



An overview of labour law in India with special study on social security

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Abstract

Generally speaking there has been a relative dearth of serious scholarship focusing on the evolution of Indian labour law in its economic, social and political contexts. Such work as there is tends to be constituted of fragmented and short journal articles and notes, including those by labour economists and industrial relations scholars. The present work undertakes a survey of the literature in the field, examining first the various periods through which Indian labour law has evolved up to the present time and secondly the extent to which the labour law system can be seen to have fulfilled its two core objectives: the protection of labour and the maintenance of industrial peace. The survey reveals that Indian 'labour law' in the formal sense has very little purchase in terms of its application in pursuit of its objects. This, in turn, suggests that some other approach is required to reach a more grounded and accurate understanding of how, and to what effect, labour is regulated in India.

Keywords: labour, labour law, social, security

Introduction

The era of the liberalization, privatization and globalization of the Indian economy in the last one and half decades have presented unparalleled challenges to the policy maker in government, industry and service sector to compete in the global market, with competitive edge necessitating the industry to improve its productivity and quality of products. This objective cannot be achieved unless and until the workers are highly satisfied with the working environment and welfare facilities which have an important impact on industrial relation. It has become important to find what improvement or progresses are made to enhance their working capacity in an organized sector. The issue is whether the social securities laws are effective enough to strengthen the dragnet of social protection of the workers and in turn improve their efficiency and productivity in the organized sector. These legislative instruments were made to meet the existing social need and problem but the state could not foresee the course of social progress in a dynamic society, which has made these apparently progressive laws regressive. The unification of administrative responsibility in respect of the existing social security legislation is both necessary and desirable. The ESI Act and Workman Compensation Act do not extend to whole working class. The workers have to put in long working hours without any safety and security. There are no comprehensive social security laws and policies or no such things as one umbrella coverage for all workers and they need to be more efficient to cover entire working class. The government has adopted the non interference policies toward the demand of the workers.

Evolution of the problem

This study is focused upon the laws and policy relating to "Social Security"¹ of the industrial workers (labour) in the organized sector 2 in India At the dawn of industrialization "Labour"³ as a concept was considered a mere factor of production along with land and capital. No thoughts were devoted legally or socially for the protection of the workman who contributed his manual, intellectual work for

production. History is witness to the fact that the first ever "demand" that was put forth by the working community was that of "just and humane" condition of work and not wages. The concern for the workmen in India regarding social security of the workman is a matter of gradual evolution. Such evolution can be studied in three phases:

1. The British Era: Roughly from late 1880-1947
2. The post Independence Era: from 1947
3. The Liberalization, Privatization and Globalization Era

Social security–ILO standards and India

The International Labour Organization (ILO) defines Social Security as "the security that society furnishes through appropriate organization against certain risks to which its members are perennially exposed. These risks are essentially contingencies against which an individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with his fellows. The mechanics of social security therefore consists in counteracting the blind injustice of nature and economic activities by rational planned justice with a touch of benevolence to temper it." Modernization and urbanization have resulted in radical socio-economic changes and give rise to new conflicts and tensions consequent upon the erosion of age old family and fraternal security. The transition from agricultural economy to an industrial economy brought in special accompanied problems that called for social security.

Indian social security system

In India, in the past, social security in a crude form of social protection was made available to the needy and the unfortunate under the joint family and caste system. Though the joint family system suffered from deficiencies and shortcomings, its members received some crude form of protection from the evil effects of various contingencies. Unemployment or any other economic hardships, old age and other contingencies were not suffered by individual members in isolation. In these circumstances, the joint family discharged the responsibilities of the social security

agency. Similarly, members of a particular caste were offered safeguards and benefits, such as medical aid to the invalid, financial help to widows and orphans and educational assistance in the form of scholarships and to needy students.

There was, of course, no definite principle or system of law governing these collections and distributions. In this manner, the joint family and caste system provided social security in the past. Both these systems lost their strong hold on society following the development of liberalism and individualism which were fostered by western influence in India. Urbanization and industrialization made their own contribution to the disintegration of these systems. The growth of the concept of the secular state in India has further eroded the continuance of the caste system.

Article 43 of the Indian Constitution speaks of state's responsibility to provide social security to the citizens of this country.

- The social security strategies in India include the following:
- Social insurance with the participation of the beneficiary pooling risks and resources.
- Social assistance financed from general revenues and granting benefits on the basis of means test.
- Employers liability schemes where there is an identifiable employer and within the economic capacity of the employer.
- National Provident Funds.
- Universal schemes for social security.

To Secure a Social Order for the Promotion of Welfare of the People

It is the duty of the state to promote the welfare of its people by securing and protecting social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art. 38 incorporates part of the preamble within it concerning justice, social, economic and political. This class has often been relied upon to sustain and demand social welfare measures and to remain the state about the kind of society the constitution expects it to create. Further, the constitution mandates the state to strive to minimize 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 Directives to the State to Secure Social Security Measures While Enacting Legislations: While enacting social security legislations the state has been directed to secure the following measures:

- a. Adequate means of livelihood
- b. Proper distribution of ownership and control of the material resources of the community so that it may sub serve the common need;
- c. Prevention of the concentration of wealth and means of production;
- d. Equal pay for equal work for men and women;
- e. The health and strength of workers; and
- f. Childhood and youth are protected against exploitation.

Critical analysis and social security system in other countries: A comparative study

Social security system in India and compares them with their OECD counterparts. Historically, the Indian policy makers have viewed the pension system as a welfare measure and therefore, it lacks in financial professionalism,

diversification, and in the belief that pension funds can also be treated as an asset. The Indian system is biased towards the organized formal sector as workers in this sector are benefitted with the provisions under various labor laws. Even then the pension provisions in India are way far behind the OECD benchmark. In the unorganized sector, old age income remains mainly confined to voluntary savings. The New Pension System although makes the pension amount an old age asset, is silent on the social security provisions to the poor. The average income earners are not able to replace their pre-retirement earnings with pensions compared to most of the OECD countries. In terms of the gross pension wealth, India is nearer to the OECD average only in the low income category for men. Out of 5% of health care expenditure as a percentage of GDP, government's share in India accounts even less than 1% which is significantly lower than the OECD benchmark.

A Social Security System (SSS) is one whereby the state provides various benefits to those who are unable to provide the same for themselves. Such a system is generally meant to serve the socially deprived conditions, such as poverty, old age, disability, and unemployment, etc. The most important forms of social security system are retired-worker benefits, and dependents' benefits. Therefore, SSS is a means of living independently during the old age and supporting the dependents in the family. Individuals while working are expected to set aside a part of their income as long term savings to take care of their needs in post-retirement years. Apart from the increased cost of living, the steeply rising cost of medical treatments in recent times and the need for personalized services in the old age, there are always apprehensions that the savings made during the working life will be inadequate unless some institutional arrangements are in place.

Conclusions

India's workforce is largely engaged in the unorganized sector where the pension provisions are mainly of voluntary nature. In fact, the largeness of this sector is a bottleneck in the social security provisions to the elderly poor in India. Though the NPS is a professional move to make the Indian social security system in tandem with the international practice, the benefits are likely to be carried away by the organized sector workers as they have consistent and regular cash flow of income. The targeted assistance and micro pension schemes although caters to the need of old age poor and women, are not significant enough to meet the future requirements. In addition, the government's burden of the pension provision with the administered interest rate (which is usually high compared to the market rate of interest) makes the government vulnerable to its debt sustainability.

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