

AN APPROACH OF LABOUR LAWS TOWARDS SOCIAL SECURITY

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Abstract

Social security is an important component of any social development agenda and is as relevant as physical security in the evolving concept of human security. Right to social security is a human security. The paper discusses in detail about the various legislations pertaining to social security under labour law. It also discusses about the various amendment that are proposed to be taken in labour laws as a social security measure. It discusses about the various provisions which will be a social security measure for the labourers and give different benefits to them. The paper has also discussed about the important role of judiciary for providing social security to the workers. It discusses about the various bills and its provisions as a socio-welfare measures to the workers.

Keywords:- Social Security, Act, Bill, Law, Employer, Worker.

INTRODUCTION

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. Right to social security is a kind of natural right and it is recognized as a basic human right by most of the international personality. The concept of social security was first introduced in Germany in 1883. Social security is an important component of any social development agenda and is as relevant as physical security in the evolving concept of human security. Right to social security is a human security. Right to social security is human right and hence everyone has a right to a standard of living adequate for the health and wellbeing of himself and his family. India being a socialistic democratic state, has a commitment of providing social and economic justice to its citizens for the survival of democracy. Moreover, the creation of the welfare state is to execute instrumentalities which are enshrined in the directive principles of state policy serve as fundamental guides for the states action towards social, economic and welfare programmes with a view to ameliorate the conditions of labour. In pre independence period, a beginning was made to provide social security measures with the passing of the Workmen's Compensation Act, 1923.

Social security is a fundamental right of labour which is guaranteed by law to all human beings, who live their own labour and who find themselves unable to work temporarily or permanently for their control. In terms of social security, the first beginnings were made at the time of French Revolution when a Declaration of the Rights of man was proclaimed. According to Article 22 of the Universal Declaration of Human Rights, every member of society has a right to social security. After independence, the government of India has enacted a number of legislations to provide social security to industrial workers as productivity of labour is an essential condition for all round prosperity of the country. But efficient production depends upon the sincere functioning of labour and industry. Generally accepted definition of social security is "right to social security assistance for those unable to work due to sickness, disability, maternity, employment injury, unemployment or old age". Internationally the concept of social security as a basic human right came to play by ILO's declaration of Philadelphia (1944). Then this right is upheld in various international instruments like international bill of rights (UDHR, ICESCR) and is reflected in various international conventions. Most of the states in the world accepted and recognized this right as human right and enforce it through their legal instruments. The paper will discuss about the various social security legislations under labour law.

SOCIAL SECURITY LEGISLATIONS UNDER LABOUR LAW

Labour Laws have various enactments which provide social security to the workers which are discussed below:

1) The Employee's Compensation Act, 1923-

It requires payment of compensation to the workman or his family in cases of employment related injuries resulting in death or disability. The Workmen Compensations Act, 1923 provides for the payment of compensation to workmen for injuries sustained in accidents. Dependents can claim compensation in case of death of workmen due to accident arising out of and in course of employment. Also for various types of

disablement amount of compensation is fixed under law depending upon nature of injury sustained by employee. Thus it provides social security to employees.

2) The Payment of Wages Act, 1936-

The Payment of Wages Act, 1936 regulates the payment of wages to certain classes of employed persons. The main purpose of act is to ensure regular and prompt payment of wages and to prevent the exploitation of wages earners by prohibiting arbitrary fines and deduction from wages. It thus ensures regular payment of wages to employees.

3) The Factories Act, 1948-

The Factories Act, 1948 is designed to protect the workers in the factories. The Act has undergone various amendments from time to time. The main object of the Act is to ensure adequate safety measures and to promote the health and safety of the workers and further, deal with benefits and welfare facilities and health, safety and hygiene inside the factory premises. Provisions regarding health of the workers relate mainly to cleanliness, disposal of wastes and affluent, ventilations, control of temperature, elimination of dust and fumes, artificial humidification, overcrowding, lighting, drinking water facilities, latrines, urinals and spittoons. Thus it provides a healthy atmosphere to the employees at work place so that they are socially secured.

4) The Minimum Wages Act, 1948: -

The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefits of unorganised labour. It was enacted for fixing, reviewing and reviving the minimum rates of wages in the scheduled employments where workers are engaged in the unorganised sector. Thus considering the basic necessities minimum wages are being fixed under this law and it thus provides social security to workers.

5) The Employee's State Insurance Act, 1948: -

It covers factories and establishments with 10 or more employees and provides for comprehensive medical care to the employees and to their families in the form of cash benefits also during sickness and maternity and monthly payments in case of death or disablement.

6) The Employees' Provident Funds & Miscellaneous Provisions Act, 1952

It applies to specific scheduled factories and establishments employing 20 or more employees and ensures terminal benefits to provident fund, superannuation pension, and family pension in case of death during service. Separate laws exist for similar benefits for the workers in the coal mines and tea plantations.

7) The Maternity Benefit Act, 1961: -

It provides for 12 week wages during maternity as well as paid leave in certain other medical complications arising due to pregnancy. Thus it provides social security to employed female wage earners.

8) The Payment of Gratuity Act, 1972: -

It provides for 15 days wages for each year of service to employees who have worked for five years or more in establishments having a minimum of 10 workers. Thus monetary help is provided and workers feel secured.

SOCIAL SECURITY FOR EVERYONE

To ensure security for all workers, the Central Government has amalgamated 9 Labour Laws into the Social Security Code in order to secure the right of workers for insurance, pension, gratuity, maternity benefit etc. Through this Code, a comprehensive legal framework for Social Security has to be created so that workers can receive social security completely. Under this, in a step wise manner, a system would be institutionalized for the contributions received from employer and worker. The Government can fund the contribution of workers from disadvantaged section.

SOCIAL SECURITY CODE, 2020

The important aspects of Social Security Code, 2020 are as follows:-

1. Through a small contribution, benefit of free treatment is available under hospitals and dispensaries of ESIC.
2. The doors of ESIC will now be opened for the workers of all sectors along with the workers of the unorganized sector.
3. Expansion of ESIC hospitals, dispensaries and branches up to district level. This facility to be increased from 566 districts to all the 740 districts of the country.
4. Even if a single worker is engaged in hazardous work, he would be given ESIC benefit.
5. Opportunity to join ESIC for platform and gig workers engaged in new technology.
6. Plantation workers to get benefit of ESIC.
7. Institutions working in hazardous area to be compulsorily registered with ESIC.

EXPANSION OF SOCIAL SECURITY

1. Benefit of pension scheme (EPFO) to all workers of organized, unorganized and self-employed sectors.
2. Creation of social security fund for providing comprehensive social security to the unorganized sector.
3. Requirement of minimum service has been removed for payment of gratuity in case of fixed term employees.

4. Employees engaged on fixed term to get same social security benefit as permanent employees.
5. Creating a national database of workers of unorganized sector through registration on Portal.
6. Employers employing more than 20 workers to mandatorily report vacancies online.
7. A Universal Account Number (UAN) for ESIC, EPFO and Unorganised Sector workers.
8. Aadhaar based Universal Account Number (UAN) to ensure seamless portability.

CONCEPT OF MIGRANT WORKERS-

A migrant worker is a person who either migrates within their home country or outside it to pursue work. Migrant workers usually do not have the intention to stay permanently in the country or region in which they work. Migrant workers who work outside their home country are also called foreign workers. After independence, many labour laws have enacted by the government of India. Besides, the government also adopted various labour policies in order to improve wages and working conditions of workers in the organized and unorganized sectors. Article 19(1)(e) of the Constitution, guarantees all Indian citizens the right to reside and settle in any part of the territory of India, subject to reasonable restrictions in the interest of the general public or protection of any scheduled tribe. However, people migrating for work face key challenges including i) lack of social security and health benefits and poor implementation of minimum safety standards law, ii) lack of portability of state-provided benefits especially food provided through the public distribution system (PDS) and iii) lack of access to affordable housing and basic amenities in urban areas.

The ISMW Act provides certain protections for inter-state migrant workers. Labour contractors recruiting migrants are required to: (i) be licensed, (ii) register migrant workers with the government authorities, and (iii) arrange for the worker to be issued a passbook recording their identity. Guidelines regarding wages and protections (including accommodation, free medical facilities, protective clothing) to be provided by the contractor are also outlined in the law. In December 2011, a report by the Standing Committee on Labour observed that registration of workers under the ISMW Act was low and implementation of protections outlined in the Act was poor. The report concluded that the Central government had not made any concrete and fruitful efforts to ensure that contractors and employers mandatorily register the workers. During the lockdown, several inter-state migrant workers tried to return to their home state. Due to the suspension public transport facilities, migrants started walking towards their home state on foot. Subsequently, buses and Shramik special trains were permitted by the central government subject to coordination between states.

JUDICIAL APPROACH

Right to life includes right to social security and protection of family as a basic fundamental right. The Court in Life Insurance Corporation of India V/s Consumer Education and Research Centre observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the state to raise the standard of living and to improve public health. Justice P.N. Bhagwati in case of People's Union for Democratic Rights and others V/s Union of India asserted that time has come when the courts must become the courts for poor and struggling masses of country and also held that no one can employ a child below 14 years in hazardous employment. In case of Bandhuka Mukti Morcha V/s Union of India which is a landmark decision on bonded labour wherein Supreme Court has stretched its arms to various aspects such as identification, release and rehabilitation. The Supreme Court reviewed the situation of migrant labourers in different parts of the country, noting inadequacies and lapses in the government response to the situation in view of lockdown prevalent in country during pandemic of COVID-19. On 26th May 2020, the Court issued an order to the Central and State governments to submit a response detailing all measures that are taken by the respective governments for migrant labourers. On 28th May 2020 the Court provided interim directions to the central and state/UT governments for ensuring relief to the migrant workers: i) no train or bus fare should be charged to migrant workers, ii) free food should be provided to stranded migrants by the concerned State/UT government and this information should be publicised, iii) States should simplify and speed up the process of registration of migrants for transport and those registered should be provided transportation at the earliest and iv) the state receiving migrants should provide last-mile transport, health screening and other facilities free of cost. Reiterating their earlier directions, the Supreme Court further directed the Central and state/UT governments to ensure: i) transportation of all stranded workers wanting to return to their native place is completed within 15 days, ii) identification of migrant workers is immediately completed and the process of migrant registration be decentralised to police stations and local authorities, iii) records of returning migrant labourers are kept including details about the place of earlier employment and nature of their skills, and iv) counselling centres are set-up at the block level to provide information about central and state government schemes and other avenues of employment. The Court also directed the state/UT governments to consider withdrawal of prosecution/complaints under Section 51 of Disaster Management Act filed against migrant labourers who allegedly violated lockdown orders.

AMENDMENT IN LABOUR LAWS 2020

With the announcement of lockdown except for few areas, industries or establishments have gradually started inching towards operations of businesses with the limited workforce or resources to not only sustain the businesses but also to contribute to the economic growth of India. Since COVID-19 has led to slow down of economic growth in India, besides the federal (central) government, state governments have also commenced introducing various measures by way of amending labour and employment statutes, such as granting exemption in working hours and raising the statutory thresholds, amongst others, to ease the financial burden on employers. The three new labour codes have been introduced- Industrial Relations Code Bill, 2020, Code on Social Security Bill, 2020 and Occupational Safety, Health and Working Conditions Code Bill, 2020.

In the Industrial Relations Code Bill, 2020, the government has proposed to introduce more conditions restricting the rights of workers to strike, alongside an increase in the threshold relating to layoffs and retrenchment in industrial establishments having 300 workers from 100 workers or more at present, steps that are likely to provide more flexibility to employers for hiring and firing workers without government permission. The Industrial Relations Code has raised the threshold for requirement of a standing order and rules of conduct for workmen employed in industrial establishments to over 300 workers. The Industrial Relations Code states that the provision for standing order will be applicable for “every industrial establishment wherein three hundred or more than three hundred workers, are employed, or were employed on any day of the preceding twelve months”. The Industrial Relations Code also introduces new conditions for carrying out a legal strike. The time period for arbitration proceedings has been included in the conditions for workers before going on a legal strike as against only the time for conciliation at present. The Social Security Code proposes a National Social Security Board which shall recommend to the central government for formulating suitable schemes for different sections of unorganised workers, gig workers and platform workers. Also, aggregators employing gig workers will have to contribute 1-2 per cent of their annual turnover for social security, with the total contribution not exceeding 5 per cent of the amount payable by the aggregator to gig and platform workers. The Occupational Safety, Health and Working Conditions Code has defined inter-state migrant workers as the worker who has come on his own from one state and obtained employment in another state, earning up to Rs 18,000 a month. The proposed definition makes a distinction from the present definition of only contractual employment. Thus there has been a change in various concepts under labour laws.

CONCLUSION

It is thus clear that there are various labour laws which are being designed for social security of labourers. State has an obligation to respect, protect, promote and fulfil the right to access to social security. Nowadays state is gradually advancing the right through mechanisms in form of policies, programmes and various project to achieve the idea of social security. Social security has been universally accepted as the responsibility of state to protect employee and dependents against certain hazards when they are unable to earn and restore themselves. A comprehensive social security policy should link and co-ordinate different schemes to achieve intercomplimentary goals of different schemes. Thus proper implementation of laws, awareness to workers and protecting the rights of workers should be done in order to provide social security to workers under labour laws which are in existence for them.

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