

SOCIAL SECURITY FOR WORKERS IN THE UNORGANISED SECTOR

By

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Introduction

Social security is a basic need of all people regardless of the sector of employment in which they work and live. It is an important form of social protection we should begin with birth and should continue till death. In a general sense social security refers to protection extended by the society and state to its members to enable them to overcome various contingencies of life.

The main risks or insecurity to which human life is respi and in relation to which an organised society can afford relief to the helpless individuals are the incidents occurring right from childhood upto old age and death. Which includes mainly sickness, unemployment, old age *etc.*

Though, we have enacted good number of social security legislations to meet the mandate of our Constitution and provide a sort of protection to the people in case of various providential mishaps, the scope and coverage of these legislations is limited to hardly 9.4 per cent of the total workforce, who are in the so-called organised sector, as per 1991 census- But remaining 90.6% of the persons working in unorganised sectors such as the small and marginal farmers, the landless agricultural labours, the rural artisans, the handicrafts men and women, the fishermen and women, the salt workers, the hamals and the building and construction workers *etc.*, are deprived of protection under many social security legislations of the State. Thus majority of the workforce in the above said unorganised sector are in an urgent need of a comprehensive social security protection which can be achieved by joint of governmental and non-governmental organisations.

Constitutional Basis for Social Security in India

The preamble of the Indian Constitution is a solo-repository of social security measures and provide for establishment of Socialist State. According to the Supreme Court of India, the principal aim of socialism is to eliminate inequality of income, status and standard of the life and to provide a decent standard of life to the working people. Further it is designed to secure social, economic and political justice to all its citizens. Social justice is said to be signature tune of Indian Constitution. These objectives can be achieved through various directive principles of State policy enumerated in part III of the Constitution. Article 38 is a mandate to the State to secure a social order for the promotion of welfare of the people. Article 39 provides for equal rights to adequate means of livelihood to all citizens and distribution of wealth and material resources to subserve common good and prevention of concentration of wealth and means of production *etc.* Article 41 provides for right to work, education and public assistance in certain cases such as unemployment, old age, sickness and disablement. Article 42 stands for providing just and human conditions of work and maternity relief. Article 43 deals with living wage for workers and Article 43-A intend to secure worker participation in management of industries. Besides these, Entries 21, 23, 24 and 26 of Concurrent List (List-III) authorise the State Governments to take necessary steps for Trade Unions. Industrial and labour disputes, social security and ial insurance, employment and unemployment, welfare of labour *etc.*, respectively with an intention to ensure protection of interest of all the citizens of India.

Although these provisions are not enforceable in the Courts of law, the Supreme Court of India has declared that they are nevertheless fundamental in the governance of the country and it is the duty of the State to apply them in making laws.

Laws Relating to Social Security in India

Several legislations, both Central as well as State have been enacted to provide social security to the workers. The most 1923, E.S.I. Act, 1948, the Factories Act, 1948, the Provident Fund and Miscellaneous Provisions Act 1952, the Maternity Benefit Act 1961, Industrial Disputes Act, 1947, the Payment of Gratuity Act, 1972 and the Contract Labour (Regulation and Abolition) Act, 1970 *etc.* However, as it has been already stated above, the protection provided by these laws is available only to 9.4 per cent of the working people who are working in organised sector such as factories and establishments and no protection is available under them to the worker in the unorganised sector. Hence, there is a strong need and necessity to extend the facilities to the workers in the unorganised sector.

Need of Social Security for Unorganised Sector

The social security needs of the unorganised sector are extensive and varied whereas the funds available for the programmes are necessarily limited. These persons are the uncovered wage earners who work for very small employers. Their needs and characteristics are identical to those of the covered workers in the organised sector. Majority of the working people in the rural areas especially in agriculture sector are deprived of any of the protections of the existing social security legislations. The small and marginal farmers who are badly hit by drought, flood, crop failures, epidemic diseases and others, such as loss of livestock *etc.*, they need some social assistance in the form of earning related programmes in the field of

agriculture, animal husbandry *etc.* and also supply of seeds, pesticides and irrigation facilities. The other basic social security need in the rural areas is health care as they are more prone to various diseases.

Obstacles in the Extension of Social Security to Workers in Unorganised Sector

The main obstacle in the coverage of wage earners in tiny establishments is the formidable task of their identification and is more so in the cases of small artisans, fishermen, landless agricultural labourers and other unprotected groups. The high cost involved in their coverage impel the social security administrations to shrink from the challenge. Further the number of persons in the unorganised sector is increasing due to liberalization and globalisation policies. There is also a lack of vocal demand from the deprived population. Apart from this the weak economic capacity of rural communities, lack of adequate infrastructure of communication, illiteracy, lack of awareness about the social security measures, difficulty in determining wages and income and paucity of funds *etc.*, are few important problems in the way of extension of social security to workers in unorganised sector.

Strategies for Extension of Social Security

Social protection for the poor and the deprived can be provided through a combination of measures including the expansion of the current social security schemes and the Government funded social assistance programmes and the enlargement of the employment generations and poverty alleviation programmes.

Apart from conventional social security, crop and livestock insurance schemes are a priority area of protection. Even though there are some crop insurance schemes exist in India, there is no awareness among the people who are often affected by crop failure *etc.* Further establishment of more and more

institutions of mutual benefit funds can provide an alternative system of social security for the unorganised sector particularly for the self-employed persons. The panchayats and Nagarpalikas shall be involved in administering social security programmes which help to achieve effective targetting and accountable delivery of benefits, reduce overhead, mobilize local resources and create a basis for community solidarity. Further, the Department of Social Justice Welfare *etc.*, must be made responsible to implement the social security schemes strictly and also be encouraged to ensure new schemes. In addition to these, the role of non-governmental organisations and social workers in implementation of schemes is more significant.

The needs of the people engaged in barely subsistence level activities such as semi-skilled craftsmen and venders in urban areas and marginal farmers, fishermen, forestry workers and landless agricultural workers in rural areas require to be considered. Specifically with reference to their meagre incomes, the distinct social security measures are to be devised for them. Further, some measures are required to be taken to improve their conditions of work, health *etc.* Though many health centres have been established in many villages, still the condition of health care is not upto mark due to lack of doctors, availability of drugs *etc.* Though many hospital buildings are constructed in rural areas, they are lying vacant since several years without any medical staff and facilities. Therefore, Government must take immediate steps for recruitment of necessary staff and ensure the supply of drugs.

The workers in the unorganised sector are facing a problem of housing. Due to low and uncertain income, they are unable to have their own shelter and as such are forced to live in huts *etc.* Though Government has evolved a housing scheme for poor, it has not yet reached millions of workers in the unorganised sector. Further, social assistance measures are inevitable to provide clothing and food for non-earning elderly without

family support unemployed handicapped persons, the deserted women and destitute, agricultural workers and rural artisan and the effective programmes in the shape of poverty alleviation and employment generation be implemented properly.

Various Schemes Evolved in India

Several schemes have been evolved in India through legislations and policies to provide social security to the workers in the unorganised sector. Some of the important such schemes are Integrated Rural Development Programme (I.R.D.P.), Rural Group Life Insurance Scheme introduced in 1995 in which insurance is available between ages 20-60 years for an assured amount of Rs.5,000/- with a premium of Rs.60 per annum. However the programme in this scheme has not been very satisfactory all over the country and require revamping by undertaking effective publicity. Old Age Pension Scheme is another social security measures exists in almost all States in India, which is a monthly pension ranging between Rs.50/- and Rs.100/- and is applicable to the people whose income does not exceed the maximum slab prescribed. However, many of the old aged people who are eligible for pension under the scheme are not aware about the same and as such are deprived of the benefit. These schemes can be implemented properly through the local authorities by identifying the needy beneficiaries.

The Life Insurance Corporation of India had introduced variety of Group Insurance Schemes and saving schemes to cover members of cooperative societies and trade or occupational associations. Further the National Agricultural Insurance Scheme was launched in June 1999. The scheme provides insurance cover to all farmers, irrespective of the size of holdings and covers almost all crops. The premium rates are also very less and the scheme also has a provision of 50 per cent subsidy on the premium amount

for small and marginal farmers. In case of failure of crops due to any calamities such as cyclone, flood, hailstorm, landslide *etc.* the affected person would be entitled to payment of insurance according to indemnity rates prescribed. The scheme provides for Constitution of a separate organisation for its administration such as Bharatiya Krishi Bhima Nigam (Indian Agricultural Insurance Corporation).

Further, the Government of Orrisa has introduced a scheme called Orrisa Unemployment Assistance Scheme 1999 for providing livelihood to the educated unemployed whose family income does not exceed a prescribed limit per month and family must be in the below poverty line list. The rate of assistance is Rs.200/- per month payable for a maximum period of 3 years or till he or she is engaged in gainful employment whichever is earlier. The similar type of scheme may be implemented in other States also. The Integrated Housing Scheme for Beedi workers have been introduced by Government of India to provide housing facilities to beedi workers at a subsidised rate.

The Jawahar Gram Samridhi Yojana has been launched streamlining and restructuring the Jawahar Rozgar Yojana which was existing earlier. The primary objective of this programme is including assets. It will also help create assets to enable the rural poor to increase opportunities for sustained development. The scheme will also generate supplementary employment for the unemployed poor in rural areas. The programme will be implemented with the help of village panchayat institutions and they are also empowered to execute work with approval of Gramasabhas. The cost of the programme is shared between Central and the State Governments in the ratio of 75:25. In case of Union Territories the total funding would be done by the centre. The recent decision of the Government of Karnataka to introduce Karnataka Unorganised Workers Welfare Bill-2001 in the coming session of

the State Legislature, is a commendable step taken in this direction.

These are some of the important social security schemes existing in India to protect the interest of the workers in the unorganised sector.

Contribution of the Supreme Court

Several rights of the workers in the unorganised sector have been recognised by Supreme Court of India in its various judicial decisions. *Peoples Union for Democratic Rights v. Union of India*¹, is an epoch-making judgment of the Supreme Court which has not only made a distinct contribution to labour law but has displaced the creative attitude of Judges to protect the interests of the weaker sections of the society. The Court has enlarged the contours of the fundamental right to equality, life and liberty, prohibition of traffic in human beings and forced labour and prohibition of employment of child labour provided in the Constitution.

The case arose out of the denial of minimum wages to workmen engaged in various Asiad Projects and non-enforcement of the Minimum Wages Act, 1948, Equal Remuneration Act, 1976, Article 24 of the Constitution, Employment of Children Act, 1938, Contract Labour Regulation and Abolition Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Court's attention was drawn by a public spirited organisation by means of a letter addressed to *Bhagawati, J.*, of the Supreme Court. The Supreme Court has accepted *locus standi* of the organisation to file the writ petition and converted the letter into a petition and observed that when legal wrong or legal injury is caused to a person or determinate class of persons and such person or persons are unable to approach the Court for relief due to poverty,

1. (1982) 2 LJ 454

helplessness or disability or social and economic backwardness, they may be represented by any other person or organisation.

The Court has held that employment of children below the age of 14 years in the construction work of the Asiad Project is violation of fundamental right and non-observance of the provisions of the Equal Remuneration Act, 1976 would amount to breach of Article 14. Further, the violation of Contract Labour (Regulation and Abolition Act, 1970 and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 intended to ensure basic human dignity to workmen, is clearly in violation of Article 21. It was also held that non-payment of minimum wages to the workers engaged in construction work would amount to not only violation of Minimum Wages Act but also Article 23 of the Constitution, which intends to prevent forced labour and beggar. Thus, the Supreme Court has championed the cause of several persons engaged in construction work of Asiad Projects and rendered justice.

In *Sanjit Roy v. State of Rajasthan*², it has been held that the payment of wages lower than the minimum wages to the persons employed on Famine Relief Work is violative of Article 23. Wherever any labour or service is taken by the State from any person who is affected by drought and scarcity conditions, the State cannot pay him less wage than the minimum wage on the ground that it is given to them to help to meet famine situation. The State cannot take advantage of their helplessness.

Further, in *Bandhu Mukti Morcha v. Union of India*³, the Supreme Court held that when action is initiated in the Court through public interest litigation alleging the existence of the bonded labour, the Government should welcome it as it may give the Government an opportunity to examine whether bonded

labour system exists and as well as to take appropriate steps to eradicate that system. This is the Constitutional obligation of the Government under Article 23 which prohibits "Forced Labour" in any form. Article 23 has abolished the system of bonded labour but unfortunately no serious effort was made to give effect to this Article. It was only in 1976 that the Parliament enacted the Bonded Labour System (Abolition) Act 1976 providing for the abolition of bonded labour system with a view to prevent the economic and physical exploitation of the weaker section of the society.

These are sum of the landmark decisions of the Supreme Court wherein several basic rights of the individuals especially the workers in the unorganised sector have been unhealed and safeguarded.

Recommendations of R.O and NCL on Social Security for Workers in Unorganised Sector

The ILO has conducted a study that institutional social security measures were not suited to the informal sector particularly because of irregular employment, difficulty in assessment of earnings, incapacity to contribute and inadequacy of infrastructure facilities. So it was necessary to devise other means of providing social protection to large masses of the workforce which were outside the ambit of the institutional social security system. It was recommended for establishment of a single united agency for coordination and rationalization of various social security and welfare programmes.

The National Commission on Labour (NCL) has recommended for formulation of unemployment insurance schemes to help the people who are unemployed involuntarily. Further, recommended for evolving an integrated social security scheme and creation of a separate social security fund to finance various security measures. However no efforts have been made so far in this direction.

2. AIR 1983 SC 1155

3. AIR 1984 SC 802

Further, the suggestion emerged in the symposium on social security for workers in the unorganised sector, conducted by Social Security Association of India, New Delhi are significant and worth considering for extension of social security to the workers in the unorganised sector.

These suggestions are that a cess be levied on all manufactures and the proceeds be utilised for meeting the social security needs of the workers in the unorganised sector. The other suggestion was that awareness should be created among the workers.

These are some of the recommendations and suggestions made by various bodies for promotion of social security to the workers in the unorganised sector.

Conclusion

Apart from Constitutional mandate, social

security for all is considered as a basic Human Right under the Universal Declaration of Human Rights. Every member nation of U.N.O. must strive to further and promote *this* basic right. As the study on the subject of social security for workers in unorganised sector reveals, though many schemes and policies have been evolved both at Central and State level to achieve the said object, the result is not so satisfactory because of non-implementation of the schemes properly. To make these schemes effective, both governmental and non-governmental organisations must be encouraged. Further, more and more social assistance programmes be evolved because in case of social insurance schemes the workers in the unorganised sector are unable to contribute regularly due to uncertainty of income *etc.* But at the same time there must be a proper control and check to prevent misuse of the social assistance programmes.

“THE LAW ON WORKMEN, STRIKES AND WAGES”

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Introduction

Strikes are a common feature in almost every industrial establishment now-a-days. They are often resorted to by the employees or workmen as a means of enforcing compliance with their demands. But does every act of striking work amount to a “Strike”? And do the workmen have to be paid wages for the period of the strike, even if the strike was unjustified or, for that matter even if it was illegal?

Every Industrial Relations Manager is confronted with these questions, and it would

help to know the laws on the subject “Take the definition of the word strike”, to start with – Section 2(q) of The Industrial Disputes Act, 1947 defines the term “Strike” as a ‘cessation of work by a body of persons employed in an industry action in combination, or a combination, or a concerted refusal under common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment’. This definition makes it very clear that every cessation of work by workmen does not amount to a strike.