

Social Security for Organized Sector Workers in India

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Abstract: “As a labourer/representative, you are a wellspring of Social Security insurance for yourself and your family. As a business you are in charge of giving satisfactory government managed savings inclusion to every one of your labourers.”

International commitments and constitutional duties bind the government to offer social protection advantages to all citizens. Social protection can be shielding or promotional. The former seeks to give safety towards the contingencies of lifestyles (including illness and old age), which may also lessen the incomes capability of a man or woman; whereas the latter needs pro-active movement for raising the usual of residing. In India, handiest approximately 7% of all the employees are entitled for most of the advantages of the social security legal guidelines and the relaxation belonging to the unorganised category aren't provided adequate coverage and if included, the legal guidelines and schemes are often now not implemented. Besides, ambiguities in regulations, flaws inside the legal guidelines and relatively low funding within the social security schemes add insults to injury. This prima facie contravenes the constitutional goals in general and equality clause especially. Unorganised people are forced to spend out in their meagre earning for all contingencies and continue to be helpless in their old age. We must now not view ill-fitness or malnutrition as a contingency, but a continuing truth of existence for which safety should be arranged. The intention of this paper is to spotlight the existing social security guidelines and schemes available to the unorganised staff of India. A strive has been made to live upon the ideas of social safety and unorganised worker. In this regard, several law and judicial choices, in conjunction with schemes on the Central and State Levels have been analysed.

Keywords: social security, unorganized zone, rights of workers, policies, schemes

1. Introduction

Social security is a new concept relating to the economic insecurity. Social security system responds to new demographic challenges, such as ageing and changing family structures, with important implications for the financing of social protection. Social security for employees is a concept which over time has gained importance in the industrialized countries. Broadly, it can be defined as measures providing protection to working class against contingencies like retirement, resignation, retrenchment, maternity, old age, unemployment, death, disablement and other similar conditions. Social security is one of the pillars on which the structure of a welfare State rests, and it constitutes the hard core of social policy in most countries. It is through social security measures that the State attempts to

maintain every citizen at a certain prescribed level below which no one is allowed to fall. It is the security that society furnishes through appropriate organization, against certain risks to which its members are exposed. Social security system comprises health and unemployment insurance, family allowances, provident funds, pensions and gratuity schemes, and widow's and survivor's allowances. The social insurance schemes include their compulsory and contributory nature; the members must first subscribe to a fund from which benefits could be drawn later. On the other hand, social assistance is a method according to which benefits are given to the needy persons, fulfilling the prescribed conditions, by the government out of its own resources. The labour sector of the Indian economy consists of roughly 487million workers, the second largest after China. Over 94 percent of India's working population is part of the unorganized sector. In local terms, organized sector or formal sector in India refers to licensed organizations, that is, those which are registered and pay sales tax, income tax, etc. These include the publicly traded companies, incorporated or formally registered entities, corporations, factories, shopping malls, hotels, large businesses etc. [4] Organized sector is normally governed by government and it has some sets of rules and regulations which must be followed [5]. In the organized private sector with more than 10 employees per company etc, there are employees numbering in social services at 2.2 million, which includes private schools and hospitals; finance at 1.1 million which includes bank, insurance and real estate and agriculture at 1 million. India had more central and state government employees in 2008, than employees in all private sector companies combined. If state-owned companies and municipal government employees were included, India had a 1.8:1 ratio between public sector employees and private sector employees. In terms of gender equality in employment, male to female ratio was 5:1 in government

and government owned enterprises; private sector fared better at 3:1 ratio. Combined, counting only companies with more than 10 employees per company, the organized public and private sector employed 5.5 million women and 22 million men [6]. In the initial years of development and planning, it was believed that with the process of development, more and more workers would join the organized sector and eventually get covered by formal social security arrangements. However, experience has been lied this hope. The opening up of the

economy, under the regime of economic reforms, has only exacerbated the problem. There is now almost a stagnation of employment in the organized sector with the resultant increase in the inflow of workers into the informal economy [7]. The Second National Commission on Labour, 1999 was constituted to suggest rationalization of existing laws relating to labour in the organized sector. Major Restructuring of Employees State Insurance Scheme and Provident Fund Scheme were considered in the wake of the recommendations of the Second National Commission on Labour which had been asked to examine the recommendations of the Wadhawan Committee. The Commission has recommended for formulation of unemployment insurance schemes to help the people who are unemployed involuntarily. Further, recommended for evolving an integrated social security scheme and creation of a separate social security fund to finance various security measures [8]. Planning Commission had set up a working group to prepare the 10th Five Year Plan on Social Security under the chairmanship of Shri Vinod Vaish, Secretary, Ministry of Labour [9]. The social security schemes in India cover only a very small segment of the organized work force, which may be defined as workers who are having a direct regular employer - employee relationship within an organization. Out of an estimated work force of about 397 million, only 28 million are having the benefit of formal social security protection [10]. The Directive Principles of Indian Constitution do not impose any particular pattern or frame work of economic, welfare and social order. This task is left over to the state, which has to implement these directives depending upon the wishes of people and the existing national economic, political and social conditions. Social security in schemes which were included in Directive Principles of State Policy provide protection and safeguards and security against various risks in worker's life as Directive Principles have been given same importance equal to Fundamental Rights [11]. Although these provisions are not enforceable in the courts of law, the Supreme Court of India has declared that they are nevertheless fundamental in the governance of the country and it is the duty of the State to apply them in making laws [12].

2. Legislations relating to social security

A. For organized sector workers

Social security is the aim of all social welfare legislations of all countries following different ideologies, different social and political structures and different economic policies. Social security is essential for the well-being of people and society. It is the basic human right and its fulfillment will contribute to achieving various developmental goals of nation. Social Security measures have far reaching benefits in the form of improving and bringing sense of pride and self-respect amongst the citizens. Such measures also help in providing the minimal level of providing protection against health and life hazards in work situations [13]. India enforced number of labour legislation dealing with social security. The organized sector

includes primarily those establishments which are covered by the Factories Act, 1948, the Shops and Commercial Establishments Acts of the States, Industrial Employment Standing Orders Act, 1946 etc. This sector already has a structure through which social security benefits are extended to its workers. Most workers under the organized sector are covered under the institutionalized social security provided through Employees Provident Fund Organization (EPFO) and the Employees State Insurance Corporation (ESIC) [14]. Social Security to the workers in the organized Sector is provided through five Central Acts, namely, the Employees' Compensation Act, the Industrial Disputes Act, the Employees State Insurance Act, the Employees Provident Fund and Miscellaneous Provisions Act, the Maternity Benefit Act, and the Payment of Gratuity Act. There are many schemes for workers which are being run by the government. Following are the main legislations providing social security for workers of organized sector:

B. The Employees Compensation Act, 192315

Workers need protection against industrial accidents, which occur in every country, with increasing use of machinery and mechanical power in organized industries. The number of industrial accidents have become common in India also but in spite of that accidents occur, partly due to the absence of adequate safeguards against dangerous machinery and partly due to the carelessness of the workers, resulting from miscalculation or wrong judgment Ignorance of the risk involved, overwork and fatigue. Compensation to workers for industrial accidents has become an important part of labour legislation in every country, and in many countries it is included under social insurance schemes [16]. The general principles of workmen's compensation command almost universal acceptance for a number of years, the more generous employers have been in the habit of giving compensation voluntarily, but this practice is by no means general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible from hardship arising from accidents. The term Workman should be replaced by the term employee so as to make the Act applicable to all categories of employees, viz., clerical staff, supervisory, managerial and others [17]. Till January 2010 it was known as the Workmen Compensation Act. Originally the Act was applicable to workers of certain specified industries, employed otherwise than in clerical capacity and receiving monthly wages not exceeding 300. The workmen were entitled to compensation from the employer in case of personal injury caused by accident arising out of and in the course of employment with certain reservations to the duration of incapacity and negligence of workman himself. The payment of compensation was mainly dependent upon the incapacity or disablement of workmen. Now it is called the Employees Compensation Act, 192318, which requires payment of compensation to the Employees '19

or his family in cases of employment related injuries resulting in death or disability. The Act provides for payment of compensation to workmen and their dependents in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death [20]. Schedule II [21] of the Act includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations etc. Minimum rates of compensation for permanent total disablement and death have been fixed at 1,40,000 and 1,20,000 respectively or more. Where there is temporary disablement, a half monthly payment of wages is to be paid. In case of treatment of actual medical expenses are to be reimbursed. In case of death of funeral expenses of 5000 are to be paid [22]. The working of the Act has brought to light some defects. The employers have complained that the Act is unfair to them, because they do not see why they should be called upon to pay full compensation for a risk for which they are not personally responsible e.g. in case of fatal injuries, even if a worker's own fault results in his death, the employer is called upon to pay compensation. On the point of view of the workers the working of Act is more serious, especially in small establishments in mousse areas 23, where attempts are commonly made to avoid payment of compensation to workers by one means or another. Moreover, the workers are ignorant and illiterate and in several cases they do not even know that they are entitled to compensation in case of individual accidents.

C. Industrial Disputes Act, 194726

Social security measure in the form of benefit against unemployment was adopted in 1953 when an Ordinance No. 5 of 1953 provided for lay-off and retrenchment 27 compensation to industrial workers. The scope of unemployment benefit was extended after amendment in 1956 and 1957 to provide for compensation to 26 Act 14 of 1947.

[27] The Industrial Dispute Act, 1947, Section 25-F. 175 workmen on closure of undertakings. Retrenchment²⁸ covers all terminations of workmen other than through voluntary retirement, superannuation, termination of the service of the workmen, after expiry of an employment contract and termination on the basis of continued illness of workmen [29]. The Industrial Disputes Act, 1947 provides for retrenchment, compensation in closing down of industry and compensation in case of layoff. In any industrial establishment in which more than 100 workers are employed and a worker has worked for continuously one year will not be retrenched without the prior approval of the appropriate authority. In case an industrial dispute is pending before any authority under the Act a workman connected with the dispute without the prior approval of that authority cannot be retrenched [30]. Lay-off means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery to give employment to a workman whose name is borne on the muster rolls of his

industrial establishment and who has not been retrenched [31].

Whenever a workman whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off. Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer. Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.³² In case of transfer of undertaking section 25(FF) of Industrial Disputes Act, 1947 is applicable. The employer transferring the undertaking has to pay the compensation. Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure. The service of the workman has not been interrupted by such alternative employment.

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for one year and is provided alternative employment at same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure, the service of the workman has not been interrupted by such alternative employment and the

employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment,³⁴ shall not be entitled to notice or compensation on closure.

3. Schemes and policies relating to social security in India

The Central Government has framed some schemes for the Workers of organized sector under the existing social security laws. These are:

A. *Employees Provident Funds Scheme*

The Central Government framed a scheme called the Employees Provident Fund Scheme for the establishment of provident funds under EPF Act for employees or for any class of employees and specify the establishments or class of establishments to which the Scheme applies, A fund is established in accordance with the provisions of this Act and the Scheme. The fund vests in, and is administered by, the Central Board constituted under section 5A. A Scheme framed for all or any of the matters specified in Schedule. A Scheme framed under any of its provisions of the Act takes effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme. The Scheme is basically meant for security of workers after their retirement. According to Para 26(1) of the scheme, every employee employed in, or in connection with the work of a factory or any other establishment to which the scheme applies, shall be entitled, and is required to become a member of the fund from the very first day of his employment.

B. *Employee's Pension Scheme*

The Central Government framed a scheme to be called the Employee's Pension Scheme for the purpose of providing for superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Employees Provident Funds Act applies and widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees. After framing of the pension scheme, a pension fund was setup into which there shall be paid, from time to time, in respect of every employee who is a member of the pension scheme, such sums from the employer's contribution under section 6, not exceeding eight and one-third percent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the pension scheme. Such sums as are, also payable by the employers of exempted establishments. The scheme shall include the net assets of the employee's family pension as on the date of establishment of the pension fund. The family pension scheme shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the pension fund and the beneficiaries under the ceased scheme shall be entitled

to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the pension fund. Pension fund shall vest in and be administered by the Central Board in such manner as may be specified in the Scheme. The Employee's Provident Funds Miscellaneous Provisions Act, 1952 was amended and a separate Pension Scheme was launched from November 16, 1995 replacing the then Employees Family Pension Scheme, 1971. Its benefits are Superannuation pension, early pension, permanent total disablement pension, widow or widower's pension, children pension or orphan pension, nominee pension/dependent parents pension.

C. *Employees Deposit-Linked Insurance Scheme*

The Central Government framed this scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which Employees Provident Funds Act applies. There is a Deposit-linked Insurance Fund into which is paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent of the aggregate of the basic wages, dearness allowance and retaining allowance if any for the time being payable in relation to such employee. The Central Government with the motive of providing additional social security in the form of life insurance to the family of the deceased member of the provident fund, framed the Employees Deposit Linked Insurance Scheme.¹⁰⁹ The benefit under the Scheme is so devised that it acts as an incentive to the members to save more in their Provident Fund Account. As the name of the Scheme provides that the benefit is linked to the amount of accumulation in the Provident Fund Account of the member. The Scheme applies to all the establishments to which the Employees' Provident Fund Scheme applies. Under this Scheme, the members do not contribute any amount as contribution. However, the employer pays an amount equal to 0.5% of the total wages paid to the members as contribution. The employer shall pay into the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under sub-section 2, as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under it. It shall vest in the Central Board and be administered by it in such manner as may be specified in the Scheme. It may provide for all or any of the matters specified in Schedule IV.

Grant of exemption to an establishment or to an employee or to a class of employees as the case may be, from the operation of all or any of the provisions of the Scheme, where the life insurance benefit of the Scheme in the establishment is more beneficial than the benefits provided under the statutory scheme. From 1-4-93 onwards the amount of Insurance Benefit payable is an amount equal to the average balance in the amount of deceased in the Fund during the preceding 12 months or during the period of his membership whichever is less, except

where the average balance exceeds 25,000 amount payable shall be 25,000 plus 25% of the amount in excess of 25,000 subject to a ceiling of 35,000.

D. National Skill Development Policy

A National Policy on Skill Development has been formulated by the Ministry of Labour and Employment and which has been approved by the Cabinet in its meeting held on 23rd February, 2009. The objective is to create a workforce empowered with improved skills, knowledge and internationally recognized qualifications to gain access to decent employment and ensure India's competitiveness in the dynamic global labour market. It aims at increase in productivity of workforce both in the organized and the unorganized sectors, seeking increased participation of youth, women, disabled and other disadvantaged sections and to synergize efforts of various sectors and reform the present system. Skills and knowledge are the driving forces of economic growth and social development for any country. Countries with higher and better levels of skills adjust more effectively to the challenges and opportunities of world of work. The target group for skill development comprises all those in the labour force, including those entering the labour market for the first time (12.8 million annually), those employed in the organized sector (26.0 million) and those working in the unorganized sector (433 million) in 2004-05. The current capacity of the skill development programs is 3.1 million. India has set a target of skilling 500 million people by 2022. The skill development initiatives support employment generation, economic growth and social development processes. Skill development policy will be an integral part of comprehensive economic, labour and social policies and programmes. A framework for better coordination among various Ministries, States, industry and other stakeholders will be established.

E. Rajiv Gandhi Shramik Kalyan Yojna (Unemployment Allowance Scheme)

Under this Scheme, insured persons losing their employment due to closure of factory/ establishment, retrenchment and permanent invalidity are provided unemployment allowance @about 50% of wages for a maximum period of six months. During this period, insured person and his family is also entitled for medical care.

4. Conclusion

In old times the standardized savings of labourers existed in distinctive structures however with the difference in times these structures have been changed. After the Mughal Emperors and beginning of the British period the work laws came up on the resolution book. The evolving modern, monetary, horticulture creation forms, changes in data also, correspondence advancements, work developments and industrialist reaction thereto, brutal and peaceful fomentations and Labour Commissions. Proposals have acquired numerous progressions the idea of government managed savings under work laws and

still the more changes are requested by the work and capital in this period of progression and globalization. The legislature has made numerous changes in the social law to give advantages of government disability to greatest number of employees. Government disability is presently commonly comprehended as importance security given by the general public to its individuals through a progression of open measures against the monetary and social trouble that generally is brought about by the stoppage or considerable decrease of income coming about because of infection, maternity, work damage, word related maladies, joblessness, deficiency, seniority and death. Amid the time of 2010 upwards of 5,765 mishaps coming about in death, perpetual disablement and transitory disablement were announced by the States and Union Territories guaranteeing remuneration, a measure of 8,783.32 Lakhs was paid as remuneration. This shows that the workers are very much aware of the pay under Workers Compensation Act.121 Amid the year 2010, 2115 i.e., 0.42% of ladies labourers asserted maternity advantage in the plant area, 32552 (3.07%) of ladies labourers in estate area and 2,785 i.e., 1.28% in other foundations. In this manner the execution of Maternity Benefit Act amid this period was not satisfactory.122 In this manner from the above talk unmistakably now there are number of standardized savings laws for labourers in India, yet there are a few escape clauses in the current government managed savings laws. The cases under The Employees Compensation Act, 1923 set aside long effort for choice also, execution. This Act covers the Employees State Insurance Act, 1948 in instances of mishap when a worker isn't secured under Workers State Insurance Act however the foundation is secured under ESI yet there happens to be a mishap. This circumstance suspends the worker from the advantages of Employees State Insurance Act. The Workers Provident Funds and Miscellaneous Provisions Act, 1952 has a compensation limit which isn't in equivalent with the expanding compensation accordingly numerous workers are not secured under it. Where provisional work is utilized, this Act isn't successfully executed what's more, numerous specialists neglect to get profits by it. The Maternity Benefits Act, 1961 isn't viably actualized. The working ladies in different fields don't get advantage because of blame in meanings of working ladies in it. There is no grumbling arrangement instrument against business under this Act. The Payment of Gratuity Act, 1972 covers with other tip plans made in various foundations and instructive foundations therefore the businesses of those foundations don't actualize the Act on different unwarranted pardons. It is a finished code in itself the Gratuity can be guaranteed just under this Act, it can't be guaranteed under area 33 (C) (2) of Modern Disputes Act, 1947. It very well may be summed up that these conspires under these Acts are completing a decent support of the specialists yet here are provisos which should be stopped with the tripartite participation. There are numerous government disability laws in India however there is no legitimate authorization of all government managed savings laws. There is covering of

numerous arrangements in government disability laws. Representatives are unskilled and oblivious about the presence of these. Government should take appropriate ventures for execution of government managed savings laws and spread mindfulness through the camps and workshops and so on among the representatives. So that each specialist can take the advantage of these government disability laws. There is no legitimate protest tending to system or appropriate discipline for managers disregarding these laws. The specialist are not completely mindful about their privilege of government managed savings. In numerous private foundations, the businesses or these enterprises are not agreeing to existing laws of government managed savings. Government ought to build up such framework that each business ought to present their report with respect to the provident subsidize and different advantages of the representatives. Government ought to revise the current law to carefully rebuff the businesses, who don't comply with the existing government disability law in the nation. There is covering of ESI furthermore, Maternity Benefit Act. There ought to be arrangements of stringent discipline for boss if there should be an occurrence of inability to conform to existing laws of government managed savings.

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- [15] Supra note 11 at 39417 Second Labour Law Commission, 1999.
- [16] From January 2010 its name has changed.
- [17] [(dd) "employee" means a person, who is (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989).
- [18] Employees Compensation Act, 1923, Section 3.
- [19] List of Persons Who, Subject to The Provisions of Section 2 (1) (Dd), Are Included in The Definition of Employees.
- [20] Section 4 along with schedule I and schedule IV.
- [21] Originally, the regions of India outside the three East India Company capitals of Bombay, Calcutta and Madras; hence, parts of a country outside an urban centre; the regions or rural areas.
- [22] Supra note 20 at Section 3, 10-A and 10-B.
- [23] A. N. Agarwala, Indian Labour Problems, 194 (1997).
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