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Editor's Note

The Centre is immensely pleased to present its second online version (Volume 1 Issue 2) of NUJS Journal of Regulatory Studies. The present Issue is an extension of the first one and comprises articles exclusively related to social security laws and policies, with special reference to India. The Issue covers a wide array of topics that range from social security laws for the disabled to constitutional dimensions of social security laws in India to universalisation of social security to the impact of social security on India's economic growth. There are also articles that strive to comparatively analyse India's social security provisions vis-a-vis those that are existing in other countries.

At the outset, I must acknowledge that ever since the establishment of the Centre in July 2015, we felt the need to have a Journal exclusively run by it and we were able to crossover all the hurdles to this and the researchers worked hard to bring out the second Issue. In this Issue, we are able to provide to the readers as many as 14 articles. It is needless to mention that the articles were stringently reviewed before they got published in the present form.

On the eve of the publication of this second online Issue, I sincerely thank the Hon'ble Vice-chancellor Prof. (Dr.) P. Ishwara Bhat for the constant support in meeting all our requirements. Special thanks to all the contributors, who are either eminent professors or scholars or students pursuing their legal education in various prestigious law schools and colleges, for their relentless support in the publication process.

In this Issue, we tried our level best to ensure that insightful articles are published. I sincerely hope this Issue will meet the expectations of the readers.

Prof. (Dr.) T. R. Subramanya
Coordinator and Research Fellow

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Editor's Note

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ADAPTING SOCIAL SECURITY TO 21ST CENTURY INDIAN ECONOMY: A CASE FOR UNIVERSALISATION

Saurabh Bhattacharjee*

ABSTRACT

Proliferation of social security has been one of the integral features of the modern industrialised world. In India too, social security has not only been enshrined as a constitutional mandate, but has also been embodied in a wide variety of legislation. Yet, multiplicity of legislation has created errors of harmonisation and engendered a regime riddled with variance in legal standards and rights of workers. Along with these inconsistencies and gaps, the centrality of the status of employment in extant regimes has excluded a large number of workers who fall through the crack. Such exclusion has been exacerbated by the occupation-centricity of these schemes that is ill-suited to the ongoing transformation in the labour economy and demographic changes. In view of these shortcomings, a shift to universal citizenship-based social security schemes is advocated. Delinking social security from occupation and predicating it on citizenship would extend these schemes to informal atypical workers and persons out of work and thereby make the constitutional right of social security a substantive entitlement for our citizenry.

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Introduction

> "[T]he State is an association of citizens which exists for the sake of their general well-being, it is a proper function of the State to promote social security."[1]

Proliferation and institutionalisation of social security has been one of the integral features of the modern industrialised world. Dislocation and large-scale migration associated with industrial capitalism and consequent breakdown of kinship, communities and traditional networks of protection against catastrophic risks necessitated the creation of public assistance programmes to fill this void.[2] There had been public assistance schemes and reference to social security in pre-industrial era too. Elizabethan Poor Law of United Kingdom was a prominent example of pre-industrial state-sanctioned system of relief for the poor.[3] Similarly, the first time the nomenclature of 'social security' was prominently used was in 1819 by Simon Bolivar in his speech to mark the independence of Venezuela when he remarked that "The most perfect system of government is one that produces the greatest amount of happiness possible, greatest amount of social security and greater amount of political stability."[4] Yet, it took the catastrophic risks of early industrial capitalism that led several European states to introduce organised state-led welfare systems in the late 19th century and the early 20th centuries, most notably with Germany introducing welfare payments in 1883.[5] These social security schemes were also a part of the wider spectrum of policy that accompanied the emergence of modern welfare states.[6]

With the introduction and entrenchment of such public welfare schemes across the industrialised world, 'social security' acquired a certain nomenclatural and conceptual coherence. The concept of social security was referred to in the proclamations of the Italian Labour Party and the Soviet decrees. It found legislative recognition through the Social

[1] INTERNATIONAL LABOUR ORGANISATION (ILO), APPROACHES TO SOCIAL SECURITY: AN INTERNATIONAL SURVEY 80 (ILO: 1944)
[2] VICKI PASKALIA, FREE MOVEMENT, SOCIAL SECURITY AND GENDER IN THE EU 24 (Oxford: 2007)
[3] Mark Blaug, *The Myth of the Old Poor Law and the Making of the New* 23 Journal of Economic History 151, 162 (1963)
[4] JC VROOMAN, RULES OF RELIEF: INSTITUTIONS OF SOCIAL SECURITY AND THEIR IMPACT 111 (The Netherlands Institution for Social Research: 2009)
[5] VICKI PASKALIA, *supra* n. 2, 25-26
[6] VICKI PASKALIA, *supra* n. 2, 18

Security Act of 1935 in the United States. But beyond the nomenclature, the concept acquired concrete content through the Lord Beveridge Report on Social Insurance in the United Kingdom[7]. It defined social security to denote:

> "the securing of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident, to provide for retirement through age, to provide against loss of support by the death of another person, and to meet exceptional expenditures, such as those connected with birth, death and marriage."[8]

The Beveridge Report was followed by the International Labour Organisation (ILO) Report on Approaches to Social Security which provided substantive definitions of the concept wherein it stated:

> "Social security is the security that society furnishes, through appropriate organisation, against certain risks to which its members are exposed. These risks are essentially contingencies against which the individual of small means cannot effectively provide by his ownability or foresight alone or even in private combination with his fellows. It is characteristic of these contingencies that they imperil the ability of the working man to support himself and his dependants in health and decency."[9]

Thus, in its core sense, as defined by these two World-War-era documents, social security refers to public welfare programmes that aim to provide security to persons against risks such as unemployment, sickness, accident, etc., which inhibit a person's ability to ensure subsistence for himself and his dependents. But as the journey from the Beveridge Report to the ILO Report indicates, social security evolved from its narrow conceptual origin of income protection to a more comprehensive security. Indeed, this is reflected in a variety of instruments ranging from social insurance to social allowances that have been introduced across jurisdictions. Indeed, the ILO Convention No. 102 of 1952 referred to nine different forms of benefits. James Midgley classified extant social security schemes into five different categories: social assistance, social insurance, provident fund, employer mandates and social allowances.[10]

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[7] VROOMAN, *supra* n. 4, 112

[8] W.H. BEVERIDGE, SOCIAL INSURANCE AND ALLIED SERVICES 120 (HM Stationary Office, 1942) cited in VROOMAN, *supra* n.4, 112

[9] INTERNATIONAL LABOUR ORGANISATION (ILO), supra n.1, 80 cited in Vrooman, *supra* n.4, 112

[10] Kwong Leung Tang and James Midgley, *The Origins and Features of Social Security* in SOCIAL SECURITY, THE ECONOMY AND DEVELOPMENT (Kwong Leung Tang and James Midgley eds, Palgrave Macmillan 2008), 24-

India has been no exception to the global proliferation of legislative regimes on social security. Social security has been enshrined as a constitutional mandate through its inclusion as one of the Directive Principles of State Policies.[11] A wide variety of social security schemes have been introduced through different legislations at both central and state levels. Some of these legislations are sector-specific whereas others are aimed at providing comprehensive social security protection across sectors. The most prominent social security legislation at the central level include the Employees' State Insurance Act, 1948, a law on social insurance, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, a law on contributory savings, the Employees' Compensation, 1923, a law on employment injury compensation, and Payment of Gratuity Act, 1972, a law on gratuitous payment by the employer as a form of a retirement benefit. In addition, there are sector-specific instruments like the Unorganised Workers Social Security Act, 2008 and the Beedi Workers Welfare Fund Act, 1976 that seek to create schemes and mechanisms for workers of particular sectors or industries. These central laws have been supplemented by an array of social welfare legislations for workers at the state level.[12] These legislations have together set up an impressive regime of employment-based social security schemes for a vast number of Indian workers.

Yet, as this paper would argue, the existing legislative and administrative regime has evolved with certain fundamental flaws that undermine the core constitutional mandate of ensuring social security for workers. Through a review of the key legislative provisions, the paper argues that multiplicity of legislation has created errors of harmonisation and engendered a regime riddled with variance in legal standards and rights of workers, thus ensuring that a large number of workers fall through the crack and are left without meaningful social security protection.

Further, the paper critiques the centrality of status of employment in the existing social security regimes and makes a case for universal social security based on citizenship. The paper seeks to present a normative argument in favour of a universal social security

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[11] Article 41 requires the state to make effective provision for "public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

[12] See the Kerala Agricultural Workers' Act 1974, the Kerala Labour Welfare Funds Act 1975, the Kerala Fishermen's Welfare Fund Act, 1985, The Kerala Fishermen's and Allied Worker's Welfare Cess Act, 2007

based on constitutional and international human rights law. However, in addition, the paper shall essay a policy-critique of employment-based social security on the basis of the changing character of the labour economy and demography.

Plurality of Legislation and the Crisis of Harmonisation

As indicated in the preceding section, a diverse number of social security schemes have been introduced through different legislations both at the central and state levels in India. This plurality of social security schemes has undoubtedly enabled more extensive coverage for workers. For example, state-level schemes of the Kerala Government for fishermen and agricultural worker have extended social security beyond the ambit of the central social security legislation.[13] Even at the central level, sector-specific laws like the Beedi Workers Welfare Fund Act, 1976 have sought to particularise social security protection to the specificity of the industry.

However, such plurality of legislation has created a regime riddled with variance in legal standards, thereby creating conflicts between different statutory schemes. Different threshold norms on applicability, different definitions on fundamental terms such as employee and wages, have raised confusion about the scope of the rights under these statutes and increased the costs of compliance for workers as well.

Such harmonisation errors are illustrated by the differences in threshold norms for the Employees' State Insurance Act, 1948 (hereinafter, ESIA) and Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [EPFMPA]. Section 1(4) of the ESIA states that the Act shall apply, in the first instance, to all factories and the Appropriate Government [which could be the Central or the State Government depending on the nature of the establishment] could extend it to any other class of establishment. Section 1(3) of EPFMPA, on the other hand, does not make the Act applicable to all factories but only to those factories that are engaged in any industry specified in Schedule I of the Act. Similarly, the numerical thresholds vary between the two statutes. Section 1(4), read with section 2(12) of the ESIA, suggests that a factory must have at least ten employees before it can be brought within the ambit of the Act. In contrast, Section 1(3) of EPFMPA sets a numerical threshold of twenty

[13] See the Kerala Agricultural Workers' Act 1974, the Kerala Labour Welfare Funds Act 1975, the Kerala Fishermen's Welfare Fund Act, 1985

or more persons. Further, the power of extending the application of statutes to other classes of establishments has been left to different authorities under the two statutes. While the EPFMPA vests this power in the Central Government, under the ESIA, this power is enjoyed by the State Governments too.

As a result of these incongruities, the same establishment may be covered under one of these two statutes and not the other. For example, a factory with fifteen workers may be covered under the ESIA and not under the EPFMPA. Similarly, in many states, an educational establishment may be covered under EPFMPA since it has been notified by the Central Government and not covered by the ESIA due to absence of any notification by the State Government. These incongruities result in confusion and ambiguity for workers and employees about the scope of their entitlements and raise the cost of compliance with social security laws. Further, they also result in the enjoyment of uneven set of rights by different groups of workers. While these flaws do impose significant limitations on the utility of the extant schemes, they have been compounded by the impact of employment-centricity and the changing character of the labour economy.

The Crisis of Employment-Centricity

The vast number of social security legislation that operate in India in the field of social security have primarily been predicated around the status of employment. This has ensured that a substantial slice of the financing of such security schemes have been raised through employers' contributions. For example, both the ESIA and EPFMPA prescribe contribution by both the employer and the employee as a matter of general rule. Similarly, the Payment of Gratuity Act, 1972 vests the obligation to pay gratuity in the employer.[14] However, the creation of employment-centric schemes has also resulted in many serious flaws that can potentially undermine the efficacy and viability of social security in India.

Firstly, centrality of status of employment for the application of social security schemes such as sickness benefits, medical benefits as is the case for ESIA in a political economy with a chronically high unemployment,[15] precludes a sizeable chunk of the citizenry

[14] See Section 4, Payment of Gratuity Act 1972.

[15] For a discussion on unemployment in India, see Satya Paul, *Unemployment in India: Temporal and Regional Variations*, 28 (44) Economic and Political Weekly 2407 (October 30, 1993), Deepak Lal, *Determinants of Urban Unemployment in India* 23 (1) Indian Economic Review 61-81 (1988).

from the ambit of social security protection. It must be kept in mind that even a sustained period of high economic growth in the last two decades has been paralleled by a limited dent in unemployment.[16] In fact, the Census data suggests that India's overall unemployment rate grew from 6.8 per cent in 2001 to 9.6 per cent in 2011.[17] With an increasing backlog of overall unemployment, the pitfalls of excluding a large swath of unemployed people from social security are particularly acute as they impede the realisation of universal social protection of all. Thus, limiting social security to only employees institutionalises the absence of universal minimum standards of social protection for all citizens.

The absence of social protection for all citizens as a result of employment centricity is compounded by the changing nature of the labour economy and the contractualisation of work which is increasingly taking workers outside the scope of definition of employment. The Indian labour market has seen a sharp increase in informalisation of the workforce in the last few decades. The India Labour and Employment Report 2014 found that the share of contract workers in the organised manufacturing sector has increased from 13 per cent in 1995 to 34 per cent in 2011.[18] Another striking illustration of the growing informalisation of work is found in the Reports of the National Commission for Enterprises in the Unorganised Sector, which stated that the entire increase in employment between two rounds of National Sample Survey in 1999-2000 and 2004-2005 took place in the informal sector.[19] Juxtaposing this growing casualisation of work with the legal definition of employment lays bare the limits of an employment-centric model.

Employment has acquired a technical legal meaning through centuries of evolution in common law and not every worker fits the requirement.[20] Admittedly, the courts have moved away from the traditional control and supervision test as endorsed in *Dharangadhara*

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[16] Labour Bureau, Ministry of Labour and Employment, Government of India, *Report on Employment and Unemployment Survey (2009-2010)*, October 2010.

[17] Rukmini S, *In India, unemployment rate still high*, THE HINDU, November 7, 2015, available at http://www.thehindu.com/news/national/in-india-unemployment-rate-still-high/article7851789.ece

[18] INSTITUTE FOR HUMAN DEVELOPMENT, INDIA AND LABOUR EMPLOYMENT REPORT 2014: WORKERS IN THE ERA OF GLOBALISATION 6 (Academic Foundation: 2014)

[19] Dipak Mazumdar, *Dissecting India's Unorganised Sector*, Economic & Political Weekly 27 (February 9, 2008)

[20] See Collins v. Hertfordshire County Council ([1947] K.B. 598, Stevenson, Jordan and Harrison Ltd. v. Macdonald and Evans [1952] T.L.R. 101, *Cassidy v. Ministry of Health [1951] 1 T.L.R. 539,* Birdhichand Sharma v. The First Civil Judge, Nagpur and others ([1961] 3 S. C. R. 161, D. C. Dewan Mohideen Sahib and Sons. v. The Industrial Tribunal, Madras ([1964] 7 S.C.R. 646, Shankar Balaji Wage v. State of Maharashtra ([1962] Supp. (1) S. C. R. 249, Montreal v. Montreal Locomotive Works Ltd. [1947] 1 D. L. R. 161, Bank Voor Handel e nScheepvaart N. V. v. Slatford [1952] 2 All E. R. 956, U.S. v. Silk 331 U. S. 704 (1947)

Chemical Works v State of Saurashtra[21] to more comprehensive tests in recent cases such as *Silver Jubilee Tailoring House v Chief Inspector of Shops*[22] and *Workmen of Nilgiri Cooperative Marketing Society v State of Tamil Nadu.*[23] Nonetheless, control has still remained an integral part of the test of relationship of employment as indicated in *Balwant Rai Saluja v Air India Ltd*.[24] The Apex Court applied the test of complete administrative control to determine the existence of a relationship of control. Earlier, the Supreme Court had distinguished between primary and secondary control in *International Airport Authority v International Air Cargo Workers' Union*[25] and asserted that primary control is necessary for employment.

If complete administrative control or primary control is to be seen as an essential feature of employment, a large section of the informal workers would fall outside the ambit of relationship of employment. The principal employer exercises very superficial control, if any at all, over most contract labour and home-based workers. As a result, most such contract labour, home-based workers and other dependent entrepreneurs may not fulfil the requirement of complete administrative control. This is one of the factors that has contributed to only less than 10 per cent of Indian workforce having social security protection.[26]

Admittedly, both ESIA[27] and EPFMPA[28] use a very liberal definition and move away from the common-law test of relationship of employment. However, judicial emphasis on control as a marker of employment has often limited the scope of these definitions. This is illustrated by the recent Supreme Court's decision in *Managing Director, Hassan Co-*

[21] AIR 1957 SC 264
[22] (1974) 3 SCC 498
[23] (2004) 3 SCC 514
[24] (2014) 9 SCC 407
[25] (2009) 13 SCC 374
[26] Ramgopa lAgarwala, Nagesh Kumar and Michelle Riboud*, Reforms, Labour Markets and Social Security Policy in India: An Introduction* in REFORMS, LABOUR MARKETS AND SOCIAL SECURITY IN INDIA (Ramgopal Agarwala, Nagesh Kumar and Michelle Riboud eds. Oxford: 2004) 2. See generally, KP Kannan and J. Brennan eds, THE LONG ROAD TO SOCIAL SECURITY (Oxford: 2013)
[27] Section 2 (9) of the Act includes persons employed through an intermediate employer within the definition of employee. *The broad scope of ESIA was exemplified in the case of Royal Talkies. Hyderabad v ESIC [(1978) 4 SCC 204] where the Apex Court explained that the clause 'in connection with the work of the establishment under s. 2 (9) implies a loose connection and it merely requires that "some nexus must exist between the establishment and the work of the employee." In words of the Court, he "may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure."*
[28] Section 2 (f) of the Act includes within the definition of employee a person engaged by or through a contractor.

operative Milk Producer's Society Union Limited v Assistant Regional Director, Employees' State Insurance Corporation[29] where workers were held outside the purview of employees as defined by ESIA on account of lack of supervisory control and 'consistency of vigil'. Thus, the shadow of common-law test of supervision and control continues to hang over these social security statutes as well, excluding a large number of informal sector workers in the process.

Another consequence of increased informalisation of work is that most existing schemes, even where applicable, may be in danger of being rendered ill-suited to workers.[30] Most extant social security schemes emerged to respond to the challenges of industrial economy and the quintessential worker, around whom such schemes were designed, was a wage worker who worked for the same employer over their working lives.[31] The current models of contributory social insurance and provident fund schemes would be ill-suited in a post-industrial economy with labour flexibility, massive flux in employment and large number of self-employed entrepreneurs taking the place of wage workers.[32] Frequent changes in employers, intermittent bouts of unemployment and low wages would raise the administrative cost of compliance with and minimise the benefits available under such schemes.[33] These changes in the labour economy also make continuance of the contributory principle that informs most social security schemes. The ability to pay contributions is seriously challenged in an economy characterised with high unemployment, insecure jobs and low wages.[34] Further, the centrality of employers' contribution in extant models needs a revision in an economy where a self-employed worker is becoming the typical worker.[35] It is pertinent to note in this context that the Unorganised Workers Social Security Act, 2008 does seek to extend social protection to atypical workers, particularly self-employed workers.[36] However, the Act does not spell out any concrete benefit and leaves the scope of entitlement

[29] (2010) 11 SCC 537
[30] Ramgopal Agarwala, Nagesh Kumar and Michelle Riboud, *supra* n.26, 5
[31] Kwong Leung Tang and James Midgley*, supra* n.10, 40-41
[32] See generally, Kim Van Eyck, *Flexibilizing Employment: An Overview*, Seed Working Paper No. 41, International Labour Office, 2003 at www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/.../wcms_117689.pdf
[33] See A Euzeby, *Social Security and Part Time Employment* 127 International Labour Review 545 (1988)
[34] VICKI PASKALIA, *supra* n. 2, 40.
[35] See D Pieters (ed), CHANGING WORK PATTERNS AND SOCIAL SECURITY EISS YEARBOOK (The Hague, Kluwer Law International, 2000)
[36] Section 2, Unorganised Worker Social Security Act 2008.

to the executive.[37] As a result, it fails to guarantee national minimum social security for informal workers.[38] Not surprisingly, it remains poorly implemented in most states.[39]

Employment-based Social Security, Changes in Labour Economy and Demographic Changes

The preceding section referred to the changes in labour economy and the challenges posed by them to the continuing effectiveness of social security programmes. However, such transformation in labour economy, when combined with demographic changes, can potentially wreck the financial viability of social security as we know now. As indicated in the previous section, these schemes were developed in an industrial economy with mass wage employment and single breadwinner model.[40] But these fundamental assumptions are coming under tremendous strain due to transformational demographic changes. Reduction in mortality and fertility and consequent increase in longevity and decrease in growth rates in population has resulted in fast ageing of the average population in the industrialised world. According to a United Nations Report, globally the population of older persons has grown at a rate that is double that of the rate of growth of the world population.[41] Even among the seniors, the percentage of those above the age of 80 would increase faster than those below the age of 80.[42] Such ageing of the populace creates more burden on social welfare programmes due to higher spending on pension, healthcare and associated risks while also reducing the size of working-age persons to fund and support social security programmes. As a result, the very financial sustenance of many extant schemes is being threatened by these demographic changes.[43] While India is indeed on the right side of the demographic curve at this moment and the crisis may not immediately confront it, the same transition is underway

[37] Section 3, Unorganised Worker Social Security Act 2008.

[38] NATIONAL COMMISSION FOR ENTERPRISES IN THE UNORGANISED SECTOR (NCEUS), THE CHALLENGE OF EMPLOYMENT IN INDIA: AN INFORMAL ECONOMY PERSPECTIVE (Academic Foundation: 2009).

[39] See generally, KP Kannan and J. Brennan, *supra* n.26

[40] M. Sherraden, *Conclusion: Social Security in the Twenty-First Century* in ALTERNATIVES TO SOCIAL SECURITY: AN INTERNATIONAL INQUIRY (J. Midgley and M. Sherradeneds, Auburn House Greenwood Press: 1997), 121-140

[41] United Nations, *World Population Ageing: 1950-2050* (2002), available at http://www.un.org/esa/population/publications/worldageing19502050/

[42] H SADHAK, PENSION REFORM IN INDIA: THE UNFINISHED AGENDA 5-7 [Sage 2013]

[43] Kwong Leung Tang and James Midgley, *supra* n.10, 42-43; For more on impact of demographic changed on social security, see DE Bloom, *Social Security and the Challenge of Demographic Change*, 63 (3-4) International Social Security Review 3-21 (2010); and William A Halter and Richard Hemming, *The Impact of Demographic Change on Social Security Financing* 34 (3) Staff Papers (International Monetary Fund) 471 (1987)

in this country too. Therefore, social security design must anticipate the likely transformation and cater to it in advance.

The current models of social security schemes are also challenged by increased female labour participation. At one level, greater participation of women in the labour market means that social security must extend to personal support services to cater to the care work earlier done by women in our patriarchal structure, such as socialised child care and care for the elderly.[44] At another level, it also implies that current schemes must recognise the combination of paid work and unpaid household labour that women have to balance.[45] Consequently, these schemes must move away from models of continuous service and contribution as essential features of entitlement to social security since a large number of working women also spend substantial amount of time out of paid work due to their care work. An associated phenomenon that calls for the revision of the single-breadwinner model which informs most of the current schemes is the increased rate of divorce.[46] With rise in the number of single-parent families, enhanced protection for child-care and other familial responsibilities is also required. The European Commission's Report on Social Protection found that a divorced woman who took time out for child-rearing was comparably worse-placed in terms of pension entitlements.[47] This illustrates the need for enhanced protection for women in cases of divorce in particular and the limitations of current models in face of feminisation of labour and changes in family patterns.

Occupation-centric schemes of social security, with their focus on continuous service and regular contribution by beneficiaries, do not have the capacity for such innovation and are, therefore, inherently limited by their design in adapting to the new demographic and economic realities. Therefore, it is argued that economic sustainability, efficacy and equity would require that social security programmes transcend employment-centricity and embrace universalisation, thereby delinking themselves from occupational status. As such, universalisation would allow informal sector workers, atypical workers, self-employed and persons who are unemployed to register and claim benefits. Further, it would also expand the

[44] VICKI PASKALIA, *supra* n. 2, 40.. See also Thakur, Arnold and Johnson, Gender and Social Protection in Promoting Pro-Poor Growth (OECD 2009) available at https://www.oecd.org/dac/povertyreduction/43280899.pdf

[45] See JAMES, COX AND WONG, THE GENDER IMPACT OF SOCIAL SECURITY REFORM (2008: University of Chicago Press), Martha Macdonald, *Gender and Social Security Policy: Pitfalls and Possibilities* 4(1) Feminist Economics 1, 22 (1998).

[46] VICKI PASKALIA, *supra* n. 2, 40.

[47] VICKI PASKALIA, *supra* n. 2, 41.

pool of contributors for social insurance and other contributory programmes. The case for universalisation is, however, not just economic; on the contrary, as would be argued in the next section, it is a constitutional and international human rights mandate.

Universal Social Security: A Legal Mandate

This paper proposes several policy and economic justification for moving away from occupational status-based social security schemes to universal citizenship-based programmes in the long run. But the core thrust of this paper extends to the claim that social security is a universal human and constitutional right and by implication, universalisation must be seen as a legal mandate.

As indicated earlier, social security has been enshrined in the Directive Principles of State Policies.[48] While the Directive Principles are not justiceable on their own, they are seen as valuable aids for interpreting the scope and ambit of the fundamental rights.[49] Very significantly though, the Supreme Court of India has recognised social security as a part of the judicially enforceable right to life under Art. 21. In *Calcutta Electricity Supply Corporation (India) Ltd. v Subhash Chandra Bose*,[50] the Court held that the right to social security was an integral part of right to life. This was reiterated in *Regional Director, ESIC v Francis D'Costa*[51] where the Court held that security against sickness and disablement was a part of the right to life under Article 21 of the Constitution. Social protection, as a part of the fundamental rights, was acknowledged again by the Supreme Court in *Consumer Education Research Centre (CERC) v Union of India.*[52] Critically, apart from the CERC verdict where social protection was alluded to in the context of workers, assertion of social security as a fundamental right was not made contingent upon the status of employment. Even if these observations are to be seen as mere obiter dicta, they still constitute persuasive authorities on the status of social security under the matrix of fundamental rights within the Indian constitutional framework.

[48] Article 41 requires the state to make effective provision for "public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."
[49] See Olga Tellis v Bombay Municipal Corporation AIR 1986 SC 180, Delhi Transport Corporation v DTC Mazdoor Congress AIR 1991 SC 101
[50] AIR 1992 SC 573
[51] AIR 1995 SC 1811
[52] AIR 1995 SC 922

A universal entitlement to social security as a fundamental right is also firmly entrenched in international human rights law. The Universal Declaration of Human Rights recognises social security as a human right in its Article 22, which states that "Everyone, as a member of society, has the right to social security" and in Article 25(1), which postulates that everyone has the "right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."[53]

This normative recognition was buttressed by the inclusion of social security into treaty law through Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) under which State Parties 'recognise the right of everyone to social security, including social insurance.'[54] The scope of this right was clarified by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 19 where it stated that "the right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights."[55] It also emphasised that "all persons should be covered by the social security system." It must be further noted that the CESCR enjoined State Parties "to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families" and included this obligation within the minimum core obligations that every state must immediately enforce up to the minimum essential level.[56] Therefore, even though many of the obligations under ICESCR can only be progressively implemented, states are required to ensure a minimum level of social security to all individuals without any delay.

It is pertinent in this context to note that the CESCR's endorsement of social security is not occupation-centric and it recognises that social security must extend to all persons. Article 9 of ICESCR does not limit the right of social security to workers but speaks of "right of everyone to social security."[57] This is reiterated in General Comment No. 19 where the

[53] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.refworld.org/docid/3ae6b3712c.html [accessed 15 May 2016]
[54] Article 9, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: http://www.refworld.org/docid/3ae6b36c0.html [accessed 15 May 2016]
[55] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19, available at: http://www.refworld.org/docid/47b17b5b39c.html [accessed 15 May 2016]
[56] UN Committee on Economic, Social and Cultural Rights (CESCR),*ibid.*
[57] *Supra* n. 50

CESCR asserts that all persons must enjoy coverage of social security schemes. While recognising that special needs of workers and other vulnerable groups must be addressed, it does not limit the right to occupational status.[58] Therefore, it would appear that international human rights law makes universal social security a categorical mandate for states. Since India has signed and ratified the ICESCR and none of its declarations and reservations pertain to Article 9, universalisation must be construed as a legal mandate for India.

The need for universal social security which goes beyond occupation-based models is also grounded in the ideal of social citizenship. T. H. Marshall, the renowned British sociologist, wrote in his seminal work, 'Citizenship and Social class,' that social rights are as much an integral constituent of citizenship as civil and political rights.[59] In other words, social rights were essential for social integration of each individual - an essential ideal of citizenship.[60] Universal social security, like the right to vote and other civil-political rights, would facilitate the nurturing of a sense of equal citizenship shared by everyone.[61] Thus, universalisation of social security must also be seen as a necessary instrument for strengthening the democratic fabric of the country and assertion of citizenship.

Conclusion

This paper has argued that in spite of an impressive plurality of legislation-backed social security schemes that India has evolved, the effectiveness and coverage of current regimes are affected by variance in threshold norms on applicability, definitions of foundational concepts and consequent ambiguities about the scope of the rights and manner of compliance. Along with these inconsistencies and gaps, the centrality of the status of employment in extant regimes has excluded a large number of workers who fall through the crack and are left without meaningful social security protection. It has been argued that such exclusion of a sizeable chunk of workers from social protection negates the constitutional mandate and India's obligations under international human rights on providing social security to all persons.

[58] UN Committee on Economic, Social and Cultural Rights (CESCR),*supra* n.51
[59] T.H. Marshall, *Citizenship and Social Class* in INEQUALITY AND SOCIETY (Manza and Sander eds, Norton and Co.: 2009) 149
[60] VICKI PASKALIA, *supra* n. 2, 47.
[61] Sunil Khilnani, *An Idea for India*, Livemint, November 19, 2010, available at http://www.livemint.com/Leisure/gTnUezEaP7Izd7USQBI3TO/An-idea-for-India.html

In addition, the paper has proposed that the occupation-centricity of these schemes are ill-suited to the ongoing transformation in the labour economy and demographic changes taking place in the industrialised and industrialising world. Informalisation of work, rise of atypical work and increase in average age of the population are likely to render occupation-centric social security schemes inadequate or inaccessible.

Therefore, the paper calls for a shift to universal social security schemes that are based on citizenship and not occupational status. Delinking social security from occupation and predicating it on citizenship would extend these schemes to informal atypical workers and persons out of work. As a result, the constitutional right of social security would become meaningful for our citizenry. Universal social security would also strengthen the compact between citizenry and state by strengthening a shared sense of citizenship among the populace.

The paper concedes that the adoption of universal social security would stretch existing financial resources at this juncture. Yet, it is an option that must be pursued for continued sustainability of the existing occupation-centric schemes would be under imminent threat due to new economic and demographic conditions. Further, it is arguable that universalisation may also expand the range of contributors to programmes thus adding to the existing resource base. Similarly, self-selection of beneficiaries combined with reduction in the administrative costs associated with targeting of beneficiaries may limit the increase in expenditure to manageable proportions.[62] Finally, it must be pointed out that universal social security is a constitutional entitlement and financial considerations cannot trump over this claim to emasculate social security protection into an illusory rope of sand.

[62] For a detailed discussion of universalisation, targeting and self-selection in welfare, see Thandika Mkandawire, *Targeting and Universalism in Poverty Reduction*, Social Policy and Development Programme Paper No. 23, UNRISD, 2005; Amartya Sen, *The Political Economy of Targeting,* Annual Bank Conference on Development Economics, World Bank; 1992; Lant Pritchett, *A Lecture on Political Economy of Targeted Safety Nets*, Social Protection Discussion Paper Series No. 0501, World Bank; 2005

THE ROLE OF INTERNATIONAL LABOUR ORGANISATION IN ENSURING SOCIAL SECURITY: AN ASSESSMENT

T.R. Subramanya*

ABSTRACT

International Labour Organisation (ILO) as a specialised agency of the United Nations has since its inception a bestowed responsibility of ensuring social security and an environment conducive to the working class across countries. Established post the Treaty of Versailles, the organisation touched a milestone by the Declaration of Philadelphia in 1944. Alongside providing for a descriptive and normative framework, social security was for the first instance recognised by the organisation in 1944 through its Declaration in Philadelphia which was elaborated and deliberated upon by the recommendations and conventions. This organisation is often considered as the source for the new branch of international law under the nomenclature of International Social Security Law. It has to its credit flagship conventions and declarations which have not only defined social security and its minimum standards but also explained through its organs the responsibility on individual countries to promote and protect the rights of the human beings as social beings entitled to basic minimum security for their existence. The working of the organisation is maintained in multitude by the conventions and recommendations of the organisation. While the recommendations pave way for structural developments, the conventions provide a concrete structure to the working of the organisation and also govern its major working organs- International Labour Office, International Labour Conference and the Governing body. This paper analyses the functioning and establishment of the ILO. It also discusses as to how the Organisation has promoted flexible security measures after the Declaration of the Philadelphia in 1944 and allowed a secured framework for the working class in the countries by application of uniform recommendations and conventions with liberty to each country to modify the same as per convenience and for optimum application. The organs of the organisation and the intricacies of the recommendations and the conventions are also discussed in depth to understand the mechanism for the realisation of the goal of social security.

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1. INTRODUCTION

Post world war developments led to the creation of specialised agencies by the United Nations. International Labour Organisation (ILO) is one such specialised agency which was established for the welfare of the working class and has been successful since its origin. The regulation of labour issues originally emerged in Europe with laws generally written to serve the interests of the elite rather than to protect labour.[1] However, with the onset of the industrial revolution, social activists began advocating labour protection, which might mitigate the more unruly aspects of industrialisation. The working hours were long spent in bad conditions, falling wages, women and children exposed to vulnerable working conditions. Under these conditions, workers sought some mechanism to protect them and naturally were led to combine into trade unions, realising that the collective action could protect their position in a situation where individual action was largely hopeless.[2]

This paper considers as to how the International Labour Organisation was established by the Treaty of Versailles; the way in which it made a head start towards its motto of ensuring social security through the Declaration of Philadelphia (1944), which was the cornerstone of the recognition of rights to social security ensured by the organisation through its conventions and recommendations. The three major organs of the ILO, i.e., International Labour Office functioning under the Director General, International Labour Conference (World Industrial Parliament) and the Governing body, have promoted flexible social security measures which can be adopted and adapted in all the countries across the globe without bending the economic rules or degree of dependence while the labour standards are incorporated. It has put in efforts to universalise the labour standards and ease the tension of countries in dealing with situations of unrest.

2. EVENTS LEADING TO THE ESTABLISHMENT OF INTERNATIONAL LABOUR ORGANISATION:

Nations, after the World War I, realised the need of international cooperation. The concept of cooperation in the given scenario could only find a firm basis through an organisation structured on the outlines of the society which could deal with the anomalies and

[1] Bob Hepple, *Labour Laws and Global Trade* 27 (Hart Publishing Oxford and Portland, Oregon, 2005).
[2] Bruce E. Kaufman, *The Global Evolution of Industrial Relations* 30 (ILO, Geneva, 2004).

shortcomings of the society. Thus, the International Labour Organisation was created in 1919.[3] As an organisation it was then expected to very well present the mirage of the belief that universal peace could be attained through social justice. The Labour Commission drafted its Constitution at the Peace Conference, which was composed of representatives from nine countries. The coming together of these countries led to the formation of a tripartite organisation, which brought together representatives of governments, employers and the working class and pursued allegiance to the principles of the organisation and ensured peace and social justice unanimously. It was primarily set up on the ideas of International Association for Labour Organisation[4] and its qualities specifically were security, humanitarian, political and economic considerations. The preamble of the institution clearly emphasises its role of providing, regulating and protecting the working class, the vulnerable groups of old-age, sick, diseased, young persons, women and children and their empowerment and equal treatment.

The League of Nations founded as per the Paris Peace Treaty in 1919, was determined to protect territorial integrity, independence of states, promotion of diplomacy to settle disputes in between countries and improve the condition of the workers. Out of these core principles, the objectives were primarily two fold. . One was to establish universal peace and the other was to ensure that such peace could be established only if it was based upon social justice[5]. Hence, ILO was built on the belief that peace and justice go hand in hand. For this reason, ILO was initially an agency of League of Nations which aimed to achieve peace globally.

3. ESTABLISHMENT OF INTERNATIONAL LABOUR ORGANISATION:

Established on the basis of Peace Treaty, commonly called the Treaty of Versailles, the organisation was an effort of the United Nations to secure lasting peace through the pursuit of social justice.[6] Two important tasks were entrusted to ILO,[7] the first was to

[3] It was a part of the Treaty of Versailles, which ended the World War I, and was one of the main specialised agencies of the United Nations.
[4] The ILO's Constitution laid down the rationale of the Organisation, spelled out its aims and purposes as well as its detailed design and also identified certain "*methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit*" which are of "*special and urgent importance*".
[5] Section 1 of part XIII of the Treaty of Peace of Versailles.
[6] Article XIII of the Peace Treaty provided for the establishment of ILO. According to the International Training Centre of the ILO, "*the ILO Constitution, incorporated into Part XIII of the Treaty of Versailles, for the first*

establish everywhere humane conditions of labour and second was to institute and apply a system of International Labour Legislation, subject to reservations imposed by the sovereignty of each state and conditions prevailing therein. Originally ILO had 44 member countries from Europe, Asia, Africa and Latin America.[8] The motive behind the creation of the ILO was to provide for a considerably more powerful instrument than had hitherto existed to expand and enforce a range of international labour standards and to establish a social framework for economic exchange so as to create a foundation for an equitable world trading system.

3.1. OBJECTIVES:

The International Labour Organisation is a multilateral system. It works for the sustainable development of the economy through organised agencies and conventions. There are certain principles considered as core principles which are also known as enabling standards (respecting them is a precondition for the application of ILO norms); four conventions of the ILO are known as priority instruments, which encourage member states to ratify them because of their importance and are also termed as governance conventions covering tripartism, employment policy and labour inspection.

The Constitution of ILO provides for four means of governance. They are tripartism, the representatives of workers and employers and governments. The representatives of workers and employers get equal status with that of governments. The ILO differs from other intergovernmental organisations in two basic respects. The first of these is tripartism. The second, less well known even to many international lawyers, lies in the particular ways in which international labour standards are adopted, ratified and supervised.

The ILO is the only intergovernmental institution in which governments do not have the exclusive voting power in setting standards and policies. Employers and workers have an equal voice with governments in their decision-making processes. This concept is known as

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time established a link between peace and social justice, stating that universal and lasting peace can be established only if it is based upon social justice".

[7] Part XIII of the Treaty of Peace of Versailles.

[8] Available at the http://www.ilo.org Last accessed on 27.06.2016.

"*tripartism*".[9] The General Conference, which meets once in a year, is a meeting of the entire membership that adopts the ILO's instruments and approves its works.

3.2. The Declaration of Philadelphia 1944

Since inception, ILO has been involved in deals and events with varied degrees of interference and success. In the first international labour conference (1919), public job creation was advocated. It was considered to be an effective cure to the disease caused due to economic depression and unemployment.

The purpose of ILO 1944 Declaration was to establish everywhere humane conditions of work. The Conference was held in Philadelphia from April 20 to May 12, 1944. The outcome of the Conference was the Declaration of Philadelphia. The inclusion of human rights at the centre of the Philadelphia Declaration was significant. In that labour standards were an indelible part of political democracy, bound up with a growing post-war emphasis on human rights and the pursuit of industrial prosperity[10]. Some of the basic principles of the 1944 Declaration are: Lasting peace cannot be achieved unless it is based on social justice; grounded in freedom, dignity, economic security and equal opportunity; labour should not be regarded as a commodity or an article of commerce; freedom of association, for both workers and employers, along with freedom of expression, and the right to collective bargaining. These principles are fully applicable to all human beings, irrespective of their race, creed or sex.[11]

The Declaration had a set of objectives which were further promoted by the organisation amongst its member nations with the aim of promoting social justice. One of the major highlights of this Declaration is the unanimous resolution on social provisions in the peace settlement which suggested that the "*Declaration of Philadelphia"* be reaffirmed in

[9] It is based on Article 3(1) of the ILO Constitution, which states that: "*The General Conference shall be composed of four representatives of each of the Members, of whom two shall be government delegates and the two others shall be delegates representing, respectively, the employers and the workers of each of the Members.*"

[10] See, Ernst Hass, *Beyond the Nation State: Functionalism and International Organization* (Stanford University Press, California, 1964).

[11] The Declaration further affirmed in Clause I(c) that "*Poverty anywhere constitutes a danger to prosperity everywhere, and must be addressed through both national and international action*". Freedom of Association and Rights of the workers have been recognised by the ILO through specific conventions. James Clancy, *The Hidden Human Rights deficit: Freedom of Association*, International Union Rights, Vol. 12, No. 2, Giant retailers and trade Union rights (2005) pp. 18-19 available at http://www.jstor.org/stable/41937365 last accessed on 17.05.2016

any treaty of the United Nations. This practice would provide a formal acceptance to the norms as well as subtly but effectively ensure compliance. The ILO constitution emphasises on freedom of association as one of the building principles of ILO. The Declaration insists on the role of the ILO for implementation of the necessary programmes with a view to ensuring effective application of the right to collective bargaining.

3.3. BRIEF ACCOUNT OF THE INTERNATIONAL LABOUR ORGANISATIONS' ORGANS AND THIER FUNCTIONS:

The three agencies which are set up by the ILO as mentioned earlier are: International Labour Office, International Labour Conference and the Governing Body which is the executive Council of the organisation. International Labour Office is known as the Permanent Secretariat of the International labour Organisation. It monitors the overall activities such as reports and recommendations of the Governing body and the technical experts committee. The Director General as the leader of the office makes decisions and undertakes responsibilities of the office. This office has its own research and documentation centre which updates the office of the economic development in the countries which have been parties of the organisation through the process of ratification of the core principles.

International Labour Conference is another agency within the organisation and sets International Labour standards and emphasises on the broad policies of ILO. It is mainly considered as a forum for discussion of key social and labour questions and situations in between member countries.

The Governing Body is the Executive Council of the ILO that meets three times a year at Geneva and takes decisions on ILO policy and establishes the programme and the budget, which is subsequently submitted to the conference for adoption.

4. KALEIDOSCOPE VIEWPOINT OF THE INTERNATIONAL LABOUR ORGANISATION ON SOCIAL SECURITY:

Social security protection is defined in the ILO conventions as the protection that a society provides to individuals and households to ensure access to healthcare and the

guarantee of income security, particularly in cases of old age, sickness, unemployment, invalidity, work injury, maternity or loss of a breadwinner. Informal economies of the developing world face the problem of lack of social security coverage and with globalisation the problem has accelerated to new heights. While social security provides cohesion and overall growth in the living standards, lack of it or deficiency cripples and adversely affects all levels of the society. Social Security was recognised as a basic human right by the Declaration of Philadelphia and its Income Security Recommendation which was subsequently upheld by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

Recognition and importance associated to the Labour standards of the ILO has led to the international and regional developments of the social security strategy of the countries. Coherence and integrity are characteristics of the organisation. The contribution of ILO to certify social security objectives are unmatched. It is constructive with features in the international and the national policy. The opportunity for useful and regular employment under fair conditions, raising the living standards, establishment of minimum standards of employment, provision for child welfare and for a regular income of those unable to work, freedom of association and of collective bargaining, and provision for the training and transfer of labour are some of the measures the ILO preaches to attain social security through recommendations and conventions.[12] The International Labour Organisation's conventions and recommendations find relevance and are ensured through social security extension policies.[13]

Social Security (Minimum Standards) Convention[14] 1952 is one of the social security extension policies of the ILO. Though it does not provide a single definition of social[15] security; the definition can be construed from various parts of the Convention. To ratify this Convention, ILO member state is obliged to comply (at the time of ratification) with at least

[12] John Price, *International Labour Organisation*, International Affairs (Royal institute of International Affairs 1944-), Vol. 21, No. 1 (Jan., 1945), pp. 30-39.
[13] The Social Security (Minimum Standards) Convention, 1952 (No. 152); The Equality of Treatment (Social Security) Convention, 1962 (No. 118); Invalidity, Old Age and Survivors' Benefits Convention, 1967; The Medical Care and Sickness Benefits Convention, 1969; The Maintenance of Social Security Rights Convention, 1982; The Employment Promotion and Protection against Unemployment Convention, 1988; the Job Creation in Small and Medium–sized Enterprises Recommendation, 1998 and Maternity Protection Convention(Revised) 2000.
[14] Convention No.102 of ILO.
[15] Social Security: International Labour Organisation and India.

three of the following parts of the convention,[16] medical care, sickness benefits, unemployment benefits, old age benefits, workers' compensation, family disability, maternity and survivors' benefits and at least one among three must be a provision concerning unemployment, old age, workers' compensation, disability or survivors benefits.

Social Security assured by this Convention through ratification by states provides flexibility according to the financial status of the respective states. This Convention paved the way for adoption of several specific conventions subsequently. Invalidity, Old Age and Survivors Benefits Convention, 1967 and Medical Care and Sickness Benefits Convention, 1969 aimed at raising the requirements for the categories of protected persons and the level of protection provided by national social security schemes covering these risks. Since the beginning of 1990s, the ILO's social security division has been given a mandate by the International Labour Conference to search for solutions that can include '*other workers'* in a social protection scheme. Naturally, the ILO used the principles of social security as a human right to govern its work.[17]

Social Security was recognised as a basic human right by the Declaration of Philadelphia and its Income Security Recommendation which was subsequently upheld by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights[18]. Social assistance broadly described as '*Social security*' has its own safeguards due to its extensive scope of application and, therefore, the organisation ensured minimum and immediate content of right[19] to social security with a useful framework being made available to financial institutions, donors, human right agencies and NGO's (working in the field) as a guiding principle. The contents of the principle are:

(i) *The model*: Social security as a human right and not as a commodity, relies on collective funding. This can be of different types: public, professional or

[16] See Law Mantra Think Beyond Others (International Monthly Journal, I.S.S.N 2321 6417) Last accessed on 17.05.2016.
[17] See Wonter Van Ginnekan, *"Social Security for the Informal Sector: Issues Option and tasks Ahead"*, ILO, Geneva 1996. Available on www.ilo.org/public/english/110secsoc/ techmeet/wonter2.htm., Last Accessed on 24th September, 2007.
[18] Universal Declaration of Human Rights and the International Covenant on Economic and Social and Cultural Rights furthered the major highlights of the Philadelphia Declaration and outlined the steps towards ensuring Social Justice.
[19] The Conference concluded that the essentials of social security to be provided to all are: provision of benefits to households and individuals; Through public or collective arrangements; aimed at protecting against low or declining living standard and that arises from basic risks and needs.

community. In all these cases, it is a basic and minimal requirement of the right that it be supervised by an independent, participatory and regulatory body.

(ii) *Contribution and Benefits*: The benefits must be defined in advance, along with contributions that do not exceed a reasonable percentage of available income (whatever its source) how small or minimal the benefit is.

(iii) *Risks*: As per the principle of inter-dependence of all human rights, implementation of the right to social security and ensuring the right to an adequate standard of living in Article II of ICESCR has its related risks such as those in connection with health care, sickness benefits, survivor's benefits and maternity benefits. These risks in sensitive issues must be given priority.

(iv) *Coverage*: States are to undertake negotiations with civil society aimed at guaranteeing social security for all, including the self-employed, rural workers and workers in the informal sector. Provision must be made for periods of time when the insured person, family or group is not able to contribute to the system. In all cases, social security programmes should be subject by law to such requirement.

It was largely believed that labour issues overwhelmingly fall within the domestic field of law,[20] characterised by a unique blend of particular rules negotiated by parties to an employment relationship and general legislative imperatives enacted for the protection of workers.[21] Labour laws were almost entirely national, established by sovereign states. Like many domestic legal fields, it also has had an international counterpart in a set of conventions and declarations that detail rights and obligations with which states, as a subject of international law, must comply with. Even then, it was mainly the domestic law that played an important role. Two dramatic trends that emerged in the recent past are increasingly challenging the traditional capacity of domestic labour law to promote justice in the world of work. While the *first* relates to the introduction of flexible forms of production, which are supplementing and in some cases supplanting traditional forms of mass production dependent on routinised labour with hierarchically structured detailed rules and responsibilities.[22] Facilitated in part by new developments in computer and information technology, these

[20] Patrick Macklem, "*Labour Law Beyond Borders*" 5 (3) *JIEL* 1 (2002).
[21] Ibid.
[22] Ibid.

flexible forms of production rely on an increasingly versatile labour force, motivated by the spirit of cooperation and generalism, to produce customised products just in time to meet the ever-shifting consumer demand. The *second* relates to the onset of economic globalisation, manifest in many bilateral, regional and international agreements, especially those supervised by the World Trade Organisation, promoting trade liberalisation. By gradually introducing reciprocal tariff reductions and eliminating non-tariff import barriers, these agreements represent the legal superstructure of a new international economic order, where capitalism increasingly operates on a global scale and possesses the capacity to move relatively freely across national boundaries.[23] The International Labour Conference in 2001 having observed the changing trends adopted the Resolution and conclusions concerning social security.

5. LEGAL EFFECT OF THE CONVENTIONS AND RECOMMENDATIONS OF THE INTERNATIONAL LABOUR ORGANISATION:

International Labour Organisation, like any other specialised agency of the United Nations, has its own unique features. This agency has constituted model laws. This has placed the organisation on the productive and constitutional path.[24] The ILO as an organisation cannot achieve its goals without the support from other bodies and governments. The objects have to be delivered through efforts and the interest of the ILO has shifted from enforcing its standards to avoidance of harmful policies and promotion of those which the organisation considers important. To ensure maximum adherence to its objectives and attainment of social justice, ILO functions through an organised supervisory system. This system other than reporting obligations on governments also suggest adversarial '*special procedures*' as and when required. International labour standards are laid down to either promote productive work conditions or decent terms of freedom, dignity and security of the working class. Such standards are put to practice either through conventions, recommendations or protocols of the organisation. While the conventions have binding effect on the countries, the effect of recommendations is more persuasive in nature.

[23] Also see Articles 3, 22, 23 and 25 of the Universal Declaration of Human Rights, Article 34 of Charter of Fundamental Rights of European Union and Articles 6 and 9 of the International Covenant on Economic and Social and Cultural Rights.

[24] Brian Langille, *The Future of ILO Law, and the ILO*, Proceedings of the Annual Meeting (American Society of International Law), Vol. 101 (March 28- 31, 2007), pp. 394-396 available at http://www.jstor.org/stable/25660227 last accessed on 17.05.2016.

The supervisory function is primarily to ensure compliance with the conventions. Conventions are legally binding in nature. ILO has adopted, revised and withdrawn many conventions to adapt itself to the changing nature of the industrial developments of the global economy. Once adopted, convention has to be ratified by a minimum number of countries and then the norms contained therein are to be complied with. ILO till its 90th year of being in existence has had 189 Conventions and 202 recommendations. The Governing Body however has identified of eight conventions as core conventions as they covered subjects considered as fundamental principles and rights at work. These eight core principles have been ratified by more than 150 countries. These Conventions are classified according to the importance attached to them by the organisation[25]. The conventions once ratified have a binding effect on the countries which ratify them. These conventions are drafted by the Independent technical body of the organ and are ratified by the countries. The core principles and rights expressed therein are covered in the ILO Declaration on fundamental principles and Rights at Work of 1998 include: the right to establish free and independent workers' and employers' organisations; right to organise, effective recognition of right to collective bargaining, elimination of all forms of compulsory and forced labour; abolition of child labour; equal remuneration to men and women and elimination of discrimination in respect of employment and occupation. Viewed as enabling standards, application of ILO norms are guided through them. These conventions are adopted by the countries but it is also subject to the review process from the countries. There are reports which form basis of dialogue for improvement of the compliance standards by these countries.

Recommendations by the Organ are not as binding as conventions and more voluntary with the option for acceptance and practice by the countries ratifying the principles of the organisation. These recommendations are usually in the areas of work of the organisation's multilateral cooperation, global economic recovery and job creation and promotion of international labour standards. Usually in case of recommendations, member country should report to the Director General of the International Labour Office. The report provides position

[25] In case of Convention adopted by the ILO a member state shall enforce a convention in question irrespective of the fact whether a member has ratified or not in good faith. In order to become a convention effective in International Law must always be communicated by the Head of the State or Prime Minister or Minister responsible for foreign affairs or Labour to the Director- General of ILO. If this is not done, it may be that a Convention is regarded by a State as "*ratified*" in its internal legal system, but this will be of no effect in the international legal system.

of law and practice of the federation and the state practices. The office may also like to understand the extent to which the practices and suggestions have been given effect to. These requests sought by the International Labour Office can be based on representations preferred by any employers or workers' organisations alleging non observation of the standards of the organisation despite the country, in which such organisations are based, having ratified the Conventions and accepted the recommendations.

6. CONCLUSION:

The conventions of the International Labour Organisation have had a legal and binding effect while the recommendations have a persuasive effect on the countries. However, there has been an evolving and paradigm shift in the nature of social security which a class of individuals or a particular country looks forward to. The labour standards in a developed country may or may not suit the requirements of the least developed country and vice versa. The rate of development varies and so does the economic dependence on other nations. Ratification being an important content, the labour standards of the ILO cannot be protracted for everyone as a uniform yardstick for strict adherence. However, some social theorists are also of the opinion that ILO, as a specialised agency of the United Nations, has reached a point of saturation wherein the process of law making is diminishing and the rate of ratification by the countries is also decreasing. Reporting rates of the countries has decreased and the effectiveness of the conventions and recommendations are limited to the extent of being operable.[26]

Be that as it may, as one of the most successful specialised agencies of the United Nations, ILO has adapted itself by providing for flexible labour standards for the countries depending on their capacity to enforce. However, as the economic aspect of such countries are continuously changing with globalisation, liberalisation as if a kaleidoscope, it imposes an indirect responsibility on the organisation to evolve itself in terms of functioning principles with time in a more cost-effective manner especially on issues related to social security. Therefore, it would be apt to mention that what has been achieved by the organisation in the field of social security is appreciated but what has not been addressed in the process of

[26] Daniel Blackburn, *ILO Social Justice Declaration*, International Union Rights, Vol. 15 No.3 Focus on Strategic Corporate Campaigns: IUR brings together international perspectives on an innovative tactic developed by US trade unions (2008), pp. 24- 25 available at http://www.jstor.org/stable/41937489 last accessed on 17.05.2016.

evolution and due to its newness as a concern of the organisation has to be attained at a galloping speed because drawbacks of social security[27] cannot be given a leeway at the cost of development of a country.

[27] Social security has its own share of positive and negative effects. While it helps the vulnerable with opportunity to earn an income and increase their potential, it also discourages people from working and saving, affects the creation of employment and encourages people to withdraw prematurely with the expectation of being secured through provisions.

MOTHERS ON THE TWO SIDES OF THE RADCLIFFE LINE: HOW SOCIALLY SECURE?

Anurupa Mukherjee*

ABSTRACT

In a country which is steadily marching towards economic growth with the twin goals of economic independence and economic equality in mind, social security for mothers in the form of maternity benefits is of paramount importance. Despite changes in social structures, babies are still biologically dependent on their mothers and the same necessitates adequate provisions of leave and benefit to women employees for motherhood and childcare. As per the Act, benefits are available to women who have worked at least for 80 days during the 12 months immediately prior to the pregnancy.

Maternity Protection Convention, 2000 (No.183) of International Labour Organization (ILO) stipulates 14 weeks maternity leave with cash benefit in case of an instrument being used in the delivery of the baby. For babies delivered normally by labour, the mother is entitled to six weeks of leave before and six weeks immediately after the birth of the child. However, in India, pursuant to an executive order, the maternity leave for women in the public and private sector[1] is to be extended to 26 weeks thereby helping employers retain skilled force and their loyalty.[2] She cannot be employed in any work that might endanger the baby's health. This seldom seems to be the case and the majority of women end up losing their jobs during pregnancy.

[1] Mahendra Singh, 'Maternity leave for 26 weeks likely soon' *The Times of India* (July 24 2016) <http://timesofindia.indiatimes.com/india/Maternity-leave-for-26-weeks-likely-soon/articleshow/53360216.cms>

[2] Surya Sarathi Ray, 'Good news for women employees, govt to enhance maternity leave to 26 weeks soon' *The Financial Express* (May 20 2016) < www.financialexpress.com/article/economy/govt-to-enhance-maternity-benefit-by-14-weeks-soon/260483/ > accessed on 9 July 2016

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By virtue of a recent policy to encourage small families, a woman is allowed maternity benefits only for the first two children. The flaw in this policy has been rightly pointed out by a certain section of feminists who say that in India it is mostly the husband who makes the decision of having children and usually an Indian couple attempts conception till a boy is born. Here, the wife does not have a substantial say in family planning and is being deprived of maternity benefits as well.

The aim of this paper is to examine the current Indian laws regarding maternity benefits. The paper is divided into two parts; the first part deals with the basic introduction and analytical description of the existing laws on maternity benefits while the second part attempts to offer a comparative study between existing maternity benefit laws in India and that in its neighbouring countries such as Pakistan. Through a comparative analysis, the author seeks to suggest ways in which the existing laws can be supplemented.

Keywords: The Maternity Benefit Act, 1961; Maternity benefits in Pakistan; Economic equality

Introduction

Economic growth and economic equality are two complimentary concepts whose success is dependent on social security laws framed in that regard. Since women constitute nearly half of the country's population,[3] favourable social security laws for women go a long way in ensuring economic growth and equality. Parenthood and livelihood constitute two very important aspects of a modern individual's life. In today's world, when the woman is bravely marching towards emancipation, it is grossly unfair to hold her back by denying her maternity benefits and compelling her to choose between parenthood and livelihood.

This research paper has been essentially divided into two major parts. The first part looks at The Maternity Benefit Act, 1961, examining its constituent sections with a critical approach. The founding sections of the Act are discussed herein. In here, the constitution and its guardian's views on maternity benefits have been discussed. The discussions have been supplemented by making reference to different constitutional articles and judicial pronouncements by the higher judiciary of India.

The second part of this paper deals with the lacunae in maternity benefit laws that are present in India and Pakistan. A comparative analysis has been done between the two countries. The choice of these two countries for this purpose was a rather natural one, considering their shared history of integration and separation.

The socio-cultural compositions of India and Pakistan are very similar, Pakistan having been a part of India till 69 years back. The patriarchal societal structure in both the countries being heavily prejudiced against women contributes highly to the choice of countries. Pakistan, like India, is a developing nation and has been on that path for the same number of years. Women in both the countries have steadily been coming out of the literal and metaphorical veils for quite some time now and the same calls for attention to their laws regarding women. Women in both the countries are still expected to marry, find a family and bear children. Despite the progress that has been made, child-bearing is still considered to be

[3] <http://censusindia.gov.in/Census_And_You/gender_composition.aspx > accessed 9 July 2016

the primary responsibility of a woman in both the countries. Progress has been made in respect that society has also realised how women could also work. However, professional ambition is still considered secondary to their primary obligations to the family. Against this backdrop, if any kind of emancipation, empowerment and progress of the women folk is to be achieved, it has to take place gradually and with the help of accommodating laws which do not push women towards the dilemma of parenthood and livelihood where they will be compelled to choose parenthood in most cases.

Pakistan does not have an Act regarding maternity benefits per se but an ordinance by the name West Pakistan Maternity Benefit Ordinance, 1958[4] operates across the entire country. Pakistan has a cluster of laws which grant maternity benefit to women workers.

Apart from West Pakistan Maternity Benefit Ordinance, 1958, there are Mines Maternity Benefits Act, 1981,[5] Provincial Employees Social Security Ordinance, 1965,[6] Revised Leave Rules, 1980,[7] which have explicit provisions on the issue of maternity benefit in Pakistan. It is essential to note here the constitutional backing that maternity benefit receives from the Constitution of the Islamic Republic of Pakistan through Articles 25A and 27 as Fundamental Rights and Article 37(e) under Principles of Policy. While Article 25A allows for special provision for women, Article 27 states that positions appropriate for only one sex and not the other may be filled as per requirement and as such acts as a legitimate and constitutional exception to the constitutional principle of equality among all citizens which guarantees no discrimination on grounds such as sex. Article 37(e) specifically provides for maternity benefit for women in employment.[8]

It must be said that the maternity benefit laws in Pakistan are too many and too scattered with each law catering to specific areas. Such situations cause overlapping of laws

[4] The West Pakistan Maternity Benefits Ordinance 1958 is applicable to all the organizations, establishments (whether industrial or commercial) and factories as defined under the Factories Act 1934.
[5] Mines Maternity Benefits Act, 1981 which is applicable only to women working in mines and is a rather unfit for comparison.
[6] Provincial Employees Social Security Ordinance, 1965 (Preamble, Sections 36, 38, 51 and 72) are applicable only to those women who have paid contributions to the social security institution.
[7] Revised Leave Rules, 1980 which was The Civil Servants Act, 1973 applies to women in the public sector.
[8] Constitution of the Islamic Republic of Pakistan, Arts. 25A, 27, 37(e)

and in such cases supersession of laws needs to be decided. However, as stated in Provincial Employees Social Security Ordinance, 1965,[9] the Act has supersession over the other three statutes in this regard. Yet, the West Pakistan Maternity Benefit Ordinance, 1958, has been the most comprehensive statute out of the four statutes and the closest to being a proper piece of legislation on maternity benefit.

In 2011, however, through the 18th Amendment, the West Pakistan Maternity Benefit Ordinance, 1958, was repealed as a federal law with the intention to promulgate it as a provincial law.[10] Unfortunately, at this point, this law stands repealed and there is no new provincial law in place thereby not allowing women in industries to avail of maternity benefit at all. Needless to say that it is strongly advocated that a law to this effect be promulgated and implemented at once.

It may be said that a research analysis on a repealed law renders this paper irrelevant. However, that is not the case. The law has been repealed with the primary purpose of changing its jurisdiction from federal to provincial which has nothing to do with the substantial portions of the Ordinance. The Pakistani law is a skeletal structure which provides for most of the provisions that it needs to provide and the substance is similar to its Indian counterpart. It is another matter that the Indian law is a more complete law. It is a matter of drafting that the Pakistani ordinance just gave a basic structure. This repeal does not invalidate this research as the paper is on the substance in the law rather than its jurisdiction in the two countries. Therefore, even in future, when the Pakistani law is properly formulated and eventually promulgated as an Act, its substance will probably be revised only to make the law more complete. Such modifications which may be attempted will be mostly to roughen the edges of the ordinance rather than making substantial changes in the law.

As an extension of the second part of this paper, the section discussing the author's concluding thoughts talks about two major ideas – paternity leave and surrogacy with respect

[9] Provincial Employees Social Security Ordinance 1958, s 81
[10] Shamsul Islam, '18th Amendment: Maternity benefit law lapses' *The Express Tribune* (Pakistan, June 19, 2011) <http://tribune.com.pk/story/191985/18th-amendment-maternity-benefit-law-lapses/> accessed on 13 July 2016

to maternity benefits. This section seeks to touch upon the latest ideas of relevance that deserve thought and discussion.

The Maternity Benefit Act, 1961 – India: An overview

This portion of the paper aims to discuss the Act[11] and the features in them, in brief. While discussing the same, the author intends on portraying the Supreme Court of India's stand on questions of law in this regard and also enlist her interpretations under the relevant heads.

Since prior to the formulation of this legislation, different states had their own maternity benefit laws, the object of this Act has been to do away with disparities between such Acts. This Act has seen a drastic change by virtue of Act 61 of 1989 which massively amended the Act. This paper concerns itself with the amended version of the Act.

The Act in Brief

The fundamentals of the Act are as follows:

- Section 3 of the Act defines terms such as 'child', 'delivery', 'miscarriage', 'establishment', 'employer', 'mine,' etc.[12] Section 3 of this Act is indeed a very important one in that it includes direct employment or one through an agency in its definition for 'woman' within the meaning and purpose of this Act.[13] The section also clarifies how 'wage' only means remuneration payable in cash.

- Section 4 of the Act lists down circumstances and restrictions on work for women. The employer is prohibited from knowingly employing a woman during six weeks immediately following the day of delivery or her miscarriage or medical termination of pregnancy.[14] On a request being made by a woman, she cannot be engaged in work that is of arduous nature or that involves long hours of standing or that which is likely to interfere with her pregnancy. This option is available to her from one month prior

[11] Maternity Benefit Act 1961
[12] Maternity Benefit Act 1961, s3
[13] Maternity Benefit Act, 1961, s3
[14] Maternity Benefit Act, 1961, s4

to the period of six weeks preceding her expected date of delivery and extends to the time period of six weeks before the date of expected delivery in case she does not avail of the six weeks leave of absence. The provisions are very specific in this case and the health of the mother and the child has been given paramount importance.

- Section 5 deals with the payment that the woman is entitled to.[15] She is entitled to an average daily wage for the period of her actual absence – preceding, including and following the day of her delivery. This is applicable to only those women who have been working for the employer for a period of twelve months prior to the pregnancy and has worked for at least eighty days. This provision is not applicable to those who immigrated to the State of Assam while pregnant. The rationale behind this provision is that it has socio-political and strategic significance since it is common knowledge that Assam attracts a huge number of immigrants from the border country of Bangladesh. It would indeed be difficult to implement this Act without this provision. This section also says that the maximum benefit a woman can expect is that of twelve weeks and additionally the leave preceding the day of delivery cannot be more than six weeks.

- Section 6 of the Act[16] concerns itself with notice of claim of maternity benefit and payment thereof. A female employee of an establishment may give a written notice claiming maternity benefit from any date preceding the expected date of delivery as long as it is not more than six weeks prior to the expected date of delivery. A woman who fails to give such notice of claim must do so at the earliest after delivery. The law regarding the payment of maternity benefit stipulates that the same for the period preceding the expected date of delivery must be paid in advance to the employee on production of proof of her pregnancy. For the payment of the subsequent period, production of proof of delivery would necessitate payment to the employee within forty-eight hours of such production of proof. However, in the event that the woman fails to give such notice, the Inspector[17] may, either on the woman's request or of his own accord, order payment of the benefit.

[15] Maternity Benefit Act, 1961, s5
[16] Maternity Benefit Act 1961, s 6
[17] Section 14 of the Act mentions the procedure for appointment of the Inspector who will be appointed by the Government if deemed fit for the purposes of this Act through a notification in the Official Gazette and will function within their jurisdiction of defined local limits. The powers and duties of such duly appointed Inspector

- Section 10[18] makes provision for maternity benefit during periods of illness arising out of pregnancy, delivery, premature child birth, miscarriage, for up to one month on production of relevant proof. This is in addition to the stipulated twelve weeks (now twenty-six weeks vide an executive order mentioned and cited supra).

- Section 12[19] of the Act disallows and prohibits dismissal of female employee while she is on her leave of absence pursuant to the maternity benefit to which she has rightfully claimed entitlement. During such period of time, the employer may not discharge her of her duties or alter her services so as to disadvantage her. A more detailed discussion in relation to the provision contained in this section may be found infra while comparing it with the relevant maternity benefit laws of Pakistan.

Constitutional Validity

The cause of maternity benefit finds strength, support and backing from several constitutional provisions, some of which are listed herein. Right to equality in law [Article 14],[20] Right to social equality [Article 15],[21] and Right to social equality in employment [Article 16][22] ensure that pregnancy is not viewed as an infirmity and the physiological and childcare issues a woman has to deal with does not come in the way of her professional competence. Being physiologically disadvantaged, granting of benefits in this regard would provide a cushioning effect and ensure that Article 14 is upheld.

- Right to adequate means of livelihood [Article 39(a)][23] — As an extension of the argument supplied hereinabove, the Article provides that a female employee's right to adequate means of livelihood is not impeded by the natural phenomenon of child birth.

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is to be found in Section 15 of this Act which, among other things, empowers him to inspect the premises within his jurisdiction at any reasonable time and also empowers him to compel anyone to answer his question(s).

[18] Maternity Benefit Act 1961, s 10

[19] Maternity Benefit Act 1961, s 12

[20] Indian Constitution, Art 14

[21] Indian Constitution, Art 15

[22] Indian Constitution, Art 16

[23] Indian Constitution, Art 39(a)

- Right to equal pay for equal work [Article 39(d)][24] — this Article also aims to level the female employee with her male counterpart so as to balance out the disadvantageous situation of pregnancy with the privileges of maternity benefit.

- Right that the health and strength of workers both men and women are not abused [Article 39(e)][25] ensures that women are able to deal with pre-natal and post-natal physiological changes and difficulties without sacrificing their health and livelihood.

- Right to just and humane conditions of work and maternity relief [Article 42][26] specifically draws attention to the health of new mothers in the workforce and lends constitutional validity to the case for maternity benefits. While Article 42 is under Part IV of the Indian Constitution, which contains the Directive Principles of State Policy, Article 21[27] – Right to life, when not subjected to a narrow definition may be taken to include right to sustenance of the mother and the child for which the mother should be entitled to maternity benefits.

What say you, Hon'ble Judiciary?

The Supreme Court of India as the apex court of the country has adopted a liberal interpretation of maternity benefit laws through its observations in numerous cases that have come before it. The landmark case of *Municipal Corporation of Delhi v Female Workers (Muster Roll) and another*[28] witnessed the Supreme Court examine the intention of the legislators through the provisions of the Act. In this case, female workers (muster roll) in unregularised services working on behalf of the Municipal Corporation of Delhi demanded maternity benefits, which were given only to female workers in regularised services. It was observed that female workers (muster roll) engage in work that is similar in nature to that of female workers in regularised services. The question was whether female workers (muster roll) are entitled to maternity benefits. The Supreme Court observed that the rural woman of India has recently stepped out of her traditional village home to work out of necessity and is employed in work in the nature of hard physical labour. Considering the nature of work that

[24] Indian Constitution, Art 39 (d)
[25] Indian Constitution, Art 39 (e)
[26] Indian Constitution, Art 42
[27] Indian Constitution, Art 21
[28] 2000 SCC (L&S) 331.

these female workers engage in even in advanced stages of pregnancy and soon after her delivery, in the absence of maternity benefits the woman and the child are at a very high health risk.

Considering that the nature of work in the above-mentioned case was similar, the Supreme Court upheld Article 15 by not sanctioning the discrimination which would have prevailed otherwise. Article 15 of the Constitution of India provides that the State will not discriminate against an individual on the basis of religion, race, caste, sex or place of birth and Clause (3) of the same article makes an exemption by allowing the State to make special provisions for women and children.[29] In the case of *Yusuf Abdul Aziz v State of Bombay*,[30] it was held that Article 15(3) is applicable to both current and future laws.

The Supreme Court has time and again lent credibility to the constitutional principle behind maternity benefits by invoking the same in relevant cases. In *Crown Aluminium Works v Workmen*[31] and *J. K. Cotton Spg & Wvg. Mills Co. Ltd v Labour Appellate Tribunal of India,*[32] the Supreme Court upheld the status of India as a welfare and socialist state as mentioned in the Preamble to the Constitution of India.[33] The Apex Court also observed that the definition of social justice cannot have a narrow interpretation and in this context its aim is the removal of socioeconomic inequalities. Overall, the judiciary adopts a dynamic yet pragmatic approach in the administration of the concept of 'social justice.'

The Apex Court has managed to free itself from the shackles of technicalities in the case of maternity benefits. In the case of *Ram Bahadur Thakur (P) Ltd. v Chief Inspector of Plantations,*[34] a female worker was denied maternity benefits because she had worked for 157 days instead of the stipulated 160 days. The Supreme Court held that for the purposes of computing the total number of days, Sundays and unpaid leave days were to be included in the stipulated 160 days.

[29] Indian Constitution, Art 15
[30] AIR 1954 SC 321
[31] AIR 1958 SC 30
[32] AIR 1964 SC 737
[33] Indian Constitution, Preamble
[34] (1989) 2 LLJ 20

In the case of *Air India v Nergesh Meerza,*[35] the Apex Court had to deal with the legal validity of air hostesses being asked to retire on their first pregnancy. Among other issues discussed in the case, the Supreme Court took a strong view here and directed this provision to be struck down and very importantly remarked that pregnancy is 'a natural consequence of marriage' and not a disability. Whether the female employee will be able to handle the workload and manage childcare are her personal and individual matters and not the Airline's concern as long as the Airline does not suffer loss of any kind due to such personal obligations of the female employee. The chief import of this judgment is that it puts to rest all arguments for women's retirement on the basis of pregnancy as if it is an infirmity.

West Pakistan Maternity Benefit Ordinance, 1958: An Introduction

The Ordinance which has its application nearly across the entire country of Pakistan reflects the characteristic hastiness of an ordinance. However, it is quite suitable for its intent and purposes and covers almost all provisions that have been covered in the Indian Act. It is more like a summary of the Indian Act, in that it has all the provisions but gives the impression of being incomplete and inadequate on deeper analysis.

Lacunae – common and unique; Maternity Benefit Laws in India and Pakistan

The rationale behind choosing these two countries is rather simple. India and Pakistan are countries which are united by history and divided by more recent history. India and Pakistan have been sharing borders only for the past 69 years. Therefore, as far as the societal structure and social construct are concerned, it is more or less the same, just like any other present-day part of India. Another question that may arise is – why not any other country is being chosen for comparison and analysis? Bhutan, though a friendly neighbouring nation has social and political structures quite different from India. Operating under a monarchy, ruling a handful across a territory the size of a small Indian province, Bhutan hardly seems to be a choice to be weighed against India. Nepal, on the other hand is in its nascent stage of democracy, grappling with the formulation of a Constitution. Against such a backdrop, pitting it against India in case of comparison seems to be rather unfair. China, like Bhutan,

[35] (1981) 4 SCC 335

has a very different form of government and its socio-cultural background is as similar to India as India's is to Saudi Arabia. It may seem that Sri Lanka and Bangladesh fit the bill just as well as Pakistan; however, in order to make the analysis relevant it is pertinent that a number of countries are not taken at once. A comparison among a total of four countries would naturally render it difficult for the reader to be able to comprehend the essence of the research paper. It is hereby reiterated that comparative studies with Sri Lanka and Bangladesh have immense potential and demands extensive research. Therefore, primarily through the procedure of elimination, Pakistan has become the author's country of choice. Shared colonial history, which heavily influenced the subcontinent's present political structure, has automatically led to similar socioeconomic conditions in both the countries. The Constitutions of both the countries swear to the ideal of 'social justice' in their respective Preambles[3637] which put the two countries under the obligation of legitimate expectation of legislating extensively and implementing widely the social security laws which eventually culminate in the achievement of its primary goal of social justice.

While India has the Maternity Benefit Act, 1961,[38] Pakistan has West Pakistan Maternity Benefit Ordinance, 1958.[39] The analysis that follows has been done provision-wise and appropriate sections of both the laws have been referred to wherever relevant. The analysis, which is based on five major points, is as follows:

1. Definitions of terms and expressions

Section 3 of the Indian Act and Section 2 of the Pakistani law defines terms and expressions within the meaning of the respective laws. While most of the definitions are similar, attention may be drawn to the definition of 'woman;' while the Pakistani law[40] refers to it simply as a woman who is employed the Indian Act[41] specifies it to include employment, both direct and by agency. 'Stillborn child' is clearly defined by the Pakistani law[42] while the Indian Act[43] simply includes it under the definition of 'child.'

[36] Pakistan Constitution, Preamble
[37] Indian Constitution, Preamble
[38] Maternity Benefit Act 1961
[39] West Pakistan Maternity benefit Ordinance 1958
[40] West Pakistan Maternity Benefit Act 1958, s 2(1) (1)
[41] Maternity Benefit Act 1961, s 3(o)
[42] West Pakistan Maternity Benefit Ordinance 1958, s 2(a) (j)
[43] Maternity Benefit Act 1961, s 3(b)

2. Minimum time period, preceding the date of delivery, for which the woman has to work

While the Indian Act stipulates that a woman be employed for at least twelve months and actually work for a minimum of eighty days in that time period in order to be entitled to the maternity benefits listed under the Act,[44] the Pakistani law requires the woman to be employed for four months.[45] While the Indian law is comparatively more stringent, the Pakistani law seems to be designed to encourage more women to join the workforce. For many women, since parenting gains predominance, incentives such as these go a long way in attracting and retaining women folk in the workforce.

3. Regarding payment and dismissal

Under Section 5(3) of the Indian Act[46] and Section 5(3) of the Pakistani Ordinance,[47] a woman is entitled to leave of absence on the day of delivery and six weeks preceding and following that day. Payment of wages at an average daily rate is to be made in favour of that woman for the duration of time mentioned above. In the event of the woman's death, the employer has to pay the amount of wage due to the woman till the day of her death as per Section 7 of the Indian Act[48] and Section 6 of the Pakistani Ordinance.[49]

As per Section 12 of the Indian Act[50] and Section 7 of the Pakistani Ordinance,[51] the employer is not permitted to serve the woman with a notice of dismissal while she is on a leave of absence due to pregnancy. Section 12(2)(a) of the Indian Act[52] prevents the employer from dismissing the woman from service which would have the effect of depriving her of her medical bonus or maternity benefit. Section 7 of the Pakistani Ordinance[53]

[44] Maternity Benefit Act, 1961 s 5(2)
[45] West Pakistan Maternity Benefit Ordinance 1958, s 4
[46] Maternity Benefit Act 1961, s 5(3)
[47] West Pakistan Maternity Benefit Ordinance 1958, s 5(3)
[48] Maternity Benefit Act 1961, s 7
[49] West Pakistan Maternity Benefit Ordinance 1958, s 6
[50] Maternity Benefit Act 1961, s 12
[51] West Pakistan Maternity Benefit Ordinance 1958, s 7
[52] Maternity Benefit Act 1961, s 12(2)(a)
[53] Section 7 (2), West Pakistan Maternity Benefit Ordinance 1958, s 7(2)

prohibits the employer from dismissing the woman from her services during her pregnancy without reasonable cause and also provides her with recourse in the form of the option to approach the Director of Labour Welfare within sixty days of the service of notice of such dismissal.

By virtue of Section 13 of the Indian Act,[54] the employer is prohibited from causing a deduction in the woman's wages during the period of her pregnancy. Pakistan has no such provision. It will, probably, be beneficial if Pakistan amends its law in order to include a provision similar to its Indian counterpart complete with penalty or recourse in case of inefficiency in implementation. A pronounced provision with regard to the prohibition of deduction in the woman employee's wages would give them incentive and assurance to be a part of the labour force in the first place. When the woman knows of a steady inflow of benefit during the period of her pregnancy, she will not have to resign and thereby her skills may be retained in the workforce.

Section 11 of the Indian Act[55] provides for daily nursing breaks during the course of work apart from her regular intervals of rest until he child attains the age of fifteen months. The law in Pakistan remains entirely silent on the issue of nursing breaks. It is strongly recommended that Pakistan amend the Ordinance accordingly so as to accommodate provisions for nursing breaks.

4. Penalty for woman and employer

In the event of non-compliance with the provisions of the Act by the employer, he/she can be penalised under Sections 21 and 22 of the Indian Act[56] with imprisonment of three months to one year and a fine ranging from two thousand rupees to five thousand rupees. In the occurrence of the same event, the Pakistani Ordinance renders the non-compliant

[54] Maternity Benefit Act 1961, s 13
[55] Maternity Benefit Act 1961, s 11
[56] Maternity Benefit Act 1961, ss 21, 22

employer punishable under Section 9 of the Act[57] with a fine that may extend to five hundred rupees.

While it is humbly suggested that the Indian Act considers a revision with respect to the fine keeping the changing times in mind, it is also recommended that the Pakistani law puts an upper limit with regard to the fine so as to add to the deterrent value.

In case the woman does not comply with the provisions of the Act and goes to work despite being granted a leave by her employer as under the Maternity Benefit Act, such act would invite a mere forfeiture of the right to maternity benefit by the woman under Section 18 of the Act.[58] However, in Pakistan, the woman is liable to pay a fine, which is ten rupees at the most under Section 8 of the Pakistani Ordinance.[59] Forfeiture of the right to maternity benefit, as in the case of India, seems to be a much more practical option that can better serve the purpose of discouraging women from working during pregnancy. The significance of this provision lies in the fact that working in that time period is likely to endanger the health of both the mother and the child.

5. Inspector – Appointment, Status, Duties and Powers

Sections 14, 15, 16 and 17 of the Indian Act[60] relate to the appointment, status, duties and powers of an inspector. Section 14 stipulates that the appointment of the inspector may be made by a notification in the official gazette. The inspector will enjoy the status of a public servant vide Section 16 of the Act. As per Section 15 of the Act, the inspector is empowered to pay a visit where women are employed at all reasonable times and seek information from whoever is present on the respective premises. Under Section 17, he is also vested with powers to direct payments to be made to women who have been wrongfully deprived of the same.

[57] West Pakistan Maternity Benefit Ordinance 1958, s 9
[58] Maternity Benefit Act 1961, s 18
[59] West Pakistan Maternity Benefit Ordinance 1958, s 8
[60] Maternity Benefit Act 1961, ss 14, 15, 16, 17

The Pakistani law does not have a special inspector appointed under this Ordinance but for all purposes of this statute, the 'Inspector of Factories' is to function as one under the definition of this piece of legislation .[61]

It is strongly recommended that a special inspector for this Ordinance be provided for immediately in order to ensure better functionality and effectiveness of the purpose of ensuring maternity benefits to all eligible women, that this Ordinance seeks to achieve.

6. Enforcement of penal provisions

As per the Pakistani law, no court below the magistrate of first class can try any offence against the Ordinance.[62] Also, to institute prosecution under this Ordinance, previous sanction of the Inspector of Factories is a prerequisite.[63] The Indian law, however, does not call for any such sanction and permits an aggrieved woman, an office-bearer of a registered Trade Union or an Inspector to file a complaint under the Act.[64] It may be noted that the limitation period for institution of an action under this Act by an aggrieved woman is one year in India[65] and six months in Pakistan.[66]

Concluding Thoughts

At the end of interpreting and analysing the laws, the author feels that Pakistan must add on to the legal framework that is already in place vide the Ordinance. Since the matter of repealing and amending the law so as to adjust its jurisdiction is beyond the scope of this research paper, the author has restricted herself to commenting only on the substantive part of the law which is likely to be retained even when a new and stronger law is formulated.

[61] West Pakistan Maternity Benefit Ordinance 1958, s 2(1)(f)
[62] West Pakistan Maternity Benefit Ordinance 1958, s 10(3)
[63] West Pakistan Maternity Benefit Ordinance 1958, s 10(1)
[64] Maternity Benefit Act 1961, s 23
[65] Maternity Benefit Act 1961, s 23
[66] West Pakistan Maternity Benefit Ordinance 1958, s 12

The Indian Act calls for some revision as per the recommendations suggested by the author in relation to specific provisions and definite sections.

The Amending Bill

It is pertinent to include the salient changes that is being proposed to be brought about by the amending bill[67] which was introduced by the Minister for Labour and Employment, Mr. Bandaru Dattatreya in the Rajya Sabha on August 11, 2016 during the Monsoon Session of the Parliament. The Bill seeks to include five main changes which have also been listed under the five salient features of the Bill under Statement of Objects and Reasons[68]. If this Bill is passed, it will mostly amend Section 5 and Section 11 of the Principal Act.[69]

1. **Duration of leave**

   Instead of the previous twelve weeks leave, the Bill proposes to increase it to twenty six weeks. As per the Act, the woman is not permitted to avail of her maternity leave till six weeks before the expected date of delivery[70]. The bill seeks increasing that to eight weeks. A new provision restricting the aforementioned proposed changes to women with two or less children is also to be added. In such cases, the woman is entitled to the twelve weeks leave. This may be seen being in keeping with India's policy on family planning encouraging families with two children.

2. **Adoptive and Commissioning Mothers**

   The proposed provision is discussed later in this paper after a brief discourse on the subject of maternity benefits with respect to surrogacy.

3. **Work from home**

   The Bill allows the option of working from home, should the nature of work and the employer so permit, after the completion of a certain period of time subsequent to the delivery of the child. Such period of time maybe mutually agreed to by the woman and the employer.

[67] The Maternity Benefit (Amendment) RS Bill (2016) [XLIII]
[68] *Ibid.*
[69] Maternity Benefit Act 1961
[70] Maternity Benefit Act 1961, s 5

4. **Crèche**

   The Bill contemplates inclusion of a provision which would require every establishment with fifty or more employees to provide crèche facilities within a certain prescribed distance. The woman will be allowed four visiFts to the crèche in a day, including her interval for rest.

5. **Informing women employees about their rights**

   This Bill aspires to necessitate informing women of their maternity benefit rights at the time of their appointment compulsorily in written form via an electronic medium.

On a slightly different note, advancing times call for engineering of laws so as to suit the changing needs of those whom the law caters to. Therefore, in a world where patriarchy is being challenged more than ever and gender equality is gaining prominence, alongside modifications to maternity benefit, paternity leave is an idea that is being increasingly deliberated upon and in due time will hopefully also be legislated upon.

On the case for Paternity Leave

Advocates of the concept of Paternity Leave, surprisingly, consist mostly of feminists. In understanding the rationale behind the same, it is essential to keep an open mind and examine the concept of Feminism in the first place. Feminism essentially advocates gender equality and stands for equal responsibility and opportunity in individuals' public and private lives. If one looks at it closely, it isn't hard to see how acceptance of the feminist premise logically leads to the advocacy of paternity leave since fathers are supposed to be equally responsible for the child as the mother. This is quite a weak argument for the case of Paternity Leave owing to its radical premise which calls for absolute equality till a rather impracticable degree.

To take a less extreme view, it must be accepted that a child's dependence on the mother for basic sustenance is graver than his dependence in the father. However, it must also

be accepted that present times have led to changing societal roles whereby compared to traditional roles the mother's role has diminished while the father's has been magnified.

Granting paternity leave, albeit for a lesser number of days compared to maternity leave, would definitely help send a social message about equal responsibility of father and mother towards the child. However, on the flip side, it might just result in loss of a work culture if implemented in a country such as India. This is because the patriarchal Indian society has a strong bias against women when it comes to defined roles for the two sexes. The orthodox social construct in this country puts the woman under an implied obligation of child bearing and rearing. The paternity leave, in the absence of appropriate and adequate provisions, will allow the father to take the leave and treat it as an extended one. It is hereby suggested that provisions be legislated to the effect that both the parents cannot apply for parenting leave at the same time.

India today has an unequal sex ratio that is heavily prejudiced against women and the formal employment sector has an even worse sex ratio whereby men outnumber women in the workplace by a lot. So, the output-oriented employers are unlikely to be very open to this idea, given the possibility of being left without a considerable portion of the workforce.

On surrogate mothers

The issue of surrogate mothers being entitled to maternity benefits has been one of dispute. However, in a recent order, the Bombay High Court has ruled in favour of surrogate mothers. The facts of the given case are as follows:

The petitioner got married in 2004 and for a long time could not conceive of a child. Hence, she decided to go in for the surrogacy procedure. Accordingly, an agreement was signed with a surrogate mother. When the surrogate mother completed 33 weeks of pregnancy, the petitioner applied for maternity leave, but her application was rejected by the

Central Railways. Being aggrieved, she moved the High Court.[71] As per the order in the case of *Amisha Girish Ramchandani v The Divisional Manager (Personnel Branch) Mumbai CST & Ors.*[72] Anoop V Mehta and G.S. Kulkarni, JJ said that "A newly born child cannot be left at the mercy of others. A maternity leave to the commissioning mother like the petitioner would be necessary. A newly born child needs rearing and that is the most crucial period during which the child requires the care and attention of his mother."The Bombay High Court, in this case, ruled in its order that mothers who have conceived through the surrogacy procedure are also entitled to maternity leave.

The Delhi High Court has also ruled in a similar manner in an order, "A female employee, who is the commissioning mother, would be entitled to apply for maternity leave under sub-rule (1) of Rule 43. The competent authority based on the material placed before it would decide on the timing and the period for which maternity leave ought to be granted to a commissioning mother who adopts the surrogacy route," by Justice Shakdher.[73]

The fast-paced busy life today is plagued by the problem of infertility which has led to the growing popularity of surrogacy. Although surrogate mothers are paid for their services yet the great physical exhaustion that their bodies undergo must also be taken into account. This is when their bodies are in need of nourishment and rest.

When the world is gradually waking up to the reality of infertility, a legislation to the effect of granting the surrogate mother post-labour maternity benefits will in fact promote the practice. It is hereby put forward as a suggestion that our Parliamentarians discuss, deliberate and legislate upon this issue. In the case of *Rama Pandey v Union of India,*[74] Justice Shakdher comments that female employees tend to take substantial part of the assigned leave post-delivery and the same is perhaps influenced by several factors such as family

[71] 'Surrogate Mothers Entitled to Maternity Leave: HC' *The Indian Express* (01 February 2016), <http://indianexpress.com/article/cities/mumbai/maternity-leave-bombay-high-court-hc-order/> , accessed on 20 March 2016.
[72] 2016 SCC OnLine Bom 71
[73] Abhinav Garg 'Moms of Surrogate Babies can get Maternity Leave: HC' *The Times of India* (18 July 2015) <http://timesofindia.indiatimes.com/india/Moms-of-surrogate-babies-can-get-maternity-leave-HC/articleshow/48120809.cms > accessed on 20 March 2016
[74] (2015) 221 DLT 756

circumstances, health of the child, etc. He reasons that "except for physiological changes and difficulties, all other challenges of child rearing are common to all female employees, irrespective of the manner she chooses to bring a child into this world."

In keeping with this trend, the Indian Parliament, has recently come up with The Maternity Benefit (Amendment) Bill, 2016[75], whereby provision for adoptive and commissioning mothers have been included. As an extension of the Section 5 of the Principal Act[76], a clause is added stating that mothers who have legally adopted a child who is below the age of three months and commissioning mothers are entitled to twelve weeks maternity leave from the date of handing over of the child to such mother.[77] This provision is in keeping with the changing times and is a rather welcome inclusion.

To briefly summarise, this paper has examined the Indian law at a very basic level at first and has then gone on to compare the lacunae in the laws of Pakistan and India. It is the author's humble opinion based on the logical deduction that the Indian Act is a better piece of legislation in comparison with the Pakistani one when it comes to completeness. The overall look, feel and ultimate import of the Pakistani law seems to be that of haphazardness and incompleteness. However, that seems only natural given that it is an ordinance which by definition is made in a state of urgency. So, to be fair, the Pakistani law looks like itself – an ordinance. The Indian Act could definitely improve on several counts as has been duly and respectfully mentioned in the preceding paragraphs of this paper. It is a matter of sheer urgency that the Pakistani law be made fuller and be given the shape and name of an Act as soon as possible. India, on the other hand, must do away with the redundancy that some of its provisions pose and embrace the working mothers' childcare duties by recognising today's problems and legislating on the same lines. A forward step in that direction has already been taken with the provision for maternity leave for adoptive and commissioning mothers and such progressive legislation may be further tailored to suit the requirements of changing times by inclusion of a provision for paternity leave.

[75] The Maternity Benefit (Amendment) RS Bill (2016) [XLIII]
[76] Maternity Benefit Act 1961, s 5
[77] The Maternity Benefit (Amendment) RS Bill (2016) XLIII, cl 3B (4)

SOCIAL SECURITY THROUGH AGES: AN OVERVIEW

Debarati Chakraborty*

ABSTRACT

The issue of social security has received attention from various fields including sociology, economics, law, public policy, etc, especially in a developing country such as India. The idea of social security has developed through ages. The paper explores the origin of social security especially in the Indian context. India has a history of foreign invasions which transformed the socio-economic structure of the Indian society. Against this backdrop the paper seeks to study the evolution of social security. It also explores the problems and issues of social security with respect to India in the present day context of globalization. Social security is more of a social construct and social security crisis is created by the society through inequality and unequal distribution of wealth in the society.

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I. Introduction

Throughout human history people have faced uncertainties related to their economic well-being, health and old age, these led to the rise of the idea of social security. In short, human beings always have to deal with insecurities and risks. Social security in all probabilities, has originated in Western Europe, developed by Abraham Epstein to differentiate it from economic security[1]. The concept of social security is very old; but the process of institutionalising the concept is of recent origin, i.e. the laws built around it to institutionalise it[2] are new. The non-instutionalized agencies such as family, caste group, guilds existed from time immemorial and they are the backbone of social security. For example, India has a traditional joint family system which protects its member from all hardships such as illness, economic insecurity, widowhood, old- age. But with industrialisation and migration the joint family system broke down and the need for formal institutions or agencies to protect individuals from adverse situations increased[3]. The development of liberalism and individualism influenced by the westernization of the Indian society transformed India from a caste-based to a class-based society. Industrialisation formed new classes which needed support from the formal agencies as the traditional form of security system broke down. In primitive societies people sought security in different kinds of safety nets such as kinship or friendship networks.[4]

Forms of security differ according to the types of society. For example, in medieval Europe the feudal system was the basis of economic security.[5] The feudal lord had economic security as long as the serfs served him and the serfs had security as long as they were fit to give their labour. Land was then the basic source of production and so the economy was

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[1] Mr Abraham Epstein first introduced the concept of social security. He was the national leader in the social welfare. In the beginning of 1930's economic security was the term used, it was used by President Roosevelt in June 1934 when he formed the committee on economic security. According to Webster's third new international dictionary social security means" the principle or practice of public provision for economic security and social welfare of the individual and his family(as through social insurance and assistance)"; Social Security Bulletin,vol.55, no 1, 1992:63

[2] *See* shodhganga.inflibnet.ac.in/b**its**tream/10603/6251/6/06_chapter%202.pdf(p39-40)
[3] *see* shodhganga.inflibnet.ac.in/bitstream/10603/6251/8/08_chapter%204.pdf(p108-109)

[4] Thelen, Tatjana, Carolin Leutlofl-Grandits, and Anja Peleikis. "Social Security in Religious Networks." Social Security in Religious Networks: Anthropological Perspectives on New Risks and Ambivalences (2009):1

[5] An oppressive system involves the feudal lord and the serf or the peasant in common terms, was given a piece of land and in return he has to serve his lord.

confined to land. With industrial revolution, land, labour and raw materials became equally important. Industrial revolution was a major landmark in the history of mankind. With industrialisation economic growth was coupled with social inequality and rising social insecurity. The need for social security arose especially after the industrial revolution to protect one from the adverse conditions such as accidents, illness, disability, old- age, etc. According to Van Ginneken and Wouter (1999) "The concept of social security has developed over the years. It ensures social support for dignified life which includes some necessities of life ranging from income to employment, means of acquiring basic need".[6]

II. The Emergence of Social Security: A General Overview:

As societies grew, the self-sufficient communities gave way to towns and cities. In the West, especially in Europe various organisations grew during middle Ages, for example, guilds which were associations of merchants and craftsmen- these associations benefitted the members by providing employment and other social help. The guilds were later transformed into friendly societies and these friendly societies later grew into what we call trade union in the modern age.[7] Apart from providing economic security they also provided life insurances to its members. The provision of economic security led to the emergence of "Poor laws"[8], targeted to the weaker and poorer sections of the society. The collapse of feudalism changed the relationship between the ruling class and the working class which gave birth to a new economy. The idea of laissez-faire developed, under this rule workers used to work for long hours under inappropriate conditions, leading to the exploitation of workers. Thus there grew a need to support the poor so that their willingness and ability to work could be increased. Poverty was the basic cause for the growth of social security. This English poor law was the first initiative which reflected the idea of the responsibility of the state to provide security to its citizens in the form welfare benefits.[9]

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[6] Van Ginneken, Wouter, ed. *Social security for the excluded majority: Case studies of developing countries*. International Labour Organization, 1999:37

[7] Social Security Administration. "Historical background and development of social security." (2013)

[8] Poor laws grew to reduce the cost for looking after the poor, and encourage them to work for themselves.

[9] Ibid.

Social security also has its roots in many religious groups like Catholics, within which women's congregation was the most functional in supporting those who were in need. For example catholic sisters were organised within their religious groups and functioned as a unit for emotional and material security for its members.[10] In response to industrialisation and increased poverty, hundreds of women's congregations were formed in Europe to look after the sick and poor both within and outside the boundaries, several schools and hospitals were also set up.[11]

Debates on social security emerged in the 1970s and 80s mainly in response to the development of the third world. In these counties the state-run security provisions reached only small sections of people while the majority had to depend on family, community and kinship. The idea of social security was based on the provisions provided by the state or the government of advanced nations but it was inapplicable to developing countries,[12] as implementing social security policies for the growing population in developing countries was challenging. To sum up, social security is not only meant to provide material resources to people such as housing, food but also providing social, emotional support.

III. The history of Social Security in India

India remained under British rule for more than two centuries. Social welfare benefits existed during Mughal period too, i.e. pre-British period. Foreign travellers have witnessed public hospitals being set up for the general masses. Other social provisions were also provided. To understand the scenario of social security in India (pre British period), one needs to understand the socio-economic structure existing then. India before British invasion was a self-sufficient village economy, based on simple division of labour[13]. In a country like India where caste has always been significant and castes play a crucial role in determining occupations. The occupations were mostly hereditary and generally passed from generations

[10] Thelen, Tatjana, Carolin Leutlofl-Grandits, and Anja Peleikis. "Social Security in Religious Networks." Social Security in Religious Networks: Anthropological Perspectives on New Risks and Ambivalences (2009): 188

[11] Ibid:190
[12] Ibid:2
[13] Division of labour refers to the assignment of a manufacturing process or task to different people in order to improve efficiency.

to generations. The food produced in the village was consumed by the village community itself. So the question of social security as such did not arise. India's first industry in the pre-British period was textile handicrafts. India remained an export zone for cotton, silk, silk-fabrics, woollen cloth, opium, cinnamon etc. During 1850, when industrial revolution was at its peak, Britain found India as a good source for raw materials and cheap labour and thus made India a market for its finished goods (Saini, 2011:29). In the post-British invasion, along with new trade practice new social classes emerged too. These new classes adopted western habits of life including dressing and fashion, which generated demand for British goods within the country. This lead to the destruction of handicraft industries within the country, further leading to increased poverty level and insecurity amongst the people. The present government then, the British, did not take in any action to re-settle the unemployed, instead the unemployed mass shifted to agriculture which worsened their situation more. Zamindari system was introduced where the landlords were vested with all power and the unemployed mass started farming in other's lands. Most of them became share croppers or landless labourers. The zamindars had to pay the rent directly to the British; in case they failed the land was automatically transferred to mercantile class like talukdars, jyotdars, etc.

During 1850s, a policy on commercialisation of agriculture emerged, where the production started taking place outside family.[14] Cash crops replaced food crops. Surplus production of crops leading to the formation of commercial markets, and the towns and cities grew out of need for the surplus trade. The policy resulted in the fall of food production further leading to famines in the country. This was the first instance of a major food crisis or insecurity in the economic and social history of India. Factories and industries by the time started setting in the country. The earliest industry to develop during the British rule is the plantation industry. In 1860s and 70s indigo, tea, coffee grew rapidly. However the workers employed here had to work on minimum wage and under extreme working conditions. Though the rise of industries gave immense employment but at the same time lead to the increased social and economic insecurity among daily wage labourers. The development of textile mills reflected the growth of modern factory system. During the 19th century many industrial centres were set up, Calcutta and Bombay being the major industrial centres. This

[14] Debi S. Saini. *Social Security Law in India*. Kluwer Law International, 2011:30

phase witnessed increased job opportunities coupled with other social problems such as population growth, literacy rate, declining female sex ratio, composition of population, poverty line and urbanisation.[15] Recent studies show that there has been a growing informalization of labour in India. There is a tendency of increased share of unorganised sector in the total manufacturing sectors.[16] So the social protection of these workers in the unorganised sectors is becoming a concern for the higher incidence of informalization of labour.

Post- independence, the government has strengthened the labour policies and social security measures. The Factories Act, 1948 regulated the working environment in factories by giving attention to the condition at workplace, health, issues related to wage and leave. In the same year the government approved the Maximum Wages Act to prevent the exploitation of workers at the workplace.

IV. Social movements and social security: Indian context

In India the social security movement s took its shape during World War II. The first sickness insurance law in the world was considered as the origin of social security. It was passed in 1883, though the social movement for social security developed much later in India. Sickness insurance Act regulates health insurance in the context of temporary incapacity for work such as pregnancy, maternity, terminal illness. Social security was initially designed to support the industrial workers but later spread to the whole population. The phase of industrialization started in India with the advent of cotton mills in Calcutta, Bombay which progressed faster compared to other industrial towns existing at that point of time.[17] The inter-war period (1918-39) phase though witnessed large scale industrialization, also witnessed economic depression in the country. The labour problems began to rise which received considerable attention from the public and the government. Small labour

[15] Ibid:32

[16] Goldar, Bishwanath, and Suresh Chand Aggarwal. "Informalization of Industrial Labour in India: Are labour market rigidities and growing import competition to blame?" *Institute for Economic Growth, New Delhi, Manuscript* (2010):1

[17] Agarwala, A. N. "The Social Security Movement in India." *The Economic Journal* (1946):569

organisations also grew that eventually tried to improve the present conditions of labour force. Provisions have been made for social contingencies.[18] The first social contingency that was provided during inter-war period was the employment injuries, but nothing could be claimed in cases of non-fatal injuries.[19] Though much before the World War II, the employees' compensation act was passed. But in India the questions of worker's compensation took a serious turn especially when industrial strikes overtook the country. A workman's compensation bill was introduced in the Indian legislative Assembly which became an Act later on. This was India's first social insurance measure introduced in the country.[20] The next social contingency that was introduced in the country was maternity benefit. The Maternity Benefit Act 1929 was first passed in Bombay and got adopted in 1930(ibid). Apart from this, attention was also given to unemployment insurance for industrial workers during the interwar period. The above social security measures provided an unsatisfactory picture. Legal provisions were made against employment injuries throughout India and maternity benefit was only restricted to some provinces in India. In both the cases employer's liability was taken up but the social insurance was not applied. Old age and unemployment pensions as well as other problems related to social security received little attention.

The World War II did not change the outlook towards social security problem in India, but these movements inspired India to take a path-breaking step in regard to social security. At this moment the problem of labour grew drastically and so when the question of social security was taken up it was welcomed from all directions. So the major growth of social security movement occurred from the year 1943. The area of health insurance also received attention. It is evident that social security movement in India actually took its shape during the period of World War II. During this phase India not only thought in terms of social security but also prepared certain plans related to social risks. Still India lags behind as it has yet to make a complete scheme of social security. It is limited only to heath, maternity, employment injury and nothing beyond it (ibid: 580).

[18] Social provisions for possible future events or circumstances like provisions for old age or any accidents.
[19] Supra note 17:570
[20] Ibid:571

The idea of social security should not be confined to only economic or health crisis but should also move further to consider other invisible social conditions or situations that individuals daily suffer from. For example; social security in terms of one's mental well-being. Social security is often linked to well being of an individual. Drawing on notable economist Amartya Sen's capability approach model, as Sen says "Life is seen as a set of valuable doings and beings, the "doings" in terms of activities and "beings" in terms of state of being like happiness, satisfaction".[21] The quality of one's life cannot be determined just in terms of commodities, but rather the various functionings in human life.[22] The idea of social security with respect to developing countries mainly arises from vulnerability and deprivation. In developing countries like India inadequate social security both at workplace and personal lives lead detoriates the situation. In developed countries, social security is taken as a public programme which aims at providing social assistance like social insurances. In developing country these programs mainly aimed for the weaker and the poor section of the society whereas in the developed countries the social security programmes have not been framed just keeping the poorer section in mind. It is framed for the whole population as well. For example, In Britain there is universal child care benefits but no income tax concessions (ibid: 82). In some countries the social security system is centralized whereas in some it is state sponsored. So it varies from country to country regarding the nature of programs and how far they are implemented.

V. Conclusion:

With globalization the approach to social security has also changed. Globalization has many faces and its impact of labour has been the most significant. Due to Globalization the world becoming smaller and more homogeneous and states do not remain as close units and world economy has become more independent with expanding trade and finance.[23]With

[21] World Institute for Development Economics Research. *Social security in developing countries*. Edited by Ehtisham Ahmad. Oxford: Clarendon, 1991:7. Amartya Sen's most renowned work on capability approach which focus on what individuals are capable of doing and achieving the kind of lives they have reason to value.

[22] Ibid:7

[23] Mini, S., and D. Rajeev. "Social security of labour in the new indian economy." PhD diss., Cochin University of Science and Technology, 2010.

liberalization and privatization policies by the Indian government, the social situation of the labour has been exposed to many challenges. This was due to restructuration of the economy, change in the employment relationship, and increasing insecurity in the informal labour force[24]. The present scenario of India shows that 8% of workers who get benefits of social security acts. They have no coverage of social security and have to spend from their meagre amount of wage on illness, children's education and old age (Mini and Rajeev, 2010). The irony is the large labour forces who are contributing to the development of the country have no social security coverage of their own.

The problem of social security is itself a social construct. The crisis is actually produced by the state itself by ignoring the social problems like ageing, poverty, unemployment, child labour and other economic condition that may affect the society. The less awareness or knowledge of a particular problem or a situation by the general public, greater is the political manipulation of the situation. Traditionally, the family or the community as a whole safeguarded an individual from all kinds of adverse situations but with industrial revolution social structure of the society was transformed which has given rise to new social crisis. With growing population at an alarming rate, it's sometimes difficult for the government to come up with a huge coverage of social security programmes. Social security is seen as an important part of the developing process. It's an individual right to be secured in all aspects- be it socially, mentally or physically.

[24] Informal labour is labour that is not recognised, recorded and protected by the Government. It consists of small scale hired or non-hired workers.

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CONSTITUTIONAL DIMENSIONS OF SOCIAL SECURITY LAWS IN INDIA

Ishwara Bhat[*] and Shuvro Prosun Sarker[**]

ABSTRACT

Various constitutional provisions that are in tune with those embodied in international legal instruments such as the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, etc., help in shaping and streamlining social security laws and policies across jurisdictions. In the Indian perspective, the Constitution empowers the state to protect its citizens by extending social security benefits thereby helping in the promotion of the ideals of a welfare state. In accordance with the constitutional mandates, the state can guarantee social security and assistance in cases of unemployment, old-age, sickness, maternity, disablement, etc. This article tries to know, in view of the emergence of the rights approach in judicial interpretation of Directive Principles of State Policy (DPSP), whether and how much the constitutional provisions especially in the form of DPSP and Fundamental Rights have been effective in ensuring proper implementation of social security laws and policies in India. .It strives to identify the constitutional dimensions of social security laws in light of various judgments highlighting the interrelationship between DPSP and Fundamental Rights. The article also seeks to know whether federalism and multi-layered formulation and implementation of social security measures are helpful in ensuring a more stable, robust and economically viable social security system.

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Introduction

The constitutional goal of creating a welfare state includes the idea of social security against loss of worker's competence to work. Involving one of the most important social interests,[1] this goal has cascading effect upon the law, administrative action, local initiative and private help to alleviate the pathetic situation. Guarantee of public assistance in case of unemployment, old-age, sickness, maternity and disablement, and in other cases of undeserved want goes a long way in making freedoms real, rendering economic life equitable and socially just, avoiding commodification of labour, and ensuring autonomy to the worker.[2] It is a kind of libertarian and benevolent paternalism that helps the working class to meet the challenges of inabilities to work, which accrued for no fault of theirs or occurred beyond their control. Social Security as a concept as well as a system requires to be materialised through affirmative action to protect the members of the society from contingencies of life. The concept can be interpreted as a protective framework "by the society to its members through a series of public measures against the economic and social distress that otherwise is caused by the stoppage or substantial reduction in earnings resulting from sickness, maternity, employment injury, occupational diseases, unemployment, invalidity, old-age and death."[3] At the same time, social security has become a part of the development process of a country as the labour force through some social assistance will be able to accelerate their contribution to the economy vis-a-vis efficiency and productivity.

[1] Roscoe Pound, 'A Survey of Social Interests' (1943) 57 Harvard Law Review 1-2: Social interests in general security, security of social or economic interests and security of individual interest provide philosophical foundations for the idea of social security. Also see Linus Mac Manaman, 'Social Engineering: The Legal Philosophy of Roscoe Pound' (1958) 33(1) St, John's Law Review 19-20.

[2] See for discussion Horacio Specter, 'Philosophical Foundations of Labour Law' (2006) 33 Florida State University Law Review 1119

[3] Planning Commission, Government of India, New Delhi, *Report of the Working Group on Social Security for the Tenth Five Year Plan* (2001) p. 15

The constitutional status of social security measures as a part of Directive Principles of State Policy has rested on a weak model as it depends on positive state action and legislative schemes. Along with the increased efficacy of DPSP due to emergence of the rights approach in judicial interpretation of DPSP, and a cluster of statutes on the subject, there is a better environment of social security law. The inspiring principles of the Constitution relating to social security have influenced the legislative measures,[4] administrative actions[5] and judicial interpretation[6] to make the social security scheme, a strong remedial measure. High benchmarks of international standards on social security also persuade for positive action. Most of the social security laws have the syndrome of 'centralised legislation and federalized administration'. In India, only 6 percent of the workforce is in the organized sector and the remaining is in the unorganised sector.[7] To include the remaining 94 percent of the unorganised workforce under social security system, the Government enacted the Unorganised Workers Social Security Act, 2008. Ironically it has been observed that "a number of laudable schemes had failed to deliver the desired results because of the complex processes and procedures inherent in the delivery of benefits under such schemes, thereby defeating the purpose of the entire scheme."[8] Federalism and multi-layered democracy have been entrusted with responsibilities of making and implementing social security measures.

[4] Maternity Benefit Act, 1961; Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948; Provident Fund Act, 1952; National Rural Employment Guarantee Act, 2005; National Food Security Act, 2013

[5] Pension schemes for the people below poverty line and widows; maternity benefit to the pregnant women who are below poverty line

[6] See discussion infra IIIb

[7] Ministry of Labor and Employment, Government of India, New Delhi, *Report of the Working Group on Social Security for the Twelfth Five Year Plan (2012-2017)*, (2011) 2

[8] ibid, p 20; Delivery deficit pointed by the Planning Commission of India includes: "(1) lack of delivery infrastructure at the level of state governments, (2) lack of organizational capabilities on the part of delivery agencies, (3) misidentification of the programme beneficiaries due to both type I (exclusion) and type II (inclusion) errors, (4) incidence of corrupt practices, rent seeking by the administration and delivery agencies, and elite capture of the schemes, and (5) lack of awareness on the part of people regarding details of schemes as well as their own entitlements."

From this backdrop, it is required to inquire into the international and constitutional principles on social security in the light of expansion of right to life and equality. The paper argues that the constitutional aspiration would become realistic only with a pro-labour approach on the part of legal system as a whole and grass root efforts on the part of people at the local level.

I. Right to Social Security under International and Regional Legal Instruments

The Universal Declaration of Human Rights (UDHR) is seen to be progressive in terms of ensuring social and economic benefits to the people at large. Article 22 of the UDHR can be considered as an umbrella provision for economic, social and cultural rights.[9] This is further elaborated under Article 25 of UDHR.[10] Though UDHR is primarily labelled as an international bill of rights along with the spirit of Article 22 and 25 on economic justice, the progress of civilisation has created insufferable conditions in the life of workers and, thus, it was necessary to venture more on economic and social rights.

Following this venture, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognised social security as a right.[11] Further to this, the ICESCR extends social security benefits to mothers before and after childbirth,[12] provides special measures for

[9] Universal Declaration of Human Rights, 1948, Article 22: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

[10] Universal Declaration of Human Rights, 1948, Article 25: "(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

[11] International Covenant on Economic, Social and Cultural Rights, 1966, Article 9: "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."

[12] International Covenant on Economic, Social and Cultural Rights, 1966, Article 10(2): "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits."

the protection of children and young people,[13] and supports the right of adequate standard of living and continuous development.[14] The reporting guidelines of ICESCR further expand the forms of social security which must be extended by the State parties which includes medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivor's benefit.[15] Apart from these, the International Convention on the Elimination of All Forms of Racial Discrimination,[16] International Convention on the Elimination of All Forms of Discrimination Against Women,[17] Convention on the Rights of the Child[18] and International Convention on the Protection of the Rights of All Migrant Workers and their Families[19] contain several provisions on social security to be provided to the target groups as per the need of the Conventions.

The expansion of social security as a right is further reflected in various regional instruments relating to human rights. Both the American Declaration of the Rights and Duties of Man, 1948 and the Additional Protocol to the American Convention on Human Rights,

[13] International Covenant on Economic, Social and Cultural Rights, 1966, Article 10(3): "Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law."

[14] International Covenant on Economic, Social and Cultural Rights, 1966, Article 11(1): "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

[15] Guidelines on Treaty-specific Documents to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, Committee on Economic, Social and Cultural Rights, Economic and Social Council, E/C.12/2008/2, March 24, 2009

[16] International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 5(d)(iv)

[17] International Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 11(1)(e) and 14(2)(c)

[18] Convention on the Rights of the Child, 1989, Article 26

[19] International Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990, Article 27(1) and 61(3)

1988 recognise the right to social security.[20] The European Social Charter, 1996 (revised) elaborately addresses social security provisions such as maintaining a social security system by the state parties,[21] providing various benefits for women before and after childbirth,[22] ensuring medical assistance under social security schemes[23] and promoting workers rights of social security.[24] This kind of expansion of the right to social security from international instruments to regional instruments reflects its universality and creates an obligation on the States to respect the provisions and promote social security. Ironically, there seems to be a long way in implementing or attaining the spirit of these provisions in a holistic manner.

As important human rights principles, the above social and economic rights percolate into the domestic legal domain as a matter of explicit and implicit recognition. The State's duty to foster respect to international conventions under Article 51 of the Constitution and the power of the Union government to enact laws for implementing treaties under Article 253 hint at the binding character of international human right principles. The post-Bangalore Principles development has facilitated automatic absorption of human rights in the course of adjudication without waiting for specific adoption by the State unless it is incompatible with the domestic law.[25]

II. Constitutional Mandate of Social Security in India

As an aspirational constitution oriented towards social and economic justice, the Constitution of India has express provisions guiding the social security policy. Since it has

[20] Arlene Walshe and Padraic Kenna, 'Working Paper on the Right to Social Security' (2004) Seminar on Human Rights, , University of Essex, Colchester, United Kingdom.
[21] European Social Charter, 1996 (revised), Article 12
[22] id, Article 8
[23] id, Article 13
[24] id, Article 27
[25] P Ishwara Bhat and Shubhangi Bajaj Bag, 'Judiciary and Protection of Human Rights: A Focus on Bangalore Principles' Impact' (2015) 1 Journal of West Bengal Human Rights Commission 139

nexus with basic human rights, its implementation through rights-based approach and mainstream judicial activism has elevated its position substantively.

a. Towards respectable position of social security policy

The constituent assembly debates should be the starting point of any discussion on rights and duties of a man as the spirit behind the enactment is found there. Pandit Jawahar Lal Nehru (United Provinces: General) while moving the Resolution in the matter of 'Aims and Objects' of the Constitution put it in a very firm way that the people of India shall be guaranteed and secured with "justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality."[26] Taking part in the discussion Mr. M. R. Masani (Bombay: General) had rejected the idea of social or economic justice through this 'Aims and Objects' Resolution tabled by Pandit Nehru as it did not take into account the wide and gross inequalities which exist in India.[27] He elaborated by saying that if the national income is divided into three equal shares, only the one-third earned by the 62 percent of the population which he rejected as social or economic justice. There were others including B. R. Ambedkar (Bengal: General) who also expressed the lack of a realistic approach in the Resolution tabled by Pandit Nehru. Dr. B. R. Ambedkar elaborated his disappointment in the following words:

> "I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it

[26] Constituent Assembly of India Debates (Proceedings), Vol. 1, December 13, 1946
[27] id, December 17, 1946

could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy."[28]

Though several amendments were suggested by the members of the Constituent Assembly yet all of those were finally withdrawn and the Resolution was subsequently passed. Pandit Nehru delivered his closing speech on this Resolution saying that India through its rightful and honoured place in the world will make full and willing contribution to promote peace and welfare of mankind.[29] Though he did not clearly address the points made by Ambedkar and Masani on equal social and economic rights a reality for all, but it is noteworthy that the framers were in search of an egalitarian social order. Finally, we find that the preamble to the Constitution of India promises a sovereign, socialist, secular, democratic republic along with ensuring justice, liberty, equality and fraternity for all its citizens.[30]

The Constitution of India also kept provisions envisioning social security in the Directive Principles under Part IV of the Indian Constitution. Directive Principles as stated by B. R. Ambedkar "are really instruments to the executive and the legislature as to how they should exercise their power."[31] The framers of the Indian Constitution visualised that the socioeconomic principles under Part IV along with civil rights in Part III will ensure the functioning of a welfare State.[32] It was thought that social democracy and economic

[28] id
[29] Constituent Assembly of India Debates (Proceedings), Vol. 1, January 22, 1947
[30] Constitution (Forty-second Amendment) Act, 1976, Section 2(a): "In the Preamble to the Constitution- (a) for the words "Sovereign Democratic Republic" the words "Sovereign Socialist Secular Democratic Republic" shall be substituted."
[31] See n (27)
[32] At the Karachi Session of the Indian National Congress in 1931, it was resolved that "in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions" and that the State has to safeguard "the interest of industrial workers", ensuring that suitable legislation should secure them a living wage, healthy conditions, limited hours of labour and protection from the "economic consequences of old age, sickness and unemployment". This idea was in the uppermost in the minds of constitution makers.

democracy would supplement political democracy.[33] Articles 41, 42 and 43 in Part IV of the Constitution make specific references to the social security measures. There are other provisions which aim at avoidance of exploitative practices that put people, especially women and children, into a situation of indignity. In the Constituent Assembly, the proposals for amending Article 41 (draft Article 32) [a] to add the words 'medical aid' in order to obligate providing of the said relief to the beneficiaries of social security and [b] to substitute the words 'public assistance' by the words 'State assistance' were rejected.[34] This did not narrow down the scope of the social security policy. After a brief narration of the phases of development about status of Part IV of the Constitution, the implications and impact of these Articles were taken up for discussion.

The socio-economic principles under Part IV are not enforceable by any Court, but the spirit of these provisions can be achieved by the State in governance and policy by enacting appropriate laws.[35] But a law giving effect to the Directive Principles has to observe all the constitutional limitations such as the fundamental rights and in case it violates these limitations, it must be held unconstitutional.[36] This was also the view of the Supreme Court in several cases.[37] However, on the question of whether fundamental rights can have supremacy over Directive Principles merely because Directive Principles are non-justiciable, it does not

[33] Dr B R Ambedker in CAD dated 19th November 1948; H V Kamath in CAD dated 22nd November 1948; K T Shah in CAD dated 22nd November 1948.
[34] These were moved by Shamanandan Sahay and H V Kamath in CAD dated 23rd November 1948.
[35] Constitution of India, 1949, Article 37: "Application of the principles contained in this Part 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."
[36] Upendra Baxi, 'The Little Done, the Vast Undone- Some Reflections on Reading Granville Austin's The Indian Constitution' (1967) 9 Journal of the Indian Law Institute 362
[37] *State of Madras vs. Champakam Dorairajan*, AIR 1951 SC 226, 228: "The directive principles of state policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights". *Chandra Bhavan Boarding & Lodging vs. State of Mysore*, AIR 1970 SC 2042, 2050: no "conflict on the whole between the provisions contained in Part III and Part IV" and " they are supplementary and complementary to each other". *Mohd. Hanif Qureshi vs. State of Bihar*, AIR 1958 SC 731: "A harmonious interpretation must be placed up on the Constitution, and so interpreted it means that the state should certainly implement the directive principles, but it must do so in such a way as not to take away or abridge fundamental rights."

mean that they are subservient to fundamental rights. While destroying fundamental rights in order to achieve the goals of Directive Principles amounts to violation of basic structure, giving absolute primacy to one over another disturbs harmony. So the goals of Directive Principles should be achieved without abrogating fundamental rights. As Directive Principles enjoy a higher place in the constitutional scheme, both fundamental rights and Directive Principles must be read in harmony.[38] This principle of harmony and balance between fundamental rights and Directive Principles has not always been applied in a uniform manner.[39] It can be argued that reconciliation is required so that the interests of all people within the society are covered by both the fundamental rights and Directive Principles.[40] It is expected that the inclusion and recognition of socioeconomic rights in the international legal instruments and national constitutions will be able to increase the strength of the provisions contained in the Directive Principles of State Policy. The way for recognition of these rights has been further widened while the Courts of law have taken specific reference on the implementation of the socioeconomic rights camouflaged under the umbrella of the fundamental rights in order to accommodate a 'dynamic move'.[41] Justice K. K. Mathew in *Kesavananda* referred to the goals of social and economic justice as connected to human rights like liberty and equality. He held that the moral rights embodied in Part IV of the Constitution are equally an essential feature of it; that in the light of its experience each generation has to pour content to the vessels of fundamental rights; and that supremacy or

[38] See *Minerva Mills Ltd and Ors vs. Union of India*, AIR 1980 SC 1789, 1806: "harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution".
[39] *P.A. Inamdar vs. State of Maharashtra*, AIR 2005 SC 3226 (With regard to the protection of educational interests of the weaker sections of the society read with Article 15(4), the Supreme Court held that unaided private educational institutions could not be required to reserve any seats for these sections and such reservation would be an unreasonable restriction on the occupational or business rights of such institutions under Article 19(1)(g).)
[40] *V.N. Shukla's Constitution of India* (edited by M P Singh, 12th Edition, 2013) 371
[41] Jawaharlal Nehru while introducing the Constitution (First Amendment) Bill said: "The Directive Principles of State Policy represent a dynamic move towards a certain objective. The fundamental rights represent some static, to preserve certain rights which exist. Both again are rights." Lok Sabha May 16, 1951.

priority of fundamental rights is liable to be overborne by the moral claims embodied in Part IV.[42]

Along similar lines, it was also observed by Justice Krishna Iyer that "in the creative Indian context, may look for light to the lodestar of Part IV of the Constitution... where two judicial choices are available, the construction in conformity with the social philosophy of Part IV has preference."[43] Thus, it is well established by the decisions of this court that the provisions of Part III and Part IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve that goal indicated in Part IV.[44] Mixing of unenforceable policies of Part IV with normative principles of Part III had a salutary effect of elevating some of the essential policies into principles, recognising positive rights, formulating legislative measures to give effect to policies, treating such legislations as reasonable restrictions on fundamental rights and building the social security norms on sound pedestal.

b. Specific constitutional provisions on Social Security and their value-based interpretation

According to Article 41, "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." As per Article 42, "The State shall make provision for securing just and humane conditions of work and for maternity relief." Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities. Article 39(f) expects the State to protect the children and youth against exploitation and against moral and material abandonment. Laws under Article 19(6) requiring

[42] *Kesavananda Bharati vs. State of Kerala*, AIR 1973 SC 1461, 1741
[43] *Mumbai Kamgar Sabha, Bombay vs. M/S Abdulbhai Faizullabhai & Ors*, AIR 1976 SC 1455
[44] *Unni Krishnan, J.P. and Ors. vs. State of Andhra Pradesh and Ors.*, AIR 1993 SC 2178

the employers to provide social security to workers are reasonable restrictions in the interests of general public, and effectuate social security policy through legal norms.[45] With the emergence of judicial activism in using fundamental rights to effectuate the spirit of Directive Principles like Articles 41, 42, and 39, provisions like Articles 14 and 21 became the source of social security measures by an interpretation that right to life includes right to livelihood.[46] In relation to the rights of labourers in the country, the Supreme Court observed that the workers "have a special place in a socialist pattern of society. They are not mere vendors of toil; they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital.... They supply labour without which capital would be impotent and they are, at least, equal partners with capital in the enterprise."[47]

In a 1954 case, the Madras High Court abstained from applying Article 41 in a circumstance of lay off due to shortage of electricity supply as it was a case of insufficient employment rather than unemployment.[48] The Court equated the situation to that of shortage in supply of raw materials by private producers. Obviously, the approach was hesitant in using the rights model by the application of fundamental rights, and the state's duty to facilitate avoidance of job loss. But when job loss occurred due to the arbitrary action of the State, the Supreme Court, in 1990s, applied the rights model in support of Article 41. The Court in *Central Inland Water Transport Corporation* case applied Article 14 and held the service rule authorising the public corporation to terminate its servants by three months

[45] *Bakshish Singh, Appellant vs. M/s. Darshan Engineering Works*, AIR 1994 SC 251 where validity of Payment of Gratuity Act was upheld against a challenge based on freedom of business. The provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 regarding health and welfare, conditions of employment, leave with wages, extension of benefits were upheld as reasonable restrictions on freedom of business under Article 19 (1) (g) read with 19 (6) in *Mangalore Ganesh Beedi Works vs. Union of India*, AIR 1974 SC 1832.
[46] *Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986 SC 180
[47] *National Textile Workers Union vs. P R Ramakrishnan*, AIR 1983 SC 75 approvingly affirmed in *Workmen of Meenakshi Mills Ltd . etc. vs. Meenakshi Mills Ltd.*, AIR 1994 SC 2696
[48] *Radhakrishna Mills vs. S I T*, AIR 1954 Mad 686

notice as violating the principles of natural justice which are implicit in right to equality.[49] The atmosphere of job security is also protection against unemployment. The Court observed, "The mode of making 'effective provision for securing the right to work' cannot be by giving employment to a person and then without any reason throwing him out of employment."[50]

In the matter of protection of the aged persons, the Supreme Court in *D. S. Nakara*[51] traced the concept of social security in old-age in social morality, socioeconomic justice and abhorrence for economic exploitation. The Court observed,

> "Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old-age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life."[52]

The modus operandi in effectuating old-age security consisted in nullifying the irrational classification amidst different categories of pensioners on the ground of violation of right to equality under Article 14. 'Public assistance in case of undeserved want' under Article 41 has been a source of remedial measure in numerous cases. In the matter of unjustified and wasteful litigation by a public transport company whose fault had caused accident resulting in loss of limbs of several passengers, the Court invoked Article 41 and

[49] *Central Inland Water Transport Corporation Ltd. vs. Brojo Nath Ganguly*, AIR 1986 SC 1571
[50] Ibid paragraph 111.
[51] *D. S. Nakara vs. Union of India*, AIR 1983 SC 130
[52] Id, para 36

provided remedy and expressed that the State Corporation should have sympathised with the victims of the tragic accident and generously adjusted the claims within a short period.[53] Withholding of gratuity of a public servant without hearing in a circumstance he was not guilty of grave misconduct went against Article 41 and not justified.[54] Discontinuance of Jawahar Rozgar Yojna resulting in loss of livelihood was not remediable under Article 41 read with Article 21 as the state's obligation is within the limits of economic capacity.[55] Availability of term insurance policy only to public servants and exclusion of others violated Article 14 in view of social security content of it under Article 41.[56] In supporting right to maintenance as an aspect of right to life, Article 41 helped in *Madhu Kishwar* and other cases.[57] In *Pritilal Nanda*, rejection of the claim of a physically handicapped applicant who was not sponsored as per the requirement under the advertisement but was called for an interview and placed in merit list was remedied under Article 41 read with Article 16.[58] In supporting the principle of victim compensation, the Law Commission and the Indian Supreme Court have gathered support from Article 41.[59] The argument that denial of opportunity of jobs to the visually handicapped due to non-implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 amounted to violation of Articles 14, 21 and 41 was accepted in *Justice Sunanda Bhandare Foundation* case.[60]

Public assistance in case of disablement and sickness arising from mass torts like Bhopal Gas Leak tragedy or natural calamities or man-made disasters like fire accidents and

[53] *The Rajasthan State Road Transport Corporation, Jaipur vs. Narain Shanker*, AIR 1980 SC 695
[54] *D.V. Kapoor vs. Union of India*, AIR 1990 SC 1993
[55] *Delhi Development Horticulture Employees' Union vs. Delhi Administration*, Delhi, AIR 1992 SC789
[56] *L. I. C. of India vs. Consumer Education and Research Centre*, AIR 1995 SC 811
[57] *Madhu Kishwar vs. State of Bihar*, AIR 1996 SC 1864
[58] *Union of India and Ors. vs. Miss. Pritilata Nanda*, AIR 2010 SC 2821
[59] *Ankush Shivaji Gaikwad vs. State of Maharashtra*, AIR 2013 SC 2454
[60] *Justice Sunanda Bhandare Foundation vs. U.O.I.*, AIR 2014 SC 2869

communal riots has emerged as a policy accepted in judicial decisions, legislations and administrative actions by directly or indirectly invoking Article 41.[61] Right to maintenance supports social security policy. As viewed by Deepak Misra J "when the marriage breaks up, a woman suffers from emotional fractures, fragmentation of sentiments, loss of economic and social security and, in certain cases, inadequate requisites for survival" and the circumstance demands a social security approach.[62] In *K. C. Bajaj*, the claim of doctors to include in their pension the component of non-practising allowance was admitted on the basis of social security idea, but technically on ground of unreasonable classification. The principle of fixation of compensation in motor vehicle accidents has been on the basis of social security principle in order to commensurate with the economic loss.[63] Social and economic support to the trans-gender was contemplated by the apex Court on grounds of social security, but Court substantially reasoned on the basis of Articles 14, 19 and 21 to arrive at the conclusion.[64] In Birbhum gang rape case, the State arranged for social security measure in addition to the sanction of interim relief of Rs 50,000 and a sum of Rs 5 lakhs ordered by the Apex Court.[65] In *Dewan Chand Builders* case, a Welfare Fund was created under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act). The levy of cess on the cost of construction incurred by the employers on the building and other construction works is for ensuring sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures for building and to other construction workers. The fund, so collected, is directed to specific ends spelt out in the BOCW Act. The Court reasoned that the said fund is set apart and appropriated specifically

[61] *Sushil Ansal vs. State through CBI*, AIR 2014 SC (Supp) 293; *Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. vs. Union of India*, AIR 2012 SC 3081; *Bhopal Gas Peedith Mahila Udyog Sanghathan and Anr. vs. Union of India*, AIR 2007 SC (Supp) 690; *Union Carbide India Limited and others vs. Union of India*, AIR 1994 SC 201; *Charan Lal Sahu vs. Union of India*, AIR 1990 SC 1480

[62] *Shamim Bano vs. Asraf Khan*, AIR 2014 SC (Supp) 463

[63] *Puttamma and others vs. K. L. Narayana Reddy*, AIR 2014 SC 716; *National Insurance Company Ltd. vs. Sinitha*, AIR 2012 SC 797

[64] *National Legal Services Authority vs. Union of India*, AIR 2014 SC 1863

[65] *In Re : India Woman says Gangraped on Orders of Village Court* published in Business and Financial News dated 23-1-2014, AIR 2014 SC 2816

for the performance of a specified purpose; it is not merged in the public revenues for the benefit of the general public, and as such, the nexus between the cess and the purpose for which it is levied gets established.

In the matter of just and humane conditions of work, the constitutional development is towards activist approach of establishing elaborate guidelines for the avoidance of sexual harassment in workplace.[66] Again, it is the rights approach that could aggressively carve out such a position. In *Consumer education Research Centre* case[67] the Court engaged in social policy formulation by invoking rights approach, international human rights norms and the philosophy of social justice. The Supreme Court issued a very dynamic order in protecting the health benefits of workers by directing the asbestos industries to maintain the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment, whichever is later.[68] This decision followed with further directions to the Government to ensure insurance cover for the workers from hazardous diseases. The Court held that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43 48A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. The judgment made a notable breakthrough in applying the international

[66] *Vishaka vs. State of Rajasthan*, AIR 1997 SC 3011

[67] *Consumer Education and Research Society vs. Union of India and Ors*, 1995 3 SCC 42; reference to ILO safety standards and the Asbestos Convention of 1986; see paragraphs 3 to 17 and extensive reference to American cases in paragraph 18.

[68] *Consumer Education and Research Society vs. Union of India and Ors*, 1995 3 SCC 42; per Ramaswamy J: "it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39 (c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial there of denudes the workman the finer facets of life violating Art. 21."

labour safety standards and overarching social justice to the premise of right to life. This deviates from the textual approach in a 1992 case which denied a claim for extension of ESI Act to the employees of agents of a Public undertaking. The argument that socio-economic rights are the basis of the right to life and, thus, the right to social security is a right under Article 21 of the Constitution of India could not convince the majority, whereas K Ramaswamy J in dissent was in favour of this stand.[69]

On the expansive scope of the Maternity Benefit Act, 1961, again, it is the rights approach that could bring comfortable result. The State's duty to implement Maternity Benefit law in the unorganised sector was considered as part of the scheme for the eradication of bonded labour contemplated under Article 23 of the constitution.[70] The Court in Municipal Corporation, Delhi case[71] gave a landmark verdict extending the Maternity Benefit Act 1961 to all the women employees in the muster roll irrespective of the question of regularisation of their employment by applying both fundamental rights and Article 42. The Court observed,

> "To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of a child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period."[72]

[69] *Calcutta Electricity Supply Corporation (India) Ltd. vs. Subhash Chandra Bose*, AIR 1992 SC 573
[70] *Bandhua Mukti Morcha vs. Union of India*, AIR 1992 SC 38
[71] *Municipal Corporation of Delhi vs. Female Workers*, AIR 2000 SC 1274
[72] Ibid at 1281 paragraph 30

Extension of the law to banks, shops and establishments was done in subsequent cases by employing the rights approach.[73] From the preceding observations, it can be inferred that there has been an exponential growth in social security concept, which has largely taken place by making use of the provisions under the fundamental rights chapter and the Directive Principles of State Policy. This has reinforced the essential policy underlying various statutes on social security.

c. Post-globalisation aberrations

However, after globalisation the Indian economy started getting liberalised and this change witnessed considerable shift in the judicial approach. A new adjustment in the judicial approach of non-interference has been adopted for deciding cases on economic and labour policy which is also a matter of greater scrutiny.[74] Under the newly adjusted approach, while considering the validity of the industrial policy of Madhya Pradesh, the Supreme Court held that the industrial policy though non-utilitarian cannot be said to be arbitrary as the State Government is empowered to recommend or even revise a policy as per its needs.[75] In another instance, the Supreme Court following the adjusted activism approach on a matter where reimbursement of medical expenses incurred in private hospitals to the serving and retired government employees were not provided. The condition for the government put there was that it will only be providing such expenses incurred in private hospitals if similar

[73] *Punjab National Bank by Chairman and Anr. vs. Astamija Dash*, AIR 2008 SC 3182; *National Campaign Commtt., C.L. Labour vs. Union of India*, AIR 2009 SC (Supp) 259

[74] Upendra Baxi, Access to Justice in a Globalised Economy: Some Reflections, Lecture of the Indian Law Institute, August 5, 2006: "I will suggest that the World Bank/IMF/UNDP and related programs of good governance understandably, if not justifiably, promote structured adjustment of judicial activism. These covertly address, as well as, overall seek to entrench market friendly, trade related forms of judicial interpretation and governance. Judicial self restraint covering macro-economic policy as on the basis of adjudicatory policy stands proselytized by the already hyper globalised Indian Appellate Bar."

[75] *M.P. Oil Extraction and Anr vs. State Of Madhya Pradesh and Ors*, (1997) 7 SCC 592, 610: "Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State."

treatment is not available in government hospitals, and the rate of such reimbursement will be determined by the concerned authority. The court after dealing with the issue raised under Article 21, provided its decision in the following way:

> "No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permits. If no scale or rate is fixed then in case private clinics or hospitals increase their rates to exorbitant scales, the State would be bound to reimburse the same. Hence, we come to the conclusion that the principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."[76]

In a case where the policy of the government to privatise one organisation and the effect of that on the rights of labourers was in question, the Supreme Court held that the process of disinvestment was a policy decision based on complex economic factors and the growth of the country.[77] The Supreme Court further made it clear that the "courts must... act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere."[78]

It shall be noted that the values of social security meticulously built through the rights approach and statutory schemes have occupied the major space and the aberrations remain peripheral and liable to be confined to the factual circumstances. The text of the constitution making the social security law dependent upon economic capacity of state has its practical impact.

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[76] *State of Punjab & Ors vs. Ram Lubhaya Bagga*, (1998) 4 SCC 117
[77] *BALCO Employees Union (Regd.) vs. Union Of India & Ors*, (2002) 2 SCC 333
[78] id, para 233

d. Federalism and multi-layered formulation and implementation of social security measures

In democracies with federal structures such as that in the United States of America, Canada and Australia, the provinces or states are mainly responsible for labour and social security legislations.[79] The reason for this may be for their formation as a federal country as combination of states those were independent of each other. In the case of India, the centralised scheme of federalism makes it 'union of States' which is a part of the basic structure and matters related to social security come under the List III (Concurrent List) of the Schedule VII of the Constitution of India.[80] The Constitution of India has devised the scheme of allocation of legislative powers in such a way that there exists centralisation within a federal pattern and framework though different governments exist in the Centre and the States.[81] The justification for central leadership in the matter of social security is to ensure common policy framework, common financial resource and common pattern of implementation. Co-operative federalism has valuable role to play to support social security measures. In constitutional challenges on legislative competence of the Union Government to enact laws on social security matters, the Supreme Court has upheld them as relating to welfare of workers rather than as regulating industry.[82] The case has also demonstrated the practice of cooperative federalism wherein State governments enacted rules supplementing the enabling legislation, and thereby engaging in multilayered norm formulation. Implementing the spirit of Article 41 of the Constitution of India through 73rd and 74th Constitutional Amendment Acts, the local government structure has been introduced in India which is under the jurisdiction of the States under Entry 5 of List II of the VII Schedule. There have been questions regarding the powers, functions and working of these local

[79] Section 92 (13) of the Canadian Constitution Act 1861; *AG Canada v. AG Ontario*, (Unemployment Insurance reference case) 1937 AC 355

[80] List III, Schedule VII: "22. Trade unions, industrial and labour disputes; 23. Social security and social insurance, employment and unemployment; 24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

[81] M P Jain, Indian Constitutional Law, 243

[82] *Mangalore Ganesh Beedi Works vs. Union of India*, AIR 1974 SC 1832

government bodies under the federal scheme of India. State functions can be transferred from the State Government to the local bodies can be done through state laws.[83] Entry 26 of the Eleventh Schedule denotes devolution of the power relating to social welfare, including the welfare of the handicapped and mentally retarded; Entry 23 refers to health; and Entry 27 refers to welfare of the weaker sections. Entry 3 of the Twelfth Schedule denotes devolution of power relating to planning for social and economic development on municipalities and municipal corporations. It has been argued that transferring of various state functions to the local government bodies was not successfully implemented.[84] However, various schemes related to social and employment security are now in operation under the umbrella of these local government structures.[85] For example, the National Rural Employment Guarantee Act, 2005 was enacted to provide "livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work."[86] Under this Act, States are responsible for providing work in accordance with the Scheme prepared by respective State Government for providing not less than 100 days of guaranteed employment in a financial year, to those who demand work.[87] The funding pattern of this Act provides that the Central Government will bear the responsibility for the full amount of wages for unskilled manual work and State Governments are required to pay the full amount unemployment allowance.[88] It is noteworthy that the Central Government is the major facilitator bearing the financial burden under this Act and maintaining the centralist structure of having overall control on the implementation of these kinds of schemes.

[83] See Schedule XI and Schedule XII of the Constitution of India along with Article 243G and 243W of the Constitution of India.
[84] KC Sivaramakrishnan, Local Government, in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (Ed.), *The Oxford Handbook of the Indian Constitution*, OUP, 2016, p. 574
[85] Matters related to social security have got place in the List III of the VII Schedule of the Constitution of India where concurrent power of legislation lies both with the Centre and the States.
[86] Preamble, National Rural Employment Guarantee Act, 2005 (Act 42 of 2005)
[87] National Rural Employment Guarantee Act, 2005, Section 3 & 4
[88] Id, Section 22

Several other schemes such as Janani Suraksha Yojana (JSY), Integrated Child Development Scheme (ICDS), National Maternity Benefit Scheme (NMBS), Antyodaya Anna Yojana (AAY) and National Family Benefit Scheme (NFBS) exclusively funded by the Central Government are in operation. The interrelatedness of these above-mentioned schemes was recognised in the case of *People's Union for Civil Liberties v. Union of India* to ensure that the benefits under these schemes are not denied to the beneficiaries and that assistance is provided promptly at the nearest point where it can be assessed.[89] Subsequently in 2008 in *People's Union for Civil Liberties* v. *Union of India*[90] the Court issued set of guidelines to the central and state government to continue the schemes, to pay Rs 500 in every case of child birth by pregnant woman entitled under the scheme, to ensure that the benefits of the scheme reach the intended beneficiaries, to regularly advertise the revised scheme so that the intended beneficiaries can become aware of the scheme, to avoid diversion of fund, to give details about utilization of funds and take actions against abuse of funds. The statistical details showing the extent of use of the fund under the scheme point out that in 12 states and union territories the utilization of funds fell below 22 per cent denying the facility to eligible pregnant women.

It is ironical to note that even the aforementioned orders and judgments delivered by the Courts pointed out the implementation deficiency of the centrally funded schemes related to social security; the Centre has not yet made any fundamental change in its policies concerning implementation. The reasons for this may be that there is a heartfelt intention of

[89] W.P. Civil No. 196 of 2001, Order Dated: November 28, 2001. Supreme Court hearings on this case have been held at regular intervals since April 2001. Though the judgement is still awaited, interim orders have been passed from time to time. However, the orders of the Supreme Court is followed in the following decisions of the Delhi High Court: *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, W.P.(C) 8853/2008, Date of Judgment: 04.06.2010; *Jaitun v. Maternity Home MCD, Jangpura & Ors*, W.P.(C) 10700/2009, Date of Judgment: 04.06.2010.

[90] AIR 2008 SC 495

the Centre to make the local governmental bodies work and become a third tier of the government within the federal structure of the Constitution of India.

Regarding the issue whether the burden of social security measures can be shifted through legislative measure upon the shoulders of parties which are not relevant to the economic process of production, the approach of the apex Court is not to allow such a course of action. At issue in *Koluthara Exports Ltd*.,[91] was the constitutionality of the Kerala Fishermen's Welfare Fund Act, 1985, which obligated the dealers in fish to contribute to a fund which was to serve as a resource for meeting the requirements to provide for distress relief to fishermen in times of natural calamities; to assist in case of disability; to bear the expenses of disease and death of dependents; to assist in situations of lean months; to meet education related expenses of fishermen; to restore the loss of house or fishing equipment due to natural calamities; to provide old age assistance to fishermen; and such other objects. The Court declared the scheme as unconstitutional by reasoning, "The burden of the impost may be placed only when there exists the relationship of employer and employee between the contributor and the beneficiary of the provisions of the Act and the scheme made there under." The judgment implies that public assistance for social security shall flow from the relevant economic sector that envisages employer employee relation. From the angle of avoiding undeserved burden and unjust enrichment the approach is appropriate.

From the preceding it can be inferred that the distribution of legislative power in the matter of social security has appropriate pattern. In addition to laws, the centrally sponsored administrative schemes have served the social interest. Absence of effective coordination amidst different layers of government has failed the spirit of the social security policy.

[91] *Koluthara Exports Ltd. vs. State of Kerala*, AIR 2002 SC 973

Greater participation of local bodies will have greater transparency, people's participation and civil society's initiative.

III. Conclusions

The framework of constitutional values for social security and the design for their implementation are basically sound, especially in the aftermath of judicial activism traversing the path of rights based approach and enactment of constitutional amendments for grass root governance. The passing of Rubicon from policy to principle is a significant game changer. The original intention of guiding the nation to a regime of social security has been reinforced by legislations and integrating the human rights principles in the realm of international law. International norms on social security have inspired and persuaded for domestic initiative. The mainstream constitutional activism has judicially shaped and elevated the social security law to a higher level. Integrating right to life with policy of social justice has added value to social security law. However, it appears, enacting several legislations for ensuring social security has not been much successful because of factors related to improper implementation or the lessening of coverage of the schemes under the respective enactments.

It is well established that in a democracy it is the government which will formulate the policy with the rider that in case of a change in government, the policy may also change its focus. A change in the focus of the social policies or schemes may be adversely affecting the welfare of workers or other sections of the people in need of social security protection. The aberrations of post globalization development are only peripheral, and have not disturbed the core law of social security. Courts have adequate competence to address temporary distractions. The legislations on rural employment guarantee, public health, food security and

education have revived the commitment to the aim of social security with greater rigour in the twenty first century.

Under the Constitution, social security is a responsibility of multiple layers of government, civil society, corporate sector and the general public. Unlike other federal systems where states have legislative competence in matter of social security, Indian system believes in central government's stewardship in policy, planning and finance in relation to social security measures. This has largely contributed to the success of the measures wherever States have enthusiastically participated. Federalism has a responsibility of bringing wholesome growth of all the regions of the nation.[92] The instances of neglect by the States in implementing the centrally sponsored social security scheme warn us against their future recurrence. In response, decentralised administration of central laws, programmes and policies imposes greater responsibility upon the panchayat raj system in this sphere. By taking a clue from the success of the grassroots democracy in the task of environment protection[93] it is possible to suggest for their vital role in effectuation of social security law.

[92] P Ishwara Bhat, 'Why and how federalism matters in elimination of disparities and promotion of equal access to positive rights and welfare' (2012) 54(3) Journal of Indian Law Institute 324-363

[93] *Village Panchayat, Calangute vs. The Additional Director of Panchayat-II*, AIR 2012 SC 2697

ARE SOCIAL SECURITY LAWS INCLUSIVE OF THE DISABLED?

Swetha Janakiraman* & Karthik V. Venkatesh**

ABSTRACT

The recent statistics indicate a rise in the disabled population in the country where legislation and related instruments such as the PWD Act, the National Trust Act, the Rehabilitation Council Act, and the UN Declaration of Rights for Persons with Disabilities are in place to provide social assistance and security for the upliftment of the disabled community as enshrined in the Constitution of India. The pressing issue in the realm of disability laws today is that the disabled people who are unemployed or are of limited skill do not fall under the ambit of any of the existing social security legislation, like the Employees' Compensation Act, 1923, which guarantees income maintenance and support only for disability caused in the course of employment and neglects the unemployed. The paper seeks to analyse the social security needs and impediments in policy implementation while briefly venturing into the US model of Social Security for disabled on a comparative basis. Beneficial directives to formulate a disabled-specific social security legislation ensuring economic independence of the disabled through employment generation, soft-skill training, healthcare facilities and education is suggested along with providing assistance for social inclusion and rehabilitation through awareness and community building programmes. Conclusively, a universal legislation bringing all categories of disabled persons under one umbrella is recommended

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INTRODUCTION

The recent statistics of the 2011 Census indicates a population rise among the disabled in India, showing an increase of 22.4% from the 2001 Census.[1] However, the various social security programmes in India cater towards the disabled only when such disability ensues in the course of employment. The International Labour Organisation (ILO) upholds social security as the protection conferred by the society upon individuals and households, which ensures that healthcare and guarantee of income security is obtained in cases of old-age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner. International instruments adopted by the ILO and the United Nations affirm that every human being has the right to social security.[2] In the Declaration of Philadelphia (1944), the International Labour Conference recognised that ILO's obligation envisaged the extension of social security measures to provide basic income to all in requirement of such protection and comprehensive medical care.[3] In India, the National Commission on Labour has endorsed the ILO definition to accept that social security demands the safeguarding of members of the society by collective action against social risks, which create undue deprivation of livelihood and income to individuals whose principal resources are seldom adequate to cure the deprivation.[4] It is observed that there is inadequate coverage of persons belonging to the unorganised sector owing to factors such an inability to collect contributions from them. These persons are unable to part with the payment as it does not meet their priority needs.

In India, the informal economy comprises more than 90 percent of the work force, if agriculture is included; thus, reflecting poor growth in wage employment and large-scale migration to cities in search of stable income. Informal economy cannot be a sector alone as it is a phenomenon prevalent in all sectors and encompasses categories of employees, self-

[1]Comparison of data from the 2001 census and the 2011 census <http://enabled.in/wp/census-of-india-2011-disabled-population> accessed1st February 2017

[2]Facts about Social Security (ILO) <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf>accessed1st February 2017

[3] Social security: Issues, challenges and prospects (International Labour Conference, 89th Session (2001)) <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/pdf/rep-vi.pdf> accessed1st February 2017

[4] S.C. Srivastava, *Social Security and Labour Laws* 7 (Eastern Book Company, 1stedn, 2005)

employed people, home workers, unpaid family workers, etc.[5] The state has an obligation to provide social assistance schemes within its economic capacity in cases of unemployment, old-age, sickness and disablement, and in other cases of undeserved want.[6]

SOCIAL SECURITY NEEDS

Ideally, as envisaged by the ILO, social security measures should provide assurance to individuals and families that their standard and quality of life will not diminish by social or economic eventuality by providing for medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivor benefits to counter the defined contingencies.

According to estimates by the World Report on Disability 2011, the cumulative survey from 59 countries representing 64% of the world's population was used to understand the prevalence of disability of the world's adult population aged 18 years and older. This was derived from the World Health Survey as 15.6% (some 650 million people of the estimated 4.2 billion adults aged 18 and older in 2004). In developing countries, owing to their poor healthcare, poor nutrition, unsafe living conditions and inadequate prenatal care, children become more vulnerable to serious diseases, leading to higher incidence of disability among children and youth. Even in the case of prevalence of disability among people aged 60 years and above, the lower-income countries showed 43.4%, compared with 29.5% in higher-income countries.[7]

We need to understand that the family has been the primary creator of welfare much before the concept of welfare state came into picture, since family resources were pooled in to provide for the individuals, including extended family members. The concept of pooling

[5] Social Security: A New Consensus by International Labour Organisation. < http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_209311.pdf> accessed 1st February 2017

[6] Constitution of India Article 41

[7] 'World Report on Disability : Summary', (WHO 2011) <http://www.who.int/disabilities/world_report/2011/report.pdf > accessed 1st February 2017

public resources came into existence when the individual was unable to take care of his/her own needs and the society realised the importance of protecting the individual and his/her family.[8] The joint family system that existed earlier used to ensure that all the members of the family were taken care of and it provided for social security to the weaker section- the disabled. But as time progressed, the onus of providing social security fell on the states and it has been a political necessity to produce and distribute welfare for the vulnerable groups in the society. When the families are not in a position to take care of the livelihood and existence requirements, it becomes important for the state to step in and provide social security. Moreover, the respective state government is to make policies for the implementation of various schemes in place. In India, only a few states have implemented them; states such as Kerala, Tamil Nadu and West Bengal have comprehensive social security schemes, although the benefits accrued through the same are only modest.[9]

Disability brings about many types of economic costs to the disabled individual, their family, employer, insurance companies and society. First of all, the family with a disabled member goes through extra expenses to meet the medical or equipment needs of a disabled family member. Secondly, the disabled individual contributes minimal amounts or nothing to the family resources owing to lowered productivity due to the disability. They are also subjected to complete loss of job or reduction in the number of working hours due to the said disability. Thirdly, the disability of the individuals can have many negative effects on their employers, insurance companies and society in terms of lost profits, higher medical expenses and maintenance of transportation systems and building infrastructure required to accommodate the disabled.

[8] P MadhavaRao,'Social Security for Persons with Disabilities in India'(2004) <http://www.eldis.org/fulltext/Rao_PM020804.pdf> accessed 1st February 2017

[9]PrahbatPatnaik, 'For a Universal Pension' *The Hindu* (May 10, 2012)

LEGISLATION DEALING WITH THE DISABLED: DUTY OF THE STATE TO PROVIDE SOCIAL SECURITY

India has an efficient system of promotive and protective social assistance legislation in places which aim to enable the disabled. A person with disability is defined[10] as a "person suffering from not less than 40% of any disability, as certified by a medical authority – the disability being (a) blindness (b) low vision (c) leprosy-cured (d) hearing impairment (e) locomotor disability (f) mental retardation (g) mental illness.

In 2007, India became a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), thus becoming obligated to make laws harmonious with it. The existing legislations such as the Fatal Accident Act 1855, the Employees' Compensation Act 1923, the Employees State Insurance (ESI) Act, 1948 follow a medical model of disability which means that the provisions could be availed of only if an otherwise able-bodied individual suffers from a loss of earning or utility in lieu of a disability incurred in the course of employment, accident, etc. Thus, the aspect of social security for persons with disabilities is covered only under the disability legislation in the country, whereas the social security laws contain provisions for employment-related disability.[11] The Rights of Persons with Disabilities Act, 2016 has attempted to cure the deficiencies of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (hereinafter referred to as the PWD Act, 1995) which was previously the main statute providing disability rights. The new Act widens its definition of disability to include conditions such as autism, cerebral palsy, haemophilia, etc., and provides for inclusive development through education, skilled training and employment without being subjected to discriminatory practices. The Act upholds equality and right to access public places and imposes penalty on violators of the provisions. This ambitious legislation was pending in the Parliament for a long time as there was ambiguity as to whether it was appropriate for the Parliament to impose legal and financial obligations on states and municipalities with regard to disability, which is a State List subject and whether the punishable obligations imposed are wide-ranging without having any existing institutional structure, for example, making all polling booths accessible to the

[10]The Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, No. 1 of 1996, § 2.

[11] 'CRPD Monitoring Report, Civil Society's Zero Draft', (India, 2013) <http://www.dnis.org/FINAL-MONITORING%20CRPD%20-%20ZERO%20DRAFT%20REPORT.doc> accessed 1st February 2017

disabled. The Bill was published in the Official Gazette on 28th December 2016[12] and continues to be inconsistent with the penalty meted out to a person outraging the modesty of a disabled woman as against S.354 of IPC.[13] The official amendments to the Bill did not include the standing committee recommendations to provide basic social security free of cost and without any income ceiling or below poverty line criteria to the disabled.[14]

The state and the local governments are responsible for procuring social security for the disabled within their economic capacity as envisaged under Sections 66 to 68 of the PWD Act. The aspects emphasised in the sections are financial support to Non-governmental Organisations (NGOs), formulation of rehabilitation policies, framing of insurance schemes for employees and unemployment allowance for the disabled. States were requested by the Ministry of Disability Affairs to formulate a policy for the rehabilitation of the disabled, since 'relief of disabled' features under the State List. Some states such as Bihar and Karnataka already have this policy whereas some do not.[15] The social security needs are met by protective, preventive and promotional schemes and programmes such as social insurance, social assistance, employer's liability, national provident funds and universal schemes for social security. The predominant legislation covering disability are The Rehabilitation Council of India Act, 1992, The PWD Act, 1995, The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and the National Policy for Persons with Disabilities, 2006. The Rehabilitation Council under the provisions of the Rehabilitation Council of India Act is a statutory body, mandated to monitor and train professionals for disability rehabilitation, to standardise syllabi and to maintain a Central Rehabilitation Register of the workforce in the field of Rehabilitation and Special Education whereas, The National Trust Act is for implementing various

[12]See, The Right of Persons with Disabilities Act, 2016;<http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf> accessed 1st February 2017

[13] 'The Rights of Persons with Disabilities Bill, 2014', (Legislative Brief, 2014) <http://www.prsindia.org/uploads/media/Person%20with%20Disabilities/Legislative%20Brief%20%20-%20Disabilities%202014.pdf> accessed 1st February 2017

[14]'Comparison of the Rights of Persons with Disabilities Bill, 2014, the official amendments and the recommendations of the Standing Committee'<http://www.prsindia.org/uploads/media/Disability/Comparison%20of%20the%20Bill,%202014%20with%20official%20amendments%20and%20the%20SC%20recommendations.pdf> Accessed on: 1st February 2017.

[15]'Review of the functioning of the National Institutes working in the field of disability' (February 21, 2014) <http://164.100.47.134/lsscommittee/Social%20Justice%20&%20Empowerment/15_Social_Justice_And_Empowerment_45.pdf> accessed 1st February 2017

schemes/programmes for the welfare of persons suffering from autism, cerebral palsy, mental retardation and multiple disabilities. This envisages health insurance, care-giver training, preventive intervention, awareness and scholarship assistance schemes.

Social security for the disabled in India is achieved best through social assistance. The disabled population, for obvious reasons form the weaker section of the society and are in need for more care and support than healthy persons. The ILO defines social assistance scheme as one that provides benefits to persons of small means granted as of right in amounts sufficient to meet a minimum standard of need and financed from taxation.[16] This can be interpreted as if the invalid people, disabled or aged persons are not receiving social insurance benefits because they were not compulsorily insured and whose incomes do not exceed a prescribed level, they should be given special maintenance allowance at prescribed rates by the state.[17] This model of social assistance empowers people to be independent and upholds the spirit of equality and democracy as well. Centrally funded National Social Assistance programme such as the Indira Gandhi National Disability Pension Scheme (IGNDPS), is a non-contributory pension scheme, which provides central assistance of Rs. 300 per month per beneficiary to persons with severe or multiple disabilities in the age group of 18-79 years belonging to a household living below poverty line. In addition, the states are also requested to contribute proportionally to increase the assistance amount for a disabled person.[18]

It was only in 2009 that the umbrella scheme called the National Social Assistance Programme included disabled people. Central funding allocated in the Financial Year 2013-14 was Rs. 9,541 crore catering to 2.10 crore beneficiaries in all to effectively secure social security to the poorer and weaker sections of the society. The coverage of IGNDPS is seen to have significantly improved since 2009 with 85 percent of the approved beneficiaries being covered in 2011 as against 45 percent in 2009.[19] Currently, the physical coverage of IGNDPS

[16] Dr. V G Goswami, *Labour and Industrial Laws: Social Security Legislations in India* (Central law Agency, 9thedn, 2011).
[17] Id.
[18] 'FAQ on National Social Assistance Programme' <http://nsap.nic.in/nsap/FAQ_ON_NSAP_NEW.pdf> accessed 1st February 2017.
[19] AvaniKapur, 'Budget Brief: NSAP, GOI, 2013-14' <http://accountabilityindia.in/sites/default/files/nsap_2013-14.pdf> accessed 1st February 2017.

is 41.84lakh[20] and in terms of the state-wise implementation of IGNDPS in 2011-12, Maharashtra, Karnataka, and Odisha had covered all approved beneficiaries. However, coverage was low in Jharkhand, Kerala, and Punjab (45 percent each), Tamil Nadu (32 percent), West Bengal (31 percent), and Rajasthan (21 percent).[21]

DISABLED WOMEN

The CRPD requires States to take appropriate measures to protect and guarantee all human rights and fundamental freedoms to women and girls with disabilities and guarantees adequate standard of living and social protection which further entail social security for disabled girls. It's the first binding international provision which recognises that disabled women and girls are at greater risks in the society and, hence, need social security.[22] There are instances where disabled girls are raped and harassed and this is not merely a physical violence, but an act of exploitation of her disabled condition. A survey in Orissa, India, found that virtually all of the women and girls with disabilities were beaten at home, 25 per cent of women with intellectual disabilities had been raped and six per cent of women with disabilities had been forcibly sterilised. Research indicates that violence against children with disabilities occurs at annual rates at least 1.7 times greater than for their peers without disabilities.[23] Various social and physical barriers disallow girls with disabilities to be beneficiaries of schemes and programmes meant for them. A biased attitude in the society restrains girls from educational opportunities and the stigmatic perception of disability ostracises them from social affairs.[24] Nearly 10% of the disabled females are out of school and more illiterate than males.[25] The World Bank reports that female illiteracy is 64% as

[20]'NSAP Report of the Task Force: Annexure 1', (Ministry of Rural Development, 2013) <http://nsap.nic.in/nsap/Report_Task_Force_Comprehensive_NSAP.pdf>accessed 1st February 2017.
[21] Supra Note 16
[22]Dr.SharmilaGhuge, Dr. P. K. Pandey& Dr. SukantaSarkar, *Social Security,* (A.P.H Publishing Corporation, New Delhi, 2013) 78-92
[23]'Disability Statistics: Facts & Statistics on Disabilities & Disability Issues' <http://www.disabled-world.com/disability/statistics/> accessed 1st February 2017
[24]Supra note 20
[25]Philip O'Keefe, World Bank, 'People with Disabilities in India: From commitments to outcomes' (May 2007) <http://siteresources.worldbank.org/INDIAEXTN/Resources/295583-1171456325808/DISABILITYREPORTFINALNOV2007.pdf> accessed 1st February 2017

against disabled male illiteracy of 43%.[26] It is pertinent to reiterate that social security laws giving only employment-related benefit do not cover girls disabled at birth, who are unemployed. Despite the 3% reservation mandated by the PWD Act, the disabled persons are unsuccessful in gaining employment due to their poor knowledge of English, computers and general knowledge.[27] There are no special programmes designed for disabled girls who may not be employed but undoubtedly require social security.[28]

Inclusive social security programmes which provide access to information and education are instrumental in ensuring independence among disabled women. Social assistance for access to education, public places, vocational and skill training are necessary to ameliorate their conditions. The state through social security programmes must provide special allowance and incentives to the parents of the disabled girls for covering the costs of education, transport, equipment, etc. Similarly, awareness programmes should be organised to protect disabled girls against violence, physical, mental and sexual abuse, exploitation, harassment, and gender discrimination in urban and rural areas.[29]

PERSONS WITH DISABILITY

Persons with disability face social exclusion and stigma which adversely affect the opportunities of the disabled people for full integration in social and economic life, often even within their own families.[30] Section 33 of the PWD Act, 1995 envisages three percent reservation for persons with disability in identified posts in government establishments. It is reported that the employment rate of disabled in the private sector was as low as 0.28% and in multinational companies, it was 0.05%[31] and under the Scheme of Incentives to the Private Sector for Employment of Physically Challenged Persons, the government provides the employer's contribution for Employees' Provident Fund and Employees' State Insurance for three years, for employees with disabilities, including visually impaired persons employed in

[26]Shenoy M, 'Persons with disability and the India labour market: challenges and opportunities' (December 2011) <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_229259.pdf> accessed 1st February 2017
[27]Id.
[28]Supra note 22
[29]Id.
[30]Supra note 25
[31]Supra note 26

the private sector on or after April 2008, with a monthly salary of up to Rs. 25000. The National Handicapped Finance and Development Corporation (NHFDC) provides subsidised credit to PWDs for taking up revenue-generating activities for self-employment. For the financial year 2013-14, NHFDC had released Rs.70 crore to 12,840 PWDs and skill training for 860 of them. Its performance was rated excellent in 2011-12 and also showed that it turned in profits due to better management of funds and increase in disbursement of loans.[32] The adults of rural households are guaranteed employment under the MGNREGA which includes disabled persons. Under Deendayal Disabled Rehabilitation Scheme, NGOs provide financial aid for various initiatives which provide education, vocational training and rehabilitation for disabled persons.[33]

Furthermore, there are seven national institutes to develop the disabled manpower through education and skill-based training. There are five Composite Rehabilitation Centres, four Regional Rehabilitation Centres and 120 District Disability Rehabilitation Centres imparting rehabilitation services to persons with disabilities. In addition, certain state government institutions are also equipped with the same. Besides, 250 private institutions organise training courses for rehabilitation professionals.[34] The number of these establishments is woefully insufficient to cater to 26,810,557 disabled people in the country, especially when a 22.4% increase in the decadal growth was surveyed.[35]

DISABLED IN THE COURSE OF EMPLOYMENT

In the instances where a gainfully employed person meets with an event that renders him/her disabled to generate income, the social security laws covering the organised sector shall apply. To improve the welfare of workers who lose jobs due to disability, a self-financed publicly provided social disability insurance programme that taxes the workers while in good

[32] 'Department of Disability Affairs signs MoU with NHFDC' (29 April 2013) <http://pib.nic.in/newsite/mbErel.aspx?relid=95289> accessed 1st February 2017

[33] 'Welfare Measures for Persons with Disabilities' (7 August 2013) <http://pib.nic.in/newsite/PrintRelease.aspx?relid=97806> accessed 1st February 2017

[34] 'National Policy for Persons with Disabilities' (2006) <http://www.socialjustice.nic.in/hindi/nppde.php?format=print>accessed 1st February 2017

[35] 'Census of India, 2011, Office of the Registrar General & Census Commissioner' (*Data on Disability*, 2011)<http://www.languageinindia.com/jan2014/disabilityinindia2011data.pdf>accessed 1st February 2017

health and working and pays benefits when a worker becomes disabled and loses his/her job would be greatly beneficial. The Employees' Compensation Act, 1923 covers contingent accidents and bestows liability on the employers to compensate in cases of total or partial disability incurred for a period exceeding three days, by a personal injury in the course of employment. It covers death of a workman and compensates his/her dependants. This is a classic piece of social security legislation, catering to the financial needs of the disabled workman and his/her family when his/her earning capacity has been compromised, thereby not leaving him/her and their family destitute.[36] Section 46(1)(c) of the ESI Act, 1948 provides for periodical payments to an insured person suffering from disablement as a result of employment injury sustained as an employee under the Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations. Section 51(b), as amended, says that subject to the provisions of the ESI Act,'a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payments at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.' If we are to look into the social security laws for the disabled in other countries, the US model could prove to be one which we could adopt or take from in terms of framing policies to reach a larger number of the disabled persons.

THE US MODEL

In the United States, social security for the disabled through the Social Security Administration (SSA) Department falls under two schemes, viz, the Social Security Disability Insurance (SSD) and the Supplemental Security Income (SSI). SSD pays benefits to the disabled person and certain members of the family if the person is 'insured,' meaning that he/she has worked long enough and paid social security taxes. SSI pays benefits based on financial need. A medical report is called for and then on the basis of that, if the person is permanently disabled only then he/she is allowed to get the benefits from the schemes among other requirements.

In case when the person has been disabled for a year or it is such that the disability will result in his/her death, or he/she cannot do the kind of work the person was engaged in

[36]PiyaliSengupta, 'Personal Injury Under Employee's Compensation Act, 1923 – Judicial Interpretation', <http://docs.manupatra.in/newsline/articles/Upload/6807BA7A-13F4-4CB6-9345-BF4D1086DC6B.pdf> accessed 1st February 2017

before the onset of disability, or if the concerned authorities in the department of SSA decide that the person cannot adjust to other work because of his/her condition, then the benefits under the scheme is provided. America does not provide social security cover if the person is temporarily disabled. The SSI provides for monthly payments to people who have low income and few resources. The amount to be fixed for SSI is decided nationwide and is uniform. However, the states may provide for extra payments in addition to the SSI provided by SSA. A majority of the American states have a provision to provide for the extra amount in addition to the SSI.[37] The U.S. model is, thus, a good example and can help India achieve a stronger and better social security system. Schemes such as SSI will provide a source of income to many, who are in dire need of money, especially the disabled population who are unemployed. Of late, there has been the concept of temporary pension which is coming up through a few Organisation for Economic Cooperation and Development (OECD) countries such as the Netherlands, Germany, etc. The disability benefits are lucrative as they come with a permanent beneficiary status. Very few people leave the disability benefits before attaining the statutory pension age and even fewer go back to work. With a view to prevent this, the countries have started providing temporary benefits or time-based disability benefits. The countries have various checks in place such as regulations on benefit duration and retesting of disability benefit entitlements to ensure the success of this policy.[38]

ISSUES IN IMPLEMENTATION

The Report of the Census of India has admitted that there are a few difficulties in defining and measuring disability and, therefore, has used its own definitions of disability. Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual's contextual factors (environmental and personal factors).[39] The reasons for differences will be clear if we explore the definitions individually. The Census of India considers disability as being completely blind or having blurred vision

[37]'List of states which provide don't provide additional amount',<https://www.ssa.gov/ssi/text-benefits-ussi.htm> accessed 1st February 2017

[38]OECD, *Sickness, Disability and Work- Breaking the barriers* (2010) <http://ec.europa.eu/health//sites/health/files/mental_health/eu_compass/reports_studies/disability_synthesis_2010_en.pdf > accessed 1st February 2017

[39]'World Report on Disability', (WHO and World Bank 2011) <http://www.who.int/disabilities/world_report/2011/report.pdf> accessed 1st February 2017

even with the help of spectacles. Impaired vision in only one eye is also treated as visual disability. A person who has not tested but still has blurred vision through spectacles is treated as visually disabled. NSSO, on the other hand, treats a person as visually disabled if the person does not have any perception of light in both the eyes even with spectacles or contact lenses. Night blindness is not considered as a disability. Thus, the NSSO estimate is lesser as compared to the Census estimate; the former has a narrower definition of disability. The lack of a clear-cut definition for the disabled that falls under the various definitions makes it even harder to implement the policies to the fullest. When it comes to the definitions of locomotor disability, there is a clash between the two. The NSSO definition is broader and includes a person who lacks the normal ability associated with his/her own movement or movement of objects from place to place in the category of the disabled. It is not mentioned clearly whether a person with dysfunction of joints due to arthritis is also included and it is possible that such persons are also included in the list. The lack of a single definition has further led to problems relating to the smooth implementation of programmes and even policy making.

Provisions of education of disabled children, preventive care such as the universal coverage of polio vaccinations and the improvement of pre-natal care are areas where the disability policy has tried to cover in order to cater to the disabled children in India. Howsoever useful the policies are on paper, the implementation of the same has been unsatisfactory as there is no sign of reduction in disability incidence rates over the years.

According to a recent survey,[40] there are 17.53 million persons in India who have physical or sensory disabilities, which include visual, speech and hearing, and locomotor disabilities. This comes up to 1.45% of the total population of the country. Because of the prevalence of general unemployment and rampant under-employment in times of unemployment and economic distress, disabled persons are usually the last to be hired and first to be laid off. The actual number of disabled workers employed in either regular or special establishment is far below the number of employable disabled workers.[41]

[40]'Supra note 35

[41]Usha Bhatt, *The Physically Handicapped in Indi*a (Popular Book Depot, 2nd edn, 1963).

There is a lack of job-oriented training facilities. The present system of technical training gives them limited experience in handling the jobs. The curriculum is structured in a pragmatic manner and it gives the trainees some sense of workshop discipline. More often than not it is found that when the trainee goes to the company, the work done there is far from what is imparted through training. Over and top of that it can be seen that other factors such as inaccessible transportation and public buildings are not favourable towards the disabled. Most of the disabled live in rural areas and employment opportunities are scattered in urban areas. This puts the disabled in a situation where they will have to stay in the city or commute by public transport if the distance is not too much. If both housing and transport create a huge issue considering both being acute problems in India, the disabled find it difficult to continue the job for a long time. The environmental conditions in the working place are also not suitable for them. Sanitation, stair-case, ramps, canteens and recreation rooms are not made to suit the special needs of the disabled workers as of now. Another issue is that there is limited education and training facilities even today. Majority of the disabled are illiterate, confined to their homes, totally dependent on their families or special homes, once again dependent on the often- delayed grants-in-aid to be released by the government or the philanthropic gestures of a few, otherwise they must resort to begging.

The Department of Disability Affairs has mentioned on the issue of inadequacy of trained professionals as: “The number of persons trained by the National Institute is inadequate for the disabled population of the country. There is a wide gap between the number of trained professionals and the number of beneficiaries. There is a need to increase the number of trained professionals in all the National Institutes in order to meet the requirement of all disabled persons.”

Most disabled persons are capable of being trained to work of one kind or another. Absence of identification services; lack of special medical boards for the purpose of issuing certificates as regards the disability and their capacity to perform particular duties; inadequate number of Vocational Rehabilitation Centres and Special Employment Exchanges; lack of training of employment officers; lack of an implementing machinery; apathy of the

government officials; and near non-existence of social security benefits are also components of the vicious cycle becoming an a obstacle to the employment policy and process.

CONCLUSION

The legislative framework in India gives an illusion that strong provisions exist to protect the disabled with regard to the provision of social security; however, most of the laws are toothless without effective implementation. The inconvenient delay in passing an Act of great importance such as the Rights of Persons with Disabilities Act, 2016 shows the callous attitude of the government towards the disabled community. Tall promises to make upcoming infrastructure disabled friendly alone would not solve the difficulties faced by the community. There must be an effective mechanism to assess the needs and problems of the community as opposed to relying on a census taken once in ten years being used as the basis to formulate policies. In comparison to social security models present in developed countries such as the US, we can conclude that there are various aspects which are pertinent to enhance social security support like taking into consideration the duration or permanency of the disability, insurance and making the laws uniform while making decisions and policies regarding social security. This would ensure the creation of an inclusive society for the disabled community, while allowing the state to optimally utilise its funds. It is further concluded that greater sensitisation and prompt improvement in environmental and infrastructural facilities will most certainly boost the quality of life of the disabled community which is the ultimate aim of any good social security law.

SUGGESTIONS AND RECOMMENDATIONS

1. More effective large-scale non-contributory social security schemes providing higher amount of assistance should be introduced. For instance, under IGNDPS, 300 Rupees per month for an 80% disabled person is grossly insufficient. Reduction of the disability level from 80% to 40% is recommended while doubling the pension

amount, especially for those with severe or multiple disabilities. This will help to reach an additional 22 lakh disabled persons at an additional outlay Rs.1156 crore.[42]

2. The coverage of pension schemes, which use the BPL method for identifying beneficiaries by including non-BPL individuals based on their annual income or by using a simple exclusion criterion to exclude individuals with government jobs or those owning more than a certain amount of land, should be expanded.[43]
3. To ensure better planning and implementation, schemes should be reviewed on a regular basis. Constant review of the schemes and publishing of reports along with statistics of the beneficiaries will help evaluation and up-gradation of the policies.[44]
4. More stringent penalties should be in place for violating the rights of the disabled women, children and aged who cannot defend themselves, thus, serving as a deterrent against social exclusion and exploitation. [45]
5. Creation of programmes for old-age and survivor benefits in the case of the disabled who cannot be employed or the disabled person who are not employed even after crossing the employable age. Currently, there are no programmes for the disabled, dependent and aged widows except the meagre assistance given by the state governments in the form of pension or otherwise. Enhancing this sum and creating a policy inclusive of these stakeholders would be beneficial.[46]
6. Pro-active identification of beneficiaries with no demand for documentary proof from the applicant is recommended. The Indian Disabled Persons Organisations has emphasised that people with disabilities often do not have the disability certificate they need in order to receive the benefits from the government (National Disability Network, 2011, p. 4).[47] In the case of disability, the government should reach out and make special arrangements for the issuance of disability certificates. Priority should be accorded to SC, ST and minority households fulfilling the eligibility criteria.[48] Pro-active identification will help to overcome problems arising out of the BPL method since in most states, there is no record maintained at the Panchayat or Municipal ward level containing the list of eligible persons entitled to social security

[42] Supra note 20
[43] Supra note 9
[44] Supra note 8
[45] Supra note 22
[46] Supra note 20
[47] Brigitte Rohwerder, 'Disability inclusion in social protection' (GSDRC, 2014) <http://www.academia.edu/5953277/Disability_inclusion_in_social_protection> accessed1st February 2017
[48] Supra Note 35

benefits. It is suggested that the money to be distributed through the schemes should be done through the last administrative unit so that it reaches people effectively.[49]

7. It is recommended that social protection floors and social protection systems that include people with disabilities on an equal basis with others needs to be promoted, by taking their specific requirements into account in defining benefits including schemes or programmes that guarantee income security, social health protection and other mechanisms to ensure universal health coverage, as well as schemes and programmes that facilitate their participation in employment.[50]

NEED FOR UNIVERSALISATION

1. Contributory schemes may burden the exchequer to a lesser extent but they have high maintenance costs and lack in terms of coverage. Further, awareness of these initiatives is also important. In India, proper attention is not paid to disseminate information, spread financial literacy and communicate different aspects of schemes to the public. Therefore, people living in remote areas are largely neglected. A lack of a clear idea about all the aspects of a scheme due to deficient financial literacy can hamper its successful coverage, as people would hesitate to spend their time, money and energy if they do not have proper knowledge of its supposed benefits.[51] It is unfortunate that more than 90% of the households with a disabled member have not heard of the PWD Act in the rural areas of the states of Tamil Nadu and Uttar Pradesh in India.[52]
2. Universalisation of assistive measures and disability law in terms of citizenship, residence, age, etc., and making them tax-financed would make implementation of social assistance more efficient and would ensure that equal benefits are received by the disabled population of different states, like that in welfare-oriented countries.[53]

[49]Supra Note 35

[50] 'Social Security for All: Building social protection floors and comprehensive social security systems. The strategy of the International Labour Organization' (ILO, 2012) <http://www.socialsecurityextension.org/gimi/gess/RessFileDownload.do?ressourceId=34188> accessed 1st February 2017

[51]Charan Singh, Dr. AynenduSanyal, Dr KanchanBharati,, *Social Security Schemes: A case for Universalization* (December 2015, IIMB-WP N0. 498) <https://www.iimb.ernet.in/research/sites/default/files/WP%20No.%20498.pdf> accessed 1st February 2017

[52]Supra note 24

[53]Supra note 35

3. As Contributory schemes are known to lack coverage and lack inclusivity of persons who are unable to contribute but are in dire need of the benefits, it is suggested that through the process of universalisation, this issue can be effectively tackled. This will also enhance economic growth and help eradicate poverty.
4. An umbrella legislation encompassing provisions for eligibility to avail medical care, transportation, assistive devices, etc., using statistically supported data, mentioning the tax exemptions, unemployment allowance and the comprehensive social security scheme for the disabled people would make its outreach and implementation more effective. Currently this burden is placed on the individual states, and there is an absence of equivalent initiative from all the states.[54] It is observed that different states have different amounts dispensed for assistance, which affects the disabled person's right to equal treatment. The formulation of disability pension and unemployment allowance schemes, are not universal in all states, to the extent that only one of the two schemes are available.[55]

[54]Supra note 34
[55]Supra note 8

UNIVERSALISATION OF SOCIAL SECURITY IN INDIA - COMBINING THE EXISTING AND FUTURE SCHEMES

Seemant Garg* & Himanshi Aggarwal**

ABSTRACT

India is a welfare state and social security is the medium through which it tries to realise this goal. Social Security is the security which the society provides to its members in the form of societal obligations. The word 'society' should not be taken in a literal sense but should connote the idea of a government which represents the society. The Directive Principles of State Policy (DPSP) under the Constitution of India narrates the duties of the Government to provide sufficient means to all classes of people for their proper sustenance and growth. Its basic aim is to assess and rectify the economic, social and cultural problems faced by the citizens of the country. However, due to ineffective means to engulf the major population of the working poor, social security has become a major challenge for our government. Several schemes target the whole population in the same field but due to difference in their time of launch and because of the politics involved, their implementation is severely affected. To exemplify, Indira Gandhi Matritva Sahyog Yojna (2010) and Janani Suraksha Yojna (2005) are two Central schemes which deal with mother care, target a common population and provide cash incentives to mothers for the proper birth of their children and, therefore, they require a 'Horizontal Coalescence.' Coalescence is generally used as a scientific term which denotes "the coming together of different masses to unite into one and simultaneously grow together for a common end". Schemes having common or similar goals and target the same population need to be fused together. Another is 'Vertical Coalescence' under which the schemes, which aim to achieve the common ends but were launched severally for different classes of the population, need to be fused into a common scheme. A social security scheme with a statutory backing like MGNREGA would be the best possible step not only towards universalisation but also towards eradicating various differences in the society that lead to disharmony. This paper aims to explore ways for eradicating multiplicity of ongoing similar schemes and focusing attention on the practical use of Vertical and Horizontal Coalescence, which will provide undivided focus for the implementation of a universal scheme.

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Introduction

That India is a welfare state is indicated in various provisions of the Constitution of India, including Part IV of the Constitution. In conjunction with the mandates of a welfare state, several schemes are launched by governments (Centre and state) to combat the various economic, social, cultural differences in the Indian society. But their lack of reach to each and every citizen limits their application. A cure to this anomaly is the universal application or universalisation of the schemes. The term 'universalisation' means a universal coverage of the target. For the purposes of social security, it refers to the reach of the government schemes to each and every person who is a beneficiary under that respective scheme(s).

Social security does not have an exclusive definition. It varies across different cultures and traditions and across different economies all over the world. As the Indian society differs from those of American and European countries, so is the definition of social security. Social security, in reference to India, can be defined as the security provided to the members of a society against the possible social atrocities which may plague their lives and to further the constitutional objective of India as a welfare state in the economic, cultural and social sense. It is quite possible that the interpretation and application of social security differ across the Indian states.

Society cannot act on its own; it needs some representatives to carry out such obligations. Therefore, it places an irrevocable duty on the part of those representatives to take care of the social needs of the people. Art. 22 of the Universal Declaration of Human Rights embraces the term 'social security' stating:

"Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

Social security touches upon the casket of human rights, and it is the duty of those chosen or elected representatives to protect such rights. Since the Government of India is a democratically elected government, and a chosen representative of the people of India, the burden of protecting its people lies with the government.

The Prevalence of Social Security Schemes in India

An elected government has an obligation to look after the needs of the people and to fill in the gaps that are created over time due to rapid changes in the society. To fulfil the obligation, the Government of India has crafted several schemes since our independence. Directive Principles of State Policy (DPSP) under Part IV of the Constitution of India narrates all the duties which are imperative for the government to be carried out in the interest of the state. Art. 38 of the Constitution of India creates an obligation on the state to promote welfare of the country and aims at eliminating social inequalities from the society. However, these are not enforceable before the courts[1] and, therefore, results in a tardy implementation of the schemes.

Due to an ever-increasing population, the Indian society is unable to provide basic amenities such as employment, shelter, food, etc., to the people in need, especially the ones who live Below Poverty Line (BPL). Huge differences in the allocation of resources amount to these everlasting economic disparities in the society. To curb and rectify these anomalies and to enable the people to participate in the affairs of this democratic country, it becomes imperative on the part of the government to promulgate special schemes for the common people especially targeting the lower strata of the population. Time and again, several schemes have seen the light of the day but were unable to keep up with the growing needs of the population. Either those schemes were sacked or ran with low-level monitoring. The major hindrance can be accounted to the electoral politics that takes place within the democratic framework of India. Due to the absence of statutory backing over the social security schemes, political parties and their governments with totally different ideologies come and go and so do their schemes. Subsequent governments do not focus on the schemes of the past governments and fail to monitor them. The new government promulgates its new schemes so as to gain confidence of the electorate while practically burying the older schemes.

Nonetheless, the major problem with the schemes is their coverage in application over the target population. Due to the increasing multiplicity of schemes resulting from multiple

[1] Constitution of India 1950, Art. 37.

governments, the focus on the schemes is continuously divided. Increase in manpower is not in proportion with the increase in the number of schemes. The idea of universalisation is still miles away as it is nearly impossible to look after more than 100 schemes having quite similar objectives. This amounts to most of the population being overlooked from any social security benefits. The only people who receive some benefits are those who are either quite aware of the schemes or who live in the area where the schemes have their reach. To exemplify, in the year 2015 Justice T. S. Thakur pointed out that the unorganised sector comprises more than 90% of the total workforce in India who are still deprived of the benefits of social security which further makes them more vulnerable to old-age, disability, untimely death, etc.[2] This calls for some serious attention towards the coverage of these schemes. In a broader sense, fusing the existing schemes by carrying out Horizontal and Vertical Coalescences on them will decrease the multiplicity of schemes and subsequently place focus on a few schemes.

Horizontal Coalescence

In 2005, a scheme named Janani Suraksha Yojana (JSY) was launched by the Ministry of Health under the National Rural Health Mission. It focused on providing cash incentives to mothers for safe deliveries of their child and post-delivery care. The essence of this scheme lies mainly in the case of institutional deliveries, i.e., in hospitals, medical homes, etc. It spreads awareness in regard to the importance of institutional deliveries so as to maintain the safety of the mother and the to-be-born child. In Low Performing States (states where institutional deliveries were 25% and below), the cash incentive is for the whole women population while in the High Performing States (institutional deliveries above 25%), cash incentive is only for the BPL/SC/ST population.[3] However, results of the scheme are not impressive. The Maternal Mortality Ratio and Infant Mortality Ratio are still on the higher side as per the RSOC data 2013-14.[4] *One reason for this could be that the Accredited Social Health Activists*[5] or ASHAs were not working up to the mark due to the cost of travel,

[2] '90% Indian workforce in unorganised sector deprived of welfare schemes, says, Justice T S Thakur' *Indian Express (*Chandigarh, 12 April 2015*)*.

[3] Background of Janani Suraksha Yojna, *National Health Mission* <http://nrhm.gov.in/nrhm-components/rmnch-a/maternal-health/janani-suraksha-yojana/background.html> accessed 13th March, 2016.

[4] Rapid Survey on Children (RSOC) 2013-14, *Ministry of Women and Child Development* <http://wcd.nic.in/acts/rapid-survey-children-rsoc-2013-14>

[5] ASHAs are trained female community health workers, instituted by the Ministry of Health and Welfare in respect of the National Rural Health Mission. They are selected from the villages and are accountable to it. Also,

locating the mother, etc.[6] Practically speaking, ASHAs have many other schemes to attend to and, therefore, lack of time and multiplicity of schemes limit their capabilities and coverage.

In 2010, Indira Gandhi Matritva Sahyog Yojana (IGMSY) was launched by the Ministry of Women and Child Development (MoWCD). Its prime focus is to provide conditional cash incentives (to compensate for wage loss) to pregnant and lactating women for their first two live births, while having a condition that her husband is not a government employee.[7] A cash incentive of Rs 4000 is paid in three instalments ensuring proper care for the pregnant women before and after birth.[8] However, between 2010 and 2013, only 28% of the target population was covered under this scheme.[9] Many of the beneficiaries were misinformed or uninformed about the contents of the scheme and, therefore, were unable to fully realise its benefits. Its complementary working with the National Food Security Act (NFSA), 2013 is required so as to preserve the health of the children and the women. Delays in implementing NFSA are certainly going to affect IGMSY. Therefore, it becomes imperative to create a bridge between the two for a synchronised working.[10]

While analysing the above two schemes, an inference can be drawn out which depicts similarity between the two schemes. First, both the schemes have the same goal - to provide mother care. Second, the target population for both the schemes are pregnant women without any discrimination except on an economic basis. The objective of both the schemes is to ensure the well-being of the mother and her new-born child by providing cash incentives. It is quite certain that a huge amount of tax payers money is spent on these two schemes as one woman can avail benefits under the two schemes. Human resources are at the disposal for the implementation of both the schemes separately. Huge expenditures of this kind have to come under scrutiny and, hence, should be managed through planned effort. To prevent such

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they act as an interface between the public health system and the community. <http://nrhm.gov.in/communitisation/asha/about-asha.html>

[6] Ragini Bhuyan, The limited success of Janani Suraksha Yojana, *Live Mint* (16th Sep 2015).

[7] Government of India, Ministry of Women and Child Development (8 November, 2011) <http://wcd.nic.in/sites/default/files/IGMSYscheme.pdf> accessed 14th March, 2016.

[8] Indira Gandhi Matritva Sahyog Yojna, *Press Information Bureau* (16 December 2013) <http://pib.nic.in/newsite/PrintRelease.aspx?relid=101782> accessed 14th March, 2016.

[9] Vanita Leah Falco & Jasmeet Khanuja, India's unrealized Maternity Entitlement, *The Hindu* (30th March, 2015).

[10] Ibid.

circumstances, it is imperative on the part of the government to fuse these schemes together to form a uniform scheme. *As these two schemes target the same population and have a common goal, they should undergo 'Horizontal Coalescence' to fuse into one uniform scheme.* With the advent of a new scheme, it would be much easier for the government to launch and implement it. The workforce of both the schemes could work together and share their experiences which would further extend its reach. The amount of money spent on both of them would drastically reduce without altering the amount of cash incentives provided to the women.

Horizontal Coalescence means the fusion of two schemes, which have common or similar goals and target the same population, into a common scheme which would have both of its characteristics. Basically, the schemes should lie on the same platter, i.e., horizontally so as to make them undergo Horizontal Coalescence. This concept has been in realised in practice a few times. Before 1997, three different schemes existed - Nehru Rozgar Yojana, Urban Basic Services for the Poor and Prime Minister's Integrated Urban Poverty Eradication Programme.[11] All the three had the same target population and objectives. Therefore, a need for a merger arose and Horizontal Coalescence was carried out on them resulting in a new scheme in 1997, the Swarna Jayanti Shahari Rozgar Yojana (SJSRY), which subsumed the objectives and working of all these three schemes. Therefore, it becomes imperative for the government to create such uniform schemes to increase their coverage.

Vertical Coalescence: Trans-ministry cooperation

Schemes with the same goal and similar target population have been an easy practice but those with different target population have never seen the light of fusion or merger. This lack of fusion calls for a method to coalesce such schemes. In 2011, Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (Sabla) was launched by the MoWCD, aiming at providing nutrition and supplements, health checkups and education, integrating life skills

[11] Master Circular – Swarna Jayanti Shahari Rozgar Yojana (SJSRY) *Reserve Bank of India* (1st July, 2013) <https://www.rbi.org.in/commonman/English/Scripts/Notification.aspx?Id=1240> accessed 14th March, 2016.

and education, providing vocational training, etc., to girls of age 11-18 years in India.[12] In 2014, a corresponding scheme was launched for boys namely Rajiv Gandhi Scheme for Empowerment of Adolescent Boys (Saksham). This scheme was meant to support the Sabla scheme by way of grooming boys of 11-18 years of age, by inculcating moral values in them and making them gender-sensitive so that they might realise the importance of females and develop a sense of respect towards them.[13] *Sabla could be supported by Saksham but they being two different schemes, there was a lack of synchronisation that eventually limited the reach of the latter.* These schemes may have different goals and target population, but the objective of Saksham is complementary to the implementation of Sabla. Some elements of Sabla such as skill development, education, etc., could be implemented for boys also. Therefore, a Vertical Coalescence is necessary to fuse these two schemes into a common scheme for both boys and girls and to simultaneously maintain the autonomy of the objectives of both the schemes.

Vertical Coalescence is the counterpart of Horizontal Coalescence in the sense that in the horizontal one, there is fusion of the schemes, which have common or similar goals and objectives and target the same population, whereas in the vertical one, the schemes must have similar goals but target different parts of the population. It is termed as 'Vertical' because the target population is differentiated on the basis of gender, race, caste, residence, etc. However, *the underlying objective of Vertical Coalescence is not only to merge the schemes but also to promote cooperation and connection between different ministries of the government.*

Another example can be of employment schemes. In 1997, SJSRY was launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA). The objective of the scheme is to bring the urban unemployed and underemployed people of the BPL category under the umbrella of self-employment or wage employment schemes amounting to

[12] Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG): Ministry of Women and Child Development, *india.gov.in Archive* (19th October 2012) <http://www.archive.india.gov.in/govt/viewscheme.php?schemeid=2191> accessed 15th March, 2016.

[13] Saksham Yojna Launched by Indian Government to Aim at the Well-being of Adolescent Boys, *Indian Yojana* <http://www.indianyojana.com/articles/saksham-yojana-launched-by-indian-government-to-aim-at-the-wellbeing-of-adolescent-boys.htm> accessed 15th March, 2016.

profitable jobs.[14] In 1999, Swarna Jayanti Gram Swarozgar Yojana (SJGSY) was launched by the Ministry of Rural Development (MoRD).[15] The objective of this scheme is to uplift the economic condition of the poor families in the rural areas by organising them into Self-Help Groups through training, skill development and social mobilisation.[16] In 2005, another scheme for rural employment was launched by MoRD, namely, Mahatma Gandhi National Rural Employment Act (MGNREGA). MGNREGA has been a flagship scheme as its initial coverage enveloped 200 rural districts. Its prime objective is to provide 100 days of guaranteed wage employment in a financial year to every rural household, where the household members volunteer to do unskilled manual work.[17]

In regard to their objectives, they are all in one column – providing employment opportunities to the unemployed and underemployed BPL population. But the crucial difference arises in their area of implementation, i.e., the target population. In SJSRY, the target population is that of urban area while in SJGSY and MGNREGA, it is that of rural area. Further, in between SJGSY and MGNREGA, the difference lies in their working; while providing training and skills to enable them to set up their own employment is the aim of the former one, providing direct employment of 100 days in a year is the aim of the latter one. The common aspect to all three schemes is to uplift the economic conditions of the unemployed and underemployed BPL people in both urban and rural areas. However, *the major problem in their Vertical Coalescence lies in their launch* – SJSRY was launched by MoHUPA while SJGSY & MGNREGA were launched by MoRD. This simply accounts to the difference in their respective Ministries. *For Vertical Coalescence to achieve its full potential, a unique 'Trans-ministry Co-operation Mechanism in which such kinds of schemes could be united and headed by a panel comprising people from both the ministries should be developed.* The concerned panel can have some democratic elements including elections for the head of the panel and its core members, etc. This would not just increase the undivided focus on a united scheme but will *lead to many innovative ideas in implementing the current*

[14] Swarna Jayanti Shahari Rozgar Yojana, *Indian Yojana* <http://www.indianyojana.com/rojgar-yojana/swarna-jayanti-shahari-rozgar-yojana.htm> accessed 14th March, 2016.
[15] Swarna Jayanto Gram Swarozgar Yojana, *india.gov.in Archive* (18th February 2016) <http://www.archive.india.gov.in/sectors/rural/index.php?id=15> accessed 14th March, 2016.
[16] Guidelines by Government of India, *SwarnaJayanti Gram Swarozgar Yojana* (23rd August 2011) <http://rural.nic.in/sites/downloads/programmes-schemes/prog-schemes-sgsy.pdf> accessed 14th March, 2016.
[17] Mihir Shah, Neelaskhi Mann and Varad Pande , Ministry of Rural Development, Government of India, MGNREGA Sameeksha, *An Anthology of Research Studies on the Mahatma Gandhi National Rural Employment Guarantee Act* 2005, 2006-12 (Orient BlackSwan 2012).

schemes and launching 'Trans-*ministry Schemes'* in the future. The principle of social security would face a new dimension of thought with a successful interaction between different ministries under a common government.

Multi-coalescence

With schematic tools such as Horizontal and Vertical Coalescence, the force of the schemes can increase multi-fold but for the universalisation of the social security schemes, it is essential to carry out 'Multi-coalescence' over the schemes of similar goals. As the name suggests, Multi-coalescence means two or more coalescences on the schemes so as to come out with a uniform scheme with resembling objectives. It can be done by targeting schemes in a particular area and analysing those schemes first, which have common or similar goals and target population. The next step would be the collection of these schemes over which Horizontal Coalescence is to be carried out. After each and every section of the population has been enveloped into a few new united schemes, further step would entail schemes with similar goals but different target population which are to be brought together to form another new scheme through Vertical Coalescence. Now with these final schemes in hand, a common scheme would emerge by fusing these two new schemes together. This process can be termed as Multi-coalescence.

This can be easily illustrated with an example of the schemes of Urban and Rural Housing and Development. After analysing all the schemes of Urban and Rural Housing based on different sections of the population, they can be put into two groups:

1. Urban Housing –
   - In 2013, Rajiv Awas Yojana (RAY) was launched by MoHUPA with the aim to make India slum-free. It provides housing to slum dwellers, assesses the reasons behind the creation of slums and tries to find measures to eradicate them.[18]
   - Pradhan Mantri Awas Yojana (PMAY) was launched in 2015, by the Ministry of Urban Development (MoUD). Its basic aim was to provide affordable housing at

[18] Rajiv Awas Yojna, Ministry of Housing and Urban Poverty Alleviation, Government of India <http://mhupa.gov.in/User_Panel/UserView.aspx?TypeID=1282> accessed 15th March, 2016.

subsidised rates to people who are in economically weak, especially the Low Income Group (LIG) and the Economically Weaker Section (EWS).[19]

2. Rural Housing -
    - In 1985, Indira Awas Yojana was launched by MoRD. The Scheme provides financial assistance to BPL category people, and to widows of defence personnel/paramilitary forces killed in action residing in rural areas for building their own houses.[20]

After categorising these schemes, it is essential to analyse them group-wise. Group I deals with housing schemes in rural and urban areas. Both RAY and PMAY are housing schemes with the objective of providing housing to economically weak people in the urban areas. Horizontal Coalescence can be carried out on them as their target population is also similar (the slum people also come in EWS and LIG). Group II has only one scheme so it can be left at this point. If we take a look over them through the lens of development, the newly formed scheme from Group I and the scheme from Group II aim at reaching out to the economically challenged sections of the society. Vertical Coalescence is now the next step over Group I and II. This fusion is necessary so as to include all urban and rural housing under a common scheme which decreases the workload and it would be easy to focus on one scheme. Sub-divisions of such scheme could be created to effectively manage the implementation of the united scheme. *Multi-coalescence over them will create a new united and harmonious scheme to look after urban and rural housing*. It would only be possible through trans-ministry co-operation between MoUD, MoRD and MoHUPA. Ministries working separately on different sections of people but with a common objective should hold meetings to solve out differences and carry out Multi-coalescences to come out with just one scheme for a particular section of the population. This would boost up its implementation multi-fold.

[19] Pradhan Mantri Awas Yojana – Housing for All Scheme, *Pradhan Mantri Yojana* (25 September 2015) <http://www.pradhanmantriyojana.in/pradhan-mantri-awas-yojana-housing-for-all-scheme/> accessed 15th March, 2016.

[20] Guidelines for Indira Awas Yojana, *Ministry of Rural Development, Government of India* (31st May 2010) <http://rural.nic.in/sites/downloads/programmes-schemes/prog-schemes-ruralhousing-iaygd2.pdf> accessed 15th March, 2016.

A step towards Universalisation in all aspects

Universalisation of social security has been a major challenge for the Government of India. Due to several economic, social and cultural barriers circling around the Indian society, universalisation demands immediate response. For better and effective implementation, *Coalescence can be considered a good legal weapon*, however, solely relying on it would not be too much a rational decision. Stopping at Coalescence would mean hanging in the middle of a long-term process. The schemes need a firm legal backup for sustenance and wide coverage. On the issue of a legal backing, the laws of India fall a little short as the schemes are launched under policy matters and if they were to be launched with such a backup, it would bind the states to fulfil their duties. Presently, under Part IV of the Constitution of India, Directive Principles of State Policy (DPSP) are mentioned which narrate the duties of the state towards its citizens. In *Olga Tellis v Bombay Municipal Corporation*,[21] the Supreme Court recognised the need for the right to work. Though, it was part of the DPSP under Art. 41, it was also a facet of Art. 21 and, therefore, could be enforced. In cases of *Bandhua Mukti Morcha v Union of India*,[22] *Municipal Corporation of Delhi v Female Workers*,[23] *Peoples Union for Democratic Rights v Union of India*,[24] *Unni Krishnan v State of Andhra Pradesh*,[25] the Apex Court has time and again tried to promote the cause of social security by directing the state to carry out those duties which are necessary for the enforcement of the fundamental rights of the Indian citizens.

However, because of the non-binding nature of DPSP over the state, the citizens have been unable to make the state realise its duties. But the moment these duties are incorporated into an Act of Parliament, it becomes a law. The Concurrent List under the Constitution of India envelops Social Security under Entry 23 and bestows powers both to the Central and the State Governments to legislate on it. Therefore, after the fusion of the schemes, the new scheme should be backed by a legislation of the Parliament of India. From the existing social security legislations, it can be inferred that the schemes which had the statutory backing have shown a wider coverage area and could be implemented with a proper procedure. The whole mapping of the scheme would be provided by its respective legislation. Legislation such as

[21] (1993) 3 SC 180.
[22] 1984 (3) SCC 161.
[23] AIR 2000 SC 1274.
[24] (1982) 3 SCC 235.
[25] 1993 SCR (1) 594.

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 Minimum Wages Act, 1948 and the Mahatma Gandhi National Rural Employment Scheme Act 2005, have contributed in the protection of people from social problems such as unemployment, insurance, etc.

Another advantage with the social security legislation is that *non-compliance of the statutes raises a cause of action before the courts*. As it is the obligation of the state to provide security to its citizens against social dangers, it becomes imperative on the part of the citizens to demand the performance of such duties under the garb of fundamental rights. In the words of K. Ramaswamy, J., *"The right to social and economic justice is thus a fundamental right*."[26] For a better interpretation of legislation for social security, the fundamental rights have been appraised as the tools or weapons which the courts have used continuously.[27]

A step towards universalisation has been taken by the government by enacting the Unorganised Workers' Social Security Act, 2008. As the unorganised/informal sector is still out of the reach of social security schemes, this Act exclusively tries to provide life and disability insurance cover, health and maternity benefits, old-age protection, etc. It also establishes the National and State Social Security Boards which will further look after the implementation of the schemes in the unorganised sector.[28]

In 2015, the National Democratic Alliance (NDA) government launched two schemes – Pradhan Mantri Suraksha Bima Yojana and Pradhan Mantri Jeevan Bima Yojana. The former provides for accidental insurance for a year (renewable every year) for death/disability

[26] Opined in the case of C.E.S.C. Ltd. & Others v. Subhash Chandra Bose & Others, AIR 1992 SC 573 (para 30).
[27] See LIC India v. Insure Policy Plus Services Pvt. Ltd. & Others, (2016) 2 SCC 507; Koluthra Exports Ltd. V. State of Kerala & Others, AIR 2002 SC 973; C.E.S.C. Ltd. & Others v. Subhash Chandra Bose & Others, AIR 1992 SC 573.
[28] The Unorganized Workers' Social Security Act, 2008, Sec. 5 & 6.

at Rs 12 per annum for all savings bank account holders of age 18-70[29] while the latter provides for insurance for a year (renewable every year) for death at Rs 330 per annum of age 18-59 through their savings bank accounts.[30] The maximum amount that can be received under both the schemes will be Rs 2 lakh for death and Rs 1 lakh for disability in the former, as the latter does not provide for a disability cover.

The two insurance schemes look quite promising but if we trace the roots and take our memories a few years back, we can observe that there were two watermark insurance schemes launched in the regime of the United Progressive Alliance government. In 2008, Rashtriya Swasthya Bima Yojana (RSBY) was launched so as to provide a health cover of Rs 30,000 per annum, to BPL families.[31] The beneficiary under RSBY has to pay Rs 30 per annum only. In West Bengal, 11017179 were the total number of beneficiary families identified, out of which 6110765 have been enrolled under this scheme till date.[32] Another scheme named Aam Aadmi Bima Yojana (AABY) was launched in 2007. It covered all rural landless households while providing life insurance to the earning member or the head of the family. The life cover provided Rs 30000 on natural death, Rs 75000 for accidental death/permanent total disability and Rs 37500 for permanent partial disability.[33]

Drawing inference on the basis of these two watermark schemes, the two schemes of the NDA government have been more or less a literal copy of the earlier ones. *A horizontal coalescence could have been carried out on RSBY and AABY to form a common health insurance scheme.* Further, the new government which assumed power in May 2014 should have worked to rejuvenate the earlier schemes, and should not have launched new schemes masquerading the old objectives.

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[29] Rules for the Pradhan Mantri Suraksha Bima Yojana <http://www.indiapost.gov.in/pdf/Jansuraksha%20Scheme/Rules%20PMSBY.pdf> accessed 16th March, 2016.
[30] Rules for the Pradhan Mantri Jeevan Jyoti Bima Yojana <http://www.indiapost.gov.in/pdf/Jansuraksha%20Scheme/Rules%20PMJJBY.pdf> accessed 16th March, 2016.
[31] Rashtriya Swasthya Bima Yojana <http://www.rsby.gov.in/about_rsby.aspx> accessed 16th March, 2016.
[32] Rashtriya Swasthya Bima Yojana, *Enrollment for Beneficiaries* <http://www.rsby.gov.in/overview.aspx> accessed 16th March, 2016.
[33] Aam Aadmi Bima Yojana, *Department of Financial services, Ministry of Finance, Government of India* <http://financialservices.gov.in/insurance/gssois/aaby.asp> accessed 16th March, 2016.

Furthermore, for an effective universalisation, the social security schemes should be in line with each other. *A Social Security Card (with a unique number) should be issued to every Indian citizen*. Afterwards, the government should upload the beneficiaries of those schemes on their website and set up Distribution Authorities in every district so as to effectively monitor the benefits accorded to people. *A high-level monitoring scheme would surely curb the shortcomings of the schemes in regard to their reach to each and every person.* Proper advertisements should be prepared with the perfect places to advertise. A proper promulgation of a united scheme would avoid confusion amongst the people about several schemes talking about a common benefit. Furthermore, at the time of launch of a scheme, it should be simultaneous in all the districts of India or villages wherever the scheme is targeting. This creates a limelight over such scheme which easily gets the eyes of the beneficiaries. A simultaneous launch can be timed with the help of the local authorities of the target population. Several social security schemes have failed to cater to the needs of the population. It has been seen that numerous schemes are launched at a time but their multiplicity results in difficulty to sustain it. *"Proper consistency and coverage of a scheme is essential in a country which has a grave history of colonialism and poverty*." Therefore, certain measures have to be taken in order to effectively realise the goals of the scheme.

Conclusion

Social Security is the need of the hour in a country like ours where poverty and unawareness are clutching the lower strata of the population. According to many researchers,[34] social security is just a warehouse of insurance covers related to health, old-age, disability, etc. But it is much more than that. An exclusive interpretation of the term 'social security' would disengage the very foundation of the welfare nature of our state. Social security is bound to have an inclusive definition which would consider each and every socioeconomic danger lingering over Indian citizens. The incoming of the foreign companies strengthening the organised sector is further repelling the LIG and EWS groups of our society. Placing emphasis on all the current government schemes, multiplicity of schemes is dividing our attention and, thus, delaying the benefits to be accrued. Coalescences would

[34] P. M. Rao, A. Suresh Kumar (Assistant Professor, Apollo Engg College, Chennai); Dr, K. Selvi (Associate Professor, School of Management, Vel Tech University, Chennai); Dr. Ayanendu Sanyal (Assistant Professor, Christ University, Bangalore); Dr. Kanchan Bharati Research Associate (Centre for Culture and Development, Vadodara), etc.

provide a smoother way with a lot of focus and workforce to put. Trans-ministry co-operation would be a path to a new era of public welfare.

Most of the social security legislation currently cover only the workers' benefits but there are other areas to touch upon. For example, areas such as urban and rural housing and development, mother care, skill development, etc., need immediate attention. We need not adopt the social security models of western countries as their cultural, social and economic conditions differ from ours. Nonetheless, it will be a good thing to look up to other countries that how they are coping up with their societies. At this time, we need to come up with our own innovative *Social Security Model which would be compatible to the needs of our country.*

SOCIAL SECURITY OF CASUAL WORKERS IN INDIAN RAILWAYS: WHETHER NATIONAL PENSION SCHEME IS THE WAY FORWARD?

Sneha Singh*

ABSTRACT

Indian Railways introduced the Defined Contribution Pension Scheme- National Pension Scheme and mandatorily applied the scheme for its regular employees from the year 2004. But the gigantic structure of Indian Railways requires employment of casual workers who work in different capacities and departments of the Railways for a fixed period of time and on consolidated pay. They are employed through contractors and are not entitled to any kind of social security benefits unlike the regular employees of the Indian Railways. With about four lakh contractual workers, involved and working at different tiers, Indian Railways is the largest employer of such kind in the nation. This paper will analyse whether the National Pension Scheme, as a generic pension scheme, can be extended to the contractual workers or casual labourers working for the Indian Railways. In the first part of the paper, the employment scenario in Indian Railways is assessed as to the nature of appointment and then in the subsequent part the nature of benefits ensuring social security enjoyed by the regular employees in comparison to the casual/contractual employees is elaborated upon. The features of the National Pension Scheme is laid down to understand the generic features of the social security attribute which can be made available to the casual/ contractual employees in an already complex mechanism. The paper concludes by suggesting ways of implementation of the National Pension Scheme by the Indian Railways without a burden on the coffers of the employers and making the process transparent with least interference of the contractors.

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1. INTRODUCTION

Casualisation is a phenomenon and the employment of casual labour increases relatively with the size of the enterprise. The bigger the enterprise the higher is the number of intake of casual labourers. With the expansion of Indian Railways as the transporter of the nation and with the gigantic increase in its infrastructure, the intake of casual labourers has also increased. Work and responsibilities are frequently outsourced and through independent contractors the influx of casual labourers has increased. But these casual labourers, often lured by the contractors with the promise of a job in Railways, are not treated equally to the regular employees. There are many parameters of difference and inequality but the absence of social security through retirement benefits is obvious and unique.

This paper studies and examines this nature of employment in Indian Railways and the scope of the newly introduced National Pension Scheme, which was mandatorily applied to the employees appointed in Railways on or after 01.01.2004 so as to assess whether it can be a generic pension scheme which can be made applicable to the casual labourers in Indian Railways without burdening the department while securing the retirement of such labourers.

2. EMPLOYMENT IN INDIAN RAILWAYS

Indian Railways has over the years gained enormous strength and size both in terms of infrastructure and as a service provider of the nation. The organisation is structured and organised with tiers of employees and this pattern of employment has established an inversely proportional relation between income and the generation of income. Effective labour policies and structural dissemination of responsibilities have generated trust amongst

the employees of the Railways and so has the assurance of a safeguarded future with the pensioner benefits given to the railway employees. With such prospects, Indian Railways has the capacity of generating more and more employment and contributing a higher percentage to the GDP of the nation.[1] The transporter of the nation employs maximum percentage of the population and has the record of ensuring optimum social security benefits — housing, medical benefits, education and pension. Railways pension scheme has always been honoured and has encouraged many other government departments to take a cue. However, there is a kind of employment which is under the aegis of the Railways and substantially sized but they receive bare minimum when it comes to social security benefits.

In the Indian Railways, there are about 14 Lakh regular employees and about four Lakh casual workers.[2] Regular employees in this context mean and include all the employees employed in the department of the Central Government through the Railway Recruitment Board or other associated agencies. Some of the employees are also employed by the Union Public Service Commission. Types of work and cadre create a systematically generated demarcation in the employees and '*groups'* are created. Therefore, all the Railway employees are systematically organised and work as per the structure in individual capacity and responsibility towards the employer.

[1] Prof. H. R. Uma and Shruthi B. R., *An Analysis of Indian Railways' Contribution towards Employment Generation*, International Journal of advanced Research in Management and Social Sciences, Available at <http://www.academia.edu/6757990/AN_ANALYSIS_OF_INDIAN_RAILWAYS_CONTRIBUTION_TOWARDS_EMPLOYMENT_GENERATION> Last accessed on 10.04.2016.

[2] Chapter IV- Employee Relations as laid down in the Establishment records of the Indian Railways. Available at<http://www.indianrailways.gov.in/railwayboard/uploads/codesmanual/ADMIN_FINANCE/AdminFinanceCh4_Data.htm> last accessed on 07.04.2016.

Contractual appointments can be of three kinds in the government department- firstly, appointments of routine nature like housekeeping, maintenance, data entry,[3] etc.; secondly, contractual appointments[4] for certain posts wherein certain specific skills are required and, thus, suitable persons are selected upon negotiations for salary; thirdly, the appointments of retired government employees considered useful due to their expertise garnered during their period of service. Though there is no unanimity in such contractual appointments, in the absence of specific legislations, departments under the Central Government has formulated their guidelines and rules to address the issues of informal employment and the rights of the employees and liabilities of the employer accruing thereto.[5] Indian Railways is one of the institutions which has the maximum number of contractual employees.

In Indian Railways, the total strength of contractual workers is around 400,000.[6] Contractual workers/employees refer to those workers/employees who work on a temporary basis in any organisation or institution for a consolidated amount of remuneration.[7] In the context of Indian Railways, these contract workers are usually engaged to clean the trains, platforms and railway tracks and do other odd maintenance jobs. These workers work as per

[3] Such kinds of jobs are usually outsourced to agencies which depute people to do the task. These labourers are controlled by the contractors and at any given time there are numerous contractors working for the Railways.
[4] This was introduced in the Indian Railways by the Sixth Pay Commission.
[5] Bishwanath Goldar and Suresh Chand Aggarwal, *Employment of Casual Workers in Organised Manufacturing in India: Analysis of trends and the Impact of Labour Reforms*, The Indian Journal of Labour Economics, Volume 57, Number 3, July- September, 2014, pp. 283-302
[6] The exact figure of contract workers was not available on the website concerned and this is quoted from the statements of K. N. Sharma, National Vice-president of a national trade union wing in the country. As per Mr. Sharma, this is a conservative figure and the real figure may be higher than mentioned herein. Sindhu Menon, *Railway Workers Bear the Brunt of India's Labour Reforms*, Equal Times dated 20 February, 2015, available at <http://www.equaltimes.org/railwayworkersbearthebruntof?lang=en> last accessed on 10.04.2016. Related Links: <https://data.gov.in/dataset-group-name/labour-and-employment><http://www.indianrailways.gov.in/railwayboard/uploads/codesmanual/ADMIN_FINANCE/AdminFinanceCh4_Data.htm> Last accessed on 10.04.2016.
[7] See http://www.livemint.com/Industry/D2PEAR2RL7eZTX47kjp7UM/Meet-one-of-the-biggest-user-of-temps-and-contract-workers-i.html Last Accessed on 26.01.2017.

the conditions provided for in terms of their contract with the contractors and have no medical allowance or health insurance policies.[8]

The Indian Railway Establishment Manual defines Casual labour as labour whose employment is intermittent, sporadic or extends over short period or continued from one work to another. Labour of this kind is normally recruited from the nearest available source and they are not ordinarily transferable. The conditions applicable to the permanent and temporary staff do not apply to casual labour.[9] Casual labour are usually appointed to either supplement the regular staff in work of seasonal or sporadic nature or execute railway projects such as track renewals, construction of building, maintenance, etc., and are referred as '*Project Casual Labour.*' Their status is often regulated by the terms and conditions decided by the Railway Board.

As per the available statistics,[10] more than 20% of the total number of regular employees are causal workers and they are covered under the Employees Provident Fund (EPF)[11] or the Employees State Insurance (ESI) schemes. In such situations, the Indian Railways is geared up to increase its quotient of outsourcing the jobs to private agencies which would lead to an upsurge in the contractual workers. The dealing between the casual labour and the Railways are pre-negotiated by the contractors and the benefits funnel down to

[8] As per the Railway Labour Tribunal, the period of maximum service for earning temporary status for casual labour employed other than in projects should be fixed at four months.
[9] Indian Railway Establishment Manual, Volume II, Chapter XX Casual Labour, Rule 2001- 2007.
[10] *Supra* N.1
[11] Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the Schemes have contribution from the employer. Employees enjoy social security benefits in the form of unattachable and unwithdrawable financial back up for which the employees and employers contribute equally throughout the period of employment.

these labourers. Their participation is limited and nominal except for the fulfilment of work delegated or allocated.

3. SOCIAL SECURITY BENEFITS IN INDIAN RAILWAYS

a. TO THE REGULAR RAILWAY EMPLOYEES:

Regular railway employees are entitled to many benefits and the social insurance is one of the major highlights of the job luring a large number of youth to the department to seek employment. The Railways has an independent remuneration policy on the lines of the remuneration policy of the Central Government. Salary and other remuneration in the Railways are at par with the Central Government employees and frequently revised as per the recommendations of the respective pay commissions. Bonus[12] and pension are paid based on the cost of living index and calculated on consideration of the economic factors which would affect any '*aam admi.'* The service rule of the employees of the Indian Railways is governed by the Establishment Manual and the rules thereto.[13]

Nevertheless, some other important laws which are applicable to the employees of the Indian Railways and also cover the interest of the casual workers or labourers- The Industrial Disputes Act, 1947,[14] The Workmen's Compensation Act, 1923[15] (now known as the

[12] Indian Railways provides for Productivity-linked Bonus every year and is not covered by the provisions of the Payment of Bonus Act, 1956.

[13] Post 1951, restructuring of the Railways paved the way for the formulation of the establishment rules and the standard code of conduct of the employees were since contained in the Establishment Manual.

[14] It is a comprehensive law which provides for the investigation and settlement of industrial disputes. This law extends and is applicable to all Railway workmen other than those who are employed in supervisory capacity and drawing wages exceeding Rs. 1,600 per month.

[15] This statute is also applicable to all Railway employees inclusive of the contract labourers employed for the purpose of carrying out railway work. However, it is not applicable to those employed in administrative capacity or in the divisional/subdivisional offices. Compensation is provided for personal injury caused to the workman resulting in total or partial disablement for a period exceeding three days by an accident arising out of or in the

Employees' Compensation Act), The Minimum Wages Act, 1948[16] and The Factories Act, 1948.[17] The retirement-cum-death benefits are also elaborated in the Establishment Rules for the railway employees. Every railway employee appointed after 16th November, 1957 is eligible for retirement benefits as per the rules and have the right to elect their pension/retirement benefits or to continue being governed by the State Railway Contributory Provident Fund Rules.

Indian Railways provides for social security of the employees considering the fact that the income of the working class population in India is slender to eliminate any possibility of savings for emergency or to provide substantial financial support. These benefits can be categorically emphasised as – Provident Fund,[18] Death-cum Retirement gratuity, Group Insurance Amount, Deposit-linked Insurance Amount, Leave Encashment, compensation, pension, family pension, Ex-gratia grant, etcetera. Pension out of these benefits is the most lucrative and looked forward option of the employees as it secures their life after superannuation as well as the lives of their dependants.[19]

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course of his employment. There are certain exemptions for payment of compensation and the Railways cannot be made liable, for example, as and when such injury is caused due to wilful disobedience, disregard to safety procedures or if the employee was under the influence of drink or drugs to be unable to assess the consequences.

[16] This act in the Railway Administration is applicable to the casual workmen in employment. The employer is held responsible for the payment of wages and any contractor is responsible to the person he employs. As per the rules framed under the Act, wage periods should be fixed for the payment of wages at intervals not exceeding one month or any other larger period as prescribed; wages should be paid on a working day and in case wages are to be paid to the person discharged from employment it should be paid not later than the second day of such discharge and the retrenchment compensation, if any, is to be paid as per the provisions of the Industrial Disputes Act, 1947. This Act also provides for rest in a week and extra wages for overtime, i.e., more than the scheduled or fixed work hours.

[17] This statute is applicable to the employees working in the Railway workshops and production units. It does not extend to those in the Loco Sheds and Carriage and Wagon departments (they have been specifically exempted). The obligations of the '*Occupier*' of a factory are elaborated – cleanliness of the factory, disposal of wastes and effluents, maintenance of ventilation, provision for drinking water, weekly holidays, overtime allowance, prevention of accidents, etcetera.

[18] Amount standing in credit of the railway employee is payable on his termination of service or to his nominee on his/her death while in service.

[19] Pension ensures a smooth transition in the lifestyle of the employees without fall in the basic living standards maintained while in service after superannuation. The Railways in its Establishment Manual has rules for recognition of the dependants who will be entitled to the pension benefits.

Free medical treatment is provided to the railway employees and their dependants through hospitals and healthcare units equipped with latest technology and facilities for specialised treatment as and when necessary. Railway employees' children are provided quality education through schools and grants of scholarship. Railway reimburses cost incurred by the employees to educate their wards till graduation level (in case the wards are pursuing professional degree courses, the amounts of grants/scholarships are increased to facilitate to the maximum extent possible).

Additionally, the railway employees are provided for workers' safety measure, training for upgradation, payment for overtime, national holiday allowances, recreation facilities, accommodation (housing facility), privilege travel passes, access to cooperative societies and general facilities at subsidised rates, appointment of next of kin on compassionate grounds in the service as per suitability and pension to the employee and his/her dependants (spouse till death; unmarried daughter till death or till her marriage and son till he attains the age of 21 years). The Railway Minister's Welfare and Relief Fund provides for financial assistance to the railway employees in case of sickness, premature death, and natural calamity hit or handicapped employees.

b. TO THE CASUAL WORKERS:

Casual labourers, unlike the regular railway employees, are not eligible for any entitlement and privileges other than those statutorily admissible under various statutes, such as the Minimum Wages Act, 1948,[20] the Workmen's compensation Act, 1923 (the

[20] This piece of legislation secures minimum wages in those categories where the wages of the employees are low and thereby prevents exploitation of unorganised labour. The procedure is to regulate the hours of work and the payment of wages in terms of the payment of overtime, promptness in pay and specific deductions.

Employees' Compensation Act), etc., or those specifically sanctioned by the Board from time to time.

Railways preliminary concern about the rights of contract workers was expressed by the formulation of the Rule of Contract. The Rule of Contract[21] provides for certain, however, fewer, social security benefits to such workers. The Contractor is bound by the rules and it is mandatory for him/her to apply the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952[22] on the workers appointed through contract. In case, the contractor fails and any claim is raised against the Railways, the latter has a right to be indemnified against such claims. There is a machinery working in the Railways, which establishes the communication channels with recognised unions and conducts meetings to address the concerns of the Railway employees for claims or wages or pension, as the case may be. Matters are resolved by quarterly meetings or representations as and when necessary before the appropriate tribunal.

The Railway Labour Tribunal acts as the negotiating machinery between the contractual or casual labourers and the Railways and lays down certain guidelines. However, these negotiations are often limited to the contractor and the Railways and the end results as benefits never seep down to the rescue of these labourers. Nevertheless, there are guidelines, which are often strictly followed by the contractor to avoid liability. One of the guidelines is that casual labour should not be appointed for regular open line work and should be paid as

[21] Indian Railways, *Standard Rules of Contract*, July 2014 available at <http://www.indianrailways.gov.in/railwayboard/uploads/directorate/civil_engg/General_Conditions_of_Contract_July_2014_22_07_14.pdf> last accessed on 10.04.2016.

[22] Para 30 & 36-B of the Employees Provident Fund Scheme, 1952; Para 3 & 4 of Employees' Pension Scheme, 1995; and Para 7 & 8 of Employees Deposit-linked Insurance Scheme, 1976 as modified or specified in the Contract.

per the local rates, where local rates are not available, at the rate of 1/30th of the minimum of scale of pay plus dearness allowance thereon. This principle is also applied to the casual labourers governed by the Minimum Wages Act, 1948.

There exists an inequality in wages[23] between the casual workers and regular employees despite their share of involvement which presents a negative correlation coefficient in the economy. There can be transformation through labour reforms which in itself would need overhauling steps from the administration. However, in the Indian Railways the Productivity-linked Bonus Scheme is applicable to casual labourers having temporary status.[24] This scheme was introduced in 1979 to provide substantial motivation towards achieving higher productivity by way of increased output by the employees and improved quality of service.[25]

4. NATIONAL PENSION SCHEME- SCOPE OF APPLICABILITY TO THE CASUAL LABOUR IN THE INDIAN RAILWAYS:

Pension in the Railways is allocated through schemes. These schemes, depending on their nature and ratio of contribution, can be categorised as defined contribution scheme, defined benefit pension scheme or contributory pension scheme. The most recently introduced scheme is the National Pension Scheme. This scheme is a defined contribution

[23] Such inequality is depended on numerous grounds- nature of work, education of the workers, involvement and enterprise requirements, and etcetera.
[24] This scheme is applicable only when the casual labourer has been substituted with not less than 120 days of continuous service and casual labours on daily wages employed in projects and have completed 180 days of continuous service.
[25] This scheme is also applicable to all the Railways employees.

based pension scheme[26] introduced by the Government of India in 2004 with the intent to provide old-age income, reasonable returns in the long run depending on the market rates and to extend security through pension to all the citizens. It is applicable to all the employees of the Central Government, including Central autonomous bodies. But the Armed Forces are expressly excluded from the scheme. It was in the exercise of the Government's executive power that the scheme was adopted and the principle of accumulation of the savings of the subscriber against a unique number during his/her tenure of service and the amount is given to the person when he/she superannuates. Departmental transfers or an interstate movement of the employees under the scope and purview of this scheme does not affect the savings in any manner whatsoever because the unique and portable account number can be transferred and inter-sector shifting is allowed for the beneficial use of the subscriber.

The pension scheme, preceding the National Pension Scheme, was applicable to the employees of the Indian Railways appointed before 01.01.2004 and was a Defined Benefit Pension System based on the last drawn pay of the employee unlike the National Pension Scheme, which is a cumulative contribution of the employer and the employee to the building of pension wealth, which is payable on superannuation in annuity or by a lump sum withdrawal. In the defined benefits scheme, the employer usually promises or at least intends to promise the payment of a specific amount of benefit on retirement. Such an amount would be a fixed weekly or an annual amount of pension or an amount depending upon the number of years spent by the particular employee in service.[27] This gradually led way to the system of pay and service combined pension- a trend before the introduction of National Pension

[26] Contributions from the subscribers are collected over a period of time in an account number specifically maintained for the subscriber and this particular amount is available to the subscriber on superannuation as pension.

[27] H. Sadhak, *Does Not India need a Default Option in the New Pension System?*, Economic and Political Weekly, Vol. 44, No. 46 (November 14- 20, 2009), pp. 59, 61-68 available at http://www.jstor.org/stable/25663791 accessed on 04.03.2016.

Scheme wherein the fraction or percentage of pay taken (often the amount drawn as salary) was multiplied by the number of years completed in service. The benefit to be paid was fixed despite the fact that the amount last drawn as pay remains uncertain.

General Provident Fund also provided for the pension of these Central government employees prior to the National Pension Scheme. After the completion of one year of continuous service, it was compulsory for the employee to enrol himself/herself with the fund scheme and a General Provident Fund account number was allotted. The provident fund amount was directly deducted from the pay bill of the employee and the minimum subscription ranged from 6% to 12% of the basic pay of the employee. The maximum amount would not exceed the amount paid to the employee and depended on the employer to allow adjustment of the amount. There was provision of nomination of a person from his/her family as per the prescribed format and a process of cancellation of the same with the employer. The General Provident Fund amount could be withdrawn by the employee in certain pre-specified conditions. Some of these conditions are:

1. Payment of expenses incurred in relation to treatment of prolonged illness of the applicant or illness of any dependant of the employee;
2. Payment if overseas passage for education or health of the employee or his/her dependant;
3. Payment of obligatory expenses appropriate to the employee's status or customary usage incurred in marriages, funerals or other ceremonial acts by the employee or by his/her dependants.

There was also a provision for non-refundable advance which could be withdrawn from the General Provident Fund account. But such an advance was sanctioned by the employer only after the employee completed 15 years of continuous service or within 10 years before the date of retirement of the employee, whichever was earlier. The final withdrawal of the amount could be done on either retirement or death of the employee.

But the switch from a defined benefit pension scheme to a defined contribution pension scheme is not usually straightforward or smooth. The transition phase discloses the nuances which differ from each department and enterprise depending on its structure and economic distribution. National Pension Scheme restructured the pension system and collated procedures for a more regulated and organised disbursement of the pension amount. As per the National Pension Scheme, employees are provided with a unique number and a Central Record Keeping Agency along with fund managers prescribes schemes to the employees depending on the income instruments and equities. This allows the employees their freedom of choice and implementation of the schemes for maximum output at the desired age of retirement. Every individual who joins the scheme is provided with a unique Permanent Retirement Account Number. This scheme is applicable to all the Central Government services except for the Armed Forces from 1st January 2004. The pension scheme is also formulated as an investment opportunity for the employees. The employees will be allotted a portable account with easy accessibility through internet, choice of funds, service providers, freedom to switch from one plan to another, flexibility to change the amount and frequency of contribution, transparent regulation and monitoring, effective grievance management and low cost of operations . These key features would attract and ensure allegiance to the scheme. The scheme is two-tiered and while Tier I of the contribution to the scheme is compulsory for every central government employee joining service on or after 01.01.2004, Tier II is optional

and can be paid at the discretion of the government servants.[28] The amount deposited in Tier I is in a *'frozen state,'* i.e., it cannot be withdrawn and that deposited in Tier II is kept in a separate account and can be withdrawn by the employee as and when he/she deems fit and proper. In the system, a government servant can exit from service at or after the age of 60 years from the Tier I of the scheme and it will then be mandatory for him/her to invest 40% of the total amount of pension accumulated over years to purchase an annuity. Such an annuity has to be from Insurance Regulatory Development Authority regulated Life Insurance Companies and ensure the security of the employee and his/her dependants for lifetime. The remaining amount would be given to the employee and he/she would be free to use the same in the manner he/she thinks proper. Voluntary retirement does not in any way affect the membership of the employee in the scheme but the percentage to be spent in the purchase of annuity would be mandated at 80% of the total accumulated pension wealth.

But the National Pension scheme[29] is not applicable to the contractual workers or the casual workers associated with the Indian Railways. Neither was the scope of provident fund or the earlier pension scheme applicable.

5. CONCLUSION:

Casual labourers in the Indian Railways are entrusted with the herculean task of sorts but the benefit for them when circulated through the contractors diffuses in the process of discharge in between the intermediate and ultimate tiers. The contractual labourers, as the unorganised sector, cannot be included in the mainstream but their social security should be

[28] In the scheme of two tiers, in Tier I the government servant makes a contribution of 10% of his basic pay in the salary plus the dearness allowance. This will be deducted from his salary bill every month and the government will make a contribution of equal sum of money for the employees who are government employees.
[29] The scheme is for the Railway employees, specifically for those appointed on or after 01.01.2004.

considered seriously. To start with, the retirement benefits can be ensured through the newly introduced pension scheme. Structured and organised, in terms of liability and regulation, National Pension Scheme, as the defined contribution scheme, can be smoothly extended to the casual labourers in Indian Railways to provide them the sense of social security in the form of retirement benefits,[30] unlike the General Provident Fund and the defined benefit scheme. It can be considered as a good supplement for the society which is looking forward to provisions for retirement benefits to those who actually contribute as a major stakeholder in the workforce in the enterprise.

But the transition from a defined benefit pension scheme to a defined benefit contribution scheme is not a very well understood and well adapted concept in India in the background that pension is considered with an expectation of the rank and the file. In the practical scenario where the contributions are to be made by the employer, the Indian Railways will be burdened with an extra responsibility to ensure retirement benefits of the casual labourers and the burden will in practical application and hypothesis shift from the independent contractors to the Railways which will be an additional responsibility to be taken care of. However, if the Railway introduces the scheme through the contractors as a standard condition of work and incorporates the same in the rule of contracts, the casual labourers' life post-retirement will be significantly secured despite the burden of sharing the responsibility

[30] On similar lines of thought, the Pension Fund Regulatory and Development Authority (PFRDA) has voluntarily made the scheme available to all citizens. This is an opportunity to avail the benefits of the National Pension Scheme from 1st May 2009.This will provide an avenue to citizens to save for their old age and reduce dependency on others. The scope is extended to all sections of the society. To bring the corporate entities within the ambit of the scheme, the PFRDA has initiated the "*NPS- Corporate Sector Model*". The Public Sector Undertakings are within the scope of this corporate model and this pension scheme can be availed by the employees.

of ensuring such security. However, it will burden the employer with a mammoth responsibility of providing for a large chunk of employers despite their casual employment.

The Railways can regulate that the payments made as contributions to the social security scheme reach the ultimate beneficiary through the transparent mechanisms of the National Pension Scheme. The scope of interference of the contractors will be reduced with least deprivation of the casual labourers. Their account numbers and details of National Pension Scheme as account holders will be available with the principal employers and the regulator for unbiased disbursal of their rightly earned finances. Therefore, it can be rightly concluded that the Scheme is a way forward to ensure social security in terms of retirement benefits of the casual labourers employed with the Indian Railways.

IMPACT OF SOCIAL SECURITY ON ECONOMIC GROWTH IN INDIA

Shilpa Shivangi*

ABSTRACT

Economic growth and development of a society is deeply influenced by its social security. The harmonious co-existence and tranquillity in governance is one of the most important prerequisites for the growth and development of a nation, which can be attained by way of social security. It is unfortunate to observe that the social security of farmers in India, whose economic status is undeniably bound to affect economic growth of the country, has been grossly undermined hitherto. A similar condition prevails in other unorganised sectors of work too. The present budgetary provisions and the positive approach of the government, though, have given some hope and respite ensuring their social security and thereby securing the economic growth of the country. An economically vulnerable individual can never be an asset for himself or for his nation. Access to basic amenities via social security makes it promising for an individual to contribute towards the economy of the nation. Factors such as poverty, recession, crop failure, unemployment, poor medical facilities and post-retirement insecurity are some of the most challenging issues required to be properly redressed today. A support system can be built up efficiently by introducing social security in various realms of life. The framers of the Indian Constitution too envisaged economic development of the nation and social security as intertwined and made constitutional provisions in the form of Directive Principles of State Policy, such as those under Articles 41 and 42. The preamble itself speaks for economic justice and equality of status and opportunity. It is for this reason that social security is a subject-matter under the Concurrent List so that both Central and State Governments can make laws for its proper implementation. Various legislations have also been enacted in this regard. A social security administration along with a change in mind-set at all levels will ensure that the benefits actually reach the person entitled for the same. This research study is an attempt to analyse the impact of social security measures on the economic growth of the nation. It analyses the challenges that are faced due to the present system of social security in India and a possible solution to overcome these challenges.

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INTRODUCTION

Social security is a protection and a preventive barrier against distressful situations, which a society as a whole provides to each of its members. The society acts as a guardian and a caretaker of its member based upon the needs of the individuals and the resources available within the society. Social security is an assurance pertaining to basic amenities such as pension, gratuity, disability benefits, maternity benefits, health insurance, etc. It emphasises on the relationship between the society and its members as an integral part of the society. This evolution of the society is possible only through collective efforts and this is the result of the effort of the society to give equal opportunities and basic amenities to all its members. It is based on the principle that all the members in a society are interdependent on each other and their harmonious existence is possible only if they respect the needs of each other. Social security can be evaluated on various parameters, but there are certain basic characteristics of this system. The presence of these bare essential components within the society promotes a sense of belongingness and confidence among the members of a society or nation.

The idea of social security is not alien to the modern world; it has been there ever since the inception of human civilisation in one form or the other. It was very prominent in ancient India too. It existed in ancient India in the form of joint family system, Panchayats, religious and charitable institutions which used to provide assistance measures to the needy for different misfortunes and calamities.[1] The concept of Hindu joint family itself was a great protection against financial distress as the family was considered to be the basic unit of social organisation. The British Raj in India eroded the social security system at large. The native industries were destroyed and thousands of people lost their livelihood. Due to lack of amenities in villages, people moved to cities and gave up their home, lands and the traditional social security. The quality of life for Indian masses deteriorated as they were left jobless. Much of the Indian raw materials were being exported to set up industries in Europe.[2] The resources within the nation at that time were scanty as compared to the population and the British officials focused more on profit-making rather than on community service. However,

[1] Srikanta Mishra, Modern Labour Laws and Industrial Relations (Deep a and Deep Publications, New Delhi, 1992) 131

[2] J.V. Vilanilam, Mass Communication in India: A Sociological Perspective (Sage Publications, New Delhi, 2005) 65

their profit-oriented approach did bring certain changes in the society such as the introduction of infrastructural facilities and the use of railways for business and day-to-day activities. Post-independence, it led to India being the most well-connected nation by railways. They also made an attempt to commercialise the most viable occupation in India, i.e., agriculture, owing to the presence of fertile plains and the perennial rivers. They commercialised agriculture by offering farmers higher pay for their crops for sale in markets rather than for self-use. But they failed miserably to generate any profit through agriculture. This led to a shortage of resources which subsequently led to the occurrence of terrible famines in the economic history of India.[3] Social security in independent India went through a massive transformation as compared to those in the ancient and the British era. The focus was shifted from benefit of few to the benefit of the nation at large. This was clearly reflected in the Indian Constitution as well as various action plans that were undertaken to restore the socioeconomic position of the nation after the British left this place. Thereafter, India has come a long way as far as the implementation of social security measures is concerned. A great achievement in this regard has been solving the scarcity of food with the advent of the green revolution and major reforms in the organised sector by incorporating various schemes.

SOCIAL SECURITY IN INDIA

India is a diverse nation having crossed the population of one billion. The population reflects immense diversity in terms of caste, religion, language, culture, food, lifestyle and occupation. The diverse nature of the Indian population is an asset for the nation as well as a mammoth task in terms of administration. On the one hand, there are states such as Kerala with over 94% literacy rate[4] while on the other hand, there are states such as Bihar and Uttar Pradesh which are still striving to achieve the national standard in terms of literacy. The needs of various sections of the society vary as per their standard of living and the resources available to them. Despite such vast differences in various aspects such as religion, language, culture, food and occupation of the Indian society, what remains unchanged is a constant need for a social security setup throughout the nation that will cater to people from various segments of the society irrespective of their socioeconomic status. India as a welfare state has surely transformed itself since independence. The idea of a welfare state is one where the

[3]Debi S. Saini, Social Security Law In India, (Kluwer Law International, The Netherlands, 2011) 30
[4]Ministry Of Human Resource Development, Government Of India, *Adult Education* (March 4, 2016) para 4

state has to shoulder the responsibility of securing socioeconomic stability of its citizen in one way or the other. The same has been incorporated in the constitution in the form of Fundamental Rights and Directive Principles of State Policy to ensure the well-being of the masses through democratic, independent and fair means. Post-independence, the nation battled a devastated economy, acute poverty and illiteracy. The economic reforms of 1991[5] brought sweeping changes in the economy and introduced India to globalisation and open market. This reform came into picture after an exceptionally severe balance of payments crisis occurred. It witnessed liberalisation, deregulation and privatisation[6] as major catalysts which boosted the economic power in more than one way. The major impact of this economic reform was visible on the export and import which were unable to generate revenue due to various constraints created earlier. Prior to 1991, the imports were regulated by means of a positive list that included all the freely importable items. From 1992, imports were regulated by a limited negative list. The imports of almost all intermediate goods were made unrestricted.[7] The influx of trade and business from all parts of world has earned India a global name in the subsequent decades. There was a growth in GDP due to the economic boost given to the production units and liberalised exports and imports. This was quiet significant for an emerging economy such as ours. However, this could not completely uplift the growth of the country at large. The prime reason behind this was the fact that within the country itself there were major challenging issues that demanded attention. On the one side, there was globalisation and expansion of exports while on the other hand, the nation was battling poverty, hunger, unemployment, poor health facilities, high infant mortality rate, frequent droughts, etc. There was no guarantee as to social security in India at that time. After almost six decades of independence, the scenario has changed and though social security doesn't stand universalised in the Indian context, it is present in certain realms of life and that in itself is a great step ahead.

At present, social security in India is accomplished by various schemes and legislations which cover mostly the employees of the organised sector. This brings into light another facet of social security in India that unorganised sector and the unemployed people

[5]Planning Commission of India, Montek S. Ahluwalia , *India's Economic Reforms*, (March, 1994) 4
[6]Centre For Research On Economic Development And Policy Reform, *Privatization in India: The Imperatives and Consequences of Gradualism*,(Working Paper 142, July, 2002)8
[7] Anonymous , ' Stories of Life under the Liscence Raj' (India Before 91) <http://indiabefore91.in/1991-economic-reform> accessed 13 March, 2016

are grossly neglected by the present schemes. So, there is no umbrella statute or action plan that aims at providing security to all, instead, the social security set up in India is run in bits and parts.

The most coveted form of aid is that of pension. It refers to the post-retirement remuneration which is made available to an employee or his/her dependent(s) in case of his/her death. The benefit of pension is extended to the employee, spouse and the children. It is availed by the employee either on superannuation or upon facing some disability. The dismissive side of this aid is that it benefits only the employees of the organised sector, for example, the employees of public units, civil servants and defence personnel. So, the pension scheme in India which is partly administered by the Employees' Provident Fund Organization covers not even half the working population of the nation. Though it is not the sole organisation which manages the pension of the organised sector employees, but it is totally absent in case of the unorganised labourers. Another aid in the form of social security which is available to the people is in the form of a health security. For example, The Employees' State Insurance Act, 1948[8] and the Maternity Benefit Act, 1961[9] aim at securing the well-being of the people and providing aid in times of physical distress. The Maternity Benefit Act is a major change for the working female population in India whose condition was impoverished in the early days of independence. It has been a source of great change because prior to this Act there were other Acts in force in the country. But there was no uniform implementation of such Acts. The Maternity Benefit Act has revolutionised the perception of women towards employment. It provides for 12 weeks of maternity benefit in the form of average daily wage for their actual absence due to pregnancy and delivery. A very recent step in the same direction is The Maternity Benefit (Amendment) Bill, 2016 which has not been notified yet. However, this amendment seems to be quite a promising one as it aims to increase the duration of the leave from 12 weeks to 26 weeks.[10] But this increment in leave is not applicable to women who have two or more children. The bill also aims at providing maternity leave to the women who have adopted a child below three months of age. The concept of maternity leave has attracted women into employment and they are able to contribute at par with men. But the same is not true for the women in the unorganised sector

[8]The Employees' State Insurance Act, 1948
[9]Maternity Benefit Act, 1961
[10] The Maternity Benefit (Amendment) Bill, 2016

who although are necessitated by their economic conditions to work have no access to any maternity benefits. They keep juggling between their priorities as a mother and as a bread earner due to the lack of any aids for maternity. The prime objective of the Employees' State Insurance Act is to provide insurance benefits over contingencies such as sickness, maternity, death or any other form of disablement which may affect the earning ability of an employee. This, however, doesn't mean that the entire population has access to free or subsidised healthcare facilities as the Act is applicable only to specific establishments and factories. The Act also guarantees reasonably good medical care to workers and their immediate dependants. The framework of this Act is an ideal to impart maternity care to the working women but its impact remains limited as it covers only a limited number of establishments.

In India, the most recent progress on social security has been brought about by the new trio of social security schemes simultaneously launched at 115 locations throughout the country.[11] The present government has launched the schemes Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY), Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Atal Pension Yojana (APY) keeping in view that the poor need empowerment, not aid.[12] PMJJBY is an effort of the Central Government to provide life insurance cover to people within the age of 18-50 years. The account holder will be provided with a fixed annual premium and in case of death, the person will be given a fixed amount of Rs 2 lakhs. APY is a pension scheme primarily for the unorganised workforce in India. The Central Government as an initiative will contribute 50% of the total contribution or Rs. 1,000 per annum, whichever is lower, to each eligible subscriber account, for a period of five years. Thus, a pension fund will be created for the person irrespective of the work he/she is involved into. The PMSBY mainly focuses on providing accident insurance to people of age group 18 to 70. These schemes are a ray of hope mainly for the people from the unorganised sector in India who were earlier bereft of any social security. The advent of these schemes saw a whooping response that clearly pointed at the utility and necessity of such social security schemes. The number of people subscribing to these schemes crossed the count of 10 crore in a short span of one month. But no matter how efficient the social security schemes are individually, they are all

[11]Atmadip Ray, 'PM NarendraModi launches 3 social security schemes' (The Economic Times, May 9 2015)
[12]Anonymous, 'NarendraModi launches social security schemes in Mamta Banerjee's company,' (The Financial Express, May 10,2015)

scattered. This inconsistency in the operation of such schemes is a major loophole for the non-performance of any social security regime in India. Another possible hindrance in the success of this trio of social security schemes may be that they won't be able to generate as much revenue as they should and this will again reflect badly upon the economy at large. A simple reason for the generation of low revenue is that when such group schemes are provided to such a large number of people, the cost of services and maintaining such huge data rises dramatically. The focus remains only on the benefits that would occur but once the schemes are launched their operational cost eclipses all the benefits earlier planned. But the benefactors being people of low-income group or with no income are unable to pay for such high-end services. A possible remedy to this can be cutting down on certain services or changing the mode in which they are made accessible to the public at large.

LEGAL MANDATE FOR SOCIAL SECURITY –

The prime utility of law is to provide justice to all and existence of equality is a precondition for the idea of justice to perforate through each and every strata of the society. Social security is one of the means to achieve this equality and justice. Social security as a backbone of social justice was envisioned long back by the framers of the Constitution. They also envisaged economic development of the nation and social security as intertwined and made constitutional provisions in the form of Directive Principles of State Policy.[13] The Preamble[14] itself speaks for economic justice and equality of status and opportunity. It is for this reason that social security is a subject-matter under the Concurrent List so that both the Central and State Governments can make laws for its proper implementation. The idea of social security is deep-rooted in the Constitution of India itself. It also emphasises the fact as to how vital social security is, for the integrity and growth of any economy.

The Directive Principles of State policy, though not enforceable in the courts of law,[15] play a key role whenever any law is enacted for the nation. It may not be directly presented as a claim in a court of law but the fact that these principles must be incorporated and cherished in every law that is framed shows their fundamental presence in one form or the other when it

[13] Directive Principles Of State Policy, Constitution of India, 1947.
[14] Preamble, Constitution of India., 1947.
[15] Article 37, Directive Principles of State Policy, Constitution of India, 1947.

comes to governance. It operates as a guiding torch for the legislature so that the state can make its best endeavours to give social security to the people in the form of basic necessities of life which include food, clothing, housing, medical care and the right to social security in the event of physical and financial distress. Article 39 of the Directive Principles[16] lays down that the resources available within the nation must be so distributed as best to sub serve the common good and also that the citizens must not feel forced by the economic necessity to enter avocations unsuited to their age or strength.[17] It emphasises the importance of optimum use of resources within a community. The Directive Principles also focus on the right to work, to education and to public assistance.[18] This highlights the interdependent nature of education and social security and that they stand inseparable with respect to economic growth of the nation. No doubt that there are limitations on the economic capacity of any state at any given point of time and subject to these limitations only the state should make social security provisions for its citizens. The right to work incorporates within itself the right to human conditions of work.[19] The state's responsibility doesn't cease to exist if a person has a secured job, the security must exist in the real and practical sense. Provisions for maternity, permanent or temporary disablement and employment-related health hazards are the key components that actually are the essence of right to work in humane conditions. The legal framework revolving around social security in the nation also includes legislation such as The Employees' Provident Fund & Miscellaneous Provisions Act, 1952,[20] The Employees' State Insurance Act, 1948,[21] The Payment of Gratuity Act, 1972,[22] The Employees' Compensation Act, 1923,[23] and The Maternity Benefit Act, 1961,[24] all of which have in some way or the other addressed the issues of pension, maternity, insurance and gratuity but only with regard to the organised sector of work. The picture is disappointing if looked from the perspective of the unorganised workforce in India. A ray of hope that restored the optimism of the unorganised workforce was in 2008 when the Unorganised Workers' Social Security Act[25] was passed, which seemed to be a promising one but was unsuccessful in serving its purpose when evaluated in light of the existing issues which it was meant to address. The Act doesn't

[16]Article 39 of Directive Principles of State Policy, Constitution of India.
[17]Article 39(e), Directive Principles of State Policy, Constitution of India
[18]Article 41, Directive Principles of State Policy, Constitution of India
[19]Article 42, Directive Principles of State Policy, Constitution Of India
[20] The Employees' Provident Fund & Miscellaneous Provisions Act, 1952
[21] The Employees' State Insurance Act, 1948
[22] The Payment of Gratuity Act, 1972
[23] The Employees' Compensation Act, 2010
[24] The Maternity Benefit Act, 1961
[25]Unorganised Workers' Social Security Act, 2008

touch certain key aspects too, for example, the Act[26] neither defines social security as a term nor does it lay down its components. The administration of assurance through the Act also presents a dismal picture. The implementation of the Act is weak and vague. The National Social Security Board constituted under it doesn't have powers to administer or grant any security to the workforce in the unorganised sector. All it can do is to recommend the formulation of social security schemes[27] and, thus, its role is reduced to an advisory body rather than an administering body. The excruciating part of such attempts by the legislature is that though attempts have been made to provide security to the vulnerable sections of society yet they turn out to be futile due to lack of any practical benefits.

THE UNORGANISED SECTOR & SOCIAL SECURITY AS A TOOL FOR ECONOMIC GROWTH –

It was rightly said by Mahatma Gandhi that "***A nation's greatness is measured by how it treats its weakest members***". Social security symbolises the harmony and unity within a nation. It also symbolises that the dynamics of human needs are balanced by the interdependence of members within a society. The growth and development of one member reflects its effect on the progress of other individuals too. This progress is inclusive of various realms of life be it culture, politics, economy, justice or education. The socioeconomic development of a society acts as a barometer to the prosperity of a nation at large. The economic growth and development of a society and a country is deeply influenced by its social security status too. The harmonious co-existence and tranquillity in governance is one of the most important prerequisites for the growth and development of a nation, which can be attained by way of social security. Social security is not only an end result of the development, it is rather an important driving force for the economic development of a nation.

The employment structure in India can be analysed from various perspectives. The workforce within the nation can be categorised on a number of parameters. Analysing it from

[26] Ibid.
[27] Ministry Of Labour & Employment, *Welfare Of The Unorganised Sector Workers* (December 31, 2008)

the nature of work and the involvement of public or private entities and the conditions of employment, the workforce can be categorised as organised and unorganised sector. The nature of work in both these sectors can be primary, secondary or tertiary. But the remarkable dissimilarity is with respect to the conditions of work. The organised sector is characterised by regular work and regular pay. Such institutions of work are registered with the government and are bound to follow certain regulations in order to fix the terms of employment. These regulations ensure that there is job security and the employee gets medical and pension benefits due to the nature of the employment. The unorganised sector is in glaring contrast to this system. The apathy towards job security is the prime lacunae of the unorganised sector. It is further characterised by a lack of medical and pension benefits, lack of fixed wages and a complete absence of job security. The vulnerability of the unorganised workforce in India stems from the fact that there is no legal framework regulating them or bestowing any rights upon them. Lack of education and working skills shove people into this sector of work where they are exploited only for the benefit of the employer. They mostly include workers in small-scale industries, domestic helps, street vendors, farmers growing crops on their own land, rag pickers, construction workers on contractual basis and people doing a myriad of other odd jobs. The short-lived nature of work provides these people less benefits and more risks in terms of health hazards too. What adds to the economic misery of India, which although is dynamic but is unable to make optimum use of its dynamism, is the fact that the sector which contributes half the GDP and engages almost 90% of the population is the most vulnerable and socially unsecure sector even after decades of independence. The unorganised sector consists of about 82.7% of the total workforce of the nation[28] and still remains the most unregulated and non-legalised sector of the economy as it is hardly regulated and monitored by any statute which runs uniformly throughout the nation. Out of these, three-fourth of the unorganised workforce is involved in the agricultural sector and the rest are in the non-agricultural sector. The miserable condition of the unorganised workforce is simply unjustifiable when they contribute 60% to the national economic output of the country.[29] Due to urbanisation, there has been a shift of economic output from agriculture to other areas of work such as domestic helps and rag pickers. Though such population does not constitute a sector but their occupation came into existence due to rapid urbanisation and they

[28]Ministry of Labour & Employment, Government of India, Report of labour force employment and unemployement, *The Enterprises In The Unorganised Sector*,(July 2016) para 1

[29]KiranMoghe, 'Understanding the Unorganised Sector' (Infochange, September,2007) <http://infochangeindia.org/agenda/women-a-work/understanding-the-unorganised-sector.html> accessed on 15 March, 2016

do not have any social security with regard to their respective occupations. But what remains unchanged is that employment density is still more in the agricultural area of work. A major chunk of the population is engaged in agricultural activities. Thus, there is a condition of disguised employment where a person is employed but not as per his full employability potential.[30] While agriculture no longer dominates the Indian economy in terms of national output, it still dominates in terms of employment. This uneven distribution of manpower in the job sectors presents a distorted figure of employment at the national level. It has also led to increasing incidences of suicides by farmers who despite the availability of land fail to make full use of it due to lack of any financial support, any working skill and absence of any technological assistance. To add to their vulnerability, they are exploited and are forced to accept remuneration much below their requirements. A similar condition prevails in other unorganised sectors of work too. The lack of any social security is the root cause behind their exploitation and non-realisation of their primary rights. The unorganised sector is essentially illiterate as it has very scarce knowledge about its rights, duties, the impact of education on their lifestyle and the transformation which education can bring to their lives. It makes them reluctant to educate their children, they rather put them to work which subsequently leads to child labour. The ill effect of illiteracy among the unorganised sector has far-reaching effects than is visible on the face of it. The lack of awareness about their rights can be socially secured only if they are given access to appropriate education and healthcare facilities. So, a common thread running through each of these unsecured areas of work is that of illiteracy. Social awareness through education has a definite link with social security and economic growth. Factors such as poverty, recession, crop failure, unemployment, poor medical facilities and post-retirement insecurity are some of the most challenging issues required to be properly redressed today. When such vulnerable groups are given education and basic facilities such as maternity benefits, pension and free or subsidised medical benefits, they become confident and self-reliant. They become assets for themselves as they are able to fulfil their own basic needs. This happens in the light of the fact that they are given support and care in times of any financial or physical distress. An economically vulnerable individual can never be an asset for himself/herself or for his/her nation. Access to such basic amenities via social security makes it promising for an individual to contribute towards the economy of the nation. Once a farmer is introduced to the technical know-how and is given a basic insurance against any kind of crop failure fully or partially, he becomes more independent

[30]Ilo Bureau of Statistics, *Measurement Of Employment, Unemployment And Underemployment Current International Standards And Issues In Their Application,* (2007)

and progressive towards experimenting and taking calculated risks which can benefit his/her job tremendously in the long run. Providing social security to vulnerable people also ensures that they do not fall into any debt trap once they meet any misfortune. Around 250 million Indians slip into poverty if they face any health problem.[31] So, a single health problem has the potential to put a person into the vicious trap of poverty and debt and the number of such vulnerable people is quite high. Thus, the lack of social security worsens the condition of the unorganised workforce in India. Immoral and undignified acts such as begging and human trafficking would be curbed and the manpower can be utilised to perform skilful tasks as per their abilities. The lack of any social security within the unorganised sector has made it a breeding ground for poverty, illiteracy, unemployment and post-retirement insecurity, all of which have slowed down the economic growth of the nation. So, the economy definitely reaps the benefits from the unorganised sector in the form of enhanced GDP but fails to extend social recognition and support to it. In the initial days, post-independence, this set-up worked because at that time India was a young economy. But now, when India is internationally renowned and has even conquered the space by becoming one of the Mars explorers that too in its first attempt, now it needs a robust manpower and economy to maintain its growth in various fields. The unorganised sector is still contributing to GDP with the same efficiency but the lack of any social security has made this sector financially crippled. This can be altered only by infusing fresh resources into the manpower in the form of primary and secondary education, skill-development programmes, rural healthcare schemes and employment generation.

RECOMMENDATIONS

Social Security is undoubtedly a means to achieve economic growth. However, it needs to be well structured in order to ensure that the benefits perforate through each and every strata of the society and eventually reach the benefactors. In a densely populated nation such as India, social security can bring about economic progress only when its implementation is robust. In the light of the research done and conclusions drawn, the following steps can greatly remedy the economic slowdown via social security:

[31]Independent Commission On Development And Health In India, Planning Commission, India, *Feedback on the Report of High Level Expert Group on Universal Health Coverage* (2010)

1. Recognising various jobs within the unorganised sector, regulating and bringing them under the purview of social security based on the nature of jobs and the risks involved. This will ensure that the unorganised sector too gets its fair share of benefits under social security schemes.
2. Setting up a social security administration at the centre, state and district levels that would monitor the implementation of social security schemes. Implementing a specific scheme for each species of job as well as unemployment and providing multiple benefits through that scheme instead of funding multiple schemes that overlap each other. The administration will help to keep the implementation process transparent without any mismanagement of resources.
3. Keeping a record of the benefits accrued and of the benefactors. Incorporating the use of advanced technology to monitor the distribution of resources and study its impact over the economic progress. This would ensure transparency and leave no room for corruption.
4. Educating and sensitising the masses about the need and benefits of social security and utilising them to achieve the desired economic goals. This will not only help the masses make optimum use of such social security but also contribute towards it.

CONCLUSION

The evolution of any society is possible not just by advancing in one field, there needs to be a balanced approach for development to happen. Social security when made accessible to the vulnerable sections of the society uplifts them in more than one way. It secures their health, employment, justice and dignity and all of this has an impact on the economy of the nation. If a support system is built up to guard them in times of distress, they can not only overcome the after-effects of the distress but also utilise these basic amenities to advance their economic conditions. This will lead to more educated, healthy and self-sufficient individuals contributing toward the GDP of the nation. There will be a gradual shift from quantity population to quality population. It will restore the human dignity which is lacking in many areas of work that subject the worker to inhumane conditions of work and put their life at stake. Thus, the idea of social security and economic stability are so intertwined with each other that neglect of one will lead to total evaporation of the other. It is high time that

the idea of social security is encompassed in all sectors of economy to bring a uniform progress both nationally and internationally and to excel not only financially but also socially.

LEGISLATING SAFETY: COMPARING RECENT SOCIAL PROTECTION LAWS IN INDIA AND INDONESIA

Parag Singhal* & Priyam Jain**

ABSTRACT

In recent years, several Asian countries have started moving far from patchwork welfare programmes, towards giving more thorough social security. This is a significant movement in an area where social welfare has not been politically prevalent, and the family has been generally faced with the pressure of supporting the young, the old and the ailing. Two of these states – India and Indonesia – have put new government-managed social security exercises into law, as opposed to just planning official strategy. In this paper, the authors examine social security laws in both the nations. They look specifically at India's National Food Security Law, 2013, and Indonesia's laws on the National Social Security System, 2004 and 2011. These laws deserve attention since they help to amplify advantages, as well as to promote economic and social rights. These recent social protection laws potentially deepen what Brinks and Gauri (2004) depict as the 'legalisation' of welfare approach, whereby legal rights assume importance in policy, and legal professionals, judges in particular, become significant in implementing it. In that capacity, these laws are likely to, and arguably should, force entirely hard-edged commitments on the administration and empower people to hold the legislature to its commitments. At the same time, recent social protection laws have the potential to allay concerns that legal enforcement of economic social rights distorts policy and dilutes the separation of powers. Through this paper, the authors want to show that social protection laws in both India and Indonesia have principally extended the policies that went before them, instead of in a general sense, rebuilding how specific types of social security are conveyed.

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Introduction

I. Social security systems have been under challenged for many years. Some consider that the systems are too expensive, and that they harm the process of economic growth and development. Other point to deficiencies in the level of protection and the scope of coverage, and argue that in times of increased unemployment and other forms of labour insecurity, social security is more needed than ever. As, social security defined by the International Labour Organization is the protection which is given by the society to its people for their betterment by the public measure, against the monetary and social distress.[1] The social security systems must respond to new demographic challenges, such as edging and changing family structures, with important implications for the financing of social protection.

II. The growth trajectory of the social security system of both India and Indonesia in the last two decades has generated one recurring theme: that the example of financial development is highlighting insecurities. Yet, there is a profound partition about whether the gains from growth should be ploughed back to accomplish social security for everybody. Social security is construed to provide employment-related benefits and advantages, it binds a person to his/her socioeconomic status as a specialist in the formal or the informal economy when, at a very basic level, it begins from the idea of ensuring everybody protection against vulnerability.

III. In recent years, a few Asian countries have started moving from patchwork welfare programmes, towards providing more effective social protection. This is a significant shift in a region where social welfare has not been politically popular, and the family has traditionally absorbed the burden of the young and the old.[2] Asian governments are, it seems, trying to tackle chronic poverty and inequality with fresh earnestness. Two of these countries India and Indonesia have opted to put new social protection initiatives in to law, rather than just simply formulating and executing policies and programmes.

[1] Vicki Paskalia, *Free Movement, Social Security and Gender in the EU* (1st edn, Hart 2007).
[2] I. Holliday, 'Productivist Welfare Capitalism: Social Policy in East Asia' (2000) 48 Political Studies.

IV. India and Indonesia have reformed their social security provisions over a period of time. Indonesia has developed a three-pillar social security system and India's social security comprises a number of schemes and programmes provided by the government over a period of time through laws and regulations. The National Food Security Act, 2013 in India and the National Security System (passed in 2004 and 2011) in Indonesia gave people a broader perspective of benefits.

Discussion

Why Comparing India and Indonesia?

V. Contrasting Indian legislation and Indonesian laws raises those difficulties that are regular to many similar explorations. In any case, there are additionally political and financial similarities between India and Indonesia that make comparative analysis compelling. Both the nations are majoritarian democracies, in spite of the fact that Indonesia's Assembly is driven by proportional representation, while the Indian Parliament is the consequence of a 'first past the post' electoral framework.

VI. Both Indonesia and India are middle income nations; however, Indonesia is all the more financially prosperous of the two. India's per capita income is $1489, Indonesia's is $35575.[3] Outright poverty has been falling in both India and Indonesia. In both the nations, declining poverty implies that individuals who are poor aspire for better standards of living, more education for their children and more noteworthy social mobility. Accordingly, there is apparently more weight on the State in both the nations to pad the troublesome existence of their poorest residents, even as financial development implies that there are more assets to do as such.

[3] 'GDP Per Capita (Current US$) | Data' (Data.worldbank.org, 2016) <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> accessed 6 July 2016.

VII. Provincial aberrations and population development raise potential difficulties with regard to ensuring general welfare of the citizens. From one viewpoint, there is the test of improving public infrastructure in poorer districts, and building the capacity of the nearby government apparatus to convey open administration. Then again, open administrations battle to meet the requests of a rising population in megalopolises such as Jakarta and Delhi, and in second-level urban communities such as Surabaya or Bangalore. In this way, while Indonesia is wealthier than India – its per capita GDP is 2.5 times[4] that of India's - both the nations are exploring comparable weights in furnishing their subjects with a satisfactory way of life.

VIII. Political corruption is a major issue in India. In Indonesia, indignation regarding the New Order's administrative corruption generated a mood of dissent against the Suharto government in 1998, at last pushing President Suharto to resign. Corruption not only impacts the real effect that a welfare measure may have but also shapes individuals' desires of the measure and their ability to bolster it. It is, along these lines, worth analysing how India and Indonesia have endeavoured to incorporate responsibility with the National Food Security Act and social security laws separately.

IX. It is essential to note the significant differences in political structures and functions of the two nations. Since India secured independence in 1947, the nation has had customary, although sometimes intermittent, political decisions that have been sensibly free and reasonable. Indonesia, on the other hand, was authoritarian until 1998, when the Suharto administration fell in the wake of the Asian currency crisis during 1996-98.

X. Indonesia's economy suffered more than that of some other Asian nations amid the crisis; its GDP in 1996 was 8.0% and in 1998 it fell down to -13.6%[5] (annual percent change) The

[4] Ibid.
[5] H. Hill, *The Indonesian Economy* (2nd edn, Cambridge University Press 2000) 64.

sudden crisis presented the degree to which Indonesia was a plutocracy, with the public and private sector organised in the administration of the Suharto family and their partners. The period after 1998, known as reformasi era, with Suharto removed from office, it was by no means clear what direction Indonesian politics would head. Cynics saw President Habibie as Suharto's man, a tool of New Order interests who would ensure that Indonesia remained a corrupt autocracy with national wealth and political power concentrated in the hands of military-dominated Jakarta elite. Others hoped for a democratic transition comparable to that which had taken place in South Korea and Spain after the demise of long dictatorships and saw profound political rebuilding as Indonesia transitioned into a sacred majority- rule electoral system. Hence, when contrasted with India, Indonesia is a far more youthful majority- rule government.

XI. It is additionally critical to recognise that the laws being compared deal with very different types of social protection. Addressing widespread hunger in India, and universalising medical insurance and pensions in Indonesia are all attempts that raise their own specific political questions.

Social Security – 'The Very Foundation of Poor People in India'

XII. The significance of social security in social and financial advancement has turned out to be more apparent. Social security ought not to be seen as an expense, but rather as an interest in human capital that prompts better profitability. It is one of the viable methods of reducing poverty, empowering value and supporting monetary and social stability.[6]

XIII. Every country tries to ensure social security for its citizen, many schemes and programmes come but few are implemented well and show some results. India over a period of time has implemented its policies and schemes. While some schemes failed to meet their desired

[6] Gary Koenig and Al Myles, 'Social Security's Impact on the National Economy' (Mississippi State University, Public Policy Institute 2013).

objectives, some of them helped uplifting the poor and the under-privileged people. India through Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and National Food Security Act, 2013 has shown that social security laws and policies can yield outstanding results in many states; Gujarat is one of the success stories of MGNREGA.[7]

Mahatma Gandhi National Rural Employment Guarantee Act.

XIV. The Act came into force on 2nd February 2006 covering just the 200 poorest districts of the nation and was extended to cover every single rural area of the nation from April 2008. This is, possibly, the biggest programme of its kind for generating employment in the rural unorganised sector of India.[8] In the last 10 years, it has produced 19.86 billion man days of employment profiting 276 million workers,[9] with a large portion of the employment going to female labourers and around a third to scheduled castes (SC's) and scheduled tribes (ST's). The goal of the Act is the creation of strong resources and reinforcement of the business resource base of the rural poor. It mandates enhancing livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work. It is an interesting procurement for the individuals who can't be given work disregarding an appropriate demand being made. The unemployment recompense has been pegged at 1/4th the pay rate for the initial 30 days and afterward ½ the pay rate for the remaining period.

XV. The MGNREGA is not a dole. It means that the government accepts that the poor have a privilege to be employed and that the State ensures and reaffirms this privilege. At least 100 days

[7] Gunget Village in Gujarat has showed immense result through MGNREGA. Which is under usage in Patan district since 1/4/2008. As a result of these works practical long term resources are made and villagers get financial advantage. Troubles of individuals diminished and permanent facilities created are being utilized by villagers. Work was of stone pitching on embankment of the pond. The Estimated amount allotted for work was 10 Lakhs. It completed in 6.75 Lakhs. It generated 1690 Men days and the Average daily wage earned: Rs.86/- per day.

[8] Parmod Kumar and Dipanwita Chakraborty, *MGNREGA: Employment, Wages and Migration in Rural India* (Routledge India 2016)

[9] Prakash Jai, 'Poverty, Self-Employment and Minorities - A Study' (2001) 39 Southern Economist.

of work can be acquired per family in the non-agricultural season. So, a poor family can get work for eight months a year; four in the agrarian season and four through the MGNREGA.

Benefits of MGNREGA

XVI. The following are some of the benefits of MGNREGA:

(a) Providing unskilled work for rural India.
(b) Ensuring complete openness and ownership in the governance.
(c) Ensuring sustainable development by developing the natural resources such as land and water.
(d) Providing an important role to the Panchayati raj institutions.

XVII. Overall, MGNREGA has made life easy for the families of poor farmers and villagers as they are able to earn better and do not have to move to urban areas to earn their bread and butter. Also, it focuses on making the environment cleaner and greener, thereby reducing any risk of damaging the environment.

Ineffectiveness of MGNREGA

XVIII. Regardless of its success and good governance, the MGNREGA still needs to manage several identified issues, which are as follows:-

(a) Corruption,
(b) Job cards,
(c) Applications,
(d) Choice of work,
(e) Execution of work,
(f) Estimation of work done

XIX. The fundamental criticism, however, is of the idea itself. This has been blamed for as salary redistribution and thus may bring about swelling. Expansion of schemes under MGNREGA in 2008 hit a three- year high with the wholesale price index hitting 7% for the year up to March 22, 2008.[10] However, the benefits under MGNREGA where gradually faded due to non- cleared, record costs of rice, wheat and other foodstuff.

XX. India saw the need for reformation of its existing system for providing more benefits to the people, schemes under MGNREGA failed as they were not able to reach to the needy people; by changing the existing system and by providing more benefits to the people belonging to the informal sector.

National Food Security Act, (NFSA) 2013

XXI. As passed by the Parliament, the Government notified this Act on 10th September, 2013 with the goal to give food and nutritious security at reasonable costs to people to carry on life with some economic comfort. The Act covers 75% and 50% of rural and urban areas, respectively, for getting sponsored food grains under the Targeted Public Distribution System, therefore, covering around 67% of the population.[11] This is possibly the biggest experiment of a food-based welfare scheme in the world.

Background and Constitutional Framework

XXII. The Directive Principles of State Policy of the Indian constitution portrays that it is the obligation of the state to raise the level of nutrition and the way of life of its people, and to

[10] Nareppa Nagaraj and Harish B. G, *An Economic Impact Analysis of MGNREGA* (LAP LAMBERT Academic Publishing 2012).
[11] Ashok Gulati and Surbhi Jain, 'Buffer Stocking Policy In The Wake Of NFSB: Concepts, Empirics, And Policy Implications' (Commission For Agricultural Costs And Prices Department Of Agriculture & Cooperation Ministry Of Agriculture Government Of India 2013).

enhance the general wellbeing.

XXIII. In 1996, in a case,[12] the Supreme Court announced that the right to live ensures in any enlightened society the right to food among different rights. In 2001, PUCL filed a writ petition arguing that the right to food is a part of the Fundamental Right to life embodied in Article 21 of the Constitution.[13] The Court issued a few orders and requested the execution of eight midway supported plans as legitimate qualifications. These incorporate the Public Distribution System (PDS), Antyodaya Anna Yojana, and the Midday Meal Scheme,[14] fair price shops,[15] among others. In 2008, the Court held that Below Poverty Line (BPL) families were qualified for 35 kg of food grains every month at financed costs.

XXIV. In 2010, the National Advisory Council drafted a National Food Security Bill, proposing legitimate privileges for around 75% of the population. In January 2011, an Expert Committee set up by the Prime Minister under the chairmanship of Dr. C. Rangarajan analysed the Bill and made a few suggestions, including decreasing the extent of the population qualified for advantages and modernising PDS. The Bill ensured the establishment of State Food Commissions[16]. Every such Commission should comprise a chairperson, five different members and a member secretary (counting atleast two ladies and one member each from SC and ST).[17]

[12] *Chameli Singh v. State of U.P.* [1996] 2 SCC 549.
[13] *PUCL v. Union of India and Others* [2001] 196.
[14] N. Karunakaran and Krishnaraji. T, 'Impact of Mid-Day-Meal-Scheme (Mdms) On Nutritional-Level, Enrolment-Rate and Dropout-Rate of Primary School Children in Kerala: A Case Study' (2015) XI Journal of Economic & Social Development, Vol. - XI, No. 1.
[15] NFSA 2013,s 28.
[16] NFSA 2013, s 13.
[17] NFSA 2013, s 16 (6).

Eligibility and Benefits under NFSA

- The Act guarantees 75% of rural and 50% of urban families, the privilege to seven kg food grains per person, at Rs.3/2/1 per kg for rice, wheat and millets, respectively.[18]
- Priority households are qualified for five kgs of food grains per individual/month[19] and 2.43 crores Antyodaya families to 35 kgs every family/month.
- The general category will be given atleast three kgs food grains for every individual/month at half the base offering cost.
- Rations or cooked meals will be given to children under 14 years old, destitute including ladies, and persons living on the fringes of the society.[20]
- The Act will give least Rs. 1,000 every month for six months as maternity advantage to 2.25 cores pregnant ladies and lactating mothers.[21]
- The eldest person or the head of the family will be eligible for ration cards being issued in his/her name.[22]

Table 1: Category and Type of Meals[23]

SL. NO.	Category	Types of meal	Calories (Kcal)	Protein (g)
1	Children (Six months to three years)	Take Home Ration	500	12-15
2	Children (Three to Six years)	Morning Snack and Hot Cooked Meal	500	12-15

[18] NFSA 2013, s 3(2)
[19] NFSA 2013, art. 3 (1)
[20] NFSA 2013, s 5(1)(b)
[21] NFSA 2013, s 4
[22] NFSA 2013, s 13
[23] NFSA 2013, s 4(a), 5(1) and 6, Schedule II.

3.	Children (Six months to Six years) who are malnourished	Take Home Ration	800	20-25
4.	Lower primary classes	Hot Cooked Meal	450	12
5.	Upper primary classes	Hot Cooked Meal	700	20
6.	Pregnant women and Lactating mothers	Take Home Ration	600	18-20

Source: Section 4(a), 5(1) and 6, Schedule II, NFSA, The Gazette of India (2013)

Financial Burden on the States

XXV. The expense of the usage of the Food Act will be shared between the Centre and the States; however, it would put critical weight on the poor states. Unexpectedly, they are the ones requiring the most extreme help. The costs imposed on states (halfway or full) include: dietary support to pregnant ladies and lactating mothers, midday meals, anganwadi framework, dinners for children experiencing ailing health, transport and conveyance of food grains, making and maintaining storerooms.

Identification

XXVI. The state government is entrusted with the obligation of recognising the total number of qualified households further engaged for distinguishing proof of 'needy' families. It may vary from state to state. The Census population evaluation will be utilised by the central government to decide the state-wide coverage of the PDS and the rural urban population extent.

Opportunities generated under NFSA

XXVII. The following are the opportunities generated under NFSA:

- Employment Assurance Scheme
- Mid-day Meal Scheme
- Integrated Child Development Scheme
- National Benefit Maternity Scheme for BPL Pregnant Women
- National Old- age Pension Scheme for Destitute Persons over 65 Years
- Annapurna Scheme
- Antyodaya Anna Yojana
- National Family Benefit Scheme
- Public Distribution Scheme for BPL and Above Poverty Line Families

Impacts of NFSA

XXVIII. The following are the impacts of NFSA:-

Pros: NFSA proposes to give food grains to 67% of the population at exceedingly financed rates. The Act provides uniform allocation of 5 kg foodgrains (per person) at fixed rate of Rs. 3 (rice), Rs. 2 (wheat) and Rs. 1 (coarse grains) per kg to 75 per cent of the rural population and 50 per cent of the poor in urban India – about 800 million people. Protection to 2.43 crores poorest of poor families under the Antyodaya Anna Yojana (AAY) to supply of 35 kg foodgrains per month per family would continue. Nutritional support to pregnant women without limitation is among other changes proposed in the Act. The Act extends subsidised food to pregnant women and children under the age of 16. It is positive that it is including those who really need nutritious food. The eldest woman who is the head of the family in the household

shall be entitled to secure food from the Public Distribution System for the entire household. The Act seeks to utilise already existing infrastructures like PDS and anganwadi. This has prevented further wastage of money to develop the infrastructures.

XXIX. **Cons:** There will be fixed share per state of grains designated. The onus is on the states to choose the beneficiaries. This can lead to differences, as a man not qualified for such great advantages in one state may be qualified in another state.

1. The number of beneficiaries is to be chosen at the state level. Corrupt ministers can illicitly store the grains and make deficiency of grains as an excuse.

2. The government should acquire a high amount from banks to finance such projects. So, banks will be lending more to the government, leaving less for overall population which will hamper the development of the private sector.

XXX. The aim animating the NFSA is getting food – in particular the basic staple grains that people consume – into the hands of those who cannot afford to feed themselves. Past experience shows that governments have not been very good at achieving this. The NFSA puts in place different mechanisms to monitor government performance, and grants recourse for getting benefits under NFSA to the individuals.

XXXI. The NFSA sets a handful of different mechanism to check government performance and raise individual complaints on board. The act doesn't have an effective grievance redress mechanism. In the Act, it begins at the district level which is outrageous; people need it the local Panchayat or Gram Sabha level.

An Analysis of Indonesian Social Security System

XXXII. The Indonesian legislature, the House of Representatives, passed several schemes such as Jamsostek Provident Fund scheme, Taspen programme scheme, etc., which cover multiple types of social security including health insurance, old-age pension programme, death benefits and work accident insurance which create plethora of opportunities for Indonesian citizens.

Jamsostek Provident Fund Scheme

XXXIII. Jamsostek programme includes work injury benefits, health-care, death benefits and retirement benefits. All the benefits are covered by the employer except retirement benefits where the employee has to contribute.[24] All these benefits are provided through provident fund managed by a state-owned company. The employer has to contribute about 7.24% to 11.24% and the employee has to contribute about 2% of his/her wages which is somewhat equal to a one month salary.

Table 2: Contributions/Premiums for Jamsostek Programme [25](% of wages)

Programme	Employers	Workers	Total
Workplace Accident Benefits Programme (JKK)	0.24 – 1.74	-	0.24-1.74
Death Benefits Programme (JK)	0.3		0.3
Retirement Benefits Programme(JHT)	3.7	2	5.7
Healthcare Benefits	3-6		3-6

[24] Claudia Rokx, *Health Financing In Indonesia* (World Bank 2009).
[25] Bambang Purwoko, 'He Social Security System in Indonesia: Current Investment Issues and Future Prospects' (2001) PT JAMSOSTEK (Persero) The University of Pancasila.

Programme (JPK)			
TOTAL	7.24 – 11.74	2	9.24-13.74

Source: PT Jamsostek (2001)

Taspen Programme for Civil Servants

XXXIV. Taspen programme was created in 1963 for providing benefits to civil servants under health care, death benefits, injury benefits and retirement benefits and the programme was extended to elderly members and their inheritors.

XXXV. Taspen programme includes monthly pension benefits for members' amount to 2.5% of their basic multiplied by the numbers of years they have served. The programme is funded not only by the national budget but also by contributions from members, which amount to 4.75% of their base salaries.

XXXVI. At present, there are four million civil servants contributing about 8% of the funds for the PT Taspen programme. PT Taspen contributes about 22.5% of the overall expenses derived from its enormous assets and investment income from member contributions and the rest is funded by the government.

Ineffectiveness of both the schemes under the Social Security System of Indonesia

XXXVII. Both the schemes failed because of the following inadequacies:

1. Jamsostek Provident Fund Scheme doesn't cover the workers belonging to the informal sector, self-employed workers and businesses with lesser number of workers (about, 80% of workers are not covered)
2. Jamsostek Provident Fund doesn't provide enough incentives for the workers to save for the retirement programme (total pension payment received by a Jamsostek recipient is only valued at about 7% of their basic salary after 35 years of active work.[26])
3. The rate of return in Jamsostek is quite low.
4. Taspen will be unsuccessful in the long run due to the increasing number of civil servants.
5. Restriction of existing law that imposes limitation on providing funding to Taspen scheme. (Additionally, 3.25% of the basic salaries of civil servants are required to fully fund the Taspen Scheme).

XXXVIII. In conclusion, both the Jamsostek and Taspen programme schemes have not been successful in attaining its goal to cover all informal workers in Indonesia. Given the limited number of providers willing to accept the schemes, the lack of health benefits effort and due to high administrative cost, it is no wonder that most workers chose to opt out of these schemes and instead chose other private health insurance plans for greater benefits.

National Social Security System Law 2004

XXXIX. The National Social Security System Law was formulated on 28th September 2004. The law provides a basic framework for the development of a national social security and social assistance system. The law includes informal workers and self-employed workers.[27] The

[26] Leechor Chad, 'Reforming Indonesia's Pension System' (World Bank 1996) <http://documents.worldbank.org/curated/en/1996/10/696208/reforming-indonesias-pension-system> accessed 6 July 2016.

[27] Muliadi Widjaja and Robert A. Simanjuntak, *Social Protection in Indonesia: How Far Have We Reached?* (9th edn, 2009).

government pays the contributions for the poor and disabled persons.[28] At a basic level, the law set up has expanded social security coverage to the whole population, through a combination of non-contributory social help plans for the most vulnerable and particular contributory insurance plans for each diverse class of labourers.[29]

Composition of National Social Security System Law 2004

XL. The law creates two level structures – (i) an advisory National Social Security Council reporting to the President to formulate general policies and to monitor the system. (ii) A Social Security Administrative Body to administer the social security fund and the delivery of the benefits. The law has combined four state-owned enterprises as operating bodies: PT Jamsostek (Pension and health-care), PT Taspen (Pension scheme for civil servants), PT Askes (Health insurance for civil servants) and PT Asabri (Pension for armed forces) to increase funds.[30] Setup of the three- pillar structure as recommended by ILO: (i) social assistance for citizens who lack financial means (ii) compulsory social insurance scheme as contributed by the employer and the employee (iii) voluntary private insurance in which people can take additional insurance.

XLI. The law has also formulated a National Social Security Board that will then examine the effectiveness of the Programme. It will consist of 15 members including five representatives from the central government ministers and five from labour unions. Members of the Board will be re-elected every three years.[31]

Eligibility and Benefits of the Bill

[28] Yves Guerard, 'Implementing An Indonesian National Social Security System' (2005).
[29] Nunzio Dunzio, 'Indonesia'S National Social Security System: Providing Social Protection for All' UBI Business (2004)<http://www.ubibusiness.com/topics/business-environment/indonesias-national-social-security-system-providing-social-protection-for-all/#.V31xLzUaLIU> accessed 6 July 2016.
[30] Gulati (n 12) 8.
[31] Alex Arifianto, 'Social Security Reform in Indonesia: A Critical Analysis' (2004) SSRN Electronic Journal.

XLII. The scheme proposed by the government will consist of retirement, healthcare, death and disability benefits. It will cover all the citizens of Indonesia, including formal, self-employed and informal workers.

1. The proposed benefits of the bill –

- Mutual assistance (gotong royong) – under the programme, wealthier will help poor, healthier will help the weak person and so on.
- Compulsory membership – Government made compulsory scheme for all Indonesian citizens to participate.
- Trust funds – the funds collected by the participants will be used for their welfare.
- Not-for-profit – funds will be ultimately used for its members and not for any profit oriented programmes.
- Health benefits, Employment Accident (worker compensation), Old-age benefits (lump sums), Pension (monthly for life), and death benefits (uniform normal amount).[32]

Table 3: Increase in contribution of Jamsosnas for formal sectors workers (% of wages)

Programme	Total Jamsostek Contribution Rates	Total Known Jamsosnas Contribution Rates	Total Contribution Rates (estimated)
Workplace Accident Benefits Programme	0.24-1.74 (5 classes)	0.24-1.75	0.24-1.75
Death Benefits Programme	0.3	Unknown	0.3
Retirement Benefits Programme	5.7	Unknown	10.75

[32] Hasbullah Thabrany, *Social Security for all: A continuous challenge for workers in Indonesia*, (2011)

Healthcare Benefits Programme	3-6	6	6
Total	9.24-13.74	6.24-7-75	17.29-18.80

Source: Authors' calculations

Opportunities generated under National Social Security System Law 2004

XLIII. The law created two types of Pension schemes in Indonesia – (i) Public Pension Programme and (ii) old- age pension programme. It also included National Health Insurance Scheme.

Old-age Pension Programme

XLIV. The old-age pension is a long- term programme wherein participants make regular contributions so that an additional income is available to offset a reduction in or loss of income after retirement. This programme will only accumulate social security contribution for first 15 years, and will only start paying pension benefits to retirees after this. It is defined benefit social insurance programme[33], and it will presumably operate as a partially funded pay-as-you-go scheme.[34]

XLV. Old-age Pension Programme has benefitted the old-aged people, child, widow/widowers

[33] A defined benefit scheme is a retirement plan in which workers are guaranteed a benefit upon retirement, usually based on years of service, age, and final or lifetime earnings. The government/employers are responsible for funding the plan's promised benefits and are liable for the risks associated with the scheme. An alternative is the defined contribution scheme that is a retirement plan in which only the contribution rates and bases of benefits calculations are determined in advance (not the benefit level). The benefit is a direct product of the contributions paid to the investment accounts, plus the return on investments from these accounts. The risks, though not the control, of this pension scheme rest with the workers (ILO, xxii; Weller, 3-4)

[34] A pay-as-you-go system is a social security system in which no funds are set aside in advance and benefits for current retirees plus administrative costs are paid out of the current workers' contributions (ILO, "Academic Paper" xxii). A partially funded pay-as-you-go scheme means that the system is partially financed in advance to create a reserve fund for future use by retirees but does not pay contributions at the present. After the system matures, it would start paying out pension obligation to retirees and then it could return as a full pay-as-you-go scheme.

and disabled people. The fixed minimum pension is 70% of wages. The widow/widowers will receive 60% of their wages; they will be able to receive until they die, remarry or work full time. Pension contribution for the formal and informal workers will be different and their retirement age is 55. After contributing for 15 years they will receive their pensions.[35]

Table 4: Pension – Cost of Base Plan[36]

Year	2010	2020	2030	2050	2070
% of GDP	0.0%	0.1%	0.5%	2.0%	2.9%
% of Wages	0.0%	0.2%	1.7%	6.3%	9.8%

Source: PT Jamsostek (2001)

Retirement age: Age 60 with 15 years of contributions

Benefit formula: 0.5% of final average earnings for each year of contributions.

Past service credit: None; Social pension for elderly: None

Minimum benefit: None; Average cost = 5.27% of wages.

Old -age saving programme

XLVI. The old-age saving programme is a long-term programme in which participants will receive benefits both before and after retirement. The cost of the Programme is (i) Contribution rate – 3% (ii) Cost of % of GDP = 1.05% years.[37]

Benefits of the individual will depend on –

- Wages and pattern of wage change.
- Rate of return on investments
- Periods of absence from labour
- Investment management and administrative expenses.

Estimated growth –

[35] Lene Muliati, 'Pension Reform Experience in Indonesia' (The World Bank Office 2013).
[36] Chad (n 27) 13.
[37] Tulus, T.H., 'Tambunan and Bangbang Purwoko, Social Protection in Indonesia' (2002)

- Contribution rate: 3.0%
- Inflation: 4%
- Real rate of wage growth: 3%
- Real rate of return on Investment: 4%
- Years of Contributions: All
- Expenses: None
- Pre-retirement withdrawals: None

Table 5: Benefits of Old-Saving Programme

Benefits

Years of Contributions	Salary Multiple
5	1.9
10	3.9
15	6.0
20	8.2
25	10.5
30	13.0
35	15.5
40	18.2

Total Assets

Year	% of GDP
5	5.2%
10	10.1%
15	14.4%
20	18.0%

Source: Report of Pension fund 2010 by Pension Bureau- BAPEPAM- LK

National Health Insurance Scheme (NHIS)

XLVII. NHIS will cover the health expenditure of all the Indonesian Citizens. The first phase includes formal workers who have to pay 6% payroll tax, split equally with their employers. 6% will be deducted from the pension of the retired citizens and taxes for the informal workers will be decided accordingly.[38]

Impacts of National Social Security Law (NSSL) on Indonesian Labour Market

XLVIII. The following are the impacts of the NSSL:

- High contribution rate will create financial burden on the employers and the workers.
- Loss of job opportunities due to higher rate of contribution of social security.
- Conflict between informal (fixed contribution) and formal worker (may vary) due to payroll taxes.

XLIX. It is doubtful that current contribution rate will cover health expenses for all Indonesians in during next few decades. Higher contribution rates would be required, which would increase the burden of workers and employers and could cause the Indonesian economy, already less competitive.[39]

Changes under the National Social Security System Law 2004

L. In 2011, there were mainly four changes. First, an additional programme for four to five schemes. Second, the government's commitment to have general universal medical care for the entire population, in which the legislature will pay contribution. Third, adaptability of the law to

[38] Hasbullah Thabrany, 'Birth of Indonesias 'Medicare': Fasten Your Seatbelts' The Jakarta Post (2014) <http://www.thejakartapost.com/news/2014/01/02/birth-indonesia-s-medicare-fasten-your-seatbelts.html> accessed 6 July 2016.
[39] Gulati (n 12) 8.

cover the informal economy and the independently employed. Fourth, simplification of the government-managed savings establishment (It is run by a government for the benefit of its citizens. A provident fund is a form of social safety net into which workers must contribute a portion of their salaries and employers must contribute on behalf of their workers). There will be just two open autonomous organisations that will run the standardised savings, namely, the social security for healthcare- and the social security relating to employment.[40]

Need to Reform the Schemes of India and Indonesia

Indonesia

- The recent trend in pension provisions is characterised by pay as you go scheme to a fully funded one, from the publicly run to the privately run and the government can't go both as the regulator and the provider. Thus, the government should change its policies and make pension scheme privately owned, supported by the three-pillar paradigm.
- Under the retirement account scheme, a private scheme, workers should be given the chance to manage their accounts either by themselves or by their employers.
- The government should provide safeguard for workers' investment.
- A micro health insurance scheme for the informal sector should be created.

India

- Lessons from the MGNREGA should be drawn.
- For making more effective implementation of the NFSA, it could link it to education as in Bangladesh where school children and their families are given access to subsidized food.
- Government should have to import foodgrains during drought years.
- 'Food stamps' should be given to poor's because 'free market economies' use that mechanism.
- There is a need to reduce the leakage from the Act and make it more transparent.

[40] Rekson Silaban, 'The Reform of Social Security in Indonesia, Social Policy, Trade and Labour Standards, Development Corporation' (2015) ITUC, AP.

Conclusion

LI. The NFSA and National Social Security Act put into legal principles and goals that might, more traditionally, have remained exclusively in the realm of the policy. The state through its law tries to promise more than it is capable. Since the laws have been there, it is difficult to roll back the social protection in question. Laws serve as a commitment that is more public than policy, and is, thus, more difficult to rescind.

LII. The welfare laws restrict the state to make social security more protective, responsive and innovative. The laws examined in the paper, particularly the Indonesian laws, need more reformation through further legislation and executive regulation. While NFSA tries to fulfill its obligations and provides a better balance between detail and flexibility of the laws, yet every law doesn't guarantee concrete rights, duties, standards and deadlines and it takes a long time to take effect – eight years elapsed since the law being passed.

LIII. Law provides better opportunities to expose the government to careful examination and better monitoring. Due process rights give individuals a basic entry point, which can make it easier to press for service. Moreover, relying on individual complainants, welfare laws can create better institutional mechanisms and rural form to reduce inadequacies. This is, perhaps, the most concrete improvement that social welfare laws can achieve.

LIV. The Indian and Indonesian laws observed in this paper suggest that creating legislation does not replace policy-it provides the umbrella under which social welfare programmes must fit. However, passing such laws with regard to social welfare programmes must be through democratic checks and balances.

MATERNITY BENEFIT ACT AND THE PRIVATE SECTOR: IMPLEMENTATION ISSUES

Rubanya Nanda* & Debadatta Bose**

ABSTRACT

The most relevant and the fundamental purpose of the implementation of the provisions related to maternity leave is to cherish and preserve the self-respect of women who are conceiving. Due to the onset of globalisation and increasing awareness and the education of the womenfolk, there has been a rapid surge in the number of women employees in the government and private sectors alike. Thus, it becomes very necessary to implement laws and grant maternity leave to the women employees. This is the primary objective of the Maternity Benefit Act, 1961, in the Indian context. The Act prominently enunciates the various provisions with regard to the benefits given to the women employees during maternity leave. The Act forbids the employer from knowingly engaging a woman at the workplace six weeks after her delivery or miscarriage. Now the Labour Ministry is expected to mandate the maternity leave of 26 weeks in the government sector as well as in the private sector. However, still, many women employed in the private sector are at the suffering end due to discrepancies in the implementation of the maternity benefits. There is evidence that on quite a few occasions the management removes the women employees by retrenchment even before they apply for maternity benefit. This paper addresses the issues in reference to the women in the private sector. It tries to carve out a concise solution for a better implementation of maternity benefits in the private sector. To understand the argument of this paper from an objective standpoint, some of the International Conventions on maternity benefits have been referred to.

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Introduction

Feminist Jurisprudence and Maternity Benefit

Feminist jurisprudence has taught us that even law is biased against females – there is a male bias in the legal superstructure wherein the test of a reasonable 'man' still generalises the applicability of the law.[1] The dark cloud of rampant gender discrimination behind the closed walls and veils of what one calls 'law' is a major glitch that needs to be thoroughly addressed. This can be understood in a socio-historic context; but to dwell upon feministic conceptions of law is not the objective of this paper, although to disregard the impact of feminist jurisprudence on maternity benefits altogether, especially when maternity leave is being discussed, will not be correct.

Women have long been disadvantaged by the legal superstructures themselves – been ostracised and left out, stereotyped and discriminated upon by the very ones from whom they seek their solace. This problem has been there since almost the times from when formal 'law' has been there, and has not changed ever since. The poor representation of women in most, if not all the legislature[2] speaks a thousand words about where the problem of law relating to females lies. Patriarchal authority, coupled with male hegemony, has forever dominated the arena of law-making.

While the debate in the House of Commons was going on regarding the Surrogacy Bill, Hon'ble Ms. Joe Richardson had spoken what had not been spoken for a long time:

> *"[...] this House will eventually be asked to decide. But this is a male-dominated House, and that dominant male voice will decide the future of millions of women [...]"*[3]

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[1] *See generally* Catharine Mackinnon, 'Toward a Feminist Theory of the State' (1990-1991) 12 Women's Rts. L. Rep. 205, 208.

[2] Anahita Mukherjee, 'Women in House: India's rank slips from 117 in 2014 to 144 this year' *The Economic Times* (Mumbai, 8 Mar 2016) <http://articles.economictimes.indiatimes.com/2016-03-08/news/71309602_1_constitution-amendment-bill-lok-sabha-parliament> accessed 15 Mar. 2016.

[3] HC Deb 23 November 1984, vol 68, col 560. *See also* Committee Of Enquiry Into Human Fertilisation And Embryology, 'Human Fertilisation and Embryology (Warnock Report)' <http://hansard.millbanksystems.com/commons/1984/nov/23/human-fertilisation-and-embryology-1> accessed 15 Mar. 2016.

Yet this is how the laws are made, without account for female needs and requirements, without hearing any of the voices of the millions of women affected by such legislation and without due regard to any practical problems any woman may face. Irrelevant and outdated male knowledge and experience of problems with the fair sex lead to the disproportionate effect of hardship that the legal structure has on women today.

To begin with, motherhood is not essentially female; motherhood is as much as a duty and responsibility of the male as much as it is of the female.[4] Both the mother and the father form a non-negotiable part in raising a child. But, equality is far from being a reality in the law of employment. Child rearing and child care are generally seen as the domain of the 'Mother'. Maternity benefit, though has its measures of furthering the cause of abolition of a 'childbearing penalty' by making women lose their jobs when they have a child due to their extended leave, does further the cause of discrimination against women with regard to recruitment and wage reduction. The very fact that a term such as 'motherhood penalty'[5] exists to denote the loss in an increase of wages in the long run due to a pregnancy shows how far law has gone to provide a remedy to women that is never practically implemented.

The concept of maternity benefit

Maternity benefit is largely a part of labour law, and mainly centres around 'job protection' during pregnancy and 'maternity leave' as a compulsory leave so that mothers can spend time to take care of their newborns. It is one of the various benefits that are available under labour laws and is a measure of social security to preserve the sanctity of childbirth, though sadly the law speaks that only females are entitled to spend time nurturing the child and the father inherently has no role to play.

Maternity leave can be of two types: paid or unpaid. Paid maternity leave is the norm in the 21st century, with a minority adopting the concept of unpaid maternity leave. Unpaid maternity leave is merely a token leave which means that the employee will not be retrenched

[4] *See generally* Derek Morgan, 'Making Motherhood Male: Surrogacy and the Moral Economy of Women', (1985) 12 J.L. &Soc'y 219, 238.
[5] *See generally* Stephen Benard; In Paik; Shelley J. Correll, 'Cognitive Bias and the Motherhood Penalty', (2007-2008) 59 Hastings L.J. 1359, 1388. *See also* Tamar Kricheli-Katz, 'Choice, Discrimination and the Motherhood Penalty', (2012) 46 Law &Soc'y Rev. 557.

on the ground that such an extended leave has been availed by the employee, and the employee gets no monetary or economic benefit whatsoever when she essentially requires it. Paid maternity leave, at least, solves half the purpose it seeks to achieve – nurturing the child by ensuring that the parents spend quality time with their newborn babies. In both cases of paid or unpaid maternity leave, however, there are mandatory minimum periods of leave that have to be granted by the employer. The employer may, however, choose to extend the leave beyond the statutory minimum as a matter of policy.[6]

In India, this leave is governed by the Maternity Benefit Act, 1961 and it grants 12 weeks[7] of paid leave to a female employee expecting childbirth. The payment of wages in this case is the full amount of wages that is ordinarily paid to the female employee during regular days. However, even this leave comes with a rider that the woman must have worked for a minimum of 80 days in the preceding one year under the employer to be eligible for the benefit under the Maternity Benefit Act.[8]

The International Labour Organization and Maternity Benefit

The International Labour Organization (ILO) is a strong voice for the grant of maternity benefits, and had succeeded in getting all countries legislate maternity benefits – except for the United States and Papua New Guinea which, according to a ILO Report that studied the extent of maternity benefits in 185 odd countries,[9] do not have any statutory mandate for paid maternity leave.

[6] For example, Airtel India gives 22 weeks' maternity leave and Microsoft India allows for 6 months' maternity leave. *See* Somya Abrol, 'Besides Airtel, these are the companies that offer extended maternity leave in India' *India Today* (Delhi, 10 Mar 2016) <http://indiatoday.intoday.in/story/extended-maternity-leave-in-india-airtel-flipkart-hcl-godrej-hindustan-unilever-maternity-leave-around-the-world/1/616754.html> accessed 15 Mar. 2016.

[7] *See* S. 5(3) of the Maternity Benefit Act 1961.

[8] *See* S. 5(2) of the Maternity Benefit Act 1961.

[9] *See* Laura Addati; Naomi Cassirer; Katherine Gilchrist, 'Maternity and paternity at work: Law and practice across the world' < http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_242615/lang--en/index.htm> accessed 15 Mar. 2016. See also Catherine Albiston; Lindsey Trimble O'Connor, 'Just Leave', (2016) 39 Harv. Women's L.J. 1, 66.

The primary convention governing the area of maternity leave is the Maternity Protection Convention of 2000[10] which provides for an array of benefits and mandates that there should be a minimum period of 14 weeks' leave for pregnant mothers.

The Maternity Protection Convention of 1919

ILO in one of its general conferences adopted the Maternity Protection Convention in 1919. The original text of the Convention consisted of 12 Articles. This Convention was ratified by many countries later on. This was done to ensure a sound financial support for all the working women. Article 1 deals with terms such as industrial undertaking[11] and commercial undertaking.[12] Article 2 of the Convention deals with the scope of the term 'woman.'[13] Article 3 of the Convention talks about the grant of maternity leave to women who are working in the public, private, industrial or commercial undertaking and further states that a woman shall not be permitted to work in the six weeks following her confinement (childbirth). She can, furthermore, claim the right to leave the work by the production of a medical certificate proving that the confinement is going to take place within six weeks.[14] Article 3 also envisages the payment of sufficient benefits to the woman for the full and healthy maintenance for her own being and her child. Article 4 of the Convention talks about the prohibition of unlawful dismissal of a female employee by her employer during her maternity leave. It states that the employer cannot give her the notice of dismissal during her leave period.

The Convention Concerning Maternity Protection (Revised), 1952

The ILO Maternity Protection Convention, 1919 was revised in 1952. According to the revised Convention "*every woman irrespective of age, nationality and status in public or private, industrial or commercial undertaking was required to be absent for a period of six weeks after the childbirth and allowed to be absent for a period of six weeks prior to*

[10] International Labour Organization, Maternity Protection Convention (C183) (entered into force 7 February 2002).
[11] *See* Article 1 of Maternity Protection Convention (Revised) (C103), 1952 (No. 103) <http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C103,%2FDocument> accessed 18 Mar. 2016.
[12] Includes any place where articles are sold or where commerce is carried on.
[13] For the purpose of this Convention, the term 'woman' means any female person, irrespective of age, nationality, race or creed, whether married or unmarried, and the term 'child' means any child whether born of marriage or not.
[14] See Article 3 of Maternity Protection Convention (C003),1919 (No.3).

childbirth". In furtherance of this absence from her respective duty, she had to be paid full benefits which amounted to sufficiency for the full maintenance of herself and her child. The benefits had to be paid out of public funds or by the system of implementation of insurance but the exact amount and the dues were to be decided by the appropriate authority or the government in each country. Additional benefits over and above the basic benefits which included two nursing breaks of half an hour in one day of work and the services of the doctors and midwives were provided completely free of cost.[15] This futhermore included the protection of woman from unlawful dismissal during her absence from work in the period of the leave.[16]

C183 - Maternity Protection Convention, 2000 (No. 183)

Convention concerning the revision of the Maternity Protection Convention (Revised)

Maternity protection was a crucial point of development of nations through protection of women. The ILO terms maternity protection as a 'core issue' and has been striving to advance the cause since its inception in 1919[17]. Cultural stereotypes coupled with economic ruthlessness and social and political norms have discriminated women for generations and one such area is the workplace. During pregnancy, women across the world are at considerable economic and medical risk. What the ILO endeavours to do through maternity benefit is not only to provide economic security to women when they require it so but also to ensure the health and safety of both the mother and the newborn by cutting out work-related risks through compulsory leave. Through the lifespan of the ILO, three conventions have been adopted, namely one in 1919, one in 1952 and one in 2000. Years of progress on the issue has culminated into the latest 2000 convention.

This convention was enacted keeping in view of the principles of the Universal Declaration of Human Rights, 1948, United Nations Convention of Elimination of All forms of Discrimination Against Women, 1979, and all other related conventions for the equality of treatment of men and women workers. It applied to all the women workers irrespective of their place of employment and without any discrimination. The term 'child' was also applied

[15] *Supra* note 11, Article 4.
[16] *Supra* note 11, Article 6.
[17] *See* ILO, International labour standard instruments on maternity protection, <http://ilo.org/travail/aboutus/WCMS_119238/lang--en/index.htm> accessed 19 Jan 2017.

to any child without any kind of the discrimination.[18] This Convention forms a major part of the international framework on maternity benefit that is present in the world today. This is not the first convention, however, and contains some compromises as compared to its predecessor – the C103 Maternity Protection Convention, 1952 to achieve its desired object through possibility of more ratifications. The stringent measures were softened in this Convention, but it still cannot be said to be of universal acceptance. India has not yet ratified the Convention. However, this forms an important part of the discussion on maternity benefit law in the present world nevertheless for even though it is still just an endeavour, it is the most ambitious endeavour till date.

The Convention addresses the following subjects:[19]

- Benefits
- Breastfeeding mothers
- Employment Protection and Non-discrimination
- Health Protection
- Leave in the case of illness or complication
- Maternity Leave (more than 14 weeks)

Ensuring Maternity Protection[20]

A working mother aspires for a healthy pregnancy as well as sound financial support for her child and herself during and after her pregnancy. The maternity protection benefits fulfil these aspirations by encompassing two broad goals. These goals are:-

1) to make sure that a woman's job preferences and her economic ventures do not act as a hindrance or pose any kind of health risk to her and her child.
2) to ensure that the role of being a mother doesn't compromise the financial security of the woman and her family.[21]

[18] ***Supra* note 10, Preamble of the Convention.**

[19] *See generally* s*upra* note 10.
[20] *See generally* Maternity Protection Resource Package by the ILO, <http://mprp.itcilo.org/pages/en/introduction.html> accessed 17 Mar 2016.
[21] *See generally* Assane Diop, Manuela Tomei, Philippe Marcadent, 'Goals of maternity protection', <http://mprp.itcilo.org/pages/en/introduction.html> accessed on 17 Mar 2016.

The Maternity Benefit Act, 1961

In India, the Maternity Benefit Act was passed in 1961 which applied to all the states. Prior to that, different states had laid down their own laws in relation to maternity protection. The Maternity Benefit Act is heavily based on the aforementioned guidelines of the ILO. It aims to ensure complete safety and welfare of both the mother and the child. It includes the grant of maternity leave along with the benefit in the form of payment of wages and remuneration during the time of leave. It states the granting of leave and the benefits both before and after the date of delivery. Though the provisions of this Act apply to both the government and the private sectors, there are certain major lacunae in the implementation of the Act in the private sector.

Salient Features of the Maternity Benefit Act, 1961

Till 1961, there was no specific beneficial legislation for the achievement of the goal of the social justice to the women workers in both the private and the public sectors. Thus, the Maternity Benefit Act was passed in 1961 in tune with the ILO Conventions to protect the health and the financial security of both the mother and the child.

The Act is a special law for women that nobly endeavours to ensure gender equality at workplaces and provides certain benefits to women for the hardships they have to endure during childbirth. This forms the backbone and framework of the national legislation on the protection of women's economic interests on childbirth prescribed by law, alongside the Employees' State Insurance Act, 1948 and a few other concurrent labour laws. It is through the provisions of this Act that employed women can claim maternity benefit, and as a welfare legislation, it ordinarily follows that this Act adopts a pro-employee approach. It has a wide application covering 'mines, factories, plantations, shops and establishments' and provides no wage limits or eligibility criteria to be covered under the Act. Section 3 of the Act deals with various definitions that include the definition of 'child,'[22] 'delivery,'[23] etc.

Section 4 [Before the Maternity Benefit (Amendment) Bill, 2016]

Section 4 of the Act embodies the very primary aspect of this piece of legislation. According to Section 4, "*no employer shall knowingly employ a woman in any establishment*

[22] *See* section 3 (b) of the Maternity Benefit Act 1961.
[23] *See* Section 3(c) of the Maternity Benefit Act 1961.

during the six weeks immediately following the day of her delivery."[24] This section also includes the issue of miscarriage wherein an employer is prohibited from allowing any woman to work immediately after her miscarriage. It also restricts the women employee to work during this period. Added to it, no pregnant woman will, even on a request made on her behalf, be required by the respective employer to do any kind of arduous work. She is also forbidden to do any kind of work which involves long hours of standing, or which is likely to affect her pregnancy and the normal development of the foetus. Furthermore, she is restricted from doing any kind of work which is likely to cause her miscarriage or otherwise to adversely affect her health, during one month immediately preceding six weeks before the date of her expected delivery.[25]

All women are entitled to, and their employer would be liable for, the payment of maternity benefits. The benefits are prescribed and calculated at the rate of the average daily wage of the female employee. The period included is the period of her actual absence which also includes the preceding as well as the day of her confinement. In brief, she is entitled to six weeks before and including her date of delivery and also six weeks after her delivery. No woman is eligible for these benefits unless the criteria of being in the employment for not less than 80 days in the twelve months immediately preceding the date of her confinement is met with. Furthermore, the maximum period for the entitlement to maternity benefits is 84 days. In the case of any casuality during the confinement, the benefits would be payable upto and including the day of her death.

The Maternity Benefit (Amendment) Bill, 2016

Very recently, the Prime Minister of India gave his ex-post facto approval and the Rajya Sabha passed The Maternity Benefit (Ammendment) Bill, 2016.[26] The amendments will be benefiting 1.8 million (approx.) women workforce in the organised sector.[27] This is a huge relief for all the working women in all the sectors. The major increase in the number of weeks granted for maternity leave is very welcoming. The salient features of this amendment are as follows:-

[24] *See* section 4 of the Maternity Act 1961.
[25] *Ibid*.
[26] *See* Maternity Benefit (Amendment) Bill, 2016. *See also* TNN & Agencies, 'Bill allowing 6-month maternity leave passed in RS' *Times of India* (London, 11 Aug 2016) <http://timesofindia.indiatimes.com/india/Bill-allowing-6-month-maternity-leave-passed-in-RS/articleshow/53652957.cms> accessed 26 Jan 2017.
[27] *Ibid.*

- The granting of 12 weeks of maternity benefit to the 'Commissioning mother'[28] and the 'Adopting Mother.'
- The increase in the granting of maternity benefit from the present 12 weeks to 26 weeks for two surviving children. Furthermore, a leave of 12 weeks is also granted for woman with more than two children.[29]
- The inclusion of the work-from-home system and also the provision of Crèche facilities for the establishments which are having 50 or more than 50 employees.

This amendment is especially relevant to the private sector since these are economic burdens ordinary employers or small to medium-sized businesses would not have provided. The line between the exemplary benefits to the government employees and the meagre benefits in the private sector is clearly being blurred. In the private sector, a 26-week leave by an employee would have otherwise definitely cost her the job and any benefits associated with employment which might in consequence lead to any other prospective employer seeing her as a liability to the company.

Maternity Benefit Act - Implementation in the Private Sector

The Act does not distinguish between the private sector and the government sector. Women working in both the private sector as well as the government sector are covered under the Act. However, this Act does not cover the unorganised sector which consists of the temporary and casual workers and those employed through sub-contracting, outsourcing, etc. This is mainly because of the absence of an identifiable employer and workplace in the unorganised sector[30]. Even the implementation of the Act in the private sector is not very effective. There are many discrepancies and loopholes when it comes to the implementation of the provisions of the Act in the private sector. These sectors include small-scale companies and other small private enterprises. The women employees of these sectors are mostly at the suffering end. The employers use smart tactics in preventing the women in getting their due

[28] A commissioning mother is defined as a biological mother who uses her egg to create an embryo implanted in another woman. The 12-week period of maternity benefit will be calculated from the date the child is handed over to the adoptive or commissioning mother. *See generally* 'Maternity Leave in India and Other Countries', <http://www.prsindia.org/theprsblog/?p=3695> accessed on 11 Aug 2016.
[29] *See supra* note 30.
[30] Anita Abraham, Devika Singh and Poulomi Pal, Critical Assessment of Labour Laws, Policies and Practices through a Gender Lens, National Resource Centre for Women, Ministry of Women and Child Development, Government of India,
<http://nmew.gov.in/WriteReadData/l892s/8261924589Final%20World%20Bank%20Report.pdf> accessed 26 Jan 2017.

maternity benefits during and after their pregnancy. Moreover, women are also willing to do arduous work even during the final stages of their pregnancy in the fear of losing their wages and job. This is a really unfortunate scenario.

Women who remain in the employment after the childbirth are often at a very disadvantageous position altogether. They are often penalised in terms of career opportunity and wages. Many of them also postpone their career aspirations in the pursuance of their childcare duties. The hostile circumstances, thus, force the women to leave the job altogether.

The Major Issues of Implementation in the Private Sector

The Lacuna on the part of the Employers

One of the major issues concerning the implementation of the Act is the lack of proper adherence to the statute by the employers. Despite the prevalence of this statute over any employment contract which provides for a reduced period, it is very common practice in the employment contracts to provide for a lesser period or to make the maternity leave unpaid.[31] The employers mostly don't pay any heed to the statutory provisions and leave no scope for bargaining. The employer don't take much adequate measures to ensure maternity protection. Increased medical costs happen in relation to a child who is not being taken care of by either of the parents. These costs are mostly borne by the employer through the medical benefits to dependents, and can be avoided or reduced by providing maternity benefit.[32] They tend to disregard the maternity protection allowance as it involves the paying of wages to the female workforce who has opted for maternity leave. Under this Act, a female employee is entitled to 12 weeks of paid maternity leave. The employer hesitates to give the financial support because he/she does not get the requisite profit due to the absence of the female employee. Thus, it provides for a major drawback in the accurate implementation of the Act. The employer should adhere to the statutory regulations so that the maternity protection can be ensured.

[31] *Ibid.*
[32] Sashi Bala, 'Analysis on Effectiveness of the Implementation of the Maternity Benefit Act, 1961' (Report of National Commission for Women, 2014), page 17.

The Issue of Retrenchment[33]

There is also evidence of the misdemeanour practices on behalf of the employer when he/she gets to know about the employee going on maternity leave. The employer takes the ultimate step of retrenchment against the female employer even before she applies for maternity leave. This is done to get rid of the responsibility and the liability to sanction the maternity leave.[34] This is done in furtherance to avoid the granting of cash benefits as a part of the maternity leave to the female employee.

Resignation from the Job

Another reason for the non-implementation of the Act is the voluntary resignation of the employees from jobs during the ongoing pregnancy. Family pressure and the apprehension of the non-payment of the maternity benefits force women employees to avail voluntary resignation from their jobs. They are furthermore forced to take these adverse steps as they prefer to devote their maximum time for their children. The added responsibility of motherhood along with the aims and expectations of the employers creates additional pressure on the mothers. The demands of the employers in the workplace are similar to the demands of the men present at the respective households of the female employees as they are expected to handle the household responsibility single-handedly. Women are, therefore, left with no other option but to opt for resignation from their respective jobs.

Hesitation of the Employer to Employ Female Workforce

The employers, especially in the private sector, generally hesitate to employ females due to the apprehension that they would certainly take maternity leave in the future. Thus, it also leads to the lowering of the prospects of hiring female workforce. This is more prominent in the private sector since the employer has to pay the women availing of maternity benefits as his/her own expenditure.

Employers Role During the Absence of a Female Employee from the Workplace

During the absence of a female employee from the workplace, the employer is prohibited from terminating the employee, as is stipulated under the provisions of the

[33] *See* section 2(oo) of the Industrial Disputes Act 1947. It defines retrenchment as: "the termination of the of the employee by the employer/workman for any reason whatsoever , otherwise than as a punishment inflicted as a way of the disciplinary action".

[34] Sashi Bala 'Implementation of the Maternity Benefit Act', V.V Giri National Labour Institute, NLI Research Series No. 099/2012. <http://www.vvgnli.org/sites/default/files/publication_files/099-2012_Shashi_Bala.pdf> accessed on 17 Mar 2016.

Maternity Benefit Act. During this period, the employer tries to fill up the vacant position(s) on an ad-hoc basis. Thus, it sometimes happens that the employer no longer needs that post or manages to deal with the activities without the need for the female employee. Therefore, when the employee returns after the maternity leave, she is informed that there is no requirement of her service as the post has been removed altogether. This technique prominently works on the employees who are less aware of their rights and they are left with no other option but to forego their jobs. The other employees may become duty-bound during their co-workers' maternity leave to take up their co-workers' job for no extra remuneration. This further encourages the employer to terminate the employee. Thus, this leads to discrepancy and eventually to the inefficient implementation of the Act as the employee is again put into financial risks and the troubles for no reason at all.

The Absence of the Provision in Relation to Adequate Facilities for Nursing Period:

The Act, under section 11, provides for grant of mandatory nursing breaks to the breastfeeding mother. The law enacted hardly provides other facilities to the mother, for example, separate nursing rooms and other ancillary facilities. Absence of such facilities for nursing in private companies with a significant number of female workforce discourages women to breastfeed during the nursing breaks. In the United States, companies usually have a 'lactation room' where women can use breast pumps or breastfeed in private.[35]

The Trilegal-NASSCOM report

This report was very recently published which emphasised on the implementation of the maternity benefits at the Indian Business Processing Management sector.[36] It states that though India continues to be a major stronghold in the field of business processing management, there is a significant drop in the diversity at the senior managerial level. There is less number of women employed at the senior level. This can be deduced from the fact that the women ought to take longer break or opt out of the workplace pre- or post-pregnancy. This indicates the inefficiency in the lack of implementation of the maternity benefit law.

[35] *See* Brit Mohler, 'Is the Breast Best for Business: The Implications of the Breastfeeding Promotion Act', (2011) 2 Wm. & Mary Bus. L. Rev. 155, 184.
[36] *See* NASSCOM & Trilegal, 'Maternity benefits and facilitating return to work: IT-BPM Industry's Experience' <http://www.nasscom.in/maternity-benefits-and-facilitating-return-work-it-bpm-industrys-experience> accessed on 7 Apr. 2016.

Maternity benefit as a system does not operate independent of other social obligations of 'parenting'. Although the system purports to ensure economic and medical stability for women, a considerable focus on childcare has been given and is also a primary objective. Shifting childcare exclusively to the mother while obligating the other partner to work everyday is a flaw that has been addressed by many countries. In India, the Maternity Benefit Act is only women-centric. In countries such as France, Sweden and United Kingdom, parental leave (both paid and unpaid) is duly provided. In France, parents can share unpaid leave up to three years. This is based on the ethos that "child rearing is a shared responsibility." This report also indicates that there is a major drop in the number of female workforce in the senior and the mid-managerial level as compared to the entry level. Women tend to leave the workforce post-pregnancy due to the lack of a supportive environment.[37] They don't get appropriate support from their employer(s) to give time to their new-born. This is a major setback to their career. This implicates the lacuna in the implementation of the Act. Though 75 percent of the employees tend to return to their workplace after availing the maternity benefits,[38] a few of them leave before the end of two years. This portrays a grim picture and it can be inferred that the objective of this Act is not duly fulfilled.

The Increase in the Maternity Benefit Entitlement

Recently, the Ministry of Women and Child Development has proposed an increase in the maternity leave from 12 weeks to 26 weeks.[39] This is a welcome change as it ensures maternity protection on the guidelines of the ILO. The government is expected to implement this change very soon. This would put India among the few[40] countries that provide the maximum amount of maternity leave. This is done to encourage women in continuing their participation in the workforce. The nursing of the babies has also been an important factor behind this change. This will give the scope to the working women to breastfeed their children for an uninterrupted period of six months.[41]

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[37] *Ibid.*
[38] *Ibid.*
[39] *See* Sunitha Sekar, 'Maternity leave in private sector to be 26 weeks' *The Hindu* (Chennai, 4 Jan 2016) <http://www.thehindu.com/news/cities/chennai/maternity-leave-in-pvt-sector-to-be-26-weeks/article8060095.ece>accessed 18 Mar. 2016.
[40] India would be put in a league of 16 countries that give the maximum paid maternity leaves to women.
[41] *See* Aarefa Johari, 'Extended maternity leave is the right move But what about paternity leave and unorganised sector?' (Scroll.in, 4 Jan. 2016) <http://scroll.in/article/801322/needed-after-extended-maternity-leave-a-policy-for-paternity-leaves-and-women-in-the-unorganised-sector> accessed 17 Mar. 2016.

The Argument against the Implementation of the Change

Many professionals argue that this step would affect the career map of the women as it would be very difficult to cope up with the stiff competition in the private workplace after six months of maternity leave. This may hinder the professional growth of the women after reabsorption as there would be major changes in the working environment at a given time.[42] The unorganised sector is untouched by the change in the provision. The companies would be again hesitant in hiring the female employees.

Authors' View

Keeping all the aforementioned arguments in mind, the authors would like to elaborate on the need to legislate these into comprehensive laws by taking into consideration the cohesive needs of all. The above step in increasing the maternity benefit would no doubt be praiseworthy but there needs to be a law with respect to paternity benefit also. As the implementation of paternity benefit would encourage the fathers to take care of their offsprings and it would lessen the burden on the mothers.[43]

The Proposed Solution

1. **Shared Paternal Leaves**- India should follow the footsteps of Sweden, which offers approximately two months of paternity leave and 16 months of shared paternal leave. Few weeks of the paid paternal leave can also be duly provided. It was observed from the Swedish model that for every paternity leave taken by the father, the mother's income increased by 6.7% in the later four years.[44]
2. **Proper Orientation Programme**

   There should be an apt orientation programme in the workplace from time to time where all the employers, as well as the employees, need to be present. This should be conducted by the experts so that the female employees become duly aware of their right to maternity benefits.
3. **Due Compliance to be Followed**

   The employer should mandatorily send the details of the female employees and their record of maternity leave availed in the form of a report or otherwise to the labour

[42] *Ibid.*
[43] According to the Report of the ILO in the year 2014 approximately 78 countries already provide paternity leaves so as encourage the fathers to take part in the child rearing.
[44] Report of Sweden Johansson, 2010, cited by Paid Family Leave Report, University of Washington 2016 <https://www.washington.edu/pso/files/2016/07/uw-pso-pflac-report_June-2016.pdf> accessed 12 Aug 2016

inspector. It should also include the exact details of the grant of maternity leave and other incentives provided by the employer. This should be done on a regular basis. The inspector should frequently visit the workplace to personally see the due compliance.

Mandatory Clause legislation

Law has long been known for its omnipotence and omnipresence – it pervades all domains, and such an instance can be found in the example of having some clauses being statutorily mandated in contractual agreements.[45] Such mandatory clauses in contracts are often prescribed by legislation for better implementation of the law that the legislature seeks to enforce. The authors, in their opinion, find it worthy that the Maternity Benefit Act should prescribe non-discrimination clauses for employment contracts relating to maternity benefit for speedy justice in such cases of employment so as to bring maternity benefit within the purview of contractual obligations as well as legislative mandate.

Clauses relating to maternity benefit in employment contracts, if mandated, would also have to include a standard procedure to apply for maternity benefit amongst all employers so as to ensure a fair and transparent process of availing maternity benefits. This procedure, coupled with the compliance requirements as discussed, would further the goal of the Maternity Benefit Act. The advantage of such mandatory clauses is tremendous – it seeks to entail judicial review of maternity benefit applications within its ambit through contractual obligations, and would also be better covered under the Industrial Disputes Act for those seeking to raise an industrial dispute with the support of a trade union.

Such clauses, if incorporated, would also give the employer and employee a room to negotiate on the finer details of the procedure and benefits under the Maternity Benefit Act, instead of solely relying on the Act to solve its purpose automatically. Through this, we may one day see increased time of leave, enhanced payments, no 'wage-loss'[46] and increasing benefits without the requirement of legislative intervention. Minimum requirements have already been prescribed by the legislature through statutes, and an argument of unequal bargaining power to the detriment of the employee will not hold good in this context. If the

[45] *See generally* Henry N. Butler; Larry E. Ribstein, 'Contract Clause and the Corporation, The', (1989-1990) 55 Brook. L. Rev. 767.
[46] See 'motherhood penalty', *supra* note 5.

benefits change through negotiation, it will change for the better and can never be less than the statutory limits.

Conclusion

In the course of our research on the topic, we observed that maternity entails for a career break for the working women due to multifarious reasons. This is more prevalent in the private sector. Though the government is making concerted efforts to ensure maternity protection in this regard, the actual implementation varies from place to place. Thus, there needs to be a time-to-time survey and a grievance redress mechanism to identify and combat the problems in relation to the Maternity Benefit Act. The family of the women should not also pressurise the mothers in taking their career break from work but rather encourage and help the mothers in increasing their financial independence. The unorganised sector along with the private sector should also be given due importance in this regard.

After the passing of the Maternity Benefit (Amendment) Bill, 2016, there is new hope that the mothers can look forward to. It seeks to expand the definition of ‘mother’ and increases the maternity leave available to the mothers. Although a step in the right direction, this is only a stepping stone towards a bright future where these benefits will culminate into a perfect gender-sensitive maternity-benefit system on the basis of shared responsibility, especially in the private sector.

UNEMPLOYMENT BENEFIT IN INDIA: NEED FOR EXPANSION OF ITS SCOPE

Monalisa Saha*

ABSTRACT

Globalisation, together with the fact that employment opportunities in the Indian organised sector is limited, has resulted in leaving a large body of people with the hope of securing employment only in the unprotected unorganised sector. This paper lays out the abysmal picture of the fate of persons who suddenly find themselves unemployed in a country such as India, not just in terms of the meagre scope (and coverage) of unemployment benefit, but also in terms of other allied factors that exacerbate their plight. After relaying the current situation in the country, the author proceeds to analyse the success of those schemes operative in Organisation for Economic Co-operation and Development (OECD) countries that have proven to improve the life of those suddenly rendered unemployed either because of structural or functional reasons. Keeping in mind the vast difference in the economic stability between these developed countries and India, the author shall suggest a viable formula for improving the economic security of those rendered unemployed.

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Introduction

The interaction beyond national boundaries of countries has been ever increasing. It is an ongoing process that is bringing together people, connecting business ventures, intertwining cultures from across the globe.[1] A significant fallout of this process in the human world is an increase in employment opportunities for workers. Money does not need to be earned in a familiar environment anymore.Workers are venturing outside the recognisable terrain into the unknown in search of more and better employment opportunities in the hope of deriving better returns for the application of their respective skills and expertise.

A part of the populace is even comfortable with risking job security of the organised sector in search of vocations that offer better economic returns. Besides, the growth in employment opportunities in the organised sector has been not steadily increasing. In 1993-94, the growth in the organised sector was 1.20 per cent per annum, which fell to 0.53 per cent between 1994 and 2000.[2] It marginally improved since 2003. Between 2009 and 2010 it was 4%, between 2010 and 2011 it was 8% and between 2011 and 2012 it was about 6%.[3]

When workers today lose their jobs as a consequence of lay-off, closure or retrenchment, they turn to the unorganised sector for refuge. The proportion of workers in casual and contractual employment (in vocations such as construction, transport, storage, communications, financial services, etc.) has been on the rise and one can't help but notice how this might be indicative of the financial inadequacy of unemployment benefit that exists with organised-sector employment.

The debate on unemployment benefit is substantial. Enacting social protection regulations which entitle workers to unemployment benefits such as lay-off/retrenchment compensation is not supported by the advocates of free market forces. They argue how state

[1] UNESCO, *Globalisation*, available at http://www.unesco.org/education/tlsf/mods/theme_c/mod18.html last visited 1 May, 2016

[2] Alakh N. Sharma, 'Flexibility, Employment and Labour Market Reforms in India, *Economic and Political Weekly,* 2006, at p. 2097

[3] B. N Goldar, 'Globalisation, Growth and Employment in the Organised Sector of the Indian Economy', Working Paper No. 06/2014, New Delhi, 2014 available at http://www.ihdindia.org/Working%20Ppaers/2014/WP-0614.pdf p. 25

intervention through policies, usually impacts the efficiency of workers negatively and creates a situation of inequity, between those covered within the scheme and those outside of the scheme.[4] Such interference by collective institutions[5] (such as trade unions) make labour inflexible (thereby increasing the transaction cost) since the employer is expected to bear the burden of sustaining those who cannot be accommodated within the business venture anymore.

Employers faced with uncomfortable legal situations where they are prohibited from adjusting quantities of various resources (labour being one kind) as is prudent for the sustenance of their business venture, usually resort to heightened dependence on capital resources and casual/contractual workers (who are explicitly outside the scope of protective arms of the law).[6]

The other side of the debate comprises economists who point out how deregulation of labour markets in advanced capitalist countries has not always been instrumental in reducing instances of unemployment as suggested by advocates of free market forces.[7] There are two broad ways in which firms in competition can reduce their cost of production and increase their margin of profit - by innovating technological knowhow, product design and organisation; or, by reducing the labour standards and lowering wages payable to workers. These proponents insist that in the absence of state intervention, firms will not be motivated to innovate but will prefer exploiting the most vulnerable factor of production, i.e., labour.[8]

What then is the most suited method of not negatively impacting the productivity and efficiency of workers on the one hand and at the same time not abandoning workers who lose employment for no fault of theirs? Suggestions from experts range from providing compensation (one-time or gradual) to extending social insurance to workers, besides

[4] Ibid p.2078
[5] Ibid
[6] Ibid, p.2079
[7] Ibid
[8] Ibid

ensuring considerable investment in skill development, job mobility and creation of job opportunities.

India and the Problem of Unemployment

Market forces are vulnerable to a wide range of shocks as a result of which, perfectly well-placed workers can suddenly find themselves unemployed for no fault of theirs. Causes of loss can range from lack of business, downturns in economic cycle to the need to restructure enterprises in the face of technological development. According to the 2011 Census report, 9.6% (or 116 million) of the population lost their vocation and quite unfortunately amongst them, 84 million (10.98%) were literate persons. Keeping in mind the tremendous economic and mental stress that such loss of means of earning can cause, welfare states have sought to invest in formulating social security schemes targeting the unemployed.

Social Security for unemployed persons is understood as the income support that is provided for a limited period of time to those who lose their jobs, so that the beneficiaries can maintain themselves and their dependants during the period of employment until such time when they can land themselves in other jobs.

India spends only 1.4% of its GDP in social security policies and programmes and a negligible amount in sponsoring unemployment benefit scheme. It is really a matter of political will and not so much a question of affordability. For a country that ranks in the fourth position,[9] higher up the list than Saudi Arabia and Russia, on purchase of ammunition and otherwise upkeep of the India military, it isn't presumably difficult to increase the investment in unemployment benefit schemes.[10]

[9] As available at http://www.ndtv.com/india-news/how-much-the-world-is-spending-on-military-india-is-number-4-1637643 [Last visited: 20 December, 2016]

A. The Industrial Disputes Act, 1947

Let us look at a few important attempts by the legislature in improving the standard meted out to individuals. A look at the preamble of the statute will reveal that the purpose of the Industrial Disputes Act, 1947 was to essentially arrest industrial disputes and bring about harmony between workmen and their employers.[11] Chapter VA and VB relate to situations when an existing worker is entitled to claim compensation on becoming unemployed. This is operative when a workman loses his job due to retrenchment and layoff by his/her employer or when a situation of closure arises.

When a worker whose name features in the muster rolls of the employer and who has completed not less than one year of continuous service, is not given work by the employer in spite of turning up at the establishment on the designated day and at the designated time, continuously or intermittently, he/she is entitled to compensation from the employer. This compensation can be claimed under S. 25C of the Act and should be equal to 50% of the total of basic wages and dearness allowance that would have been payable to him/her had he/she not been laid off. It is usually a temporary situation and employers usually take back laid off workers once the situation in their industry improves.[12]

The laid off worker is entitled to such compensation for a period of 45 days in a 12-month period. He/she, however, cannot claim this sum if he/she had been offered alternative work in the same establishment or separate establishment owned by the employer (in the same village or a place within five miles radius from the existing place of employment) that he/she denied, or when he/she doesn't present himself/herself for work at the designated establishment at a set time, or when production in the industry slows down due to strike by workers.[13]

[11] The Industrial Disputes Act, 1947 available at http://artassam.nic.in/Industries%20&%20Commerce%20%20Deptt/Industrial%20Disputes%20Act,%201947.pdf

[12] Sree Rama Rao, *Lockouts Layoffs Retrenchment and Closures in India*, available at http://www.citeman.com/10979-lockouts-layoffs-retrenchment-and-closures-in-india.htmlLast visited 2 May, 2015

[13] S. 25E of the Industrial Disputes Act, 1947

Laying off usually occurs for genuine reasons. When the market is sluggish for finished products of the industry, or when there is shortage of raw materials/power, etc.[14] There can also be situations where in spite of the industry not closing down, the employers seek to replace the workforce (which usually happens where there is a change of management). If a workman's service is terminated for any other reasons (excluding the conditions applicable for layoff) other than the listed exceptions, it is called retrenchment.[15] Retrenchment doesn't include termination of services of a worker on disciplinary grounds, continued ill health of workman, or when there is voluntary retirement by workman, or retirement of workman on reaching the age of superannuation or when the contract with the employer concludes.[16]

A retrenched worker can claim compensation under S. 25F equal to 15 days' average pay (for every completed year of continuous service) or any part thereof in excess of six months. Another situation under which an employee can become jobless is when an industry is permanently closed down (S. 2cc-Closure). When closure happens, workers who had served the industry for at least one-year period are entitled to receive retrenchment compensation according to S. 25FFF of the Act.

But all these benefits of severance payments are exclusively meant for workman as defined under S. 2s of the Act and employed in the organised sector. It practically excludes from its scope those earning substantially more and engaged in the capacity of supervisors and administrators.

B. Employment State Insurance Corporation (ESIC) of India

Under the aegis of ESIC, the sole contribution from employers towards securing the near future of their erstwhile employees could only serve the interest of a negligible percentage of few. Not all employers are economically competent to bear the huge financial burden of providing compensation. The Employees State Insurance (ESI) Act, 1948 was

[14] S. 2kkk of the Industrial Disputes Act, 1947
[15] S. 2oo of the Industrial Disputes Act, 1947
[16] S. 2oo sub clauses (a), (b), (bb), (c) of the Industrial Disputes Act, 1947

envisaged to provide an integrated need-based social insurance scheme to protect various interests of the workers.[17] S. 46 of the Act, lists out six benefits: Medical Benefit, Sickness Benefit, Maternity Benefit, Disablement Benefit, Dependants benefits, and Other Benefits. The Scheme for safeguarding the interests of the unemployed persons falls within the scope of 'other benefits.' In 2005, Rajiv Gandhi Shramik KalyanYojana (RGSKY) was brought about by ESIC. Unlike the benefits of compensation under the provisions of the ID Act, which exclusively dig into the pocket of the employees, under RGSKY, an employee is expected to contribute along with his/her employer. After three years of continuous contribution by the employee, he/she becomes eligible for demanding unemployment allowance if such unemployment is a result of closure of factory, retrenchment or permanent invalidity.[18]

The unemployment allowance is 50% of the wage that was being earned by the employee before the termination of employment. This allowance can be paid for up to one year or till the time the person gets re-employed (whichever is earlier). Along with this, ESIC also provides for medical care for the beneficiary and his/her family from ESI Hospitals/Dispensaries. He/she becomes entitled to this for the same period as he/she is entitled to receive unemployment allowance. Lastly, the unemployed beneficiary can also avail of the opportunity of undergoing vocational training for upgrading his/her skills and increasing his/her job mobility in the market. Such trainings are funded and organised by ESIC.[19]

C. Mahatma Gandhi Rural Employment Guarantee Act (MNREGA)

In 2005, MNREGA was another step taken by the government of India to address the issue of unemployment. Unlike severance pay benefit under the Industrial Disputes Act and the insurance scheme provided by ESIC, a person is not required to be previously employed to seek the benefits envisioned under MNREGA.

[17] Employees State Insurance Corporation, *Employees' State Insurance Act, 1948* as available at http://www.esic.nic.in/esi_act.php Last visited: 3 May, 2016
[18] Ibid
[19] Ibid

Doling out payments to unemployed persons was not construed as the only prudent way of addressing the issue of social security to the unemployed persons. MNREGA promises to provide unskilled work (resulting in guaranteed wage) for a minimum period of hundred days to at least one adult member of a family in rural parts of India (S. 3).[20]

According to S. 7 of the Act, if an applicant is not provided work within fifteen days from the date of receipt of his/her application, he/she becomes eligible for claiming unemployment allowance in accordance with the eligibility criteria laid out by the respective state government through notification(s). Since the allowance is to be paid by the state government, the economic capacity of the state is taken into account under the statute. Under section 7(2) of the Act, the state is allowed to decide upon the rate of unemployment allowance (in consultation with the state council) and announce the same to the general public through a notification. In spite of the said independence, the state is mandated to ensure that at no point the set allowance is less than one-fourth of the wage rate for the first thirty days during the financial year and not less than one-half of the wage rate for the remaining period of the financial year.

People cannot, however, claim the allowance if, someone from his/her family has already received work, if the period of seeking employment has concluded, if the adult members of the household has received in total hundred days of work (or more), or if the combination of unemployment allowance and actual work days received equals the value of hundred days' of work.[21]

An applicant becomes disentitled from claiming unemployment allowance for a period of three months under MNREGA if he/she does not accept employment provided to his/her household, or he/she does not report for work within fifteen days of being notified for the same, or when he/she remains absent from work for a continuous period without

[20] The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 available at http://www.nrega.nic.in/netnrega/home.aspxLast Visited: 2 May, 2016

[21] S. 7 (3) (a), (b), (c), (d) of MNREGA Act, 2005

obtaining the sanction of the appropriate authorities. He/she will, however, remain eligible to seek employment under the Scheme at any point of time.[22]

Unemployment Benefit Scheme in OECD countries

The schemes in operation in seven OECD countries were studied by the author. These seven countries (namely, Sweden, Ireland, Canada, Britain, Germany, France and Australia) were chosen because they represent a rich series of contrasts along significant dimensions.[23] For instance, the budgetary constraints faced by the country, the level of unemployment, the different policy changes experienced, etc.

The modalities of offering unemployment benefit are very important to gauge the success of the respective benefit. The kind of scheme picked and administered by a country depends on its fiscal deficit, unemployment rate, age of the maximum number of unemployed persons, administrative facility available, etc.

Low level of unemployment benefit is usually accompanied by low-level monitoring (Britain and Australia). This is very prudent for a country that cannot afford the high expenditure that is associated with running a robust monitoring agency smoothly. Therefore, unemployed persons are motivated to continue the search for job and attempt to re-enter the workforce. Otherwise, they know that the limited dole will not be able to sustain them for long.

On the other hand, countries such as Sweden,[24] which can afford not only the cost of setting up a functional monitoring agency but also to give out unemployment benefit as high as 90% of the previous wage, choose to create a system where high unemployment benefit is

[22] S. 9 (a), (b), (c) of MNREGA Act, 2005
[23] George Tsebelis and Ronald Stephen, 'Monitoring Unemployment Benefits in Comparative Perspective', *Political Research Quarterly*, 1994, at p. 807
[24] Ibid

combined with high monitoring system in place.[25] Usually countries with high fiscal deficit or such other budgetary constraints refrain from taking on the cost related to such scheme.

Nation states such as UK, USA (including Sweden), have set the receipt of unemployment benefits conditional upon enrolment of persons in some educational or training programme.[26] In Ireland, people can choose between taking up educational/other training programme or social employment. This has been lauded by scholars as prudent especially since the rate of unemployment in Ireland was significantly higher as compared to all the OECD countries[27]). Though this effectively means increased burden on the state exchequer, it is welcomed, and practised by state, because it builds capabilities of employees and increases their job mobility/flexibility, which is beneficial to both the unemployed persons and the state in the long run.

Generating government jobs or creating an atmosphere where private players are encouraged and reassured to invest in business ventures is perhaps still the best way of tackling the issue of less job opportunities (as noticed in Sweden and Ireland).[28]

Canada has adopted the policy of setting a time limit to the benefits it offers to its unemployed populace. Administrative costs incurred on maintaining a robust monitoring system are cut down accordingly. Canada offers unemployment benefit for a really short time, so that the unemployed persons don't get too comfortable remaining out of the workforce and actively take effort to look for an alternative vocation.[29]

Germany had brought about other policy changes ancillary to unemployment benefit. For instance, 'work from home' and 'work that was not commensurate with one's qualification or skills was initially not considered as work, thereby disentitling such persons

[25] Ibid
[26] Ibid, p. 804
[27] Ibid, p. 808
[28] Ibid, p. 807
[29] Ibid, p. 809

from claiming unemployment benefits. But subsequently this position underwent some modification and the scope of what was considered as work increased. Workers engaged in either of the above two categories of work were denied unemployment benefit on the basis of that.

In France, the government believes in paying high level of benefits for a short period of time. Apart from this, France encourages its older workforce to get off the payroll, decreasing the number of people in the workforce. At the same time it offers its younger workforce job subsidies such as 'shortened work hours' to those already employed. This way the number of people quitting their jobs all together are much lesser. Workers don't have to deal with a situation of total joblessness and depression while the state doesn't have to give out unemployment dole.[30] Administrative costs and responsibilities are also reduced in France by an innovative method in which the government imposes the responsibility of organising training for the unemployed persons on the private sector players.[31] All costs related to training of unemployed persons for alternative jobs are, therefore, borne by non-government players.

Conclusion

In the foregoing section, we noticed how a flat cash benefit is not always given out to unemployed persons in other countries. There are conditions attached thereto and eligibility is defined in various ways. India's main problem is not that it does not have enough people covered by cash benefit of unemployment scheme, but that it is not doing enough to create more jobs for its vast population.

Government jobs or for that matter organised-sector employment is available for an insignificant number of people. Rest of the workforce is absorbed in the unorganised sector and are not particularly unhappy doing so. The state should, therefore, not aim at making unemployment benefits available to all but to generate enough scope of employment in the country.

[30] Ibid, p. 810
[31] Ibid, p. 811

A significant way of doing this is to encourage private players to make investments and grow/start various business ventures. If business owners/employers know that the government is not going to compel them through legal enactments to keep in employment inefficient workers, they will feel encouraged to take on more risks. If they are convinced that the government will encourage their attempt to develop technological knowhow, employment opportunities for the general populace with automatically grow.

Fixing a lower threshold of labour standards and wages might be ideal in some situations, but to increase such standards so as to make the employers solely liable for bearing the severance compensation payable to an outgoing worker/employee will hit a wrong chord with the businessmen; especially when an enterprise is undergoing loss (and is in need of 'closure') or when it is going through a period of restructuring (like, when a change of management takes place through mergers, acquisition, etc.). Making stringent policy norms will only ward off potential investments from such private players (businessmen) thereby aggravating the problem of job-loss.

India needs to consider supporting and developing insurance opportunities seriously. The focus should be on 'worker protection' and not on 'employment protection'. As long as we consider bailing out people who lose their jobs, more important than helping them find an employment where they are needed and useful at, the country as a whole along with such individual workers will be moving downhill in the part of progress. We should invest heavily in building necessary skill-set of people so that they can be absorbed in an existing job market, instead of directing our energy to keep a loss-making business venture open and running.

Resisting market forces and encouraging governmental interference in terms of policy directives will never prove to be a long-term solution for the market. The solution when an industry ceases to exist or starts requiring different resources more (like, machines over manpower) is not to go against the market forces. Workers should be re-trained and re-taught a different skill set by which they can find employment in another industry (such as in UK, USA, Sweden, etc.). For instance in India, the state of West Bengal has made some

significant progress in this regard. It has organised training programmes and other skill-development programmes for various workers all because it wants to improve the productivity of the workers and help them earn a better wage.[32] Should the market for these products/services reduce, the states should encourage developing expertise of workers in different industries. The focus should be on ensuring job mobility and flexibility. This is what is most required in an economy going through an economic turmoil and low job openings.

Seeking a flat severance payment from employers will just encourage employers to take on less permanent employees and redirect work to casual and contractual employees instead. Either that, or they will start investing heavily on mechanisation to eliminate the dependence on labour.

It, therefore, makes more sense to adopt insurance system that workers can avail of in times of unemployment that does not aggrieve the employers severely. The ESIC in Bengal has provided unemployment benefit scheme to 1348 persons in the year 2012.[33] Allowing insurance companies to develop policies that allow workers to contribute premium amount based on various factors (their job security, qualification, scope of transition to another field/place), might take off the burden from the employers and the state to take care of unemployed persons.

India cannot, in the author's opinion, afford to follow suit with France and Sweden which are comfortable paying a high percentage of the wage earned in previous employment, to those rendered unemployed (for any reason apart from those exiting the job voluntarily or due to disciplinary actions). It needs to focus on creating jobs, be it through government or through private businessmen very much like that in Sweden and Ireland to work on developing an insurance system for all kinds of workers (which is not just limited to the lower rung of the society) and to offer training opportunities to workers (so that their job mobility increases and their chance of securing re-employment increases).

[32] Employees' State Insurance Corporation, Annual Report, 2012-2013
[33] Ibid

ATAL PENSION YOJANA: PROVIDING ADEQUATE SOCIAL SECURITY NET?

Rohan Chatterjee* & Abhisek Singhvi**

ABSTRACT

The tradition of joint family system in India precluded the need for a social security cover for its people. The family itself provided the cover. But with industrialisation and consequent migration of people from rural to urban areas, the joint family started dissolving and nuclear families evolved. Thus developed the need for a social security cover by the government for its citizens. A large proportion of India still exists without any kind of health, accident or life insurance. In order to ensure an overarching universal social security system which will guarantee that no Indian citizen will have to worry about illness, accidents or pension in old-age, the present government introduced Atal Pension Yojana, a pension scheme especially crafted for the benefit of the unorganised sector workers who are otherwise not generally protected under any statutory social security scheme. As per the Scheme, a fixed monthly pension of any sum between Rs.1000 and Rs. 5000 will be paid once the subscriber attains the age of 60 years. The amount of pension will be based on the respective monthly contributions of the benefactors. The question is whether this Scheme is helpful if we take the rate of inflation into account. This paper tries to provide a detailed analysis of whether the Atal Pension Yojana as a Scheme will benefit the target groups (unorganised sector) in the long run or will help the government to invest more public money in order to generate more funds. It will also focus on the need for inflation indexation and a more optimal investment mix so as to provide adequate social security to each household.

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Introduction

A critical policy issue which is gaining top priority for the government in our country is how to provide adequate social security, especially through social insurance and social assistance, for the vast majority of the population engaged in unorganised-sector activities. In India, the question and debate for social security arrangement for the unorganised sector workers has gained prominence during the last decade.

Social security means any legislative measures taken by a government to maintain or provide for the income of a family or an individual. It may also be to provide for income when other sources of income are disrupted or when heavy expenses have to be incurred in case of healthcare, etc. It also covers cash benefits for sickness, disability, unemployment, failure in crops, death of income-earning spouse, maternity, care of young children or retirement.

Social security benefits may be provided in cash or in the form of various kinds of medical aid, rehabilitation, legal aid, funeral expenses, etc. Its object is to act as a facilitator – to help people plan their own future through insurance and assistance. The issue before a developing country such as India is to design effective social security measures for the unorganised sector which will serve as a guarantee against poverty and at the same time provide adequate retirement benefits. To ensure social security for people belonging to the unorganised sector, the current government has announced the Atal Pension Yojana (APY) (pension scheme). Thus, there is a need to analyse the policy, concepts, problems and effectiveness of the programme relating to social security of the unorganised workers in the country.

The Unorganised sector and the unorganised workers

The definition of the term ‘unorganised sector’ still remains ambiguous in character and suffers from a lack of precision. The Central Statistical Organisation (CSO) states that the unorganised sector comprises all those unincorporated enterprises and household industries (other than the organised ones) which are not regulated by any legislation and which do not

maintain annual accounts or balance sheets.[1] According to this concept, more than 90% of the workforce and about 50% of the national product is accounted for by the informal economy.[2] As per CSO, the unorganised workers include agricultural labourers, share croppers, small and marginal farmers engaged in agricultural operations and also workers from other allied occupations such as forestry, hunting, fishing, etc. The unorganised workforce in the industrial sector includes rural and urban artisans, home-based workers and self-employed persons in household industries. The National Commission on Labour in India,[3] submitted that the unorganised labourers are described as those workers who have not been able to organise the pursuit of a common objective because of constraints such as the casual nature of employment, ignorance and illiteracy, small size of establishment in view of the number of persons employed, scattered nature of establishment and the superior strength of the employer operating singly or in combination.

The International Labour Organisation (ILO)[4] uses the term informal sector in place of unorganised sector. ILO's definition of informal sector is not specific but descriptive of a sector characterised by small-scale operations, family ownership, and reliance on indigenous resources, labour intensive and adoptive technology.

The 15th International Conference of Labour Statistics held in January, 1993, at Geneva adopted a resolution on informal sector statistics which was subsequently endorsed by the UN Statistical Commission. The national accountants in India have basically attempted to cover the whole economy as per the United Nations System of National Accounts (UNSNA). According to the UNSNA, the informal sector consists of units which are part of the household sector, entirely owned by households, and produce goods and services for providing income and employment for the persons so engaged. Their legal status and accounts make them different from corporations and quasi-corporations and they also do not enjoy a legal status independent of its members.

[1] 'CSO' (1980)
[2] Report of the Committee on Unorganised Sector Statistics' (National Statistical Commission, Government of India 2012)
[3] 1969
[4] 'ILO'(1999)

Thus, the National Accounts Statistics, Government of India follows that enterprises that do not belong to the public (government) sector or private corporate sector within the meaning of the Companies Act, 1956[5] and co-operatives and manufacturing units registered under the Indian Factories Act, 1948 or Beedi and Cigar Workers Act, 1966 and recognised educational institutions form the informal sector.[6]

Considering the above definitions, the unorganised sector workers can be identified by two methods - (a) self-employed approach and (b) worker-based approach. The self-employed approach signifies that the owner himself is the worker who runs his own business in the informal sector at the household level using family labour. He is in non-wage employment that includes own account workers, i.e., independent workers and dependent workers or home workers. Under worker-based approach, the self-employed may hire few labourers who are his/her employees. Thus, the workers are in wage-employment condition, whose pay and benefit do not conform to the existing labour regulations. Under the latter approach are also included independent wage workers attached to more than one employer, for example masons, carpenters, porters, chowkidars and maid servants. Today, the term 'unorganised worker' has been defined under the **Unorganised Workers' Social Security Act, 2008**, as a self-employed, home based worker working in the unorganised sector.

Concept of Social Security

The term social security came into general use only after 1935, when the United States passed the Social Security Act. This concept has since spread rapidly and it has now been widely accepted throughout the world. Social security is a cover against various contingencies of human life such as sickness, unemployment, old-age, dependency, industrial accident against which the individual cannot be expected to protect himself and his family by his own ability.[7]

[5] The Companies Act, 1956 got replaced by the Companies Act, 2013.

[6] R. MUTHUSAMY, *A Study on Social Security and Welfare Schemes of the Unorganised Workers in Namakkal District* (2013) 4 – 4.

[7] Watkinson (1949)

Initially, the ILO took a narrower view by limiting its applicability to contingencies of the formal-sector employment.[8] But later it reviewed its earlier notion and now it is viewed as a series of legislative measures provided to protect against economic and social hardships which may be caused due to insufficient income, lessening or complete stoppage of income, that may have been caused by sickness, maternity or injury during work, including occupational diseases, unemployment, absence of employment, underemployment, destitution, old age, social disability, death and also to provide health facilities, including preventive measures.[9]

Social security may consist of two forms — protective social security and promotional social security. The former is concerned with the task of preventing a decline in the living standards. It is a safety net measure that guarantees relief from deprivation. The latter refers to the enhancement of normal living conditions and to the expansion of basic capabilities of the population and will primarily have to be seen as a long-term challenge. It aims at improving real income, social consumption and seeks more directly to avert deprivation in specific ways. The Indian social security system is a blend of these two characteristics.[10]

India's Social Security System

India seeks to promote the prosperity and security of the people. The Constitution of India obliges the state to ensure effective social security measures for the people of the country, which is evident from the Directive Principles of State Policy (DPSP). The DPSP are designed to usher in a social and economic democracy in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy through various schemes.

Article 38(1) of the Constitution of India directs the state to strive "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which

[8] 'ILO' (1942)
[9] 'ILO' (1997)
[10] Muthusamy R, "*A study on social security and welfare schemes of the unorganised workers in Namakkal district*", 2013 Pp 9

justice, social, economic and political, shall inform all the institutions of the national life." Article 38(2) directs the state to strive "to minimise 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, Article 38 envisages not only legal justice but socioeconomic justice as well. The Supreme Court has explained the idea of social justice as follows: "The Constitution commands justice, equality, liberty and fraternity as supreme values to usher in the egalitarian social, economic, and political democracy. Justice is the genus, of which social justice is one of its species."[11]

Reading Articles 21, 38, 42, 43, 46 and 48A together, the Supreme Court has concluded in Consumer Education & Research Centre v Union of India,[12] that "right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a Fundamental Right."

Article 39 requires the state, in particular, to direct its policy towards securing: (i) that the citizens, men and women, equally have the right to an adequate means of livelihood (ii) that there is equal pay for equal work for both men and women (iii) 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 (iv) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment. The Supreme Court has taken recourse to Article 39(a) to interpret Article 21 to include therein the "right to livelihood."[13] The Supreme Court has observed in Olga Tellis v Bombay Municipal Corporation[14] "If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."

[11] Air India Statutory Corporation v United Labour Union, AIR 1997 SC 669
[12] AIR 1995 SC 923
[13] Centre for Environment and Food Security v. Union of India, [2011] AIR SCW 231
[14] AIR 1986 SC 180

Though there are various provisions in the Directive Principles which direct the state to ensure a complete social security cover for its citizens, there have not been any proper policies for the same. The unorganised sector is particularly in need of such a cover and the APY is one such scheme which is directed towards this sector.

APY: Through the Lens of History

The Government of India is extremely concerned about old-age income security of the working poor. In order to address the longevity risks among workers in the unorganised sector who constitute about 88% of the total labour force[15] and to encourage these workers to voluntarily save for their retirement as they do not have any formal pension provision, the government had started the Swavalamban Scheme in 2010-2011. However, the coverage under the said scheme was inadequate mainly because of the lack of clarity of pension benefits at the age after 60.

The Finance Minister of the present government, therefore, announced a new initiative called APY in the Budget 2015-16. The APY is focussed on all citizens in the unorganised sector, who join the National Pension System (NPS) administered by the Pension Fund Regulatory and Development Authority.[16] The members should hold bank accounts or create a new one and must not be a member of any statutory social security scheme. Under the APY scheme, the contributions of the subscribers will determine the fixed monthly pension they will receive, i.e., Rs 1000 per month, Rs 2000 per month, Rs 3000 per month, Rs 4000 per month or Rs 5000 per month, on attaining 60 years of age. The contributions will vary depending on the age of joining the APY and the amount that the subscribers can contribute every month. The minimum age of joining APY is 18 years and the maximum age is 40 years. The government also guarantees a fixed pension benefit. Fifty per cent of the subscriber's contribution or Rs 1000 per annum, whichever is lower, will be contributed by the government to the account of each

[15] 66th Round of 'NSSO Survey' (2011-12)
[16] 'Press Information Bureau' (Ministry of Finance, Government of India, March 2015)

eligible subscriber for five years (2015-2016 to 2019-2020) who do not come under the income tax net and who join the NPS before Dec 31, 2015. Also, unless the subscribers of Swavalamban Scheme opt out, they will be automatically migrated to APY.

The benefits provided under the said scheme have been given in the tables cited below.

Table 1: Contribution levels, fixed monthly pension of Rs. 1000, 2000, 3000, 4000, 5000 per month respectively to subscribers and his spouse and return of corpus to nominees of subscribers and the contribution period under Atal Pension Yojana-

Age of joining	Years of contribution	Indicative monthly contribution(In Rs)Either of the amount is to be paid	Monthly Pension to the subscribers and his spouse (in Rs) respectively according to the contributions made	Indicative Return of Corpus to the nominee of the subscribers (in Rs)respectively
18	42	42, 84,126,168	1,000,2000,3000,4000,5000	1.7Lakh,3.4 Lakh, 5.1 Lakh, 6.8 Lakh, 8.5 Lakh
20	40	50,100,150,198	1,000,2000,3000,4000,5000	1.7 Lakh, 3.4 Lakh, 5.1 Lakh, 6.8 Lakh, 8.5 Lakh,
25	35	76,151,226,301	1,000,2000,3000,4000,5000	1.7 Lakh, 3.4 Lakh, 5.1 Lakh, 6.8 Lakh, 8.5 Lakh
30	30	116,231,347,462	1,000,2000,3000,4000,5000	1.7 Lakh, 3.4 Lakh, 5.1 Lakh,

				6.8 Lakh, 8.5 Lakh
35	25	181,362,543,722	1,000,2000,3000,4000,5000	1.7 Lakh, 3.4 Lakh, 5.1 Lakh, 6.8 Lakh, 8.5 Lakh
40	20	291,582,873,1164	1,000,2000,3000,4000,5000	1.7 Lakh, 3.4 Lakh, 5.1 Lakh, 6.8 Lakh, 8.5 Lakh

*Source- Press Information Bureau, Government of India, Ministry of Finance, March 2015

How is APY different from the Swavalamban Scheme?[17]

The Swavalamban scheme is a defined contribution scheme whereas APY is a defined benefit scheme. In the Swavalamban scheme, the subscriber's contribution was defined and was invested in government securities, corporate bonds, equity instruments, etc. The scheme didn't guarantee fixed returns to subscribers. In contrast, the APY is a defined benefit scheme that will provide the subscriber with fixed monthly incomes between Rs. 1000 and Rs. 5000 based on the respective monthly contribution amounts which will vary depending on the age and the saving potential of the subscribers.

Secondly, under the APY, the government will co-contribute either 50 per cent of the subscriber's contribution or Rs. 1000, whichever is lower (initially for a five-year period till 2019-20). This is a major change made to the pre-existing scheme where subscribers who contribute below Rs. 1000 also receive a (less than equal) matching contribution.

[17] Under NPS scheme of Government in 2010-2011

Thus, the APY is a much improved version of the Swavalamban scheme as it ensures fixed returns to its subscribers in the long run. But the question remains whether the amount guaranteed would serve the objective of the scheme, i.e., will it provide adequate means of livelihood in the long run at the age of retirement (60 years). Now let us try to view APY in the context of the Keynesian model. For this, we need to take a quick look at Keynes' theory of the Demand for Money.

Keynes Theory of Demand for Money

Keynes formulated the theory of demand for money in his well-known book, 'The General Theory of Employment, Interest and Money' in 1936. Keynes puts forward the theory that though financial assets other than money earn interest in the market, yet people tend to hold money over the other assets available in the market. This is because money is the generally accepted means of payment and is perfectly liquid. A perfectly liquid asset is one which can be readily converted into cash and is also easily accessible.

In order to prove his contention, he pointed out that money is demanded due to three main motives[18]- (a) The transactions motive (b) The precautionary motive (c) The speculative motive. The transaction motive gives rise to the demand for cash by the public to meet their current expenditures. This assumes the use of money as a medium of exchange. The precautionary motive makes people hold money to meet unforeseen contingencies which require sudden heavy expenditure. The speculative motive is the motive for holding cash by the public instead of investing in interest-earning bonds in the market. This maybe because people expect bond prices to fall to such an extent in the future that their loss in foregone interest that could have been earned, appears smaller. Thus, this motive suggests that people will hold cash waiting for bond prices to fall. They will, therefore, expect to have avoided capital losses and only invest in bonds when the expected bond prices have actually been realised.

[18] John Maynard Keynes, The General Theory of Employment, Interest, and Money (International Relations and Security Network).

Keynes gives a clear view that if people keep the surplus money with themselves and wait for the bond prices to fall in the market where there is a cent percent chance that in the near future the price will again increase and they will invest their money in purchasing the bonds during the period when their price falls then the profit will be more in the future compared to the loss incurred during the waiting period.

The determinants of the demand for money

Keynes made the demand for money a function of two variables, namely income (Y) and the rate of interest (r). Keynes proposed that the speculative motive gives rise to the speculative demand for money. The speculative motive, in turn, is influenced by the changes in the interest rates in the market and their uncertain nature, where Keynes assumed perpetual bonds to be the only other non-financial asset in the economy which people can invest in.

Money earns no income to its holders but has a fixed capital value. As against this, bonds yield interest. Keynes pointed out that more the rate of interest given the more people will invest in the bonds the lesser the interest given the more will the subscribers be willing to hold the money with them. Thus, the aggregate speculative demand curve for money is a downward-sloping curve, with respect to the rate of interest, as derived by Keynes is as follows:

Figure 1: Keynes' Speculative Demand for Money

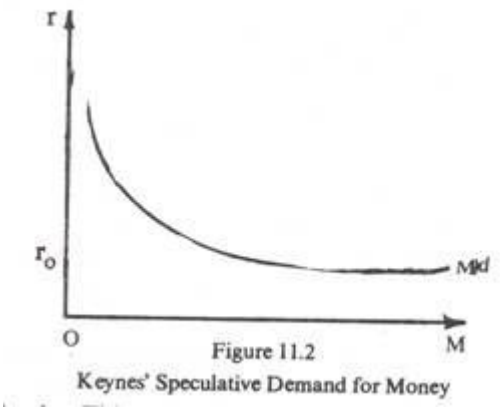

Figure 11.2
Keynes' Speculative Demand for Money

r = rate of interest, M = demand for money, O = Origin

Effectiveness of the Atal Pension Yojana

In order to understand the actual advantage of the mentioned scheme, we have to compare the proposed benefit of the pension scheme with the average monthly expenditure incurred by individuals in the lowest income quintile. Therefore, we divide the population into five equal groups based on their income. For this paper, we will assume that the subscribers fall within the first income quintile as the main target groups under this scheme are the unorganised workers.

Table 2: Average Monthly Expenditures for One Person and two Persons Falling Under Respective Income Brackets

	Income Quintile 1	Income Quintile 2	Income Quintile 3	Income Quintile 4	Income Quintile 5
Average monthly expenditure for one person	628	765	902	1056	1368
Average monthly expenditure for two person	1256	1530	1804	2112	2736

*This analysis has been given in NSS 72nd Round (July 2014-June 2015)

As the pension scheme is designed for a household, we take the monthly expenditure of two persons in our study. Secondly, the scheme provides for defined monthly pension ranging between Rs. 1000 and 5000 at the age of 60 years. In order to understand the benefit of this type of a pension scheme in the long term, we have to take into account the rate of inflation and how much of the average monthly expenditure it will cover. Thus, the real income received by the beneficiaries (subscribers) will be much less than the promised nominal amount.

Now, if we compare the real pension with the average monthly expenditure then we can get a more realistic representation of the actual value of money the households will actually get. Thus, the authors have calculated the extent of shortfall in percentage. The following tables give a detailed analysis of the real income and the shortfalls of subscribers subscribing Rs. 1000 and Rs. 5000 monthly pension, respectively. Here, the authors have taken 4% as the rate of inflation.[19]

Table 3: Real Monthly Income and the Extent of Shortfall for Subscription of Rs. 1000

Age of joining	Years of contribution	Indicative monthly contribution	Monthly pension to the subscriber	Real monthly pension to the subscriber (discounted at 4%) Discounted Present Value= Future Value * (1 + R	Extent of shortfall- Real monthly pension/Average monthly expenditure of the lowest quintile)

[19] The authors have taken 4% as the rate of inflation as the government previously had a target of 4 % inflation rate which, however, has not been achieved.

				/100) $^{-t}$	
18	42	42	1000	193	15%
20	40	50	1000	208	17%
25	35	76	1000	253	20%
30	30	116	1000	308	25%
35	25	181	1000	375	30%
40	20	291	1000	456	36%

*When the pension is Rs. 1000 per month

Table 4: Real Monthly Income and the Extent of Shortfall for Subscription of Rs. 5000

Age of joining	Years of contribution	Indicative monthly contribution	Monthly pension to the subscriber	Real monthly pension to the subscriber (discounted at 4%) Discounted Present Value= Future Value * (1 + R /100)$^{-t}$	Extent of shortfall- Real monthly pension/Average monthly expenditure of the lowest quintile)
18	42	210	5000	963	77%
20	40	248	5000	1041	83%
25	35	376	5000	1267	101%
30	30	577	5000	1541	123%
35	25	902	5000	1875	149%
40	20	1454	5000	2282	182%

*When the pension is Rs. 5000 per month.

Observations by the authors

Though the plan has been designed with the objective of providing social security cover from a very young age, it has many lags. The defined pension is no doubt a great initiative taken but can it promise the people of the unorganised sector a decent standard of living?

Firstly, the table above indicates that more the people join this scheme at a younger age the less beneficial this scheme would be to them. Thus, according to the indicative tables, an 18-year old who contributes Rs. 42 per month will result in a real monthly pension of Rs. 192 for the household. Thus, the defined benefit will cover 15% of his monthly expenditure. However, even if the 18-year old is able to contribute Rs. 210 per month towards pension, the defined benefit at retirement will yield a real monthly amount of Rs. 963 for the household (equivalent to a nominal monthly pension of Rs. 5,000) and will be sufficient to cover only 77% of his monthly expenditure. It is clear from the data collected that the subscriber should be at least in his 30s in order to ensure a social security cover for him. The policy makers should redesign the existing plan so that the bandwidth of the age group is increased from 18-40 to 30-50 in order to serve the objective ensuring social security.

Secondly, it can be seen that a mere amount of Rs. 1000 per month is not serving the purpose of ensuring a minimum standard of living. A person joining at the age of 18 for Rs. 1000 monthly pension plan can only ensure 15% of his monthly expenditure at the age of 60 while investing in this plan. Similarly, the person who joins the same plan at the age of 40 years will secure only 36% of his monthly expenditure. Thus, the policy makers should see to it that the minimum promised pension amount is not as less as Rs. 1000 but should be above Rs. 5000. Then only there is any point in investing in the current scheme.

If we contextualise the scenario following the Keynes' model as discussed, the lower the interest rate or lower the benefit given to the subscribers more will be the tendency to hold the

money with them and not invest it in the above scheme. Therefore, the speculative demand for money will rise and people will want to hold more money with themselves.

Suggestions for some Effective Changes

There is a need for inflation indexation so that the benefits can keep up with the pace of inflation in our country. In order to do the needful, the government should index the subscribers' contribution as well as the matching contribution. The government should try to invest the corpus according to the current Swavalamban investment mix (upto 85% in government bonds and upto 15% in equity). If both the subscriber and government contributions are indexed annually, it can provide the subscriber with higher returns.

The NPS-Main scheme follows a lifecycle investment mix which can be adopted by the current APY scheme. The above-mentioned method invests 50% of a 20-year-old subscribers' corpus in equity, 30% in corporate bonds and 20% in government bonds. In his/her 30s, the respective share of equity and corporate bonds is reduced and transferred to the government bonds. This type of mix investment plan can ensure much higher corpus in the long run.

Lastly, the exit rules of the current scheme provides that

"in case a subscriber, who has availed Government co-contribution under APY, chooses to voluntarily exit APY before the age 60, he shall only be refunded the contributions made by him to APY, along with the net actual interest earned on his contributions (after deducting the account maintenance charges), whereas, the Government co-contribution, and the interest earned on the Government co-contribution, shall not be returned to such subscribers."[20]

[20] Rule 13 of Atal Pension Yojana notification, Ministry of Finance, Oct 2015, New Delhi

This rule violates the sole objective of the social security cover, i.e., to secure a social order for the promotion of welfare of the people.[21] The scheme is aimed for poor workers who are not covered by any social security scheme and for the unorganised workers. The monthly contribution made by them with the belief of getting defined pension along with the co-contribution should not be deprived to them just because they opted out from the scheme. The government should propose a minimum time period within which they can't opt out which should be as low as 10 years after which they would be refunded the contributions made by them along with the interests as well as the government co-contributions with interest.

Our country should adopt an easy entry and exit policy so that the citizens are free to choose where to invest and for how long. The fundamental rights guaranteed by our Constitution also give us the right to invest in schemes which are to the best interest for us.[22]

[21] Article 38 of the Constitution of India, 1950
[22] Article 19 (6) (ii) 0f the Constitution of India, 1950

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