

## **Unit- V**

# **EVOLUTION AND GROWTH OR SOCIAL SECURITY LEGISLATION IN INDIA - WORKMEN'S COMPENSATION LEGISLATION IN INDIA (MAIN PROVISIONS)**

### **Learning Objectives:**

After studying this lesson, you should be able to understand the :

- K historical evolution of social security legislation in India;
- K main provisions of workmen compensation legislation in India;
- K problems associated with the administration of social security schemes;

### **Content Structure :**

- 20.1 Introduction
- 20.2 Evolution and Growth of Social Security in India
  - 20.2.1 ILO and Social Security
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(MAIN PROVISIONS)
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## **20.1 Introduction :**

Social security is an important part of labour welfare providing the security which is of great importance to the workers. Labour welfare is an important facet of industrial relations, which has acquired importance with the growth of industrialisation and each employer depending on his priorities gives varying degrees of importance to labour welfare and social security. The committee on Labour Welfare (CLW), formed in 1969 to review the labour welfare scheme, described it as a social security measure that contribute to improve the conditions under which workers are employed in India. The Government has introduced statutory legislation from time to time to bring about some measure of uniformity regarding the implementation of labour welfare and social security measures.

## **20.2 EVOLUTION AND GROWTH OF SOCIAL SECURITY IN INDIA:**

The development of social security systems traced form the enactment in 1883 of the first social insurance law in Germany under Bismark. The modern concept of industrialisation has been the result of industrialisation. In the Industrialised countries, social security was first introduced in the form of social insurance. Its application was limited to certain occupational groups and in course of time its coverage was extended to all or more occupational groups.

### **20.2.1 ILO and Social Security :**

The term social security came into general use after 1935, the year the US passed the social security Act introducing the old age pension system. It gradually referred to similar schemes in other countries. The formation of ILO in 1919 to promote social justice through: (1) international standards; (2) providing information; (3) technical assistance and guidance; and (4) co-operation with other international organisations, provided the direction and impetus needed by most countries. Twenty-nine conventions and 27 resolutions passed by ILO refer to social security. ILO objective in passing resolution was to set minimum standards. India was a founder member of the ILO.

The Social Security (Minimum Standards) Convention (No.102), which was adopted by the International Labour Conference on 28th June, 1952, defines the nine branches of social security benefit.

These are:

1. Medical Care
2. Sickness benefit
3. Unemployment benefit
5. Employment injury benefit
6. Family benefit
7. Maternity benefit
8. Invalidity benefit
9. Survivors benefit

All but the first of these benefits are paid in cash, but two of them - employment injury and maternity - also include an element of medical care; family benefit may comprise of variety of components.

### **20.2.2 Social Security in India :**

The evolution of social security measures in India has been rather slow, and on a more or less selective basis. In our country social security programmes have been in existence since times immemorial. Joint families, gram panchayats, community development centres and charitable trusts have contributed to provide assistance to the needy for various risks and contingencies. In those days, the main objective was collective security of life and property, freedom from misery, and security against common risks. The modern concept and organised social security measures in statutory form are only of recent origin. The Indian Constitution guarantees social security as follows:

The State shall, in particular, direct its policy towards securing:

- a) right to an adequate means of livelihood (Article 39(a));
- b) the State shall within the limits of its economic capacity and development, old-age, sickness, disablement and other cases of undeserved want (Article 41);
- c) the State shall endeavour to secure to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life (Article 43).

### **20.2.3 Social Security Legislation in India :**

In India, various factors contributed to the evolution of social security legislation. The growth of industrialisation, exodus to the cities, disintegration of joint family system etc., have lead to the disappearance

of resources on the part of individuals to cope with the unexpected risks. During the Fourth Five Year Plan a variety of social security measures, among them the employees' family pension scheme, legislation requiring the payment of gratuity at the time of retirement and finally extension of the ESI scheme to insured persons' families. The Fifth and Sixth plans continued to expand the social security benefits, including expansion of the ESI scheme.

Social security legislation in India in the industrial sector consists of the enactments: (1) The workmen's Compensation Act, 1923; (2) The Employees State Insurance Act, 1948; (3) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; (4) The Maternity Benefit Act, 1961; and (5) The Payment of Gratuity Act, 1970.

The Workmen's Compensation Act is being administered by the State Governments / Union Territory Administrations. The Employees' Provident Funds and Miscellaneous Provisions Act is administered by the Government of India through the Employees' Provident Fund Organisation. In the administration of the ESI Act, the Central Government and State Governments share the responsibility. Cash benefits under the ESI Act are administered by the Central Government through the Employees' State Insurance Corporation (ESIC). The Payment of Gratuity Act is being administered by the Central Government in establishments under its control, and also establishments having branches in more than one state - major ports, mines, oil fields and the railways; and by the respective State Governments and Union Territory Administration in all other cases. The Maternity Benefit Act are administered by the Central Government in mines and circus industry and by the State Governments in factories, plantations and other establishments. In our country the passing of Workmen's Compensation Act marks the beginning of institutionalised form of social security.

#### **20.2.4 Concept and Meaning of Social Security :**

Social security is a dynamic concept, which has been considered most essential for the industrial workers and with the development of the idea of welfare state, its scope now includes all sections of society. As the State exists for the general well-being of people, it is a proper function of the State to promote social security.

Social security is the security that society furnishes, through appropriate organisation, against certain risks to which its members are exposed. These risks are essentially contingencies against which the individuals of small means, or the worker, cannot effectively provide for by his own ability or fore-sight alone or even in private combination with his fellows.

#### **Social Security and Social Insurance :**

Social security is a very comprehensive term and includes in it, schemes of social insurance and social assistance as well as some schemes of commercial insurance. Social insurance forms the most important part of any social security scheme.

Social insurance is one of the devices to prevent an individual from falling to the departments of poverty and misery and to help him in times of emergencies. Insurance involves the setting aside of sums of money in

order to provide compensation against loss, resulting from particular emergencies. The elimination of the risk of the individual is the basic idea of insurance. Social insurance can be defined as "a co-operative device, which aims at granting adequate benefits to the insured on the compulsory basis, in times of unemployment, sickness and other emergencies, with a view to ensure a minimum standard of living, out of a fund created from the tripartite contributions of the workers, employers and the State and without any means test, and as a matter of right of the insured".

Social insurance is also somewhat different from social assistance and public assistance. Social assistance scheme is a device according to which benefits are given as a legal right to workers, fulfilling prescribed conditions, by the State out of its own resources. Public assistance is based on need and implies the acceptance of responsibility by the State to provide a minimum standard of living to all its citizens.

### **20.2.5 Social Security enactments :**

In India, the significant enactments with regard to the provision of social security are the following :

#### **1) Workmen's Compensation Act, 1923 :**

This Act was passed in the year 1923 to provide employment injury compensation to industrial workers. The compensation is related to the extent of the injury or death, but the employer is not responsible if a workman sustains his injuries under the influence of drugs, drinks etc. It is administered by a Commissioner, appointed by the government.

#### **2) The Employees State Insurance Act, 1948 :**

Under the scheme medical facilities and unemployment insurance are provided during illness to industrial workers. The Scheme is administered by the ESI Corporation, an autonomous body consisting of representatives of the Central and State Governments, employers, employees, medical professionals and also members of parliament. The scheme operates on a contributory basis and it offers five major benefits - medical, sickness, maternity, disablement and dependent's benefits.

#### **3) Employees Provident Fund Act, 1952 :**

The EPF scheme framed under the Act is administered by a tripartite central board, consisting of representatives of employers, employees, Central and State Governments. The PF is refunded with interest in the event of death, permanent disablement, superannuation, retrenchment, migration or on leaving service. All PF accumulations are invested in government and other guaranteed securities, according to the pattern specified by the Central Government.

#### **4) Maternity Benefit Act, 1961 :**

The general maternity benefit Act, 1961 applies to women in factories, mines and other establishments. It does not apply to those covered by the ESI scheme. It is administered by the Factories Inspectorates of State Governments in respect of factories, the Welfare Commissioner in coal mines and the Director General

(Safety) in other mines.

5) Payment of Gratuity Act, 1972 :

The Payment of Gratuity Act, 1972 applies to all factories, mines, oilfields, plantations, ports, railways, shops and such other establishments as specified by a Central Government notification. The Act provides that for every year's continuance in service, an employee should get 15 days wages and the total gratuity payable shall not be more than 20 months wages. Gratuity is payable on termination of employment after rendering continuous service for at least 5 years unless termination is because of death or disablement.

**20.2.6 Integrated Social Security Scheme :**

In India, the size of the country has presented its own problems, especially in the administration of social security schemes. The National Commission on Labour felt that 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. This will be limited to the benefits of: (i) PF and retirement / family pension; and (ii) unemployment insurance. They also suggested the pooling of social security collections in a single fund, for different agencies to draw upon, and disburse for various benefits according to their needs".

The government appointed a one-man commission and asked N.N. Chatterjee to draw up a blueprint for the enactment of common code of social security. He drafted a five-year plan for step-by-step integration of the ESI and EPF schemes including those of plantations and mines, and a comprehensive piece of legislation for all social security schemes. He felt that unemployment insurance at this stage of economic development could only be introduced as a pilot project in some selected industries. These recommendations are still under consideration. India is still climbing the hill in the field of economic development. Employers today are by and large sympathetic to their workers' needs and make the necessary effort to provide welfare amenities.

Social security schemes are hardly subsidised by the government except in the case of their own employees, and a small contribution to the ESI Scheme. However, given the situation and the amenities available to the average citizen in India, the industrial worker has been given a better deal.

**20.3 Workmen Compensation Legislation in India (Main Provisions) :**

Although the need for protecting workmen against even the common hazards of life such as injury, sickness, maternity, and old age was realised soon after the advent of industrialisation in the country, no concrete measures were adopted for a long time. Only in the case of fatal injuries, some relief was available to the dependents of the deceased workmen under the Fatal Accidents Act, 1855. But the measure was not of much avail owing to the ignorance and illiteracy of the workmen and their dependents, and a complicated legal procedure involved in establishing a claim. It was under these conditions that the question of providing security to the workers against the contingencies of life received the attention of the State.

### 20.3.1 Workmen Compensation Act, 1923 :

The principle of workmen's compensation was formally adopted in India in 1923, i.e., about 25 years after the adoption of the principle in Great Britain. A beginning of social security in India was made with the passing of the workmen's Compensation Act in 1923 which was put into force on July 1, 1924. Subsequently, there were a number of amendments to the Act. The Act contains 36 sections and four schedules. Prior to 1923, it was almost impossible for an injured workman to recover damages or compensation for an injury sustained by him in the ordinary course of his employment.

#### 20.3.1.1 Object, Scope and Coverage of the Act :

The object of the workmen compensation Act 1923 is to impose an obligation upon employers 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 workmen in lieu of wages, but to pay compensation for the injury sustained to him.

The Act extends to the whole of India and applies to any person who is employed, otherwise than in clerical capacity, in the railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges, etc., electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II of the Act. Under Subsection (3) of section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the Official Gazette. The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees State Insurance Act, 1948 as disablement and dependents' benefit are available under this Act.

#### 20.3.1.2 Definitions :

**Workman :** In order to be a "workman" within the meaning of section 2(1) (n) of the Workmen's Compensation Act, a person should first be employed; second, his employment should not be of a casual nature, third, he should be employed for the purposes of the employer's trade or business; and, lastly, the capacity in which he works should be one set out in the list in Schedule II of the Act.

**Dependents:** For the purposes of the Act dependents have been grouped into two classes :

- i) Those who are considered dependents without any proof; and
- ii) Those who must prove that they are dependents.

The first group includes a widow, a minor legitimate son, an unmarried legitimate daughter or a widowed mother. The following are included in the second group if they were wholly or partially dependant on the earnings of the workers at the time of his or her death; a widower, a parent other than a widowed mother, a minor legitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and minor, or if widowed, and a married brother or unmarried sister or widowed sister, if a minor, a widowed

daughter-in-law, a minor child of a predeceased son, a minor child of a predeceased daughter where no parent of the child is alive, or a paternal grand parent, if no parent of the workman is alive.

**Partial disablement** means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time provided that every injury specified in (Part II of Schedule I) shall be deemed to result in permanent partial disablement.

**Total Disablement** means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

#### **20.3.1.3 Payment of Compensation under the Act :**

The main provisions of the Workmen Compensation Act, 1923 regarding the payment of compensation includes the following.

#### **20.3.1.4 Distribution of Compensation :**

The Compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment. However, the employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workman was under or violated a rule expressly framed for the purpose of securing his safety or wilfully removed or disregarded a safety device. A workman is also not entitled to compensation if he does not present himself for medical examination when required, or if he fails to take proper medical treatment which aggravates the injury or disease. In case it is not fatal, an employment injury may cause any injury resulting in permanent total disablement; permanent partial disablement; or temporary disablement (Section 3).

#### **Rate of Compensation :**

The rate of compensation in case of death is an amount equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 80,000, whichever is higher. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 percent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of Rs. 90,000, whichever is higher.

Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the above purposes will be four thousand rupees only. The ceiling on maximum amount of compensation is Rs.4.56 lakh in case of death and Rs.5.48 lakh for permanent total disablement.



In case of temporary disablement, a half-monthly payment of the sum equivalent to 25 percent of monthly wages of the workman has to be paid.

If the workman contracts any occupational disease peculiar to that employment, that would be deemed to be an injury by accident arising out of and in the course of his employment for purposes of this Act. In the case of occupational diseases, the compensation will be payable only if the workman has been in the service of the employer for more than six months. Some of the occupational diseases listed in Schedule III to the Act are: anthrax, poisoning by lead, phosphorous or mercury, silicosis, asbestosis, and bagassosis (Section 3).

#### **20.3.1.5 Administrative Authority :**

The Act is administered by state governments which are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include :

- (i) Settlement of disputed claims;
- (ii) Disposal of cases of injuries involving death; and
- (iii) Revision of periodical payments (Section 20)

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of Compensation or otherwise (Section 31).

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts, and such payment must be deposited with the Commissioner or paid to the Workman. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. The amount deposited with the Commissioner for Workman's compensation is payable to the dependents of the workman.

If employer is in default, in paying the compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of 6 percent per annum.

#### **20.3.1.6 Contracting Out :**

A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation. The compensation payable to the workman or to his dependents cannot be assigned, attached or charged (Section 9 and 17).

### 20.3.1.7 Claims and Appeals :

The workman concerned or his dependents may file an application before the Commissioner for Workmen's Compensation in case the compensation is not paid by the employer. The claim shall be filed within a period of two years of the occurrence of the accident or death. The application which is filed after the period of limitation can be entertained if sufficient cause exists. An appeal will lie to the High Court against certain orders of the Commissioner if a substantial question of law is involved. An appeal by an employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, the appeal cannot be regarded as having been validly instituted. The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

### 20.4 Summary :

In India social security programmes have been in existence since times immemorial. But organised social security measures in statutory form are only of recent origin. India has been a pioneer in introducing social security for its people. The beginning of social security may be traced back to the 1920s when the Workmen's Compensation Act was passed. Subsequently, the country made significant progress during the first decade after independence from 1947-57 and again between 1967-77.

Workman's Compensation Act, 1923 was India's first social security legislation, which came into force on July 1, 1924. Subsequently there were a number of amendments to the Act.

There is a vital need for a social security scheme for organized labour. The size of the country has presented its own problems, especially in the administration of social security schemes. It is generally agreed that if the administration of these schemes is decentralised, there could be better coverage and a drastic cut in costs. Social security system in India is characterised by multiplicity of schemes administered by different agencies without any co-ordination. A co-ordinated or systems approach has been lacking. That too, the dichotomy in the administration of the schemes is not conducive to effective implementation.

On the whole, the social security legislation in our country suffer from several defects like - uneven scope, narrow coverage, duplication and overlapping provisions, and different administrative authorities for implementation and enforcement. A vast majority of labour force in the unorganised and agricultural sector are beyond the benefits of organised social security schemes. There is a need for an integrated and comprehensive social security system.

### 20.5 Key terms :

**Social Insurance :** is one of the devices of social security and involves the setting aside of sums of money in order to provide compensation against loss.

**Contracting Out :** A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation.

## 20.6 Model questions

1. Define social security. How did social security measures come into existence ?
2. What is the object of the Workmen's Compensation Act, 1923 ? What are the various benefits payable under the Act ?
3. What are the powers of the Commissioner for Workmen's Compensation ?
4. Discuss the stand of ILO on social security.

## 20.7 Reference Books

Bare Act on the Workmen's Compensation Act, 1923 (Latest Edition)

P.R.N. Sinha, Indu Bala Sinha, Seema Priyadarshini Shekhar	- Industrial Relations, Trade Unions and Labour Legislations
A.M. Sharma	- Industrial Jurisprudence and Labour Legislation
Arun Monappa	- Industrial Relations
Monal Arora	- Industrial Relations
IGNOU	- MS-28 - Labour Laws
S.C. Srivastava	- Industrial Relations and Labour Laws
I.A. Saiyed	- Labour Law