



SOCIAL SECURITY AND LEGAL PROTECTION TO INJURED WORKERS IN UNORGANISED SECTOR: THE INDIAN CONTEXT

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ABSTRACT

International commitments and constitutional obligations bind the government to provide social security benefits to all citizens. Social security may be protective or promotional. The former seeks to give protection against the contingencies of life (such as sickness and old age), which may reduce the earning capacity of an individual; whereas the latter demands proactive action for raising the standard of living. In India, only about 7% of all the workers are entitled for most of the benefits of the social security laws and the rest belonging to the unorganised category are not provided adequate coverage and if covered, the laws and schemes are often not implemented. Besides, ambiguities in policies, flaws in the laws and relatively low investment in the social security schemes add insults to injury. The aim of this paper is to highlight the existing social security policies and schemes available to the unorganised workforce of India. An attempt has been made to dwell upon the concepts of social security and unorganised worker.

KEYWORDS : Social security, Unorganised, fatal injuries.

Introduction

In India, approximately 92% of the working population is engaged in the unorganised sector, which include majority of women workers and children's too. Predominance of informal employment has been one of the central features of labour market scenario in India. While the sector contributes around half the GDP of the country, its dominance in the employment front is such that in early 1980's and even before that more than 90% of total workforce has been engaged in the informal economy². Yet, in spite of their vast numbers and their important contributions to the national economy, they are amongst the poorest sections of the country's population.³ But what have they in common is that they form the most oppressed section of the Indian society. They do not have the secured employment. They have been progressively alienated from our land, forests and other traditional means of livelihood. They are not covered by various labour legislations and are left at the mercy of their employers. They are not covered under various social security measures like provident fund, pensions, maternity benefits etc. They do not get even minimum wages even in situation where their category of work is covered under the minimum wages act.⁴ Social security measures are an integral part of any society - a means to provide some form of assistance to its members during distress caused by the unforeseen and inevitable eventualities like sickness, accident, unemployment, death etc. However, the evolution of social security and the process of its implementation vary across time and space. In India, the majority of the population particularly those engaged in the unorganised sector continues to be outside the preview of social security coverage⁵.

Social security: concept and need

Social security has assumed considerable importance in recent years. It is one of the basic needs in welfare state like India. It is based on the idol of human dignity and social justice. The basic idea behind social security measure is that a citizen who has contribute or likely to contribute to his country's welfare should be given protection against certain hazards⁶. It is novel concept in the field of business management and industrial administration. It is true for all country although there is no denying that social security, today embraces a wider field than even before. In addition to labour welfare and economic protection of workers, it covers also socio-economic and development of the working or weaker class⁷.

Social security is a dynamic concept so it varies from time to time and country to country. In simple words we can say that social security is a social, economic and legal protection to human being to earn his/her livelihood and maintain his standard of living. It is therefore necessary to link up traditional social security policies and economic policies in general. Get big for instance defines social security for developing countries as "any kind of collective measures or activities designed to ensure that members of the society meet

their basic needs, As well as being protected from contingencies to enable them to maintain a standard of living consistent with social norms"⁸. The focus of the social security is to enhance and protect people's capabilities to be adequately nourished, to be comfortably clothed, to avoid escapable morbidity and preventable mortality.⁹

The history of social security of labour or working class in modern India has its root with the enactment and execution of labour and industrial legislations during the British ruling as well as in independent India. From the middle of 19th Century to the end of First World War, the Indian industrial legislation was in the period of origin. It was through a slow and steady process that the industrial law took root in India. The Apprentices Act figures the first law introduced in India relating to labour. It was enacted for better enabling children to learn trades, crafts and to seek employment by which when they come to full age, they may gain a livelihood.⁹

Cotton mills and jute mills that have been established during 1850s marked the beginning of factory system in India. The conditions of workers in those mills were pathetic due to long working hours without any safety and security. Based on the principles of torts, Fatal Accidents Act, 1855 was enacted for providing compensation to legal heirs of these employees where death occurred by an actionable wrong. Minimum rate of compensation, to some selected legal heirs and a restricted application were the main drawback of the said Act. The quantum of said compensation was very minimal so the application of this Act was not wide enough also. So, the measure for social security for the workers under this Fatal Accident Act was not exclusive one and after that The Indian Merchant Shipping Act was enacted in the year 1859 for the better health condition to be provided to the workers in the sea. But practically it was not so effective in providing social security to the sea men. In the same year Workmen's Breach of Contract Act was passed which provided for criminal penalties for workers for breach of contract of service.

In 1860, Employers and Workmen (Disputes) Act was passed and it provided for speedy and summary settlement of disputes between employers and workmen. By this time 1881, the number of factories was increased at a huge rate in India, but workers did not organize themselves simultaneously with the industrialization. The safety and working conditions of these workers were prime concerns for many members of the House of Lords and they argued for legislation. Thus in 1881, Indian Factories Act 1881 was passed. In order to improve the conditions of plantations labours, Island Emigration Act 1892 and to secure safe and healthy conditions of work in mines, Indian Mines Act, 1901 were passed.

In the year 1919 just after the World War First the ILO was formed in accordance with the provisions of the Versailles treaty. The treaty

provided for the right to social security of the working class. ILO has adopted many conventions and recommendations casting different types of liability on industry, Government and labor. Under the Montague-Chelmsford Reforms in 1919, the central legislature was given definite legislative authority to enact industrial laws. Using that power, in 1923, India passed a major enactment called Workmen's Compensation Act, 1923, with an object to eliminate hardship caused to workmen injured, through providing prompt payment of benefits regardless of fault from their side and with minimum legal formalities. In 1925, Government of India enacted another Act, Provident Fund Act, 1925. Royal Commission on Labor was appointed in 1929 which recommended a scheme for health insurance to industrial workers on a contributory basis (financed by employers along with small deductions from the wages of workers) and provisions against old age and payment of gratuity.

During the period of 1919-1942, there was a great progress in modifying old laws and in enacting of new ones. Some new enactments were passed for specifically addressing certain industrial establishments. These were not merely intended for regulating employment in the industries but attempted to give better conditions of employment like shorter hours of work, weekly holidays, safety of premises, and payment for overtime, rest period and paid holidays.

Legislative Measures to the Injured Workers The Employees Compensation Act, 1923

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, a deliberate failure to take the necessary precautions, or 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.

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.¹¹

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, 1923¹², which requires payment of compensation to the Employees' 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 dependants 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.¹⁴ Schedule I¹⁵ 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 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.¹⁶ 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 mofussil areas¹⁷, where attempts are commonly made to avoid payment of compensation to workers by one means or another.¹⁸ 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.¹⁹

Constitutional Safeguards to the Injured workers :

The right of workers including social security was demanded to be included in Constitution as fundamental right but the nature of the right and the difficulty in its enforceability made its position in the subordinate category of non-justiciable right. Matters relating to Social Security are listed in the Directive Principles of State Policy and the subjects in the Concurrent List. The social security issues mentioned in the Concurrent List viz., List III in the Seventh Schedule of the Constitution of India are Item No. 23: Social Security and insurance, employment and unemployment. Item No. 24: Welfare of Labour including conditions of work, Provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits. Article 41 Right to work, to education and to public assistance in certain cases the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42, Provision for just and humane conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief, . These provisions contained in Fundamental Rights and Directive Principles of Constitution helped a lot for providing facilities to workmen and making effective provisions of public assistance.

Conclusion and suggestions

Along with the whole world, India also celebrates International Worker's Day on 1st May and World day for safety at work places on 20th April. But do these days have achieved their importance in India in real terms? With the same thought, an endeavor has been made in this paper to clear the concept of social security, social schemes, constitutional provisions and the Government initiatives. It is studied that the conditions of injured workers in unorganized sector were so pathetic in Pre and Post Independent India. Even after a bunch of years of independence, the states of these workers still the same. Undoubtedly, Central and State Governments have taken numerous initiatives for the betterment and development of the unorganized workers, but there are no accurate figures to measure the effectiveness and implementation of these initiatives as there is no strict standard check. Even these unorganized workers are also not aware about all these schemes, benefits and rights which make their condition unchangeable.

With some, the study concludes that there should be a standard social security system in the country as well as a strict check is required to assess whether these schemes and laws are successfully implemented or not. There should be registration of these unorganized workers as organized workers. Government and NGO's should conduct such programs in which these workers are given knowledge about these laws, schemes and benefits in their support and of course about their rights too.

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10. Act 8 of 1923.
11. Second Labour Law Commission, 1999
12. From January 2010 its name has changed
13. [(dd) "employee" means a person, who is (i) a railway servant as defined in clause (f) of section 2 of the Railways Act, 1989 (24 of 1989), 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) (a) a master, seaman or other members of the crew of a ship, (b) a captain or other member of the crew of an aircraft, (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or (iii) employed 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 the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;] Clause (dd) inserted by Workmen's Compensation (Amendment) Act, 2009, section 6,
14. Employees Compensation Act, 1923, Section 3.
15. List of Persons Who, Subject to The Provisions of Section 2 (1) (Dd), Are Included in The Definition of Employees.
16. Section 4 along with schedule I and schedule IV
17. 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.
18. Supra at Section 3, 10-A and 10-B.
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