Chapter 3

The Origin and Development of Social Security
“Parasperam bhavayantah sreyaḥ paramavapsyatha” - Bhavad gita
“Regarding one another helpfully and with dignity, you will obtain the condition of welfare”
CHAPTER-3

THE ORIGIN AND DEVELOPMENT OF SOCIAL SECURITY

INTRODUCTION

QUEST FOR SECURITY

Historically, the insecurity, arising out of various quarters and the human struggle to combat it, is not an unfamiliar one. Life is full of risks and the entire story of human civilization reveals that an endless war against insecurity still goes on. Labour existed in good old days evensince the beginning of human history. From the first dawning of history, man was not entirely free from insecurity.

In order to ensure his physical survival, he had to protect himself from pangs of hunger. Apart from that he faced serious physical dangers - from wild animals, besides the elemental forces of floods, famine and drought, fires and deadly diseases also threat his existence. The very nature of man is to strive continually for material security of threats with respect to physical security.

Primitive man sometimes sought safety in flight and some times his inventive mind motivated him to master and control the numerous sources of insecurity through human ingenuity. The lifting of some wooden stick or a stone by him in defence against the aggressive postures of some carnivorous beast was probably the first effort of man to overcome insecurity.


3.1 MODE OF ATTAINING SECURITY DURING PRE-INDUSTRIAL SOCIETY

TRIBAL SOCIETY

A tribal society is a type of primitive society which existed in the early period of human history. In this society, division of labour beyond simple sex and age differentiation is almost non-existent. There was no recognition of individual private property rights. Everyone has to work for the interest of the group collectively and shared the dangers and fruit of their labour. The children, the weaker and the aged sections of the community were taken care according to the custom, knowledge and superstitions of the tribe.

AGRARIAN LIFE

The development of agriculture came next in which the livelihood was primarily based on agriculture even though pottery making, the weaving of hair or wool or cotton were existed among agricultural groups. With the cultivation of soil, population multiplied. Soon, facilities banded for both productive and protective efforts which made fixed abodes necessary. This growth continued until there were villages, towns, cities, provinces and nations.

Later occupations became diversified and specialised. In relieving distress, family, charitable and religious institutions, community assistance played important role in providing securities against social and economic contingencies.


During Elizabethan times, England had developed system of poor law i.e., relief was granted to able-bodied persons only if they were willing to subject themselves to the rigours of the workhouse, where life was intentionally made harsh and repellant. Later when trades were organized into guilds in which the members of such guilds helped the other members in times of distress and crisis.

Then during the period of industrial revolution a new manufacturing class whose commercial doctrine was Laissez-Faire emerged which exploited the workers like anything. Thus the concept of social justice gave birth to welfare state, to be an active promoter to render social justice through social security legislations for the protection of workers.

3.2 HISTORICAL BACKGROUND OF SOCIAL SECURITY SYSTEM

In order to understand and appreciate the origin, growth and development, we must be aware of its historical background which was responsible for its birth, has been discussed under this chapter. A study of jurisprudence would reveal that slave, serf, servant and artisans were the systems prevailed in the past which are discussed as follows:

THE SLAVERY SYSTEM: THEORY OF COMmodity

In times past, during the early stage of capitalism, the relationship between the capitalist and the labourer was governed by the law of master and slave.


55 Guilds may be said to constitute the forerunners of trade unions of today.

According to this law, labour was considered as a commodity. The labourer was considered as an article of commerce to be bought as cheap but not as human being with dignity. The slave could not enter into any contract as he did not possess any free will. The whole time of the slave was at his master's disposal, i.e., they asked to be what their masters wished them to be. So their relationship between them was based on coercion.

SERFDOM

Later the position of slave was little improved into serf by some enlightened capitalists. Serfdom was prevailed over most of Europe in the middle ages under feudalism and has existed in slightly different forms at other times in various parts of the world 57. The slave was an instrument of production owned by a master who provided him with food and clothing, but the serf provided his own food and clothing from his own productive effort. Under fortunate circumstances serf could produce more than his own subsistence requirements and accumulate reserves of his own. But a substantial proportion of the surplus product of his holding was taken by his over Lord. There was restrictions on the freedom of movement also 58. So the position of serf did not make considerable progress as the capitalists retained their unrestricted coercive powers over him in their iron hands. Hence the serf was neither an unfree slave nor a free servant.


58 Encyclopaedia Britanica, Vol 20, PP 244 - 245.
EVOLUTION OF MASTER AND SERVANT RELATIONSHIP

With the passage of time the Capital-Labour relationship, came to be looked upon as master and servant relationship which was based on the theory of Freedom of Contract. According to this theory, labourer was free to acquire rights from the capital and impose duties upon by voluntary mutual contract. But in reality, the master being in dominating position used to dictate the terms and conditions of service and the wages. Though appreciable change occurred when the serf came to be looked upon as a servant having independent existence and rights including the right to contract was more illusory than real freedom of contract 59.

THE FREE CRAFTSMAN OR ARTISAN

It is a system of which we find examples in nearly all ages, alike in classical times, in the towns of the late middle ages and at the present day.

Prior to industrialisation the artisans were self-employed and independent with his own tools in his own workshop and marketing his own products or in the agriculture, the independent peasant farmer working with his own holding by the labour of himself and his family 60. But all this was rudely disturbed by the industrial revolution. A new class of factory workers enjoyed in the eighteenth and nineteenth century resulted in the mass scale of production with the


help of machines in the industries were cheaper than the goods produced by handicraft method. So most of the artisans have migrated for better living in search of employment in factories.

3.3 GROWTH OF INDUSTRIALISATIONS

In primitive societies, the usual system of exchanging goods was barter system. The economic factors such as wages, investment, interest and profits were practically unknown. People accumulated goods to gain prestige but not for making profit during the days of scarcity. Later money involved as an incentive medium of exchange to the development of trade and commerce.

FACTORY SYSTEM AND MECHANISED PRODUCTION

The advent of industrial revolution in the world gave rise to invention of many number of machines and chemical discoveries in the industrial field, which gave a spurt to the production capacity in the latter half of eighteenth century and first quarter of 19th century. Larger-scale of production and division of labour became the order of the day in Britain and other countries in which big industry came to be machanised. Production of goods was shifted from small workshop and cottage to large factories located in big towns and cities.

3.4 GROWTH OF CAPITALISM

Modern capitalism, which originated in the eighteenth century, is the child of the Industrial revolution which began in England. Therefore, England may be re-

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garded as the original home of modern industrial capitalism. As the industrial revolution spread to other countries of Europe and to the United States of America, capitalism arose with it. There was remarkable growth in Trade and Commerce because industrial capitalists accelerated method of production and flooded the world markets with cheap goods.

The doctrine of Adam Smith, J.S. Mill and Spencer contended that government should remove all legal restriction on trade, production, the exchange of wealth and the accumulation of property. They also preached that if individual pursue their own interest, unhampered by restriction, they will achieve the greatest happiness of the greatest number.

These doctrines were those referring to the principles such as the Doctrine of Self Interest, Laissez-Faire policy, the theory of competition, Profit motive. This has resulted not only tremendous concentration of wealth in few hands but also exercise of much political power by the capitalists as they were free to do as they pleased.

3.5 INDUSTRIAL WORKERS AND THEIR PROBLEMS

The worker became an "exchangist" whose labour was treated as the prime cost of production in such the same manner as new materials were and are treated.

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SHORTAGE OF ACCOMMODATION

Whenever there is industry, workers in more numbers migrate from villages to cities for jobs as they find difficulty for adequate livelihood in their native place. The process of industrialisation has led to over crowding with problems relating to safety, hygiene and health.

UNEMPLOYMENT

Industrialisation has created both employment and unemployment. Though it has created employment opportunity for workers, on the other hand workers are thrown out of jobs due to installation of new sophisticated machine which also gave rise to economic disparities.

INDUSTRIAL ACCIDENTS AND PROBLEM OF HEALTH

Industrial capitalism converted the machines as an engine of dehumanisation and brought both unhealthy working and living conditions. These conditions have become the nurseries of accidents and sickness.

ACCORDING TO BOWERS:

“The very nature of modern production demands the sacrifice of hands, legs, eyes, arms and even lives of workers. There are punch presses which smash fingers; metal shears which cut off hands; calendering machines which tear off arms; giant rolls which smash bodies; falls which break legs; cave-ins which wrench backs; flying dust which blinds eyes. These are the concomitants of production.”

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Exposure to serious accidents due to unprotective methods of handling machines and sickness due to unhealthy living and working conditions either made the workers entirely incapable of work or considerably reduced their earning capacity. There was no protective system either in the form of compensation or in the form of medical care and treatment due to the prevalent economic and political thought which did not admit of any interference by the governments. The law then prevailed were only in conformity of the Laissez-Faire ideal by favouring the position of the entrepreneurs at the expense of working class. So the workers had to spend their major portion of earnings for medical treatment and care. So it involved double income loss i.e., interruption of wage-earnings and expenditure on the cure of disease. This ultimately had resulted in economic insecurity

PROBLEM OF WAGES

The capitalists wanted more production but for less wages. As a result of this, the freedom of contract theory was fully exploited. They fixed wages according to their will and pleasure. It was a clear case of “take this or go out”\(^{65}\). The living standard of workers become low and the efficiency of workers dropped. They found to be difficult to cope up with the cost of living in urban life. The traditional protection systems were came to be out of date and inadequate for the modern industrial worker. It was felt necessary that at least minimum protection should be provided to the industrial worker against the employment injury risk. A sense of union conscience became wide spread in the western countries which was followed by

other parts of the world. Inspite of repressive measures, workmen combined on many occasions for increasing wages and reducing hours of work so as to improve their conditions. The employers resisted not only by physical force but also penalise them by applying the Combinations Acts of 1799, 1800 and 1813.

The courts created a pattern of industrial law for the first time in the first half of 19th century, which inevitably reflected the postulates of contemporary Benthamite individualism. Its basis was optimistic belief that a free interplay of economic forces would ensure for the welfare of society, for the sake of which it was prepared to ignore both the inequality in bargaining position between the management and the employee and the measure of economic compulsion which left the latter no real choice between acceptance of conditions of work offered to him and starvation or equally hazardous employment elsewhere, with a view encouraging and subsidising burgeoning capitalist enterprise, the standard of protection conceded to the employees was the minimum which employers were regarded as capable of affording in the light of unexacting standards of the time. By means of reading fictitious implied terms into the contract of employment, the courts denied redress of injury from inherent danger of work, besides excusing the master from vicarious liability for the negligence of the fellow servants - the Doctrine Of Common Employment. The employee was regarded as voluntarily assuming these risks incident to the free bargaining position which was

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66 These Acts forbade any combinations of workers for any purposes which included obtaining higher wages, lessening hours of work, preventing or hindering any person from carrying on any manufacture, trade or business.
imputed to him and to his employer alike. In consequence the vast bulk of industrial accidents remained uncompensated 67.

3.6 COMMON LAW SYSTEM AND EMPLOYER’S LIABILITY

It was the first protection system to pay damages to his employees for employment injuries which evolved as late as 1837. Under the common law an injured workman or his dependents in case of death could sue the employer in a civil court and claim damages 68. But such liability was based on the personal fault of the employer, inbreach of legal duty to take care 69.

The growth of common law defences viz. contributory negligence, assumption of risk and fellow servant rule reached a stage of complete stagnation without any hope for the workers to secure damages.

The common law failed to meet modern needs so far as the relations of employer and worker are concerned 70. Although legislature made an attempt to remove the common law defences through Fatal Accidents Act, 1846 and Employer’s Liability Act 1880, these measures could not succeed because of their limited


69 Wilson and clyde coal co. v English (1937) AllER 628, per Lord wright at 640: “The obligation is 3 fold, the provision of competent staff of men, adequate material and a proper system and effective supervision.

70 LQR, “Industrial Law”, Vol 51 at P-196 (1935)
purpose and narrow range. The maximum they ever accomplished was restoration of
the employee to a position no worse than that of a stranger injured by the negligence
of the employer of his servants 71.

As the Employer’s Liability Act proved to be inadequate, the new
innovation came in the form of Workmens Compensation Scheme. This was based on
new principles creating compensation liability based not on fault or negligence of the
employer but on employer-employee relationship. But with the passage of time, the
compensation scheme also became stale, inefficient and stultified due to numerous
institutional deficiencies and functional tardiness 72.

3.7 BETWEEN TWO WORLD WARS

The first world war deteriorated both economic and social conditions of the
working class. It had provided greater opportunities to manufacturers to produce
more goods. This increased their profits but the working class reaped very low
wages, poverty, malnutrition and miserable working and living
conditions as the fruit of war. The workers could not depend themselves through their
personal effort due to the impact of the war. So they raised their voice against injustice,
suppression and exploitation. The industrial unrest engulfed the
industrial sector throughout the world. As trade unions were legalised in some coun-
tries, they started functioning as welfare bodies in addition to
protest organisation.

71 Quoted in Dr. singh, Veer, “Loc. cit.,” P-16.

72 The scheme of workmen’s compensation could not completely shed away
the rules of the common law.
In 1919 the term “Social Security” was unknown to the world. Germany and Great Britain, the two important industrial countries had protected the workers against sickness, invalidity and old age. There was no comprehensive system of social insurance if it existed in any country that covered only one risk or one section of the wage earners.

3.7.1 ESTABLISHMENT OF I.L.O. : 1919 - AN EVENT OF CONSIDERABLE SIGNIFICANCE TO LABOUR IN ALL LANDS.

It was Robert Owen, the well known labour leader of Great Britain and other philanthropic employers pleaded the necessity of international regulation to improve the conditions of labour.

In 1889, a few resolutions were passed in Berlin Labour Conference which laid the foundation of International Association for Labour Legislation in Paris in 1900. During 1905-1906 this association drew up the first International Labour Convention prohibiting the night work of women and the use of phosphorus in the manufacture of matches. But this provisions of the convention could not be implemented on an international level due to the out break of the first world war. There was a mounting pressure from the trade union movements of U.S, Great Britain, France and other countries for comprehensive labour legislation. There was increasing participation of trade union movement to create a better world which should include systematic effort to improve labour conditions.

Accordingly the Versailles Peace Treaty 1919 appointed a commission on labour legislation to inquire into the conditions of employment from the international aspects. The commission recommended the creation of permanent agency for the purpose of regulating the conditions of employment from the
international aspects. The peace conference adopted the Report of the Commission and it was incorporated in part XIII of the peace treaty, 1919 which led to the creation of I.L.O. The aim and objects of I.L.O. can be understood from the text of the peace treaty, 1919. It provides that I.L.O. is being constituted for the well being physical and intellectual of industrial wage earners 73.

This gave a morale boost to the workers to have organised movement for redressing their grievances which had resulted in steady growth and development of trade unions throughout the world.

3.7.2 SECOND WORLD WAR AND ITS IMPACT

In early 1930s the world again experienced the economic depression 74 due to second world war. Frequent wars left many disabled. Industrial injuries, due to long hours of work and bad working conditions, was increased all over the world. So the working class raised their voices against the wage loses arising from unemployment, sickness, accident, old age or death of the bread winner. To protect the workers and their families a liberal and complete programme of social insurance was very much needed.

The illconsequences of the industrial revolution in the western world compelled the government to bring about the introduction of a spate of welfare

73 Article 427, peace treaty 1919.

74 The 1930s opened with the greatest economic blizzard in the history of capitalism known as the great depression bringing economic activities to a stand-still, with falling prices, wage cuts, mass unemployment and starvation on a large scale.
measures since 19th century. Separate programmes on fragmented basis were assembled and emerged in industrialised countries. Various contingencies which threaten the wages and incomes were covered inorder to maintain the quality and standard of living of working people. Thus the new term “Social Security” was found to explain this new state of affairs.

Many social welfare legislations began to emerge out in England and U.S.A. Since the late 19th century which gave birth and recognition of industrial jurisprudence with social justice. So the state was no longer content to play the part of a passive on-looker and the Doctrine of Laissez-Faire Principle yielded place to new principles of social welfare and common good through the instrumentality of social justice. So we can say in the words of Grigson and Gibbs Smith: Laissez-Faire - the doctrine that the state should not interfere with the natural workings of a nation's economy, that economic forces alone working through private individuals should shape economic welfare, died at the end of 19th century and was burried in the 20th century. Though the first broad system of social insurance was created by the Government. of Germany, the term social security was first officially recognized and authoritatively used in U.S.A. in 1935 which was the hey day of working class.

3.7.3 PHILADELPHIA DECLARATION - 1944.

In 1944, the I.L.O. hold a special session of International Labour Conference at Philadelphia and redefined it aims and purposes in the form of

declaration which became part of I.L.O. constitution. This declaration reaffirmed in particular that 'Labour is not a commodity', that freedom of expression and of associations are essential to have a collective attempt at improving socio-economic conditions, that poverty anywhere constitutes a danger to prosperity anywhere and that the war against want requires to be carried on with unrelenting vigour within each nation and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to promotion of the common welfare. Philadelphia Declaration emphasised I.L.O. to promote the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care. In pursuance of this declaration, ILO has adopted down International Standards for workmen's compensation, sickness benefits, unemployment benefits, old age benefits and maternity benefits.

Thus I.L.O. has transisted the ancient slaves into modern 'industrial worker' by ensuring certain basic and fundamental rights in the matter of formation of trade unions, collective bargaining, right to strike and security of service with an ideal of living wage. Its ultimate aim is to establish new status to worker as employee by throwing old idea of master and servant with a view to achieve harmonious and peaceful environment in industrial society.

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76 Article 1, Philadelphia Declaration, 1944.
According to Sir Henry Maine, the human society has moved from status to contract but unlike the human society the industrial society has been travelling from contract to status and this status is a political-socio-economic juristic "status.

3.8 SOCIAL SECURITY IN SELECTED NATIONAL SYSTEMS

The concept of social security has developed in the course of a historical process. A sense of insecurity is inherent in human condition as man is exposed to various kinds of risks and dangers. Due to the progress of civilisation further social ills and economic dangers began to pose greater threat to human life. So social security gave birth to protect them against such risk as it is one of the primary concerns of all human organisations all the world over. In this chapter an attempt has been made to discuss the global perspectives of social security system.

3.8.1 GERMANY-ORIGINATOR OF SOCIAL SECURITY

The first broad system of social insurance was created by the Government. Of Germany under Chancellor Bismarck between 1883 and 1889 78. In 1883, Compulsory Sickness Insurance Act was passed as an initial governmental programme administered by existing mutual aid funds. Employment injury insurance operated by employer’s trade associations came 1884. By following this, the another Social Insurance Act was passed in 1889. All these emerged on the


principles of compulsory social insurance for all the wage earners whether they are skilled or unskilled, young or elderly, male or female irrespective of their state of health in order to support their colleagues and work mates in the time of their need. So this principle of solidarity is a fundamental idea underlying German Social Security. Then Employment Exchanges \(^7^9\) and Unemployment Assurance Act as late as in 1927 was passed to cover nearly the entire industrial working population of Germany.

After second world war, German Economic Reconstruction started under the leadership of Chancellor Adenaur. After a long debate, the entire social security system was restructured in confirmity with the Bonn Constitution, 1949 \(^8^0\) and socio-economic goals of Adenaur.

In the area of industrial accident injuries the Government succeeded in 1963 in enacting legislation which adopts the principle of dynamic pension for industrial accidents \(^8^1\). In 1974 the Rehabilitation Benefits Alignment Act was enacted and it com-

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\(^7^9\) Labour exchange is available to anyone who is able to be employed under normal conditions of the general labour market and is prepared to accept any employment that can be expected of him.

\(^8^0\) The Bonn constitution 1949 states that “Federal Republic of Germany is democratic and social federal state” (Article 20) and that individual member states “must confirm to the principles of republican, democratic and social government based on the rule of law” (Article 28) and that “every one has the right to free development of his personality” (Article 2)

pleted the task of a comprehensive coverage of employment accident
disabilities which includes both medical and vocational benefits. Under this Act, the
worker is entitled to the following benefits:

i) Medical benefit - Medical care to avert the danger of handicap.

ii) Rehabilitation benefit - for maintaining, improving and restoring
disabled worker’s earning capacity.

iii) Vocational benefit - Assistance is available regarding retaining and
obtaining a job, Vocational adjustment etc. In addition to these benefits,
cash benefits are also available.

STATUTORY ACCIDENT INSURANCE SYSTEM:
The purpose of statutory Accident Insurance System is:

i) Prevention of work accidents

ii) Compensation to injured worker, his dependents and survivors:
   a) restoring the working capacity of disabled worker through
      employment promotion and
   b) by giving cash benefits

PROTECTION OF WOMEN:

In general, there is a restriction on the employment of women in mines,
saltworks, coke works and steel works on over ground and under ground workings and on
amelioration work. Additional bans or restrictions, which can be supplemented by special
regulations for the prevention of accidents.

82 ibid.

83 Dr. Zollner (Detlev), "Labour and Social Security", (Bonn : Press and
information office of the Government Of Federal Republic of Germany),
MATERNSITY BENEFIT:

Under the Mother’s Act, expectant mothers are given special protection. They may not perform any physical work of heavy kind or be exposed to materials endangering health. An employer may not require overtime, night work or sunday work of expectant or nursing mothers. In the last six weeks before confinement, further employment is permissible only if the woman has already expressed her willingness, likewise there is exemption from work for a period of 8 weeks after confinement.

In this period, women are entitled to maternity benefit amounting to their previous net earnings ⁴⁴. Under German scheme, National Employment institute is responsible for: ⁴⁵.

i) Occupational placement

ii) Vocational Counselling

iii) Vocational training

iv) Promotion of occupational entry

v) Vocational Rehabilitation

vi) Maintenance and creation of jobs

vii) Unemployment benefit

viii) Compensation incase of closure of undertaking.

⁴⁴ ibid.

Thus Germany has been a pioneer nation in providing comprehensive and well coordinated social security system.

3.8.2 SOCIAL SECURITY SYSTEM IN U.K.

In early days of U.K., there was a traditional assumption that poverty resulted from moral failings. Poverty occurred due to hazards of illness, old age, unemployment and death causing income loss, were considered as misfortunes. It was also considered that poverty constituted not only a deviation from normal discipline but also a threat to civil order. If he failed to get relief from relatives, then the poor law system provided assistance. The relief of the poor was very harsh, inhuman and punitive in nature which involved loss of civil rights also.

THE GOVERNMENT OF ELIZABETH I

It was in Queen Elizabeth’s reign that some progress was made for providing relief to the poor. It put the responsibility of controlling paupers on overseers of the poor in each parish. They were to buy raw material to get the idle to work and could levy a compulsory rate on all occupiers of property to pay the costs. They could also relieve old, blind and sick people and put pauper children to all apprenticeship. This was Poor Relief Act of 1601.

In 1834, an important Act was passed in which the administration of the poor

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law was placed under the direction of a Central Board Of Poor Law Commissioners. It established the principle that a man must earn his livelihood by his labour, but it didn’t make any provision for the unemployed.

During the age of Laissez-Faire and Liberalism, sharp intellectual attacks were made on poor. But it was criticised that poor relief undermined the individual spirit of independence and destroyed his industriousness to freedom and independence. However, even the new poor law of 1834 had a remarkable staying power and long after their underlying Principles were rejected in the new social Security legislation.

COMPENSATION OF EMPLOYMENT INJURY

Compensation on employment injury is the widely recognised means of Social Security and it is now well established with Statutory Sanction. Prior to it, for employer’s liability to his injured employee, the Common Law Practically up to Seventeenth Century didn’t Provide any safety remedy. According to Atiyah, the position under Common Law was that:

“The tort systems rarely provided any compensation to the victim of an industrial accident at that time because of the three doctrinal defences which the courts had evolved for the protection of the employers - namely the Doctrine Of Common Employment, denying liability where the workman was partly responsible for this injuries and the doctrine of volenti non fit injuria which denied li-

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ability for injuries occurring from and known and obvious risk". Later in the last quarter of nineteenth century, the defences available in the Common Law was abolished through judicial activism and legislative measures. However, inspite of these judicial innovations and legislative measures under the Common Law, the legal theory as well as its administration was decided against the victim of an industrial accident as the injured worker was required to prove that employer was directly responsible for his injury.

THE WORKMEN’S COMPENSATION SYSTEM

The select committee which led to the passing of the Employer’s Liability Act, 1880, that utterly inadequate measure held the field until 1897, when the first Workmen’s Compensation Act was passed through the efforts of Mr. Joseph Chamberlain.

The principle Act was passed in 1906, which provided that employers should pay compensation to their work people without distinction of age or sex, who, as a result of accident or specified industrial diseases, arising out of and in the course of their employment were prevented from earning their ordinary wages. The Act was amended in 1923. This has raised the amounts of compensation which extended its scope and allowed lump-sum settlement.


90 Parliament enacted the Employer’s Liability Act 1880 which denied the defence of common employment to the employer in an action at common law by the employee. The defence of volenti nonfit injuria was curtailed in the famous case of Smith V Baker and Company Ltd, 1891 AC 325.

91 LQR, “Industrial Law”, vol 51 at 197 (1935)
OLD AGE PENSION

In 1908, the first Old Age Pension Act was passed. This was not a measure of social insurance in the strict sense as there was no compulsory contributory systems i.e., under this Act, a small non-contributory pension was payable to people over 70 years of age who satisfied criteria relating to means, nationality and residence 92.

SOCIAL INSURANCE

In 1911, the first measure of social insurance was passed to have the National Insurance Act mainly concerned with health insurance, but it also introduced unemployment insurance in a tentative form to a limited number of specified trades 93. This was the system of social insurance prevailing before the Beveridge plan and the benefits available under those schemes were inadequate to cover large number of needy workers.

BEVERIDGE AND HIS PLAN:

The social security system in its present form is mainly post-war development 94. After the second world war, for the reconstruction of a better Britain, Sir William Beveridge was appointed to prepare unified scheme of social security in 1941. In 1942, the Beveridge Report on social insurance and allied services was published which laid the foundation of social security programme in United Kingdom.

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92 CLJ (2001) vol 60 (1) at (3)
93 LQR,”Industrial Law”, Vol.51 at 206 (1935)
94 Encyclopaedia Britanica Vol 20, P.768-A.
The Beveridge plan was accepted by the government in 1943. It was based upon three assumptions:

i) That poverty due to size of one’s family be avoided, by a system of family allowance,

ii) that mass unemployment, would be avoided if necessary by government action,

iii) that there would be comprehensive health and rehabilitation services available to all members of the community.

His report was a landmark in the development of new social security system. The report is the most comprehensive statement of citizen’s social rights to freedom from want involving state to play a more significant role which is based on six fundamental principles namely:

i) Comprehensiveness

ii) Adequacy of benefit

iii) Organization and unification of administrative responsibilities

iv) Classification

v) Flat rate of subsistence benefits

vi) Flat rate of contributions

So this is a single integrated scheme of social security covering various contingencies. Sir Beveridge also recommended that workers compensation was to be integrated with National Insurance Scheme. The special treatment of industrial injuries was more recommended in Beveridge Report with regard to cases of death or prolonged disability. After the second world war the basic principles of
Beveridge Report were enacted into law. The basic Act was National Insurance Act, 1946. The National Health Insurance Act was also passed in the same year. The important statutes such as National Insurance (Industrial Injuries) Act, 1946, Family Allowance Act, 1945, and National Assistance Act 1948 were passed to have comprehensive social insurance. The National Insurance Act 1946, and the National Insurance (Industrial Injuries) Act 1946 are consolidated in the social security Act 1975. There are numerous schemes and social service schemes under Social Security Act 1975 which provides an enviable arrangement of benefits to the entitled victims of the industrial accidents which includes both cash benefits as well as benefits in kind which involves both rehabilitation service and other social services.

THE SOCIAL INSURANCE SCHEME COVERS THE FOLLOWING TYPES OF BENEFITS:

UNEMPLOYMENT BENEFIT

For seeking unemployment benefit, the claimant must not have become unemployed voluntarily or have lost their job through misconduct. A weekly rate of benefits is paid to the contributors. Additional sums are also available to families provided they should be dependent of the insured persons.

RETIREMENT PENSIONS

A retirement pension is payable, subject to the satisfaction of contribution conditions, to women at the age of 60 and men at the age of 65.

MATERNITY BENEFITS

Pregnant working women are entitled to receive their statutory maternity pay directly from their employer for a maximum of 18 weeks. Women who
are not entitled under statutory maternity pay may qualify for a weekly maternity allowance payable upto 18 weeks.

WIDOW’S BENEFITS AND PENSION

Widow’s under the age of 60 or those over 60 whose husbands were not entitled to a state retirement pension when they died, receive a tax-free single payment of lumpsum amount following the death of their husbands, provided that their husbands had paid a minimum number of National Insurance Contributions. Women whose husbands have died of an industrial injury or prescribed disease may also qualify, regardless of whether their husbands had paid National Insurance contribution. A widowed mother with a young family is also entitled for a widowed mother’s allowance.

INVALIDITY PENSION AND ALLOWANCES

A weekly invalidity pension is payable to the injured and also with certain allowance to the dependents when statutory sickness pay or sickness benefit ends. For the period to count towards receiving invalidity pension, the contribution condition for sickness benefit must be satisfied.

SICKNESS AND DISABLEMENT BENEFIT

Employees who are entitled to statutory sick pay can claim benefit up to a maximum of 28 weeks. Employees who are not entitled to statutory sick pay can claim weekly state sickness benefit paid up to 28 weeks.

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DEATH GRANT:

The grant is lumpsum paid to the person who holds himself liable for the payment of funeral expense.

THE NEW INCAPACITY BENEFIT:

The Social Security (incapacity for work) Act 1994 introduced a new Incapacity Benefit to replace sickness benefit and invalidity benefit.

JOB SEEKERS ALLOWANCE:

The government has announced proposals to introduce a new benefit—Job Seeker’s Allowance in order to replace unemployment benefit and income support for unemployed people.

3.8.3 THE AMERICAN SYSTEMS OF SOCIAL SECURITY

The U.S. in its early years was predominantly an agricultural economy. The threats to economic security was faced by the individual by accumulating sufficient resources through hard work and thrift and by support of their members in the family groups.

Upto 1870, more than half of the nation’s adult workers were farmers. Due to the industrial development there was a shift from predominantly agricultural to a highly mechanised inter-dependent society. It had created new risks to the family’s financial security. So the securities provided by families proved to be inadequate.

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96 ibid., P-342
During colonial days, public welfare was a local programme in which local villages and towns provided aid through a poor relief and alm house system. Gradually state assumed its responsibility towards the workers and adopted state wide measures to provide aid through cash allowances to certain categories of the poor. Mother’s Pension Laws and Programmes of old age assistance and aid to the blind were adopted. Workmen’s compensation was the first social insurance programme to be introduced in the United States. A federal law covering civilian employees of the federal government engaged in hazardous jobs was adopted in 1908, and the Workmen Compensation Law to be held constitutional was enacted in 1911.

Prior to the enactment of Social Security Act 1935, the law gave protection exclusively to workers suffering from industrial accidents or work-connected disease. The dependents of the workers suffered due to lack of protection. All these burdens fall in the first instance upon the family. Then it was supplemented by private charity and public relief. Some companies, trade unions had established plans for pensions, sickness, disability and unemployment benefits. But they never covered as much as one-tenth of the working population.

97 The American Alm house was the basic form of public protection for the poor, disabled, destitute, who had no relatives to support him like poor relief in England, the Alm-house too carried the stigma of disgrace and defeat.

98 Encyclopaedia Britannica, vol 20, P-763.

It was very much felt that the government intervention was necessary in social insurance scheme to compel payment of tax contributions by employers and workers compulsory inorder to assure adequate coverage and to avoid adverse selection of risks.

Social Security measures as conscious and concerted effort came in 1935 through the Social Security Act 1935.

The Act provided for,
i) A federal system of old age, survivors and disability insurance,

ii) A state system of unemployment assistance and

iii) A number of federal grants-in-aid to states for financing the welfare work.

As time passed, the scope and coverage have been widened to cover the vocational rehabilitation programme on a permanent basis.

The following are the programmes has been adopted in a system of social security in this country:

OASDI SYSTEM 100

Under this programme the Non-Farm Self Employed, Employees Of Non-Farm, Private Employers, Employees of Non-Profit Organisaiton, Employees Of State And Local Governments, Employees of Federal Government, Farm Operators are covered.

100 Old age, Survivors, Disability Insurance
OLD AGE RETIREMENT BENEFITS

Under this programme, benefits are payable to retired workers at the age of 65, or reduced rate benefits may be paid as early as the age of 62. Benefits may also be paid to the following dependents; wife or husband at the age of 62 or over, children under 18 or disabled before the age of 18, and a wife of any age earning for child entitled to benefits.

The Employee Retirement Income Security Act of 1974, and the Multi-Employer Pension Plan Amendments Act of 1980 have been adopted to promote and to regulate the fiscal soundness and financial and social integrity of privately funded employee retirement programmes 101.

SURVIVOR’S BENEFIT

Upon the death of an insured worker, monthly benefits are payable to a surviving widow or dependent widowers of the age of 62 or over, children under age of 18 or disabled before 18, a mother who has such a child in her care and dependent parents. A lumpsum death payment is also made. When a fully injured worker dies, parent’s benefits are payable at age 62 to parents who have been dependent upon such individual 102.


DISABILITY BENEFIT

Monthly benefits are payable to workers who are totally and permanently disabled and to the same dependents as for old-age benefits. The disability benefits terminate at the age 65, and the beneficiary then goes on the old-age benefit roll 103.

WORKMEN'S COMPENSATION OR INDUSTRIAL ACCIDENT INSURANCE

Benefits under workmen's compensation programmes are directed at the economic loss the injured workers suffer, the loss of earning power, and the increase in expenses to recover from the injury. This is translated in the laws as two types of benefits - cash benefits and medical service benefits104. Income protection for losses resulting from job-related illness and injuries under the Federal Employee's Compensation Act 105. The law of workmen's compensation varies from state to state, but the basic objective to provide prompt medical care, cash benefit and rehabilitation service remains generally. In 1977 Mines Safety And Health Act provides both a system of federal regulation and inspection of this notoriously hazardous industry and a system for compensating the victims of some of those work hazards 106. In 1970 the Occupational Safety And Health Act was passed which provides a broad preventive programme for combating injury caused by work hazards to health and safety in all types of employment.

103 ibid., P-41.

104 ibid., P-540


106 ibid., P-55.
The important characteristic feature of U.S. Workmen's Compensation Laws are of two types i.e., elective or compulsory. It is neither a pure tort system nor a pure social insurance system. In most of the states the employer is free to insure his compensation liability either through private insurance or through his own qualification as a self insurance.

UNEMPLOYMENT COMPENSATION

Generally, unemployment compensation is provided on a state-by-state basis. Three states, Alabama, Alaska and New Jersey, finance these benefits through taxes imposed on workers as well as on employers. The other states finance the programme solely by a special federal tax upon employer pay rolls\(^\text{107}\).

In order to qualify for unemployment benefits the individual is able to work and is available for work, as evidenced by registration at public employment office. A few states, however, permit beneficiaries to continue to be considered eligible even though they become ill after being unemployed and are not able to work. A minimum period of prior employment usually 14-20 weeks is required by most states. During the strike periods, if the employer has hired others to take the jobs of the strikers, then strikers are allowed to draw unemployment compensation benefits\(^\text{108}\).

MATERNITY PROTECTION

Maternity benefits in the U.S.A. are provided through the voluntary action of employers and unions rather than through legislation. In one state (Rhode

\(^{107}\) ibid., P-56

Islands), however the Temporary Disability Insurance Act provides that employed women are entitled to cash benefits for disabilities due to pregnancy for 6 weeks before and 6 weeks after childbirth 109. Federal legislation also provides maternity benefits to employed expectant mothers in railroad industry and for wives of men in the armed services.

With the Cooperation of federal, state and local governments, maternity care is provided for medically needy pregnant women through a public service. Child and health welfare programmes are also undertaken by states with the help of Federal Governments under the Social Security Act.

There are Federal-State public assistance programmes for needy, aged, blind totally disabled and to dependant children under the Social Security Act of 1935. There are provisions for medical assistance to the older persons are aged 65 and over who are able to meet regular living expenses but who cannot meet the cost of unusual medical services.

The Social Security Act also provides for federal-state cooperation in welfare programme. The programmes are established and administered by state legislations and state executives. To encourage the establishment of such programmes, the Federal Government offers substantial financial assistance, both for substitute payments and for administrative expense. To qualify for receipt of these federal funds, however, the state programmes must conform to specified Federal Standards stated in the Act 110.

3.8.4 SOCIAL SECURITY IN CERTAIN COMMON WEALTH COUNTRIES

Social security system is operating in common wealth countries to a varying degree. In Australia there is no contributory insurance programme, but social security services were provided by the Common Wealth Department of Social Services and the cost of the services is met by the exchequer. There are mean tests of income for confirming certain benefits.

AUSTRALIA

Australia has developed social security system with four dominant features 111.

i) Non-contributory approach: There is no requirement for any welfare claimant to make or have made any financial contribution. Social Security is funded by general taxation revenue.

ii) Flat-rate benefit: Social security payments are paid at a flat rate irrespective of the claimant's former income i.e., they are not earnings related.

iii) Categorical nature: To be eligible for assistance a claimant must come within one of the defined categories of assistance such as unemployment benefit or sickness benefit. It is not sufficient for a claimant just to demonstrate a lack of adequate income. The principle exception to this is special benefit designed as a residual benefit to catch cases of need not easily categorised.

iv) Mainly selective assistance: The majority of social security entitlements are paid selectively to those whose means fall below a set means test level. There was a movement in the early 1970s to increase the range of entitlements paid on a universal or non-selective basis, such as age pensions to those over 70 years and family allowance, but in more recent years there has been trend back to selectivity of entitlements.

THE FOLLOWING BENEFITS ARE PROVIDED UNDER THE SOCIAL SECURITY SYSTEM:

OLD - AGE PENSION:

The first federal social service was the old age pension began to operate in 1909. Pension for men at 65 years of age and for women at 60 years of age are provided under certain means test as to both income and property.

INVALID PENSIONS

Invalid pension system was introduced in 1940. It also provides pension for persons above 16 years, who are permanently incapacitated for work or are permanently blind at the same rate as case of old age pensions.

MATERNITY ALLOWANCE

Maternity allowance began to operate from 1943. It is the payments made by the government to expectant mothers to provide financial assistance towards expenses associated with the birth of children, which are not subject to any means test. A mother is entitled to receive payment in addition to free care, treatment and accommodation in a public hospital. In case of birth of twins or more children, and additional amount is paid in respect of each child in excess of one born at a birth.
CHILD ENDOWMENT

Child endowment was introduced in 1941. Any person who has more than one child, under the age of 16 years, under his care, can claim. Payments are made at four weekly intervals without any means test.

BENEFITS FOR UNEMPLOYMENT, SICKNESS OR ACCIDENT OR TEMPORARY LOSS OF REGULAR EARNINGS:

On 1944, an Employment And Sickness Benefit Act was passed to provide benefits in case of unemployment sickness or accident or temporary loss of regular earnings. But the claim should be qualified under means test as to income but none as to property. These payments are available to all between the ages of 16 and 65 in case of men, and 16 in case of women.

WIDOW’S PENSION

Widow’s pension scheme was introduced in 1942. Widow for the purpose of benefits, includes

i) Woman whose husband is dead but also a deserted wife.

ii) a divorced woman or

iii) a woman whose husband is in the jail or in a hospital.

iv) Certain other dependent females.

Benefits to these widows are paid at different rates.

NEWZEALAND

The Social Security Act of 1938 embodies all social security benefits and provides financing of a unified scheme which can be divided into three groups:
a) Cash benefits

b) Health benefits and

c) Finance

The cash benefits are administrated by the social security department and include

i) Super annuation benefits

ii) Widow benefits

iii) Orphans benefits

iv) Family benefits

v) Invalid’s benefits

vi) Minor benefits

vii) Sickness benefits and

viii) War service - men’s dependents allowance

The health benefits to resident population are administered by the Department Of Health and includes:

(i) Maternity benefits

(ii) Hospital benefits

(iii) Medical benefits

(iv) Pharmaceutical benefits, nursing laboratory and dental services.

Social security scheme are financed from the social security fund

The Workmen’s Compensation Act, 1928 provides for compulsory insurance of employees against injuries received in course of their employment and administered by the State Fatal And Accident Insurance Office.
CANADA

In Canada, unemployment insurance was provided in 1940 for the first time. In 1952 a comprehensive federal scheme was introduced to cover old age, disability and workmen's compensation benefits. In 1966 the Canada Pension Plan extended Social insurance protection to retiring people, widows, orphans and the disabled.\textsuperscript{112}

FRANCE

In France, the social insurance system covers sickness, protracted illness, maternity, invalidity, old age, funeral and death. The employment injury scheme financed entirely by the employer and employees have to pay nothing on this account. An old age pension laws of 1910 amended in 1912 provides for all wage earners, old age pensions in which both employers and workers contribution is involved. There are provisions for unemployment insurance for construction and public workers due to bad weather.

3.8.5 SOCIAL SECURITY MEASURES IN INDIA

SOCIAL SECURITY IN ANCIENT INDIA

Like many developing countries, India has gone through a long process of industrialisation. Today it is tenth industrialised country in the world. Of a population of 1 billion people approximately 3.3 million belong to working class. There are 200,000 registered industrial factories and more than 5000 chemical factories employing half a million workers.\textsuperscript{113}


\textsuperscript{113} Parekh, Ramnik "Occupational Health - Indian Scenario", Industrial safety chronicle, vol no.XXX1, July-Sep 2000, (Published by National Safety Council), P-38.
India was an energetic, alive, influential and dynamic as well as prosperous country from socio-economically view in her ancient period. She has contributed significantly towards the culture and civilization of man kind. In the development of culture, industry had its pride. It is evidenced by the fact that Egyptian Mummies have been found wrapped in exquisite quality of Indian muslins. So they were not merely a pastoral community and our present labour laws has its background in various literature like <i>manu smriti</i> and <i>Arthashastra</i>, and <i>Shukra-niti-sara</i>. All these literature goes to show evidence that great emphasis was laid on the promotion and maintenance of peaceful relations between the employer and workers. These literature also bear testimony to the fact that the concept of “Welfare State” and social security origin were well known to the ancient Indians.


115 Manu framed rules and laws for the ruler as well as for the society. Fragments of the code bearing his name must have been composed long ago, but the time when the fragments were consolidated in a compact form cannot be accurately determined.

116 Arthashastra was composed by Vishnu Gupta popularly known as Kautilya or Chanakya who had all the qualities of an economist. Arthashastra is most remarkable and comprehensive on political economy throughout the Hindu Period. It is for the socio-economic welfare of the man living in this world.

117 Shukra-niti-sara is the work of shukracharya on social security measures.
The study of historical development and conceptual dimensions of social security measures may be conveniently divided with the following periods as:

i) Hindu period

ii) Muslim period

iii) British period

iv) Modern period

3.8.5.1 HINDU PERIOD

The non-formal protection system in ancient India can be divided as follows:

i) State Assistance

ii) Joint Family Systems

iii) Community Assistance

iv) Guild system.

STATE ASSISTANCE

In this period, the king was looked upon as the father of the people and it was his duty to care for the welfare of all the citizens. Kautilya says: The king shall provide the orphans, the aged, the infirm, the affected and helpless with maintenance. It was considered to be the duty of the king to give pensions and maintenance allowances and also to provide the destitute, financial assistance by the state in consideration of compulsory service rendered by them.

JOINT FAMILY SYSTEM:

Under this system, the family is a patriarchal one. The distinctive features such as spirit of discipline, sacrifice, obedience, reverence and unselfishness which pro-
vided an ideal system of social insurance and social security to all the members of the family in the ancient period. Due to the fascinating feature of system nobody felt victim to want, disease or idleness as all members had reciprocal moral and legal obligations to each and every member of the family. The aged, the orphans, the widows and the disabled members were taken care with an assurance of proper living. Thus joint family was the first line of defence against any calamity that threatened a member. An expect of industrializations is the gradual extinction of the joint family systems and its replacement by nuclear family. Now a days, most families consist of husband, wife and their progeny.

COMMUNITY ASSISTANCE

Community life in ancient India before the Mughals and British came, was, organised in democratic fashion at local level. The villagers in ancient India enjoyed a considerable measure of autonomy and so they managed their own affairs through the traditional institutions of panchayat. It was the responsibility of local fiscal, judicial and administrative powers. The people of community considered together to collect voluntary offerings to mitigate the distress of their people by supplying them with money, food and clothing.

GUILD SYSTEMS

The ancient literatures under study reveal that labour was organised in the institution of guilds which has been one of the most effective and important system for the protection of workers and artisans which may be said to constitute the fore runners of trade unions today. These were voluntary unions of the class-wise or profession-wise workers and Artisans in various occupations on the modern principle of mutual insurance. A common fund used to be created by the combinations of all the members for extending help to the worker in need.
Kautilya in his Arthashastra, as an instance, had laid down various rules for the regulation of such guilds. Collective security of life, property and freedom from want and misery etc., were the chief purposes of the guilds. The ultimate cooperation with guilds provided them protection against the common risks.\textsuperscript{118}

LABOUR REGULATIONS

The society in ancient India did not witness the class-struggle as between the employer-employee, exploiter-exploitee and oppressor and oppressed. All the people worked together on the principles of equality, freedom and brotherhood. They supported one another and were not exploiters. Harmonious industrial relations are the basic key of economic success and satisfaction between labour and employer. Adequate wages, good behavior, participation in pleasure and pain of the labourers are considered as the requisite qualities of the employer for maintaining peace and harmony among working class. It is useful to examine the labour policy concerning female labour, child labour, wages, efficiency and labour welfare which were responsible for cordial relationship between employer and employee are discussed as follows:

FEMALE LABOUR:

Female labour in ancient India was recommended in certain occupations. Husking, grinding, winnowing etc. were usually entrusted to women. Kautilya attached a great importance to female labour. Our ancient thinkers were far more advanced than the modern thinkers who accept female labour only with some

hesitation $^{119}$.

WAGES

Wages were bargained between employer and the employee $^{120}$. If wages weren’t so settled from before there were some standard methods of determining wages. Now-a-days one of the biggest reasons of labour unrest is delayed payment of wages which was anticipated in ancient period. So only they had formulated rules regarding work and wages.

Wages could be paid as per agreement at the outset, in the midst of the work or after the completion of the work. Wages could be paid daily, fortnightly, monthly quarterly, half-yearly or on completion of the work $^{121}$. Wages could be fixed according to time and work or according to both so agreed up in which the concept of piece rated and time rated wages had been fully evolved.

Shukracharya placed workmen on three categories namely skilled or specialised, semiskilled and unskilled and said that their wages should differ according to their level of skill and qualifications $^{122}$. According to him wages of workmen should be so fixed as to enable him to meet his necessary expenses.

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$^{120}$ Kautilya Arthashastra, Part III, Ch 13-38, 39, 41

$^{121}$ Shukraniti, ChII – 795 - 96.

LABOUR EFFICIENCY

An efficient labour force is a powerful instrument of economic uplift and which was very well recognised in ancient time as the life-blood of a nation-by laying down rules and regulations in the forms of four ashramas\textsuperscript{123} and varna Vyavastha\textsuperscript{124} which aimed at maintaining the ability to work through a regulated daily life. The regulated life was given with a view to make human life systematic like, as seed is sown, it grows, ripens and is harvested for making the bread which was considered to be as a well planned scheme of life to maintain the efficiency of human beings. Varnavyavastha can be considered as the scientific division of labour i.e., distribution of work according to the ability, aptitude and capacity of each individual.

3.8.5.2 SOCIAL SECURITY SYSTEM IN MUSLIM PERIOD

During Mughal period, due to frequent-warfare there was a rapid decline of Indian industry which had sought chaotic conditions. The consequent decline of Hindu System Of Social Protection including the place of artisans were the results of their

\textsuperscript{123} Four Ashramas - remarkable feature of the Ancient Indian Society. Brahmacharya, Grihastha, Vanaprastha, Sanyas were the 4 divisions of individual in human life according to age groups of 25 years in each, thinking the life to be 100 years. The first Ashrama was for education, the second family responsibilities, the third for forest life and the fourth for a life of renunciation.

\textsuperscript{124} Varnas - Ancient Indian society was divided into 4 categories viz (i) Brahmanas - the teachers ii) Soldiers and warriors - kshatriyas (iii) Traders and manufactures - Vaishyas (iv) Helpers and Labourers - Shudras.
conquest. The Muslim conquerors established some measures of social protection to their own co-religionists which was permitted by their religion. However, some enlightened emperors such as Sultan Firuz started giving financial help (Diwan - I Khairat) to the poor for marriage of their daughters. Actually there was no systematic plan or social security except some occasional charities or gifts.

3.8.5.3 BRITISH PERIOD

Indian industry had declined considerably after the Britishers came as local industry was hardly encouraged. During their period India was treated as a colonial market for the British goods. The British took keen interest in the export of new materials from here to factories in their native places in England with a view to import the materials in the vast Indian Market. So this had discouraged development of industrial countries in India prior to the second half of 19th century.

The movement of the social security measures

i) Pre-Independence Phase

ii) Post-independence Phase

3.8.5.3.1 PRE-INDEPENDENT PHASE

Pre-1919 period: The western countries gradually became more and more civilized and it has very much influenced India by the introduction of factory system. The first cotton textile factory was setup at Bombay as early as 1854.

125 Quoted in Dr. singh, Veer "Loc. Cit.," P-222

In 1854 the foundation of the cotton textile industry and jute industry were laid on sound footings. Along with large scale cotton and jute textile industries, seasonal industries e.g. cotton ginning, cotton and jute pressing and rice milling also cropped up.

Ambitions of artisans had driven them from village life to city inorder to improve their living conditions. Life in their villages was based on mutual cooperation among kin and community members. On the contrary, in cities, relations, are purely business and commercial type. Soon joint family lost its validity to provide security against certain socio-economic contingencies.

As a result of the technological developments and industrialisation the independent producer and self employed worker were disappearing fastly which led to the establishment of two distinct classes in the society that is employers and employees. The society, its culture, customs etc., were affected by the emergence of this new class of society. The need for protecting workman against the hazards of life such as injury, sickness, maternity and old age was very much felt essential after the advent of the industrialisation. Actually there was hardly any law of the land in India governing non-personal matters like penal, commercial and labour matters. The First Law Commission in its Lex Loci Report (1840) recommended that English Law should be declared as Law of Land (Lex Loci) for

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India because “there is probably no country in the world which contains so many people, who, if there is no law of the place, have no law whatever”\(^{128}\).

**INDIAN FATAL ACCIDENT ACT 1855**

One of the significant features of those period was the passing of the Fatal Accidents Act in 1855. It was passed to provide for compensation to families for loss occurred by the death of the bread winner caused by wrongful act, neglect or default of his employer. But the measure was not much avail owing to the ignorance and illiteracy of the workman and a complicated legal procedure involved in establishing claim. Moreover, the provisions of the Act were not adequate to cover certain dependents, brothers and sisters to claim compensation and the quantum of compensation was also not sufficient.

**THE FIRST FACTORIES ACT - 1881**

India had witnessed the development of jute and cotton industries, coal mines and rail road constructions from the period 1860 to 1875. But the conditions of Indian labour was miserable as they were very much exploited by the employees. Their living and working condition day by day became worstened with the growth of modern mechanised industry, mining and transport. This was due to the non-availability of protection through legislations concerning safety, welfare, holidays, leave etc., for workers. Atlast in 1881, the first Factories Act was passed to provide regulation of the labour in factories due to continued protest against low wages and cruel

condition of employment. The Factories Act, later it has been amended on many occasions from time to time.

FIRST WORLD WAR (1914-1918)

Till the beginning of the first world war there was no class-consciousness among the workers inspite of their groaning under the prevailing ills of the factory system. Workers were dissatisfied with the industrial system as whole. The climax of world war-I led to vexatious and tortious process for Indian working class to go through due to the industrial expansion. By the world war I the production began to increase and the prices also went up which had resulted in poverty, malnutrition and hardships of working class. This was due to the wage and the conditions of working class which remain unaltered. The sweated labour class suffered due to starvation wages. For redressing their grievances, they voiced through number of strike committees formed during that period. The awareness of general economic conditions brought awakening among labour class in the formation of labour unions. The sense of solidarity and union consciousness started growing up among working class. In 1918, The Madras Labour Union was formed which had become the forerunner of a modern labour movement in India and within a period of 3 years it spread rapidly to other centres and several others industries. But prior to 1919 there was no proper legislation for the protection of workers against social and

economical contingencies. A.N. Agarwal rightly calls this period as, “the period of inactivity” in social insurance movement in India.\textsuperscript{130}

**PERIOD OF DEVELOPMENT (1919-1945)**

The establishment of I.L.O. laid the foundation to social security measures for workers by adopting the principle to secure universal peace based on social justice. The powerful All India Trade Union Congress was established in 1920 to send a trade union representation at I.L.O. The influence of I.L.O. in the post-war period favoured the growth of trade union movement in India, which led to the enactment in the field of social security namely Workmen’s Compensation Act, 1923.

**WORKMEN’S COMPENSATION ACT, 1923**

Upto 1923, when workmen’s Compensation Act was enacted, Indian worker had the common law protection against employment injury which could not prove to be effective, as proof of the employer’s fault remained the basis of liability even though Employers Liability Acts abolished or limited certain defences. Moreover, relative poverty, ignorance of the industrial worker were other contributory factors in its failure. So most of the industrial accidents were not touched and workman could hardly get damages. The necessity of enactment of Workmen’s Compensation Act 1923 was

\textsuperscript{130} Agarwal (A.N.), *The insurance system of India*, (Allahabad : Dikshit Press), 1944 edition, P-182.
i) Compensation to workmen

ii) Promoting safety which are clearly stated in the statement of objects and reasons 131. annexed to then bill.

The workmen's compensation is based on an entirely new philosophy based not on fault or negligence of the employer but on employer and employee relation which constitutes a complete departure from common law liability. But this Act failed to provide security against other contingencies of life, like sickness, old age, maternity etc. Generally, the injured workmen had to make their own arrangements for medical treatment which led to an unsatisfactory state of affair.

Later the then Government was forced to take interest in legislative protection to labour due to the subsequent industrial unrest and the international pressures exerted through I.L.O. As a result of this, Trade Union Act, 1926, was pressed which recognised the legality of unions and conferred immunities from certain civil and criminal liabilities.

ROYAL COMMISSION ON LABOUR - 1929.

On July 1929, a Royal Commission On Labour was appointed with J.H. Whitley as chairman to make a detailed and systematic study of labour

130 Gazette of India 1922, Part V P-313, "The General Principles of Workmen's Compensation concerned almost universal acceptance in India is now nearly alone amongst civilised countries is being without legislation embodying these principles... An addition advantage of legislation of this type was that by increasing the importance for the employer of providing adequate safety devices."
problems. It had submitted its report to the government in 1931 by suggesting various recommendations on the existing conditions of labour in industrial undertakings and plantations in British India. It had recommended the scheme of health insurance of individual workers on a contributory basis financed by the employers and by small deductions from the wages of workers. It also recognised the necessity of making provision for old age. It suggested the development of strong and stable trade unions, appointment of Labour Welfare Officers, formation of Work Committees and appointment of Commission Officers etc., for the improvement of health, safety, efficiency and standard of living of the workers and also for the relationship between the employers and employed. These recommendations laid foundation for the improvements in industrial law.

IMPACT OF WORLD WAR II (1939-1945)

The outbreak of war created an acute shortages of men and material. There was demand for increased production and greater cooperation of labour. Due to the effect of war, there was abnormal rise in the cost of living and the wages remained unaltered and hence cordial relations between the workers and the employers was very rare. Rule 81-A of the defence of India rules was brought into force in January 1942 for compulsory adjudication. It was to prohibit strike or lockouts with a view to keep production at the highest level without interruption. These rules have laid the historical foundation of compulsory adjudication in India.

TRIPARTITE LABOUR CONFERENCE

The first Labour Minister’s Conference was held in New Delhi in 1940. It suggested that the Government of India should determine the views of employers and
workers about the contribution towards health insurance fund. The Second Labour Minister’s Conference was held in 1941. The workers and employers expressed their willingness to pay the contribution. So labour ministers suggested a preliminary survey to find out the working of the scheme in practical to certain large industries. So that a contributory scheme could be evolved. But no effort was taken for availing health insurance scheme for industrial workers.

The Third Labour Minister’s Conference was held in 1942. Based on the earlier discussion, it was agreed at the conference that a draft sickness insurance scheme should be prepared for application in the first instance to workers in cotton, jute and heavy engineering industries and Government should advance loans whenever needed. The conference, however, considered it expedient to entrust the work of chalking out a scheme to an expert.

In the mean time, Beveridge Report had been published in England and Social Security Act, 1935 was enacted in U.S.A. These developments hastened the efforts of Government Of India in this direction which had led to the appointment of professor B.P. Adarkar, an officer on special duty, to prepare a Health Insurance Plan for the industrial workers in India.

ALL OUT ATTEMPTS TO ATTACK SOCIAL SECURITY PROBLEMS

REPORT OF PROF. B.P. ADARKAR

Prof. B.P. Adarkar was appointed in 1943 to formulate a scheme of health insurance of industrial workers. The Adarkar commission submitted its report on 15th August 1944 which has opened the door for a comprehensive contributory scheme of social insurance. The scheme proposed by prof. Adarkar was to cover three major groups of industries viz., the Textile, Engineering and Minerals and Metals.
The scheme contemplated that all perennial factories falling in these categories would be covered except those specially exempted. It was also envisaged that all such factories located in the sparse areas where medical facilities could not be provided would also be exempted. Depending upon the length of service, workers under the scheme were classified into 3 heads namely, "Permanent", "Temporary" and "Casual". The employer was required to pay a uniform contribution in respect of all of them.

The permanent and temporary employees were eligible to get cash and medical benefits. But the casuals were eligible to get medical benefit only. He also referred the provisions of maternity benefit and employment injury. For maternity benefit, he has stressed a uniform scheme of maternity insurance all over India. Regarding employment injury, he suggested that Workmen's Compensation Act should be scrapped and replaced by the scheme of insurance against industrial disability, covering both industrial accidents and diseases. Thus this report presented a unified and integrated system of health, maternity and employment injury insurance. It also emphasised the need for the adoption of other schemes like

a) Unemployment insurance
b) Old age pension
c) Measures like the regulation of wages, rigorous enforcement of factory laws, education in health and improvement in environment hygiene ¹³².

¹³² ESIS Review Committee, Govt. of India, (1966), P-19.
In the mean time, in 1943, the then Government of India appointed a Health Survey And Development Committee under the chairmanship of Sir Joseph Bhore to make, “A broad Survey of the present position in regard to health conditions and health organisation in British India, and to make recommendations for future development 133.

LABOUR INVESTIGATION COMMITTEE

In 1944, the Labour Investigation Committee popularly known as “Rege committee” was appointed to investigate and report on the following matters:

i) The risks which bring about insecurity;

ii) The needs of labour to meet such risk;

iii) The methods most suitable for meeting such risk’ and;

iv) Housing and factory conditions 134;

Thus a multi-directional attack was launched by the Government on the problems social security.

MODIFICATIONS BY ILO EXPERTS

The scheme formulated by prof. Adarkar was examined by the members of I.L.O. experts, M.Stack and R. Rao in 1945 at the invitation of the Government of India. They suggested some modifications in respect of health insurance scheme in the following respects: 135

133 ibid, P-18

134 Report of Labour Investigation Committee, Government Of India, 1946, P-1

i) Separation of administration of medical and cash benefits.

ii) Integration of maternity benefits and workmen's compensation in the health insurance scheme and

iii) Extension of the scheme to all perennial factories covered under the Factories Act and also to cover non-manual workers.

3.8.5.3.2 POST- INDEPENDENT PHASE

Before independence industrial jurisprudence was in undeveloped form. The real sense of industrial legislation took shape only after independence although its birth may be traced back to the industrial revolution.

The progress of a country depends upon the development and growth of industry. So after independence the National Government realised that backbone of the country are workers and so much attention was paid with respect to the improvement of the conditions of labour in industry. Though India became independent on 15th August 1947, the transfer of power took place in 1946 itself. The Interim Government formulated a Five Year Programme for the welfare of the labour class.

The Significant features of the programmes were:

i) Organisation of health insurance scheme applicable to factory workers to start with;

ii) Revision of Workmen's Compensation Act;

iii) A Central Law for Maternity Benefit; and
iv) Extension to other classes of workers of the right, within specific limits, to leave with allowances during periods of sickness.\textsuperscript{136}

A spate of industrial laws to regulate labour management relations, to provide welfare measures, retirement benefits, protection against industrial injuries, social insurance schemes, regulating wages and payments thereof began to emerge out since independence. The planned movement has brought the country to an effective take off stage of industrialisation.\textsuperscript{137}

**PLANNED SOCIAL SECURITY IN THE REPUBLIC OF INDIA,**

India became a Sovereign Democratic Republic on 26th January, 1950 and framed its constitution. The birth of industrial jurisprudence in our country may be ascribed to the Constitution of India which made more articulate and clear the industrial relations philosophy of the Republic of India. This philosophy has afforded the broad and clear guidelines for the development of our industrial jurisprudence and has thus taken India one step forward in her quest for industrial harmony.\textsuperscript{138}

Social justice and social security has to be restored to the labourers for the achievements of socio-economic objectives. Labour legislation is one of the most progressive and dynamic instruments for achieving socio-economic progress which has


been guaranteed by our constitution to the people of India. With reference to social security, our constitution stressed in its part IV about the socio-economic justice and public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

FIVE YEAR PLANS AND SOCIAL SECURITY MEASURES

The Five Year Plans reinforced by the Directive Principles emphasise the need of social security schemes to achieve the desired result.

FIRST FIVE YEAR PLAN (1951-56)

Social Security measures such as assistance in disablement, old age, sickness, and other cases of undeserved wants for the workers has been discussed in this plan. It has made references about legislative measures like Workmen's Compensation Act, Maternity Benefits, Employee's State Insurance Act which provides protection against risks of sickness, maternity and employment injuries.

The aim of the plan is to provide adequate food, clothing, and shelter which are the basic needs of the workers. It has also impressed on their social and economic progress through the provision of social security, better educational opportunities and increased recreational and cultural facilities 139.

SECOND FIVE YEAR PLAN (1956-61)

While lauding the progress made in the implementation of the social security measures, the plan has made a particular mention of the Employee’s State Insurance Act, 1948 and the Employee’s Provident Fund Act 1952 and also a further measure of security in case of loss of employment provided in the shape of the Industrial Disputes (Amendment) Act 1953. The plan has also observed with satisfaction the progressive recognition of better working conditions for labour in industry.\(^{140}\)

THIRD FIVE YEAR PLAN (1961-66)

The Third Five Year Plan stressed the need for more effective implementation of statutory welfare provisions. It suggested that the improvement of the working conditions could result in greater productive efficiency on the part of the workers. The plan has specified that about 30 lakhs of industrial workers have been covered by Employee’s State Insurance scheme and the Employee’s Provident Fund scheme to further industries and establishments.

FOURTH FIVE YEAR PLAN (1969-74)

The Fourth Five Year Plan provides for the expansion of Employee’s State Insurance Schemes so as to provide hospitalisation to the insured workers and their families. It has recommended to cover shops and commercial establishments in selected centres and also non-power factories employing 10 or more persons and to cover all centres having an industrial concentration of 500 or more insurable workers.

\(^{140}\) ibid.
FIFTH FIVE YEAR PLAN (1974-79)

It laid emphasis to increase the activities of the E.S.I. scheme. The plan recommended for the need of systematic programme of re-education of employees at all levels. Greater stress was laid on the creation of industrial democracy in which a worker should realise that he is a part and parcel of the industrial apparatus.

SIXTH FIVE YEAR PLAN (1980-85)

The Sixth Five Year Plan placed the responsibility of safety of industrial workers upon the State Governments i.e., the State Government has to undertake to see that the industrial workers have been provided with adequate measures of safety. The responsibility of safety in mines has been placed upon the Director General of mines safety. The plan recommended that effective measures would be taken to ensure consciousness at all levels regarding precautions at work place. This plan has also recommended that the State Government should undertake the measures to protect the safety and health of workers in the rural sector particularly for those engaged in agriculture, fishing, weaving, leather processing and forestry. The plan has emphatically stressed on the rational obligation and refinement of social security benefits to workers. The plan has further urged upon the Central Government for promoting safety measures in ports and docks and in mines including coal fields.

SEVENTH FIVE YEAR PLAN (1985-90)

The Seventh Five Year Plan refers industrial sickness which creates the problem of rehabilitation of large number of workers in the organised sector.
A sound policy of taking industrial sickness has to be evolved which while protecting the interest of labour would also take into account the fact that government cannot bear a huge burden of losses.

EIGHTH FIVE YEAR PLAN (1992-97)

In the Eighth Five Year Plan, chapter 7 deals with “Labour and Labour Welfare”. As regards objectives and thrusts, the Eighth plan mentions that improvement in the quality of labour, productivity, skills, and working conditions and provision of welfare and social security measures, especially of those working in the unorganised sector are critical elements of the strategy for quantitative and qualitative enhancement of employment opportunities 141.

NINETH FIVE YEAR PLAN (1997-2002)

In Ninth Five Year Plan, priority is given to the agricultural sector with a view to generating adequate productive employment and eradication of poverty. The important objective of this plan is to ensure food and nutritional security of all, particularly, the vulnerable sections of society, and also to provide the basic minimum services of safe drinking water, primary health care facilities and universal primary education. The present social security measures adopted by the Government to provide protection to the industrial workers in contingencies have been given as follows:

WORKMEN'S COMPENSATION ACT 1923.

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents, arising out of and in the course of employment resulting in death or total or partial disablement for a period exceeding 3 days. In cases, where the disablement prolongs for 28 days or more, compensation is payable from the date of disablement. Compensation is also payable for some occupational diseases contracted by workmen during the course of the occupation.

MATERNITY BENEFIT ACT 1961

The object of this Act is to regulate the employment of women in certain establishments for certain period before and after child birth and to provide maternity benefits and other benefits. This Act applies to every establishment being a factory, mine or plantation including any such establishments belonging to government. However, the Act will not be applicable to a factory or establishment covered under Employee's State Insurance Act 1948.

EMPLOYEE'S STATE INSURANCE ACT, 1948

It was enacted to provide the following benefits against various risks and contingencies sustained by workers while serving in a factory or establishment benefits provided under the Act:

i) Sickness benefit

ii) Maternity benefit

iii) Medical benefit

iv) Disablement benefit
v) Dependent’s benefit

vi) Funeral grant

It should, however, be noted that an insured person who is entitled to benefits under the Employee’s State Insurance scheme is not eligible to claim similar benefits under the Workmen’s Compensation Act or the State Acts relating to maternity benefits.

Old age Invalidity and Survivor’s Benefits

i) Employees Provident Fund Act 1952

ii) Coal Mines Provident Fund Scheme, 1948

The various kinds of benefits is provided under the above Acts. Provisions have also been made to safeguard the future of the workers when they become unfit to work or they retire, through the provident fund and pension schemes introduced by the government for safeguarding the interest of the working class against old age, invalidity and death in India.

THE ASSAM TEA PLANTATIONS PROVIDENT FUND SCHEME 1955

This Act makes provisions for the framing of compulsory provident fund scheme for labourers employed in the tea plantation in Assam. It is applicable to all adult persons residing in plantation who are employed in any kind of work, manual, or otherwise and who gets wages directly or indirectly from the employers and which includes artisans but excludes clerical, medical and similar staff.
SEAMEN’S PROVIDENT FUND SCHEME 1966

The problems of seamen working on board of ships for truncated periods are of a special nature and it was considered desirable to enact a separate provident fund legislation for men. Accordingly, the Seamen’s Provident Fund Act was passed in 1966. The Act generally follows the pattern of the Employee’s Provident Funds Act 1952 and applies to every seamen and his employer.

PAYMENT OF GRATUITY ACT 1972

Under this Act, gratuity shall be payable to an employee on the termination of his employment after his five years of continuous service

i) On his super annuation; or

ii) On his retirement or resignation; or

iii) On his death or disablement due to accident or diseases

In case of death or disablement the condition of 5 years service is not necessary.

OTHER MEASURES:

LAY - OFF AND RETRENCHMENT COMPENSATION:

There are payment of compensation to workers in case of involuntary unemployment. For instance, the amendment of the Industrial Disputes Act 1947, in the year of 1953 provided for payment of compensation to workers in the event of layoff or retrenchment.

State Government’s Social Security Schemes or as follows:

i) Social security for destitutes

ii) Unemployment relief schemes
iii) Death - cum - Retirement Benefit Schemes

iv) Group Insurance Schemes.

SOCIAL SECURITY FOR DESTITUTES

Apart from the various social security schemes, most of the State Governments and union territories administrations are having social security schemes for destitutes in the form of pension for old persons, widows, physically handicapped persons, disabled persons, agricultural workers, farmers etc. The amount of pension is very low but still these are helpful to destitute men and women to some extent. These schemes are administered by social welfare departments of these Governments and Union Territory Administrations.

UNEMPLOYMENT RELIEF SCHEMES:

Actually there is no unemployment allowance scheme in India but a few states such as Assam, Bihar, Gujarat, Kerala, Punjab, Tamilnadu, West Bengal etc., have unemployment assistance schemes for educated unemployed whose names are registered in employment exchanges and who do not get their jobs for certain number of years. These schemes are financed and administered by the state government. The benefit is in the form of lumpsum monthly assistance which ceases as soon as the person secures full time employment or at the end of certain number of years.

DEATH CUM RETIREMENT BENEFITS SCHEME

Two states viz., The Kerala (The Kerala Artisans and Skilled Workers Death Cum Retirement) Benefit Scheme 1986, and Tamil Nadu (Insurance cum
Retirement Benefit Special scheme for the workers in the unorganised sector 1985) have introduced death cum retirement benefits schemes for certain categories of artisans and skilled workers. These schemes are mainly financed by the workers but the Governments also make contributions. The benefits are in the nature of lumpsum grants on death or after retirement and are managed by the State Governments.

GROUP INSURANCE SCHEME

Some of the states have introduced group insurance schemes for weaker sections of society eg., agricultural workers, smaller farmers, artisans, low income groups and the poor in case of death and disablement. The schemes are financed by the State Governments without any contributions from the beneficiaries but in some cases the recipients also contribute.\textsuperscript{142}