

SOCIAL SECURITY IN INDIA: A NEW APPROACH

By

—Dr. V. VENKATA RAMANA, B.Com., L.L.M., Ph.D.
Associate Professor, University College of Law,
Osmania University, Hyderabad, A.P.

1. Introduction:

Social security is a consistent and struggle of every man in the country throughout his life. There are many situations, stages and circumstances in the life of a man from cradle to the grave and womb to the tomb strives hard to have the social security. The society is also having the responsibility to help and protect the persons in case of their difficulties and problems specially relating to their livelihood. There are many religious scriptures directs for providing help to the people who face difficulties in search of their livelihood in the name of divine, and there are also many laws of the country, International Conventions and Recommendations which provide Social Security in various contingencies to certain members of the society who are very weak and poor.

Social security systems are being developed in many countries of the world. The International Labour Organization states that “Long before any formal recognition of the need for community action, the relief from poverty had been commended as private obligation and individual personal responsibility. Religious foundations provided shelter sanctuary and alms; medieval trade guildes supported members and their families in times of adversity. Out of these beginnings, Countries developed systems of poor law to relieve and accommodate the destitute laws which had the merit of admitting public liability, while establishing the principle of using public money for their purpose, these laws were comprehensive in their scope. But being designed as some would say to minimize the likelihood of social unrest in reaction to actual starvation. These laws did

little more than blunting the edge of the problem. In countries outside the money economy the traditional bulwark against poverty was the support of the family or the extended family of clan and tribal village, with each generation accepting the duty of caring for the elderly and for weaker brethren. But with intensive industrialisation on the one hand, there was a gradual move away from pastoral and subsistence economies on the other and these various forms of protection, rooted in history and tradition, became progressively less adequate to meet the new situation”¹.

The Report of Committee on Labour Welfare, in year 1969 observed that “at all times and in every society, at every stage of development there have been sick people requiring medical aid and care, handicapped and old people unable to work for a living”. In addition to this there are also some people who are unemployed and are unable to make both ends meet. Sir *William Beveridge* said that “there are five giants on the road of reconstructions”. These are want, disease, ignorance, squalor, and idealness². In the early periods human requirements were very little and livelihood was based primarily on agriculture, joint families, craft guilds, churches, charitable, philanthropic and other religious institutions provided these securities. In some countries poor houses were also established³. The system which was based on the voluntary charity became insufficient and unsatisfactory for many years. In some of the

1. ILO: Introduction to Social Security, 1984, pp.1-2.

2. Sir *William Beveridge* report of Social Insurance and allied services p.6 & p. 300.

3. ILO approaches to Social Security, 1942, p.83.

countries these schemes were supplemented with mutual benefits schemes and different aids by the States. Now, a situation has arisen by way of increasing various risks and contingencies due to industrialisation and scientific development. Due to these changes in the society it has become an essential aspect for introducing various social security laws.

2. Approaches to Social Security:

The following are the important approaches for providing social security to all the members of the society. In Great Britain, the poor laws provided minimal food and shelter in a work house for those who had nothing, the conditions for this assistance was so harsh that they would not be acceptable today, the poor laws in Britain did not make much impact on the problem of persons without means or support.

- (a) Charity and poor relief
- (b) Private savings
- (c) Compensation by Employers
- (d) Mutual aid or Mutual benefits societies
- (e) Private Insurance
- (f) Life Insurance

3. Strategies for Social Security:

There are different strategies or methods for providing Social Security in any of the Country. The following are major ones which are:

- (a) Social Insurance
- (b) Social Assistance
- (c) Employer's Liability
- (d) National Provident Fund's

Social Insurance is compulsory, contributory, employment – related approach where by benefit eligibility is based directly

or indirectly on the length of employment (or period of Contribution). The social insurance has three important functions such as compensatory, curative and preventative. The Social Assistance means tested approach where by benefits are provided to residents or citizens in prescribed category of need, determine by a set of categorization criteria, subject to a means test the entire cost of benefit is paid from the General Revenues of Government. The employer's liability is to constitute an employer – based approach where by employers are required by law to provide designated benefits (usually employment injury, sickness and maternity) to their employees and their dependents. National Provident Fund's represent a compulsory saving approach where by covered employees and their employers pay regular contributions to a publicly administered or supervised funds. These contributions are credited to a separate account maintained for each employee. The universal schemes provide flat rate cash benefits to residents or citizens without consideration of income, employment or means. Universally financed from general revenues, they are often universal in application for persons who have been residents for a required number of years these programs include old age pensions for persons over a certain age, pensions for disabled workers, widows, widower and orphans and family approaches.

4. Important Definitions of Social Security:

Sir *William Beveridge* defined the term Social Security which means “the security 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 expenditure such as those connected with birth, death and marriage. Primarily social security means securing of income upto a minimum, but the provision

of an income should be associated with treatment designed to bring the interruption of earnings to an end as soon as possible”⁴.

The International Labour Organisation defines the term social security as “the security that the society furnishes through appropriate organisation against certain risk to which its members are exposed. These risks are essentially contingencies against which the individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with fellows”⁵.

The National Commission on Labour in India define the term of social security by endorsing the ILO that “Social Security envisages that the members of the community shall be protected by collective action against social risks causing undue hardships and privation to individuals whose prime resources can seldom be adequate to meet them”⁶.

There are also many other definitions given by many authors and organisations ultimately the importance of Social Security is an attack on poverty and helplessness of the individuals to face difficulties, in cases of lack of desired income or finances.

5. India and Social Security based on Constitutional Provisions:

India achieved freedom from colonial rule. The Indian Constitution recognises the concept of equality and provides protection and safe guards to various sections of the society. The Preamble of the Indian Constitution states that the people of India have solemnly resolved “to secure to all its citizens: Justice, Social, Economic and Political equality ...of status and opportunity. The Constitution of India provides safe guards in three ways, which are specified below.

1. Preamble to the Constitution which speaks of the resolve of the people to secure justice social economic and political and equality of status and opportunity.
2. Enshrined certain basic rights relating to equality as guaranteed fundamental rights.
3. Through Directive Principles of State Policy enjoins the State to adopt certain measures which will advance the goals of equality in the society.

The concept of Social Security is enshrined in the preamble of our Constitution, Fundamental rights and directive principles of state policy. The Constitution contains many provisions such as Article 38, Article 39, Article 41, Article 43, Article 15, Article 16, Article 23, *etc.*, which provide for social security and reducing inequalities in income *etc.*, of the Indian people. It is very important to specify that the Article 38 of the Indian Constitution desires for the fulfillment of basic needs of common man and brings about a change in the living of a man. The Article 39 of the Constitution provides a direction to the state towards securing the health and strength of workers, men and women and that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.

Article 39 of the Indian Constitution directs towards social justice and lays down certain principles relating to the socio-economic rights of the citizens. It prescribes the minimum programmes necessary to establish Socio-economic order in the society. It ameliorates the downtrodden of India. It contemplates measures for securing equitable distribution of community resources, prevents the concentration of wealth and means of production in a few private hands, provide equal pay for equal work for all citizens irrespective of sex, give security to the health and strength of workers including the children

4. Sir *William Beveridge* report of Social Insurance and allied services p.6 & p.300

5. ILO approaches to Social Security, 1942, P.83

6. Report of National Commission on Labour, 1969 p.162.

etc. *Nehru* said “that the Service of India means service of the millions who suffer. It means the ending of poverty and ignorance, disease and inequality of opportunity”. The ambition of *Nehru* was to wipe every tear from every eye. He further said “that may be beyond us, but as long as there are tears and suffering our work will not be over”.

Article 38(2) of the Constitution provides that “the State shall in particular strive to minimize the inequalities in income and endeavour to eliminate inequalities of State’s facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different locations”.

The Indian Constitution provides provisions relating to elimination of inequalities (Article 38), Security of Health (Article 39 and Article 47), Security of Work, education and public assistance (Article 41), Security of Human conditions of work and maternity relief to the Children, Youth and Women (Article 42), Security of Living wage (Article 43), Security to minorities and weaker sections of society (Article 46), Security to women (Articles 14, 15, 16, 23 and 39), Protection of Children (Article 24 and 39). Article 43 of the Constitution provides that the State shall strive to secure living wage, a decent standard of life and full enjoyment of leisure, social and cultural opportunities to all workers, agricultural and industrial or otherwise.

In India the Government fixes the minimum wages of certain category of employees where there is more chance of exploitation, where the workers are not organised properly and where the collective bargaining system does not work.

The Supreme Court of India in the case of *Express News Paper v. Union of India*,⁷ classified wages into three categories namely living wage, fair wage and minimum wage. Minimum wage is one which can only

provide for a bare subsistence. It is one which is sufficient to cover the bare physical needs of the worker and his family. Minimum wage differs from statutory minimum wage. The statutory minimum wage is one prescribed by the statutes it may be higher than the bare subsistence of minimum wages providing for some measure of education, material requirement and other amenities. Fair wage is between the minimum wage and living wage. While the lower limit to fair wage must obviously be the minimum wage, the upper limit is said by capacity of the industry to pay. Living wage is one which covers the normal needs of an average employee who should be treated as Human being in a civilized community. A living wage should enabled to make wage earner to provide for himself and his family not nearly the bare essential of food, cloth and shelter, but a measure of frugal comforts including education for children, protection against ill-health requirement of essential social needs and a measure of insurance against more important misfortunes including the old age it is very important to mention here that Hon’ble Judge of the Supreme Court *P.N. Bhagwati* in his Historical judgment said that “the paying less than the minimum wage is amounted as forced labour”⁸.

Though there are many provisions relating to the social security in the Indian Constitution but which are not being implemented properly by the administrator and also various Governments which are being run by different political parties. It is unfortunate to mention here that in India the corruption has been increased and in recent years many scams by Ministers and administrators have been taken place by which the poverty of the people specially the poor workers has been increased to a maximum extent and also the unemployment is also a cause for prevalence of corruption in the various circles of the society.

7. AIR 1958 SC 576

8. *Peoples Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

The object and intention of the Democratic Government of the country has been failed miserably.

4. Important Social Security Laws in India:

The following are the important laws relating to the social security have been passed in India before and after independence, which are specified below.

- (a) Workmen's Compensation Act, 1923.
- (b) Employees' State Insurance Act, 1948.
- (c) Employees' Provident Funds Act and Miscellaneous Provisions Act, 1952.
- (d) Maternity Benefit Act, 1961.
- (e) Payment of Gratuity Act, 1972.

Conclusion: Social Security is very important concept in any of the country. The International Labour Organisation played an important role in the field of Social Security systems and passed many Conventions and Recommendations advising the member countries to frame suitable scheme for the protection of people in their various contingencies and in corporate the benefits in the social security laws. India also having many of the Social Security Laws which have been specified above but the laws are not implemented systematically and scrupulously because of lack of political consciousness and will of the administrators and parties who occupied the important positions including the administrators or authorities of the Social Security Laws, because of many of the political leaders are indulged in corrupt practices by which the goals and benefits are not reaching to the deserved person. Therefore an effective and impartial machinery of administrative authority is *sine qua non*. Another important point to be noted that the existing Social Security Laws are applicable only that to partially to certain industrial workers and majority of the workers of the

society who are in rural areas are totally neglected and very few of them are being covered with ineffective management of the schemes meant for such workers. The National Commissions for Labour have been constituted in the year 1969 and 2002 which made very important recommendations for the extension of social security to all the workers. But, the policy makers *i.e.*, legislators and parliamentarians have not concentrated wholeheartedly for providing protection to the weaker section of the society specially the workers. The National Commission on Labour, (1969) recommended (number 87) for integrated social security such as (a) the aim should be to work gradually towards a comprehensive social security plan by pooling all the social security collections into a single funds from which different agencies can draw upon for disbursing benefits according to needs. (b) it should be possible over the next few years to evolve an integrated social security scheme which will, with some marginal addition to the current rate of contribution, take care of certain risks not covered at present. These will be limited to the benefits of (i) Provident Fund and Retirement/ Family Pension, and (ii) Unemployment Insurance.

The whole object of the social security can be stated that "Fundamental purpose is to give individuals and families the confidence that there level of living and quality of life will not, so far as is possible, be greatly eroded by any social or economic eventuality. This involves the prevention of the occurrence of contingencies which involves loss or substantial reduction of income. In other words, it means poverty prevention or poverty alleviation". It is very important to recollect the ILO declaration, Philadelphia, 1944 which declared excellently that "poverty anywhere constitutes a danger to prosperity everywhere".

The India is relentlessly working for the eradication of poverty after independence

beginning from the leaders *Mahatma Gandhi* to *Sonia Gandhi*. But, their efforts are not being materialized due to criminalization of politics, rampant corruption, failure of rule

of law and lack of sincerity and truthfulness among the leaders who are ruling the Country through their Political Parties.

“ARREST” AND ITS SCOPE IN CONTEMPORARY INDIAN CRIMINAL JUSTICE SYSTEM

By

—K. MAHESWARI

Asst. Public Prosecutor
Jammalamadugu (A.P.)

The emerging trends in the criminal justice system emphasize the need to speedy trial. Since our Constitution envisaged the spirit of fundamental rights to its citizens the right of life and personal liberty

Article 21 of the Indian Constitution read as “No person shall be deprived of his life or personal liberty except according to procedure established by law”. However in spite of the constitutional and statutory provisions are aimed at safeguarding the personal liberty and life of a citizen, growing incidents of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation.... custodial death is perhaps one of the worst crime in a civilized society governed by the rule of law”¹.

Speedy trial thus an integral and essential part of the fundamental right to life and

personal liberty enshrined in Article 21 of the Constitution².

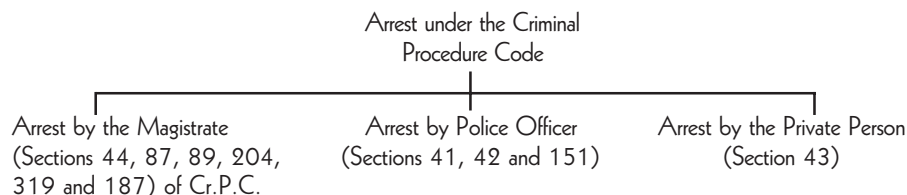
In *Kadra Pabadiya v. State of Bihar*,³ it was held that several trials were languishing in jail for several years without their trial having made any progress. The Supreme Court commented “it is a crying shame upon our adjudicatory system which keeps men in jail for years an end without a trial”

In this context it is obvious to know about arrest and its scope in the Code of Criminal Procedure.

“Arrest means the apprehension of a person suspected of criminal activities”⁴.

When a person is found to be committed an offence under I.P.C or another law for the time being in force, be arrested by the police officer and a Magistrate as according to the following provisos

Arrest under the Criminal Procedure Code:



1. AIR 1997 SC 610 (*D.K. Basu's case*)

2. AIR SC 1675 (*State of M.H. v. Champalal*)

3. AIR 1981 SC 939

4. Oxford Dictionary of Law (3rd Edtn)