encouraging the women to follow (optimal) IYCF practices including early and exclusive breast feeding for the first six months;
- Contributing to better enabling environment by providing cash incentives for improving the health of pregnant and nursing mothers;
- Promoting appropriate practices, care and service utilisation and safe delivery and lactation.

### **2. Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers**

Rajiv Gandhi National Crèche Scheme was implemented on 1st January 2006 for children of working women from families earning up to Rs. 12000 per month. This scheme is implemented by three governmental bodies i.e. the Central Social Welfare Board, Indian Council for Child Welfare and *Bhartiya Adim Jati Sevak Sangh*. There is a provision for collecting user charges of Rs. 20/- per month from BPL families and Rs. 60/- from other families.

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<sup>346</sup> In this scheme, the elderly destitute are eligible to receive a moderate pension amount of Rs 30 to Rs. 100/- per month. Here the destitute is generally defined as one over the age of 60 years and above, without any source of income and who has no kin to support.

To meet the growing need for more crèches, the National Crèche Fund, set up in 1993–94, made assistance available to voluntary organisations/mahila mandals (women’s groups) through interest earned from the corpus fund to convert existing AWCs (preschool centres) into AWC-cum-crèche centres. Thus the scheme still requires substantial expansion if it is to serve its purpose. State governments/Union Territory administrations do not play a role in the existing crèche and day-care schemes run by the MWCD. As a result, there is no possibility of involving local community-based organizations and self-help groups, other large national NGOs, trade unions or workers’ boards such as the Building Workers’ Association.

## **5.7 Other Central Schemes**

### **a. Krishi Shramik Samajik Suraksha Yojana**

It was launched in July, 2001 for giving Social Security benefits to agricultural labourers on hire in the age group of 18 to 60 years.<sup>347</sup> This Social Security scheme provides life-cum-accident insurance, money back and superannuation benefits. In the event that this scheme is extend to cover about 200 million agricultural workers, the government exchequer need to contribute Rs. 400 million per day. That amount to Rs.14, 600 crores per year.<sup>348</sup>

### **b. Shiksha Sahayog Yojana**

It provides for educational allowance of Rs. 100 per month to the children of parents living below the poverty line for their education from the 9th to 12th standard.<sup>349</sup>

### **c. Jawahar Gram Samridhi Yojana**

This scheme was launched streamlining and restructuring the earlier Jawahar Rozgar Yojana. The primary objective of this is infrastructure including assets. It will also help create assets to enable the rural poor to increase opportunities for sustained development. The cost of the programme is shared between Central and the State

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<sup>347</sup> B.P. Tyagi, Labour Economics and Social Welfare, 739 (Jai Prakash Nath & Co. 9<sup>th</sup> Edition, 2004).

<sup>348</sup> Government of India, Report of the Second National Commission on Labour, Planning Commission (Vol-I part I-2002 ) p.686.

<sup>349</sup> *Supra*

Governments in the ratio of 75:25. In case of Union Territories the total funding would be done by the centre.<sup>350</sup>

#### **d. Swarnjayanti Gram Swarozgar Yojana (SGSY)**

This scheme is the outcome of the programme amalgamation viz., Integrated Rural Development Programme (IRDP), Development of Women and Children in Rural Areas (DWCRA), Training of Rural Youth for Self-Employment (TRYSEM), Million Wells Schemes (MES) etc. into a single self-employment programme launched on 1st April, 1999. It aims at promoting micro-enterprises and helps the rural poor into Self Help Groups (SHG)<sup>351</sup>. The scheme is also being implemented as a Centrally Sponsored Scheme on a cost sharing ratio of 75:25 between the Centre and the State as that of Jawahr Gram Samridhi Yojana.<sup>352</sup>

#### **e. Rajiv Gandhi Shramik Yojana<sup>353</sup>**

Under this scheme, insured workers who lose their jobs after having contributed to the ESI scheme for five years or more shall be entitled to an 'unemployment allowance' in cash. The Government has announced this ambitious scheme to provide Social Security to its million employees, and their families insured under the Employees State Insurance Corporation.<sup>354</sup> They receive medical care from ESI dispensaries and hospitals. This medical benefit will extend to 30 million family members of ESIC workers.<sup>355</sup>

The ESIC proposes to meet the expenditure of the scheme out of its existing resources. It is "highly labour friendly" scheme that was launched to provide for a situation where any industrial units and other establishment were closed down for a variety of reasons. During such period of unemployment and till they were able to find alternative employment the economic and social condition of workers and their families

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<sup>350</sup> B.P.Tyagi, Labour Economics and Social Welfare (Jai Prakash Nath & Co. 9<sup>th</sup> Edition, 2004).

<sup>351</sup> This scheme cover all aspects of self employment like organization of rural poor into SHG and their capacity building, training, planning of activity, infrastructure development, financial assistance through bank credit and subsidy and marketing support etc.

<sup>352</sup> *Supra*

<sup>353</sup> Rajiv Gandhi Shramik Yojana was launched on first April 2005.this was for the first time that an unemployment related benefit scheme was launched in the country.

<sup>354</sup> Social Security to labour, The Hindustan Times, March 18, 2005.

<sup>355</sup> *ibid*

became highly vulnerable. The scheme had been floated to provide a sort of a safety net for such workers, the labour minister said.<sup>356</sup>

Recognizing the importance of health in the process of economic and social development and improving the quality of life of people, the National Rural Health Mission was launched in 2005<sup>357</sup>. The Plan of Action includes increasing public expenditure on health, reducing regional imbalance in health infrastructure, optimization of health manpower, community participation, operating Community Health Centres, decentralization and district management of health programmes, induction of management and financial personnel into district health system in each block of the country.<sup>358</sup>

The scheme is basically a strategy for integrating the on-going vertical programmes of Health and Family Welfare. It adopts a sector-wide approach and aims at systematic reforms to enable efficiency in health service delivery. It also subsumes key national programmes like Reproductive and Child Health-II Project, the National Disease Control Programmes and the Integrated Disease Surveillance Project. It also enable the mainstreaming of AYUSH-Ayurvedic, Yoga, Unani, Siddha and Homeopathy system of health.

While decentralized village and district level health planning and management, appointment of female Accredited Social Health Activities (ASHA) to facilitate access to health services are finally at the doorstep of every village household is expected to transform the health status of the village society and the Nation needs the attention for the policy maker to meet the sole object of the scheme.<sup>359</sup>

#### **f. Pradhan Mantri Jan Dhan Yojana (PMJDY)**

Pradhan Mantri Jan Dhan Yojana aims to transform the traditional banking system in India and it is appropriate for everyone, particularly for the poor who are not financially sound. This schemes provides accidental insurance facility which cover up to one lakh rupees and that too without any charge. The account holder will also get a Rupay

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<sup>356</sup> *Ibid*

<sup>357</sup> The National Rural health Mission adopts a synergic approach of good health viz. nutrition, sanitation, hygiene and a safe drinking water. The goal of the mission is to improve the availability of quality healthcare to people especially for those residing in rural areas, the poor and vulnerable section of the society i.e women and children.

<sup>358</sup> V Mohan Rao, " Quality Haelthcare for Rural Poor", Employment News Paper, 11-17 June, 2005.

<sup>359</sup> *Ibid*

debit card, which can be used for cash withdrawal or for making any purchases. This scheme offers various basic services.<sup>360</sup>

As per the data issued by the finance ministry, the scheme had opened 31.45 crore accounts with over Rs 80,000 crores in deposits as of April 2018.<sup>361</sup>

Any person opening account under Pradhan Mantri Jan Dhan Yojana is entitled to a number of benefits which are stated below-

1. This account can be simply opened with zero balance, which is one of the main highlight of this scheme.
2. The account holder is entitled to take a loan up to Rs 5000 after six months from opening the account. The loan amount might seem insignificant but let me tell you that this scheme is mostly meant for people below the poverty line, who's struggling hard to meet the bare basic need.
3. It allows the account holder to enjoy the mobile banking services to check their account balance and transfer funds using their cell phone.
4. This scheme entitles the account holder with an accidental insurance cover upto Rs 1,00,000 without even paying a single premium.
5. The account holder will receive a RuPay debit card which is accepted at all ATMs and most PoS machines in the country.<sup>362</sup>

#### **g. Atal Pension Yojana (APY)**

Atal Pension Yojana was introduced to help the low-income group of society. It provides pension benefits with a minimum contribution per month in case of demise of the contributor, the nominee can claim for pension. This scheme is targeted to the unorganised sector such as maid driver, security guard<sup>363</sup> In order to avail this benefit the individuals must be between 18 to 40 years of age<sup>364</sup>

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<sup>360</sup> Like a Savings and Account deposit, Pension, Remittances etc. suitable for the weaker sections of the society in term of economic. Anyone who is an Indian citizen (above 10 year of age), who do not even have a bank account can open the account with zero balance.

<sup>361</sup> Time of India Newspaper Apr 22, 2018

<sup>362</sup> Debit card must use at least once in 45 days to get the benefit of Accidental Insurance cover.

<sup>363</sup> Under this social security scheme for every contribution made to the pension funds, the Central Government would also contribute 50% of the total contribution or 1,000/- per annum whichever is lower, to each eligible

#### **h. Pradhan Mantri Jeevan Jyoti Bima Yojana**

This scheme will provide the benefit of Rs 2,00,000, which will be payable to the member's family in case of his/her death due to any reason. Through this scheme the government aims to increase the number of the beneficiaries.<sup>365</sup>

The main Objective of this schemes are

1. To provide social security and to increase the penetration of life insurance to the poor masses who are unable to avail the life insurance policies due to the high insurance premiums.
2. This scheme also helps in securing the financial future of the individual's family

**Some of the key features under Pradhan Mantri Jeevan Jyoti Bima Yojana are stated below-**

1. It's important to maintain a required balance as the payment of the premium will be deducted from the bank account of the subscriber.
2. The policy-holder needs to renew the policy every year in order to continue with the plan.
3. In case of the death of the individual, risk coverage of Rs 2,00,000 is to be provided. The life is covered irrespective of the reason of the death.
4. The subscriber has to provide the nominee name and also the relationship with the nominee.
5. The contribution made by the government towards this scheme is decided every year and it comes from the unclaimed money that has been lying idle in different public welfare funds.

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subscriber account, for a period of 5 Years. But the subscriber has to contribute for a period of 20 years or more under this scheme.

<sup>364</sup> For a monthly pension of Rs 1,000 an 18 year old will have to contribute 42 per month for 42 years while 40 years old will have to invest Rs 291 per month 20 years.

<sup>365</sup> It was introduced in the 2015 budget by our finance minister, Arun Jaitley also see <https://blog.elearnmarkets.com/7-government-schemes-to-invest/>

### **i. Pradhan Mantri Suraksha Bima Yojana (PMSBY)**

Apart from the above two social security scheme i.e Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) and the Atal Pension Yojana (APY). PMSBY is another social security schemes that the government had announced in the 2015 Budget. Premium paid in this scheme is Rs. 12 per annum which will be directly auto-debited by the Bank from the subscribers savings account held with the Bank. Total risk coverage (sum-insured) under the scheme is Rs. 2 Lakh. The following table 2.1 explains the sum insured under the scheme in details:

	<b>Table of Benefit</b>	<b>Sum Insured</b>
i.	Death	Rs. 2 Lakh
ii.	Total and irrecoverable loss of both eyes or loss of use of both hands or feet or loss of sight of one eye and loss of use of one hand or one foot	Rs. 2 lakh
iii.	Total and irrecoverable loss of sight of one eye or loss of use of one hand or one foot	Rs. 1 Lakh
<ul style="list-style-type: none"><li>• The total amount that can be claimed under the policy is INR 2 Lakh only</li></ul>		

### **5.7 Labour Law Reform in India**

The Government desire to transform India into global market and manufacturing hub thus the Government of India initiated and launched a campaign titled *Make in India* to foster the growth of the manufacturing sector was launched on 24<sup>th</sup> September 2014. It has been almost four year that it has been launched. To state a movement government has proposed various plans out of which labour Reform in India is one of them in order to boost the economy of the nation.

Through this flagship campaign government intended to boost the domestic manufacturing industry and attract foreign investor to invest into the Indian economy and involvement of the labour is necessary in order to be competitive manufacturing unit . Their active involvement is necessary in making improvement in terms of quality, production and cash reduction. It is evident from the experience of China; Japan that shows it is workers who can make the incremental improvement who are much more

valuable than any major breakthrough in manufacturing technology. Subsequently, the Government of India through the “Make in India” renders that the practice of labour law or labour reform should allow this to occur, it means workers must be motivated. With the above view government proposed reform in factories Act, 1948, Apprentice Act, 1961 and labour Act, 1970. The wage code and the industrial relations code will club nearly 10 existing laws including factories Act, 1948 and the Industrial Disputes Act, 1947. The Government has sought to consolidate 44 central employment laws into 4 labour codes.

The flagship programme proposed the following five labour legislation reform

1. Payment of Bonus (Amendment) Bill 2015 to make more and more worker eligible for bonus and double bonus payouts.
2. Child Labour (Protection and Regulation) Amendment Bill 2012- bars children from hazardous occupation till the age of 18, but allow those under fourteen year of age to work in a family enterprise.
3. The Small Factories (Regulation of Employment and condition of service) Bill 2014- to exempt firms up to 40 employees from compliance with six major labour law.
4. Labour wage code Bill 2014

Labour Code on Industrial Relations Bill 2015 to replace three labour law including Industrial Disputes Act, 1947, Trade union act, 1926, Industrial employment Act, 1946.

Along with the above reform the following reform is initiated i.e.

- Greater women’s participation in the workforce will be facilitated by small Factories Bill, which will allow women to work at night shifts.
- Shops will be allowed to open round the clock under the shops and establishment (Amendment) Bill
- PMKVY (Pradhan Mantri Kaushal Vikas Yojana train 10 million people over the next four years.
- State to get Rs 7,000 Crore for skill development. Lesser wages for equal work is the violation of human dignity.

- Center rethinks to widen EPF coverage. Minimum wage linked unskilled non-agricultural workers on central public sector unit from 246 to 350 a days. Formation of a committee to look into extending benefit under the ESI Corporation Act to unorganized sector including agandwadi, mid-day meal and ASHA volunteer.
- **Enhancement of the gratuity ceiling:** The Payment of Gratuity Act, entitles employees who have been in continuous employment for a period of 5 years to gratuity at the rate of 15 days wages for every year of continuous service, capped at INR 10,00,000. However, The Payment of Gratuity (Amendment) Bill, the ceiling is likely to be enhanced from INR 10,00,000 to INR 20,00,000.

## 5.8 Conclusion:

The sole purpose of social security promulgated in India is to provide payment of wages, minimum wages, payment of the gratuity, payment of bonus have been established in India. However, today changing the way India works, more importantly changing the way labour were treated, the relationship between employers and employee. Labour Laws in India is existence for so long that it looks like natural i.e ‘they are given to you and you cannot temper to it’. Thus, **Workers need to be “protected”, “Respected”** is the call of an hour. The core issues that the situation that the workers are facing is threshold. So one should get rid of the threshold like 100(Plus), 200 (Plus), 300(Plus), through which the employer get tempted and try under thus dusk. Which will not upgraded and built human resource strength. In case of the Contract workers who are unaware of their future and unaware for how long will they be employees can never be motivated due to lack of social security. Though, Government of India has proposed the introduction of a National Employment Policy to address the growing rate of unemployment in India but it appears that this would be done by incentivizing employers to hire, by allowing relaxations in employment law compliances or bearing a part of the cost for social security payments.

The Supreme Court of India, in its landmark judgment observed that the right to privacy and the protection of sexual orientation lie at the core of the fundamental rights

guaranteed by Articles 14, 15 and 21 of the Indian Constitution.<sup>366</sup> Further, the Supreme Court on January 8, 2018, stated that it would review its position on Section 377 of the Indian Penal Code, 1860<sup>367</sup>, i.e., the criminalization of sexual intercourse between consenting adults of the same sex. With respect to transgender persons, the Transgender Persons (Protection of Rights) Bill, 2016, inter alia, seeks to prohibit the discrimination of transgender persons in terms of employment, healthcare services and access to facilities.

Amendments to the Factories Act, 1948, have been in the pipeline for the past two years. The amendments are primarily aimed at allowing the state government to increase the number of overtime hours that employees can work and prescribe rules in relation to exemptions that could be given to various categories of employees. These measures would allow flexibility to State Governments to undertake initiatives to encourage the development of industries.

The Government has released a draft bill for the amendment of the law governing the engagement of contract labour in India – the Contract Labour (Regulation and Abolition) Act, 1970 (“CLRA”). The bill primarily intends to exclude workers who are regularly employed in the establishment of the contractor from the definition of the term ‘contract labour’ for the purposes of the CLRA.

Labour laws has opposite effect there are three desires that labour forces have and demanding for ages i.e desire to have salary/ wages on time, desire for job guarantee, desire for social security Guarantee. To conclude there is much talk about the motivation of the workers but they forget that the entire industry should work as a family i.e an “Industrial Family”.

Criticism that put forth was that the BMS demand for the review of the labour Laws and not the Reform. BMS president in one of his interview stated that they demand for the review of the labour laws and not the reform. In support of his statement he said that labour laws are protective law and there is some lacuna in the existing labour law. He further state that the punitive measures are too low that any time, anyone can violate e.g penalty of Rs 50, Rs 60, Rs 100. Due to which they don’t care of the law. He further

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<sup>366</sup> *Justice K.S Puttaswamy (RETD), And Anr v.s Union of India and Ors* (2017)10 SCC 1

<sup>367</sup> *Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice, W. P. (Crl.) No. 76 of 2016* ([Supreme Court of India](#))

stressed that punitive measures need to be made strong. Until and unless the punitive measure and labour laws are made strong than only one will fear in violating the laws. Thus, reform means to redraft whole labour law which is a call of an hour.

However, the problem of limited coverage has become a matter of social security policy-maker, who recognizes that the exclusion of ordinary people from modern forms of social protection is undesirable. Further there is absence of comprehensive social security policies which can co-ordinate different schemes and ensure that their various objectives are complementary.

## Chapter VI

### A STUDY OF THE FIVE YEAR PLAN VIS-À-VIS SOCIAL SECURITY OF LABOUR IN ORGANIZED SECTOR

#### 6.1 Introduction

In the Second World War almost all the countries of the world faced obliteration. They had to face the ravage of many new problems coming out of war. So, immediately when the war was over, the Government thought of post-war reconstruction in their respective countries. The British Government of India also had such plan for India. Moreover, India was an underdeveloped country. After Independence, the national Government of India wanted to uplift it through proper planning. So, the Government of India introduced five year plans. The Planning Commission was set up in March, 1950. The draft of the five year plan was published in July 1951 and it was approved in December 1951. The First Five Year Plan<sup>368</sup> focused on agriculture, power and transport. It recognized that the labour is productive source and contribute to national income thus their protection is important in order to boom in the industry. From 1947 to 2017, the Indian economy was premised on the concept of planning. This was carried through the Five- Year Plans, developed, executed and monitored by the Planning Commission (1951-2014) and the NITI Aayog<sup>369</sup> (2015-2017). Hence this chapter attempts to study the five Year Plan vis- a vis Social Security of Labour in Organized Sector till date.

Five-Year Plans in India is framed, executed and monitored by the Planning commission in India<sup>370</sup>. Joseph Stalin implemented the first Five Year Plan in the Soviet Union in the late 1920s.

The Planning Commission in India<sup>371</sup> was set up in March, 1950 with the following terms and object:

"The Constitution of India has guaranteed Fundamental Rights to the citizens of India and enunciated certain Directive Principles of State Policy. Keeping into

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<sup>368</sup> Government of India, *Recommendation of study Group on Social security*, 1957.

<sup>369</sup> The new Government led by Narendra Modi, elected in 2014, has announced the dissolution of the Planning Commission, and its replacement by a think tank called the NITI Aayog.

<sup>370</sup> Renamed as NITI Aayog (2015-2017)

<sup>371</sup> *Ibid*

consideration these rights conferred by the Constitution and the desired goals of the government to raise the quality of life of the people, the Planning Commission's objectives is effective utilization of the available resources and to increase the production by way of providing employment opportunities to all.

The plans with regard to social security in an organized sector from first plan till date in the Five Year Plan have been described and discussed in detailed below.

## **6.2 The First Five-Year Plan**

First Five Year Plan<sup>372</sup> was one of the most important plans adopted by the planning commission as it deals with the development after Independence. The plan strongly supported agriculture production and industrialization in the country

The very object of this plan is rehabilitation of refugees, food self sufficiency and control were more or less achieved.

The plan emphasized that workers active participation is required for the desired production and economic boost<sup>373</sup>. The plan also emphasized that the only demand of the workers is the healthy working environment.

Exploitation of the worker rights by the employees lead to the strike and lockout. Thus, right to strike and lockout was recognized by the planning commission under this plan. Through this plan, the Planning Commission gave utmost importance to Alternative Disputes Relation as mechanism to settle disputes between the employer and employee.

It was in the First Five Year plan that the planning commission recommended the effective implementation of the existing labour legislation for protection of right of the labour force<sup>374</sup>

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<sup>372</sup> In July, 1951 the Planning Commission presented a draft outline of a plan of development for the period of five years from April, 1951 to March, 1956

<sup>373</sup> The report said that, the working class performance functions vital to the maintenance of the community's economic life.

<sup>374</sup> Such as Factories Act, Mines Act, Plantation Act, Shops and Establishment Act etc

### 6.3 Second Five Year

**Second Five Year Plan**<sup>375</sup> was focused on rapid industrialization with much emphasize on employment. Chapter 5 of the Plan deals with employment. This chapter emphasize that economic growth cannot be achieved without proper utilization of their recourses and this can be achieved only through employment generation.<sup>376</sup>

In this Second five year plan, the policy with regard to labour was immensely influence by the socialistic framework of society. The Plan recognized that the worker rights need to be protected along with the growth as they are more vulnerable to exploitation. The plan also stretched that relation between employee and employer will only develop through effective collective bargaining and negotiation between the trade union, employer and employee.

It was through this recommendation the Code of Discipline (1958) was accepted with certain terms and condition thus leading to adoption of programmes for worker's education, establishment of wage boards (1969) and fixation of wages etc.<sup>377</sup> As this plan was focused on generating more employment therefore, more importance was given to village and small scale industries.<sup>378</sup>

### 6.4 Third Five Year Plan (1961-1966)

During this period it was felt that the Indian economy has entered a “take off-stage” thus with this endeavor the planning commission aimed to make India self-reliant and self- generated economy and adopted Third Five Year Plan (1961-1966) . Based on the experience of the first two plans the planning Commission emphasis more to agricultural sector<sup>379</sup>. It was through this plan that the responsibility was shoulder on the State to protect the interest of the workers through effective facilities and cooperation.<sup>380</sup> The Government made outstanding achievement during this plan through the enactment of several legislations in many states.

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<sup>375</sup> Second five Year plan was published in February 1956 and the final plan was approved by the Parliament in May, 1956. The object of the plan was rapid industrialization with particular emphasis on the heavy industries

<sup>376</sup> The task under this plan was to provide employment opportunities for urban and rural growth and those underemployed in agriculture and household activities to be provided with increased work opportunities.

<sup>377</sup> *Supra* n.2 at p.22

<sup>378</sup> *Ibid* at p. 50 also see <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

<sup>379</sup> During these plans a whole new agricultural strategy was implemented. It involving wide-spread distribution of high-yielding varieties of seeds, extensive uses of fertilizer, exploitation of irrigation potential and soil conservation.

<sup>380</sup> object is to secure higher levels of industrial efficiency and rising standard of life of working class alonin with peaceful relation between the employer and employee was visualized in this plan

First National Commission on Labour and National Safety Council set up during this plan. It was for the first time after Independence a comprehensive study on labour problems, finding solution to the problems were carried out by the Planning Commission in this Plan.

### **6.5 The Fourth Five Year Plan (1969-1974)**

The first two years of plan witness production and the last three year plan did not measure up due to poor monsoon. Family Planning Programmes were the main aim of the Fourth Five Year Plan (1969-1974). Economic development cannot be achieved through proper utilization of available resources and thus can be achieved only through proper employment generation which was solely adopted by the ILO Convention.<sup>381</sup> Accordingly this view was appreciated by this plan<sup>382</sup> hence; stress was given to rural, small scale industries development. This plan also supported the view of the fourth Year plan i.e employment generation programme and appreciated and carried forward the idea on this plan and in addition wage related problem was also highlight of this plan.

### **6.6 The Fifth Five Year Plan (1974-1978)**

The Fifth Five Year Plan India was sketched out for the period spanning 1974 to 1979 with the objectives of increasing the employment level, reducing poverty, and attaining self- reliance. The twin objectives of poverty eradication and attainment of self reliance were inculcated in the fifth plan. A national program for minimum needs including elementary education, safe drinking water, health care, shelter for the landless was included. Electricity Supply Act was enacted in 1975, which enabled the Central Government to enter into power generation and transmission. Meanwhile, India had seen substantial rise in the food grain production. To alleviate the problem of unequal spread of green revolution, government unsuccessfully tried to take over the wholesale trade in wheat.

However, in 1975, Indira Gandhi imposed emergency and planning became subject to much politicization. In 1977, the government changed and first non- Congress

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<sup>381</sup> In UNEP report, the ILO has forcefully agreed for the employment creation to economic development through the maximum utilization of available resources and to substitute labour for scarce capital where there is economically feasible.

<sup>382</sup> That includes development through comprehensive programs for rural development by fuller utilization of industrial capacity, promotion of labour intensive product in domestic and foreign markets, and utilizing intensive techniques in industrial production.

Government took over power with Morar Ji Desai at its helm. The new central government was a coalition called Janata Alliance. This government reconstituted the planning commission and announced a new strategy in the planning<sup>383</sup>. The new objective laid down was “Growth for Social Justice”. The new approach was “ Rolling Plan”. It terminates the fifth year plan in 1977-78 and launched its own Sixth Five Year Plan for period of 1978-1983 and called it rolling plan.<sup>384</sup>

## **6.7 The Sixth Five Year Plan (1980-1985)**

During this plan it was felt that the comprehensive labour policy should be framed in order to cover the entire working class. Removal of Poverty and attainment of self reliance was the two main objective of the Sixth Five year Plan (1980- 1985). It was recommended that along with the development in the production the rights of the workers need to be protected.

Collective bargaining for harmonize relationship between the employer and employee were proposed by this plan.<sup>385</sup>. The payment of minimum wages, equal pays for equal work, bonus etc. were the major recommendation under this plan.

The planning commission under this plan discussed social security of workers through various welfare legislations<sup>386</sup> and proposed that this legislation is going to be applicable only to those establishments where more than ten workers are employed. It is not only applicable to those establishment that use power for the purpose of running their activity but this legislation also extends to those establishment such as shops, hotels, restaurants, cinemas, theatres, motor transport and news paper establishments where more than twenty workers are employed.

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<sup>383</sup> This new strategy involved a change in the objective and approach pattern.

<sup>384</sup> Indra Gandhi again became the Prime Minister and she immediately threw the Janta's rolling plan in dustbin and launched her own plan for year 1980-85. The year 1978-79n was restored back to fifth plan of 1974-79

<sup>385</sup> This plan says the right to workers is to be protected otherwise bilateral collective bargaining is deprived of its ultimate sanction from worker's point of view.at the same time means to avoid strike i.e., notice, consultation and arbitration were also given importance.

<sup>386</sup> Such as Employees State Insurance Act, 1948; Employees Provident Fund and Miscellaneous Provisions Act; Payment of Gratuity Act, 1947 and Family Pension Schemes. Also see Government of India Planning Commission, Fourth Five Year Plan (1978-1983), Chapter 2, p.172

Working women rights were protected under this plan. Equal pay for equal work<sup>387</sup> and stressed on the proper implementation of the provision that protected the interest of the working women as well as their children.<sup>388</sup>

The study on the child labour by the planning commission under this plan year came to the conclusion that it is due to the poverty and unemployment, the children is deprived from education and child labour exist in India. Therefore, it is only through employment generation child labour can be abolished.<sup>389</sup>

## **6.8 The Seventh Five Year Plan**

Food, work & productivity were the sole aim of the Seventh Five Year Plan. Chapter 5 of the plan dealt with this in detail. The plan recommended that productive employment generation can only be achieved by adopting effective measures for investment and production. The plan recommended for the strong policies in terms of education, training and reorientation of workers in order to achieve growth in production without any interference.<sup>390</sup> The seventh Five Year Plan lays emphasis on the improvement of production and resource utilization as the plan recognized that the labour enter into both the production process i.e both demand and supply side.<sup>391</sup>

Through this Plan year the planning commission intended to provide facilities related to health, recreational, education, and other welfare related matters to the worker and in addition focused to protect the interest of the working women. There are many provision dealing with the same also it is the duty of the Government to sensitized the unorganized workers about all the available facilities, schemes etc which is being endorsed by the Government for the benefit of the workers.

## **6.9 The Eighth & Ninth Five Year Plan**

Due to political uncertainty at the center The Eighth Five Year Plan (1992-1997) remained ineffective for two years. Unlike the other Plan, this plan also in order to

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<sup>387</sup> Accordingly equal remuneration Act was enacted

<sup>388</sup> Such as proper enforcement of the establishment of crèches for the children of the working women

<sup>389</sup> This Plan recommended for National Committee on child labour to examine the adequacy and implementation of present legislation relating to child and to suggest effect welfare measure for the development of child.

<sup>390</sup> Apart from sectoral investments, the oriented programmes like NREP, IRDP, RLEGP, and TRYSEM resulted in expansion of employment opportunities.

<sup>391</sup> Government of India, Seventh Five Year Plan, Chapter '*Employment-Power, Plans and Labour Policy*', 19. (Planning Commission.)

combat the economic situation aimed at welfare of the human being through employment generation. Also the planning commission through this plan remained more focused on the effective implementation of policy for the protection of the worker in an unorganized sector as they contribute more to the economic development.<sup>392</sup> In order to achieve the desired goal the planning commission suggested analysis of macro-economic, sectoral and labour policies on employment.

The notable suggestion made under this plan was the rigid provision of the existing labour legislation is a hindrance to employment in the large scale industries.<sup>393</sup>

Ninth Five Year plan witness the change in the labour policy and outcome on India was positive. The planning commission under this plan was more focused on “Growth with Social Justice & Equity. The planning commission aimed to encourage private sector.<sup>394</sup>

#### **6.10 The Tenth Five Year Plan**

Planning commission through the Tenth Five Year plan aimed to create employment in unorganized sector that are not covered under the existing social security legislation. This plan aims to achieve economic and social justice, and accordingly a policy was framed. The Tenth Five Year Plan was approved by the National Development Council.<sup>395</sup> The study group of this working planning found that the most of the social security legislation is applicable to the public sector but still employment in this sector is decreasing. Therefore, the review of the pension system was suggested under this plan.

This plan recommended for the comprehensive social security policy to protect the interest of the entire working force. The planning commissions also recommended streamlining the delivery system and issue of National Security Number in the EPFO to the worker for the proper identification of the worker in the case of injury etc to make their dependant avail the social benefit provided by the Government.

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<sup>392</sup> Government of India, *Report of the working group of Eighth Five Year plan*, 117 (Planning commission).

<sup>393</sup> *Ibid at* Chapter 6, p.116.

<sup>394</sup> Government of India, Ninth five year Plan (1997-2002) Planning commission.

<sup>395</sup> Through thi plan the government target to provide employment to 10 million people over this Plan period.

## **6.11 Eleventh Five Year Plan**

The National Development Council approved the Eleventh Five Year Plan setting ‘a faster more broad based and inclusive’ growth at the average annual rate of 9 percent. The plan target to reduce poverty by 10 percentages by creating 7 crore new employment and also ensure electricity connection to all villages. With various monitor-able targets set for various priority programmes at the central and state level, the thrust of the Plan document is on social sectors, agriculture and rural development. The draft document proposed to increase by the priority sector allocation to 74,67 percent of the center’s Gross Budgetary Support from 55,20% in the Tenth Plan. The plan also proposes to raise investment on infrastructure sector including irrigation, drinking water and sewage from 5 percent of GDO in 2005-2206 to 9 % by 2011-2012.

The education sector is set to be a big beneficiary with the Plan document seeking to increase the allocation to 19.36 percent of the GSB from 7.68 percent in the Tenth Plan.

## **6.12 The Twelfth Five Year Plan**

This plan is expected to be different than all the earlier plans because of the differences in the economic environment in which the plan has to be operationalized. A number of new initiative have been proposed in this plan for retaining youth in Agriculture Sector and funding for research and innovations in the sector. The twin objectives of the plan are ensuring food security and improving the lot of framers through higher investments in agriculture and allied sectors. To address the challenges in live stock sector, National Livestock Mission<sup>396</sup> and National Programme for Bovine Breeding & dairying has also been proposed in the Plan. The plan also recommended the need to evolve a National Social Security for the unorganized sector and formulate a detailed action plan to cover almost all the segments of the unorganized workforce in social security with the ultimate goal of covering all unorganized workers in the long run. The plan furthermore emphasized on the enforcement of existing social security legislation namely EPF Act and ESIC that should be strengthened.

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<sup>396</sup> The main objective of this mission is to achieve sustainable development and growth of livestock sector by providing greater flexibility to the states.

The initiatives taken up by the EPFO during Tenth Plan to streamline the delivery system and issue of National Social Security Number to the workers should be continued in this plan as it would help in reducing harassment to the workers and reduce corruption in the organization. The plan also recommended that the proposed initiative of ESIC to extend ESI Scheme to educational and private medical institutions, enhancement in daily rate of rehabilitation allowance, implementation of scheme in new areas, enhancement in the wage ceiling for coverage from Rs. 7,500/- to Rs. 10,000/- reduction in threshold for coverage and setting up of Zonal Super- Specialty Hospital in all Zones should be completed.

The Plan envisaged that there were not very many additional benefits which could be added to the existing ones for the organized sector workers. It was felt that focus should be only on provisions of health care, accident benefits, sickness and maternity which are broadly covered by the ESI Act, EPF Act, Employees Compensation Act, and the Maternity Benefit Act. It was pointed out that none of these Acts cover Self-employed persons. The plan emphasized that the criteria for coverage of Various Acts such as threshold, the wage ceiling limits etc. should be homogeneous so that convergence of these schemes could be considered. The plan also emphasized that the separate schemes need to be framed for different section of workers having different risk perception as some of the employment are not accident prone or are not susceptible to occupational disease.

The plan also suggested that the Associations or trade Union representing different sections of employees could be utilized for providing benefit to that particular section e.g. ESIC has been able to cover Cine workers in Mumbai with the help of active cooperation of Cine Workers Trade Unions.

The plan also highlighted that there exist an overlapping provision of benefits for some contingencies by different schemes e.g both ESI and EPF provide disablement and dependants benefit which could be avoided if uniform coverage criteria is adopted. Convergence will also result in cost saving since different organizations are performing same functions and could lead to better utilization of available resources. This plan also emphasized on the comprehensive social security laws that cover the entire working class.

### 6.13 Conclusion

Social security arrangements have a comparatively long history in India. The concept of social security is not new concept in India. It was in existence from time immemorial in the form of joint family or religious institution. Due to industrialization, urbanization and privatization this system lost its importance. Thus the need for social security was felt. Before independence only certain categories of workers were covered by the social security law that was then enacted.

After Independence, India adopted the Constitution of India on which significant provision relating to social security of labour were embodied through fundamental Rights and Directive Principles of State policies. Social security is a relatively neglected area in terms of both research and policy in India. For two to three decades after Independence, there was hardly any discussion in this area in the India five Year plan documents, until the Ninth Plan. They were silent on social security planning and did not even take cognizance of the prevailing schemes.<sup>397</sup> Over the last few decades, India has witnessed a shift in the social security discourse. Despite the literally hundreds of programs for social protection of the underprivileged, however the social security programs have failed to reach its desired goal.<sup>398</sup>

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<sup>397</sup> Rolf Sulzer, Social Security in India- A System in the Making, 3 Partner Country Perspective, 211-229

<sup>398</sup> Ibid

## Chapter VII

### A Study of the Budgetary Allocation for Social Security

#### 7.1 Introduction

No social security will deserve its name unless there is reasonable certainty that the promised benefits will be paid as they fall due. The method of financing the proposed benefits must be thoroughly studied, and a viable solution found, before the scheme is formulated. The budgets vary from year to year depending upon various factors. As far back as India's Independence, center and State governments have asserted that they need to figure towards social development and impoverishment. Inexhaustible has been accomplished in the past 50 years<sup>399</sup>. Disregarding those increases, the general element of hardship is still too goliath to ever be unnoticed by arrangement issues.

National Budget contributes with respect to one a large portion of the full joined public expenditure of States and Center, an excessively high offer of use on social area and impoverishment is provided by the State Government. Social improvement and poverty alleviation is provided in the State Lists of the Indian Constitution making it the States 'duty to make such speculations. The States utilize their very own assets according to the recommendation of the Finance and Annual commission assignments. Normally the States are expected to share considerably in the introduced programme as half of the national buget exercised. The consequent clarifications on the budgetary allotment for social segment may encourage the Government goal and steps taken for the security of work in general.

The Central Government spending plan orders add up to use (both income and capital) into Plan and non-Plan use. Plan consumption<sup>400</sup> (both income and capital) relates to Central Plan and Central help for State and Union Territory Plans. The Plan budget contains spending for new projects related with the Five-Year Plan. Hence, with the above view this chapter attempts to analyze the budgetary allocation for social security in India.

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<sup>399</sup> It is claimed that the incidence of impoverishment declined from over 50 % within the 1950 to 26 % inside the late 1990s, the securing rate enlarged from 20% in 1951 to 65% in 2001, and consequently the grimness rate declined from 146 for each a thousand live births in 1950s to 70 for every 1000 live births in 2000.

<sup>400</sup> The non-Plan expenditure consists of regular government operations, including programmes that have moved out of the Plan budget and into the regular appropriations process. Typically, the non-Plan budget contains no capital spending, although there are minor exceptions to this generalization

## **Revenue Expenditure**

This expenditure identifies the ordinary running of administration of India divisions and various administrations, intrigue charges on obligation brought about by the Government of India and the awards given to State Governments and elective gatherings. Extensively, all consumption of the government that doesn't end in the formation of physical or cash resources, regarded as Revenue Expenditure.

## **Capital Expenditure**

That expenditure of the Government of India that winds up in the formation of physical or cash resources or decrease in persistent cash liabilities falls into this class. Such consumption relates to installments on obtaining of such resources as land, structures, apparatus, and instrumentality, and to interests in offers, and advances and advances given to State Governments, open area endeavors, and elective gatherings

### **7.2 Last Five Year Budgetary Allocation for Social Security in India**

Government funds are the indication of a developed welfare state. Strong welfare states, like the social popular governments of Europe, spend over 25% of its GDP (for the year 2005) on institutionalized funds of which 33% is on therapeutic administrations.<sup>401</sup> The overall typical is 8.39% of GDP (2.67% on human administrations) and reaches from 4.05% (0.95% therapeutic administrations) in India to 12-13% in South Africa, Brazil and Russia (3-4% social protection) and 29.40% (6.8% human administrations) in Sweden<sup>402</sup>.

Investment funds gave shifts an impressive measure to different fragments of the masses. Toward one side of the range, the regular organizations agents of Central and State governments get a full extent of points of interest as portrayed by the ILO. For instance, their retirement benefits alone (annuity, PF, tip et cetera, notwithstanding therapeutic administrations) were Rs.1,66,170 crores in 2010-11 (as much as 2.11% of GDP). At another end are the underneath poverty line (BPL) masses who get uniquely selected focal points under various welfare and social help designs. For instance in 2010-11 such favorable circumstances the country over indicated Rs.1,46,248 crores or 1.85% of GDP (social help designs/benefits for BPL, SC, ST, sustenance, cabin and work

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<sup>401</sup> Ravi Duggal, "Social Security Budget in India; A Critical Assessment *available at* [https://www.researchgate.net/publication/236889012\\_Social\\_Security\\_Budgets\\_in\\_India\\_A\\_Critical\\_Assessment](https://www.researchgate.net/publication/236889012_Social_Security_Budgets_in_India_A_Critical_Assessment) last visited on 12/11/2011 at 9:35 PM

<sup>402</sup> *Ibid*

welfare for messy segments). Indian need to isolate these assorted focal points that range from government inability<sup>403</sup> (basic organization laborers) to exceptionally designated social help programs centered at poor and defenseless public.

With certain types of schemes, the solution to the financing problem is obvious. While social assistance resorted traditionally to public funds, social insurance scheme were financed out of the contributions of workers and employers.

A brief study of the budgetary outlays for social security under various scheme in the last five year is given below.

**Table3.1**

**Total Union Budget outlays for social security under various Schemes<sup>404</sup>**

Sl. No	Year	Rs. In Crore
1	2012-2013	9,030.40
2	2013-2014	10,206.80
3	2014-2015	8118.60
5	2015-2016	9,624.70
6	2016-2017 (B E)	12,225.40
7	2016-2017 (R E)	10,505.90
8	2017-2018	11,425.00

The budget allocation in the above table includes creation of national Platform of Unorganized Workers, national Health Protection Scheme/RSSY/RSBY, National Social

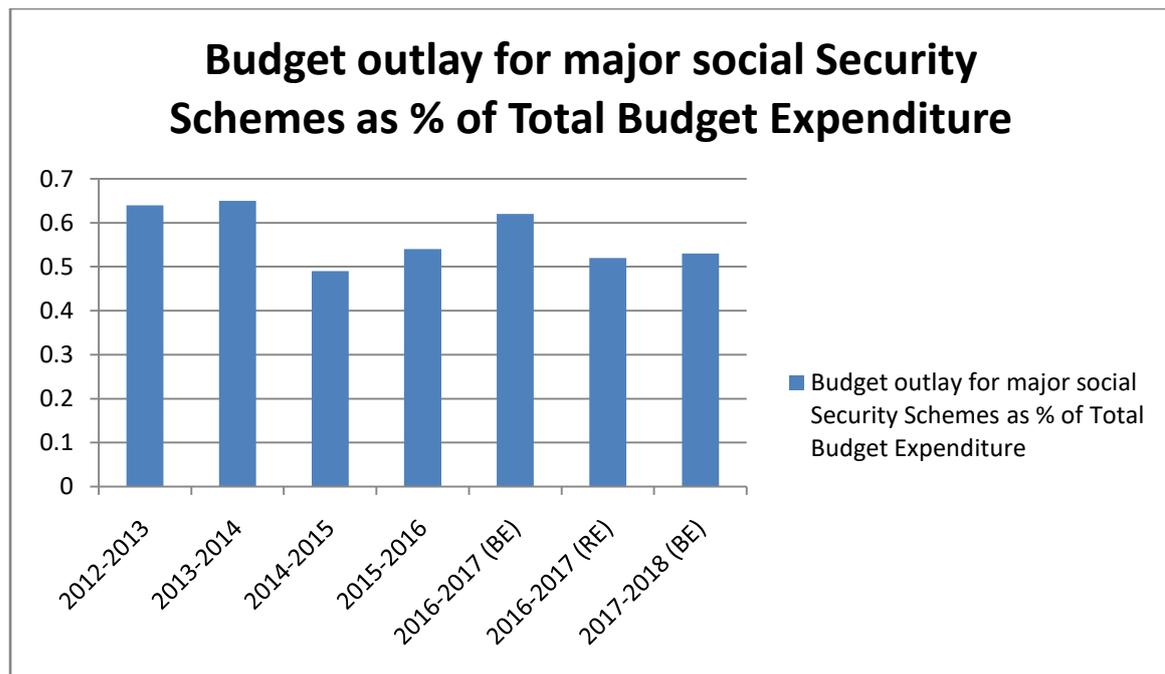
<sup>403</sup> What do we comprehend by government disability? The ILO definition is as under: "The idea of standardized savings embraced here spreads all measures giving advantages, regardless of whether in trade or out kind, to anchor assurance, bury alia, from (an) absence of business related wage (or inadequate wage) caused by ailment, inability, maternity, work damage, joblessness, maturity, or passing of a relative; (b) absence of access or exorbitant access to medicinal services; (c) lacking family bolster, especially for youngsters and grown-up dependants; (d) general destitution and social rejection. Social security therefore has two fundamental useful measurements, in particular "salary security" and "accessibility of restorative care", which are particularly recognized in the ILO Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69), separately, as "fundamental components of government managed savings"

<sup>404</sup> Compiled by CBGA from Union Budget for various years.

Assistance Programme, Swavalamban, Govt. contribution to Aam Admi Bima Yojana, Atal Pension Yojana, and interest subsidy to LIC for pension Plan for senior Citizen.

**Budget outlay for major social Security Schemes as % of Total Budget Expenditure**

**Table 3.2**



From the above table it is evident that India remains somewhat over portion of the worldwide normal as an extent to GDP. In-fact the bigger increment has been in the extent of social security to government employees, because of the fifth and sixth Pay Commissions – from 27% offer in 1990-91 of every such advantage to over 40% by and by

**Budget outlay for Major Social Security Schemes as % of Gross Domestic Product (GDP)**

**Table 3.3**

Sl. No	Year	Percentage
1	2012-2013	0.09
2	2013-2014	0.09
3	2014-2015	0.07
5	2015-2016	0.07
6	2016-2017 (BE)	0.08
7	2016-2017 (RE)	0.07
8	2017-2018 (BE)	0.07

**Creation of National Platform of Unorganized Workers and allotment of an Aadhaar seeded identification numbers**

**Table 3.4**

Sl. No	Year	Rs. In Crore
1	2012-2013	0.00
2	2013-2014	0.00
3	2014-2015	0.00
5	2015-2016	45.30
6	2016-2017 (BE)	144.50
7	2016-2017 (RE)	0.50
8	2017-2018 (BE)	100.00

## National Health Protection Schemes/ RSSY/RSBY

**Table 3.5**

Sl. No	Year	Rs. In Crore
1	2012-2013	7,824.80
2	2013-2014	9,046.00
3	2014-2015	7,086.70
5	2015-2016	8,616.40
6	2016-2017 (BE)	9,500.00
7	2016-2017 (RE)	9,500.00
8	2017-2018 (BE)	9,500.00

National Social Assistance Programme includes Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi National Widow Pension Scheme (IGNWPS), Indira Gandhi National Disability Pension Scheme (IGNDPS), Annapurna Scheme, and Family Benefit Scheme<sup>405</sup>

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<sup>405</sup> Also see <https://pingpdf.com/pdf-employee-and-employment-injury-under-the-employees-statei.html>

**Swavalamban Scheme<sup>406</sup> Table 3.6**

Sl. No	Year	Rs. In Crore
1	2012-2013	104.40
2	2013-2014	152.90
3	2014-2015	195.00
5	2015-2016	250.60
6	2016-2017 (BE)	209.00
7	2016-2017 (RE)	00
8	2017-2018 (BE)	50.00

**Government Contribution to Aam Admi Bima Yojana Table 3.7**

Sl. No	Year	Rs. In Crore
1	2012-2013	0.00
2	2013-2014	405.
3	2014-2015	437.50
5	2015-2016	450.00
6	2016-2017 (BE)	100.00
7	2016-2017 (RE)	9,500.00
8	2017-2018 (BE)	350.00

<sup>406</sup> Swavalamban Scheme is a co-contributory Pension scheme launched in the year 2010 to support people from the unorganized sector. The Central Government would contribute an aggregate of Rs. 1,000 in each National Pension System (NPS) account opened underneath the subject wherever the supporter is in a situation to spare loads of Rs.1,000 to Rs.12,000 all through a yr. The Government's commitment is available up to year 2016-17. The Swavalamban scheme targets beneficiaries of State Governments, Aanganwaadi employees, Construction workers, weavers, anglers, agriculturists, cultivate workers etc. The scheme is managed by Pension Fund Restrictive and Development Authority (PFRDA) and bolstered through money fund support by approach of Grants-in-Aid to PFRDA.

## Atal Pension Yojana

**Table 3.8**

Sl. No	Year	Rs. In Crore
1	2012-2013	0.00
2	2013-2014	0.00
3	2014-2015	0.70
5	2015-2016	173.00
6	2016-2017 (BE)	200.00
7	2016-2017 (RE)	40.00
8	2017-2018 (BE)	155.00

## Interest Subsidy to LIC for Pension Plan for Senior Citizens

**Table 3.9**

Sl. No	Year	Rs. In Crore
1	2012-2013	99.50
2	2013-2014	115.80
3	2014-2015	111.20
5	2015-2016	101.80
6	2016-2017 (BE)	171.90
7	2016-2017 (RE)	136.60
8	2017-2018 (BE)	250.00

**For Publicity and Awareness of Pradhan Mantri Jeevan Jyoti Bima Yojana And Pradhan Mantri Suraksha Bima Yojana the following budget has been allocated in the last Five Year**

**Table 3.10**

Sl. No	Year	Rs. In Crore
1	2012-2013	0.00
2	2013-2014	0.00
3	2014-2015	0.00
5	2015-2016	0.00
6	2016-2017 (BE)	50.00
7	2016-2017 (RE)	5.00
8	2017-2018 (BE)	20.00

**Budget allocation for IGNOAPS<sup>407</sup>**

**Table 3.11**

Sl. No	Year	Rs. In Crore
1	2015-2016	5,562.70
2	2016-2017 (BE)	6,130.90
3	2016-2017 (RE)	6,130.90
4	2017-2018 (BE)	6,126.90

<sup>407</sup> The scheme is a part of National Social Assistance Programme (NSAP)

### **National Family Benefit Scheme (NFBS)**

**Table 3.12**

Sl. No	Year	Rs. In Crore
1	2015-2016	639.40
2	2016-2017 (BE)	787.20
3	2016-2017 (RE)	787.20
4	2017-2018 (BE)	774.10

### **Indira Gandhi National Widow Pension Scheme (IGNWPS)**

**Table 3.13**

Sl. No	Year	Rs. In Crore
1	2015-2016	2,068.90
2	2016-2017 (BE)	2,221.70
3	2016-2017 (RE)	2,221.70
4	2017-2018 (BE)	2,221.70

## Indira Gandhi National Disability Pension Scheme (IGNDPS)

**Table 3.14**

Sl. No	Year	Rs. In Crore
1	2015-2016	288.00
2	2016-2017 (BE)	279.30
3	2016-2017 (RE)	279.30
4	2017-2018 (BE)	274.30

## Annapurna Scheme

**Table 3.15**

Sl. No	Year	Rs. In Crore
1	2015-2016	56.30
2	2016-2017 (BE)	75.80
3	2016-2017 (RE)	75.80
4	2017-2018 (BE)	75.80

### **7.3 Summary of Budget 2018-2019 on Education health and Social Protection; Medium, Small and Micro Enterprises (MSMEs) and Employment; and Employment Generation<sup>408</sup>**

Against a background of mounting distress for weaker sections of the population and people in rural areas, there was a clear need for a substantial increase in allocations for the social sector in the Union Budget 2018-19.

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<sup>408</sup>Press Information Bureau, Government of India Ministry of Finance, "Summary of Budget 2018-19" 1<sup>st</sup> February 2018

The Government firmly on targeted to achieve high growth of 8% plus as manufacturing; services and exports are back on good growth path. While GDP growth at 6.3% in the second quarter of 2017-18 signaled turnaround of the economy, growth in the second half remain between 7.2% to 7.5% . .

Indian society, polity and economy had shown remarkable resilience in adjusting with the structural reforms. IMF, in its latest Update, has forecast that Republic of India can grow at 7.4% next year within the scenery of services resuming high growth rates of 8% plus, exports expected to grow at 15% in 2017-18 and producing back on smart growth path.<sup>409</sup>

However, Government has observed programmes to direct the advantage of structural changes and smart growth to succeed in farmers, poor and different vulnerable sections of our society and to uplift the under-developed regions. This Budget consolidate these gains and notably specialize in strengthening agriculture and rural economy, provision of good health care to economically less privileged, taking care of senior citizens, infrastructure creation and working with the States to supply a lot of resources for rising the standard of education within the country. This budget ensured that welfares reach eligible beneficiaries.

### **Education health and Social Protection**

Calculable fund on health, education and social protection for 2018-19 is Rs.1.38 lakh crore against calculable expenditure of Rs.1.22 lakh crore in 2017-18 .

On education front, Ekalavya Model Residential School on par with Navodaya Vidyalayas to produce the simplest quality education to the tribal children in their own setting by 2022 in each block with over 50% ST population and a minimum of 20,000 social persons with special facilities for protective native art and culture besides providing coaching in sports and ability development. To improve investments in analysis and connected infrastructure in premier educational institutions, including health institutions, a significant initiative named “Revitalising Infrastructure and Systems in Education (RISE) by 2022” with a complete investment of Rs.1,00,000 crore in next four years was allotted in this Budget year .

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<sup>409</sup> Addressed by Shri Arun Jaitley in General Budget 2018-19.

The Government launched the ‘‘Prime Minister’s Research Fellows (PMRF)’’ Scheme this year. Under this, 1,000 best B.Tech students will be identified each year from premier institutions and supply them facilities to do Ph.D in IITs and IISc, with a handsome fellowship. Allocation on National Social Assistance Programme this year has been unbroken at Rs. 9975 crore.

This budget proclaimed the world’s largest government funded health care programme titled National Health Protection Scheme to cover over 10 crore poor and vulnerable families (approximately 50 crore beneficiaries) providing coverage upto 5 lakh rupees per family per year for secondary and tertiary care hospitalization. It also committed Rs 1200 crore for the National Health Policy, 2017, which with 1.5 lakh Health and Wellness Centres will bring health care system closer to the homes of people. The Government also decided to allocate additional Rs.600 crore to provide nutritional support to all TB patients at the rate of Rs.500 per month for the duration of their treatment. Shri Jaitley said, the government will be setting up 24 new Government Medical Colleges and Hospitals by upgrading existing district hospitals in the country.

Under this Budget on cleaning the Ganga, a complete of 187 projects are sanctioned under the Namami Gange programme for infrastructure development, watercourse surface cleaning, rural sanitation and different interventions at a value of Rs.16,713 crore. 47 projects have been completed and remaining projects are at varied stages of execution. All 4465 Ganga Grams – villages on the bank of river - are declared open excreting free. The government acknowledged 115 aspiration districts taking innumerable indices of enlargement in thought for creating them model districts of development.

### **Medium, Small and Micro Enterprises (MSMEs) and Employment**

The Budget has given an enormous thrust to Medium, Small and Micro Enterprises (MSMEs) to spice up employment and economic evolution. A amount of Rs. 3794 crore has been provided for giving credit support, capital and interest aid and for innovations. MUDRA Yojana launched in April, 2015 has led to sanction of Rs.4.6 lakh crore in credit from 10.38 crore MUDRA loans. 76% of loan accounts are of women and more than 50% belong to SCs, STs and OBCs. It is proposed to set a target of Rs.3 lakh

crore for lending under MUDRA for 2018-19 when having with success exceeded the targets altogether previous years.

### **Employment Generation**

Reiterating that crafting job opportunities is at the core of Government policies, This budgetary year associate freelance study as showing that 70 lakh formal jobs will be created this year. To lug forward the momentum created by the measures taken throughout the last 3 years to spice up employment generation, it is proclaimed that the Government can contribute 12% of the wages of the new employees in the EPF for all the sectors for next three years. This budgetary year also proposed to make amendments in the Employees Provident Fund and Miscellaneous Provisions Act, 1952 to condense women employees' contribution to 8% for first three years of their employment against existing rate of 12% or 10% with no amendment in employers' contribution.

The Budget planned associate outlay of Rs.7148 crore for the textile sector in 2018-19 as against Rs.6,000 Crore in 2016.

### **7.4 CONCLUSION**

In the interests of budget transparency, it's vital to elucidate the programmes and initiatives proclaimed clearly, thus individuals understand wherever the resources can return from. Farmers are told that the method for considerably increasing the minimum support worth has already started and that they are going to be group action larger gains within the next crop. However individuals can realize this tough to believe this, then they ought to a minimum of savvy and from wherever these edges can return. They are nowhere seen within the allocations for the food grant or within the allocations for the .

The Finance Minister in his 2018 Budget speech has proposed that the Government will make provident fund contributions of 12 percent of wages for new employees for a period of three years and reduce the mandatory contribution limit from 12 percent to 8 percent for women employees for the first three years of employment. The 2018 Budget proposed for the amendments to the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and allied schemes which is indeed a ray of hope in achieving objectives of enactment of social security legislation.

It is evident from the above study that the budgetary allocation for advancement of the social security varies thus additional cautious is required in the near future concerning the downward redaction of Budget Estimates for a few aspects of social sector outlay or else the sole purpose of social security will never be achieved. Hence, careful scrutiny of social sector expenditure throughout the year is a call of an hour.

## Chapter VIII

### A Study of the Shifting Contours of Judicial Perception

Labour jurisprudence owes its origin to the Pre-independence era, where it existed in an elementary form but after independence, it is the Supreme Court that has infused new-fangled essence in the legislative framework of the welfare State. The Indian judiciary has played an extensive role in the advancement of industrial jurisprudence and makes a discrete contribution towards innovative methods and devised strategies to ensure justice to vulnerable section of the society which could be witnessed from a number of Supreme Court landmark decisions.

India is a welfare state<sup>410</sup> and has enforced many labour welfare legislations. A social system is characterized by such policies adopted by the Government for the welfare of the people. Judiciary upholds the spirit of social equity and social justice and protects the interest of vulnerable groups. Thus, this chapter focuses to study the shifting contour of judicial perception of social security of labour in India. This chapter also consists of a discussion on what could be termed as ‘social Justice’, the Indian constitutional structure of the division between fundamental rights and directive principles, and the debates in the Constituent Assembly on the nature and enforcement of social Justice.

#### 8.1 Introduction

India being a welfare state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term of social security cover a variety of forms of economic and social organization. Before discussing the welfare state it is important to analyze the term “State” State is an important legal institution as it is a source of all the powers and rights.<sup>411</sup> The relation between the state and law is inherent.

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<sup>410</sup> Welfare state is that system in which the Government undertakes various welfare programmes for its people such as insurance, old age pension and other social security measures.

<sup>411</sup> According to *Salmond*, “A state is an association of human beings established for the attainment of certain ends by certain means.” The relationship between state and law is inherent. According to *Holland*, “A state is a political society. He further writes society means a natural; unit of a large number of human beings united together by a common language and by a common language and by similar customs and opinions resulting from common ancestry,

The concept of welfare state<sup>412</sup> developed during 19<sup>th</sup> and 20<sup>th</sup> century. At the time of independence, the Constitution makers were highly influenced by the feeling of social equality and welfare of the people which led to incorporation of such provisions in the Constitution of India that made the role of state in India important. State plays a key role in protecting and promoting the economic and social well-being of its citizens based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life which is enshrined in the Fundamental Rights and Directive Principles of State Policies in the Constitution of India.

The principal aim of the socialist state is to eliminate inequality in income, status and standards and this concept was also appreciated by the Hon'ble Supreme Court in *D. S. Nakara v. Union of India*<sup>413</sup>

The Apex Court in *Excel Wear v. Union of India*,<sup>414</sup> headed by Hon'ble Chief Justice Y.V. Chandrachud, Justice R.S. Sarkaria, Justice N.L. Untwalia Justice A.D. Koshal and Justice A.P. Sen in deciding the case held that:

“The addition of the word “socialist” might enable the courts to learn more in favour of nationalization and state ownership of an industry. But, so long as private ownership of industry is recognized which governs an overwhelming large proportion of economic structure, is it possible to say that principles of socialism and social justice can be pushed to such an extreme so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private owners of the undertaking.”<sup>415</sup>

“From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey to the fulfillment of goal every state

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religious and historical circumstance”. *Grotius* defines state as “ the complete union of freedom who joins themselves for the purpose of enjoying law and for the sake of public welfare”

<sup>412</sup> A basic feature of the welfare state is social benefits, intended to provide benefit during period of greatest needs i.e old age, illness, unemployment. The welfare state also usually includes public provision of education, health , housing.

<sup>413</sup> (1983) 1 SCC 305 the Hon'ble Supreme Court held at para 33 held that “the principal aim of a socialist state is to eliminate inequality in terms of income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. This amongst other on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism.”

<sup>414</sup> AIR 1979 SC 25 at para 24

<sup>415</sup> *Ibid*

action, whenever taken, must be directed and must be so interpreted, so as to take the society one step towards the goal”.<sup>416</sup>

## 8.2 Social Security: Fundamental Rights & Directive Principles of the Indian Constitution

The Indian Constitution strikes a balance between individualism and socialism. The Indian Constitution is divided into two separate parts. Part III of the constitution deals with the ‘Fundamental Rights’<sup>417</sup>, and Part IV of the constitution contains the Directive Principles of State Policy (DPSPs),<sup>418</sup>. While Fundamental Rights are justifiable under the constitution, the Directive Principles are not justifiable rights and their non-compliance cannot be taken as a claim for enforcement against the State.

The Directive Principles have specifically been made non-justifiable or unenforceable by Article 37<sup>419</sup> of the Indian constitution. The Supreme Court supported this view in *State of Madras v. Chempakam Dorairajan*<sup>420</sup> and in *Re Kerala Education Bill*,<sup>421</sup>

However, in *Sajjan Singh Case*,<sup>422</sup> it was held by the Hon’ble Supreme Court that the Fundamental Rights cannot be amended. But this view was contradicted by the Supreme Court in *Golaknath v. State of Punjab*<sup>423</sup> where the Hon,ble Supreme Court in dealing the case held that

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<sup>416</sup> *Supra*

<sup>417</sup> Fundamental Rights include the right to life, the right to equality, the right to free speech and expression, the right to freedom of movement, the right to freedom of religion, which in conventional human rights language may be termed as civil and political rights

<sup>418</sup> DPSP include all the social, economic and cultural rights, such as the right to education, the right to livelihood, the right to health and housing

<sup>419</sup> The constitution of India, art 37 provides that -“the provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.”

<sup>420</sup> A.I.R. 1951 S.C. 226. At Para 10 The Hon’ble supreme court held that “*Directive Principles* had to conform to run as subsidiary to the chapter on *Fundamental Rights* on the reason that the later are enforceable in the courts, while yje former are not.”

<sup>421</sup> In *Re Kerala Education Bill*, A.I.R. 1958 S.C. 956. Para 8 Hon’ble Chief Justice S.R.Das observed that “ the Directive Principles had to conform to and run as subsidiary to the chapter on Fundamental Rights.

<sup>422</sup> *Sajjan Singh v. State of Rajasthan* A.I.R 1965 SC 845

<sup>423</sup> *Golaknath v State of Punjab*, A.I.R. 1967 S.C. 1643.

“The Directive Principle and Fundamental Rights enshrined in the Constitution formed an ‘integrated scheme forming a self-contained code. The scheme flexible enough to respond to the changing needs of the society’”.<sup>424</sup>

Subsequently, in 1972 The Constitution was amended and inserted i.e., *Article 31-C*<sup>425</sup> and The Hon’ble Supreme Court in<sup>426</sup> by majority upheld the validity of this Amendment.

In *Mumbai Kamgar Sabha v. Abdulbhai Faizullabai*<sup>427</sup> Justice V.R. Krishna Iyer and N.L. Untwala held that, Directive principles of state policy will be given preferred while two judicial choices are available.

Further the Justice O. Chinnappa Reddy in *Uttar Pradesh State Electricity Board & Another v. Hari Shanker Jain*<sup>428</sup> headed by the bench Justice Krishna Iyer, Justice D.A. Desai and Justice O. Chinnappa Reddy, expressed the view that the court do not have power to legislate. They are bound to interpret the principles enshrined in the constitution of India which does not hinder the goal that is set out in the Directive Principles of State Policies.

The question for consideration before the Supreme Court was whether the amendments introduced by section 4 and 55 of the constitution (42<sup>nd</sup> Amendment) Act, 1976 damage the basic structure of the Constitution by destroying any of its basic feature or essential elements where to be decided in *Minerva Mills Ltd. v. Union of India*<sup>429</sup> in which the Supreme Court observed that “the Constitution is a precious heritage; therefore, you cannot destroy its identity. The majority conceded to the Parliament the right to make alterations in the constitution so long as they are within its basic frame work. Further, the

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<sup>424</sup> *Id.* at 1656. Para 19

<sup>425</sup> Constitution of India, art 21 C was inserted by the 25<sup>th</sup> Constitution Amendment. Act. The 25th Amendment was to make Articles 14, 19 and 31 inapplicable to the laws made by the Parliament or State legislature for implementing the directive principles enshrined in Article 39 (b) and (c). Consequently, those legislations could not be questioned in a court of law.

It was introduced against the backdrop of increasing judicial scrutiny of land reforms introduced by the government to abolish Zamindari; the tussle between the court and the government was seen in the Bank Nationalization case where it was held mandatory for the government to give due compensation to those deprived of their property.

<sup>426</sup> (1973)4 S.C.225

<sup>427</sup> (1976) 3 S.C.C. 832. Supreme Court at Para 29 held that “where two judicial choices are available, the construction in conformity with the social philosophy of the part IV has to be preferred

<sup>428</sup> (1978)4 S.C.C 16 the Hon’ble Supreme Court at Para 5 held that “even though the courts could not direct making of legislations, courts are bound to evolve and adopt principles of interpretation which will further and not hinder the goals set out in Directive Principle in the state policy”.

<sup>429</sup> A.I.R. 1980 S.C. 1789.

court held that section 4 of this amendment was beyond the amending power of the Parliament and was void since it damages the basic or essential features of the constitution and destroyed its basic feature by a total exclusion of challenge to any law on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Art. 14 or Article 19 of the constitution Justice Bhagwati, in 'his dissenting judgment expressed that: "if the exclusion of the Fundamental Rights embodied in Article 14 and 19 could be legitimately made for giving effect to the Directive Principles set out in clauses (b) and (c) of Article 39 without affecting the basic structure, I fail to see why these Fundamental Rights cannot be excluded for giving effect to the other Directive Principles if the constitutional obligation in regard to the other Directive Principles which stand on the same footings". Further he observed that "I find it difficult to understand how it can at all be said that the basic structure of the constitution is affected when for evolving a *modus vivendi* for resolving a possible remote conflict between two constitutional mandates of equally fundamental character, Parliament decides by way of amendment of Art 31-C that in case of such conflict the constitutional mandate in regard to Directive Principles shall prevail-over the constitutional mandate in regard to the Fundamental rights under Articles 14 and 19".The amendment in Article 31-C far, from damaging the basic structure of the constitution strengthens and reinforces it by giving fundamental importance to the rights of the members of the community as against the rights of a few individuals and Merging, the objective of the constitution to build an egalitarian social order. But so far as section 4 of the 42<sup>nd</sup> Amendment of the Constitution is concerned Justice Bhagwati said; "I hold that, on the interpretation placed on the amended Article 31- C by me, it does not damage or destroy the basic structure of the constitution and is within amending power of Parliament and I would therefore, declare the amended Article 31-C of the constitution as valid."

The Hon'ble *Justice Krishna Iyer* in one of the leading case<sup>430</sup> held that it is the duty of the court to uphold the ideas of the Directive Principles of State Policies while interpreting the Constitution and other legislation. Later in landmark Right to Education Judgment<sup>431</sup>, the Justice Jeevan Reddy said that the Fundamental Rights and Directive Principles of the State Policies are supplementary and complementary to each other.

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<sup>430</sup> A.B.S.K Sangh (Rly) v. Union of India A.I.R. 1981 SC 298.

<sup>431</sup> Unnikrishnan v. State of A.P A.I.R. 1993 S.C. 2178 the Hon,ble Supreme Court held that "The provisions of Part III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goal indicated in Part IV

These Fundamental Rights can be enforced directly by the Supreme Court by virtue of Article 32 and through High Courts under Article 226

In *Air India Statutory Corporation v. United Labour Union*<sup>432</sup> it was observed by Supreme Court that the Directive Principles are substantially human rights.

The Hon'ble Supreme court also pointed out that the rights of the workers are protected under the Constitution of India through the Directive principles of state policies<sup>433</sup>. The Hon'ble Supreme Court in one of the case elaborately considered the scope of review of economic policy affecting rights of labour<sup>434</sup>.

The Supreme Court *Randhir Singh v. Union of India*,<sup>435</sup> held that principle of "equal pay for equal work" though not a fundamental right but it is certainly a constitutional goal, so it can be enforced, while dealing with the case where the petitioner and other other driver constables made a representation to the authorities that their case was omitted to be considered separately by the Third Pay Commission and that their pay scales should be the same as the drivers of heavy vehicles in other departments. As their claims for better scales of pay did not meet with success, the application has been filed by the petitioner for the issue of a writ under Article 32 of the Constitution. It is clear that the Judiciary is playing a pivotal role to promote Indian state as a social welfare state. In addition to these, Public Interest Litigations (PILs) have also played an important role in this field and have maintained social order.<sup>436</sup>

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<sup>432</sup> A.I.R. 1997 SC 645

<sup>433</sup> . In *National Textile Worker's Union v. P.R.Ramakrishnan* A.I.R. 1983 S.C. 75, the Supreme Court pointed out the significant position of workers in Indian society and reiterated the profound concern to the workers by the socioeconomic order envisaged in the Preamble and the Directive Principles of the Constitution. Though the Companies Act does not provide any right to the workers to intervene in the winding up proceedings it was decided that such a right of the workers had to be spelt out from the Preamble and *Articles 38, 39, 42, 43 and 43A* of the Constitution. The directive in *Article 43A*, i.e., the provision for securing the worker's participation in management, were accordingly read into fundamental right of the share holders to carry on or not to carry on their trade or business guaranteed under *Article 19 (1) (g)*. "The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is a centre of economic power should be controlled not only by economic power but also by capital and labour

<sup>434</sup> *BALCO Employees Union (Regd.) v. Union of India & Ors* (2002) 2)SCC 333

<sup>435</sup> AIR 1982 SC 879

<sup>436</sup> According to the Constitution of India, art. 38 " State in order to secure social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. Further, The 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"

Thus, from the above it is evident that The Indian Constitution not only aimed at achieving political independence from colonial rule but also resolve to establish new social order based on social, economic and political justice. Social revolution was put at the top of the national agenda by the Constituent assembly when it adopted the Objectives Resolution, which called for social, economic and political justice and equality of status, opportunity and before the law for all people. The DPSPs, it was thought, would make explicit the 'socialist' as well as the social revolutionary content of the constitution.<sup>437</sup>

### 8.3 Constitutional Prohibition<sup>438</sup>:Contract Labour

In *Secretary, State of Karnataka and Ors.v. Umadevi*<sup>439</sup> the hon'ble court held that that a sovereign government while considering the economic situation in the country was not prohibited from making temporary appointments or engaging workers on daily wages.

The Hon'ble Supreme Court while deciding, inter alia, whether the violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 are also violative of article 21 of the Constitution in *People's Union for Democratic Rights v. Union of India*<sup>440</sup> answered the question in the affirmative and observed:

The rights and benefits conferred on the workmen employed by a contractor are protected by the enacted of creation social welfare legislation which intended to ensure basic human dignity to the workmen<sup>441</sup>and if the workmen are deprived of any of these rights and benefits to under the provisions would clearly be a violation of fundamental Rights of the constitution<sup>442</sup>

In *Steel Authority of India Ltd. v. National Union Water Front Workers and Others*,<sup>443</sup> a Constitution bench of the Supreme Court delivered a landmark judgment on contract labour as:

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<sup>437</sup> Mahavir Tyagi from the United Provinces, during the Constituent Assembly Debates said, '... the directive principles accommodate all the revolutionary slogans in a particular form as it is social and economic justice that is demanded by the most radical of the radicals of the world.' Constituent Assembly Debates Official Report 1999) 19<sup>th</sup> Nov. 1948, Vol. No. VII, Book No.2 (New Delhi Lok Sabha Secretariat New Delhi).

<sup>438</sup> Article 21 of the Constitution, as observed earlier, lays down that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

<sup>439</sup> A.I.R.2006 S.C.1806.

<sup>440</sup> (1982)2 LLJ 454

<sup>441</sup> Such as Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

<sup>442</sup> Constitution of India, art. 21

<sup>443</sup> 2001, 111 LLR 349

“Neither Section 10 of the Contract Labour (Regulation and Abolition) Act nor any other provision in the Act, whether expressly or by necessary implications, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub section 1 of Section 10<sup>444</sup>, prohibiting employment of contract labour in any process, operation or other work in any establishment, consequently the principle employer cannot be required to order absorption of contract labour working in the concerned establishment.”

*Air India Statutory Corporation v. United Labour Union*<sup>445</sup> is an epoch-making judgment on contract labour. Here the Supreme Court ruled that after abolition of the contract labour system, if the principal employer fails to absorb the labour working in the establishments of the employer on regular basis, the workmen could seek judicial redress under article 226 of the Constitution. This is so because "judicial review being the basic feature of the Constitution, the High Court has to see that the notification is enforced. The citizen has fundamental right to seek redress of their legal injury by judicial process to enforce his rights in the proceedings under Article 226. The court added: "the workmen have a fundamental right to life. Meaningful right to life springs from the continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life". The court accordingly held that when the workmen are engaged as contract labour continuously in establishment of the employer where work is of perennial nature, then on the abolition of contract labour system, the contract labour are entitled per force to be absorbed on regular basis transposing their erstwhile contractual status into that of employer employee relationship under the principal employer.

In *Secretary, Haryana State Electricity Board v. Suresh*<sup>446</sup> the state electricity board employed workers through a contractor to maintain cleanliness in the plant. The contract itself specified the number of karamcharis to be employed. They having put in 240 days of continuous service claimed regularization by the board. The labour court ordered reinstatement of the service along with ten per cent back wages. The Hon'ble High Court in appeal confirmed the decision of the labour court but without back wages on the ground that there existed relationship of employer and workmen between the electricity board and the karamcharis. The Supreme Court, agreeing with the decision of

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<sup>444</sup> Section 10 Prohibition of employment of contract labour:-

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultaion with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

<sup>445</sup> (1997) LLR 288

<sup>446</sup> (1999) 3 SCC 601

the high court observed that the work was of a permanent nature and the overall control of the contract labour including administrative rested with the board. Further, neither the board was registered as a principal employer nor the contractor was a licensed contractor. Therefore, the so called contract system was a mere camouflage or a smoke screen. The real contractual relationship was "between the board and the karamcharis. As such they were entitled to be regularized in the service of the board. The doctrine of 'lifting of veil' enunciated in *Salomn v. Salomon*<sup>447</sup> was applied in this case to decide the actual relationship of employer employee.

The judgment given the SAIL case was followed in *Promod Kumar and Others v. National Aluminium Company Ltd.*<sup>448</sup> in which the High Court dismissed the petition seeking a declaration of petitioners to be regular workman as security guards, sergeants and cooks, and give direction to opposite parties to pay them remuneration equal to that paid to regular employees. The high Court observed that the Contract Labour was continuing in the establishment with due permission of the competent authority.

Further by virtue of a notification under section 10 of The Contract Labour Act, 1970, employment of contract labour in the establishment had not been prohibited. While relying upon the decision of SAIL case Court further held that there could be no automatic absorption of contract labour on issuing notification under section 10(1) of the Act as it does not provide any such relief. The principle laid down in SAIL was followed in many cases, also in *Cipla Ltd. v. Maharashtra General Kamgar Union*<sup>449</sup> and *Food Corporation of India v. The Union of India*<sup>450</sup> while supporting the judgment of SAIL case held that the workers has no right of automatic absorption on abolition of contract labour system.

Judiciary maintained its trend of protecting the interest of unorganised labour. In *National Iron and Steel Company v. State of West Bengal*<sup>451</sup>, maintained the protection of contract labour interest and the court discouraged the system of contract labour and even directed its abolition in certain circumstances to prevent exploitation. At the same time, in *Standard Vaccum Refining Company Ltd. v. Their Workmen*<sup>452</sup> court held that if it cannot be possible to abolish contract labour system, according to the objectives of

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<sup>447</sup> 1896 AC 22

<sup>448</sup> (2002) III LJ 657 Ori

<sup>449</sup> 2001 LLR 305

<sup>450</sup> 2003 Lab. IC 166

<sup>451</sup> (1967)2 LLJ 23 (SC)

<sup>452</sup> (1960) 2 LLJ 233 (SC)

the Act, fair conditions of service and security of tenure should be ensured to them. The Court also emphasized the need of workmen and interest of industry by extending the coverage of the employees by widely interpreting the definition of employee. For instance, the hon'ble supreme Court in one of the case held that the employees of the canteen and the cycle stand run in the cinema theatre by contractor were to be covered by the definition of employee under the Employees State Insurance Act,<sup>453</sup> Act and also *in Siddheswar, Hubli v. Employees State Insurance Corporation*,<sup>454</sup> the Court, while interpreting the term 'employee' under the Employees State Insurance Act held that the definition appears to be of wider implication and applies to those persons even whose services are lent to the principle employer.

In the case of *Mangesh Salodkar v. Monsanto Chemicals of India Ltd*<sup>455</sup> the issue concerned conditions of work at plants run by Monsanto Ltd. The company manufactures pesticides and it was alleged that a particular worker had suffered a brain hemorrhage because of the work environment. He survived but suffered major after - effects. He was paid Rs 3 lakh by the company towards medical expenses, but he filed a petition in the high court. The court initially appointed a commission headed by a retired judge of the high court. The commission, in turn, summoned documents from the factory inspectorate and asked certain experts to go into the conditions of work at the factory. A medical examination was also carried out on some of the other workers. During the pendency of the matter, the dispute between the workers and the employer was resolved as the employer agreed to pay an additional Rs 17.80 lakh to the concerned employee and Rs 7.40 lakh to other employees who had been affected. The commission accordingly filed a report with the high court. Since the dispute between employer and employees had been resolved, the court was not called upon to determine that aspect. However, it did go into other aspects concerning the right of employees to a safe workplace, etc. The court held that the workers had a fundamental right to health in the workplace. In addition, it observed:

As this case demonstrate the absence of updated medical records results in a virtual denial of access to justice. In the absence of information, factory workers and all those who promote the cause of workers cannot realistically attempt to redress the

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<sup>453</sup> *Royal Talkies, Hyderabad v. Employees State Insurance Corporation*, (1978 ) 4 SCC 204

<sup>454</sup> (1998) Lab I C 214 (Orissa)

<sup>455</sup> Writ Petition No. 2820 of 2003, decided by Bombay High Court on July 13, 2006

systemic failure on the part of the regulated industry to maintain regulatory standards. The court issued various directions, including the following:

- I. The medical examination of workers which is to be conducted under Section 41 E of the Factories Act, 1948 should be such as would enable an identification of diseases and illnesses which are a likely outcome of the process and material used in the factory;
- II. Copies of medical records of workmen must be handed over to them as and when medical examinations are conducted and the appropriate government will consider the issuance of suitable directions mandating the permanent preservation of medical records in electronic form by factories engaged in hazardous processes;
- III. In respect of factories involved in hazardous processes, safety and occupational health surveys as required by Section 91 A should invariably be carried out at the time of renewal of licenses, apart from other times.

In deciding one of the public interest Litigation case The Hon'ble supreme Court went to the extent of declaring right to health as a part of right to livelihood and life under Article 21 read with Article 39(e), 41, 43, 48-A of the Constitution<sup>456</sup> ,.

In *Muir Mills Co. Ltd. v. Suti Mazdoor Union*<sup>457</sup>, Justice Bhagwati explained Social Justice. According to him social justice is a very unclear and undefined expression, and added that whatever it meant, the concept of social justice does not derive from the imaginary ideas of any adjudicator but must have a more solid foundation. On the other hand, In *Parkash Cotton Mills v. Bombay*<sup>458</sup>, Mr. Chagla C.J. rejected the submission that

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<sup>456</sup>*Consumer Education and Research Centre v. Union of India* AIR (1995) SC 922 Thus the court observes: "The jurisprudence of personhood or philosophy of the right to life enlarges its sweep to encompass human personality in its full blossom with invigorate health which is a wealth to the workman to earn his livelihood to sustain dignity and to live a life with dignity and equality.... The expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard to life, by hygienic conditions in work place and leisure". The court further held that the State, be it Union or State Government or and industry, public or private is enjoined to take all action which will promote health, strength and vigour of the workmen during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. Health of the workers enables him to enjoy the fruit of his labour. Medical facilities to protect the health of the workers are, therefore, the fundamental human rights to make the life of workman meaningful and purposeful with dignity.

<sup>457</sup> (1995)ISC 991

<sup>458</sup> 59 BOM L.R 836

the Court should not impose its own ideas of social justice in interpreting statutory provisions by saying that social justice was an object of the Constitution.

The labour welfare is one which lends itself to various interpretations and it has not always the same significance in different countries. State is an important legal institution as it is a source of all the powers and rights. According to Bosanque, “the ‘state’ is a working conception of life as a whole.”

#### **8.4 Judicial Protection to Workers Right of Provident Fund and Employee State Insurance Act**

This is another piece of social security legislation. These are consistent with the constitutional guarantee for social, economic justice, to secure freedom from want and security against economic fear. The Supreme Court in several cases interpreted this Act as a beneficial legislation that provide benefits to the employees in case of illness, occupational injury, maternity Act<sup>459</sup> The Scheme under the Employees State Insurance Act and Provident Fund Act were framed by the central government in 1948 and 1952. In 1971, The Act was extended to comprehend family pension and life insurance benefit also. It is designed to provide for some retirement benefit.

The schemes under the ESI Act and Provident Fund Act were framed by the central government in 1948 and 1952. The Act was extended to comprehend family pension and life insurance benefit also. It is designed to provide for some retirement benefit.

Under the ESI Act, temporary and casual workers are covered and the wages paid to them are liable for contribution. This question was settled by the Courts which have held that “a casual worker is entitled to payment of contribution by the employer towards employer's contribution as well as employee's contribution, though he is employed even for a day or two or a few days in a week. The effect of these two clauses is emphatic enough to declare that the word 'employee' as defined under Section 2(9) of the Act includes casual worker also.”<sup>460</sup> A full Bench decision of the Karnataka High Court in *ESI Corporation v. Suvarna Saw Mills*,<sup>461</sup> observed that Courts have held time and again that there is no such difference between a casual or temporary or permanent employee for

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<sup>459</sup> Such as in *Bombay Anand Bhavan Restaurant v. Dy. Director ESI Corporation and In Transport Corporation of India v. Employees' State Insurance Corporation* (2000) 1 SCC 332 and *Cochin Shipping Co. v. ESI Corporation* (1992) 4 SCC 245

<sup>460</sup> *A.P.S.E Board v. S.S.J.C,Hyderabad*, 1977 L.I.C 316

<sup>461</sup> 1990 (5) FJR 154; 1979 L.I.C 1335 (FB).

the expression “employee” as defined under the Act and held that the term is wide enough to even include a casual employee who is employed just for a day for wages.

The apex court Bench comprising of Justice V. Gopala Gowda and Arun Mishra also in *Royal Western India Turf Club Ltd. v. ESI*<sup>462</sup> corporation has held that casual worker are covered under the definition of employees as defined in section 2 (9) of the Employees State Insurance Act. 1948

In the case of Director General, *ESI Corporation v. Scientific Instrument Co. Ltd.*<sup>463</sup>, the question that came up for consideration before High Court of Allahabad was whether employees who worked outside of the State of Allahabad which is where the registered office was, could avail of the benefits of the ESI Act, since the main work of the branch office outside Allahabad was to distribute products of a foreign company. The Court answering in the affirmative held that, “If the main business of the company itself at the branch sales offices, is to sell and distribute products of foreign company and the employees working have been employed by the company basically in connection with this work, it would be difficult to hold that the employees at branch sales offices are not 'employees' within the meaning of the term defined in Section 2(9) of the Act.

The ESI authorities in *Abu Marble Mining Pvt. Ltd. v. Regional Director, ESI Corp., Mumbai*<sup>464</sup> demanded contribution on the payment made to the contractor for the work of marble fixation done outside the factory premises. The appellant challenged the said demand under section 75 of the Act before the ESI court which held that the job of marble fixing outside the factory of the appellant by the employees engaged by the contractor had no connection with the factory and such employees engaged by the contractor would not fall even within the extended definition of employee' under section 2(9) of the Act.

The employees working in the club was also brought within the ambit of ESI Act<sup>465</sup> as Hon,ble *Justice R. Banumathi* stated in one of his deciding case that the act is one of the beneficial legislation which provides social security to the most susceptible

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<sup>462</sup> (2016)4SCC521

<sup>463</sup> 1995, lab. IC 651, (1990) 70 FLR 154.

<sup>464</sup> 2005 LLR 184

<sup>465</sup> In *Employees State Insurance Corporation v. Hyderabad Race Club* (2004) 6 SCC 191

section of the society who is in constant need of protection and assistance. Thus, the Act should be effective enough to have more coverage areas<sup>466</sup>.

In the recent case *Jaya Biswal & Ors. v. Branch Manager, Iffco Tokio General Insurance Company Ltd.*<sup>467</sup> Justice V. Gopala Gowda, held that the E.C. Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment should be construed as such.

### **8.5 Judicial Approach on Employees Provident Fund and Miscellaneous Provisions Act, 1952**

In India Employees Provident Fund and Employees State Insurance Schemes, the contribution is the main resource to keep the Scheme financially viable and administratively effective. In *Regional Provident Fund Commissioner v. Hooghly Mills Company Limited*<sup>468</sup> the Supreme Court held that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 granted exemption to the respondent Company from the operation of

all the provisions of the EPF Scheme, 1952 subject to the conditions specified in the Scheme which were in addition to the conditions mentioned in the Explanation to Sec. 17(1). After the grant of execution, the respondent company framed a scheme and created a trust and appointed a Board of trustees for the management of the said trust fund and was thus enjoying exemption under Sec. 17 (1-A) (a) of the EPF Act.

However, there were defaults on the part of the respondent company in making timely payment of dues towards the provident fund. Therefore, proceedings were initiated against the respondents and after affording an opportunity to the respondent to represent their case, as contemplated under Section 14 and 13 hearing, the Regional Provident Fund Commissioner by a detailed order directed the respondent company to remit a specified amount by way of damages, failing which, it was stated that further action as provided under the Act and the Schemes framed there under shall be initiated. The Supreme Court held that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, the normal canon of interpretation is that a remedial statute

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<sup>466</sup> *Delhi Gymkhana Club Ltd v. Employees State Insurance Corporation* (2015) 1 SCC 142 at para 23

<sup>467</sup> CIVIL APPEAL NO.869 OF 2016(Arising out of S.L.P. (C) No.1903 of 2015

<sup>468</sup> (2012) 2 SCC 489

receives liberal construction. If there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted. The court observed that the EPF Act is a beneficial social welfare legislation to ensure benefits to the employees. It affected the economic message of the Constitution as articulated in the Directive Principles of State Policy.<sup>469</sup>

Constitutional validity of EPF was discussed by Supreme Court in *Mohmedallii v. Union of India*.<sup>470</sup> The Supreme Court observed that the Act does not suffer from the vice of discrimination and, therefore, does not infringe Article 14 of the Constitution. The underlying principles of the Provident Fund Act is to bring all kinds of employees within its ambit as when the central Government might think fit after viewing the circumstances of different classes of establishments. The general rule as to the application of the Act is laid down in Sec. 1(3) of EPF. By way of exception to that general rule, the appropriate Government is authorized by section 17 to exempt any establishment from the operation of all or any of the provision of any Scheme framed under the Act. The exemption is with a view to avoid duplication and permit the employees concerned the benefit of the pre-existing Scheme which, presumably has been working satisfactorily so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which is not less favorable to them. Hence, Section 1(3), read along with section 17 cannot be said to have conferred an un controlled power on the appropriate Govt.

In the case of *Employees Provident Fund Commissioner v. Official Liquidator of ESSKAY Pharmaceuticals Limited*,<sup>471</sup> the EPF Commissioner filed the special leave was whether the priority given to the dues payable by an employer under section 11 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is subject to section 529-A of the Companies Act 1956 in terms of which the workmen's dues and debts due to secured creditors are required to be paid in priority to all other debts. The Court held that the EPF

Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments who have made significant contribution to the economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of

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<sup>469</sup> Under the Directive Principles of the State Policy has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life.

<sup>470</sup> 1963 Supp (1) SCR 993

<sup>471</sup> (2011) 10 SCC 727

goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the Directive Principles of State Policy contained in Articles 38 and 43 of the Constitution.

The government servant cannot approach any of the forums under the Act for any of the retirement benefits. In *Dr. Jagmittar Sain Bhagat v. Director Health Services, Haryana*<sup>472</sup> the appellant joined Health Department, of the respondent State, as Medical Officer on 5.6.1953 and took voluntary waiver retirement on 28.10.1985. During the period of service, he stood transferred to another district but he retained the government quarter. Appellant claimed that he had not been paid all his retirement benefits, and penal rent for the said period had also been deducted from his dues of retirement benefits without giving any show cause notice to him. Appellant made various representations, the appellant preferred a complaint before the District Consumer Disputes Redressal Forum, Faridabad on 5.1.1995 and the said Forum dismissed on merits observing that his outstanding dues i.e. pension, gratuity and provident fund etc. had correctly been calculated and paid to the appellant by the State authorities.<sup>473</sup>

The appellant approached in appeal to the State Commission. The State Commission dismissed the appeal the order dated 31.1.2007 observing that though the complaint was not maintainable as the District Forum did not have jurisdiction to entertain the complaint of the appellant he was not a “consumer” and the dispute between the parties could not be redressed by the said Forum, but in view of the fact that the opposite party (State) neither raised the issue of jurisdiction before the District Forum nor preferred any appeal, order of the District Forum on the jurisdictional issue attained finality. However, there was no merit in the appeal.<sup>474</sup>

It is evident that by no stretch of imagination a government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act. The government servant does not fall under the definition of a “consumer” as defined under Section 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, of redressal of any his grievance, may be the State Administrative Tribunal, if any or Civil Court but certainly not a Forum under the Act.

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<sup>472</sup> AIR 2013 SC 3060

<sup>473</sup> *Ibid* at 3064

<sup>474</sup> *Ibid* at 3065

## 8.6 Judicial Approach on Maternity Benefit Act, 1947

The Act defines a “woman” as a woman employed directly or through an agency for wages. The Supreme Court has held that not just regular women employees but even women who are engaged on a casual basis or on muster roll on daily wage basis can avail of the benefits of this Act.<sup>475</sup> In this case Union of Female Workers who were not on regular rolls, but were treated as temporary workers and employed on Muster roll, claimed that they should also get maternity benefit like regular workers. The court held that the provisions of the Act would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the fetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery.

The Supreme Court of India, in case of *Dhanwatey v. Commissioner of Income Tax*,<sup>476</sup> has formulated that the law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interest of the society. Our great commentator in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions.

The present system of government in India is based on the principle of shaping it into a “Welfare State”. The government is therefore striving to transform India into a progressive society. From time to time the government has introduced laws aimed at social reformation and efforts are being made to bring about a social change. Law in such a Welfare State is conceived not only as an instrument to preserve law and order to assure rights of the individual, but also to achieve a society where justice-social, economic and political prevails. The concept of 'social justice' and 'social engineering' are thus a part of the wider concept of a welfare state.<sup>477</sup> So Maternity Benefit Act, 1961 was established. The Apex Court held in this case that a just social order can be achieved only when

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<sup>475</sup> Municipal Corporation of Delhi v. Female Workers (Muster Roll), 2000 LLR 449

<sup>476</sup> AIR 1968 SC 683

<sup>477</sup> *Ibid* at 689

inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honored and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled.

The Court observed that the purpose of Maternity Act is to protect dignity of motherhood by providing for the full and healthy maintenance of the women and her child when she is not working. Since number of women employees grows, maternity leave and other maternity benefits are becoming, increasingly common in employment today. The Maternity Benefit Act has been of great value in social justice oriented welfare state in securing adequate rest and financial assistance to factory women workers. Maternity Act gives a special protection to the women and increases the dignity of motherhood.

In the case of *B. Shah v. Presiding Officer, Labour Court*,<sup>478</sup> wherein the petitioner claimed that she was paid her maternity benefit wages by deducting the wage due to her on Sundays, the Supreme Court defined the term „week“ to include wages for 7 days including Sundays and not 6 days. The Court applying the principles of Article 4 of Convention No.103, i.e the Maternity Protection Convention (Revised), 1952 held that the Act was a beneficial social legislation and thus will fall under the purview of Article 42 of the Constitution of India.

The Apex Court introduced the concept of reasonableness, in interpreting Article 14 of the Constitution in *In Air India v. Nergesh Meerza*<sup>479</sup> Air India Corporation (AIC) Act and Indian Airlines Corporation (IAC) Act formulated certain regulations between the conditions of retirement and termination of service pertaining to air hostesses (AH) and those of male pursers (MP) forming part of the same cabin crew and performing similar duties. These conditions were that an AH under AIC retired from service in case of ‘first pregnancy’. The Court held it to be “grossly unethical” and as smacking of “deep rooted sense of utter selfishness at the cost of all human values” as compelling to terminate services if a woman becomes pregnant would amount to forbidding her not to have any children. It has been stated that mere pregnancy should not be considered to be a

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<sup>478</sup> AIR 1975 SC 12

<sup>479</sup> (1981)4 SCC 335

disability but a natural outcome of marriage and any distinction made on the ground of pregnancy is extremely unreasonable and manifestly arbitrary.

*Neera Mathur v. Life Insurance Corporation of India*,<sup>480</sup> in this case the petitioner's applied for the post of Assistant in the Life Insurance Corporation of India ("the Corporation"). She was called for written test and also for interview. She was successful in both the tests. She was asked to fill a declaration form which she did and submitted to the Corporation on May 25, 1989. On the same day, she was also examined by a lady doctor and found medically fit for the job. The doctor who examined the petitioner was in the approved panel of the Corporation. The petitioner was directed to undergo a short term training programme. After successful completion of the training she was given an appointment letter dated September 25, 1989. She was appointed as Assistant in the Corporation. She was put on probation for a period of 6 months. She was entitled to be confirmed in the service subject to satisfactory work report. The petitioner took leave from December 9, 1989 till March 8, 1990. In fact, she applied for maternity leave on December 27, 1989 followed by medical certificate dated January 6, 1990. She was admitted to the Nursing Home of Dr Hira Lal on January 10, 1990. She delivered a full-term baby on January 11, 1990. She was discharged from Nursing Home on January 19, 1990. Employment with the LIC was terminated after she returned from maternity leave. The reason given was that she had withheld information about her pregnancy in a questionnaire she had filled out at the time of her appointment. After a perusal of the questionnaire, the Supreme Court found that it required female candidates to provide information about the dates of their menstrual cycles and past pregnancies. The Court held that the questionnaire was an invasion of privacy and directed the LIC to reinstate the petitioner and delete the offending columns from its future questionnaires.

*In Municipal Corporation of Delhi v. Female Workers*<sup>481</sup> The Supreme Court declared that there is nothing in the Maternity Benefit Act, 1961 which entitles only regular women employees to the benefit of maternity leave and should be extended to women engaged in work on casual basis or on muster roll on daily-wage basis. The Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act 1966 grant maternity benefit to those worker. Further, the Supreme Court

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<sup>480</sup> (1992) 2 SCC 286

<sup>481</sup> AIR (2000) SC 1274

held that the Delhi Municipal Corporation was an “industry” under the Industrial Disputes Act, 1947 and that the workers on the muster roll were “workmen”. Thus the court held that the benefits of the Act, was directly applicable to the women employees on the muster roll as much as regularized employees.<sup>482</sup>

In the landmark judgment *Kakali Ghosh v. Chief Secretary, Andaman & Nicobar Administration*<sup>483</sup> where the appellant initially applied for CCL<sup>484</sup> for six months commencing from 5-7-2011 by her letter dated 16-5-2011 to take care of her son who was in 10th standard. In her application, she intimated that she is the only person to look after her minor son and her mother is a heart patient and has not recovered from the shock due to the sudden demise of her father; her father-in-law is almost bedridden and in such circumstances, she was not in a position to perform her duties effectively. While her application was pending, she was transferred to Campbell Bay in Nicobar District (Andaman and Nicobar) where she joined on 6-7-2011. By her subsequent letter dated 14-2-2012 she requested the competent authority to allow her to avail CCL for two years commencing from 21-5-2012. However, the authorities allowed only 45 days of CCL by their Office Order No. 254 dated 16-3-2012. Thus, the court were left to deal with the question that whether a woman employee of the Central Government can ask for uninterrupted 730 days of child care leave (hereinafter referred to as “CCL”) under Rule 43-C of the Central Civil Services (Leave) Rules, 1972 (hereinafter referred to as “the Rules”). Thus, the Justices S.J. Mukhopadhaya and V. Gopala Gowda of the Supreme Court held that a female employee of the Central Government is entitled to two years uninterrupted leave for childcare, which may also include illnesses and schoolwork. It held that the judgment of the Calcutta High Court, Circuit Bench at Port Blair was ignorant of the rules framed by the Central Government and directed the respondents to comply with the directions issued by the Central Administrative Tribunal, Calcutta, Circuit Bench at Port Blair.

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<sup>482</sup> The hon’ble Court applied the non-discrimination provision Convention on the Elimination of all forms of Discrimination Against Women, (CEDAW) while deciding this case

<sup>483</sup> (2014) 15 SCC 300

<sup>484</sup> Central Civil Services (leave) rules 1972

## 8.7 Judicial Interpretation of Factories Act

The Madras High Court in the case of *Vasantha R. v. Union of India*,<sup>485</sup> struck down Section 66(1)(b) on the grounds that it was violation of Article 14, 15 and 16 of the Constitution of India. The petitioners were women workers who were working in the mill and some who were on the management of the various mills or factories filed petitions challenging the constitutionality and the batch of writ petitions was filed on the grounds that no discrimination should be practiced against women on account of their gender. The petitioner could not work in the third shift between 10 p.m. and 6 a.m. due to the statutory provisions banning night work of women. The Court held that, “potential employment cannot be denied on the sole ground of sex when no other factor arises” and struck down Section 66(1) (b) The Court laid out detailed guidelines in order to ensure the safety and welfare of women workers in the night shift.

## 8.8 Judicial Interpretation on Minimum Wage Act

Wage fixation is done under the Minimum Wages Act, through adjudication, Arbitration, Wage Boards and Collective Bargaining. There have been various important decisions of the Supreme Court involving different wage Problems where the Court has laid down certain far-reaching principles. The Supreme Court has come across the wage related disputes under The Minimum Wages Act, Collective bargaining process and the appeals from the industrial tribunals. While deciding these cases, the Court has Used in different context and connotations, the related terms for ‘ minimum Wage ’ such as bare minimum, basic minimum, minimum wage, industrial Minimum wage, statutory minimum wage, sustenance wage or subsistence Plus level and the need based minimum wage. The reasons for emergence Of these different nomenclature for the term ‘minimum wage’ is that each

Case stood before the Supreme Court from its own background.

The Minimum Wages Act was passed in the year 1948 and the Constitution came into existence in the year 1950. The Supreme Court was first assigned with the task of determining the constitutional validity of the Minimum Wages Act in *Edward Mills Co. Ltd. v. State of Ajmer*,<sup>486</sup> wherein the validity of Sec. 27<sup>487</sup> of the Act was challenged on the ground of excessive delegation. The power of the appropriate Government to appoint

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<sup>485</sup> (2001) II ILJ Mad. See also Triveni K.S. V. Union of Indi , 2002 (5) ALT 223 (High Court of Andra Pradesh)

<sup>486</sup> 1954 II LLJ (S.C.) 686

<sup>487</sup> Minimum wage Act, sec 27

the Committees to hold enquires to advice it in the matter of fixing minimum wage came before the Court. It was argued that the Act prescribed no principles and laid down no standard which could furnish an intelligent guidance to the administrative authority in taking such a decision and that the matter was left entirely to the discretion of the appropriate Government. Such delegation virtually amounted to surrender by the legislature of its essential legislative functions. On that the Supreme Court held that conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depend upon a variety of facts which are by no means uniform and which van best be ascertained by the person who is placed in charge of the administration of a particular State. Therefore, the legislature could not be said to have stripped itself of its essential powers or assigned to the administrative authority anything except a subordinate power which was thought necessary to carry out the purpose and policy of the Ad. The second issue is that the Government reconstituted the Advisory Committee after the expiry of its term retrospectively. The Court held that the nature of the Advisory Committee under Sec. 5(2) is only recommendatory and the final decision is left in the hands of the Government and hence it is valid.

In 1955, the validity of the Minimum Wages Act was again challenged in *Bijay Cotton Mills Ltd. v. State of Ajmer*,<sup>488</sup> wherein Sections 3,4 and 5 of the Act were challenged on the ground that the restrictions imposed by these Sections upon the freedom of contract and thus violated the fundamental right guaranteed under Article 19 (1) (g) of the Constitution. There was an industrial dispute between the appellants company and its workmen regarding enhancement of wages and the dispute was referred to an Industrial Tribunal. The tribunal held that “the capacity of the mill precludes the award of higher rates of wages and higher dearness allowance.” The employees appealed to Appellate Tribunal when this appeal was pending, the Government fixed the minimum wages at Rs. 56 in the textile industry under the Act. In the meantime the Appellate Tribunal sent back the case to the industrial tribunal for further investigation and the latter rejected the basis upon which the minimum rates of wages of Rs. 56 were fixed by the State, and fixed the minimum rates of wages including the dearness allowance at Rs. 35 only. The Company in its petition stated that, the minimum wages fixed by the State is prohibitory and it beyond possible carry on its business on payment of such wages fixed

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<sup>488</sup> 1955 | LLJ 129 SC

by the government and hence closed its mills. An interesting feature in this case was that, all the workers working in the mills approached the Company and expressed their willingness to work at lower rate of wages than the rates prescribed under the Act. Despite the willingness of the workers the Company is unable to open the mills by reason of the fact that the Act makes it a criminal offence for not paying the wages fixed under the Act.<sup>489</sup> The workers also filed the other petition supporting the contentions of the Company. Mr. Seervai, appearing for both the petitioners invited the Court to hold that the material provisions of the Act are illegal and ultra vires by reason of their conflict with the fundamental rights of the employer. The Act puts unreasonable restrictions upon the rights of the employer, and the rights of the employees are also restricted, in as much as they are disabled, from working in any trade or industry on the terms agreed to between them and their employers. The Court held that ‘it can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency is conducive to the general interest of the public. This is one of the directive principles of State policy embodied in Article 43 of our Constitution. The employers cannot be heard to complain if they are compelled to pay the minimum wages to their labourers even though the labourers, on account of their poverty and helplessness are willing to work on lesser wages. Further it was held that “if it is in the interest of the general public that the labourers should be secured adequate living wages, the intentions of the employers whether good or bad are really irrelevant.”

In the instant case the Court held, in its opinion, constitute an adequate safeguard against any hasty or capricious decision by the ‘appropriate Government’. In suitable cases the ‘appropriate Government’ has also been given the power of granting exemptions from the operation of the provisions of this Act. The Court held that the restrictions, though they interfere to some extent with the freedom of trade or business guaranteed under Article 19 (1) (g) of the Constitution, are reasonable and being proposed in the interests of the general public, are protected by the terms of Cl. (6) of Article 19. The Court had specifically laid down that the workmen should at least be given adequate living wages, which in reality mean minimum wages. Secondly the Court analyzed the scope of the term ‘minimum rates of wages’ fixed under the Act that it should ensure not

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<sup>489</sup> Minimum Wage Act section 22

only bare physical subsistence but also the maintenance of health and decency and thus concurred with the definition of 'minimum wage' as defined by the Committee on Fair wages. The Court here liberally interpreted the progressive spirit of the Constitution. Again the employers in different cases raised the similar contentions without much new impact on the Supreme Court. It is proposed to examine them at the appropriate stage.

In the above two cases the Supreme Court was called upon to decide the validity of the Minimum Wages Law itself as well as on the question of power vested with the appropriate Government to interfere with matters of wage fixation which under common law was considered to be in the realm of contract between parties based upon notions of freedom of contract. Very rightly the Court had no difficulty to reject the older jurisprudence as pleaded even by Mr. Seervai and opt for the new jurisprudence of Industrial Law. The outcome of these two decisions clearly establishes that in fixing the statutory minimum wage the capacity of the employer to pay is not a relevant factor.

Apart from the above, there are series of judgments through which it can be traced the development of judicial pronouncements on the question of wages.

In the present state of society the primary requirement is that all workmen must get at least a minimum wage, which should not only be a bare minimum but it should also provide them some measure of education, medical requirements and other amenities. *In Express News Papers (p) ltd v. Union of India*<sup>490</sup> supreme court held that in a case where the employer is already paying minimum wage and the claim is for fair wage, the question of the financial capacity of the employer is not only relevant but is pertinent, because fixing the limit of fair wage would depend upon the capacity of the employer to pay. has analyzed different theories enunciated by economists on wage fixation and had gone in depth studying the I.L.O. Conventions, various Committees Reports and the position regarding the wage structure prevailing in other countries. By an Act of Parliament, a Wage Board was constituted to frame a wage structure for all journalists working in the paper industry. In this case, the Wage Board did not pay any regard to the capacity of the industry to pay while recommending wage fixation to the Government and therefore, its award was challenged as being bad and unreasonable. Excerpts from the judgment, delivered by Bhagwati J are as follows: Broadly speaking wages have been

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<sup>490</sup> 1961 ILLJ 365 SC

classified into three categories viz. (1) the living wage (2) the fair wage and (3) the minimum wage.

The concept of minimum wage<sup>491</sup> in India, however, the level of national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage, which would correspond to the concept of the living wage. What would be the level of minimum wage, which can be sustained by the present stage of the Country's economy? Most employers and some Provincial Governments consider that the minimum wage can at present be only a bare subsistence wage, in fact, even one important Ail India Organization of employees has suggested that a minimum wage is that wage, which is sufficient to cover the bare physical needs of a worker and his family. Many others however, consider that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and other amenities... There is also a distinction between a bare minimum or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family that is a rate which is mandatory on the part of the employer to pay the worker. Irrespective of its losses incurred. If an industry is unable to pay to its workmen at least a bare minimum wage it has no right to exist. The statutory minimum wage however is the minimum, which is prescribed by the Statute and it may be higher than the bare subsistence or minimum wage providing for some measure of education, medical requirements and amenities, as contemplated above.

The three concepts, the minimum wage, fair wage and living wage were examined and it was pointed out that the content of these three expressions was not fixed and static, and that it varies and was bound to vary from time to time.

In *Standard Vacuum Refining Co. v. Its Workmen*<sup>492</sup>, the workmen claimed a bonus for the year 1956, equivalent to nine months total earnings on the ground that the employers had admitted their capacity to pay and that the wage actually received was less than the living wage. The employers contended that they were paying a living wage and

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<sup>491</sup> The Court has quoted extensively the relevant portions of the Report of the Committee on Fair Wages, (1949) and approved the concepts of 'living wage', 'Minimum Wage' and 'Fair Wage' as defined by the Committee. However, it expressed its own views with regard to the principles of fixation of 'minimum wage' to that of the Committee's.

<sup>492</sup> 1960) 2 LLJ 233 (SC)

that no bonus was due. The employers relying on the Report of Textile Committee, 1940, contended that if the living wage there for 1940, is Rs. 55/- and if this was multiplied by 3.5 (due to a 35 per cent rise in prices between 1940 and for 1956) it comes to Rs.192.55 as the living wage for 1956, and they were paying their workmen more than that. The workmen relied on the recommendations of the Indian Labour Conference, 1957, to show that Rs.209.70 approximated to the need- based minimum wage, and that the average wage paid by the employers was fair, but that there was still a gap between the actual wage and the living wage. The tribunal accorded a bonus equivalent to five months basic wages. Both the parties challenged this award.

Speaking for the Court Gajendragadkar J. observed:

“It is well known that the problem of wage structure with which industrial adjudication is concerned in a modern democratic State involves in the ultimate analysis to some extent ethical and social considerations. The advent of the doctrine of a Welfare State is based on notions of progressive social philosophy, which have rendered the old doctrine of laissez faire obsolete. In the nineteenth century the relations between employers and employees were usually governed by the economic principles of supply and demand, and the employers thought that they were entitled to hire the labour on their terms and to dismiss the same at their choice, subject to the specific terms of contract between them, if any. The theory of ‘hire and fire’ as well as the theory of ‘supply and demand’, which were allowed free scope under the doctrine of laissez faire no longer hold the field. In constructing a wage-structure in a given case industrial adjudication does take into account to some extent considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement, the collective bargaining enters the field and the wage-structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of the national economy have their say, and the requirements of a workman living in a civilized and progressive society also come to be recognized. It is in that sense, and no doubt to a limited extent, that the social philosophy of the age supplies the background for the decision of industrial disputes as to wage-structure. It is because of this socio-economic aspect of the wage-structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as

the minimum basic wage. If he cannot pay such a wage, he has no right to engage labour, and no justification for carrying on his industry; in other words, the employment of sweated labour which would be easily available to the employer in all undeveloped and even underdeveloped countries is ruled out on the ground that the principle of supply and demand has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to ensure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognized. Further it was observed that in dealing with wage-structure it is usual to divide wages into three broad categories: the basic minimum wage or the bare subsistence wage; above it is the fair wage; and beyond the fair wage is the living wage. It would be obvious that the concepts of these wages cannot be described in definite words because their contents are elastic and they are bound to vary from time to time and from country to country. Sometimes the said three categories of wages are described as the poverty level, the subsistence level and the comfort or the decency level. It would be difficult, and also inexpedient, to attempt the task of giving an adequate precision to these concepts. What is a subsistence wage in one country may appear to be much below the subsistence level in another, the same is a fair wage in one country may be treated as a living wage in another. Several attempts have nevertheless been made to describe generally the contents of these respective concepts from time to time.

In *Novex Dry Cleaners v. Its workmen*<sup>493</sup> Justice Gajendragadkar observed that “It appears from the award that the tribunal addressed itself correctly to the true legal position governing the fixation of a wage structure in industrial disputes. It realized that in deciding upon a wage structure it may be relevant to take into account the wages prevailing in the industry in the said region, that the wages will have to be fixed in a fair and just way and above all it would be necessary to examine whether the wage structure proposed to be fixed would be fairly and reasonably borne by the financial position of the establishment. It is now well settled that in fixing a minimum wage, the capacity of the industry to pay that wage is not relevant. But in fixing a fair wage, the capacity of the employer to bear the burden of the said wage is very much relevant and very important factor. Therefore, there can be no doubt that before fixing the wage structure, it was

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<sup>493</sup> 1962 I LLJ 271 SC

necessary that the tribunal should have examined the financial position of the appellant and came to a definite conclusion in that behalf

Once again we find the Court reiterating its earlier view that capacity to pay is really irrelevant when it comes to the question of fixing a minimum wage. But we must also take a note of the fact that lack of precision in terminology that is used regarding the concept of 'minimum wage' has resulted in all this confusion.

In *Unichoy v. State of Kerala*<sup>494</sup> the Court dealt with the question of constitutional validity of the Minimum Wages Act and the capacity of the employer to pay the minimum wages fixed under the Minimum Wages Ad by applying the 'need based minimum wage' norms as laid down by the 15\* Session of Indian Labour Conference 1957. The following are the other issues considered by the Court in this case.<sup>488</sup>

(1) The wage structure recommended by the Committee by following the criteria of need based minimum wage, would lead to fair wage.

(2) That the observation made in *Express Newspapers* i.e. the fixation of statutory minimum wage requires to be considered the capacity of the employer to pay - is valid.

(3) The settlement arrived contrary to the provisions of the Minimum Wages Act at the instance of the Government taking in view the fact that thirty tile industries were closed down because of the notification issued under the Act - is valid

Courts have observed that the concept of minimum wage is likely to undergo a change with the growth of the economy and with the change in the standard of living and that concomitants must necessarily increase with the progress of the society.<sup>495</sup> In the case of **Raptakos Brett**<sup>496</sup> the Supreme Court specified that additional factors such as children's education, medical requirement, provision for old age, marriage, etc. which should constitute 25% should be used while fixing the minimum wage.

Bonded labour and forced labour are prohibited by Article 23 of the Constitution of India. The scope of this provision was discussed by the Supreme Court in the *Asiad*

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<sup>494</sup> 1961 ILLJ 631 SC

<sup>495</sup> Chandrabhavan Boarding and Lodging, Bangalore v. State of Mysore and Ors, AIR 1970 SC 2042 (1970) LIC 1632

<sup>496</sup> Workmen Represented by Secretary v. Management of Reptakos Brett and Co. Ltd. & Anr., AIR 1992 SC 504; See also

Unnichoyi v. State of Kerala, 1961 SC I LLJ

*Workers Case*<sup>497</sup>, which concluded that where a person was working for less than the minimum wages, it would be considered forced labour which is prohibited by Article 23. The law is settled on the point that if a worker receives less than the minimum wages, it is considered to be forced/ bonded labour unless proven otherwise.<sup>498</sup>

In *Employees State Insurance Corporation v. Bhakra Beas Management Board*<sup>499</sup> & *Fertilizers and Chemicals Travancore Ltd. v. Respondent: Regional Director, ESIC*<sup>500</sup> The Supreme Court pointed out that the ESI Act has been enacted for the benefit of the workers to give them medical benefits, which have been mentioned in Section 46 of the Act. Hence the principal beneficiary of the Act is the workmen and not the ESI Corporation. The ESI Corporation is only the agency to implement and carry out the object of the Act and it has nothing to lose if the decision of the Employees Insurance Court is given in favour of the employer. It is only the workmen who have to lose if a decision is given in favour of the employer. Hence, the workmen (or at least some of them in a representative capacity, or their trade union) have to be necessarily made a party/parties because the Act is a labour legislation made for the benefit of the workmen. It further held that wherever any petition is filed by an employer under Section 75 of the Act, the employer has not only to implead the ESIC but has also to implead at least some of the workers concerned (in a representative capacity if there are a large number of workers) or the trade-union representing the said workers. If that is not done, and a decision is given in favour of the employer, the same will be in violation of the rules of natural justice.

## **8.9 Judicial Interpretation on Compensation for Workers**

### **1. Compensation For Employment Injury**

In *Works Manager Central Railway Workshop v. Vishwanath*.<sup>501</sup> All legislations in a welfare state are enacted with the object of promoting general welfare, but certain types of enactments are more responsive to some urgent social demands and also have a more immediate and visible impact on social vices, by operating more directly to achieve social reforms.

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<sup>497</sup> People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473

<sup>498</sup> Bandhua Mukti Morcha V. Union of India, (1984) 3 SCC 161.

<sup>499</sup> (2009)10SCC671

<sup>500</sup> (2009)9SCC485

<sup>501</sup> (1970) ILLJ 351

In *Partap Narain Singh Dev v. Shri Niwas Sabata*,<sup>502</sup> the Supreme Court held that in case employer does not pay any compensation for employment injury, the Workmen Compensation Commissioner is fully justified in imposing interest and penalty. The Court observed that the measure followed the Workmen Compensation Act in its main principles and in some of its details, but it contained a large number of provisions designed to meet the special conditions in India. This Act was the first step towards social security in India. Its most striking feature was its rigidity, designed to prevent vexatious litigation. In respect of the tribunals set up to decide disputes, the Act followed the American model in preference to the British model and special commissioners were appointed with wide powers where required; and although provision was made for appeals to the High Court the right to appeal was severely limited. Honorable court observed that its object has been expressed by Royal Commission that moreover, provision for compensation is not the only benefit flowing from workmen's compensation legislation, it has important effects in furthering work on the prevention of accidents, in giving workman greater freedom from anxiety and in rendering industry more attractive.<sup>503</sup>

In *Aryamuni v. Union of India*<sup>504</sup>, the employee sustained injury to his eye due to spark. The Company's notice written in English required the use of goggles for such work. Goggles were not provided to the workman nor were asked so by the supervisor. The employee injured did not know English under these circumstances, it was held that the employee was not willfully disobedient as he did not know English and he could not know the contents of the notice nor it was explained to him. It was duty of supervisor to interpret the need of wearing goggles and it was duty of employer to provide it. So employer was held liable to pay compensation. Controversy regarding procedure explained in Section 8 of Workmen's Compensation Act was settled in the case of *Oriental Insurance Co. Ltd. v. Dyamavva*<sup>505</sup> According to Apex courts section 8 of Act provides that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen's Compensation Commissioner. The procedure envisaged can be invoked only by the employer for depositing compensation with the Employees Compensation

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<sup>502</sup> (1976) ILLJ 235

<sup>503</sup> *Ibid* at 241

<sup>504</sup> (1963) 1 LLJ 24

<sup>505</sup> AIR (2013) SC 1853.

Commissioner consequent upon such “suo motu” deposit of compensation by the employer with the Commissioner, the Commissioner may summon the dependents of the concerned employee to appear before him under sub-section (4) Section 8. Having satisfied himself about the entitlement of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependents. As against the aforesaid, where an employer has not suo motu initiated action for payment of compensation to an employee or his/her dependants, in spite of an employee having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the Workmen’s Compensation Act, 1923. The procedure under Section 8 is initiated at the behest of the employer “suo motu”, and as such, cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen’s Compensation Act, 1923. Mere acceptance of compensation by the dependent would not disentitle him from filing claim petition.<sup>506</sup>

The Court held that Sub-sections (1) to (3) of Section 8 reacted above, leave no room for any doubt, that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen’s Compensation Commissioner. Payment made by the employer directly to the dependants is not recognized as a valid disbursement of compensation. The procedure envisaged in Section 8 of the Workmen’s Compensation Act, 1923, can be invoked only by the employer for depositing compensation with the Workmen’s Compensation Commissioner. Consequent upon such “suo motu” deposit of compensation (by the employer) with the Workmen’s Compensation Commissioner, the Commissioner may (or may not) summon the dependants of the concerned employee, to appear before him under subsection (4) of Section 8 as stated herein above. Having satisfied himself about the entitlement (or otherwise) of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependants, under subsections (5) o (9) of Section 8 of the Workmen’s Compensation Act, 1923. Surplus, if any, has to be returned to the employer.<sup>507</sup>

As against the aforesaid, where an employer has not suo-motu initiated action for payment of compensation to an employee or his/her dependants, in spite of an employee

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<sup>506</sup> *Ibid at 1856*

<sup>507</sup> *Ibid at 1859*

having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. Sub-section (1) of Section 10 prescribes the period of limitation for making such a claim as two years, from the date of occurrence (or death). The remaining sub-sections of Section 10 of the Workmen's Compensation Act, 1923 delineate the other process requirements for raising such a claim. Having perused the aforesaid provisions and determined their effect, it clearly emerges, that the Port Trust had initiated proceedings for paying compensation to the dependants of the deceased Yalgurdappa B. Goudar "suo motu" under Section 8 of the Workmen's Compensation Act, 1923. For the aforesaid purpose, the Port Trust had deposited a sum of 3,26,140 with the Workmen's Compensation Commissioner on 4.11.2003. Thereupon, the Workmen's Compensation Commissioner, having issued notice to the claimants (dependants of the deceased Yalgurdappa B. Goudar), fixed 20.4.2004 as the date of hearing. On the aforesaid date, the statement of the widow of Yalgurdappa B. Goudar, namely, Dyamavva Yalgurdappa was recorded, and thereafter, the Workmen's Compensation Commissioner by an order dated 29.4.2004 directed the release of a sum of 3,26,140/-to be shared by the widow of the deceased and his daughter in definite proportions.<sup>508</sup>

The Court has observed that, "the issue to be determined by us is, whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option, to seek compensation under the Workmen's Compensation Act, 1923. The procedure under Section 8 aforesaid (as noticed above) is initiated at the behest of the employer "suo motu", and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Employee's Compensation Act, 1923. The position would have been otherwise, if the dependants had raised a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under Section 10 of the Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's Compensation Act. Suffice it to state that no such application was ever filed by the respondents -claimants herein under Section 10 aforesaid. In the above view of the matter, it can be stated that the

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<sup>508</sup> *Ibid at 1860.*

respondents-claimants having never exercised their option to seek compensation under Section 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988.<sup>509</sup>

*Anand Bihari v. RSRT Corporation*<sup>510</sup>, is another landmark decision in the quest for compensatory relief for employment injury. In this case the Rajasthan State Transport Corporation employed a number of drivers who were required to drive the heavy motor vehicles in the sun, rain, dust and dark hours of night. In the demand of their service they were exposed to the glaring and blazing sun light and beaming and blinding lights of the vehicles coming from the opposite direction due to which the drivers who had put in service with the corporation for long periods and were above 40 years of age, developed a weak or sub-normal eye-sight or lost their required vision. The Corporation, therefore, terminated the service of 30 such drivers. The petition were filed before this court praying for ground under which the Hon'ble court were required to decide the present case on the issues such as whether the termination of service of the drivers are covered by sub-clause (c) of section 2(00) of the Industrial Disputes Act, 1947 and are drivers entitled to compensation for occupational injury under the Employees State Insurance Act, 1948. Regarding the availability of benefits under the ESI Act, the Hon'ble Court held that the present case would not be covered by item 4 of part I and items 31, 32 and 32A of part II of the second Schedule of the Act, as no provision is made there for compensation for a disability to carry on a particular job. In order to fill the gap left by the legislature and to provide compensatory relief to workmen who are disable to carry on a particular job but not incapable of taking any other job and gave judgment along with certain direction to be obeyed by the Corporation.<sup>511</sup>

## **8.1 Judicial Interpretation on Retrenchment, Lay Off, Transfer and Closure Of Undertaking**

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<sup>509</sup> Id

<sup>510</sup> 1991 lab.IC494

<sup>511</sup> the Hon'ble Court directed the Corporation To offer alternative job along with retirement benefit if available and the employee is able to perform, In case no such alternative job is available, each of the workmen shall be paid additional compensatory amount along with his retirement benefits, as a) Where the employee has put in five years or less the amount of compensation shall be equivalent to seven days' salary per year of the balance of his service; b) Where the employee has put in more than 10 years but less than 15 years' service, the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service; c) Where the employee has put in more than 15 years' service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service.

## 1. Compensation for Lay-Off

Industrialization has demonstrated the vital role of labour laws as an instrument of social justice. It is estimated that nearly one -sixth of litigations in the Supreme Court pertains to industrial law matters and a substantial portion of legislative activity at Centre and States covers subjects of industry and labour.

The freedom of contract theory, emerged out of the Laissez-faire principle, authorized the employer to discharge his workmen due to breakdown of machinery or such other reasons beyond the control of the employer. This invariably exposed the workmen to frequent risk of involuntary unemployment. This absolute power of the employer to discharge his workman gradually began to disappear with the erosion of the Laissez-faire philosophy and the introduction of more state interventions in industrial relations.

The case of compensation of lay-off position is quite different from compensation for injury. This issue rose in the case of *Workmen v. Firestone Tyre and Rubber Co.*<sup>512</sup>The Apex Court while resolving it held that if the terms of contract of service or the statutory terms engrafted in the standing orders do not give the power of lay-off to the employer. The employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confess a right of lay-off on the employer, there in the case of an industrial establishment which is governed by chapter V-A, compensation will be payable in accordance with the provisions contained therein.

It is an action by the workman against the employer. Under this, the workman has the opportunity to work and earn wages. The employer is, therefore, required to pay compensation to the workman who is laid off, as the workman's case falls within the provisions of section 25C of the Act which entitles a workman to lay -off compensation equivalent to fifty percent of the total of the basic wages and dearness allowance for the period of his lay-off. For Compensation a workman should be fulfilled the following conditions:-

- a) His name should be borne on the muster rolls and not have been retrenched.
- b) He should not be 'badli' workman or a casual workman;

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<sup>512</sup> (1976) 1 LLJ 493 (SC).

- c) He should have completed not less than one year of continuous service under the employer.<sup>513</sup>

The Supreme Court in *Payment of Wages Inspector v. Suraj Mal Mehta*<sup>514</sup>, has held that the payment of compensation under section 25-F, 25-FF, 25-FFF is wages within the meaning of S. 2 (vi) (d) of the Payment of Wages Act. The same principles will apply to lay off compensation of section 25-C. Court held that employer is duty bound under the provisions of Act to pay compensation to the laid off workers.

Looking to the whole scheme of chapter V-A of the industrial Disputes Act the power of employer to layoff is implicit. It determines not merely the right of the workmen to receive compensation but also the wider rights and liabilities with regard to lay-off itself. So it is a statutory right available to the workers.<sup>515</sup>

## 2. Compensation in Case of Retrenchment

Retrenchment compensation used to be awarded on equitable considerations by the tribunals before section 25-F was inserted in 1953 the Industrial Disputes Act, 1947. Provisions of section 25F cannot apply to retrenchment effected prior thereto. This section, for the first time gave legislative recognition to the principle of awarding retrenchment relief. It was inserted because of the then impending large scale closures in the textile industry, particularly in the then Bombay State. It was the intention of the legislature to prevent such closures and where that was not possible to ensure payment of some compensation to retrenched workers so as to enable to tide over the difficult days of unemployment<sup>516</sup>

Retrenchment generally means "discharge of surplus labour or staff" by the employer on account of a long period of lay-off or rationalization or production or improved machinery or automation of machines or similar other reasons. It is adopted as an economy measure. The subsisting employer -workmen relationship is, however, terminated in cases of retrenchment.<sup>517</sup>

Chief Justice Chagla and Justice Dixit of the Bombay H.C. held that the workmen who had been retrenched by the Railway Co., was liable to pay compensation to them in

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<sup>513</sup> *Zandu Pharmaceutical Works Ltd. v. R.m. Kulkarni and Co.*, (1996) 1 LLJS 60.

<sup>514</sup> (1969) ILLJ 762 SC

<sup>515</sup> *Veiyra M.A v. Fernadez*, (1956) ILLJ 547 (Bom)

<sup>516</sup> Supra note 301 at 123.

<sup>517</sup> S.C. Srivastava, *Industrial Relation and Labour laws*, 537 (2008).

*Barsi Light Railway Co. v. K.N. Joglekar*,<sup>518</sup> while considering the meaning and scope of the definition of retrenchment. In this case under an agreement dated Aug. 1, 1895 between the Secretary of the State for India and Railway Company, the President of India gave notice to the Railway Company would be taken over with effect from Jan 1, 1954. Consequently, the Railway Co. served a notice to its workmen that the services of all the workmen of the Railway Company would be terminated with effect from the afternoon of Dec. 31, 1953. It was also stated therein that the Government of India intended to employ those staff of the Company who would be willing to serve the railways on terms and conditions fixed by the Government. Majority of the Staff of the Railway Co. were reemployed on the same scales of pay. However, 23 percent of the staff were re-employed on somewhat lower scales though the pay which they actually drew at the time of re-employment was not affected. Only about 24 of the former employees of the Railway Company were not taken back by the Government. Soon after Railway Union filed 61 applications under the Payment of the Wages Act, 1936 before the Payment of Wages Authority for payment of retrenchment compensation under section 25F. The Authority held that it had no jurisdiction to deal with the application but held that the workers were entitled to compensation as these had been retrenched. After this order Railway Union moved to the Bombay High Court for a writ under Art. 226 and 227 of the Constitution for quashing the order of dismissal passed by the authority.

In *Bharat Sanchar Nigam Limited v. Man Singh*<sup>519</sup> The respondent workmen worked with the appellant as casual labourers on daily wages during the year 1984-1985. Due to non-availability of work, their services were terminated in the year 1986. No notice or retrenchment compensation was given to them before terminating their services. After about five years, they raised an industrial dispute in the year 1991. The appropriate government referred the dispute to the labour court for adjudication. The labour Court vide its award dated 27-5-2005 ordered reinstatement of the respondent workmen on the same post which they were holding at the time of their termination. The order of the labour court was challenged by the department filing writ petition before the High Court. The respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, High Court considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice. The High Court as also the award dated 27-05-2005 passed by the labour court were set

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<sup>518</sup> (1957) SCR 121

<sup>519</sup> (2012) 1 SCC 558

aside by Supreme Court. Bharat Sanchar Nigam Ltd. was directed to pay Rs.2 Lakh to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.

### 3. Judicial Interpretation on Compensation For Transfer Of Undertaking

Section 25-FF was originally introduced in chapter V-A of Industrial Disputes (Amendment) Act, 1956. The Supreme Court in *Hari Prasad Shiv Shankar Shukla v. A.P. Divelkar*<sup>520</sup> and *Barsi Light Railway Co. v. K.N. Joglekar*,<sup>521</sup> held that no retrenchment compensation under section 25-F was payable to workmen whose services were terminated by the employer on a real and bonafide closure of business or when termination occurred as a result of transfer of ownership from one employer to another. The original section 25 FF was negative in nature. The above decisions of the Supreme Court demanded amendment to section 25-FF. Hence, Section 25-FF was recast to its present form by the Industrial Disputes (Amendment) Act, 1957. The amended section has made it clear that the employer is liable to give notice and pay compensation in case of transfer of undertaking to workmen.

In *New Horizon Sugar Mills Limited v. Ariyur Sugar Mills Staff Welfare Union*<sup>522</sup> the assets of new Horizon Sugar Mills were seized and sold by an auction under the Provisions of the SRFAESI Act 2002<sup>523</sup> by Indian bank, a secured creditor. The writ petition was dismissed and the court held that the workmen of New Horizon will be entitled to the benefits under Section 25-FF of the Industrial Disputes Act, 1947 from the employer New Horizon. A Court directed the authority to compute the claims of the workmen and submit a report to the Court. Further, Hon'ble court also directed Indian Bank which had the sale proceeds in respect of sale of the assets of New Horizon to deposit initially a sum Rs.6,00,00,000 (Six Crores) for being disbursed to the workmen. The said amount was ordered to be placed in a non-lieu account in Pondichery main branch of the said Bank. Appeal was disposed by a Division Branch of the Madras High Court. New Horizon then filed appeal by special leave.

The main issue was that who should be made liable to pay the compensation under Section 25-FF of the Industrial Disputes Act, 1947 and the appeal was dismissed by the Supreme Court and held that Indian Bank will now transfer the sum of rupees six crores

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<sup>520</sup> AIR 1957 SC 121

<sup>521</sup> AIR 1957 SC 121

<sup>522</sup> (2009) 17 SCC 487

<sup>523</sup> Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,

as directed by the High Court, from the sale proceeds, without prejudice to its contentions to a no lieu account in its Pondicherry main branch which shall be operated by the commissioners, who shall endeavor to complete the exercise of verification, qualification and payment of the employees dues within three months. The balance, if any, remaining in the no-lieu account after such settlement of workers dues, shall be paid to New Horizon without prejudice to the contentions of the Bank. If the amount of 6 crores is found to be insufficient by the commissioner, the commissioner may apply to the Madras High Court for release of further funds, from the amount in deposit with it.

The Honorable Supreme Court awarded compensation to workers in the case transfer of workers in *State of Maharashtra and another v. Sarva Shramik Sangh, Sangli*<sup>524</sup> The Government of Maharashtra established a Corporation named as the Irrigation Development Corporation of Maharashtra Limited, in December 1973. This Corporation was a Government of Maharashtra undertaking. It set up 25 lift irrigation schemes to provide free services to farmers. The Corporation was established in the aftermath of a terrible drought which afflicted the State in the year 1972. Some 256 workmen were employed to work on the irrigation schemes of the said Corporation. Though it was claimed that the workmen were casual and temporary, the fact remains that many of them had put in about 10 years of service when they were served with notices of termination. The notice sought to terminate their services w.e.f. 30.6.1985, and offered them 15 days compensation for every completed year of service. The retrenchment was being affected because according to the appellants the lift irrigation schemes, on which these workmen were working, were being transferred to a sugar factory viz. Vasantdada Shetkari Sahakari Sakhar Karkhana, Sangli.<sup>525</sup>

These 163 workmen and the other 10 workmen viz. Pandurang Vishnu Sandage and others were working on the same lift irrigation schemes. Those 10 workers also got award of reinstatement with 25% back wages. That award was dismissed by the Bombay High Court. The Special Leave Petition and the Curative Petitions there from also came to be dismissed, although on the ground of gross delay. The fact, however, remains that as far as those 10 workmen are concerned; the order of relief in their case viz. reinstatement with 25% back wages and continuity in service was left undisturbed. Therefore, a question arises should the Government having been lethargic in the case of those 10 workmen, where it suffered an order of reinstatement with 25% back wages, be now

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<sup>524</sup> AIR 2014 SC 61

<sup>525</sup> *Ibid* at 64

permitted to insist that when it comes to these 163 workmen, who are similarly situated, they may be denied a comparable relief.<sup>526</sup>

In the facts and circumstances of the present case also, accepting that the termination did result on amount of transfer of the undertaking, the relief to be given to the workmen will have to be molded to be somewhat similar to that given to the other group of 10 workmen. It will not be just and proper to restrict it to the rigorous of the limited relief under Section 25FF read with 25F of the Industrial Dispute Act. Prior to the termination of their services on 30.6.1985, many of the workmen concerned had put in a service of about 10 years. In as much as so many years have gone since then; most of them must have reached the age of superannuation. In the circumstances, there cannot be any order of reinstatement. However, they will be entitled to continuity of service, and although they have been receiving last drawn wages under section 17B of the Industrial Disputes Act, 1947, they will be entitled to 25% back wages and retirement benefits on par with the other 10 workmen. Award of 25% back wages in their case will be adequate compensation.<sup>527</sup>

#### **4. Judicial Interpretation on Compensation for Closure**

Closure means the permanent closing down of a place of employment or part thereof.<sup>528</sup> It is a permanent discontinuance of the business. The reasons or motive behind the closure is immaterial<sup>529</sup> the employer is required to serve a sixty days notice to its employee before closure of an undertaking clearly stating the reason for the closure.<sup>530</sup>

When the terms of reference are limited to the narrow question as to whether the closure was proper and justified, the tribunal by the very terms of the reference, had no jurisdiction to go beyond the fact of closure and inquire into the question whether the business was in fact closed down by the management<sup>531</sup>.

Section 25-FFF was substituted in 1957 by the Industrial Disputes (Amendment) Act, 1957 to override the decision of the Supreme Court. The Section is focused to

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<sup>526</sup> *Ibid* at 69

<sup>527</sup> *Ibid* at 70

<sup>528</sup> Sec. 2 (CC) of Industrial Disputes Act, 1947

<sup>529</sup> . Section 25-FFF makes it clear that a closure for any reason what sooner imposes liability on the employers or company with the notice and compensation under section 25F also available at <https://dokumen.tips/documents/chapter-2-historical-development-of-indianlabour-.html> (last visted at 13/12/2018 at 9:34 PM)

<sup>530</sup> *Kalinga Tubres Ltd. V. Workmen* (1969) 1 LLJ 557 Section 25-FFA inserted by the 1972 amendment requires an employer who intends to close down an undertaking to give at least sixty day's advance notice in the prescribed manner to the appropriate Government. The notice shall clearly state the reasons for the intended closure of the undertaking. Where the factum of closure is admitted or established, a tribunal shall not go into the question as to the motive of the management to close down the establishment

<sup>531</sup> *Pottery Mazdoor Panchayat v. the Perfect Pottery Co. Ltd.* (1983) 1 LLJ 232 (SC)

provide some relief to the workmen whose services stand terminated consequent to the closing down of an undertaking except on certain situations. At the time of the closure, every workman, who has been in one year's continuous service in that undertaking before the closure, is entitled to notice and compensation. If the closing down of the undertaking is on account of unavoidable circumstances beyond the control of the employer, then the compensation under section 25-F (2) shall not exceed the workmen's average pay for 3 months.

The Supreme Court in one of the case while deciding the case closure of 168 laid down various norms in order to protect the interest of workers of those industries that the 168 industries cannot be permitted to operate and function in Delhi. These industries may shift themselves to any other industrial estate in the NCR. These industries had to close down and stop functioning and operating in the city of Delhi with effect from November 30, 1996. The concerned Deputy Commissioner of Police had to affect the closure of the industrial units with effect from November 30, 1996 and file compliance report in this Court within 15 days thereafter. The allotment of plots, construction of factory buildings, etc. and issuance of any licenses, permissions etc. was to expedited and granted on priority basis. The shifting industries on their relocation in the new industrial estates were given incentives in terms of the provisions of the Master Plan and also the incentives which were normally extended to new industries in new industrial estates. The closure order with effect from November 30, 1996 was unconditional. Even if the re-location of industries is not complete, they had to stop functioning in Delhi with effect from November 30, 1996.<sup>532</sup>,

The workmen employed in 168 industries were entitled to the rights and benefits, the workmen would have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment. The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of the service. All those workmen who agree to shift with the industry would be given one year's wages as "shifting bonus" to help them settle at the new location. The workmen employed in the industries which fail to relocate and the workmen who were not willing to shift along with the relocated industries would be deemed to have been retrenched with effect from November 30, 1996 provided they had

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<sup>532</sup> *M. C Mehta v. Union of India* AIR 1996 SC 2231

been in continuous service for not less than one year in the industries concerned before the said date. They should be paid compensation in terms of Section 25-F (b) of industrial Disputes Act, 1947. These workmen would also be paid, in addition, one year's wages as additional compensation. The "shifting bonus" and the compensation payable to the workmen in terms of this judgment was to be paid by the management before December 31, 1996. The gratuity amount payable to any workmen shall be paid in addition.<sup>533</sup>

Enforcement of any legislation is as important as the law itself. Without proper enforcement a law is a paper piece and a dead letter. Therefore to make law a meaningful phenomenon, the effective enforcement is necessary. Coming to the enforcement of social security legislation, apart from administrative and quasi judicial apparatus for the purpose, the judiciary has played an active role for securing an effective enforcement of social security legislation. This is clear from the analysis of various cases where the judiciary has been particular for the enforcement of various enactments of social security by justifying the penalties imposed on contravention of the relevant law.<sup>534</sup>

#### **i. Compensation for Disability of Workers**

The Supreme Court gave this landmark judgment, while awarding compensation to a young worker. In *Govind Yadav v. New India Insurance Company Ltd.*<sup>535</sup> the appellant was 24 years of age when he met with an accident resulting in amputation of his one leg and awarded compensation of 1,78,500 treating his income as 1500 per month, disability to be 70% and by applying a multiplier of 17. In appeal, the High Court enhanced the compensation to 3,06,000 with interest at the rate of 7% per annum at treating his income as 2000 per month. The Highest Court held that both the Tribunal and the High Court over looked that at the relevant time minimum wages payable to a worker were 3000 per month. In the absence of any cogent evidence, the Tribunal and the High Court should rationally have determined the appellant's income to be 36,000 per annum and loss of earning with 70% disability at 25,200 per annum. As the appellant was 24 at the years at the time of accident, multiplier of 18 was considered. Therefore, compensation payable to the appellant for loss of earning would be 4,53,600. Considering increase in the cost of living, cost of artificial limbs the honorable court awarded a sum of 2,00,000 to the appellant for future treatment. As it is not possible to make precise

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<sup>533</sup> *Ibid* at 2235

<sup>534</sup> *Supra* note 18 at 246.

<sup>535</sup> (2011)10SCC683

assessment of compensation for pain on suffering, the appellant must be awarded a sum of .1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg. The appellant can be expected to live for at least 50 years and during the period he would not lead and enjoy life like a normal man. Prospects of his marriage had also considerably reduced. Hence a sum of 1,50,000 must be awarded towards loss of amenities and enjoyment of life. Thus, overall compensation of the appellant must be enhanced to 9,53,600 with interest @7% per annum from the date of filing the claim petition till the date of realization.

In case of sickness benefit an insured person can avail the benefit only after the production of medical certificate which need to be duly certified by the medical practitioner appointed or specified by the commissioner <sup>536</sup> The Act provides for disablement benefit to insured persons suffering from disablement due to employment injury sustained to an employee in a factory or establishment to which the Act applies.

### **8.11 Interpretation on Compensation Relating to Gratuity**

Gratuity was originally an ex-gratia or voluntary payment or a gift for long and meritorious services. With the passage of time of progressive social philosophy, it became a matter of constant industrial strife, and like bonus, it was accepted as a right of labour. Statutory regulation of gratuity schemes started with Working Journalists (Conditions of Services and Miscellaneous Provisions) Act, 1955. Gratuity is a retrial benefit to employees for their long and continuous service. It was designed to help the workers on their

retirement, whether it is due to superannuation, physical disability or otherwise. The principle underlying gratuity is that by virtue of the length of their services, the workmen are entitled to claim certain amount as retrial benefit. It is one of „efficiency devices“ and is considered necessary for an orderly and humane elimination from the industry of superannuated or disabled employees, who but for such retiring benefits could continue in employment even though they function inefficiently. It is paid not gratuitously or as a matter of boon, but for long and meritorious services rendered by the employees to their employer<sup>537</sup>

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<sup>536</sup> *K.K. Nair v. The Regional Director, ESI Corporation* AIR 2008 SC 1726

<sup>537</sup> *Indian Hume Pipe Co. Ltd v. Workmen, (1959) II LLJ 830 SC*

The Apex Court, in the case of *Lalappa Lingappa v. Laxmi Vishnu Textiles Mills Ltd.*,<sup>538</sup> emphasized the purpose of giving the comprehensive coverage to the Payment of Gratuity Act, 1972. The Act is enacted to introduce a scheme for Payment of Gratuity for certain industrial and commercial establishments, as a measure of social security. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity and old age etc. For the wage earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions of social security, retiral benefits like gratuity, provident fund and pension are of special importance. In bringing the Act on the Statute book the intention of the legislature was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained, all-embracing, complete and comprehensive code relating to gratuity.<sup>539</sup>

The Court observed that social security and labour welfare legislation helps to achieve the value goals set by the Constitution and, hence, they are to be enacted and amended according to the principles enshrined and, procedure prescribed in the Constitution. Social security legislation derives its vis (force) and, validity from the Constitution. In other words, they are to be enacted and amended according to the scheme of distribution of legislative powers in the Constitution and, according to the procedure prescribed for the purpose, without infringing fundamental rights and also, within the framework of the spirit of broad goals and ideals set in the Constitution.<sup>540</sup>

Many a times the Constitutional validity of the various social security legislations has been challenged in the Courts of Law to protect against arbitrary legislation. Such challenges seen to be prompted by certain interests of business and traditional attitudes of individual liberties.

In *Chairman Cum Managing Director, Mahanadi Coalfields Ltd. v. Rabindranath Choubey*,<sup>541</sup> the respondent was working as Chief General Manager (Production) since 17-02-2006 at Rajmahal area under Mahanadi Coalfields Ltd. A memo containing articles of charge was issued to him on 01-10-2007 alleging that there was shortage of stock of coal in Rajmahal Group of mines which was under his management

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<sup>538</sup> AIR 1981 SC 852

<sup>539</sup> *Ibid* at 855

<sup>540</sup> *Supra* note 18 at 180.

<sup>541</sup> AIR 2014 SC 234

and enquiry was proposed to be conducted under Rule 29 of the Conduct, Discipline and Appeal Rules.<sup>542</sup>

During the pendency of the departmental proceeding, the Respondent was allowed to retire on 31.7.2010 on attaining the age of superannuation. The Respondent submitted an application on 21.9.2010 to the Director (Personnel) for payment of gratuity. On the same date, he also submitted an application before the Controlling Authority under Payment of Gratuity Act- cum-Regional Labour Commissioner for payment of gratuity. Notice was issued to the Appellant to appear. The appellant appeared and stated that the payment of gratuity was withheld due to reason that disciplinary case is pending against him. The controlling authority held that the claim of the Respondent was pre-mature.<sup>543</sup>

The respondent challenged the order by filing the writ petition. The single Judge dismissed the writ petition holding that in view of the existence of an appellate forum against the order passed by the authority, the respondent may file an appeal before the Appellate Authority within 21 days from the date of passing of the impugned order.<sup>544</sup> The Respondent then filed Intra Court Writ Appeal. The Division Bench of the High Court has held that writ petition was maintainable. On merits, it ruled that the disciplinary proceedings against the respondent were initiated prior to attaining the age of superannuation. The respondent retired from service on superannuation and hence the question of imposing a major penalty of removal or dismissal from service would not arise.

As per the decision of the Hon'ble Court in *Jaswant Singh Gill v. Bharat Coking Coal Ltd.*<sup>545</sup> It was held that the power to withhold payment of gratuity as contained in Rule 34(3) of the Rules, 1978 shall be subject to the provisions of the Act of 1972. Therefore, the statutory right accrued to the respondent to get gratuity cannot be impaired by reason of the Rules framed by the Coal India Ltd. which do not have the force of a statute. On that basis, direction is given to the appellant to release the amount of gratuity payable to the respondent. Thus for invoking Clause (a) or (b) of subsection 6 section 4 necessary pre-condition is the termination of service on the basis of departmental enquiry or conviction in a criminal case. This provision would not get triggered if there is no termination of services.<sup>546</sup>

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<sup>542</sup> *Ibid* at 235

<sup>543</sup> *Ibid* at 238.

<sup>544</sup> *Id*

<sup>545</sup> (2007) 1 SCC 663

<sup>546</sup> *Ibid* at 667.

It is the case of the appellant that in the charge-sheet served upon the respondent herein, there are very serious allegations of misconduct alleging dishonestly causing coal stock shortage amounting to Rs. 3 1 .65 crores, and thereby causing substantial loss to the employer. If such a charge is proved and punishment of dismissal is given thereupon, the provisions of Section 4(6) of the Payment of Gratuity would naturally get attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. As a corollary one can safely say that the employer has right to withhold the gratuity pending departmental inquiry. This issue needs to be considered authoritatively by a larger Bench. Therefore, the opinion that presents appeal be decided by a Bench of three Judges.<sup>547</sup>

### **8.12 Other Related Case**

Although the legal jurisprudence developed in the country in the last five decades is somewhat precedent based. The judgments which have a bearing on socio-economic conditions of citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters need to be frequently visited keeping in view the fast-changing societal values, the effect of globalization on the economy of the nation and their impact on the life of the people.<sup>548</sup> There are a number of cases in which the Supreme Court helped to advance the labour laws and strike down those laws or practices that were discriminatory. It is extremely difficult to fathom any rationale for the observation made in the judgment in *Sarla Verma v. Delhi Transport Corporation*<sup>549</sup>, that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. The Highest court observed in the case of *Centre for Environment and Food Security v. Union of India*<sup>550</sup> that “the majority of the Indian population is residing in rural areas and unemployment was the greatest challenge before any state or the central government, Parliament decided to enact law to provide rural employment to restrict persons as stated in such law. It was an enactment

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<sup>547</sup> *Ibid at 241.*

<sup>548</sup> *Santosh Devi v. National Insurance Company Limited and Others*, (2012) 6 SCC 421

<sup>549</sup> (2009) 6 SCC 121

<sup>550</sup> (2011) 14 SCC 252

“MGNREGA” to provide for enhancement of livelihood security of households in the rural areas of the country by providing.<sup>551</sup>

The Court observed that the paramount feature of the Act was that if an eligible applicant is not provided worse as per the provisions of this legislation within the prescribed time-limit, it will be obligatory on the part of the state government to pay unemployment allowance at the prescribed rate who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. Although the wages/income of those employed in unorganized sectors of the economy has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in the organized private sector but it cannot be derived that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

The Supreme Court took serious note of social security of the unorganized sector workers in *National Campaign Committee for Central Legislation on Construction Labour v. Union Of India*<sup>552</sup>, the court held that object of the Act 1996<sup>553</sup> is to confer various benefits to the construction workers, like fixing hours for normal working days, weekly paid rest day, wages for overtime, basic welfare amenities at site, temporary living accommodation near site, safety and health measures, etc. Every State is required to constitute a State Welfare Board to provide assistance in case of accident, to provide pension, to sanction loans, to provide for group insurance to provide financial assistance for educating children, medical treatment etc. Though the welfare board was to be constituted with adequate full time staff, many states has not constituted the welfare boards. In some states, even though the boards are constituted, they are not provided with

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<sup>551</sup> Through this programme at least hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith and incidental threats

<sup>552</sup> (2011)4SCC647

<sup>553</sup> Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

necessary staff or facilities. As a result, welfare measures to benefit the workers have not been taken.

In *Dewan Chand Builders and Contractors v. Union Of India*<sup>554</sup> Justice D.K. Jain and A.K. Ganguly, held that the Scheme of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is that it empowers the Central Government and the State Government to Constitute Welfare Boards to Provide and monitor social security schemes and welfare measures for the benefit of the building and other construction workers. It is thus clear from the Scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognized right to live with basic human dignity, enshrined in art. 21. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting welfare boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act. Its sole object is to provide for their safety, health and other welfare measures to exploited sections of the society.

Court took note of corruption in social security schemes for workers of unorganized sector. Under these two aspects concerned one relating to corruption in the implementation of the NREGA Scheme and other implementation of the guidelines issued by the Central Government under Sec. 27 of the 2005 Act. There are certain States in which serious irregularities exist as per the extracts of CAG Report as well as the report of the National Institute of Rural Development. If what is stated in those reports is true then not only the guilty should be punished but also the monies lost should be retrieved. The Central Government is considering whether CBI should be appointed to examine the case of misappropriation of grants for that purpose, are giving to the central government four weeks' time and implement the guidelines issued by the Central Government with regard to muster rolls, maintenance of job cards, applications and transfers to the account of the beneficiaries and given the four weeks' time to look into the matter.

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<sup>554</sup> (2012) 1 SCC 101

### 8.13 Conclusion

Interpretation of statute is one of the vital functions of the courts in administering justice so as to know the intention of the legislature making the law. The novel character of the Hon'ble Supreme Court of law making is an unquestionable realism. Therefore, the main idea behind this chapter was to explore the just form of judicial view for the socio-economic rights in India. Recently, there has been a radical change in the role of the Supreme Court of interpreting laws and it is evident from the above judicial perception that Indian judiciary has frolicked beneficial role in interpretation of legal provisions for the implementation of the existing labour welfare laws. It is significant to mention here that the Judiciary has no doubt given landmark judgments relating to social security, payment of compensation for employment injury and disability etc.

The fundamental rights and the Directive Principles are not strictly divided according to civil and political rights on one hand and economic, social and rights on the other hand respectively. If there is a responsibility upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be absolute literalism to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. Directive Principles of state policies<sup>555</sup> are designed to give an idea to the Government, both Central and State, to make laws towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country. The workers are most vulnerable especially those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors workers, generally, tend to be employed in the lowest paid, most tedious tasks using the least technology. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights.

The analysis of the litigations reaching the Supreme Court as described above, have given rise to the Court articulating and recognizing the specific rights of the Labour. While the above discussed cases validate the instances in which the Supreme Court stepped in to safeguard the fundamental human rights of workers and it is also apparent that there are several instances where such rights are blatantly desecrated. The different segments of the labour force in an unorganized sector are getting the lowest wages. There

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<sup>555</sup> The Articles 21, 38, 39, 41, 42, 43, 43-A and 47 of the Constitution

are even instances in some sectors of workers being paid less than work they do for example in the tea plantations, construction, agriculture etc., as compared to the minimum wages fixed by the state.

## Chapter IX

### “Social Security” in Organized sector in Japan, Germany, China and Korea.

Social Security, in its modern systematized form is a recent concept, though its origin could be traced to ancient times. During the seventies there has been, in general, tremendous progress and growth in social security in nearly all the countries of the world. In developing countries where the economy is already more structured, the social security institutions have become very firmly established and occupy an extremely powerful; and influential position both politically and financially. Over the years, more and more categories of the population have been brought within the scope of social security. After the end of the Second World War, the number of countries operating social security programmes rose sharply.

Effective and sustainable social security system have emerged as a major concern all over the world developed countries, whether it is the United States , Japan and Korea are worried about the fiscal viability of the social security systems they had developed as part of welfare state approach. The socialist economies in transition, like Russia and China, are struggling to change their ‘cardle to grave’. Hence this chapter attempts to review the existing statutory social security in China, Japan, Germany and Korea.

#### 9.1 Introduction

Japan and Korea are industrialized countries though China and India are both fast-growing countries. Korea and Japan are trifling nations in terms of topographical and populace and have industrial structures from India and China. China under the Communist Party initiated its economic transformation in the late 1970s, while India, initiated its reform in the early 1990s after Independence. In 1948, the Republic of Korea was established under the control of autocratic governments with majority rule since the 1980s. At the same time, India and China emerged as two major power houses in the development of the Asian economy since the 1990s<sup>556</sup>. But both were heavily hit by the Asian financial crisis in 1997<sup>557</sup>. Together, India and China constituted over one-third of the world’s population, while most live in the rural areas where a large proportion of the

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<sup>556</sup> Khanna, T, “ Billions of Entrepreneurs: How China and India are Reshaping their Future and Yours, Boston, MA: Harvard Business School Press (2002)

<sup>557</sup> Lee, W., and Lee, B, “Korean Industrial Relation in the Era of Globalization,”45, JIR 505-520 (2003) and also see Magoshi, E and Chang, E, “ Diversity Management and the Effects on Employees’ Organizational Commitmet: Evidence from Japan and Korea,” 44 *JWB* 31-40 (2009)

poor are concentrated<sup>558</sup>. Japan witness a population decline and is recorded highest in population among elderly in the world<sup>559</sup>. Yet the life expectancy of Japanese is high and the health expenditure per capita is low compared to other industrialized nations. It is noteworthy to mention that in certain sectors, India and China are key players: for example, IT industry in India and business process outsourcing and China's low cost manufacturing.

The right to work and social security is the basic right of the citizen. No matter what other form of protection had been organized, nearly every country had some type of employment injury scheme, in some cases in the form of social insurance, in others by lacing a legal liability on employers. Most countries have made provision for old age, invalidity and survivors, again in different ways through social insurance, social assistance, provident funds or general revenue-financed schemes for residents.

A brief review of the existing statutory social security schemes in Japan, Germany and Korea is given below.

## **9.2 Social Security in Japan:**

Japan was the first Asian country to establish a comprehensive social insurance system. Health insurance for employees of large corporation was adopted in 1922, followed by national health insurance in 1938, seamen's Insurance in 1939 and Employees Pension Programme in 1941.

In 1959, with a view to establish universal medical care and a pension for the whole nation, the national health insurance programme was amended and a national pension programme was introduced to include those not covered by existing health or pension programmes.

Japan has two major programme for old age, survivor and disability insurance. The employees 'pension programme, which is contributory as well as non contributory. It covers regular wages and salary workers. Besides these, a number of pension programme also exist for special groups such as civil servant, seamen, private school teachers, agricultural workers.

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<sup>558</sup> Roy, K., and Chai, J., " Economic Reforms, Public Transfers and Social Safety Nets for the Poor: A study of India and China", 26 *IJSE* 222-238 (1999)

<sup>559</sup> available at <http://www.ipss.go.jp/s-info/e/ssj2014/PDF/ssj2014.pdf> (last visited on 13/12/2014 at 9:46 P.M)

The Health Insurance Programme cover worker employed in manufacturing, mining and retail establishments with five or more employees. National health Insurance plan covers residents not insured as a result of their employment. It is designed to cover the oldest, poorest and the sickest segments of Japanese society.

Japan has had unemployment insurance since 1947. The law was amended in 1975 so that coverage is compulsory for all industrial and commercial firms with more than five employees. Voluntary coverage is available for employees of smaller firms and agricultural workers. The government pays 25 per cent of the benefit costs and the entire administrative cost. Employees pay 0.5 per cent of earning; employments pay 0.8 percent of payroll.

Kinds of benefits provided through these social security schemes are either in-kind or in-cash.<sup>560</sup>

### **9.3 Social Security in Germany**

A comprehensive modern plan of social security was introduced originally in Germany. The German social insurance system was established as the first comprehensive legislative system for the protection of workers.

Wage earner comes under compulsory insurance through Wage Earner's Sickness Insurance Act, 1883, the Accident Insurance Act, 1884 and the Invalidity and Old Age Protection Act, 1889. Employers and workers were required to provide against certain contingencies by paying contribution.

The social security system in Germany is divided into a number of independent branches which together make up the social insurance programme. These branches of social insurance consist of sickness insurance<sup>561</sup>, accident insurance<sup>562</sup>, old age pension insurance for wage earners and salaried employees and unemployment insurance.

Under the Occupational Safety Act of 1974, employers are required to appoint industrial medical officers and occupational safety specialists<sup>563</sup>. There is also provision

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<sup>560</sup>See <http://www.ipss.go.jp/s-info/e/ssj2014/PDF/ssj2014.pdf>

<sup>561</sup>The statutory sickness insurance system provides benefits in the form of early detection of disease, sickness benefits, hospital treatments, care in curative or special establishment, home care, maternity benefits, death grants and benefits for dependants.

<sup>562</sup>The purpose of accident insurance scheme is not limited to providing social cover for the victim of an accident and his dependants but also to prevent occupational accidents.

<sup>563</sup>Their duty is to assist the employer in their programmes of health care and prevention of accidents.

for payment of compensation by the Federal Government for a chosen list of occupational diseases. Occupational diseases are placed on the same footing as employment accidents.

The purpose of the statutory pension's insurance system is to maintain, improve and restore the insured person's earning capacity and to provide pension to insured person and to his survivors. The National Employment Service is responsible for occupational placement and vocational counseling. On October 1, 1974, a rehabilitation Benefits Alignment Act came into force to promote rehabilitation of the handicapped by extending certain benefit to them.

#### **9.4 Social Security System in China**

In order to promote economic development and social stability, and to gradually raise the living standards and social security benefits of the general public, the Chinese government has made every effort to establish a sound social security system that corresponds with the socialist market economy system. After years of exploration and practice, a social security system has been basically set up, consisting mainly of social insurance, social relief, social welfare, social mutual help and special care for disabled ex-servicemen and family members of revolutionary martyrs, and featuring the raising of funds through various channels and the gradual socialization of management and services.

Since the early 1980s, the Chinese government has carried out a sequence of reforms in its social security system with the goal of establishing a standardized social security system independent of enterprises and institutions, funded from various channels, and with socialized management and services - a system characterized mainly by basic security, wide coverage, multiple levels and steady unification. Under this mandatory state basic security, people's basic living needs will be met corresponding with China's economic development level, and the social security network will cover all citizens step by step. Besides basic security, the state will actively promote other types of social security so as to form a multi-level social security system. Through reform and development, a nationally unified social security system is put into practice step by step.

Reform of the old-age insurance system was initiated throughout China in 1984. In 1997, the Chinese government adopted a Decision on Establishing a Uniform Basic Old-Age Insurance System for Enterprise Employees, in light of which efforts were started along this line in urban areas nationwide.

A social security system that guarantees urbanites a minimum standard of living has been established across China. In 2001, the Chinese government began a pilot program in Liaoning Province, aimed at improving the existing social security system in cities.

In 1991, China began to try out the old-age insurance system in some of the rural areas. The basic principle for the rural old-age insurance system is that the premiums are to be paid mainly by the beneficiaries themselves, supplemented by collectively pooled subsidy and supported by government policies, the accumulation of funds taking the form of personal accounts.

In 1988, the Chinese government began to reform the free medicare system in government institutions and the labor protection medicare system in state-owned enterprises. In 1998, the government issued the Decision on Establishing the Basic Medical Insurance System for Urban Employees, enforcing a basic medical insurance system for urban employees throughout the country.

In the late 1980s, the Chinese government began its reform of insurance covering injuries suffered on the job. In 1996, the government issued the Trial Procedures for Industrial Injury Insurance for Enterprise Employees, to be followed by the establishment of relevant systems in some of the regions. In the same year, the Standards for Appraising Industrial Injuries and Disabilities Caused by Occupational Diseases was adopted by the government department concerned, providing the basis for such appraisal.

In the early years after the founding of the People's Republic of China, the government set up a social relief system for the urban and rural poor. In 1993, it began to reform the social relief system in cities, at the same time seeking to try out a minimum living standard security system. In 1999, this security system was established in all cities and organic county towns throughout the country. In the same year, the Chinese government officially promulgated the Regulations on Guaranteeing Urban Residents' Minimum Standard of Living to ensure the basic livelihood of all urban residents.

Over a decade the first major labour reform took place in china through the enactment of Labour Contract Act in 2007. Through this labour Contract employees enter into a contract with the employer in a terms and condition that help the workers to enforce their legal right at the workplace because local government put economic growth and business interest above worker well-being.

## 9.5 Collective Bargaining and Settlement of Industrial Disputes: A Comparative Study

Industrial relations have become one of the most delicate and complex problems of modern industrial society. Industrial progress is impossible without the cooperation of labourers, and harmonious relationships. Therefore, it is in the interest of everyone concerned to create and maintain good relations between employees and employers. The relationships which arise in and out of the workplace generally include the relationships among individual workers, the relationships between workers and their employer, the relationships among employers, the relationships among employers and workers, the relationships employers and workers have with the organizations formed to promote their respective interests, and the relations among those organizations, at all levels.

Collective bargaining is one of the methods wherein the employer and the employees can settle their disputes. This method of settling disputes was adopted with the emergence and stabilization of the trade union Government. It was believed that the labour was at a great disadvantage in obtaining reasonable terms for contract of service from the employer. With the development of the trade unions in the country and the collective bargaining becoming the rule, it was equally found by the employers that instead of dealing with individual workmen, it is convenient and necessary to deal with the representatives of the workmen, not only for the making or modification of contracts, but also in the matter of taking disciplinary action against the workmen, and handling other disputes. So, collective bargaining has come to stay having regard to modern conditions of the society where capital and labour have organized themselves into groups for the purpose of settling their disputes.

However, the Trade Unions Act (1926) of India enables leadership to come from outside the industry, and in the process multiple unions have cropped up, often with the blessings of outsiders, neglecting the interests and aspirations of workers in an enterprise. This clause has been partially amended to avoid multiple trade unions in an establishment<sup>564</sup>. The amendment states that no trade union shall be registered unless it has a minimum membership of seven persons. These provisions allow formation of at least ten unions in an establishment with a size of 70 workers, and upwards of ten unions

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<sup>564</sup> With the amendment, no trade union shall be registered in India unless at least ten percent or one hundred of the workmen, whichever is less, in an establishment of such trade union.

if the size exceeds 1100 workers. Existence of multiple trade unions in an establishment results in union rivalry, thereby affecting industrial harmony.

In the above context, analysis has also been undertaken to study the differences in trade union structure, orientation and collective bargaining capacity among China, Germany, Japan & Korea

The All China Federation of Trade Unions (ACFTU) in China is the main authority for collective bargaining. The regulations in relation to collective bargaining and industrial relations are established in accordance with the Labour Law of the People's Republic of China and the Trade Union Law of the People's Republic of China, and their purpose is to protect the legal rights and interests of the employees and the employing entity by regulating the acts of collective negotiation and of concluding collective contracts. These regulations are applicable to all enterprises and institutions within the territory of the People's Republic of China.

Collective agreement refers to a written agreement concluded through collective negotiation between the employer and its employees in conformity with the stipulations of the relevant laws, regulations and rules on the subjects of wage, hours of work, rests and holidays, labour safety and health, vocational training, insurance and welfare etc. The conclusion of collective contracts or subject-specific collective contracts between the employing entity and its employees, and the making of any decision on the relevant matters, should be done through collective negotiations. The principal form of collective negotiation is a negotiating conference. The labour protection administrations at the county level and above shall monitor the collective negotiation, conclusion, and performance of collective contracts between the employing entities and their employees within their respective jurisdiction. They shall also be responsible for reviewing the relevant collective contracts and subject-specific collective contracts. Also in China there is a monopoly of workers' representation by the official national centres of trade unions, the All China Federation of Trade Unions (ACFTU). The trial of labour dispute cases is done by the People's Court of China on issues such as: where an employee requires his employer to compensate him for losses, any dispute arising from the self restructuring of an enterprise, where an employer fails to obtain a business license, and when there are issues relating to payment of compensation, payment of pension etc.

In Germany, labour courts are the principal mechanism of conflict resolution, in individual as well as in collective labour disputes. The German labour court system is three tiered:

- i. labour courts of first instance (Arbeitsgerichte)<sup>565</sup>;
- ii. higher labour courts (courts of appeal) in the second instance (Landesarbeitsgerichte); and,
- iii. at the top, the Federal Labour Court (Bundesarbeitsgericht), which has the final say in labour law matters (only cases that are believed to infringe constitutional rights may be sent, on further appeal, to the Federal Constitutional Court).

These courts deal with private law disputes involving statutory rights - such as wrongful dismissal, infringement of works council procedures, disputes over wage payments and the interpretation of collective agreements.

In other words Labour courts in Germany have exclusive jurisdiction over all in matters involving civil legal disputes between employer and employee arising from an employment relationship. Any attorney admitted to practice in Germany can represent clients before any labour court of any instance. Social security cases are heard by separate courts. This is due to the fact that social security law in Germany is strictly separated from labour law, and is understood to be a part of public law. Therefore, disputes arising in the field of social security are not settled by labour courts (or administrative courts), but by special social security courts (Sozialgerichte). Civil law courts play a role mainly in two respects. First, all problems relating to the field of workers' representation on company supervisory boards are dealt with by the civil courts (this is because civil courts are responsible for the settlement of company law cases, and workers' representation is partly embedded within the traditional structures of company law). Second, civil courts decide disputes of rights referring to the internal structure of trade unions and employers' associations. For example, disputes concerning whether or not a union member can be excluded are decided by the ordinary civil courts.

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<sup>565</sup> Representation by Counsel is optional in the court of First Instance. It is however required at the higher levels. The parties involved in the dispute must be represented either by an attorney, or by an employers' association, or by a trade union official.

Arbitration as an alternative means of resolving disputes exists in Germany. The procedure followed by an Arbitration Committee depends on whether the conflict involves a conflict of rights or a conflict of interests.<sup>566</sup> The agreements are legally binding in respect of trade union members and the members of the employers' organisations who sign them. German collective agreements regulate a wide range of issues. Apart from pay, agreements also deal with issues such as shift work payments or pay structures, working time, the treatment of part-timers and training. There is no system for setting a single national minimum wage, although, there are minimum rates which must be paid in some important industries.

## **9.6 Conditions of Employment: Contract: A Comparative Study.**

Due to globalization, the employment structure across the globe has been undergoing changes. In order to effectively compete in a globalized market, one needs flexibility relating to labour, capital, or bureaucracy; this allows a producer to adapt to the fast-changing world and compete effectively. Stringent labour regulations not only put domestic producers at a disadvantage but also deter foreign direct investment and eventually impact adversely on investment, output and employment. Over the last two decades, a number of countries have attempted to liberalize their respective labour markets and have also amended their labour laws so as to make them more investment and employment friendly. Globalization has also created non- traditional employment structures including part time, casual and contract labour.

In India, contract labourers are protected by the Contract Labour (Regulation and Abolition Act), 1970<sup>567</sup>. A contract labourer is defined in the Act as one who is hired in connection with the work of an establishment by a principal employer (who is the firm owner or manager) or through a contractor.

Under the provisions of the Act, every principal employer to whom this Act applies should register his establishment in the prescribed manner for employing contract

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<sup>566</sup> If the complaint involves a conflict of rights, the decision of the Arbitration Committee can only serve as a recommendation to the employer and Works Council on how the case should be settled. In a conflict of interests, the decision of the Arbitration Committee supersedes any agreement between employer and Works Council. Either of these two bodies may appeal to the labour court, however, arguing that the Arbitration Committee has exceeded its jurisdiction.

<sup>567</sup> The Act applies to any establishment in which 20 or more workmen are employed on a contract basis on any day of the last one year, and also to all contractors who employ or have employed 20 or more workmen on any day of the preceding 12 months. The Act however, does not apply to the establishments in which work is intermittent or casual in nature.

labour. The contractor to whom this provision applies also necessarily has to get license for his operations from a licensing officer. Further, a set of perennial or core activities are defined in terms of what a company had declared as main activities at the time of registration. According to a Study by V V Giri National Labour Institute, about 55 percent of the workforce in organized industry is on contract basis and they are not paid industry wise minimum wages. According to data collated by Labour Bureau in the year 2011-12, 3886 inspections have been conducted, and about 2451 prosecutions have been launched (about two-third of inspections) for violations, and 1528 persons have been convicted (about 40 percent of total inspections) under the Contract Labour Act.

Against this background, a comparison of legal provisions related to contract labour in various countries have been examined

The countries which do not prohibit fixed term contracts for permanent tasks include: China, India, Malaysia, Sri Lanka, Vietnam, Kenya, Uganda, Germany UK and USA. In countries such as Bangladesh, China, India, Malaysia, Philippines, Sri Lanka, Thailand, Kenya, Uganda and USA, there are no limit on the maximum length of fixed term contract. Although Indian regulations allow engagement of contract workers for permanent tasks, central and state governments can notify prohibition of contract workers in any industry or even in a single employment. In addition, inspection and administrative hurdles make the enterprises taking the course of informal employment. Besides, central or state governments can also impose ban on fresh recruitment of permanent workers where contract workers are engaged.

India needs to encourage contract employment, with adequate safeguard measures, including provision of social security measures; this would generate formal employment in the manufacturing sector. Contract employment with higher compensation package, than the normal employment, could also be encouraged to bring in talent. This has been the practice in developed nations, in several professional streams.

Contract law in Germany covers the Part Time employees and Fixed Term Employment. In the part time employment, the employees are entitled to reduce their working time, provided no agreement has been made with employers on the numbers of hours the employee would work. A reduction of working time is not allowed if “internal reasons” within the company are an obstacle to this request. These internal reasons have a

negative effect on the operations of the organization, safety or excessive costs. This is one of the reasons for the collective agreements.

If full-time jobs are available, part time workers who want to return to full-time work must be given preference by the employer; and Employers are obliged to inform employees about the alteration of working hours, vacancy in the full-time or part-time jobs within the company and opportunities to participate in training measures.<sup>568</sup>

## **9.7 Conditions of Work-Hours/ Leave: A Comparative Study**

It is widely believed that the advent of industrial capitalism was accompanied by the emergence of the modern concept of time and increase in working hours. The dominant concept of working time in early industrialization was based on the perception that hours spent outside work were seen simply as ‘lost’ time. The logical result of this perspective was the extension of working hours, often to the physical maximum, and the policy concern was how to secure minimum hours of work to discipline workers and maintain production levels. The negative consequences of very long working hours on health and productivity have been slowly recognized, and the importance of guaranteeing free time or leisure for workers is gradually acknowledged.

As a result, working hours began to be progressively reduced from as early as the 1830s, notably through legal interventions. In the late nineteenth century, the idea for the eight-hour/ day gathered increasing support, and its positive impacts on productivity were reported in various pioneering experiments. All this eventually paved a way to the adoption of the first international labour convention in 1919, the Hours of Work (Industry) Convention, 1919 (No. 1), which stipulates the principle of ‘eight hours a day and 48 hours a week’.

Taking this into consideration, in this chapter, an attempt has been made to compare the conditions of work hours and leave entitlement

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<sup>568</sup> The new Act contains with regard to regulations on fixed-term contracts are In principle, employees with fixed-term employment contracts are to be treated equally with permanently employed workers With the exception of cases of employers taking on new labour, the duration of the employment contract or relationship must be set according to objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event; If an employee takes up a new job, the employment contract (or the maximum period of three renewals of a shorter contract) can be limited to two years, without special reasons being given; These restrictions do not apply to employees over the age of 58, in order to give them a chance to engage themselves; and Employers are obliged to inform employees with fixed term employment contracts about vacant permanent jobs, allow them to participate in training measures, and inform employee representatives about the proportion of fixed-term employment relationships within the company.

A comparison on working hours reveals that most of the countries follow ILO convention of eight hours a day<sup>569</sup>.

In China, overtime limit during normal circumstances in a day is 1 hour and under exceptional circumstances is 3 hours, and for countries such as India (200 hours per year) and France (220 hours per year) overtime limit is based on hours per year. Usually overtime pay is provided to workers who work overtime and on a normal day it is generally a minimum of 50% (of hourly pay) over and above the normal pay and 100% when it is on a holiday. Also, overtime premium helps many workers with low base wages earn more money. In addition to the host of differences regarding overtime rules, there are a number of other important differences among these policies. There is a large consensus on weekly rest. India specifies a 30 minute rest every 5 hours of work.

Most countries around the world have labour laws that mandate employers provide a certain number of off-days with wages per year to workers. Public holidays, sick leaves and annual leaves were given for all the employees in all the countries considered for comparison; however, it differed from country to country

## **9.8 The role of legislation and policies in women's employment in India, China, Japan & Korea**

There have been a growing number of cross- national comparative studies on women's employment since the 1990s. Most of them have focused on European and developed countries, in part encouraged by the European Union's gender main streaming strategy and the perceived need for countries to share good practices of welfare policy. There have been few studies that 'place the interrelations of welfare state policies and culture systematically in a theoretical framework'<sup>570</sup> for the comparative analysis of women's employment<sup>571</sup>. *Rubery, J., and Fagan* identified a set of institutional structures that is pertinent in the cross national comparative analysis of women's employment such as the organization and industrial structure of the production system, labour market conditions and regulations, the training and education system, and dominant social

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<sup>569</sup> The ILO Convention sought not only to limit working hours but also to establish overtime work as an international standard. Under the Convention's specific terms, only industrial operations that operated on a 24-hour basis, or with union bargained contracts, and other rare exceptions, could require overtime work.

<sup>570</sup> Pfau- Effinger, B. , 'Culturw and Welfare State Policies: Reflections on a Complex Interrelation,' 34 *Journal of Social Policy* 3 (2005)

<sup>571</sup> *Ibid*

attitudes and values<sup>572</sup>. In addition, ‘patriarchal values, international division of labour, and the effects of export-led industrialization’<sup>573</sup> have a role to play. It has been stated, ‘regardless of women’s qualification or the nature of labour demand, a myriad of cultural practices channel women into behaviors that either discourage labour force participation or encourage participation in only those jobs with the lowest income and prestige rewards’. Moreover, international division of labour as a result of heightened global competition has led to the growth of a large informal sector in many countries and the shift from the core to the peripheral employment system<sup>574</sup>.

Given the paucity of comparative studies of women’s employment in Asian countries, this study selected four major Asian economies for analysis: China, India, Japan and South Korea. These four countries are chosen for comparison because few, if any, of such studies have been conducted, despite the fact that they are among the politically and economically most important Asian countries in the world. The fact that conventional gender norms still prevail in these four countries makes it even more interesting and necessary to investigate the role of women workers in their economic development. While all four countries share considerable similarities in social cultural values, the differences in the stages of economic development, comparative strengths of industries, political power, the role of the trade unions, and socio-cultural also mean that the structural and institutional conditions for women’s employment differ across the four countries

In China, the Chinese Communist Party kept on taking a gander at the protection of women’s rights and interests in employment as an essential proportion of equivalent chance, at any rate on a fundamental level. In order to achieve women’s participation in employment, the state has intervened, since the 1950s, through educational, administrative, economic and information mechanisms<sup>575</sup>. An undesirable venture was created in childcare facilities to highlight the burden of working mothers. This intercession has given impressive space to advance in the payment of wages and social justice to female workers. Therefore, China has accomplished more noteworthy gender

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<sup>572</sup> O’ Reilly, J., ‘Part-time Prospects: An International Comparison of Part-time Work in Europe, North America and the Pacific Rim, Routledge, London(1998)

<sup>573</sup> Brinton, M., Lee, Y., and Parish, W. , ‘Married Women’s Employment in Rapidly Industrializing Societies: Examples from east Asia,’ 100 *the American Journal of Sociology*, 1099 (1995)

<sup>574</sup> *Ibid*

<sup>575</sup> Fang Lee Cooke, “Equal opportunity? The role of legislation and public policies in women’s employment in China” MCB UP Ltd (2001)

equality from industrialized entrepreneur social orders<sup>576</sup>. However, the effect of these intercessions has not prompted genuine gender equality in China. While women have an extensive range of employment opportunities, their career prospects are still severely constrained. In fact, authorization of ineffectual equal opportunity legislation has been a common in China, India, Japan and Korea<sup>577</sup>. It is accounted for that in spite of the fact that the Equal Employment Opportunity Law (EEOC) Act was passed in 1986; Japan had a much lower ratio of women supervisors in government organizations than it did in its companies in the mid1990s<sup>578</sup>. The introduction of EEOC was debatable among lawmakers, employers and the state at the outset and had ‘produced few gains in employment opportunities for women’<sup>579</sup>. There is a widespread consensus among scholars in Japan that the Government has endorsed EEOC more as antiphon to international pressure than recognition of Japan’s changing social values<sup>580</sup>. EEOC has been reprimanded for its ‘over-reliance on voluntary compliance’ with ‘little government enforcement power’. However, ‘this prompted reestablished endeavors in case, increased awareness and activity among women, and amendments to the law, conceded in 1997’<sup>581</sup>. Additionally, the implementation of the constitutional rights of Indian women is unbalanced in light of fact that there is no uniform civil code in India<sup>582</sup>. This lack of ineptness hampers the frail usage of social legislation in India, including the empowerment of women<sup>583</sup>. However, the Indian courts were pondered to play an significant role in defending women’s rights ‘in a context where government, employers and unions have been largely indifferent and nonchalant, either reluctant and ineffective in addressing gender issues’<sup>584</sup>.

Korea’s Gender-Equal Employment Act of 1987 provides that employers can be imprisoned for up to two years if they pay different wages for work for equal work in the

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<sup>576</sup> Stockman et al. 1995

<sup>577</sup> e.g., Budhwar et al. 2005; Cooke 2005; Kang and Rowley 2005; Yuasa 2005; Magoshi and Chang 2009

<sup>578</sup> Patricia G. Steinhoff and Kazuko Tanaka, “women Managers in Japan” *Int. Studies of Mgt. & Org.*; vol. 23, No.2, 25-48 (1993)

<sup>579</sup> Gelb, J, “the Equal Employment Opportunity Law: A decade of change for Japanese Women,” *Law & Policy*, (2000), p. 385

<sup>580</sup> *Ibid*

<sup>581</sup> *Ibid* p. 385; also see Broadben, k. , “Japan: women Workers and Autonomous Organizing”, in *Woman Organizing: Women and Union Activism in Asia*, K. Broadbent and M. Ford, London: Routledge (2008) p. 156-171

<sup>582</sup> Ghosh, R and Roy, “the Changing status of Women in India: Impact of Urbanization and development,” *24 IJSE* 904 (1997), p. 904

<sup>583</sup> Saini, D, “law and Social development in India,” a study presented at an international workshop on law and social development organized by the Parliamentary Commision on Social Development of Mexico, Mexico City, 24-26 November 1999

<sup>584</sup> Venkata Ratnam, C., and Jain, H, “Women in Trade Unions in India”, *23 IJM* 281 (2002).

same job; yet hardly any employers have gone to jail'<sup>585</sup>. By overlooking the prejudicial practices of employers, the state is in fact 'perpetuating gender norms and stereotypes that disadvantage women'<sup>586</sup>.

Legislation went for giving an upgraded dimension of correspondence may turn out to be counterproductive, particularly in ineffectively application. For instance, India's labour's laws are most stringent laws that are available in the world that hinder the growth in the manufactured sector<sup>587</sup>. This discourages employers from creating employment of better quality in the formal sector and driving millions to continue to encircle poor jobs in the informal sector. Prevention of women from night shifts in India, an activity that is being lifted in some sectors, which has additionally reduced the scope of employment for women, 'despite the fact that there is significant potential to work in information technology-related areas involving call centre's, where working around the clock work is the norm'<sup>588</sup>. Mandatory maternity leave, requiring breast-feeding breaks and crèches in workplaces where the majority of workers are women are often superficial by employers as discourage them from hiring women<sup>589</sup>.

In Korea, an amendment was made to the Labour Standards Law was passed in 1998 which enables employers to lawfully develop workers in the business restructuring process and 'employ workers who work under temporary agencies' with inferior employment packages classified as informal employment<sup>590</sup>. By both employers and the state as a noteworthy component to reduce job security of workers, labour rights, wage levels and a strong weapon to disassemble third-line labour movement for the sake of focused business advancement<sup>591</sup>. The passing of the labour law caused tension between the two groups of workers and weakened union power.

## 9.9 Conclusion

One of the most striking features of social security is its rapid progress and improvement throughout the world. Social security as a mechanism for meeting human needs have achieved universal acceptance. Nation with widely different political,

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<sup>585</sup> Van der Meulen Rodgers 1998, p. 746

<sup>586</sup> Seguino, s, "Accounting for Gender in Asian Economic Growth,' 6 *Feminist Economist* 34 (2000).

<sup>587</sup> World Bank, "India Country Overview 2006, the World Bank, Washington, DC p. 3 available at <http://worldbank.org> (last Visited on 29/10/2016)

<sup>588</sup> Venkata Ratnam, C., and Jain, H, "Women in Trade Unions in India", 23 *IJM* 279 (2002).

<sup>589</sup> *Ibid*

<sup>590</sup> Chun, J., 'the Contested Politics of Gender and Employment: Revitalising the South Korean Labour Movement,' Draft Study for Global Workinh Class Project, D.Pillay, I.Lindberg, and A. Bieler eds. 2006, pp. 9 – 10

<sup>591</sup> *Ibid*

economic and social setting has made social security programmes available to their people. It is a rare nation which does not have atleast one social security programme in operation. The right to work and social security is the basic right of the citizen. The condition of the workers in Japan, German, korea and China is no different than that of the workers in India. No matter what other form of protection had been organized, nearly every country had some type of employment injury scheme, in some cases in the form of social insurance, in others by lacing a legal liability on employers. Most countries have made provision for old age, invalidity and survivors, again in different ways through social insurance, social assistance, provident funds or general revenue-financed schemes for residents.

However, there is no a comprehensive social security policy or law which coordinates different scheme and ensure that their various objectives are complementary. It is only the German Social insurance system was established as the first comprehensive legislative system for the protection of worker. The implementation of Labour Laws in China has historically been weak. But the enactment of Labour Contract Act in 2007 which is regarded as the first major labour reform over a decade through which the pressure is given to the employer to give a written contract that help the workers to enforce their legal right at the workplace because local government put economic growth and business interest above worker well-being. This reform is been popularized. In spite of certain drawbacks no doubt the policy maker and the Government are taking initiative to protect the interest of the worker nationwide. To ensure that the employees and their employer fall under one country's social security law India and Japan entered into an agreement to avoid double social security liability on 1<sup>st</sup> October 2016.

## **Chapter X**

### **Conclusion and Summation**

Social Security is each an inspiration moreover as a system. It represents essentially a System of protection of people who square measure in want of such protection by the Society or State as associate agent of the society. Such protection becomes essential in contingencies like retirement, resignation, retrenchment, old age, death and bad condition, that square measure on the far side the management of the individual members of the Society. Men square measure born otherwise, they suppose otherwise and act otherwise. State as associate agent of the society has a very important mandate to harmonize such variations through a protective covering to the poor, the weak, the underprivileged and therefore the underprivileged. Since the last century, human civilization has witnessed a silent revolution, unseen and inaudible by several.

Though its impact is refined, it's of utmost significance to everybody. The most critical activity of the most recent century was bigger life span that has brought about partner expanding maturing populace around the world. A person ages endlessly through associate irreversible organic process, socially as perceived by the members of the society, economically by retiring from the manpower and chronologically with the passage of your time. The survival of partner expanding scope of people on the far side their antiquated grown-up jobs causes populace maturing. The unimaginable increase in expectancy is also termed joined of the best triumphs of human civilization. However it's expose one in all the toughest challenges to be met by electronic equipment society. India, being a state, has taken upon itself the responsibilities of extending numerous edges of Social Security and national assistance to its voters.

The history of labour legislations in India clearly shows that the concept of social security was not alien to India. In the past it was prevalent in form of family or religious institution. it slowly lost its importance due to modernization and change in the family structure. The growth of industries also had a huge impact on India. It leads to the demand for formulation of effective labour policies. Prior to independence the laws dealing with social security was almost non-existent. After independence the framers formulated many provisions dealing with social security laws. However, no serious steps were undertaken towards the policies on social security. For many decades this continued to remain a neglected in India. For two to three decades after Independence, there was hardly any discussion in this area in the India five Year plan documents, until the Ninth

Plan. They were silent on social security planning and did not even take cognizance of the prevailing schemes.<sup>592</sup> Over the last few decades, India has witnessed a shift in the social security discourse. Despite the literally hundreds of programs for social protection of the underprivileged, due to poverty, ignorance and lack of effective implementation appears to be a far distance dream.<sup>593</sup>

The Social Security legislations in Republic of India derive their strength and spirit from The Directive Principles of the State Policy as contained within the Constitution of India. Social Security is progressively seen as an integral part of the event method. It Helps to make a lot of positive perspective not simply to structural and technological amendment however additionally the challenge of economic process and to its potential edges in terms of larger potency and better productivity. The Constitution of India was written to uphold and paraphrase the ideals that impressed the struggle for freedom.

The predominant and declared goal of the struggle wasn't mere independence from imperialist rule however the action of human freedom all told its magnificence. This Meant evolving and protective a social and political order that secure freedom. It additionally meant making the fabric conditions (including the fabric requisites) that the subject required to relish the richness of freedom. The Fundamental Rights within the Indian Constitution guarantee right to life, and the Hon'ble Supreme Court in numerous landmark judgments has expanded the meaning of 'life' and have included within its ambit 'right to adequate means of livelihood'.

The Social Security's primary goal is to make sure that each one has the means that of living, food, shelter, health, and care. It follows, therefore, that Social Security falls within the meaning of 'life' as provided under Article 21 i.e. right to live a dignified life. Asian nation is constitutionally a socialist state and therefore the principal aim of socialism is to eliminate difference of financial gain and standing and to supply an honest normal of living to the folks. Thus, Commitment to supply Social Security to the impoverished is inherent within the Indian Constitution, deservedly claiming the standing of elementary right.

Social security is a comprehensive approach designed to prevent deprivation, assure the individual of basic minimum income for himself and his dependents and to

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<sup>592</sup> Varma, "Social Security for Unorganized Sector", 6

<sup>593</sup> Ibid

protect the individual from any uncertainties.<sup>594</sup> On the other hand to protect the interest of the workers in unorganized sector the efforts have been piecemeal. They are few Acts such as Minimum Wages Act, 1948, The Unorganized Sector Worker's Social Security Act, 2008, National Rural Employment Guarantee Act, 2005 that to an extent deals with unorganized sectors. However, in spite of these beneficial legislations, the benefits and amenities prescribed under these laws are deprived of to them in the majority cases. It can be said that more than 90% of our workforce does not have the benefit of the minimum protection and security that they need. This is a situation which should bring ignominy all those who matter of care and commitment to the rights and welfare of labour, as well as all those who abide responsibility for ensuring the rights and welfare of the people in the society.

The Workmen Compensation Act is seriously criticized mainly by the employers who have pointed out its shortcomings. They have complained that the provisions of the Act do not look to be fair to them. They do not understand why only they are held responsible to pay full compensation against an accident for which they are not personally responsible. Further, they say that in case of fatal injury even if a worker's own fault causes death, merely the employer is generally held responsible for such death and demand for full compensation to the deceased's dependants.

From the point of the workers, the defect of the Workmen compensation Act especially its implementation. The implementation of the Act needs to be improved, particularly in regard to small establishments where attempt is more commonly made to avoid the payment of compensation to the workers for one reason or the other. The bigger companies, however, follow up the Workmen Compensation Act, and pay the compensation to the workers as mentioned in the Act. Though, they also do not often report particularly in case of minor injuries. Secondly, there is avoidable delay in the disposal of applications relating to compensation for the fulfillment of the judicial formalities. Thirdly, in seasonal factories and mines the cases of accidents are often settled on minor payments and several cases of accidents go unreported. The payment of compensation is usually avoided in case of the contract labour. They are badly exploited by their employers. Fourthly, another important shortcoming of the Act is that there is no liability at present of the employer to report non-fatal injury cases to the concerned commissioner.

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<sup>594</sup> The principal social security laws enacted in India are a) The Employees' Compensation Act, 1923, b) The Employees' State Insurance Act, 1948, c) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, d) The Maternity Benefit Act, 1961, e) The Payment of Gratuity Act, 1972, f) The Factories Act, 1948.

Besides, the service cards are not maintained in the factories. When there is any occurrence of accident, the worker and his family migrate to the village without any information or any address. It becomes very difficult to find out their particulars. Moreover, most of the workers are uneducated and ignorant and in several cases they do not understand their right of compensation and, hence, get no compensation. Mr. Shiva Rao observes: “Beyond a point, it does not pay a workers in India to demand fulfillment of right.”<sup>595</sup>

The employers often takes the benefit of this weakness on the part of labour and often declines to pay his compensation or settles such cases on his own terms and conditions. Besides, the Act makes no provision for medical help while the labour becomes the victim of any accident. When a worker dies or gets serious injuries, it becomes just impossible to his dependents to meet out the situation effectively and file a claim for the compensation while generally they live far away from the factory areas. Mr. A.N. Agarwal rightly comments: “The compensation to the worker remains merely on paper.”<sup>596</sup>

While as a compound insurance the ESIS has been valued in its commencement, limitations and difficulties have been experienced in its implementation. The level and quality of medical care has not been found to be satisfactory in many areas, the dual administrative control of the state government and the corporation has added to the tribulations of administering health services, which is by itself an intimidating task. The dissatisfaction is greater in areas where good infrastructure is lacking, and in establishments having well- managed health care system for its senior employees who earn wages above the ceiling and who are not compelled to join the ESIS, on the other hand, the scheme has been recognized as extremely useful where alternative facilities do not exist, and where the centre are staffed by sincere and competent professionals. The ESI Scheme has been appreciated by non-regular employees, such as casual and contract workers, whom employers normally like to exclude from any protection.

After enactment of Employees State Insurance Act, 1948, a Medical benefit Scheme for the organized working class in selected industries, the country passed another legislation Employees Provident Fund Act, 1952. The institution of Provident Fund though not considered strongly as a social security measure is included in the

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<sup>595</sup> Dr. U.C. Kulshrestha “Labour Problems & Social Welfare (Lakshmi Narain Agarwal Publication revised Edition 2005 )  
213

<sup>596</sup> *ibid*

programmes of social security, due to the colonial considerations of the erstwhile British Government world over. Colonial kings never gave anything to colonies, but took away something from the colonies. So is the case with Provident Funds. Collecting the money of the workers, be it the Employees share or the Employers share, spending it for the Government, and passing back to the worker when he leaves the services with interest have been guiding principles of Provident Funds right from the day one since they have been established anywhere in the world. In other words, the worker has become a financier to the Government at a very cheaper rate of interest, under the disguise of savings for the future or compelled by savings for the future. The unseen future has always been haunting every person, for future has no fixed date.

However, for the Provident Fund subscribers the fixed date of future is either death or retirement.

India as it once was a British Colony had the influence of British Economic philosophy and therefore started an institution of Provident Fund way back 1952, i.e., five years after achieving freedom. Although, during 1952 itself the government felt to have a Pension Scheme for the working class it could not come out with a Pension Scheme until 1995. However, an attempt in this direction was made way back in 1971 with a scheme of Family Pension Scheme, 1971. The Employees Pension scheme, which came after a great deal of demand and deliberations, is still not free from criticism, dissatisfaction and adverse comments. Everyone who was economically sound knocked the doors of the courts to see that the Pension Scheme is struck down- of course without seriously knowing the benefit of the scheme.

The literature so far reviewed however, does not go in to the details of the functioning of the organizations established for the delivery of Social Security Benefits for attacking contingent poverty. There are several stray comments on the efficiencies of the organizations but empirical approach to examining the shortfalls is not seen. Some international writers like *Mukul Asher* and *P.S.Srinivas* have only commented on the investment patterns in practice in the Employees Provident Fund Organization without going into the details of the mandate before such organizations and their social responsibility. There are many recommendations on extending the benefits to a large number of the unprotected working class, ironically none of the above recommendations have seen the light of the day nor do we find any road map to approach the unprotected and uncovered lot. Concrete suggestions to improving the administrative arrangements are also not seen in the literature reviewed.

The Employees Provident Fund organization is a body corporate with independent Board. Several committees 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. However, the autonomy of the Board is far from reality for there are more than 45 areas where central Government controls the day-to-day functioning of the Board. Functional autonomy is therefore not there for the Board. Board thus is not able to take some policy decisions for the simple fear of Central Governments interventions.

The coverage and registration 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 their own. There are stray cases in the entire organization where the regional provident fund commissioners have initiated coverage drives on their own to meet the annual action plan targets of improving the coverage. 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. Accordingly it is found 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 operating in the country and the number of registered companies working in the country put together cross the number of establishments covered by the organization. It is further found that the organization does not have any data bank of the establishments working in the country with their employee's strength, however there is a system of maintaining a marginal register by the inspectors of the organization. This is a register where an Inspector, after conducting field surveys, has to list all the Establishments employing less than 20 people but otherwise coverable under the Act. This is not strictly followed. Even it is found maintained at some regions it does not contain any useful information to cover the establishment in event of its employing more than 20 persons. There was no reason found why the Cinema Halls employing 5 or more persons have been extended the benefits by the statute and not 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 employed to extend the coverage under the Employees Provident Fund and Miscellaneous Provisions Act. The system of voluntary disclosure of the employees'

strength by the establishments and their being in the schedule of industries is still a non-starter thereby defeating very purpose of the legislation.

The implementation of the Maternity Benefit Act has been retarded and marked with malaise both on the part of the government and employers. In the absence of an effective monitoring system, there is no way to ensure coverage. The itinerant nature of these workers also poses a problem. Also, the use of the term “maternity benefit” itself is often misunderstood. The Act provides for “maternity benefit” in two ways – maternity leave and medical bonus for delivery and postnatal care. Both these components are essential to support a woman

Under the Maternity Benefit Act no employers is allowed to discharge or dismiss a woman employee while she is on maternity leave. If during her maternity leave a notice for discharge and dismissal is served, she will be entitle to her maternity benefit and medical bonus. Gross misconduct, which has to be communicated to the woman in writing, disentitles her from claiming her maternity benefit and medical bonus. The State government is given the power to make rules of what constitutes gross misconduct. The lacunae in these provisions are protection of employment per se during the periods of pregnancy, which are not under maternity leave. The Act mandates the keeping of registers by employers. In order to evade giving the women these statutory benefits, the names of women workers are not entered in the register or the women are employed through contractors.<sup>597</sup> In seasonal factories, employers do not maintain any record or service registers and do not pay benefits on the ground that the qualifying period for which the women should have worked is not satisfied.<sup>598</sup>

The Maternity Benefit Act mandates the appointment of Inspectors who are given the function of overseeing implementation of the Act but the number of inspectors is inadequate with insufficient women inspectors on the job. Further, the number of inspections under the Act are also insufficient.

Section 4<sup>599</sup> of the Maternity Benefit Act, denies the woman the right to get employed immediately after her pregnancy for 6 weeks for no legitimate reason. This prohibition is without any legitimacy and must be repealed with immediate effect.

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<sup>597</sup> C.L Patel, Justice for Women, Central India Law Quaterly.

<sup>598</sup> *ibid*

<sup>599</sup> Maternity Benefit Act 1961, Sec 4. Employment of or work by, women prohibited during certain periods.—

(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery,<sup>11</sup> [miscarriage or medical termination of pregnancy].

(2) No women shall work in any establishment during the six weeks immediately following the day of her delivery<sup>12</sup> [miscarriage or medical termination of pregnancy].

The recent amendment in the M. B (Amendment) Act 2017 is silent on paternity leave. The whole responsibility is shifted on the mothers for child caring. Many socialist are of the view that women employment in the private job will decrease due to the fear of granting them maternity leave upto 26 weeks in the initial period. However, it is worth to mention that there is no wage limit for coverage under the Act. The Act covers permanent 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 effectively covered under this Act because of the emphasis on an identifiable employer and workplace.

The labour force which is not involved in a manufacturing process or where the number of workers is less than the statutory number required in the Act, are not covered by this Act. For example, women in home based work; sub-contracting work or self-employed workers are not under the purview of this Act

There are also restrictions of daily working hours for men and women in factories. Sections 23 and 27 of the Factories Act prohibit women from handling dangerous devices. However, all these provisions are not applied in practice for a section of the workers. Moreover, the Act is applicable only to manufacturing units, organized as 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 Factories 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 prohibition has resulted in a decrease of the employment of women workers by employers

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[\(3\)](#) Without prejudice to the provisions of section 6, no pregnant women shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

[\(4\)](#) The period referred to in sub-section (3) shall be—

[\(a\)](#) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

[\(b\)](#) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

because it means adding more people to the muster rolls as one entire shift of workers becomes unavailable for work. Thus, no prohibition through protective legislative can be made which denies women their right to equality of opportunity and treatment.

Vide the Factories (Amendment) Bill, 2005, an amendment to the Act was proposed to address the issue of the right of women to night work, but it was not passed. Several other laws including the Mines Act, prohibits night work of women. It is essential 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.

It was reported in the Shramshakti Report in 1988, that the minimum wage legislations were not strictly followed at an all India level across various industries, with the exception of some regions of Kerala where trade unions exist. In many cases the workers were switched to piece-rate basis so that it was not covered by the Minimum Wages Act.<sup>600</sup> Though this Act is a legal 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, wages actually paid to the workers are below the prescribed minimum wages fixed by the government for the respective industry.

The Act helps unorganized workers who are working in the scheduled employments. But nearly 60% of the workforce in the unorganized sector is self employed or home-based. Thus, they remain outside the purview of The Minimum Wages Act, 1948, although they constitute the majority in the sector.

The minimum wage is not uniform since it varies 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 applicable to agricultural, non-agricultural and to rural as well as 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

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<sup>600</sup> Shramshakti Report: Report of the National Commission on Self-Employed Women and Women in the Informal Sector, New Delhi, 1988

provisions of the Act are constantly violated.<sup>601</sup> Women are exploited even more than the male workers and in many employments get even less wages than the male workers. Middlemen i.e. the contractors 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 end up with even less once they give the middlemen the cut of the wage agreed to, whether in advance or otherwise. Hence, unionization, availability of legal grievance redressal mechanisms and legal awareness are necessary to thwart these processes of exploitation of the woman worker.

In the interests of budget transparency, it's vital to elucidate the programmes and initiatives taken so that an individual will understand where the resources are being utilized. Farmers are told that the method for considerably increasing the minimum support has already started and that they are going to be group action larger gains within the next crop. However individuals are getting tough to believe this as it cannot be seen coming from the allocations for the food grant or allocations for the agriculture ministry.

As it is, this year (20-19) the Union budget has been given during a state of affairs of a lot of bigger uncertainty concerning resource accessibility than in traditional years, partially thanks to product and Services Tax-related factors. Revenue receipts up to Gregorian calendar month 2017 were 53% of Budget Estimates for the year, compared with 58% for a similar amount for the preceding year.

This is why we'd like to be additional cautious this year concerning the downward redaction of Budget Estimates for a few aspects of social sector outlay. Some widely-publicized initiatives could also be used only for pre-election information and stay confined to simply many areas, united doesn't see any resource mobilization for correct national-level implementation. there's would like for terribly careful scrutiny of social sector expenditure throughout the yr – which could also be additional true this year than others.

Interpretation of statute is one of the vital functions of the courts in administering justice so as to know the intention of the legislature making the law. The novel character of the Hon'ble Supreme Court of law making is an unquestionable realism. Recently, there has been a radical change in the role of the Supreme Court of interpreting laws and

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<sup>601</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.

it is evident from the above discussed chapter judicial perception that Indian judiciary has frolicked beneficial role in interpretation of legal provisions for the implementation of the existing labour welfare laws. It is significant to mention here that the Judiciary has no doubt played an activist role towards matter relating to social security, payment of compensation for employment injury and disability etc.

It is clear by now that the fundamental rights and the Directive Principles are not strictly divided according to civil and political rights on one hand and economic, social and rights on the other hand respectively. But the review of the rights enshrined in Part IV is not prohibited explicitly by the court. If there is a responsibility upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be absolute literalism to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. Directive Principles of state policies<sup>602</sup> are designed to give an idea to the Government, both Central and State, to make laws towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country. The workers are most vulnerable especially those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors workers, generally, tend to be employed in the lowest paid, most tedious tasks using the least technology. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights.

The analysis of the litigations reaching the Supreme Court as described above, have given rise to the Court articulating and recognizing the specific rights of the Labour. It is evident from that the Supreme Court stepped in to safeguard the fundamental human rights of workers and it is also apparent that there are several instances where such rights are blatantly desecrated. They are working different segments of the labour market in unorganized sector getting the lowest wages. There are even instances in some sectors of workers being paid less than work they do for example in the tea plantations, construction, agriculture etc., as compared to the minimum wages fixed by the state.

Laws need to be reviewed from time to time as per the requirement of the changing society. Though, Labour is one of the subject in the concurrent list (seventh schedule) of the Constitution of India, the State Governments have very little role in enacting labour

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<sup>602</sup> The Articles 21, 38, 39, 41, 42, 43, 43-A and 47 of the Constitution

legislation. Thus, FICCI<sup>603</sup> appeal shifting of the subject “labour” from concurrent list to the State list of the constitution so that the state have more economic independence to legislate welfare legislation according to their own requirement in order to combat the issue.<sup>604</sup>

In order to make the exiting labour legislation employment friendly, simplification of archaic laws must be made and create single window system under the common headlines. This can be achieved by making the existing labour legislation into one comprehensive law. Such as there must be a one legislation governing terms and conditions of employment,<sup>605</sup> one legislation governing wages<sup>606</sup>, one legislation governing welfare<sup>607</sup> and one legislation governing social security<sup>608</sup>

For better interpretation and understanding, a standardized definition of terms ‘industry’ is necessary across the statutes.<sup>609</sup>

The condition of workers in China is not different than that of workers in India. The implementation of labour law in china has historically been weak, but the recent amendment in China labour law in 2007 is the first major reform in over a decade. The Chinese Government enacted new Labour Contract Law. This legislation sought pressure to the firm to give workers written contract that would help workers enforce their legal right at the workplace because local government put economic growth and business interest above the workers well being

To conclude no body step back and said what is the situation of labour in India, who is representing the interest of the workers who are not covered by the labour laws that prevails. Thus one needs to step back to make it meaningful.

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<sup>603</sup> The Federation of Indian Chambers of Commerce and Industry is an association of business organizations in India. Established in 1927

<sup>604</sup> Currently, there are 44 labour laws under the purview of Central Government and more than 100 under State Governments, which deal with a host of labour issues. Unfortunately, these labour laws protect only 7-8 percent of the organized sector workers employed at the cost of 93 per cent unorganized sector workers. *Also visit* <http://iasmaker.com/contents/display/labour-reforms-in-india/>

<sup>605</sup> Which may consolidate Industrial Disputes Act, 1947; Industrial Employment (Standing Orders) Act, 1946; Trade Unions Act, 1926 Into one head

<sup>606</sup> Minimum Wages Act, 1948; Payment of Wages Act, 1936; Payment of Bonus Act, 1965

<sup>607</sup> Factories Act, 1948; Shops and Establishments Act; Maternity Benefits Act, 1961 ; Employees’ Compensation Act, 1952 and Contract Labour (Regulation & Abolition) Act, 1970

<sup>608</sup> Employees Provident Funds and Miscellaneous Provisions Act, 1952; Employees State Insurance Act, 1948 and Payment of Gratuity Act, 1972

<sup>609</sup> Available at <http://iasmaker.com/contents/display/labour-reforms-in-india/>

## SUGGESTION

Following are section wise key suggestions required in the existing laws:

a) **Industrial Disputes Act 1947**

The definition of 'industry' under Section 2(j) had been amended in 1982, but could not be enforced due to absence of a parallel machinery to investigate and settle the disputes in the excluded category of the establishments. Parliament in its own wisdom thought it prudent to save certain institutions like hospitals, education and research institutions from the vagaries of industrial unrest like strikes and lockouts, and kept them out of preview of Section 2(j). The amended definition of 'industry' should, therefore, be enforced forthwith.

Definition of 'workman' Section 2(s) defining 'workman' needs to be amended. Excessive protection given to the employees in the higher salary brackets in the organized sector like Airlines, Bank, Insurance, etc., has not helped to make these employees accountable to the establishment and the society at large. On the contrary, it has tended to erode the overall discipline. Further, Supervisors, Managers and people holding administrative positions irrespective of the salary limits, should be taken out from the purview of the definition of 'workman'.

Strikes and Lock-outs India is perhaps the only country, where the requirement of strike notice is absent barring public utility service. This does not give adequate time to the parties to take pre-emptive steps and avert the situation through negotiations. A reasonable period of notice of strike is, therefore, essential. Section 23 of the ID Act to be amended to provide that a 14 days notice of strike should be compulsory. Further, to democratize the functioning of trade unions, the Strike Ballot should be supported by at least 75% of the workers working in the enterprise. Go-slow and work to rule are the most pernicious forms, even worse than strike. The economic loss caused by go-slow is far graver than strike. It has not yet been prohibited in our legislation. It should be recognized as a 'strike'.

Voluntary Arbitration must be Promoted to Discourage Litigation Section 10A, providing for Voluntary Arbitration, has failed in its objective. Arbitration should be promoted as an alternative dispute resolution machinery to discourage litigation. A panel of expert arbitrators needs to be appointed.

Publication of Awards According to Section 17 of the existing Industrial Disputes Act, only a published award becomes enforceable on the expiry of 30 days from date of its publication. The requirement of publishing Award is a mere formality, consuming time and resources. The same can be communicated to the parties like a Judgment of the Civil Court, which should become enforceable on the expiry of 30 days after the Judgment, to give adequate time to parties to file Appeal, if it is necessary.

**b) Factories Act, 1948**

Definition of ‘Occupier’ Section 2 (n) ‘Occupier’ shall be a person who has ultimate control over the affairs of the factory but restricting the definition of ‘Occupier’ only to a ‘Director’ in the case of Private sector with multiple factories, who may not be stationed at the site of the factory all the times, puts unreasonable restrictions. Rather the definition of “occupier” need to be extended to any managerial person vested with the ultimate control of the factory by a resolution of the Board of Directors.

With regard to the Annual Leave with Wages<sup>610</sup> the proposal for reducing the qualifying period of worked days from 240 to 90 days for availing annual leave with wages will promote unnecessary absenteeism among the regular workers. However, the proposal can be made applicable for the baadli/casual worker by mentioning it in a specific clause. In case of regular workers the existing 240 days may continue.

**c) Employees’ State Insurance Act, 1948**

Applicability and Coverage During the previous Government’s regime, the ESIC in its meeting held on September 19, 2013, proposed for enhancement of the salary limit for coverage of employees under the ESI Act from existing limit of Rs. 15000/- to Rs. 25000/- per month, and it was approved by the corporation despite objections raised by the employers’ representatives. This extra burden, due to enhancing the coverage, would negatively impact the viability of the enterprises and would even lead to a negative effect on employment generation. Moreover, the ESI dispensaries are lacking in important medicines, doctors, paramedical staff and other important infrastructure, hampering regular and satisfactory services to the employees.

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<sup>610</sup> Factories Act 1948, sec 79

To conclude, the researcher suggests that the penal provisions in all these laws need to be revisited. Workers need to be protected and respected. The threshold in the legislation should be removed. The Government while framing a policy on labour, transgender person's rights should also be recognized in terms of employment, healthcare services and access to facilities.

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3. The Basic Law of the Federal Republic of Germany, 1949
4. The Beedi Workers Welfare Fund Act, 1976
5. British Poor Law Act, 1601
6. The Building and other Construction Worker's Welfare Cess Act, 1966
7. The Building and other Construction Workers (regulation of Employment and Condition of Service Act, 1966

### **C**

8. The Children (Pledging of Labour) Act, 1933
9. The Cine Workers Welfare Fund Act. 1981
10. The Constitution of India, 1950
11. The Constitution of Japan, 1946
12. The Constitution of Korea, 1948
13. The Constitution of the People's Republic of China, 1982
14. The Contract Labour (Regulation and Abolition Act), 1970
15. The Coal mines Provident Fund and Miscellaneous Provision Act, 1948

## **E**

16. The Employees Compensation Act, 1923
17. The Employees State Insurance Act, 1948
18. The Employees' Provident Fund and Miscellaneous Provision Act, 1952
19. The Employment of Children Act, 1938
20. The Employment Insurance Act, Korea
21. The Employment Retirement Benefit Security Act, Korea
22. The Employment Security Act, Korea
23. The Employee Vocational Capability Promotion Act, Korea
24. The Equal Employment Opportunity and Work Family Balance Assistance Act, Korea

## **F**

25. The Factories Act, 1934
26. The Fatal Accident Act, 1855

## **G**

27. The Government of India Act, 1935

## **H**

28. Hours of Work Act, 1994, Germany

## **I**

29. The Indian Mines Act, 1901
30. The Indian Mines Act, 1923
31. The Industrial Accident Compensation Insurance Act, 1947, Korea
32. The Industrial Disputes Act, 1947
33. The Invalidity and Old Age Protection Act, 1889, Germany

## **K**

34. Korea's Gender-Equal Employment Act of 1987

## **L**

35. The Labour Contract Act, 2007, China
36. The Labour Standard Act, 1997, Korea
37. The Labour Welfare Fund Act, 1953

## **M**

38. The Maternity Benefit Act, 1961
39. The Mines Act, 1952
40. The Mines Maternity Benefit Act, 1941
41. The Minimum Wages Act, 1948, India
42. The Minimum Wage Act, 1986, Korea
43. The Minimum Wage Act, Germany

#### **N**

44. The National Pension Act, 1986, Korea
45. The National Medical Insurance Act, Korea
46. The National Rural Employment Guarantee Act, 2005
47. The National Health Insurance 1938, Japan

#### **O**

48. The Occupational Safety Act of 1974, Germany

#### **P**

49. The Part- Time and Limited Term Employment Act, Germany
50. The Payment of Gratuity Act, 1947
51. The Payment of Gratuity Act 1972
52. The Payment of Wages Act, 1951
53. The Plantation Labour Act, 1951
54. The Protection Against Dismissal Act, Germany
55. The Provident Fund Act, 1925

#### **S**

56. The Seamen's Insurance 1939, Japan
57. The Shops and Commercial Establishment Act

#### **T**

58. The Trade Disputes Act, 1929

#### **U**

59. The Unorganized Sector Worker's Social Security Act, 2008,

#### **W**

60. The Wage Earner's Sickness Insurance Act, 1883, German
61. The Wage Claim Guarantee Act, 2017, Korea

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## A STUDY OF THE FIVE YEAR PLAN VIS-À-VIS SOCIAL SECURITY OF LABOUR IN ORGANIZED SECTOR

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### **Abstract:-**

*In the Second World War almost all the countries of the world faced obliteration. They had to face the ravage of many new problems coming out of war. So, immediately when the war was over, the Government thought of post-war reconstruction in their respective countries. The British Government of India also had such plan for India. Moreover, India was an underdeveloped country. After Independence, the national Government of India wanted to uplift it through proper planning. So, the Government of India introduced five year plans. The Planning Commission was set up in March, 1950. The draft of the five year plan was published in July 1951 and it was approved in December 1951. The First Five Year Plan<sup>1</sup> dealt with labour and industrial relations with a humanistic approach. It recognized the importance of labour in the fulfillment of the targets of the plan and creating an economic order in the country. From 1947 to 2017, the Indian economy was premised on the concept of planning. This was carried through the Five- Year Plans, developed, executed and monitored by the Planning Commission (1951-2014) and the NITI Aayog<sup>2</sup> (2015-2017). Hence this article attempts to study the five Year Plan vis- a vis Social Security of Labour in Organized Sector till date.*

### **Introduction:-**

Five-Year Plans in India is framed, executed and monitored by the Planning commission in India<sup>3</sup>. Joseph Stalin implemented the first Five Year Plan in the Soviet Union in the late 1920s

The Planning Commission in India was set up in March, 1950 with the following terms and object:

<sup>1</sup>Recommendation of study Group on Social security, Government of India, 1957.

<sup>2</sup> The new Government led by Narendra Modi, elected in 2014, has announced the dissolution of the Planning Commission, and its replacement by a think tank called the NITI Aayog.

<sup>3</sup> Renamed as NITI Aayog (2015-1017)

"The Constitution of India has guaranteed certain Fundamental Rights to the citizens of India and enunciated certain Directive Principles of State Policy, in particular, that the State 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, and shall direct its policy towards securing, among other things,—

- a) That the citizens, men and women equally, have the right to an adequate means of livelihood ;
- b) That the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good ; and
- c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Having regard to these rights and in furtherance of these principles as well as of the declared objective of the Government to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country, increasing production, and offering opportunities to all for employment in the service of the community.

The plans with regard to social security in an organized sector from first plan till date in the Five Year Plan have been described and discussed in detailed below.

#### **First Five Year Plan**<sup>4</sup>

The First Five-Year Plan was one of the most important because it had a great role in the launching of Indian development after Independence. Thus, it strongly supported agriculture production and it also launched the industrialization of the country

The first plan relates to the certain rights and obligations with the role which labour had to play.<sup>5</sup>the rights included factors like adequate provision for the basic need of the workers in respect of food, clothing and shelter so as to enable them to remain healthy and efficient, provision for improved health conditions, wider provision for social

<sup>4</sup>In July, 1951 the Planning Commission presented a draft outline of a plan of development for the period of five years from April, 1951 to March, 1956

<sup>5</sup>Recommendation of study Group on Social security, Government of India, 1957

security, better educational opportunities and increased recreational and cultural facilities; condition of work that would safeguard the worker's health and protection against occupational hazards, right to organize and to take lawful action in furtherance of their rights and interests. The plan called upon labour to realize the fact that in an undeveloped economy, it cannot build for itself but they have to make a substantial contribution<sup>6</sup>. This will ultimately lead to peaceful industrial relations.

In the plan, right to strike and lock out was recognized. Just settlement of claims was also given emphasis. The Commission also accepted the importance of conciliation and arbitration in dispute resolution and duty of state to provide machinery for settlement of disputes. The plan envisaged for establishing a tripartite body for determining norms and standards, standardization of wages with principles of social policy, profit sharing, permanent wage boards etc. above all, a full and effective implementation of minimum wage legislations was the main recommendations in First Five Year Plan. The plan also stressed on improving working conditions of labour and for that purpose implementing legislation ie., Factories Act, Mines Act, Plantation Act, Shops and Establishment Act etc. the plan assured "having placed his assets labour and skill at the disposal of the community, he should be assured for a reasonable measure of security against various natural and other risks to which he is exposed".<sup>7</sup>

#### **Second Five Year Plan**<sup>8</sup>

Chapter 5 of the Second Five Year plan focused on employment aspects. This plan gave importance to the employment opportunities with an objective of maximizing rate of growth output through the utilization of available resources as a mean for economic development. The task is divided into three i.e

- Firstly about providing employment opportunities for the existing urban and rural growth,
- Secondly, providing natural increase in the labour force and

<sup>6</sup> The report said that, the working class performance functions vital to the maintenance of the community's economic life.

<sup>7</sup> Ibid

<sup>8</sup> Second five Year plan was published in February 1956 and the final plan was approved by the Parliament in May, 1956.

The object of the plan was rapid industrialization with particular emphasis on the heavy industries

- Lastly about those underemployed in agriculture and household activities to be provided with increased work opportunities.<sup>9</sup>

The labour policy in the Second Plan was accordingly influenced by the socialistic pattern of society. The Plan recognized that the goal of progressively speeding up production would mean that indiscipline, stoppage of production and indifferent quality of work would have to be guarded against. The plan placed greater emphasis on mutual negotiations and voluntary arbitration in improving employer-employee relation. Important development took place in the acceptance of Code of Discipline (1958) laying down specific obligation for the management and workers i.e., institution programmes for worker's education (1958), establishment of wage boards (1969), for fixation of wages etc.<sup>10</sup> the main emphasis of the Second Five Year Plan was on the problem of unemployment and under employment. The plan gave high priority to the development of the large scale joint stock enterprises on the one hand and village and small scale industries on the other for solving the unemployment problem.<sup>11</sup>

#### **Third Five Year Plan**<sup>12</sup>

During the Third Plan, apart from the fuller implementation of the schemes drawn up in the first two plans, social security measures were taken into consideration. The Third Five Year Plan emphasized that it's the states responsibility in providing facilities and co-operative arrangements for settling disputes. It visualized that "the object is to secure not peace alone but higher levels of industrial efficiency and rising standard of life of working class"<sup>13</sup> payment of Bonus Act, 1965; Shops and Commercial Establishments Act in different states<sup>14</sup>, Labour Welfare Funds Acts<sup>15</sup> in many states were some remarkable improvements during this plan period. National Safety Council was set up in 1966. Under Minimum Wages Act, 1948, minimum wages were fixed and periodically revised by state governments in respect of various agricultural and other trades. The First National Commission on Labour

<sup>9</sup> Government of India, Planning Commission, Second Five Year Plan (1956-1961)

<sup>10</sup> Supra n.2 at p.22

<sup>11</sup> Ibid at p. 50

<sup>12</sup> 1961-1966

<sup>13</sup> Government of India, Planning Commission, Third Five Year Plan (1961-1966)

<sup>14</sup> In Kerala in 1960, in Uttar Pradesh 1962, Punjab 1958, Himachal Pradesh 1969 etc.

<sup>15</sup> In Karnataka 1965, in Bombay 1965 etc.

was also set up under this Plan. This was the first step in independent India that envisaged a comprehensive study for finding out the labour problems, its causes and remedies.

**The Fourth Five Year Plan**<sup>16</sup>

The Fourth Plan<sup>17</sup> analyzed the ESI Scheme, industrial training to craftsmen, employees provident fund scheme and found that these expanded steadily. This plan recommended for adoption of the ideology of ILO that includes “development involving comprehensive programs of rural development, labour intensive public work programmes and fuller utilization of industrial capacity, promotion of labour intensive products in domestic and foreign markets and application of economically sound labour intensive techniques in industrial production.”<sup>18</sup> Such investment plan will need more investment in human as compared to physical capital.<sup>19</sup> More stress was given to rural development and small scale industries and the strategy of development envisaged in Fourth Plan was broadly in conformity with this. This plan also envisaged the creation of new employment opportunities and improvement in wages of those who were already employed in different sectors.

**The Fifth Five Year Plan**<sup>20</sup>

The Fifth Five Year Plan India was sketched out for the period spanning 1974 to 1979 with the objectives of increasing the employment level, reducing poverty, and attaining self- reliance. The twin objectives of poverty eradication and attainment of self reliance were inculcated in the fifth plan. A national program for minimum needs including elementary education, safe drinking water, health care, shelter for the landless was included. Electricity Supply Act was enacted in 1975, which enabled the Central Government to enter into power generation and transmission. Meanwhile, India had seen substantial rise in the food grain production. To alleviate the problem of unequal spread of green revolution, government unsuccessfully tried to take over the wholesale trade in wheat.

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<sup>16</sup> 1969-1974)

<sup>17</sup> Government of India, Planning Commission, Fourth Five Year Plan (1969-1974)

<sup>18</sup> In the report of UNEP, the ILO has forcefully agreed for the integration of employment creation to economic development through the maximum possible productive resources available labour to accelerate economic growth and more particularly, to substitute labour for scarce capital where there is economically feasible.

<sup>19</sup> Id at chapter 22, p.429

<sup>20</sup> 1974-1978

However, in 1975, Indira Gandhi imposed emergency and planning became subject to much politicization. In 1977, the government changed and first non- Congress Government took over power with Morarji Desai at its helm. The new central government was a coalition called Janata Alliance. This government reconstituted the planning commission and announced a new strategy in the planning<sup>21</sup>. The new objective laid down was “Growth for Social Justice”. The new approach was “ Rolling Plan”. It terminated the fifth year plan in 1977-78 and launched its own Sixth Five Year Plan for period of 1978-1983 and called it rolling plan.<sup>22</sup>

### **The Sixth Five Year Plan**<sup>23</sup>

The Sixth Five year Plan recognized that the time had come when labour policy should be much more concerned with the interests of vast masses of workers who are outside the organized sector and are unable to protect their interests. The plan spoke about industrial policy i.e., ‘industrial development policy’ in a developing country like India has to meet two conflicting requirements. It must protect the right of the working class to organize and to struggle for its economic and social betterment by all democratic and legal means.<sup>24</sup> At the same time, it must ensure the steady growth of investment and production at a satisfactory rate. Collective bargaining as the main mode of dispute settlement and protection of right to strike of workers were the proposals under this plan for concretizing the good industrial relationship.<sup>25</sup> At the same time means to avoid strike i.e., notice, consultation and arbitration were also given importance. The plan also envisaged for extension of benefit of minimum wages to more beneficiaries, revising wage policy assuring similar wages for similar work, worker’s share in profit and income, expansion of working of National Safety Councils and National Council for Safety in Mines.

The plan discussed social security of workers under Employees State Insurance Act, 1948; Employees Provident Fund and Miscellaneous Provisions Act; Payment of Gratuity Act, 1947 and

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<sup>21</sup> This new strategy involved a change in the objective and approach pattern.

<sup>22</sup> Indira Gandhi again became the Prime Minister and she immediately threw the Janta’s rolling plan in dustbin and launched her own plan for year 1980-85. The year 1978-79 was restored back to fifth plan of 1974-79

<sup>23</sup> 1980-1985

<sup>24</sup> Government of India Planning Commission, Sixth Five Year Plan (1980-1985)

<sup>25</sup> This plan says the right to workers is to be protected otherwise bilateral collective bargaining is deprived of its ultimate sanction from worker’s point of view.

Family Pension Schemes.<sup>26</sup>The plan envisaged for expansion of coverage of these Acts not only to factories employing 10 to 19 persons using power but also to shops, hotels, restaurants, cinemas, theatres, motor transport and news paper establishments employing 20 workers or more. With regard to women labourers, the plan recommended for application of Equal Remuneration Act to all branches of employment to eliminate discrimination against women and to set up Advisory Committees in all states to implement the Act. The plan emphasized the proper enforcement of existing provisions requiring crèches or child care units within establishments in order to cover children of working mothers.

The plan realized that to eliminate child labour there is no shortcut in an economy where poverty and unemployment forced families to divert their children from education to supplement their family income. The only way is to raise the income of the families through employment and anti-poverty programmes. The plan also recommended for National Committee on child labour to examine the adequacy and implementation of the present legislation relating to child labour and to suggest welfare measures for the benefit of employed children and also for a child Labour Cell in Ministry of Labour to formulate, co-ordinate and implement policies and programmes for the welfare of employed children and to indicate follow up action on the sections of Child Labour Committee.

#### **The Seventh Five Year Plan**<sup>27</sup>

The chapter 5 of the plan dealt with in detail employment, manpower planning and labour policy. This Plan witnesses a shift in ideology of employment and manpower policy from basic approach to the concept of productive employment. The task is found with adopting a suitable of investment and production, appropriate types of technology and mix of production technique and organizational support which would help the production of growth in productive employment. There must be suitable arrangements and adjustment of policies in terms of education, training and retraining and reorientation of workers in order to avoid dislocation effects and make the process of technology adoption

<sup>26</sup> Government of India Planning Commission, Fourth Five Year Plan (1978-1983), Chapter 2, p.172

<sup>27</sup> Seventh Five Year Plan, (1974-75)

smooth. The plan analyzed the employment generation achievements in Sixth Plan period and found that there was expansion.<sup>28</sup>

The seventh Plan recognized that the labour entered the production process from the supply side as well as from the demand side and the thrust of Seventh Plan was an improvement in capacity utilization, efficiency and productivity.<sup>29</sup> This plan has given emphasis to industrial safety and required constant attention due to its significant impact on the working conditions and welfare of workers and also on the production mechanism. This plan also discussed wage policy and found that wage factor depended on related elements like allowances, bonus, social security and fringe benefits. With regard to the unorganized sector, efforts are suggested to be made not only to train to upgrade skills of the workers but also to educate them and make them aware of the pragmatic and legislative provisions available to them. With regard to women workers, the plan gave special recognition and made provisions for requisite facilities for bringing them into the mainstream of economic growth.

#### **The Eighth<sup>30</sup> & Ninth Five Year Plan**

The objective of Eighth Five year plan was creating employment generation, check population growth and overall human development. It was creating economic growth as complementary rather than conflicting processes. The plan took the aspect of need of important scrutiny in the impact of macro-economic, sectoral and labour policies on employment.

The plan also discussed elaborately the existing labour policies, in the context of economic reforms. It was pointed out that capital and labour policies are not always employment friendly. The plan found that the labour policy as manifest in certain labour laws and labour market rigidities rendering wage mechanism ineffective, has introduced a degree of inflexibility in labour use thus “discouraging employment expansion particularly in the large scale industries”.<sup>31</sup> The plan also discussed the unorganized sector where majority of workers belong and found employment in that sector, not only completely insecure but also devoid of any social security provisions i.e., “high degree protection for

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<sup>28</sup> Apart from sectoral investments, the oriented programmes like NREP, IRDP, RLEGP, and TRYSEM resulted in expansion of employment opportunities.

<sup>29</sup> Government of India, Planning Commission, Seventh Five Year Plan, Chapter ‘Employment-Power, Plans and Labour Policy’, pp.1-9.

<sup>30</sup> Eighth Five Year Plan, (1992-1997) can be called a “Rao and Manmohan Plan”

<sup>31</sup> Government of India, Planning Commission, Eighth Five Year Plan (1992-97) Chapter 6, p.116.

minimum scale proportion of work force and complete lack of protection for the majority of workers”.<sup>32</sup>

The shift from long protected non-competitive economy to increasingly competitive market occurred during Ninth Five Year Plan period.<sup>33</sup> Appreciating the encouraging results of these reforms, the plan document observed that Indian economy has responded well to the change in policy direction.<sup>34</sup>

#### **The Tenth Five Year Plan**<sup>35</sup>

This plan as approved by National Development Council (NDC) envisaged an annual growth of 8% which is higher than 5.5% achieved during the Ninth Five Year Plan period. The plan targeted 10 million employment opportunities per year over this Plan period. The plan especially emphasized on social security and framed a working group. The report<sup>36</sup> elaborately discussed the present system of social security in India. The objective of this plan was to support attainment of economic and social objective in labour sector through a set of strategies. It is believed that a reasonable return to labour is facilitated by labour laws including provisions for social security to workers. According to the plan, job is the best guarantee for those who are not covered by social security laws<sup>37</sup>. In the plan it has been stated that the labour market is found moving in a direction that change over of jobs by an individual will become more frequent. Public sector which provides comprehensive social security cover to its employees has been sinking in size, the pension system of government employees be kept under review. The plan envisaged that to reach out to the entire labour force employed many of the existing institutions, laws and programmes including that on social security have to be restructured. The Plan recommended streamlining the delivery system and issue of National Social Security Number to the workers in the EPFO.

#### **Eleventh Five Year Plan**<sup>38</sup>

<sup>32</sup>Id at p.117.

<sup>33</sup> 1997-2002.

<sup>34</sup>N.Jetli, India: Economic Reforms and Labour Policy, New Century Publications, New Delhi, (2004), p.16.

<sup>35</sup> (2002-2007) period

<sup>36</sup> Report of the Working Group on Social Security for the Tenth Five Year Plan (2002-2007), Government of India, Planning Commission, October 2001.

<sup>37</sup> As stated in the Plan, out of about 400 Million workers in the country only around 50 to 60 million are covered by some form of social security.

<sup>38</sup> Eleventh Five Year Plan (2007-12)

The National Development Council approved the Eleventh Five Year Plan setting 'a faster more broad based and inclusive' growth at the average annual rate of 9 percent. The plan target to reduce poverty by 10 percentage point, generating 7 crore new employment opportunities and ensuring electricity connection to all villages. With various monitor-able targets set for various priority programmes at the central and state level, the thrust of the Plan document is on social sectors, agriculture and rural development. The draft document proposed to increase by the priority sector allocation to 74.67 percent of the center's Gross Budgetary Support from 55.20% in the Tenth Plan. The plan also proposes to raise investment on infrastructure sector including irrigation, drinking water and sewage from 5 percent of GDO in 2005-2006 to 9 % by 2011-2012.

The education sector is set to be a big beneficiary with the Plan document seeking to increase the allocation to 19.36 percent of the GSB from 7.68 percent in the Tenth Plan.

#### **The Twelfth Five Year Plan**<sup>39</sup>

This plan is expected to be different than all the earlier plans because of the differences in the economic environment in which the plan has to be operationalized. A number of new initiatives have been proposed in this plan for retaining youth in Agriculture Sector and funding for research and innovations in the sector. The twin objectives of the plan are ensuring food security and improving the lot of farmers through higher investments in agriculture and allied sectors. To address the challenges in live stock sector, National Livestock Mission<sup>40</sup> and National Programme for Bovine Breeding & dairying has also been proposed in the Plan. The plan also recommended the need to evolve a National Social Security for the unorganized sector and formulate a detailed action plan to cover almost all the segments of the unorganized workforce in social security with the ultimate goal of covering all unorganized workers in the long run. The plan furthermore emphasized on the enforcement of existing social security legislation namely EPF Act and ESIC that should be strengthened.

The initiatives taken up by the EPFO during Xth Plan to streamline the delivery system and issue of National Social Security Number to the workers should be continued in this plan as it would help in reducing harassment to the workers and reduce corruption in the

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<sup>39</sup> Twelfth Five Year Plan (2012-2017)

<sup>40</sup> The main objective of this mission is to achieve sustainable development and growth of livestock sector by providing greater flexibility to the states.

organization. The plan also recommended that the proposed initiative of ESIC to extend ESI Scheme to educational and private medical institutions, enhancement in daily rate of rehabilitation allowance, implementation of scheme in new areas, enhancement in the wage ceiling for coverage from Rs. 7,500/- to Rs. 10,000/- reduction in threshold for coverage and setting up of Zonal Super- Specialty Hospital in all Zones should be completed.

The Plan envisaged that there weren't very many additional benefits which could be added to the existing ones for the organized sector workers. It was felt that focus should be only on provisions of health care, accident benefits, sickness and maternity which are broadly covered by the ESI Act, EPF Act, Workmen Compensation Act<sup>41</sup>, and the Maternity Benefit Act. It was pointed out that none of these Act cover Self- employed persons. The plan emphasized that the criteria for coverage of Various Acts such as threshold, the wage ceiling limits etc. should be homogeneous so that convergence of these schemes could be considered. The plan also emphasized that the separate schemes need to be framed for different section of workers having different risk perception as some of the employment are not accident prone or are not susceptible to occupational disease.

The plan also suggested that the Associations or trade Union representing different sections of employees could be utilized for providing benefit to that particular section e.g. ESIC has been able to cover Cine workers in Mumbai with the help of active cooperation of Cine Workers Trade Unions

The plan also highlighted that there was an overlap in provision of benefits for some contingencies by different schemes e.g both ESI and EPF provide disablement and dependants benefit which could be avoided if uniform coverage criteria is adopted. Convergence will also result in cost saving since different organizations are performing same functions and could lead to better utilization of available resources. The working group on Social Security for the Twelfth Five Year Plan felt that there is a need for universalization of Social Security.

### **Conclusion**

Social security arrangements have a comparatively long history in India. The historical overview of labour jurisprudence in India reveals the fact that social security is not an unknown concept in India. It was in existence as a part of family or religious institution. The development of

<sup>41</sup> Now known as Employees' Compensation Act, 1923

industrial jurisprudence influenced India also and thus the modern approach to social security moved slowly to India. It was progressive growth from preliminary period and then, a period of mindful planning. Before independence only certain categories of workers were covered by the social security law that was then enacted.

Even though after Independence the framers of the Constitution of India, while framing the constitution significant provision relating to social security of labour had given, Social security is a relatively neglected area in terms of both research and policy in India. For two to three decades after Independence, there was hardly any discussion in this area in the India five Year plan documents, until the Ninth Plan. They were silent on social security planning and did not even take cognizance of the prevailing schemes.<sup>42</sup> Over the last few decades, India has witnessed a shift in the social security discourse. Despite the literally hundreds of programs for social protection of the underprivileged, the social security situation in India is characterized by lack of poverty.<sup>43</sup>

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<sup>42</sup>Varma, "Social Security for Unorganized Sector", 6

<sup>43</sup> Ibid