Chapter 2

SOCIAL SECURITY: ORIGIN AND ITS CONCEPTUAL EVOLUTION

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“History, in illuminating the past, it illuminates the present and in illuminating the present, it illuminates the future”

Benjamin N. Cardozo

This chapter is an attempt to analyse the origin of the term social security, its meaning and conceptual evolution as it would provide a clear insight for evaluating the present system and sound footing for framing future social security measures.

2.1 Social Security: Meaning and Content

Social security is essentially a term of Atlantic origin introduced by Abraham Epstein with a view to differentiating it from economic

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Social Security. It is both a concept and a system. The concept of social security is very old, though the term, the laws and institutions built around it in order to institutionalize the concept may be of recent origin. Social security conveys a meaning that necessitates a security in the society in case of contingencies. But it also extends to security by state in case of contingencies.

The term social security, its meaning, its denotation and connotation are vague. It speaks of a condition of the masses as a symbol of an end greatly desired and has been duly sensed by statesman. It is the principle or practice of public provision for the economic security and social welfare of individual and his family as such, through social assistance or insurance.

2. Mr. Abraham Epstein is the person generally recognized as introducing the word to the world. He was the national leader in the social welfare movement in the first half of this Century in U. S. In U. S. at the beginning of 1930s the term “economic security was used and the Bill introduced in the Congress was Economic Security Bill. Epstein said “I insisted on the term ‘social security’ because by that time I had a clear conception of the differences which lay between the concept of social insurance as worked out by Bismarck in Germany and the conception of social protection as elaborated in England. I definitely did not want social insurance because this would give it the German twist of the actuarial insurance conception terms of compulsory savings which do not justify governmental contributions. I did not want ‘economic security’ because what I hoped for was not only a form of security which would, at the same time, promote the welfare of the society as a whole as I was convinced that no improvement in the conditions of labour can come except as the security of the people as a whole is advanced.” See Notes, “Origin of the Term Social Security”, 55 Soc. Sec. Bull. 63(1992) at p. 64. See also infra n.6 at p. 114
4. Contingencies include the following: (a) unemployment, (b) sickness, (c) maternity, (d) invalidity, (e) old age, (f) death, (g) emergency expenses etc. See Report of National Commission on Labour II, Chapter 8, para 54
5. In most of the studies the term is used in this sense.
7. See Webster’s New International Dictionary
International Labour Organization$^8$ defines social security as “security that society furnishes through appropriate organizations against certain risks to which its members are exposed”$^9$, i.e., the security is furnished by society, to the members of the society$^{10}$. The origin of society itself is an outcome of the fact that man is a social animal and he can survive only in the collective humane circumstances. Being a part of the society he expects help from society when he faces a risk$^{11}$, which is the most common factor in human life. ILO casts a duty on society to furnish that protection to its members when one is exposed to a risk in life$^{12}$. It is social as it represents a culmination of collective effort$^{13}$. This definition envisages existence of appropriate organization

$^8$ The ILO was founded in 1919, in the wake of a destructive war, to pursue a vision based on the premise that universal, lasting peace can be established only if it is based upon decent treatment of working people. The ILO became the first specialized agency of the UN in 1946. http://www.ilo.org/global/About_the_ILO/lang--en/index.htm accessed on 16th March, 2007


$^{10}$ In other words it is freedom of society itself from worry. Maurice Stack has rightly observed: “Society might worry about injustice, ignorance, poverty and disease in its midst, about the less fortunate members. It might do so for two reasons: out of sympathy and idealism and out of fear of the disorder that extensive misery might produce. Our analysis suggests that “social security” means that security from injustice etc., which society provides for its members, with an eye to its own preservation.” See supra, n.6

$^{11}$ World Bank narrates the risks as natural disasters, health, social, gender, economic, political and environmental. See Social Protection Strategy: from Safety Net To Spring Board, World Bank Group, Human Development Network

$^{12}$ The Preamble of The Constitution of the ILO refers to the need and protection of workers against sickness, disease and injury arising out of their employment, pension for old age protection of the interests of workers .this is the first time social security is recognized as a right officially. Subsequently Universal Declaration of Human Rights also recognized right to social security by stating that every member of society has a right to social security. See also supra n. 2.

through which the security is to be furnished. But what are the areas covered by the definition? Whether are they social only? Or political, economic, moral, religious, or natural to which members of society are continuously exposed to? These areas comprise essentially contingencies against which the individual of small means and meager resources cannot be effectively addressed to and the working man will not be in a position to support himself and his dependents in “health and decay”\textsuperscript{14}. Hence the term social security foresees a condition wherein the wage earner is at peril when he is exposed to some risks in life so that he is unable to maintain himself and his dependents. The risk may come as anything—interrupting a disease or as an accident and so on. Such a situation will overturn his and his dependant’s existence miserable. To save him from such a situation a duty is cast on the society to protect him. Hence social security is a protection rendered by society through collective action against social risks causing hardship to individuals whose resources are seldom adequate to meet them. According to this definition the social security is ensured by way of different schemes which provide the citizens with benefits designed to support when unable to earn and to restore him to gainful activity. It is an opportunity to earn one’s living and freedom from fear especially of economic ruin which involves physical or moral ruin\textsuperscript{15}.

\textsuperscript{14} Id at p.80.

\textsuperscript{15} K.D.Srivastava, \textit{Law Relating to Trade Union & Unfair Practices in India}, Eastern Book Co., Lucknow (2002) p.30. The author says: “Security of job and standard of living are at the core of labour demands….t is the urge for security and striving for a minimum and then increased standard of living which impels various activities in labour….social security, an opportunity to earn one’s living and freedom from fear- fear especially from economic ruin which involves physical and moral ruin – is the fundamental needs of the day”.

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Sir Williams Beveridge aptly observed:

“The term social security “is used to denote the security of an income to take the place of earnings, when they are interrupted by unemployment, sickness or accident, or to provide for retirement through age or to provide loss of support by the death of another person, and to meet exceptional expenditure such as those connected with birth, death and marriage”\textsuperscript{16}.

By this definition, social security is the security of an income when the earning is interrupted. The cause of such interruption may be unemployment, sickness, accident, old age, death of earning member or meeting exceptional expenditure (such as birth, death or marriage in the family). This definition reiterates the social nature of an independent human being. When an individual is exposed to such type of interruption of his income, the society has to provide him some assurance or guarantee that the society will take care of him in these situations and the same is called social security. This is a comprehensive definition and it details the areas on which the security can be provided with.

According to National Commission on Labour (I), the concept of social security is based on the ideas of human dignity and social justice.\textsuperscript{17} According to the Commission the underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country’s welfare, should be given protection against certain

\textsuperscript{16} William Beveridge, Social Insurance and Allied Services, Report presented to Parliament in December, 1942 at p.120. See also Julian Fulbrook, Law at Work; Social Security, Sweet and Maxwell, London (1980) at p. 16

\textsuperscript{17} Report of National Commission on Labour, 1968 (India) para.13.1, p.162.
hazards. As a part of society, every individual has some contribution to it. The collective contribution indicates the welfare and progress of the society. When the positive contribution increases, society is said to be a developing society. The development of the society indicates the welfare of the country. National Council on Labour explains that the individuals in the society contribute or likely to contribute are having a right against the society to be protected when he/she is in peril. National Council on Labour explains social security as an incentive for development. This is more or less a right based approach.

According to Beweridge Committee Report this can be provided by social security plan and these plans should contain an adequate level of employment, a comprehensive health service and a scheme of children’s allowances as three fundamentals. According to National Council on Labour also, social security envisages that the members of the community shall be protected by collective action against social risks causing undue hardships and privation to individuals whose private resources can seldom be adequate to meet them. Individuals working in various fields and in different capacities contribute towards the enrichment of society and in turn “deserve to be taken care of, in times, when calamity befalls them.”

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18. Ibid.
19. See supra n.15
20. Almost all other definitions casts a duty on society to provide social security. Without a shift from that duty based approach to a right based approach, social security can not be read as a right of the workers
21. See supra n.16 at p.162.
22. See supra n 15. The author explains that ‘the philosophy of welfare has stolen the philosophy of laissez-faire in the social scene and with social objectives, collective social responsibility looms large’.
Hence social security law involves those legal mechanisms primarily concerned to ensure the provision for their individual of a cash income adequate, when taken along with the benefits in kind provided by other social services to ensure for him a culturally acceptable minimum standard of living where the normal means of doing so fail\(^\text{23}\).

### 2.2 Essential Characteristics

A comprehensive service of social security is designed to compact the five giants in the path of social progress—want, disease, ignorance, squalor and idleness. Thus it is a programme of protection provided by security against those contingencies of modern life, sickness, unemployment, old age, dependency, industrial accidents and invalidity against which the individual cannot be expected to protect himself and his family by his own ability or foresight. According to the overview prepared by Ministry of Labour of India, social security protects not just the workman but his entire family by giving benefit packages in financial security and health care\(^\text{24}\).

As stated earlier, social security is provided through schemes. On the basis of meaning of social security the schemes should contain certain essential characteristics. Generally there are four main requirements. They are

(i) The scheme for social security should guarantee income in case of involuntary loss of all or a large part of income from work;

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(ii) The system must be initiated by legislations so as to define obligations upon public or other organizations to ensure the same;

(iii) The system must be administered by public or private organizations;

(iv) The system must assure that the benefits will be available when required and the protection will be adequate both in quantity and quality.

2.3 Genesis and Factors led to the Development: A Brief History

The quest for social security and freedom from want and distress has been the consistent urge of man throughout the ages. The very basis of social security originates from the concept of poverty. As Victor George has rightly pointed out, the problem of poverty is seen in four different ways:

“Poverty as an ascribed status in the immediate aftermath of the collapse of feudalism, as an individual problem of physical subsistence attributable to the individuals, personal failing from the mid 17th Century to the beginning of the present century and finally as a social problem of physical subsistence and social inequality during this century.”

26. Supra n.16
In all the four ways poverty is a social problem and it involves conflict of economic interest between the various social classes in the society.\(^\text{28}\) But in strict sense, in the rigid feudal society, poverty was considered as a status and the same could not be altered\(^\text{29}\). But the term underwent a drastic change during 1350-1601\(^\text{30}\) which was a transition period. The government considered large number of poor people in the town who were unemployed and in search of relief or alms as a threat to the existing social order. But during this period, government never aimed at to provide them with employment or a means of acquiring income. The legislations of 15\(^\text{th}\) Century\(^\text{31}\) and first half of 16\(^\text{th}\) Century\(^\text{32}\) were designed in such a way as to punish begging. The notion persisted that poverty was consequence of moral fault\(^\text{33}\) and it is equated with laziness and crime. In 16\(^\text{th}\) Century during the period of Henry VIII, the wealthy people of parish were asked to help the poor who lived in the locality. But this was purely voluntary. The various

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30. *Id.* at p.4.

31. The *Vagabonds and Beggars Act*, 1494 provided that: "Vagabonds, idle and suspected persons shall be set in the stocks for three days and three nights and have none other sustenance but bread and water and then shall be put out of Town. Every beggar suitable to work shall resort to the Hundred where he last dwelled, is best known, or was born and there remain upon the pain aforesaid." Ref. http://www.workhouses.org.uk/ accessed on 2nd March, 2009

32. The 1547 *Statute of Legal Settlement* (1 Edw. VI. c.3) enacted that a sturdy beggar could be branded or made a slave for two years (or for life if he absconded). The Act condemned "...foolish pity and mercy" for vagrants. Ref. http://www.workhouses.org.uk/ accessed on 2nd March, 2009

33. *Id.* at p.5.
Acts of last quarter of the 16th Century\textsuperscript{34} were incorporated and enlarged in the Elizabethan Act of 1601\textsuperscript{35} which caused to guide poor relief for over two centuries\textsuperscript{36} i.e., 1600-1834.\textsuperscript{37} The Elizabethan Act required parishes to provide relief to the poor, put off taxes compulsorily levied on their wealthier members. This indicates that some machinery was established to help the poor during that period. A new religious view of nature of work, i.e., to work hard, to lead a good life and to save one’s own money, because it was a part of the Christian way of life according to God’s will. Thus the views of poverty and work meant that the poor were not only idle but sinners as well. Poverty then was not a social problem to the society but a personal problem of the individual concerned. The solution to the problem such as social policies to provide employment opportunities to safeguard wages etc., did not lie in the government, but in the individuals themselves.

\textsuperscript{34} An Act of 1564 aimed to suppress the ‘roaming beggar’ by empowering parish officers to ‘appoint meet and convenient places for the habitations and abidings’ of such classes — one of the first references to what was subsequently to evolve into the workhouse. This was followed in 1576 by an Act For Setting the Poor on Work which provided that stocks of materials such as wool, hemp, and flax should be provided and premises hired in which to employ the able-bodied poor. Ref. http://www.workhouses.org.uk/In 1597, an Act For the Relief of the Poor (39 Eliz. c.3) required every parish to appoint ‘Overseers of the Poor’ whose responsibility it was to find work for the unemployed and to set up parish-houses for those incapable of supporting themselves. Ref. http://www.workhouses.org.uk/ accessed on 2nd March, 2009

\textsuperscript{35} The Act for the Relief of the Poor, 1601. Under the 1601 Act, each parish was obliged to relieve the aged and the helpless, to bring up unprotected children in habits of industry, and to provide work for those capable of it but who were lacking their usual trade. Ref. http://www.workhouses.org.uk/. See also Sidney Webb and Beatrice English Poor Law History, Longmans, Green & Co., London, (1927).

\textsuperscript{36} See supra n. 27 at p.5

\textsuperscript{37} Id. at p.6.
The change in the nature of relationship between government and the citizen emerged after the collapse of feudalism. During feudal period, ruling class themselves formed the government and government was not of people. After the collapse of feudalism, a new relationship between ruling class and working class became a necessity for the economic development of the society. The answer or way out was provided by the British liberalism, \(^{38}\) i.e., the principles of individualism and laissez-faire.\(^{39}\) According to this philosophy, if the people worked long hours in unsuitable conditions—the theoretical independence became utterly meaningless, as it meant to starvation, hardship and exploitation to many of them. But the reports from parishes showed that if the poor were supported well, then their willingness and ability to work would also be increased. Thus the views on poor relief developed well in the 17\textsuperscript{th} and 18\textsuperscript{th} Centuries and passed to 19\textsuperscript{th} Century. The main methods developed to deal with poverty are work house, Roundsman system and Speenhamland system.\(^{40}\) Roundman System is a sort of billeting of the unemployed labour upon the parishioners in rotation, each in turn having to provide maintenance and being free to exact

\(^{38}\) Democratization in Britain, the transition from aristocracy to democracy, took place in the nineteenth and early twentieth centuries. Some people say that democracy in Britain started with the Glorious Revolution in the seventeenth century. However, after the Revolution there still existed deep-rooted discrimination in political rights caused by religious and economic factors. It was in the nineteenth century (in particular from 1830 to 1880) that a series of unprecedented reforms, that is, liberal reforms, were instituted in order to do away with these discriminations

\(^{39}\) Malthuse, Adam Smith and the then economics argued that individuals must be free to pursue his own welfare as we please. Several individual must be master of his own fate, responsible for his action, free to pursue policies that suit to him best. See Steven G. Medena and Wrren J. Samuels (Eds.) \textit{A history of Economic Thought, The LSI Lectures by Lionel Robbins}, Oxford University Press, New Delhi (2004) at p. 149

\(^{40}\) \textit{Supra} n.15 at p.8.
services. In Speenhamland System, labourer’s wages were supplemented out of parish funds up to a certain level depending on the number of children he had to support. Thus a starvation wage was assured by both these systems. But it was given irrespective of the worker’s efforts or trade.

The Act of 1722\(^4\) provided provision for workhouses in Britain, which were concentrated mainly in towns. The Parish overseers were authorized to refuse relief to anyone unless he and his family were willing to enter the work house. Though earlier the life in these was miserable, at the end of 17\(^{th}\) Century, these aimed at to provide employment, to train and to rehabilitate the poor and unemployed.\(^4\)

These systems led to the rise in public expenditure on poor relief. The ruling class rejected the idea of minimum wage, which would result in rise in public expenditure on poor relief and demanded the use of deterrent workhouse on mere systematic lines both in urban and rural areas. The workhouse principle of 1722 was applied with greater uniformity and on a large scale after the Poor Law Act, 1834. The Act introduced no new legal principles.\(^4\) It appointed a board called ‘Poor Law Board’ and its inspectors for the functioning of the Board. The

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41. The Workhouse Test Act, 1722. Otherwise known as Sir Edward Knatchbull's Act of 1722-3 — it was mainly for amending the laws relating to the Settlement, Employment and Relief of the Poor. It enabled workhouses to be set up by parishes either singly, or in combination with neighboring parishes.


major drawback of this system was rightly pointed out by Gilbert in the following words:

“The poor law … treated an applicant for relief as a quasi-criminal and sought to force him by the pressure of humiliation and discipline back into the labour market. So long as the men who made the laws were not elected by the people who were likely to become clients of the poor law, such a system could work” 44.

The formation of labour party at the end of 19th Century and the election of working class candidates as Members of Parliament were a clear warning to the Conservative and Liberal parties to what could happen if the working class acted in solidarity. The spread of socialistic ideas particularly marxism provided the working class with the unifying class-consciousness. By the end of 19th Century, the industrial expansion of the country became increasingly dependant on a labour force that was skilled, efficient and cooperative with management.

A few industrialists came to realize that the payment of a living wage or of adequate poor relief or the provision of education and health services were not a threat but an asset to the economic prosperity of an industry. The development of personnel and welfare departments in industry were the outcome of this realization. Protection of worker from want and worry thus became an economically profit-oriented activity. 45

44. As quoted in supra n. 27 at p. 9
45. Id. at p.15.
Social surveys and its statistical results and the social climate compelled to recognize poverty as a social problem, which had its root in the economic structure of society. It could be solved only through government action. The same caused for a protracted conflict between the working class and the upper classes. In 1905, Royal Commission on the Poor Law was appointed. In their report, there was less emphasis on deterrence through no complete abandonment of the people; there was more emphasis on treatment and help to those in need but always qualified so as not to undermine the virtues of self help and independence, but there was less emphasis on forcing people with the workhouse, though not complete abolition of the workhouses.

The social policy measures introduced before the First World War raised a threat to the economic position of the ruling class. They did not aim at replacing a capitalist system but was concerned with making it more humane and efficient. Old Age Pension Act, 1908 and National Insurance Act, 1911 were passed in England in the field of social security but they represented slightly different philosophies of social policy. The Old Age Pension Act is more socialistic in nature than the National Insurance Act, 1911. The National Insurance Act, 1911 was considered as the most important piece of legislation during this period. It determined the nature of future social security legislation in U.K.

46. Royal Commission on the Poor Laws and Relief of Distress 1905-09 They filed report in 1909. It contained majority and minority views
47. It provided pension of 5 shillings a week to old people who were 70 years old or more and whose income was not more than a stipulated maximum. Those who serve not morally correct were excerpted from recovery the pension.
This Act required people at work\textsuperscript{48} to pay contributions, which entitled them to a benefit when they were out of work because of illness or unemployment. Employers and state contributed to the fund, which financed the benefit. Those who had not paid any contributions or not paid minimum number of contributions were not entitled to any benefits. Health insurance was administered by approved non-profit societies that were part of friendly insurance societies or of commercial insurance companies or of trade unions. The insurance principle had very much in line with middle and upper class values of individualism and self help. It proclaimed that employers and workers were alike in self-dependence and that regardless of class, each man’s success was a proof of himself and a contribution to common wealth. In this way workers were more likely to accept the position of the upper classes as legitimate and to try to simulate them.\textsuperscript{49} This was based on the following principle:

“What is good for the individual is good for society as a whole, for society nothing more than a collectivity of free individuals. The government can best help each individual and society in general by providing an administrative framework that encouraged free competition among individuals, even if the comparison was between unequal persons and groups”.\textsuperscript{50}

\textsuperscript{48} Only employed workers required to contribute to a fund from which the money was distributed to those who were in need.

\textsuperscript{49} Supra n.27 at p.8.

\textsuperscript{50} Ibid.
Self-help was instrumental in the growth of industrialization as well as to the economic interests of the upper classes in another way. It required people to make savings which could be used to expand industries and also prevent a person relying on state for help. The harshness of the poor law forced many workers to take out insurance policies against sickness, unemployment and such other risks with friendly societies or trade unions.\textsuperscript{51} Insurance however came to be seen as respectable, the sensible way to make provision for one’s financial problems. Thus from a middle class practice, based on middle class values, it spread to the stable working class section and the Insurance Act, 1911 extended it into a national practice based on a national social value. Insurance was proclaimed to be in the interest of individual and of the nation as a whole. It was, in a sense, a compromise solution among those who felt that the state should be fully responsible for one’s welfare. Britain was copying Bismarck Germany which was the first European country to introduce insurance schemes ‘out of fear that the prevailing social order might be overthrown by revolutionary agitation of the working class’\textsuperscript{52}.

Social security schemes originated in Germany, in 1881, when Emperor William I urged upon the Rich to adopt social insurance

\textsuperscript{51} These workers were mainly skilled workers with stable jobs and regular wages. The industrialists also came forward and supported skilled and efficient labour force. See \textit{Id.} at p. 15.

\textsuperscript{52} The “friendly Society” or more generally, voluntary mutual aid paved the way for compulsory social insurance. \textit{Supra n.} 5 see also, William Harbutt Dawson, “Social Insurance in Germany, 1883-1911; Its History, Operation, Results: And a Comparison with The National Insurance Act, 1911”.\textit{75 Journal of the Royal Statistical Society,} (1912), pp. 848-850
schemes.\(^5\) Bismarck was also a great supporter of social insurance in Germany. The law providing sickness insurance in Germany was passed in 1883\(^4\), for workmen’s compensation on a compulsory insurance basis in 1884 and for old age and invalidity insurance in 1889.\(^5\) The state intervention in matters of social welfare also greatly increased with the beginning of present century as the evils of laissez-faire policy were realized to a greater extent and as a result, many schemes had been evolved in various countries by the state for providing a minimum standard of well being for the industrial workers who had suffered most at the hands of the capitalists, due to non-intervention of the state for a long time.

Hence, with the development of political consciousness and growth of democratic institutions, people become increasingly conscious of their rights and privileges. There was growing realization that the state was the ultimate moral and economic guardian of the community\(^6\). Its activities for the prevention of exploitation of unorganized labour, stabilization of economic system and protection of helpless, poor and underprivileged persons were no longer regarded as interference but was regarded as its legitimate function. The state is no longer a negative institution with only policy and judicial attributes. It is no longer a mere arbitrator among conflicting private interests in the


\(^4\) In 1883 Germany extended throughout the empire the principle of compulsory insurance which, having its origins in the incidents of mediaeval guild organization, had long been applied. *Ibid.*

\(^5\) Unemployment Insurance came only in 1925.

\(^6\) See, *supra* n.23 at p.335.
community. It is, in every country, it is becoming an active participant in an over widening sector of economics and social life. It is in fact, a creator of enterprises. The creator must not miss out and be partial in affairs of human welfare and national progress. The demand for provision of social security by the state emerges from lack of economic security and stability but it is a primary duty of the state to guarantee a certain amount of social well being and economic security to every individual member in the community. The concept has developed into a new dimension as social services are no longer a humiliating charity but necessary and proper duty of the modern state.  

So far as means of providing social security are concerned there are several alternatives available to state. State can organize it single headed without counting on the sources or co-operation of any party or organization or it can work in conjunction with some private bodies or voluntary organizations for the benefit of employees, which is not associated with the organization either through contributions or by participating in its administration. The state can also enlist the resources and co-operation of the party for whom such schemes are primarily meant along with other parties in organizing social security. Different governments have extensively adopted the first two methods. The last method, i.e., social insurance is comparatively of recent origin. However the present trend shows that the first two methods are being progressively replaced by the third one in organizing

58. Generally called as methods of poor relief and social assistance.
social security in every advanced country of the world. Each country has evolved a scheme suited to its own particular requirement with due regard to world forces.59

2.4 Modern Social Security Schemes

In the development of social insurance, different stages of growth can be traced. At first in pioneering of experimental stage the new idea is applied only to cover a few risks and strictly defused and limited groups of persons in the society. Then gradually social insurance is extended from these selected groups and risks to cover new risks and persons. Outstanding feature of modern social security scheme is the integration of its two important basic elements - social assistance and social insurance - and the unification of all social risks. Universality of coverage and adequacy of protection are two important factors in the way of social security. Before going into its details it is noteworthy to discuss social assistance and social insurance in detail.

(a) Social Assistance

Social assistance is customarily defined as a benefit in cash or in kind financed by the state and usually provided on the basis of a means or income test. Social assistance scheme is a device according to which benefits are given as a legal right to workers fulfilling prescribed conditions, by the state out of its own resources. Such schemes comprises of programmes designed to assist the most vulnerable

59. The Social Insurance Scheme adopted by Denmark, Bulgaria, New Zealand, Austria, France, Greece, Hungary, Japan, Yugoslavia and Lithuania have moved for equal contribution by employers and employees. On these countries states do not contribute. In German and Norwegian scheme, employees contribute larger sum than employers. In USSR the total cost was beard by employers.
individuals to meet their subsistence and for improving living standards. These programmes are aimed to transfer resources to eligible vulnerable and deprived persons. It is given as grants on fulfilling certain prescribed conditions such as means test etc. It provides benefit for persons of small means granted as of right and the amount is sufficient to meet a minimum standard of need and financed from taxation or general revenues. This is a kind of human development through public investment in social services to the poorest and most vulnerable and providing them employment opportunities and encourage self-reliance.

(b) Social Insurance

Social insurance can be defined as a device to provide benefit for persons of small earnings granted as of right in amount, which combine the contributive effort of the insured with subsidies from the employer and the state. Sir Beveridge defines social insurance “as a plan of giving in return for contributions, benefits up on the subsistence level, as of right and without the means test so that individual may build upon it freely.” Hence it is a device to prevent an individual from falling to the depths of poverty and misery and to help him in times of

60. Currently the social assistance is applied rather than traditional passive receipt of transfers. According to Asian Development Bank Report Social Assistance programmes should be designed to provide an expansion of opportunities to enable vulnerable groups to get out of poverty. It is envisioned that Social assistance can promote equity by ensuring access to human development opportunities that skilled and productive work force and contribute to the levels of social cohesion that assist in long term economic development. The labour Market Programmes may offer employment support in the form of public works programmes to the unemployed or poorest families. See www.adb.org/books/social_protection. NREGA Scheme in India is one example

61. Supra n.16
emergencies. Insurance involves the setting apart sums of money in order to provide compensation against loss, resulting from particular emergencies. The elimination of risks of the individual is the basic idea of insurance. It is primarily the effort of social group, in place of individual effort, to lessen the incidence of loss on individual. Thus it is a co-operative device, which aims at granting adequate benefits to the insured on the compulsory basis, in times of unemployment, sickness and other contingencies with a view to ensuring a minimum standard of living, out of fund created on the tripartite contributions of workers, employers and the state, and without any means test and as a matter of right of the insured. As rightly opined by William Beveridge:

“…social insurance implies both that it is compulsory and that men stand together with their fellows”.62

Social Insurance encompass a contributory scheme wherein contributions are paid in to a common fund from which the costs of benefit and administrations are met63.

There is a progressive development towards a “unified scheme of social insurance and social assistance”. According to ILO, a scheme which is unitary, must afford protection against all the ordinary risks of life and the special risks of employment and should bring under its

62. Ibid.
protection all workers by hand who live in society by their earnings, i.e., the entire population of small means and without private incomes.$^{64}$

A social security scheme, therefore, covers both social insurance and social assistance. All the social risks—incapacity for work, inability to find work, need for medical case etc. can be covered either by social insurance or by social assistance or by a combined scheme. For this purpose the benefits can be demarcated as (1) cash benefits and (2) kind benefits. The cash benefits such as wage loss, medical expenses can be covered by social insurance and kind benefits are covered by social assistance. Hence social security system of a country consists of its social insurance and social assistance schemes and in many cases there is a co-ordination between the two and in practice it is difficult to lay down any definite demarcation lines between various forms of social security.

It may also be noted that securities against contingencies may be provided in ways other than by state system. Many trade unions have their own sickness, unemployment and old age schemes in many countries. Large number of firms have established saving funds, sickness benefits and old age pensions for their working people.

Whatever may be the schemes or by whom these are worked out, certain conditions must be looked into. They are:

(i) The schemes should never be allowed to deteriorate into a mere hand out of giving something in return for nothing.

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Social security cannot continue for any length of time if it were to degenerate into as substitute for work and personal earnings.

(ii) Any assistance rendered by society should be dignified and also must be dependable.

(iii) It should be the objective of the scheme completely to weave a mesh of its protection.

(iv) It rests on the national income which should be transferred from the pockets of the rich, the healthy and employed into the hands of poor, the sick, the aged and the unemployed.  

Thus, social security is a result achieved by a comprehensive and successful series of public measures for protecting the public or large sector of it from economic distress that, in the absence of such measures, it would cause stoppage of earnings in sickness, unemployment, invalidity or old age and after death for making available to that same public medical care as needed and for subsidizing families bringing up young children. The important goal of the system should be to ‘ensure that everyone is able to enjoy a standard of living much like that of the rest of the community, and thus is able to feel a sense of participation in and belonging to the society’.  

As far as labour law is concerned, it originated as a part of private law. Philosophy of welfare state has resulted in a host of legislative

65. Supra n.25 at p.333.
schemes designed to channel this economic activity for the collective welfare. Thus the developments in labour law have been largely consumed by public law and form an important part of economic law. In many cases state provide actual service itself. Along with these actual services form the concern of law of public services and the schemes designed to provide the individual and his dependants means. These schemes are concerns of social security law. Hence it can be concluded that all social security measures planned by government should give a confidence in the mind of its subjects that they are protected in the society by the society against the unforeseen risks which may be happened during their life. But then the question arises what exactly is the nature of this right. Is it a part of human rights?

2.5 Emergence of Social Security as a Human Right

Rights is a 20th Century name for what has been traditionally known as natural rights or rights of man. The Declaration of Independence issued by the Thirteen American States in July 1776 stated “that all men are created equal; that they are endowed with certain inalienable rights; and among these are life, liberty and pursuit of happiness.”

The Declaration of Rights of Man and Citizen issued by Constituent Assembly in France asserts that “men are born and remain free and equal in rights.”

68. Supra n.15.
70. Id at p.2
71. Id. at p. 32
The natural rights to life liberty etc., have been understood as categorical rights, i.e., nobody could find any excuse for not respecting those rights. Such political right can be secured by legislation. But social and economic rights can rarely be secured by legislations alone. The rights like right to work, right to social security come under the second category. The first category of rights actually declares that those rights are secured through legislation. But for the second category rights, it depends on many other factors and hence mere declaration will not give meaning to those rights.

For example, a government needs to have wealth to provide social security than will to make laws. Most of the governments in the world today are poor and can not raise money. Though a state has earnest socialist ambitions, it cannot command anything approaching the sources which would be needed to guarantee any one in the state “a standard of living adequate for the health and well being of himself and of his family”72.

When right to life, liberty and pursuit of happiness become inalienable rights, it casts a duty on the state as it acquires the status of human right. Human right requires a conception of what rights one possesses by virtue of being human. By human rights we refer to those elements, which constitute the minimal conditions for human life or essential elements of human rights. Optimum realization of human rights can be achieved through the enactment of protective law and the establishment of mechanism to implement that law.73

72. *Ibid*

India enacted the Protection of Human Rights Act, 1993 which defines human right as the right relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants. International covenants are defined\textsuperscript{74} as International Covenant on Economic, Social and Cultural Rights adopted by General Assembly of UN. An examination of whether social security is a human right or not means an examination whether it is included in any of the basic documents as human right.

International human rights norms provide an excellent opportunity to explore the right of workers to social security, to be included within the spectrum of human rights. The declaration thorough various international organizations, conventions, protocols and such other legal materials substantiate that it is an inseparable social obligation to keep the human dignity of work.

International Labour Organization is one of the 12 specialized agencies of UN. It has the most effective and well-developed mechanisms for human rights protection in the international system. The preamble of ILO states the objective of regulating the hours of work including the establishment of maximum working days and weeks, the regulation of labour supply, the prevention of unemployment, the provision of adequate living wage, the protection of workers against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provisions for old age and injury, recognition of the principle of equal remuneration for work of equal value, recognition of the principle

\textsuperscript{74}. Section 2(d) of Protection of Human Rights Act, 1993.
The declaration of ILO categorically states that ILO frames the international industrial jurisprudence. It envisages measures for entering agreements on basic labour standards and provides guiding principles of policy and administration throughout the world. First World War caused a set back to industries. Failure of some of the nations to adopt human conditions of labour was seen as an obstacle in the way of other nations, which desired to improve the labour security conditions in their own countries. In these circumstances it was realized that permanent world peace could not be achieved by achievement of political and economic justice alone, but that it required securement of social justice also. Workers’ well being, regulation of labour supply, the prevention of unemployment provision for adequate living wage, protection of weaker sections sickness, disease, injury, old age and of young persons and women led to the creation of ILO in 1919 as a part of League of Nations by Part XIII of the Treaty of Versailles. The Treaty is “the first known to history for containing a provision dealing with labour”\textsuperscript{75} and provide for establishing a standard setting mechanism called ILO.

ILO is distinct from other international institutions as its major concern is social justice. The aims and purposes of this institution were reaffirmed in 1944 through Philadelphia Charter.\textsuperscript{76} In 1946, ILO and United Nations made agreement and ILO was recognized as a

\textsuperscript{75} Encyclopedia Britannica, Vol.12, p.517.

\textsuperscript{76} Declaration of Philadelphia.1944
specialized agency of UN. In the era of UN, there was more attainment of social justice as an aim of International co-operation and co-operative actions.

The Philadelphia Charter sets the fundamental principles upon which the ILO is based. They are: (a) Labour is not a commodity; (b) Freedom of expression and the association are essential to sustained progress; (c) Poverty anywhere constitutes a danger to prosperity everywhere; and (d) The war against want requires to be carried on with unrelenting vigor within each nation and by continuous and corrected international effort in which the representatives of workers and employers enjoy equal status with those of government joining in them in free discussion and democratic decision making with a view to the promotion of common welfare.

The Charter affirms that ‘lasting peace can be established only if it is based on social justice’ and the conference affirms that all human beings have right to pursue their material well being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. The conference recognizes the solemn obligation of ILO to further among the nations of the world programmes which will achieve—

(i) a full employment and raising of standard of living;

(ii) the employment of workers in which they can have the satisfaction of giving the fullest measure of their skills and attainments and make their greatest contribution to the common well-being;
(iii) facilities for training and transfer of labour for employment and settlement;

(iv) policies with regard to wages and earning hours and other conditions of work calculated to ensure a just share of the fruits of progress to all and minimum living wage to all employed and all in need of such protection;

(v) official recognition of collective bargaining, co-operation of management and labour;

(vi) provision for child welfare and maternity protection;

(vii) assurance of equality of educational and vocational opportunity;

(viii) provision for adequate nutrition, housing and facilities for recreation and culture;

(ix) adequate protection of life and health of all workers in all occupations; and

(x) extension of social security measures to provide basic income to all in need of such protection and comprehensive medical care.

In this declaration, ILO emphasizes states’ social commitment to the upliftment of working class and affirms the right of workers for decent living. While recognizing these rights, ILO actually assures a living with human dignity which is one of the basic human rights.
Universal Declaration of Human Rights

The preliminary steps towards an elaborate formulation of standards in relation to human rights in instrument which would have undoubted legal force as treaties is Universal Declaration of Human Rights. It contains 30 articles delighting diverse rights from right to life, to the right to work and right to rest and leisure. It has both been construed as law and as a common standard of human rights which everyone, every state, should endeavor to achieve.\(^7^7\) Among the 30 articles all relates to civil, political, economic, social and cultural rights including right to work,\(^7^8\) right to leisure and rest, right to social security, right to just and favorable conditions of work, right to equal pay for equal work, right to fair remuneration, right to form and join trade unions, right to maximum working hours and periodic holidays with pay, right to adequate standard of living, including food, clothing and shelter, right to medical care and education, right to special protection and assistance to motherhood and childhood, right to equal access to all for higher education on the basis of merit, right to participate in the cultural life of the community and right to enjoyment of art and cultural activities and right to share scientific advancement and its benefit.

All the above recognized rights aim at general welfare of a democratic society. Articles 25(1) explicitly deals with right of workers. It reads,


\(^7^8\) Article 6 to 13.
“every one has the right to standard of living adequate for the health of and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, in widowhood, old age or other lack of livelihood in circumstances beyond his control”.

Hence, this Article categorically establishes the security measures which are basic rights not only of the wage earner but also of his family. All the aspects or ingredients of social security are dealt within this Article.

**International Covenant on Economic, Social and Cultural Rights, 1966**

International Covenant on Economic, Social and Cultural Rights is one of the important covenants on Human Rights. The preamble to this covenant recognizes that in accordance with Universal Declaration of Human Rights, the ideal of free human beings, enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his political rights.

The Covenant recognizes the right to work, which includes the right of everyone to the opportunity to make his living by work which he freely chooses, or accepts. The text also recommends the home

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79. Preamble of ICESCR.
80. Article 6(1).
state to take measures for full realisation to achieve steady economic, social and cultural development and full and productive employment.81

Article 7 of the Covenant identifies the right of everyone to the enjoyment of just and favourable conditions of work, which ensures: (1) minimum remuneration; (2) fair wages and equal pay for equal work; (3) a decent living for him and his family; (4) safe and healthy working conditions; (5) equal opportunity for promotion in employment; and (6) rest, leisure and paid holidays with reasonable limitation.

The rights to form and join trade unions and right to strike82 are recognized under Article VIII. Protection and assistance to family, women, children and young person are extended in Article.

Article IX stands important in the present context. It recognizes the right of every one to social security. On analysis it is evident that social security including protection form economic and social exploitation, employment in work harmful to their morals or health or dangerous life and occupational diseases is recognized as a human right under the Covenant. Altogether the Covenant recognizes the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health.

**International Convention on the Elimination of all forms of Racial Discrimination, 1966**

Though this convention specifically aims at some other purpose, it incidentally touches social security also. This convention undertakes

81. Article 6(2).
82. Subjected to limitation in conformity with the laws of particular country.
prohibition and determination of racial discrimination in all forms while cultural rights, the right to public health, medical care, social security and social services particularly against discrimination as to race, colour or national or ethnic origin. 83 Hence while dealing with a particular type of human right, it aptly recognizes the dimension against discrimination in providing social security and allied basic rights.

**Convention Relating to the Status of Refugees, 1951**

This Convention also recognizes right of association, gainful employment of refugees and their social security. 84 The contracting states shall accord the same treatment as is acceded to naturals in respect of such matters which governs by laws or regulations or are subject to control of administrative authorities; remuneration including family allowances (ie., part of remuneration) hours of work, overtime agreements, holiday with pay, restrictions on human work and work of young persons and the enjoyment of benefits of collective bargaining.

According to this convention, social security--legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death unemployment, family responsibilities and any other contingency under laws or regulations in social security schemes—is subject to limitations as these limitations are subject to national laws and regulations. For example, the right to compensation for the death of refugee resulting from employment injury or from occupational disease is subject to the condition that it

83. Article 5 of Conventions on Racial Discrimination.
84. Article 24 Convention relating to Refugees.
shall not be afforded by the state as the residence of the beneficiary is outside the territory of the contracting state.

**Convention Relating to Status of Stateless Persons, 1954**

Another convention similar to the abovesaid convention is Convention Relating to the Status of Stateless Persons, 1954 also recognizing same provisions to stateless persons as of refugees as said above lawful stay in the territory. These two conventions imposes duty on states to make provisions assuring social security and dignity of working class even though they are refugees or stateless persons.

**Convention on the Elimination of All Forms of Discrimination Against Women, 1979**

This convention relates to special category of persons, women. Article 1 of the convention aims at ‘equality of men and women of human rights and fundamental freedoms in the economic, political, social, cultural, civil or any other field’.

With regard to employment, Article 11 of the Convention asks the states to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the abovesaid rights particularly—

(i) right to work as inevitable right of all human beings;

(ii) same employment opportunities;

(iii) free choice of profession and employment, the right to properties, job security and all benefits and conditions of service and the right to receive vocational training;
(iv) equal remuneration including benefits; and

(v) child care facilities and social protection to women during pregnancy in types of work proved to be harmful to them.

Article 11(e) and (f) envisages for total upliftment of women employees as it is their basic human right i.e., right to social security particularly in case of retirement, unemployment, sickness, invalidity and old age and other incapacity to work as well as right to paid leave and right to protection of health and to safety in working conditions.

Special provisions are made for rural women because of their significant role in economic survival of their families. Their right to have access to adequate health care facilities and to benefit directly from social security programmes are given more emphasis.


Equality before law is a well-known principle and every one has an inherent right to be treated equally. Convention concern equal

85. Article 32: Assures right of the child for protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education of health the convention casts a duty on states to make legislation to employment here promises. See also the clarification by the Summit in Economic, Social, Cultural Rights. Magda Spe Veda, The Nature of the Obligation Under the International Covenant on Economic, Social, Cultural Rights, School of Human Right Research (2003) p.37.
87. Convention Concerning Forced or Compulsory Labour, 1930.
88. Convention or Abolition of Forced Labour, 1957.
remuneration, equality in employment opportunity, equality treatment in social security recognize the equality and equal treatment of workers. The Equal Remuneration Convention, 1951 recognizes the right to equal remuneration for men and women workers for work of equal value without any discrimination based on sex, colour, religion, political opinion etc. The policy adopted by the convention is based on the following principles: (1) equality in opportunity and treatment in employment and occupation; (2) equality in access to guidance and placement services; (3) security of tenure of employment; and (4) conditions of work including hours of work, pay, safety, social security measures and welfare measures.

Employment Policy Convention, 1964 is concerned with economic security and right to work which is guaranteed in Article 23 of Universal Declaration of Human Rights. This Convention obligates of ILO to further among nations of the world programmes which will reshape economic and financial policies to achieve economic and financial raising of standard of living in order to ensure the right to pleasure and natural well-being and spiritual development in conditions of freedom and dignity of economic security and equal opportunity.

The main convention relating to social security89 are:

(i) Equality of Treatment (Social Security) Convention 1962: The Convention comprises the main provision of present ILO instruments in the field of social security and establishes minimum standard for the social security; and

89. Dealt in detail in the chapter III, ILO and Social Security.
(ii) Equality of Treatment for Non-nationals in the Matter of Social Security: This convention encompasses about particularly the securities aspect of principles of equality, namely equality of treatment for non-rationales. This convention compels ILO and states to take measures providing economic and social advancement of living of the working class.

All these conventions aim at social advancement as well as economic advancement. Certain conventions, though they are very few stress accelerated growth of economic development than social development. Freedom proclaimed in Preamble of ILO, Universal Declaration of Human Rights and International Covenant of Human Right aims at safeguarding freedom of association, abolition of forced labour, eliminations of discussion in employment, protection of equality of opportunity and right to work, minimum income, social security and adequate condition of work and life.

In a nutshell, in all the above conventions the right of workers especially for right to social security is recognized and treated as one among the indispensable human rights.

2.6 Conclusion

The analysis of development of social security as a term and concept reveals the fact that it is evolved as a protective measure to the poor and the acceptance of poverty as a social problem placed the burden on the government to protect the citizens from the economic distress. Considering the fact that the working class contribute towards the development of society, as the guardian of the community state is
duty bound to protect the workers in disruption of their income arising out of disablement, accident, death or old age. The present system of social security is developed from a series of public measures reshaped from time to time by expanding coverage and risks. In the Indian context, social security should be in essence a measure for ensuring social justice and human dignity as envisaged in the Constitution of India. The international community accepts social security as a human right and I.L.O. has come forward to guide the member states to ensure social security to workers in their countries.

The next chapter is an analysis of I.L.O.’s role in promoting social security in the member countries.