

Social Insurance is an instrument of social security – A Labour Perspective

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Abstract

The Employees' Compensation Act, 1923 (EC Act, 1923) is the first social security legislation in India, without knowing the concept of social security, no one can understand the know how of the concept of social insurance. The concept of social security envisages that social assistance and social insurance attaining the goal of social security in which the government has to establish law relating to social security and social insurance aspect such as The Employees State Insurance Act (ESI Act), provides the employment injury compensation all along with other compensation benefits.

1. Introduction

The concept of insurance is a social phenomenon which guarantees certain benefits to society. The social security measures are required to be carefully incorporated in the work life of the every employee. In the absence of the social security measures no country's economy will develop and attain economic growth. Such impact will cause an imbalance and will make major setback to the work atmosphere. The employee and employer relationship might be the only reason for the remedy. A welfare and democratic state has an obligation to establish the pioneering concept of social justice and social security to the worker's at large. The social security and its contribution of payment might be a state run program in some of the countries. The disbursement of the payment of social security compensation is through social insurance and social assistance. The inception of the concept of social security was that a workman who engaged only under formal employment was claimed this benefit, through tort-feasor method of civil law remedy. In India the promulgation of Employees' State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning². The international body like International Labour Organisation (ILO) has

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²The reason and object of the Employees State Insurance Act, 1948.

taken great steps to derive guidelines³ for payment of compensation towards the principles of social security towards the concept of insurance for industrial accidents. Social Insurance Schemes have been considered as a component that have radically transformed the life of common people, because of the fact that these schemes assist the individual in the case of the loss of income resulting from injuries at work, sickness, unemployment or death contributing thus to protection of individual against the affect of complete poverty⁴. This paper is analyzing the concept of insurance in view of labour perspective, the firstly this paper deals with definition and meaning of certain words and phrases, the secondly it focusing legal frame work on labour insurance particularly the Employees Compensation Act and Employees State Insurance Act in India, thirdly it deals with the Constitutional guarantee on social insurance on the labour benefits and providing social security to labour and finally concluding with certain suggestions

2. The Definition and Meaning

According to System of National Accounts 1993 Insurance is defined as an activity “intended to provide individual institutional units exposed to certain risks with financial protection against the consequences of the occurrence of specified events”. It is also stated that the common element of all insurance schemes is spreading risk. Risk is spread when “Insurers receive many (relatively) small regular payments of premiums from policyholders and pay much larger sums to claimants when the contingencies covered by the policy occur”⁵. Social insurance schemes are defined as “schemes in which social contributions are paid by employees or other individuals, or by employers on behalf of their employees, in order to secure entitlement to social insurance benefits for the employees or other contributors, their dependents or survivors”⁶. Moreover, Social insurance has been defined as a program whose

³ The General conference of International Labour Organisation having been convened at Geneva by the governing body of International Labour Office, decided to adopt certain proposals with regard to the workmen’s compensation for accidents, namely *Sickness Insurance (industry) Convention, 1927* these shall take in the form of International conventions; refer www.ilo.org

⁴ Dr. Zhaklina Peto, (PhD) Dr. Kestrin Katro, (PhD), *Schemes of social insurance system*, University of Tirana

⁵ John Pitzer 2003, *The Definition of a Social Insurance Scheme and its Classification as Defined Benefit or Defined Contribution*

⁶ John Pitzer 2003, *The Definition of a Social Insurance Scheme and its Classification as Defined Benefit or Defined Contribution*

risks are transferred to and pooled by an often government organisation legally required to provide certain benefits⁷.

Social insurance is any government -sponsored program with the following characteristics:

- the benefits, eligibility requirements and other aspects of the program are defined by statute under Employees State Insurance Act;
- the program serves a defined population, and participation is either compulsory or so heavily subsidized that most eligible individuals choose to participate⁸.

The Social Insurance Law and shall include the following branches of Insurance:-⁹

1. Insurance against old age, disability and death;
2. Insurance against employment injuries;
3. Insurance against temporary disability by reason of sickness or maternity;
4. Insurance against unemployment;
5. Insurance for the self-employed and those engaged in liberal professions;
6. Insurance for employers;
7. Family Allowances;
8. Other branches of insurance which fall within the scope of social security.

The meaning of social security is a monetary assistance from the state for people with an inadequate or no income. The cause of such inadequacy has been under unemployment or non-employment. It is also defined that a program in which the government provides money to people who are unable to work because they are old, disabled, or unemployed¹⁰. The money is paid through a social security program. The Legal definition of social security means a program of public provision (as through social insurance or assistance) for the economic security and social welfare of the individual and his or her family; for example a U.S. government program established in 1935 to include old-age and survivors insurance, contributions to state unemployment insurance, and old-age assistance¹¹.

3. The Labour laws relating to social insurance and social security

⁷Margaret E. Lynch, 1992, *Health Insurance Terminology*, Health Insurance Association of America

⁸Actuarial Standard of Practice No. 32, Actuarial Standards Board, January 1998

⁹Under Art.2 of social insurance law, part 1: *the consolidated act on social insurance*, chapter I the regulation of social insurance, scope of application and definitions visit www.ilo.org

¹⁰The meaning of social security in Merriam Webster Dictionary

¹¹ Ibid

In British period most of the Labour laws are enacted particularly the Employees Compensation Act has been modified in 1929 by the direction and adoption of ILO Convention namely Sickness Insurance (Industry) Convention, 1927. As per the provisions of Employee Compensation Act, 1923, where employer entered into a contract with any insurers under the liability of this Act to a workman, then in the event of employer becoming an insolvent or if the employer is the company then the company was wounding up, the rights of the employer against the insurers as respect that liability shall be transferred. Such transfer of liability vest to the workman to claim compensation to the insurers.¹² In accordance with the liability it may be deemed to be third party liability towards the compensation of a workman.

The definition of the employer is an inclusive definition, therefore, the enumerated persons do not constitute the whole body of persons may be considered to be an employer.¹³ But the Rajasthan High Court has held in *R.B. Moondra and Company v. Bhanwari*¹⁴ case that the definition of the term 'employer' does not include the Insurance Company within the ambit of the provisions of the Act. The person who filed the application for claim before the Commissioner such person said to be called as the claimant. The injured workman can file a petition before the Commissioner and in the case of the death of the workman the deceased dependants can also file the petition. In *Neeru Dabur's Case (Resp)* that the Allahabad High Court held that the definition of employer under the Act clearly indicates that it is inclusive and not exclusive; hence Insurance Company is liable and must deposit the awarded amount. The expression employer and his liability to pay the compensation might have been transferred to the insurance company.

The insurable employment as it means that an employment in a factory or industrial establishment in which the Employees State Insurance Act, 1948 applies¹⁵. Moreover the term insured person means a person who is or was employed and is paid contribution under this Act in which reason who is or has been receiving benefits under the Act¹⁶. The

¹² Under section 14 of the Employees Compensation Act, 1923

¹³ *Bajjnath Singh v. OvdhTirhut Railway*, AIR 1960 All 362

¹⁴ 1970 Labour and Industrial Cases 695 (Raj)

¹⁵ Section 13A of the Employees State Insurance Act, 1948

¹⁶ Section 14 of the Employees State Insurance Act, 1948.

Employees State Insurance Corporation has been established by the Act in order to facilitate purpose of the Act. A Medical Benefit Counsel is created and shall advise to the ESI Corporation on matters relating to medial benefits and certificate of grant of benefits to the workman. Where this Act applies to a factory or industrial establishment all employees shall be insured as per this Act. The Contribution shall be paid by the employer to the ESI Corporation.

Subject to the provisions of the ESI Act, 1948, the insured person shall be entitled to get certain benefits like sickness benefit, maternity benefit, disablement benefit, dependants benefit and medical benefits¹⁷. In our Constitution of India guarantees the concept of social security to every citizen of India. The social insurance is an instrument of social security to an employee in a disability to get benefits under the labour legislation.

The Employees' State Insurance Act is a self-serving and self – financing social security tool and it provides health insurance scheme for the workers those who getting benefits under the Maternity Benefit in lower income groups and vulnerable community. It is applicable to employees earning Rs 15,000 (US\$208) or less per month, with the employer contributing 4.75 percent and the employee contributing 1.75 percent.¹⁸ Those who qualify may receive maternity benefits under the ESI scheme instead of the Maternity Benefits Act.

Under Other labour laws offering maternity benefits include the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 that grants 12 weeks of maternity benefits; and the Factories Act, 1948 that grants 12 weeks of maternity leave with full wages. So, the Law relating to maternity Benefit concern the Maternity Benefit Act, does have insurance aspect of provisions as well the Factories Act, too does not have insurance related provisions.

The Government enacted as the Employees' State Insurance (Amendment) Act, 2010 (No.18 of 2010). All the provisions of the ESI (Amendment) Act 2010 (except s 18) have come into effect from June 1, 2010. The salient features of the ESI (Amendment) Act are as under

- extending medical benefit to dependant minor brother/sister in case of insured persons not having own family and whose parents are also not alive;
- continuing medical benefit to insured persons retiring under VRS scheme or taking premature retirement;

¹⁷U/s.51-59 of the Employees State Insurance Act, 1948.

¹⁸VasundaraRostigi, Maternity Leave in India : the Law and Benefits, www.India briefing.com, posted on 15.11.2018

- treating commuting accidents as employment injury
- opening of medical/ dental/ paramedical/ nursing colleges to improve quality of medical care;
- making an enabling provision for extending medical care to other beneficiaries against payment of user charges to facilitate providing of medical care from under utilised ESI Hospitals to the BPL families covered under the RashtriyaSwasthayaBimaYojana introduced by the Ministry of Labour& Employment w.e.f. 1.4.2008;

4. Constitutional guarantee on social insurance and social security

The Constitution of India guarantees the concept of social security by the Directive Principles of State Policy. The right to work , to education and public assistance in certain cases the government has to take concrete steps to improve the condition of life of the people¹⁹. The state has to provide just and humane condition of work and maternity relief²⁰. The concept of social security and social insurance falls under concurrent list²¹ of Constitution of India. Under Item No. 23 - i) Social Security and insurance, ii) employment and unemployment and Item No. 24 - i) Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation.

Under public policy and public assistance the State has an obligation to establish welfare measures towards organized and unorganized labour community. The Employees' State Insurance Act, 1948 (the ESI Act) is a social welfare legislation enacted with the objective of providing certain benefits to employees in case of sickness, maternity and employment injury. In terms of the provisions of the ESI Act, the eligible employees will receive medical relief, cash benefits, maternity benefits, pension to dependants of deceased workers and compensation for fatal or other injuries and diseases.

5. Conclusion and suggestions

The concept of social security is an inclusive of social insurance in order to analyse under labour perspective social insurance might be integral part of social security in India. In USA several states of America enacted social security aspects of law like Social Security Act. This

¹⁹Under Art.41 of the Constitution of India, 1950.

²⁰Under Art.42 of the Constitution of India, 1950.

²¹ Under the Concurrent List the Union and State has empowered to make laws

Act provides compulsory insurance liability towards disability and other benefits. In India insurance as a consumer based stakeholder issue. As for as employee concern legal remedy is available under third party insurance like the employer transferred his liability or contributions paid by the employer. In order to secure benefits of the employee social insurance is to be promoted.

- The labour which is engaged in Mahatma Gandhi National Rural Employment Scheme (for 100 days program) to be protected at their labour related risk like snake biting etc.,
- The unorganized workers like rural agricultural labourer have to be protected under social insurance scheme and they have to be sensitized by social organization.
- In par with USA a separate social security law to be enacted and all citizen to be covered under such Act.