Introduction
“Bread, a house, adequate clothing, education and good health and above all the right to walk with dignity on the world’s boulevards” is the basic need for every human being.

-Dr. Ambedkar.
CHAPTER-I

INTRODUCTION

CONCEPT OF SOCIAL JUSTICE

The traditional right of an employer to hire and fire his workman at his will under the Laissez-Faire policy ruled supreme for sometime in the absence of justice and exploited the weak by the strong. This right has been restrained by a new branch of Jurisprudence known as industrial jurisprudence in which the Laissez-Faire policy lost its validity to give birth to the concept of social justice. Thus social justice has occupied an integral part of industrial law to get rid of all kinds of exploitative labour practices and to provide security against harmful effects of social conflicts and inadequacies.

The Constitution of India also declared firmly about social and economic justice to all its citizens. Social justice and social security, both are two sides of the same coin as social justice leads to social security. The state gives security to its citizen as condition of human existence.

Social justice is not a simple or single idea of a society but it is an essential part of complex social change to relieve the poor etc., from handicaps, penury to ward off distress and to make their life liveable for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation.¹ The philosophy of Laissez-Faire of the time held that accidents, injuries and damage to health were a natural by-product of industry and that preventing them was the responsibility of the individual worker.²
Now it has been recognised that the state has responsibility to protect its citizen against risks and hazards. Thus departure from laissez-faire theory to the concept of welfare state gave birth by yielding principles of social welfare and common good. The ideology of welfare state is to obviate all types of economic fear and economic deprivation which is the fundamental objective of all kinds of social security. Every country needs to establish effective social safety nets to catch the victims of the competitive struggle - such as the temporarily unemployed - and to protect the lowest income groups, the young, the old, and the disabled.3

Thus to promote the economic security and welfare of the individual and his dependents, some measures have developed in the industrial world which have come to be called as “Social Security”

1.1 SOCIAL SECURITY - AN IMPERATIVE NEED

The word “Social Security” was first used by Bismarck in 1880’s in Germany. But it was officially recognised and authoritatively used in United States of America, only in 1935 for the first time.4 In every society the existence of social discomfort causes imbalance in the society. Unemployment, lack of social security for old age, lack of medical aid, death of bread winner, maternity are the occasions which imperil the ability of the working man to support himself and his dependents in health and decency. The onslaught of globalisation and privatisation has pushed to the background the concern for human welfare and the role of the State in promoting welfare.

1Consumer Education and Research Centre and others V Union Of India and others (1995) 3SCC P-42.
4With the commencement of the Social Security Act, 1935.
1.2 COMMUNITY RESPONSE

In the past when the livelihood was primarily based on agriculture, by means of joint family system, religious institutions, philanthropy, charitable institutions securities were provided to the needy and helpless. Donations and subscriptions were collected from the members of the community also. But such help was restricted only to the member of a particular community. Later these institutions were withered due to the introduction of industrialisation.

Modern system of production has left the worker to depend himself during the spells of misfortune as new society based on the class rather than the caste gradually emerged up. An individual from cradle to grave depends on others when he is exposed to some emergencies. As human needs were extended with the introduction of industrialisation, it was above his ability to defend himself and his dependents against certain risks which are essentially contingencies even it could not be overcome by private combination with his fellows. So it was very much felt that the institution of social security has to be established.

A welfare state cannot sit back with folded hands as a spectator without providing any security to its members against certain risks which they are being exposed. It cannot refuse to provide protection against those risks such as sickness, maternity, old age, death of the bread winner, employment injury etc., as it exists for the general well-being of the people.

Social Security is considered as an inevitable part of modern life which gives extensive protection against risk of social and economic life. So social security is the sinequa non in the national programme of a country as a measure to, “introduce an element of stability and protection in the midst of the stresses and strains of modern life”. So it is regarded as the duty of the state to provide it.
1.3 I.L.O. AND SOCIAL SECURITY

The I.L.O. deserves the credit for the wide-spread progress of social security schemes throughout the world. The primary purpose of this organisation is to promote social justice and to improve the living and working conditions of workers throughout the world. In the preamble of its constitution it has promised to protect the workers against sickness, disease and injury arising out of and in the course of their employment, the protection of the young persons and women and provision for old age. According to Recommendation No. 67 of 1944 of the ILO concerning Income Security, Social Security is required to meet the contingencies such as Unemployment, Sickness, Employment Injury, Maternity, Invalidity, Old age, Death, Emergency expenses.

1.4 IMPORTANCE OF SOCIAL SECURITY

For instance, if social security legislation does not exist in India then the workers fall as a prey to poverty which lead to a depressed standard of living. In the absence of any defence for an individual, the family, the community and the nation certainly there will be destruction in the desire of the man to free himself from the fear of want and security against economic fear. In the early part of industrial revolution, the development of industry in India had brought some inherent evils. The workers were exposed to economic evils such as ill-payment, insecurity of job and social evils such as problems relating to safety, hygiene and health. They could not avail proper arrangement for major diseases which might be either infectious or water borne diseases like Malaria, Cholera, Tuberculosis, etc. Most of them were carried away by these diseases, while the rest who survive became weakened and inefficient. Frequent attacks by these diseases made the

life uncertain. So social security is accentuated now-a-days as a condition of human existence.

On contracting an industrial disease a worker is entitled to get compensation under the law and moreover, there are protective and safety provisions of law to prevent accidents while handling machines. "Social Security envisages that the members of the community shall be protected by collective action against social risk causing undue hardship and privation to individuals whose private resources can seldom be adequate to meet them. It covers through an appropriate organisation certain risks to which a person is exposed."

Thus the presence of social security is the breath of fresh air in the dull house.

From womb to tomb an individual has to face economic evils which may be in the form of insecurity of job, disablment or death of the bread winner. For instance, If the only bread winner dies or becomes disabled in a situation where social security legislation does not exist, then the condition of his family will be in worst situation. They will experience any one of the extended forms of social evils like destitution, beggary, child labour, low wages and exploitations. The existence of social security measures gives confidence to the workers that their standard of life will never be eroded due to such situation. So naturally the workers will have the confidence to overcome the evil effects of poverty.

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The absence of social security will yield idleness, poverty, sufferings and mental depression which causes disastrous for the society. But the presence of social security undertakes responsibility for affording every individual a reasonable opportunity to earn a living and maintain himself. So it preserves the self respect of the beneficiary by restoring the lost working capacity to the extent to which it can and also maintains the workers and their dependents during the period of cessation or any break in gainful activity.

1.5 OBSERVATION OF NATIONAL COMMISSION ON LABOUR

By comparing the position of new industrial worker with the old one, we can realise the importance of social security. The worker of today has acquired a dignity and social status in the society. They enjoy the benefit as a matter of right. This is due to the confidence given by the social security systems that their standard of life will never be eroded by contingencies like death, unemployment, maternity, disablement, old age etc. In past social security measures were not available to the industrial workers as a matter of right but only on the mercy of the employer. So they could not maintain their dignity to have a social status.

The National Commission On Labour has observed about the present workers as “The industrial worker of today has acquired a dignity not known to his predecessor. He is no longer the unskilled coolie of the days gone by, engaged in an unending struggle to eke out his existence, neglected by society except for his labour and with very limited aspirations. He has now a personality of his own.” It has also observed about the present workers particularly with respect to measures of social security context as “He shares the benefits, albeit meagre, which a welfare state with a vast population and
inadequate resources can offer and some more. He enjoys a measure of social security\(^8\).

Also in the past, workers were suffered due to job insecurity due to unsatisfactory service conditions. The employer could have been dismissed or retrenched the workers when he liked it to do so. But now the situation has changed to secure the job when he enters in an employment. The National Commission on Labour observed that, "He is secure in his employment once he enters it, he cannot be dismissed unjustified and has been given statutory protection against retrenchment or lay off\(^9\).

It is clear from the brief review of social security that, it is an imperative one for country like India. In India, we cannot say that we have developed to provide social security measures adequately. But by looking into the overall condition of the labour, it is better than what it was in the past i.e., we have made a start for little progress towards the goal of achieving social security measures by opening the labour welfare chapter.

Work can never become important than a worker. A worker is much more than the mere agency for production. So a number of legislative measures have been implemented to protect and promote the welfare of the weaker section of industrial society in certain contingencies. Most of the social security schemes reaches the organised sector than the unorganised sectors\(^10\).

\(^8\) ibid.
\(^9\) ibid., P-32
1.6 UNORGANISED SECTOR

The size of unorganised sector is around 36.9 crore. Within the unorganised sector, 23.7 crore workers are employed in agricultural sector, about 1.7 crore in construction work, 4.1 crore in manufacturing, 3.7 crore in transport, communication and services\footnote{The term unorganised sector refers to that part of the economy where the employment relationship, wages and other working conditions of workers are not regulated and protected.}. The existing Social Security Legislations are being applicable to an extremely limited class when compared to the organised sector. So it does not mean that there is no social security measures for the unorganised sector. The problems of unorganised labour both in Agricultural and Non-Agricultural Sectors are not restricted only in terms of social security benefits but even the entire basis of establishing a master-servant relationship becomes the main hindrance for their development.

The unorganised sector is in no way an independent and exclusive sector. It is dependent and linked to the organised sector and the rest of the economy. Such interdependence has to be recognised. It has to be understood that the unorganised sector is here to stay. Therefore, the nature of the work in the sector, which is informal, seasonal and absent in fixed employers and workplaces, will have to be thoroughly understood and recognised. The basic approach of the legislation should be recognition and protection for all types of workers in the sector, regardless of industry, occupation and work status.\footnote{Source : Dr. Sahibsingh, Labour Minister Of India in an interview to Employment News dated 22-28 February 2003.}
1.6.1 AGRICULTURE - LARGEST SEGMENT OF UNORGANISED EMPLOYMENT

It is difficult to establish employer - employee relationship except in case of big land lord and the agricultural labourers they employ. Their developments has been obstructed by the factors such as illiteracy, poverty, indebtedness and seasonal nature of work. Like industrial workers they don't have organisation to protect their interests.

Moreover they lack sustained employment due to the seasonal nature of work. So during slack season they are unemployed. The Government has failed to utilise this huge man power which is being wasted. Due to lack of employment opportunities, many agricultural labourers migrate to other states in which they are prone to economic exploitation as victims of payment of low wages and inhuman working conditions. Law which governs the migrant labourers provide protection to the workers. It requires the employers to recruit the inter-state migrant labourers through licensed contractors. It also requires them to furnish various informations regarding the labourers to the concerned state government. But the fact remains that many of the contractors were without licence. These employers don't care to provide information to the state government.

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Agricultural classes are overlapping in the sense that source of the land owners are tenants while some tenants work as agricultural labourers.
1.6.2 NON-AGRICULTURAL UNORGANISED SECTOR

With the advent of modern industrial system, the employers developed the tendency to earn easy and quick profits at less expenses. Especially in this sector, employers find more economical to violate the law than to observe it. The employers in this sector keep the workers in an insecure position to avoid application of various laws and regulations with the view to deprive them of certain social security benefits. Most of these employers are home-based workers like incense stick workers, readymade garment stitchers or small artisans. They are generally illiterates. They don’t know the ultimate master for whom they are working as they are mostly recruited through contractors. Moreover there is no system of maintaining identity card, a record of his work or pay slips. So it favours the employers to evade and escape from the law frequently.

1.6.3 UNORGANISED SMALL SCALE AND COTTAGE INDUSTRIES

The Factories Act Of 1948 applies to establishments employing 10 or more workers where power is used. If power is not used there should be 20 or more workers for its application. So the Act does not apply to factories not using power and having less than 20 workers. But the State Governments are authorised to extend the provisions of the Act to such undertakings. The workers in these sectors are least protected and remained outside the purview of the protective legislations.

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The working conditions of labour are extremely unsatisfactory. It is very much required to be regulated by labour laws to restrict the frequent evasions of the law. In this connection Royal Commission had observed: “In majority of the provinces there are numerous cases of inadequate times, particularly to repeated offences; and not infrequently the fine is smaller that the profit made by the offender out of the offence\textsuperscript{16}. There has not been much improvement in this respect since the report of the Royal Commission in unregulated factories like Mica, Shellac, Carpet Weaving, indigenous fineries, wool cleaning, coir matting, handloom weaving etc., the working conditions are very worst and they are paid low wages.

Child labour is exploited to a greater extent. Children continue to be employed in hazardous occupations like carpet weaving, glass and bangle manufacture which affects the body cells, strain their eyes and lungs. Accidents often occur at the worksites. But social security and accident insurance schemes hardly exist.

It is lacunae in the labour legislation with respect to the workers in small scale and cottage industries for not covering them by the protective legislations. It is a high time to extend the legislative measures to them.

Eventhough most of the schemes covers the organised sector than the unorganised, the measures are not strictly implemented. So evasions is widely prevalent owing to the loop-holes in the laws.

1.7 SOCIAL SECURITY AND HEALTH CARE

Health care is an important component of social security and hence it is regarded as primary branch of social security. Since health is of concern to all age groups and all categories of employees, the ILO Convention No. 130 and recommendation No. 69, prescribe guidelines for provision of medical under social security. In one of the social security schemes compulsory compensation is provided by suitable legislation in the event of accidents arising out of and in the course of employment. The amount of compensation depends on the nature of the injury sustained. But there is no provision in that legislation to provide medical care facilities which is the greatest need of the worker while he meets accident.

1.8 MATERNITY BENEFIT

In case of maternity benefit, cash benefit is given to the pregnant women workers. There is no provision to impose legal obligation upon the employer to provide free medical aid. So women worker has to fully depend on her own resources for medical expenses.

Social security schemes should be comprehensive enough to cover the working classes and also all risks. The majority of the people who continue to be outside the ambit of social security measures should be brought inside the purview of these schemes. In case of insurance schemes the medical and dispensary facilities available to the beneficiaries are inadequate. Qualitative improvement is very much needed in the services provided.
The Labour Welfare Legislations such as Factories Act, Workmen’s Compensation, Employees State Insurance Act covers a worker engaged in hazardous and unhealthy work in various employment. It also provides compensation for health hazard under the Act. The worker could claim compensation during the period of his service. These Acts do not extend security to cover workman after cessation of employment. So worker might suffer an ailment during his service which required a longer treatment and care even after his employment. But now the right to health, medical aid to protect the health and vigour to a worker while in service or post-retirement is a fundamental right under Article 21 read with Articles 39 (e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workmen meaningful and purposeful with dignity of person.

A country’s progress is determined by the efficiency of labour in qualitative and quantitative aspect. “Medical facilities are, therefore part of social security and like gilt edged security, it would yield immediate returns to the employer in the form of increased production and would reduce absenteeism on grounds of sickness etc. It would thus save valuable man power and conserve human resources. Lack of social security hinders production and prevents formation of stable and efficient labour force. Moreover the success of the scheme depends on the proper implementation without leaving a room for its evasion.

17 Consumer Education And Research Centre And Others V Union Of India And Others (1995) 3 SCC 42.

It has been said that a bad law well administered can be of greater utility and greater significance than a good law badly administered. So government should have eyes at the back of its head for proper implementation. In this background an humble attempt is made to analyse the legislative provisions providing social security for workmen and to identify various problems in the arena of social security and conclusions are drawn with a view to suggest effective remedial measures.

1.9 HYPOTHESIS Formulated

The thesis is mainly based on the hypothesis that social security measures contemplated in India are not fully adequate to tackle the problems of workers both in organised and unorganised sectors and that the standards set by the I.L.O. and also the standards adopted by other industrially advanced countries are yet to be fully accomplished by India. Accordingly, main hypothesis has been formulated and depending upon the data collected and also in respect of specific situations noticed in some countries sub hypothesis is formulated wherever necessary.

1.10 METHODOLOGY Adopted

The research work is mainly doctrinal and materials available in the library of Dr. Ambedkar Government Law College, Labour Department Of Pondicherry, Tamil Nadu Institute Of Labour Studies, Chennai, have been comprehensively referred. International Conventions, Recommendations, Resolutions Of International Labour Organisation, Notifications issued by the Government of India and also Tamilnadu and Pondicherry have been made use of as primary materials. The researcher also could rely upon to a certain extent possible on the Report
of the Second National Commission On Labour. However exhaustive study in this regard could not be attempted due to paucity of time due to the fact that the Government Of India is yet to accept the report and initiate the action. To update the research, certain reports appearing in National Diary also have been consulted.

1.11 Scheme of the study

The entire study comprises seven chapters. The first chapter deals with the glaring importance of social security to all sectors of workers. In the beginning of the chapter the concept of social justice has been highlighted as it leads to social security. It has also been shown that social security is needed to offer to the mankind, the dignity and self-confidence and it also assures everyone to have good health and income maintenance, when they are caught in to the web of contingencies to which workers are exposed in their life.

Next comes the second chapter which discusses the conceptual frame work of social security by analysing its various definitions. It examines the concept of social security in relation to socio-economic justice, labour welfare schemes and public policy. This discussion also brings out certain Articles in part IV of our Indian Constitution which have direct and indirect bearing on social security measures with a view to protect the interest of labourers so that social justice should be ensured. Right to pension, right to adequate means of livelihood, right to job security, right to just and human conditions of work and maternity relief, right to education etc., are some of the socio-economic goals which have been discussed in this chapter. It has also been shown in this chapter that social insurance and social assistance are the two constituents which are important in today's context in providing social security to the country.
The third chapter entitled the origin and development of social security, reveals the ancient system of protection which could not be neglected if we want to cull important knowledge from them. This chapter makes an indepth study to critically examine the growth and development of social security from ancient to modern system by discussing the experience of countries like Germany, U.K., U.S.A., etc. Thereafter, the work particularly examines the Indian social security system to have retrospective look in to the history that covers Hindu period, Muslim period, British period, Pre-Constitution period, post-constitution period and the present day.

The fourth chapter entitled social security for organised sector gives an over-view about the legal protection offered to the labourer by examining the social security schemes in the light of legislative and judicial perspectives. The legislative package of social security that contains enactments such as the Workmen’s Compensation Act, 1923, the Employees State Insurance Act 1948, the Employees Provident Fund Act, 1952, the Maternity Benefit Act, 1961, the Payment Of Gratuity Act, 1972, and the Chapters VA and VB of the Industrial Disputes Act, 1947, in which each enactment prescribes for the distinct social security benefits against certain contingencies to which workers or their dependents are exposed, has been discussed in this work in a detailed manner.

Besides this, the chapter depicts the problem of child labour and their exploitation in the society. It also presents child labour law in combating child labour with a view to protect the welfare of the child because it is an essential component of social security.
The fifth chapter entitled social security for workers in the unorganised sector throws light on the problems and causes of unorganised workers and their exploitations in the society. This chapter examines the Constitutional safeguards provided to unorganised labourer by giving an account of judicial decisions pronounced by our judiciary for the benefit of unorganised labourers. This chapter highlights the position of the unorganised workers in Tamil Nadu and also measures provided by the Tamil Nadu and Kerala Governments.

Despite various social security Laws, the unorganised labourers are deprived of benefits and so the need arises to pay special attention to this segment. Therefore, the work in this chapter details about the bringing of comprehensive legislation by the Indian Government by giving effect to the model proposed by the Second National Commission On Labour.

The study of I.L.O. and social security forms the sixth chapter. Since our concern for the promotion of social justice is a matter of Constitutional commitment and moreover social security today is an internationally recognised phenomenon for national development, this chapter attempts to examine the role played by the two global organisations namely the I.L.O. and the International Social Security Association which contribute mainly for the development of social security throughout the world. This work highlights the Conventions and Recommendations of I.L.O. on comprehensive protection against injuries that involves preventive, compensative and restorative or rehabilitative measures and also on the various branches of social security such as medical care benefit, sickness benefit, maternity benefit, etc.
The last chapter explores that social security eludes most workers as it is mainly restricted to organised workers where employer-employee relationships can be clearly established. This chapter draws various conclusions to pinpoint the inadequacy of social security measures for workers in organised sectors with respect to coverage, financing arrangements, benefits and administration as well as difficulties and deficiencies in social security laws in extending measures to unorganised workers such as threshold limit of employment, wage ceiling coverage, etc.

The researcher propounds necessary suggestions in this chapter to pull down the barriers that hinders to provide a sound system of social security to achieve the desired goal not in paper but in action.