

OVERVIEW OF LABOUR & SOCIAL SECURITY LAWS IN INDIA

Dr. Jagdish Chauhan

Associate Professor & Head, Department of Economics, Govt Degree College Bharali, Anjbhoj, Sirmour (H.P.) 173025.

Abstract

Social Security measures are the measures enveloping protection to the workforce against probable eventuality like retirement, resignation, retrenchment, old age, unemployment, health and medical insurance death, disability benefits and other similar conditions. It's a kind of human capital formation that ensures overall security of a person not only within the family but also at workplace and in the society. Indian Social Security system consists of a set of schemes and programs enforced through a variety of laws and regulations. The present paper on the basis of secondary data and Govt Reports, attempts to present an overview of various Labour and Social Security Legislations enacted by the Govt of India along with new labour codes. The study finds that although various labour legislations have been enacted by the govt. of India from time to time for industry and labour, but these measures suffer from the insufficient coverage as they benefit only the tiny segment of organised sector workforce. A very few of them are applicable for unorganised sector workers.

I.Introduction

The term 'Social Security' is used to denote the security of an income to take the place of earnings when they are interrupted by unemployment, sickness or accidents to provide for retirement through age, to provide for loss of support by death of another person, and to meet an exceptional expenditure such as those connected with birth, death and marriage. The essential ingredient of social policy concerning labour and employment in the country, particularly during the first three decades of planning, has been to treat labour not as a mere resource for development, but as a partner in and beneficiary of social and economic development. This philosophy of labour had its roots in the national movement and many legislative provisions for protecting labour were enacted before independence, which were strengthened later on. Accordingly, provisions for social security were made more comprehensive and expanded to include various kinds of risks. Further, detailed laws governing industrial relations were enacted, and a mechanism for fixing and implementing minimum wages was developed.

The basic idea behind all these protective measures adopted for labour was that workforce was relatively weaker partner vis-à-vis capital in the production process and that in a poor country like India, it was desirable to safeguard workers to promote both social justice and an appropriate industrial and productive climate. The philosophy of labour laws is that industry is for man and not man for industry. Industry should, therefore, exist to make life good and comfortable. Work in industry should be an integral part of happiness. Employers are therefore under an obligation, call it economic



or social, to provide their employees safe, healthy and comfortable living, employment and working conditions. It is only when they failed to honour this obligation that the Government stepped in to safeguard the interests of workmen by enacting suitable legislations. This has happened all over the world, and in India also the Government has recognized its duty to undertake legislation to protect workers from being exploited.

Social security measures therefore involve (a) providing cash payments to persons and families of a specified class whose income from earnings has been reduced drastically or ceased temporarily or permanently; (b) providing medical benefits and medical care to persons in the specified class in the event of sickness, maternity, etc.; and (c) providing cash payments in the form of stipends, pensions, etc. to the dependents of an employee in the event of his death. Social security measures are usually divided into two categories i.e. Social Insurance Schemes and Social assistance Schemes. Social insurance schemes are usually financed through the contribution of employees, employers and the State. Social assistance schemes, on the other hand, seek to provide assistance to the poor and needy persons. They are not linked to the contribution made by the persons and are financed from the general revenue of the State.

II. Need of The Study

The Preamble of the Indian Constitution provides for the establishment of a Socialist State which aims to eliminate income inequality, inequality of status and inequality in standard of living. Article 21 of the Constitution includes all the rights that are essential to human life in a civilized society, such as food, clothes, house, medicine and education. Thus, advocates social security for Indians.¹

Social security is a human right as enshrined in the Universal Declaration of Human Rights, 1948 and as per the United Nations International Covenant on Economic, Social and Cultural Rights, 1948 and acts as sunshade for people during adverse situations. It is futile to ensure Social welfare without ensuring social security. It acts as a buffer against all odds in the time of need. It helps in lifting millions of people out of poverty and thus, raises people's standard of living. In view of rising poverty, inequality, unemployment, migration, privatization, rising covid19 like pandemics and rising dangers and risk at the workplace. In the backdrop of this, Govt of India has enacted and enforced various labour and social security legislations from time to time for industry and labour. In the recent past Govt of India has enacted four labour codes on Wages, Industrial Relations, Occupational Safety and Social Security, by replacing and repealing a few of the legislations concerning labour and industry. Given the unequal governing structures for labour and capital, these

¹<u>https://www.iasexpress.net/social-security-in-india-need-constitutional-provisions-schemes/</u>

International Journal of Management and Social Science Research Review, Vol-10, Issue-11, November -2023 Page 51



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legislations were imperative for workers' protection. Therefore, the basic thrust of this study is to produce a consolidated overview of various labour and social security legislations; their coverage and provisions.

III. Labour & Social Security Legislations²

The various legislations pertaining to labour and industry, enacted by Govt of India can be categorized in the following four sections:-

- 1. Legislations Pertaining to Industrial Relations
- 2. Laws Pertaining to Labour Reforms
- 3. Social Security Legislations.
- 4. New Labour Codes-2019-20.
- 1. Legislations Pertaining to Industrial Relations
- **1.1 The Industrial Disputes Act, 1947.** The principal objectives of the Act are to ensure social justice to both employers and employees; to settle disputes arising between capital and labour by peaceful methods and through the machinery of conciliation, arbitration; to prevent illegal strikes and lockouts; to provide compensation to workmen in case of lay-off, retrenchment and closure; to protect workmen against victimization by the employer and to ensure termination of industrial disputes in a peaceful manner; and to promote collective bargaining.

Chapter V-A of Industrial Disputes Act deals with the Strikes and Lockouts, Lay-Off, Retrenchment and Closure. The Act was amended in March 1976, and a new Chapter V-B was introduced imposing some restrictions on the employer's right of lay off, retrenchment and closure without prior permission from the appropriate government. The provisions of this chapter apply to an industrial establishment in which not less than one hundred workmen were employed on an average per working day for the preceding twelve month.

1.2 The Trade Unions Act, 1926. The Central Government on 25th March 1926 passed the Indian trade Unions Act, 1926. This Act was amended in 1947 to provide for compulsory recognition of trade unions. Recently, the Trade Unions (Amendment) Act 2001 has come into force from January 9, 2002. The main object of the Trade unions Act is to provide for the registration of trade unions and to give registered trade union a legal and corporate status, and immunity to their officers and members from civil and criminal liability for legitimate trade union activities. According to the Act, no trade union of workmen shall be registered unless at least 10 percent or

²Unless otherwise indicated, this section is based upon Taxmann, Taxmann's Labour Laws, Taxmann, New Delhi, 2009.



100 of the workmen, whichever is less, subject to a minimum of seven workmen engaged or employed in the establishment or industry with which it is connected are the members of such trade union on the date of making of application for registration.

1.3 **The Factories Act, 1948.** The Factories Act, 1948 is the most comprehensive piece of labour legislation which replaces all the earlier Acts. The Act applies to all establishments employing 10 or more workers where power is used, and to establishments employing 20 or more workers where power is not used. The Act contains many important provisions regarding health, safety, welfare, employment of young persons and women, hours of work for adults and children, holidays, and leave with wages. It prohibits the employment of children below the age of 14 years in factory establishments, provides for working hours of child labour, the adult labour and prescribes that women and persons below 18 years of age are to work only during day time, i.e. between 6 a.m. and 7 p.m.

2. Laws Pertaining to Labour Reforms

2.1 Minimum Wage Act, 1948. The conception of minimum wages is based on the principles of equity and social justice. India has ratified the ILO convention of the Minimum Wage Fixing machinery, and therefore has enacted wage legislation known as the Minimum Wage Act, 1948. In India the need for fixing the minimum wages arose from the conditions created by the payment of low and sweated wages in the unorganised and unorganised sectors of industries, and consequent need for protecting workers against exploitation. The Act requires the appropriate government to fix minimum rates of wages after following prescribed procedures at intervals not exceeding five years. The wage rate under the Act consists of basic wage rate of wage with or without allowances for cost of living allowances based on the cost of living index number. An all-inclusive rate allowing for basic wage, cost of living allowance and cash value of concession can also be fixed.

The Act is applicable only to employments mentioned in the schedule to the Act. This limitation is minimized to some extent by the provisions made in the Act empowering the appropriate Government to apply it to any other employment by including it ion the schedule. This power has been used extensively by the Government concerned with the result that now more than 300 employments are covered against twelve besides agricultural to start with.

2.2 The Payment of Wages Act, 1936. The main purpose of the payment of Wages Act is to ensure regular and prompt payment of wages and to prevent the exploitation of the wage earner by prohibiting arbitrary fines and deductions from wages. The Act applies to persons drawing less than that of Rs.6500 per month. The Act applies to railways, the construction industry, civil air



transport services, motor transport services, mines, plantation, oil fields, docks, wharfs or jetties and establishments declared as factories under Section 85 of the Factories Act, 1948.

- **2.3 The Payment of Bonus Act, 1965.** The main object of the Payment of Bonus Act is to provide for the payment of bonus to persons employed in certain industries and for matter connected therewith. The Act applies to all factories and establishments in which 20 or more persons are employed on any day during an accounting year. A person employed on a salary or wage exceeding Rs.3500 per month in any industry doing any skilled or unskilled, manual, supervisory, managerial, administrative, technical, or clerical work is covered under the Act. The Act imposes a statutory obligation on the employer to pay bonus at the minimum rate of 8.33 percent of the salary earned by an employee or Rs.100, whichever is higher, in an accounting year. The maximum is fixed at 20 percent.
- **2.4 The Equal Remuneration Act, 1976.** To give effect to Article 39 of the Indian Constitution, the Government of India passed the Equal Remuneration Act and framed rules known as the Equal Remuneration Rules, 1976. The Equal Remuneration Act provides for the payment of equal remuneration to men and women for the same work, or work of similar nature, and for the prevention of discrimination against women in recruitment as well as in conditions of service such as promotions, training and transfers.
- 2.5 The Contract Labour (Regulation and Abolition) Act, 1970. Article 21 of the constitution lays down that no person shall be deprived of his life and person liberty except according to the procedure established by law. The Contract Labour (Regulation and Abolition) Act is a piece of central legislation which was placed on the statute book to regulate the employment of contract labour and to provide for its abolition in certain circumstances. The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour; and every contractor who employs or employed 20 or more workmen on any day of the preceding twelve months. The Act does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. The Act provides for the regulation of conditions of work, payment of wages, and other amenities relating to welfare and health of contract labour such as canteens, rest room, drinking water, first-aid facilities and crèches for their children. Besides the employment of female contract labourers, excepting women in pithead baths, crèches, canteens, nurses and midwives, is prohibited before 6 a.m. and after 7 p.m.



3. Social Security Legislations

- **3.1 The Workmen's Compensation Act, 1923.** The passing of the Workmen's Compensation Act in 1923 was a beginning of social security system in the country. The object of the Act is to impose an obligation upon employer to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained to him. The Act extends to whole of India and applies to persons employed in railways, factories, mines, plantations, plantations, mechanically propelled vehicles, construction work, and other hazardous occupations.
- **3.2 The Maternity Benefit Act, 1961.** This Act regulates the employment of women in certain establishments for certain period before and after child birth and provides for maternity and other benefits.
- **3.3 Employees' State Insurance Act, 1948.** Under this Act, the ESI fund is utilised for payment of cash benefits to the insured persons and provides medical benefit, disability benefit and funeral benefit. The Act is applicable to non-seasonal factories using power and employing 10 or more persons and non-power using factories employing 20 or more persons. Except the persons of armed forces, w.e.f. October 2006, the Act covers employees drawing wages not exceeding Rs.10,000 per month.
- **3.4 Employees' Provident Fund and Miscellaneous Provisions Act, 1952.** This Act provides employees the retirement benefits in the form of provident fund, family pension and deposit linked insurance. The object of the Act is to make some provisions for future of the industrial workers after the retirement; to provide social security for the dependents in case of the employees' death; and to cultivate the spirit of savings among the employees by providing a system of compulsory savings. Under the Act, employers are also required to make a matching contribution. The Act covered 182 industries/classes of organised sector establishments employing 20 or more persons.
- **3.5 The Payments of Gratuity Act, 1972.** Gratuity is defined as a lump-sum payment made to an employee or his heirs by the company on termination of his service due to retirement, retrenchment, invalidity or death. The Act provides for payment of gratuity at the rate of 15 days wages for each completed year of service subject to a maximum of Rs.3,50,000.



- **3.6 Employees' Pension Scheme, 1995.** This scheme has been introduced w.e.f. 16th November, 1995 and is applicable to all subscribers of Employer's provident Fund. The earlier Family Pension Scheme has been discontinued. Under the Scheme, pension at the rate of 50 percent pay is payable to employees on retirement or superannuation on the completion of 33 years of service. A minimum of 10 years' service is required for entitlement of pension. The scheme is financed by diverting the employer's share of provident fund representing 8.33 percent of the monthly wage to the pension fund.
- **3.7 New Pension Scheme**, 2004. This scheme has been introduced by Government of India w.e.f. January 1, 2004 for the new entrants to the service of the Central Government (other than armed forces). Besides the central Government, other 19 provincial governments of India have introduced the NPS barring three left ruled states i.e. W. Bengal, Tripura and Kerela. The NPS is a major departure from the past pension scheme and is a shift from earlier Defined Benefit Scheme to the Defined Contributory Scheme. The contribution rate is 10 percent of the gross salary for the employee and the employer would make an equal contribution to the employee's individual pension account. There would be no pre-retirement withdrawal. The member has the option to allocate the funds among a limited number of investment schemes. At the age of 60, the accumulated amount would be divided into a compulsory annuity component and a lump sum withdrawal component. The sum that the pensioner will receive as pension or as lump sum postretirement money would depend on the yield rate of schemes the individual had opted for. The NPS, which is based on the neo-liberal view on the role of state, is based on the idea that state should not be burdened with the responsibility of providing a guaranteed defined benefit to its employees. "As economy opens up, maintaining the fiscal discipline and keeping the tax rates at par with the international norms becomes necessary, under such a situation, it would be advisable to replace the defined benefit scheme by the defined contributory scheme which creates a provision for retirement benefit out of the present income of the employee (and a contribution from the state out of its present revenue) so that the rules of sound finances are maintained.... .Since the liability of an assured benefit will not be there, the state budget will not be put under pressure for meeting a commitment that does not have a collateral financial provision".³

³Khasnabis, Ratan, "Social Security Benefits and the New Pension Scheme", at

http://www.macroscan.com/cur/sep07/print/prnt290907social_Security.htm



4. New Labour Codes, 2019-20⁴

This classification of Labour legislations is based on the recommendation of the Second National Commission on Labour, June 2002 to meet the existing needs of the Indian Labour Market and to ensure the high trajectory inclusive growth. Constitutionally, labour in India falls under the con-current list and, therefore, empowers both-Central and State Governments to enact labour laws. Further, Second National Commission on Labour (2002) found the various existing labour laws very complex and mutually inconsistent with obsolete provisions. The NCL 2002, therefore, recommended the consolidation and amalgamation of existing major labour legislations on the basis of industrial relations, wages, social security, safety and welfare/working conditions of workforce. It is in this context, that Govt of India in 2019 and 2020, has rationalized and amalgamated the existing 29 labour laws into four Codes i.e. Code on Wages 2019; Industrial Relations Code 2020; The Occupational Safety, Health and Working Conditions (OSH) Code 2020; and The Code on Social Security 2020.

4.1 The Code on Wages, 2019

This code is the subsumption and amalgamation of four existing Central Labour Legislations i.e. The Payment of Wage Act, 1936; The Minimum Wage Act, 1948; The payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. The Code on Wages extends and seeks to - regulate wages & bonus payments in all employments - formal and informal, whereany industry, trade, business, or manufacturing is carried out. The key features of this code are as follows: -

a) The Universalisation of minimum wages which was hitherto confined to workers engaged in notified scheduled employment and now extends to the excluded categories e.g. home based, domestic and marginal workers of informal sector. The code has extended legal coverage of both floor wage and minimum rates of wages to all employees numbering about 224.7 million (or 48 per cent of the total 468.8 million workforce) as per PLFS 2018-19 and will benefit additionally 76.4 million wage earners. New beneficiaries will be primarily vulnerable groups within the labour market - rural, women, illiterate & below middle level of education, causal workers, ST & OBCs, agricultural and construction labourers, and workers in tiny and micro enterprise. The Code contains the concept of statutory 'wage floor' that is to be fixed on the basis of minimum living standard of a worker by central government in consultation with state governments & CAB on wages. Floor wage can be a single floor for the entire country or different floor wages for different geographical areas

⁴ Unless otherwise indicated, this section is based on Sriniwas, H., "New Labour Codes- Putting India on a High Growth Trajectory, Policy Perspective, VV Giri National Labour Institute, Noida, UP (India), December 2020.

International Journal of Management and Social Science Research Review, Vol-10, Issue-11, November -2023 Page 57



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and Minimum rate of wages to be fixed by central and state governments shall be either equal to or above the 'wage floor' & can't be reduced to the level of floor, if such wages are already higher. Once the initial 'floor wage' is set and subsequently minimum wages are set above the floor- average wage levels are expected to go up ensuring that economic growth translates into less poverty and inequality - under assumption of full implementation. This will bring down level of wage inequality by 10% points - from 0.499 to 0.398 (Gini coefficient) and Gender wage gap will be compressed by - 6% points among regular & 18% points among casual workers. Further, it will reduce the probability of low paid worker being poor by 8% to 9% with low fiscal $cost.^5$

- b) Prohibition of gender based discrimination and no unauthorized deductions in matters relating to wages.
- c) Review and appraisal of minimum wages at least once in five years.
- d) Provision of Skill Premium (higher reward for higher skill) on lines with National Skills Qualification Framework to address Skill India Programme.
- e) Re-designation of 'Inspector' as 'Inspector -cum-Facilitator'as a guide and advisor for filling the gap between the Agents of industrial relations i.e. the Government, Employer, Employees and the Trade Unions.

4.2 The Industrial Relations Code, 2020

The Industrial Relations Code (IRC) 2020 consolidates the laws governing trade unions and employment conditions in industrial establishments, employer-workers relationship, and settlement of the disputes arising in undertakings.and, therefore lays the roadmap for the resolution of industrial disputes. It thus aims at establishing industrial peace by maintaining amicable employee employer relations. The Industrial Relations Code (IRC) 2020 is the replacement, consolidation and rationalisation of hitherto three legislations governing industrial relations in the country i.e. The Trade Union Act 1926; The Industrial Employment (Standing Orders) Act, 1946; and The Industrial Disputes Act, 1947. This Code seeks to bring transparency and accountability in the enforcement of labour laws which is expected to lead to better employer-employee relations and higher productivity. The key features and provisions of IRC 2020 are as follows:-

a) Modified definition of 'Worker' and thus has been enlarged to include the workers with monthly pay from existing Rs.10,000/- to Rs 15,000/- per month.

⁵ VV Giri National Labour Institute, *"Code on wages*" at <u>https://vvgnli.gov.in/sites/default/files/Code%200n%20Wages%202019.pdf</u>



- b) Defining of 'Fixed Term Employment' (through a written contract for a fixed period) and a fixed term employee will get all statutory benefits like social security, wages, etc. at par with the regular employees who are engaged in similar work.
- c) The threshold limit of workers for the purpose of seeking permission before closure, retrenchment and lay-off by establishments has been increased from existing 100 to 300. Further, the retrenched workers are to be paid 15 days' wages as Re-skilling Fund for retraining and re-skilling within 45 days.
- d) Industrial Tribunals have been envisaged as the only adjudicating body to decide appeals against the decision of the conciliation officer.
- e) Introduction of the provision of 'Negotiating Union' and 'Negotiating Council'. Trade Union to be recognized as a sole 'Negotiating Union' with minimum of 51 percent muster rolled workers in a particular undertaking failing which the negotiating issues will be referred to 'Negotiating Council' that represents all trade unions having support of minimum 20 percent of muster rolled workers with one representation for each 20 percent of the workers.
- f) Prohibition of employers from restricting workers from forming trade unions and establishing employer sponsored trade unions.

4.3 The Occupational Safety, Health and Working Conditions (OSH) Code, 2020

The OSH Code, 2020 rationalise and consolidates the 13 labour laws pertaining to safety, health and working conditions namely The Factories Act, 1948; The Mines Act, 1952; The Dock Workers (Safety, Health and Welfare) Act, 1986; The Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996; The Plantation Labour Act, 1951; The Contract Labour (Regulation & Abolition) Act, 1970; The Inter-state Migrant Workmen (Regulations of Employment and Conditions of Service) Act, 1979; The Working Journalist & Other News Paper Employees (Conditions of Service & Miscellaneous Provision) Act, 1955; The Working Journalist (Fixation of Rates of Wages) Act, 1958; The Motor Transport Workers Act, 1961; The Sales Promotion Employees (Conditions of Service) Act, 1976; The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.

The key features and provisions of this OSH Code, 2020 are as follows:-

- a) Modified definition of inter-state migrant workers to include directly engaged inter-state workers besides the migrant workers.
- b) Enlarged scope of Cine/Theatre workers to include all Audio-Visual Workers.



- c) Modified the definition of working journalist to include the journalist working in the electronic media also.
- d) The definition of family has been extended to include the dependent grant parents of the workers.
- e) Empowerment of women workers to work at night subject to the conditions of safety and consent.
- f) Mandatory annual health checkup for workers at employer's cost.
- g) Mandatory issuance of appointment letters by the employers.
- h) Introduction of a Single All India Work License with validity of five years thereby substituting the existing mechanism of obtaining multiple license for each work.

4.4 The Code on Social Security, 2020

The code on Social Security, 2020 defines social security as "the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code".⁶ The CSS, 2020 is the first attempt to universalize the social security measures for the entire workforce in the country, both- organized and unorganized sectors. This code is the rationalization and amalgamation of existing nine Social Security Legislations namely The Employees' Compensation Act, 1923; The Employees' State Insurance Act, 1948; The Employees Provident Fund and Miscellaneous Provisions Act, 1952; The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Cine Workers Welfare Fund Act, 1981; The Building and Other Construction Workers Welfare Cess Act, 1996; and The Unorganised Workers' Social Security Act, 2008.

The key reforms and provisions under CSS, 2020 are as follows:-

- a) Universalization of Social Security measures covering the workers of organized and unorganized sector including for Gig and Platform economy workers.
- b) Extension of Health, Maternity benefits, Old age pension, Life and Disability cover to all eligible workers.
- c) Extension of Provident Fund coverage to all enterprises having 20 or more workers instead of hitherto only scheduled enterprises.
- d) Provision of "Social Security Fund" for unorganized workers along with gig and platform workers and will help Universal Social Security coverage. This fund is to be monitored by Social Security Organization with various boards for the purpose.
- e) Mandatory ESIC coverage for employees in hazardous industries even with less than 10 employees.

⁶https://vvgnli.gov.in/sites/default/files/Social%20Security%20Code.pdf.



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IV. Conclusion

On the basis of the above analyses of the labour legislations and recommendations of different reports on labour and employment, it can be concluded that various labour legislations have been enacted by the govt. of India from time to time for industry and labour. A very few of them are applicable for unorganised sector workers and that too has not benefited them. All the labour codes launched by the Govt of India in the recent pasts, have a definite far reaching bearing on the working class in the country especially the unorganized sector workforce.

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