

UNEMPLOYMENT BENEFIT IN INDIA: NEED FOR EXPANSION OF ITS SCOPE

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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.ihindia.org/Working%20Paers/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 institutions⁵ (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 unemployment 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.html> Last 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.aspx> Last 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 countries²⁷). 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 disempowering 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 will 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