CHAPTER 4

AN ANALYSIS OF SOCIAL SECURITY LAWS IN INDIA
WITH SPECIAL REFERENCE TO THE UNORGANISED
WORKERS’ SOCIAL SECURITY ACT, 2008

Social Security Legislations in India provides security against loss of earning due to certain contingencies such as industrial accident and occupational diseases, sickness, invalidity, maternity, old age and unemployment to which workers or their dependents are exposed. The social security problems of workers in unorganised sector may be divided into two sets of problems. The first one arises out of deficiency or capability deprivation in terms of inadequate employment, low earnings, low health and educational status and so on that are related to the generalised deprivation of poorer sections of the population. The second arises out of adversity in the absence of adequate fall back mechanism that is, safety nets to meet such contingencies such as ill health, accident, death and old age.\(^1\) Hence the object of social security is to promote economic development by increasing production and productivity.

This would be possible when the employer secure the labour proper humane conditions of working and living so as to minimise the hazardous effect on life of the workers. Hence, it is the duty of the employer to provide proper working conditions with a view to improve the efficiency of the labour to benefit both the employer and worker. Adequacy of wages also has an impact on efficiency of the

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worker as it includes provision for balanced diet, housing, education etc.

A well built social security not only guarantees socio-economic justice to the toiling masses, but also maximise productivity by keeping up an efficient and healthy workforce by way of security to guard against various contingencies consequent to working class. A social security system should be backed by adequate provisions for dual purposes i.e., social security measures constitute a goal for a welfare state by improving living and working conditions. Hence, an attempt has been made to discuss not only on the benefits conferred exclusively under social security laws but also a special focus is made on the provisions relating to working conditions, welfare, social security and the schemes applicable to unorganised sector.

Further, a detailed analysis has been made with regard to the effectiveness of labour legislation to provide at least a minimum standard for conditions of work and social security in order to provide upliftment of the unorganised workers relating to their livelihood opportunities in general and women workers in particular. Hence, in this context, the study has been conveniently analysed under the following categories to discuss few important legislations that prevent deprivation and vulnerability to deprivation which is the promotional aspect of social security:

- Laws which provide Social security;

- Protective and regulatory legislations applicable or extendable to the unorganised sector; and

4.1 LAWS WHICH PROVIDE SOCIAL SECURITY

Social security legislations for workers in India consist of the following enactments:

- The Employees’ Compensation Act, 1923
- The Employees’ State Insurance Act, 1948
- The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972

Each legislative enactment provides provisions for social security benefit by covering various risks and contingencies to which a worker is exposed. Hence, an attempt has been made to discuss overall perspectives of social security enactments.

4.1.1 The Employees’ Compensation Act, 1923

Object

The growing complexity of industry in this country with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves renders it advisable that they should be protected as far as possible from the hardship arising from accidents. This is the first enactment in the field of social security making the employer by imposing legal obligation on the employer to pay compensation for injuries or death
sustained by the employee be paid to him or his family members without delay.²

The object of the Act is not only to pay compensation to employee but has an important effect in furthering work on prevention of accidents, in giving them greater freedom from anxiety and in rendering industry more attractive.³

4.1.1.1 Scope and Coverage

The Act extends to both agricultural and non agricultural workers. It applies to railways and other transport establishments factories, establishments engaged in making, altering, repairing, adapting, transport or sale of any article, mines, docks, establishments engaged in constructions, fire brigade, plantations, oil fields and other employments listed in Schedule II of the Act.⁴

The Employees’ Compensation Act, 1923 provides compensation even to casual workers. The Workmen’s Compensation (Amendment) Act, 2000 has brought the employees within its ambit irrespective of their nature of employment whether employed on casual basis or otherwise than for the purpose of the employer’s trade or business subject to the definition of employee.⁵

4.1.1.2 Qualifying Conditions

An employee is entitled for compensation if he fulfils the following conditions:

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² C.S. Azad, University of Agriculture and Technology v. Court of Workmen Compensation Commissioner, 2003 Lab I C 140 Allahabad.
⁴ Section 1 (2) of The Employee’s Compensation Act, 1923.
⁵ Ibid., at Section 2(1)(dd) and Schedule II.
• Personal injury is caused to an employee;

• Such injury is a result of an accident;

• Accident has arisen out of and in the course of employment; and

• The injury has resulted either in the death of the employee or in his total or partial disablement for a period exceeding three days.\(^6\)

An occupational disease contracted by a workman is deemed to be an accident arising out of and in the course of employment.\(^7\)

Occupational diseases have been categorised in Parts A, B and C of Schedule III. The employer is liable to pay compensation:

• When an employee contracts any disease specified in Part A at any time.

• When an employee contracts any disease specified in Part B, while in service for a continuous period of 6 months under one employer. (Period of service under any other employer in the same kind of employment shall not be included).

• When an employee contracts any disease specified in Part C, while he has been in continuous service for a specified period, whether under one or more employers. (Proportionate compensation is payable by all the employers, if the employee had been in service under more than one employer)

\(^{6}\) Ibid., at Section 3 (1).

\(^{7}\) Ibid., at Section 3 (2).
4.1.1.3 Doctrine of Notional Extension

As a rule, the employment of an employee does not commence until he has reached the place of employment and does not continue when he has left the place of employment. However, this is subject to the theory of notional extension of the employer’s premises so as to include an area which the employee passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and an employee may be regarded as in the course of his employment even though he had not reached or had left his employer’s premises.8

4.1.1.4 Conditions of Non-liability

The employer is, however not liable to pay compensation for the injury to an employee under any of the following circumstances:

- When injury does not cause total/partial disablement for more than 3 days;

- When injury, not resulting in death or permanent total disablement is directly attributable to employee’s wilful disobedience of the safety rules, or disregard of the safety devices, or the employee having been under the influence of drink or drugs.

- When the employee has contracted a disease which is not directly attributable to a specific injury caused by the accident or to that occupation;9 or

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9 Supra note 4 at Section 3 (4).
• When the employee has filed a suit for damages against the employer or any other person, in a Civil Court.\textsuperscript{10}

4.1.1.5 \textbf{Benefits}

Cash compensation generally a lump sum in cases of injury caused by accident arising out of and in the course of employment payable by the employer. Compensation is also payable for certain specified occupational diseases.

The amount of compensation payable by the employer shall be calculated as follows:\textsuperscript{11}

• Compensation in the case of death is 50\% of the monthly wages multiplied by the relevant factor or Rs.1,20,000 whichever is more. And not less than Rs.5000 for funeral expenses.

• Compensation in the case of total permanent disablement specified under Schedule I Part I is 60\% of the monthly wages multiplied by relevant factor or Rs.1,40,000 whichever is more.

• Compensation in the case of permanent partial disablement specified under Schedule I Part II is such percentage of the compensation payable in case of permanent total disablement as is the percentage of the loss in earning capacity

• Compensation in the case of permanent partial disablement not specified under Schedule I Part II is

\textsuperscript{10} \textit{Ibid.}, at Section 3 (5).

\textsuperscript{11} \textit{Ibid.}, at Section 4(1).
such percentage of the compensation payable in case of permanent total disablement as is proportionate to the loss of earning capacity as assessed by a qualified medical practitioner.

- Compensation in the case of temporary disablement (whether total or partial) is a half-monthly instalment equal to 25% of the monthly wages, for the period of disablement or 5 years, whichever is shorter.

- Compensation in the case of treatment of injuries caused in the course of employment is actual medical expenditure incurred by him.

### 4.1.1.6 Source of Funds

Since, the basic principle of the Act is that an employee is entitled to compensation for work injuries whenever he suffers a personal injury by an accident arising out of and in the course of employment, it places the cost of the injuries only upon the employer. Like tort but unlike social insurance, its operative mechanism is unilateral employer’s liability with no contribution by the employees or the state. Hence, all compensation under the Act is payable by the employer.

### 4.1.1.7 Administration of Scheme

The Act is administered by State governments by appointing Commissioners. The Commissioner will have the powers of a Civil Court for certain purposes.\(^{12}\) The time limit for disposal of claim is

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\(^{12}\) *Ibid.*, at Section 23.
three months wherein the commissioner shall dispose of the matter relating to compensation.

### 4.1.1.8 The Working of the Act

The Employees’ Compensation Act, 1923 is a mechanism for providing relief to victims of work-connected injuries. But the Act failed to provide the speedy relief to workers in unorganised sector. The workers, who are in the unorganised sector, often find it difficult to prove who is their employer and as a result cases are prolonged and often workers die without receiving any compensation.\(^{13}\)

In an indepth study of women workers employed in brick-kilns industry of Hissar division of the State of Haryana,\(^ {14}\) it has revealed that, if there are injuries on hands and feet in the course of carrying, loading and unloading operations, the employers do not give any compensation to those workers according to the provisions of the Act. Some money though is given to them at times but just as a humanitarian ground or as debt. One of the weak features of the Act is that it places the entire liability for compensation on the employer. There being no obligation on the part of the employer to insure is liability, a small employer in many cases find it difficult to pay compensation in the event of a heavy liability arising out of fatal accidents. Workers in remote areas find it difficult to approach Commissioner because of their location.\(^ {15}\)

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4.1.2 The Employees’ State Insurance Act, 1948

Employees’ State Insurance Act is a pioneering measure in the field of social insurance in the country. Adarkar’s report was considered by the Government of India, in consultation with the state governments other interested concern gave birth to workmen’s State Insurance Bill, 1946. The bill was modified by the select committee making it applicable to all the employees in factories and changed the name of the bill from workmen’s state insurance bill to Employees’ State Insurance bill. Finally the Employees’ State Insurance Act was passed in 1948.\(^\text{16}\)

Objectives

The object of the Act is to provide the insured workers certain benefits in case of sickness, maternity and employment injury and to make provision for certain other incidental matters related to these benefits.

4.1.2.1 Scope and Coverage

The Act applies to all factories including government factories but excluding seasonal factories employing 10 or more persons and carrying on a manufacturing process.\(^\text{17}\) Most of the State Governments have extended the provisions of the Employees’ State Insurance Act, to new classes of establishments such as shops, hotels, restaurants, road transport establishments, cinema including preview theatres, newspaper establishments etc.\(^\text{18}\)


\(^\text{17}\) Section 1 (4) read with Section 2(12) of the ESI Act, 1948 as amended by ESI (Amendment) Act, 2010.

\(^\text{18}\) Section 1(5) of the Employees State Insurance Act, 1948.
Employees of factories and establishments covered under the Act drawing monthly wages upto Rs. 15,000 per month and Rs. 25,000 per month for physically challenged employees w.e.f. 1.4.2008 are covered under the scheme.\(^{19}\)

The Employees’ State Insurance Scheme is now operated in 815 centres situated in 31 States/Union Territories. As on 31.03.2014, 1.95 crore insured persons and about 7.58 crore beneficiaries are covered under the scheme. The number of factories and establishments covered by the end of the year had gone upto about 6.70 lakhs.\(^{20}\)

4.1.2.2 Benefits

Social security schemes should be designed in such a manner to ensure freedom from economic fear. The benefits provided under the Act seek to attack and remove the fear. The benefits provided under the Act are sickness benefit, maternity benefit, disablement benefit, dependents’ benefit, medical benefit and funeral benefit. An insured person who is entitled to benefits under the scheme is not eligible to claim similar benefits under the Employees’ Compensation Act, 1923 and Maternity Benefit Act, 1961.\(^{21}\)

Sickness Benefit

Every insured employee is entitled to the cash benefit for a period of sickness occurring during any benefit period and certified by a duly appointed medical practitioner if the contributions in

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\(^{19}\) Dr. Shashi Bala, *Training Module on Gender and Social Security for Unorganised Sector* (Uttar Pradesh: V.V.Giri National Labour Institute) 2014 Edition p.19.


\(^{21}\) *Supra* note 18 at Sections 53 and 61.
respect of him were payable for not less than 78 days in the corresponding contribution period. The sickness benefit shall be allowed to an employee for any day on which he remains on strike, if:

- He is receiving medical treatment and attendance as an indoor patient in any E.S.I. hospital or a hospital recognised by the E.S.I. Corporation for such treatment, or

- He is entitled to receive extended sickness benefit for any of the diseases for which such benefit is admissible; or

- He is in receipt of sickness benefit immediately preceding the date of commencement of notice of the strike given by the Employees’ Union to the Management of the factory or establishment.\(^{22}\)

No sickness benefit shall be payable for the first two days of sickness following, at an interval of not more than 15 days, after the sickness in respect of which sickness benefits were last paid.

Further no sickness benefit shall be payable to any person for more than 91 days in any two consecutive benefit periods.\(^{23}\)

**Conditions to be Observed**

Any person in receipt of sickness benefit has to observe the following conditions:

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\(^{23}\) Section 63 of ESI Act, 1948 and Rule 55 of E.S.I. (Central) Rules.
• Shall remain under medical treatment at the ESI dispensary or hospital and carry out the instructions of the medical officer;

• Shall not do anything which retards or reduces his chances of recovery;

• Shall not leave the area where medical treatment is provided without medical officer’s permission;

• Shall get himself examined by the medical officer

**Maternity Benefit**

A periodical cash benefit is payable to an insured woman employees in case of confinement, miscarriage, medical termination of pregnancy, premature birth of a child, or sickness arising from pregnancy, etc., occurring or expected to occur in a benefit period, if the contributions, in respect of her were payable for atleast in the immediately preceding two consecutive contribution periods.

The benefit is payable only if the woman employee does not work during the benefit period, and the prescribed medical certificate and other information are furnished.

**Disablement Benefit**

Disablement benefit is payable in the form of cash in instalments to an employee who is injured in the course of his employment and is, permanently or temporarily, disabled, or

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24 Supra note 18 at Section 64.
25 Rule 56 of E.S.I. (Central) Rules, 1960, w.e.f. 1.2.1991.
26 ESI Regulations: 87, 88, 89, 89A, 89B, 90, 91, 92, 93, 94 & 95.
27 Supra note 18 at Sections 51 and 52A.
contracts any occupational disease.\footnote{Specified under Third Schedule to The ESI Act, 1948.} It is sufficient if it is proved that the injury was caused by an accident arising out of, and in the course of employment, no matter when it occurred, and where it occurred. However, the place or time of accident should not be totally unrelated to the employment.\footnote{Regional Director, E.S.I. Corporation v. L.Ranga Rao (1982) 1 LLJ 29 (DB) (Karnataka).} The accident shall be deemed to have arisen out of and in the course of employment unless there is evidence to the contrary;\footnote{Supra note 18 at Section 51A.} and presumptions as to accident arising out of and in the course of employment are as follows:

- Where the employee is at the time of the accident acting for the purpose of, and in connection with, the employer’s trade or business, even if he is acting in contravention of any law or any safety rules/orders/instructions of the employer;\footnote{Ibid., at Section 51B.}

- Where an accident happens while the employee is travelling in employer’s transport, to or from his place of work;\footnote{Ibid., at Section 51C.}

- Where an accident happens in or about any premises at which the employee is employed for the purpose of his employer’s trade or business, while the employee is taking steps, in an emergency, to rescue, secure or protect persons who are injured or imperilled or to avert or minimise serious damage to property;\footnote{Ibid., at Section 51D.}
When the accident occurs to an employee while commuting from his residence to the place of work and vice versa, if nexus between the circumstances, time and place of accident and the employment is established.

**Dependent’s Benefit**

If an employee dies as a result of any injury sustained in the course of his employment or an occupational disease, his dependents shall be entitled to a benefit in the form of pension. The dependent’s benefit is payable at 90% of the standard benefit rate for the corresponding contribution period.

The benefit shall be divisible among the following dependents:

(i) widow, legitimate or adopted son upto 25 years of age, legitimate or adopted unmarried daughter,

(ii) widowed mother,

(iii) son or daughter who attained the age of 25 and infirm and is wholly dependent on the earnings of the deceased employee, in the prescribed percentage, if the deceased does not leave any dependent as aforesaid the benefit can be claimed by his parent other than widowed mother or grand parent or other dependents.

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34 Section 52 of The ESI Act, 1948.
35 Rule 58(2) as amended by ESI Central (Amdt.) Rules, 2011 w.e.f. 1.7.2011.
36 Rule 58(1) of E.S.I. (Central) Rules, 1950, as amended by ESI (Central) (Amdt.) Rules, 2011 w.e.f. 1.4.2011.
Medical Benefit

An insured employee and his family members, who require medical treatment and attendance, is entitled to receive medical benefit in the form of treatment and attendance at an E.S.I. hospital, dispensary or clinic. A person is entitled to medical benefit during any period for which contributions are payable in respect of him, or in which he is qualified to claim sickness benefit or maternity benefit, or he is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations. If in respect of a person contribution ceases to be payable, he may be allowed medical benefit for such period and at such conditions as the regulations may specify.37

Funeral Expenses

If an insured employee dies, the eldest surviving member of the family or the person who incurs the expenditure on funeral of the deceased employee, is entitled to reimbursement of such expenditure subject to a maximum of Rs. 10,000.38 The claim for the payment of funeral expenses should be submitted in form 22 along with prescribed documents within 3 months of the death of the insured employee.39

4.1.2.3 Sources of Funds

The scheme is financed from ESI fund created by the contributions of employers, employees and grants and donations, aid from central and state governments or any individual or body. The

37 Section 56 of The ESI Act, 1948 read with ESI Regulation 95-A.
39 Section 48(1)(f) and Regulation 95-E as amended by ESI (Central) (Amendment) Regulations, 2004, w.e.f. 1.1.2005.
state government is also sharing the costs of the scheme by contributing towards medical treatment which is to be determined by an agreement between corporation and the state government.

4.1.2.4 Administration

The Employees’ State Insurance Scheme is administered by a corporate body called as the Employees State Insurance Corporation which is a multi-partite body consisting of nominees of central and state governments and representatives of employers and employees. There is also representation from medical personnel. The corporation has a three-tier system that includes the head-quarters, regional offices and primary unit local offices. The administration of medical benefit is the responsibility of the respective state governments except in Delhi where it has been taken over by the corporation itself. The Employees’ State Insurance hospitals, dispensaries and panel doctors are under the control of the respective state governments. The Director General, who is the chief executive officer of the corporation, is an ex-officio member of the corporation and of its standing committee.

4.1.2.5 Working of the Scheme

The Act is not applicable to the workers in the unorganised sectors as it has a threshold limit of employment of 10 persons. The National commission for Enterprises in the Unorganised Sector (2007) observed that the benefits of most of the provisions of Employees State Insurance Act did not reach the unorganised sectors as the Act is applicable only to very small segment of work force. This is also evident from the Annual Report of Ministry of Labour and employment. As per survey conducted by NSSO in the year 2009-10, the total employment in both organised and
unorganised in the country was 2.8 crore and 43.7 crore in organised and unorganised sectors respectively. But the coverage under the Employees’ State Insurance Scheme as on 31.03.2014 is 1.95 crore insured persons. It is obvious that Employees’ State Insurance Scheme covers only limited workforce that to in organised sector. Legal barrier prevent ESI Corporation to extend the coverage to informal sector.

The Employees State Insurance Act which provides for health care and cash benefits is applicable to non seasonal factories using power and employing 10 or more persons and non power factory and certain other establishments employing 20 or more persons. Hence, there is a huge gap in coverage of the unorganised sector particularly in agricultural sector because of their seasonal intermittent nature of work, low level irregular patterns of earning and employment, absence of employer-employee relationship and weak administrative structures at the rural areas. Health delivery system is the responsibility of the state by way of ensuring availability of drugs, posting of specialists, medical officers and paramedical staff in the ESI hospitals found to be unsatisfactory.

The Annual Report 2014-15 provides information regarding medical infrastructure that there are 151 ESI hospitals and the beds available in ESI hospitals are 23188 and there are 2879 reserve beds in state government hospitals. The total number of Medical Officers including specialist are 7763. The total number of ESI Dispensaries and ISM units are 1418 and 140 respectively. There are 1017 Panel

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40 Supra note 20, at 65.
41 Supra note 15, at 275.
42 Ibid.
Clinics.\textsuperscript{43} The details provided in the Annual report reveal that ESI medical infrastructure facilities are inadequate.

The ESI scheme is financed mainly by contributions from employer and employees. But a sum of Rs. 1754.14 crore was in arrears as on 31.03.2014 on account of default by the employers of covered factories/ establishments.\textsuperscript{44}

\textbf{4.1.3 The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952}

Provident Fund is a form of retirement benefits but unlike gratuity where the entire financial burden falls on the employer, this is contributory in the sense that besides putting in service, a worker has also to contribute a part of his wages.\textsuperscript{45}

\textbf{Objectives}

The Act is a social security legislation and amount of provident fund is payable in lump sum.\textsuperscript{46} The Act envisages the institution of compulsory contributory provident fund in certain industrial undertaking mentioned in Schedule I of the Act for the future of the employee after his retirement or for his dependents in case of his early death.

\textsuperscript{43} Supra note 20, at 59.
\textsuperscript{44} Ibid., at 54.
\textsuperscript{46} Baldir Kaur \textit{v. Steel Authority of India Ltd.} (2000) 6 SCC 493.
4.1.3.1 Scope and Coverage

The Act is applicable to:

- Every factory engaged in any industry specified in Schedule I in which 20 or more persons are employed;

- Every other establishment employing 20 or more persons or class of such establishments which the Central Govt. may notify;

- Any other establishment so notified by the Central Government even if employing less than 20 persons.

Apart from the provision for compulsory coverage, provision also exists for voluntary coverage with effect from 01.09.2014, an employee, on joining employment in a covered establishment and receiving wages up to Rs. 15,000 is required to become a member of the fund.

4.1.3.2 Benefits

The Central Government has framed 3 Schemes under this Act viz., The Employees’ Provident Fund Scheme, 1952 for establishment of provident funds for the employees, The Employees’ Family Pension Scheme, 1971 for providing family pension and life assurance benefit to the employees which has been emerged into Employees’ Pension Scheme, 1995 and the Employees’ Deposit Linked Insurance Scheme, 1976 for providing life insurance benefits to the employees.

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47 Section 1(3) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
48 Ibid., at Section 1(4).
**Employees’ Provident Fund Scheme**

A member of Employees’ Provident Fund Scheme is entitled to withdraw the amount lying in his account together with interest on qualifying service. The scheme also provides for partial withdrawals from the provident fund account to meet contingencies like illness, invalidation and also to provide financial assistance to discharge their social responsibilities like marriage of self, children or higher education of children and construction of dwelling house.

**Employees’ Deposit-Linked Scheme**

All the employees who are members of Employees’ Provident Fund Scheme are required to be members of this scheme. Employers are required to pay contributions at the rate of 0.5 percent of the aggregate of the basic wages, dearness allowance etc. On the death of a member while in service, an amount equal to the average balance in his Provident Fund account during the preceding 12 months or during the period of his membership, whichever is less, except where the average balance exceeds Rs. 50,000 the amount payable shall be Rs. 50,000 plus 40% of the amount in excess of Rs. 50,000, subject to a maximum of Rs. 1,00,000 is payable to the eligible member of his family.

**Employees’ Pension Scheme**

Members on attaining the age of 58 years and having rendered minimum 10 years contributory service shall qualify for superannuation pension. Those members who served less than 10 years on the date of retirement or superannuation, he shall be

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49 As per Notification No. GSR 523(E), dated 18.6.2010, w.e.f. 18.6.2010.
eligible and entitled to return of contribution at the prescribed rate. The following benefits are provided to memes and their families:

- Monthly member pension;
- Disablement pension;
- Widow or widower pension;
- Children pension;
- Orphan pension;
- Nominee pension;
- Pension to dependent parents.

### 4.1.3.3 Sources of Funds

For financing these schemes the Central Government has established a fund to which both the employer and employees are required to contribute their shares. The employees’ contribution to the Provident Fund shall be equal to the contribution payable by the employer in respect of him i.e., 10 percent and in the case of notified industries 12 per cent of the basic wages, dearness allowance and retaining allowance as the case may be. Employee and employer are not required to contribute to the Employees’ Pension fund. 8.33 Percent of the Employers contribution to the Provident fund shall be diverted to the pension fund. The employee is, however, not required to contribute towards deposit linked insurance fund.

### 4.1.3.4 Administration

The Employees Provident Fund Scheme framed under the Act is administered by central board of trustees, a tripartite body
consisting of representatives of employers and employees and persons nominated by the central and State Governments. The central Provident Fund commissioner is the executive officer of the Employees Provident Fund Organisation and secretary to the central Board of Trustees. Apart from the Central Office, there are Regional offices and Sub-Regional Offices functioning in various states for the implementation of the Act and the schemes there under.

4.1.3.5 Working of the Act

The major social security benefits are provident funds given to employees on superannuation and monthly pension. But it is non-accessible to the workers in unorganised sector because of the comparative high incidents of casual wage labour and the high degree of labour mobility in the state’s economy. Even in National Commission for Enterprises in Unorganised Sector, 2007 it has been observed that provident fund did not reach the unorganised sectors particularly in case of construction workers.

Moreover, in the Employees’ Provident Funds and Miscellaneous Provisions Act, there are constrains like wage ceiling limit, threshold limit of employment, strength of the establishment and schedule of industries restrictions. Hence, the schemes failed to cover the unorganised sector.

4.1.4 The Maternity Benefit Act 1961

The Royal Commission on Labour stressed the need for suitable maternity legislations for women employed permanently in

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50 Supra note 47 at Section 5-A.
52 Supra note 15, at 274.
non seasonal factories with a view to enable working women to discharge family as well as health care during the period of pregnancy and confinement without loss of wages. Besides the passing of state legislations for providing maternity benefits, there are three Central Acts, viz., the Mines Maternity benefit Act, 1941; the Employees State Insurance Act, 1948; the Plantation Labour Act, 1951 which also provide similar benefits. In order to remove the disparities in various Acts the Central Government has passed a new Act called the Maternity benefit act in 1961. The Act has been discussed in detail under Chapter 6.

4.1.5 The Payment of Gratuity Act, 1972

Gratuity is also a kind of retirement benefit just like provident fund or pension. It has been conceded as a provision for old age and reward for a good, efficient and faithful service for a considerable period. Prior to passing of the Act, the gratuity was considered as a payment gratuitously made by an employer to his employee at his own will and pleasure. In course of time, gratuity came to be paid as a result of bilateral agreements or industrial adjudication as a legal claim.53

Objectives

The Payment of Gratuity Act was enacted to introduce a scheme for payment of gratuity in certain industrial and commercial establishments as a measure of social security.54 The aim of the Act

is to achieve uniformity and reasonable degree of certainty in receiving gratuity.\textsuperscript{55}

\textbf{4.1.5.1 Scope and Coverage}

The Act extends to the whole of India and is applicable to:-

- Every factory, mine, oilfield, plantation, port and railway company,\textsuperscript{56}

- Every shop or establishment governed by the Shops and Establishments Act of that State, in which 10 or more persons are employed, or were employed on any day of the preceding 12 months,\textsuperscript{57} and

- Any other establishment wherein 10 or more persons are employed, or were employed on any day of the preceding 12 months, and which is so notified by the Central Government.\textsuperscript{58} The Central Govt. has extended the provisions of the Payment of Gratuity Act to all the educational institutions in the country having 10 or more employees, and to all trusts and societies registered under the Societies Registration Act, 1860 (or any other law) employing 10 or more persons.

\textbf{4.1.5.2 Qualifying Conditions}

Every employee (other than an apprentice) irrespective of his wages is entitled to receive gratuity after he has rendered continuous

\textsuperscript{55} \textit{Indian Commerce and Industries Co. Ltd. v. BVSS Mani}, (2012) 1 MWN (Civil) 419 Mad.
\textsuperscript{56} Section 1(3)(a) of the Payment of Gratuity Act, 1972.
\textsuperscript{57} \textit{Ibid.}, at Section 1(3)(b).
\textsuperscript{58} \textit{Ibid.}, at Section 1(3)(c).
service for 5 years or more. Gratuity is payable at the time of termination of his services, either (i) on superannuation, or (ii) on retirement or resignation, or (iii) death or disablement due to accident or disease.\textsuperscript{59} Termination of services includes retrenchment. However, the condition of 5 years continuous service is not necessary if services are terminated due to death or disablement. Disablement means permanent inability or incapacity of an employee to do the work, which he was capable of doing before the accident or disease.

In case of death of the employee, gratuity payable to him is to be paid to his nominee, and if no nomination has been made, then to his legal heirs.

\textbf{4.1.5.3 Benefits}

Gratuity is a claim for retirement benefit and it is not a claim to receive the share of the profit unlike bonus. It is an efficiency device for an orderly and human elimination\textsuperscript{60} which involve lumpsum amount of Gratuity payable should not exceed Rs.10,00,000 in any case.\textsuperscript{61}

\textbf{4.1.5.4 Administration of the Act}

The provisions of this Act are enforced by both the Central and State Governments. Mines, major ports, oilfields, railway company, factories and establishments owned or controlled by the Central Government and establishments having branches in more than one State, are controlled by the Central Government. The

\textsuperscript{59} Ibid., at Section 4(1).
\textsuperscript{60} Hindustan Antibiotics v. Their Workmen, (1967) 1 LLJ 714 (SC).
\textsuperscript{61} Supra note 56, at Section 4(3).
remaining factories/establishments are looked after by the State Governments.\textsuperscript{62}

The Central/State Governments shall appoint the controlling authorities for different areas\textsuperscript{63} and Inspectors, to ensure that the provisions of the Act are complied with. The Central/State Governments shall also frame rules for administration of the Act.

\textbf{4.1.5.5 Working of the Act}

The implementation of the Payment of Gratuity Act is not satisfactory due to the reason that implementations are the responsibility of the employers and the process of getting redressal for the beneficiaries is too complex and time consuming.\textsuperscript{64} The threshold limit of employment for the application of the Act is also a major constraint to cover the unorganised workers.

\textbf{4.2 PROTECTIVE AND REGULATORY LEGISLATIONS APPLICABLE OR EXTENDABLE TO THE UNORGANISED SECTOR}

Various studies indicate that labour laws are highly protective to labour. But, the workers in the unorganised sector are the most who suffer from various forms of insecurities and vulnerabilities. No labour laws can be effective, if it does not take in to consideration regarding the conditions of the working community for which it is designed. Hence, an attempt has been made to examine the protective and regulatory legislations to identify its efficacy and adequacy. Important laws in this category are as follows:

\begin{itemize}
\item \textsuperscript{62} Ibid., at Section 2(a).
\item \textsuperscript{63} Ibid., at Section 3.
\item \textsuperscript{64} Supra note 15, at 275.
\end{itemize}
- Payment of Wages Act, 1936;
- Minimum Wages Act, 1948;
- Bonded Labour (Abolition) Act, 1976;
- Child Labour (Prohibition and Regulation) Act, 1986;
- Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Contract Labour (Regulation and Abolition) Act, 1970;
- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Beedi and Cigar (Conditions of Employment) Act, 1996.

The Contract Labour (Regulation and Abolition) Act, 1970; the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; and the Beedi and Cigar (Conditions of Employment) Act, 1996 have been discussed in detail under Chapter 6. Hence an attempt has been made to discuss the remaining Acts as follows:

4.2.1 Payment of Wages Act, 1936

The Royal Commission on labour in India examined the problems of employees regarding inordinate delays in receiving their wages, imposition of fines and unauthorised deductions from their meagre wages. The commission gave several recommendations to mitigate these problems. Thus, the payment of Wages Act was passed in 1936 based on such recommendations.
Objectives

The Payment of Wages Act, 1948 enacted with the object of achieving the following objectives:

- Regulating payment of wages
- Imposition of fines and deductions from wages
- Eliminating all malpractices by laying down wage periods, time and mode of payment of wages

4.2.1.1 Scope and Coverage

The Payment of Wages Act extends to any factory, any railway establishment and any industrial or other establishment like tramway service, motor transport service, air transport service, dock, wharf, jetty, inland vessel, mine, quarry, oilfield, plantation, workshop or other establishment producing, adapting or manufacturing any article, establishments engaged in construction, development and maintenance of buildings, roads, bridges or canals, navigation, irrigation or supply of water, generation, transmission and distribution of electricity/power and any other establishment notified by the Central or a State Government.

4.2.1.2 Obligations of Employer

The Act fixes the responsibility on the employer for the payment of wages to his employees. The Act obligates that every employer should fix wage periods, which may be per day, per week or

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65 Section 1(4) of the Payment of Wages Act, 1936.
66 Ibid., at Section 2(ii).
67 Ibid., at Section 3.
per month, but in no case it should exceed one month. The Act also provides that every employer should make timely payment of wages and also prescribes the mode of payment. The Act also stipulates that the employer should not make any deductions which is not authorised under the Act.

The deductions from wages authorised under the Act include:

- Absence from duty;
- Damage or loss caused by the employed person;
- Services rendered and accepted by the employed person;
- Recovery of advances or loans received by the employed person; and
- Payments of co-operative societies and insurance schemes.

### 4.2.1.3 Authorities

The State Government is empowered to appoint an authority for a specified area to hear, decide and dispose of all claims arising out of deduction of wages or delay in payment of wages. The Act empowers the State Government to appoint Inspectors for enforcing the provisions of the Act.

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68 Ibid., at Section 4.  
69 Ibid., at Section 5.  
70 Ibid., at Section 6.  
71 Ibid., at Section 7.  
72 Ibid., at Section 15.
4.2.1.4 Working of the Act

According to the report of National commission for Enterprises in the Unorganised Sector (2007) with regard to Payment of Wages Act, the provisions of the Act are not implemented effectively. For instance, one of the common exploitive practices adopted by the middlemen is to deduct wages from the home based beedi rolling workers by intentionally rejecting the beedis on the grounds of poor quality but actually not.

4.2.2 Minimum Wages Act, 1948

Prior to 1948, there was no machinery to regulate minimum wages for the workers of the industries where sweated labour was prevalent and exploited. Hence, there was need for having such machinery in particularly in unorganised sector where workers were paid extremely low wages and also there was a disparity in the rate of wages for similar kinds of work in the unorganised industries. Hence, Minimum Wages Act was passed in 1948, to provide provision for fixation and revision of minimum rates of wages in respect of scheduled employment by the appropriate government where labour is ignorant or less organised and is vulnerable to exploitation.73

Objectives

The Minimum Wages Act was enacted to give effect to the recommendation adopted by the International Labour Conference in the year 1928. The fixation of minimum rate wages is clearly directed against exploitation of the ignorant, less organised and less privileged member of the society by the capitalist class. The

Constitutional validity of the Act could no longer the in doubt and any hardship that may be caused to employers by the wages fixed under the Act or their incapacity to pay the same are irrelevant consideration in fixing such wages.\textsuperscript{74} The restriction imposed upon the freedom of contract by the fixation of minimum rates of wages though they interfere to some extent on the freedom of trade or business guaranteed under Article 19 (1) (g) of the Constitution, are not unreasonable and being imposed in the interest of general public and a with a view to carry out the Directive Principle of State Policy as embodied in Article 43 of the Constitution.\textsuperscript{75}

4.2.2.1 Scope and Coverage

The Act is applicable to the workers engaged in the scheduled employments comprising both agricultural and non agricultural and to rural as well as urban workers but not the self employed. The Government may, however increase the scope of the Act by adding schedules.\textsuperscript{76} The Act covers even one employee engaged in scheduled employments. Home worker are also covered under the Act. Even a piece rated worker is entitled for minimum wages.\textsuperscript{77}

4.2.2.2 Fixation and Revision of Minimum Wages

The appropriate government shall fix or revise the minimum rate of wages for the workers employed in the employment specified in Part I or Part II of the Schedule. The appropriate government has discretion to fix minimum rates of wages in respect of any scheduled employment in which less than 1,000 employees are employed at a

\textsuperscript{74} Unichoyi v. State of Kerala (1961) 1 LLJ 631(SC).
\textsuperscript{75} Bijoy Cotton Mills Ltd. v. State of Ajmer (1955) 1 LLJ 129 (SC).
\textsuperscript{76} Section 27 of the Minimum Wages Act, 1948.
\textsuperscript{77} Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
given time in the whole of the State.\textsuperscript{78} Moreover, the appropriate Government may exempt the provisions of the Act in relation to wages payable to disabled employees subject to such conditions, as it may fit to impose.\textsuperscript{79} The Government is also not required to apply all or any provisions of the Act to any class of employees employed in any scheduled employment or to any locality where any scheduled employment is carried on.\textsuperscript{80} The appropriate Government may fix a minimum rate of wages for time work, piece work, guaranteed time rates, and overtime rate.\textsuperscript{81} Further, in fixing or revising minimum rates of wages, different minimum rates of wages are fixed for different scheduled employments and within each scheduled employment for different classes of work like skilled, unskilled, manual or clerical. Different rates are fixed for adults, adolescents, children and apprentices, and also for different localities.\textsuperscript{82} Similarly, the minimum wages may be fixed by any one or more of the following wage periods, namely, hour basis, day basis, month basis, or by any other longer period as may be prescribed.\textsuperscript{83}

\textbf{4.2.2.3 Procedure for Fixation or Revision of Minimum Wages}

In this Act, two methods have been provided for fixation or revision of minimum wages they are the committee method and notification method.

- Under the committee method, committees and sub committees are appointed by the appropriate governments to hold enquiries and advice with regard to

\textsuperscript{78} Supra note 76, at Section 3(1A).
\textsuperscript{79} Ibid., at Section 26(1).
\textsuperscript{80} Ibid., at Section 26(2).
\textsuperscript{81} Ibid., at Section 3(2).
\textsuperscript{82} Ibid., at Section 3(3)(a).
\textsuperscript{83} Ibid., at Section 3(3)(b).
fixation or revision of minimum wages as the case may be; or

- In notification method government proposals are published in the Official Gazette, for the information of persons likely to be affected thereby, and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.\(^84\)

After considering advice of the committees or sub-committees and all the representations received within the specified date in notification method, the appropriate government shall, by notification in official gazette, fix or revise the minimum wages in respect of the concerned scheduled employment which shall come into force on expiry of three months from the date of issue.

### 4.2.2.4 Administrative Machinery

The appropriate government is empowered to appoint through notification in the official gazette authorities to hear and decide claims arising under the Act.\(^85\) It is not only the claim relating to payment of less than minimum rate of wages but also other such claims relating to differences of wages arising out of payment of less than statutory wages which can be referred to the authority. The authority shall hear the claim and decide after providing an opportunity of being heard to both the employer and employee.\(^86\)

\(^84\) Ibid., at Section. 5(1).
\(^85\) Ibid., at Sub Section (1) of Section 20.
\(^86\) Ibid., at Sub Section 3 of Section 20.
4.2.2.5 Working of the Act

The perusal of the Act reveals that the Act provides an effective machinery to hear and decide claims. But various reports such as, National commission for Enterprises in the Unorganised Sector (2007), Report on the Working of the Minimum Wages Act, 1948 (2013) etc., show that employers often pay less than the prescribed minimum rates of wages or even do not pay the wages at a prescribed overtime rate to workers covered under the Minimum Wages Act, 1948. In the case of migrant workers very often the norms of Minimum Wages Act are followed. Migrant workers are paid in piece rates and hence preferred by employers as it helps them in cost cutting. Particularly in construction industry where illiterates and unskilled workers are widely prevalent the wages are not paid in time and the workers are unaware of the prevailing wage rates and accept work at lower wages.\(^\text{87}\) Even in agricultural sector also the Act fails provide minimum wages to workers. Hence they are unable to secure even the minimal acceptable standard of living for himself and his family.\(^\text{88}\)

In most of the states and union territories, there was no machinery appointed for the enforcement of the Minimum Wages Act and the inspecting staffs appointed under the other labour Acts were entrusted with the enforcement of this Act.\(^\text{89}\)

\(^{88}\) *Ibid.*, at 133.
\(^{89}\) *Supra* note 73 at 16.
4.2.3 Child Labour (Regulation and Prohibition) Act, 1986

The Indian Constitution provides that no child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous employment. It was made in order to protect children from exploitation and provide them education to develop their personality to lead a dignified life.

Despite of legislative prohibition on child labour, children are working in large numbers in hazardous as well as non hazardous work in almost all informal sectors of the Indian Economy. Industries employing child labour are highly fragmented with complex structures where much of the work is done through a system of sub contracting to small unorganised sector enterprises like home based and otherwise which are paid on piece rates.

A number of legislative enactments were passed to provide provisions to prohibit employment of child labour in different occupations. They are:

- The Factories Act, 1948;
- The Mines Act, 1952;
- The Motor Transport Workers Act, 1961;
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
- The Apprentices Act, 1961;
- The Shops and Commercial Establishment Acts.

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90 Article 24 of the Constitution of India.
91 Supra note 87, at 103.
The Child Labour (Regulation and Prohibition) Act, 1986 is also an exclusive Act to prohibit child labour which is also a legislation relevant to the requirement of ILO\textsuperscript{92} and hence it has been discussed in detail as follows:

**Objectives**

The main objectives of the Act are as follows:

- To bring uniformity in the definition of child in the related laws.
- To ban the employment of children in specific occupations and processes.
- To modify the scope of banned industries and processes by laying down a procedure.
- To regulate the conditions of work of children when they are not prohibited from working.
- To lay deterrent punishment for violators.

4.2.3.1 **Scope and Applicability**

The Act is applicable to Child Labour (persons who has not completed 14 years of age) and prohibits the employment of children in certain occupation specified in Part A of the Schedule or processes as specified in Part B of the Schedule. The Act is applicable to both agricultural and non-agricultural workers covering both wage workers and home workers.

\textsuperscript{92} Minimum Age Industry Convention (No.5), 1990.
4.2.3.2 Regulation of Conditions of Work

The conditions regarding hours and periods of work to be performed by a child have been laid down in the Act are as follows:93

- No child shall be required to work in excess of hours which are prescribed for such establishments.

- No period of work shall exceed three hours.

- No child shall work for more than three hours unless he has had an interval of at least one hour.

- Inclusive of period of rest, periods of work shall not spread over six hours.

- No child shall work from 7 p.m. to 8 a.m.

- There shall be no overtime for a child.

- No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

- Every child shall be allowed a holiday of one whole day in each week. The day shall be specified in a notice exhibited in some conspicuous place. The day so notified shall not be altered more than once in three months.94

93 Section 7 of the Child Labour (Regulation and Prohibition) Act, 1986.
94 Ibid., at Section 8.
4.2.3.3 Health and Safety Provisions

The appropriate government may, by notification in the official gazette make rules for the health and safety of children employed or permitted to work. The rules may provide for cleanliness, disposals of waste and effluents, ventilation and temperature etc.\textsuperscript{95}

4.2.3.4 Working of the Act

India’s child labour policy is of twofold: a ban on such labour in certain hazardous industries and its regulations in others. Any national policy that aims at improving the conditions of work in the unorganised sector should aim at elimination of all types of child labour in agriculture as well as in the unorganised non-agricultural sector enterprises. In the survey conducted by National Sample Survey Organisation (NSSO), the numbers of working children were estimated at 90.75 lakhs in 2004-05 and as per the NSSO survey 2009-10, the working children are estimated at 49.84 lakhs which shows a decline trend,\textsuperscript{96} but this is not sufficient. The banning of child labour through legislation need enormous improvement in the total decline of child labour as there is an exclusive legislation for elimination of child labour. Since the banning of child labour through legislation has not proved to give desired result, further legislative effort should aim at regulating child labour and restrictive their employment in all sectors consistent with the needs of their development.\textsuperscript{97}

\textsuperscript{95} Ibid., at Section 13.
\textsuperscript{96} Supra note 20, at 86.
\textsuperscript{97} Supra note 87, at 103-104.
4.2.4 **Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**

In India, there is a large scale migration of unskilled wage labourers from not necessarily the resource poor areas, but also, the areas which have wide spread poverty, low demand and wages for unskilled labour. They migrate to areas where there is greater demand for such labour in the unorganised sector. Since the middlemen help the migrant workers to get employment they face exploitation at the hands of employers and middle men.

It was felt to have a comprehensive legislation with a view to secure effective protection to inter-state migrant workers against their exploitations and hence the Inter-State Migrant Workmen Act, 1979 was enacted.

4.2.4.1 **Objectives, Scope and Coverage**

The Act seeks to regulate the employment of inter-state migrant workmen and provides for the conditions of inter-state workmen and matters relating to them. The Act applies to every establishment in which five or more inter-state migrant workmen are employed and to every contractor who employs five or more inter-state migrant workmen. According to this Act, workmen means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for higher or reward but does not include any person who is employed mainly in a managerial or
administrative capacity; or who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per month.\textsuperscript{98}

According to this Act the inter-state migrant workmen is defined as follows:

Any person who is recruited by or through:

- A contractor in one state;
- Under an agreement or other arrangements;
- For employment in an establishment in other state; and
- With or without the knowledge of principal employer in relation to such employment.\textsuperscript{99}

The Act provides for wage rates, holidays, hours of work and other conditions of service of an inter-state migrant workman shall be the same as those applicable to such other workmen performing the same or similar kind of work and cannot be less than the wages fixed under the Minimum Wages Act, 1948 and are payable in cash. It also provides for payment of displacement allowance and journey allowance.\textsuperscript{100}

The primary responsibility for payment of wages is on the contractor and on his failure on the principal employer.\textsuperscript{101} The contractor has to ensure the following:

- equal pay for equal work irrespective of sex;
- suitable conditions of work;

\textsuperscript{98} Section 2(1)(f) of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
\textsuperscript{99} Ibid., at Section 2(1)(e).
\textsuperscript{100} Ibid., at Section 13.
\textsuperscript{101} Ibid., at Section 17.
• to provide and maintain suitable residential accommodation to such workmen during the period of their employment;

• to provide the prescribed medical facilities to the workmen, free of charge; and

• in case of fatal accident or serious bodily injury to any such workmen to report to the specified authorities of both the states and also the next-of-kin of the workmen.

**Date of Recruitment**

Inter-state migrant workmen has to be treated to be in employment from the date of recruitment for the purposes of certain enactments namely, The Employees’ Compensation Act, 1923; The payment of Wages Act, 1936; The Industrial Disputes Act, 1947; The Employees State Insurance Act, 1948; The Employees Provident Fund and Miscellaneous Provisions Act, 1952; and the Maternity Benefit Act, 1961.

**4.2.4.2 Enforcement of the Act**

The effectiveness of law lies in its implementation. Therefore, the Act provides machinery for its proper enforcement. The main responsibility for enforcement of the provisions of the Act lies with both the Central and State Governments in their respective jurisdiction. For the administration of the Act, the appropriate government is empowered to appoint qualified inspectors for such local limits as may be assigned to them. The inspector is empowered to examine any register or record and can seize or take copies of
such register and exercise such other powers as may be prescribed according to the Act.\textsuperscript{102}

Overall with regard to the utility of the Act, in the process of migration and during their employment they are exploited by contractors, middle men, employers etc., who come in contact with them because as per the definition of the inter-state migrant workmen all migrant workers are not inter-state migrant workers. According to this definition all migrant workers who are generally unorganised workers are not inter-state migrant workers as defined by the law, and cannot, therefore, enjoy the benefits of this Act. To prove in Court that the Act is applicable is very difficult, as employers deny that workmen were recruited from another state by any of their contractors. They often contend that the workers were recruited from nearby places within the State where the industries are located. Thus, the Act provides very limited benefit to the workers in the unorganised sector.\textsuperscript{103}

The definition of inter-state migrant workmen is also inadequate in the sense that it is restricted to those recruited through contractors or middle men, but, would not applied to such workmen if they are recruited by the employer directly or if they come for work voluntarily. Hence, this would preclude substantial number of workmen from the coverage of the Act. This can be also considerably misused by the employers by claiming exemption from the applicability of the Act.

\textsuperscript{102} Ibid., at Section 20(2).
\textsuperscript{103} Supra note 13, at 708.
4.2.5 Bonded Labour System (Abolition) Act, 1976

Out of many exploitative labour practices, the bonded labour has become one of the most sensitive issues of human rights. The history of society since the abolition of slavery in 1843 has been such that the system of bonded Labour by custom and law has taken such firm roots that a change in laws to the contrary has not been successful in eradicating the system of bonded labour.\textsuperscript{104}

Objectives

Bonded labours are mainly found in agricultural sector as well as in several activities of the unorganised sector.\textsuperscript{105} Hence, in order to abolish the bonded labour system throughout the country, the Bonded Labour System (Abolition) Act, 1976 has been passed to prevent the economic and physical exploitation of the weaker sections of the society and such related or incidental matters.

4.2.5.1 Scope and Coverage

The Act extends to the whole of India\textsuperscript{106} and applies to all sections of the unorganised sector labour.

The Important Features of the Act are as follows:

- The Act abolished the bonded labour system in the country and every bonded labourers stood freed and

\textsuperscript{105} Supra note 87, at 106.
\textsuperscript{106} Section 1 (2) of the Bonded Labour System (Abolition) Act, 1976.
discharged free from any obligation to render any bonded labour.107

- Any custom, agreement or other instrument by virtue of which a person was required to render any service as bonded labour was rendered void.108

- Liability to repay bonded debt was deemed to have been extinguished.109

- Property of the bonded labourer was freed from mortgage etc.110

- Freed bonded labourer was not be evicted from homesteads or other residential premises which he was occupying as part of consideration for the bonded labour.111

4.2.5.2 Implementing Authorities

District magistrates have been entrusted with certain duties and responsibilities for implementing the provisions of the Act. The Vigilance Committees are required to be constituted at district and sub-divisional levels to provide for the economic and social rehabilitation of the freed bonded labourers.112

4.2.5.3 Working of the Act

Despite the law, there are instances of forced labour servitude in most parts of the country.113 The Ministry of Labour estimated that between 1996 and 2006, about 20.86 lakhs bonded
labourers were in different states and of these about 2.66 lakhs were rehabilitated.\textsuperscript{114} Due to social change, social movement and state intervention, the unfree status of labour in traditional agriculture and in some other sectors has changed positively. However, the incidence of bonded labour still remains high in some segments of unorganised industry.\textsuperscript{115}

The impact of social change, economic modernisation and state intervention has resulted in the emergence of bondage in newer forms. Though from estimates of labour bondage are not available but the extent of the bondage can be guarded from the fact that in a number of industry a large proportion of workers suffer from “unfreedom” and are paid wages lower than the minimum wages which is found by the Supreme Court as a key identifying characteristic of bondage.

4.3 \textbf{UNORGANISED WORKERS’ SOCIAL SECURITY ACT, 2008}

The National Commission for Enterprises in the Unorganised Sector has examined the conditions of work as well as livelihood issues of unorganised workers. The examination of the regulatory framework to ensure minimum conditions of work for unorganised wage workers has shown that:

- There is lack of comprehensive and appropriate regulations in India.

- Even where regulation exists, there are inadequate and ineffective implementation mechanisms.

\textsuperscript{114} Ibid.

Hence, it has been felt that there is a need for comprehensive legislation for minimum conditions of work in the country. The commission also has reviewed and analysed the various perspectives on a comprehensive legislative framework for unorganised wage workers and has made appropriate recommendation. On account of their unorganised nature, these workers do not get adequate social security. Even though State governments are implementing welfare programmes for certain categories of unorganised sector workers, there is a huge deficit in the coverage of unorganised sector workers in the matter of labour protection and social security measures ensuring the welfare and well being of the workers.\textsuperscript{116} Hence, Unorganised Workers Social Security Act was passed in 2008 to create a dedicated social protection environment for the unorganised work force.

\textbf{Objectives}

The Act aims to provide for social security and welfare of the unorganised sector and for matters connected there with or incidental thereto.

\textbf{Scope and Coverage}

This National legislation is an important step for the universal coverage. It covers a home based worker, self employed worker, or a wage worker in the unorganised sector and includes a workers in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act.\textsuperscript{117}

\textsuperscript{116} Statement of Objects and Reasons of the Unorganised Workers Social Security Act, 2008.

\textsuperscript{117} Section 2(m) of the Unorganised Workers Social Security Act, 2008 defines Unorganised Worker.
**Definition of Unorganised Sector**

‘Unorganised Sector’ means an enterprise owned by individuals or self employed workers and engaged in production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.\(^{118}\)

### 4.3.1 Social Security Benefits

The Act provides for welfare schemes to be formulated and notified by the Central Government from time to time for the welfare of the workers of unorganised sector relating to the following matters:\(^{119}\)

- Life and disability cover;
- Health and maternity benefits;
- Old age protection; and
- Any other suitable benefit.

The Act also provides that the state Governments may formulate and notify from time to time, suitable welfare schemes for unorganised workers in the following matters:

- Provident Fund;
- Employment injury benefit;
- Housing;
- Educational scheme for children;

\(^{118}\) Section 2(l) of the Unorganised Workers Social Security Act, 2008.  
\(^{119}\) *Ibid.*, at Section 3.
Skill upgradation of workers;

Funeral assistance; and

Old age homes.

The workers need to register with the district administration for the benefits provided under the Act.  

**Social Security Boards**

The Act empowers the central government to constitute a National Social Security Board and state boards to exercise the powers and perform functions assigned to them. The board shall advice, monitor, and review the schemes for different sectors of unorganised workers.

**4.3.2 Critical Evaluation of the Act**

**Inadequate Coverage**

The definition of unorganised worker seems to be excluded from the major section of unorganised labourers whose income limit is expected to be notified by the Government that to mostly applicable only for below poverty line category. Hence, most of the unorganised workers in the urban areas may not fall under the below poverty line category.

Section 2(l) of the Act defines unorganised sector which restricts the coverage to those enterprises employing less than 10 workers. Contrary to the usual way of defining the unorganised

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120 *Ibid.*, at Section 10.
121 *Ibid.*, at Section 5.
sector as a residue of the organised, the Act defines organised as a residue of the unorganised. Moreover, limiting less than ten is violation of Article 14 of the Constitution of India because there is no reasonable classification between workers working with employee less than ten workers and working with one who is employing more than ten workers.

**Inadequate Benefits**

The objective of the Act is to provide social security and welfare to the unorganised worker but, the Act does not confer any justifiable social security for them as there is no provision for defined right to social security.

Instead of providing social security schemes as a part of body of the Act, Chapter II of the Act explains the possible scheme of social security and most of these schemes are insurance schemes which are to be sourced from workers and operated by insurance companies. But social security cannot be reduced to these types of schemes because it should be articulated from the perspective of rights derived from constitutional rights and principles.\(^\text{123}\)

**Financing Arrangements**

The Act has provided generally that the schemes notified by the central government may be funded wholly by central Government or partly funded by both central as well as state Governments. But, it does not have separate section that defines the existence and nature of the national social security fund. The Act fails to provide an appropriate mechanism at the state level to ensure that there is clear

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financing support to address the social security needs of the workers.

**No Proper Administrative Mechanism**

From the perusal of the Act, it is clear that the national and the state social security boards are not vested with adequate powers to implement the social security schemes effectively.

There is also no provision for aggrieved worker to seek remedy in the court of law. The fairness and effectiveness of the implementation of the Act greatly depends on the availability on a functional institution of grievance redressal mechanism through which workers have recourse to a method for voicing their complaints about violations.

The board seems to have only advisory role. The boards will be effective if some powers are conferred to administer and enforce.

**4.3.3 Schemes Specified under Schedule I of the Unorganised Workers’ Social Security Act, 2008**

The Act also provides in Schedule I specifying ten schemes and as proof of Government's commitment to formulate new schemes.

- Indira Gandhi National Old Age Pension Scheme
- National Family Benefit Scheme
- Janani Suraksha Yojana
- Handloom Weavers’ Comprehensive Welfare Scheme
- Handicraft Artisans’ Comprehensive Welfare Scheme
- Pension to Master Craft Persons
- National Scheme for Welfare of Fishermen and Training and Extension
- Janshree Bima Yojana
- Aam Aadmi Bima Yojana
- Rashtriya Swasthya Bima Yojana

### 4.3.3.1 Indira Gandhi National Old Age Pension Scheme

The scheme provides security to vulnerably elderly citizens above 65 years of age and belonging to below poverty line category are eligible for a monthly pension under this scheme. The government of India provides Rs. 200 per month to the old aged people while many State Governments also contribute varying amounts. The pension will be credited into a post office or public sector bank account of the beneficiary where feasible.\(^{124}\)

### 4.3.3.2 National Family Benefit Scheme

It provides a lumpsum family benefit as a grant of Rs. 10,000 in case of death due to natural causes as well as accidental death of the primary bread winner of the family aged between 18 and 65 years.\(^{125}\) The bereaved house hold should belong to below poverty line families to qualify for this benefit. The scheme implemented through panchayats and municipalities.

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\(^{124}\) Government of India, Press Information, Bureau, *available at:*
pib.nic.in/newsite/erelease.aspx?relid=32803 (last accessed on Jan. 01, 2015).

\(^{125}\) Government of India, Press Information, Bureau, *available at:*
pib.nic.in/newsite/erelease.aspx?relid= 87574 (last accessed on May 02, 2015).
4.3.3.3 **Janani Suraksha Yojana**

This scheme has been introduced to reduce overall maternal mortality ratio and infant mortality rate, and to increase institutional deliveries. The beneficiaries under the scheme are urban and rural poor who live below the poverty line or on the margin. As per this fully centrally sponsored schemes, the states are categorised into low performing states and high performing states depending on the proportion of institutional deliveries in the state. In case of the ten low performing states (Assam, Bihar, Chattisgar, Jammu and Kashmir, Jarkhand, Madhya Pradesh, Orissa, Rajasthan, Uttar Pradesh and Uttarkhand) all women who give birth to children in Government health centres/accredited private institutions are paid Rs.2000 in rural areas and Rs.1200 in urban areas. In the case of high performing states, all women who give birth to children in Government health centres/accredited private institutions are paid Rs.700 in rural areas and Rs.600 in urban areas.126

4.3.3.4 **Handloom Weavers’ Comprehensive Welfare Scheme**

Handloom Weavers Comprehensive Welfare Scheme comprises of two separate sub-schemes viz., Health Insurance Scheme and Mahatma Gandhi Bunkar Yojana Health Insurance Scheme.

**Health Insurance Scheme**

This scheme covers handloom weavers, his wife and two children belonging to below poverty line categories. The scheme covers pre-existing and new diseases including outpatient treatment and the annual limit per family is Rs.15000. The limit for outpatient

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treatment as well as the limit per illness is Rs.7500.\textsuperscript{127} It also provides for maternity benefit of Rs.2500 per child for 2 children. Further, expenditure towards Ayurvedic/ Unani/ Homeopathic/ Siddha systems of medicine up to Rs.4000 is also provided.\textsuperscript{128}

**Mahatma Gandhi Bunkar Yojana Health Insurance Scheme**

The scheme provides enhanced insurance cover to the handloom weavers in case of natural as well as accidental death and in cases of total or partial disability. To become eligible under the scheme, the weaver should be earning at least 50\% of his income from handloom weaving and should be between age group of 18 and 59 years. The weavers belonging to the State Hand Development Corporation/apex/primary Handloom Weavers’ Co-operative Societies will be covered under the scheme. Weavers outside co-operative can also be covered under the scheme on a certificate from the State Directorate of Handlooms that they are fulfilling the eligibility conditions. The scheme provides for Rs 1.5 lakh cover for accidental death/total disability, Rs.75000 for partial disability and Rs.60000 for natural death. This scheme also provides scholarship of Rs.300/- per quarter per child to children studying in class IX to XII for a maximum period of four years or till they complete XII standard. Government of India contribute of Rs.290, Weavers’ contribute Rs.80, and Life Insurance Corporation of India contributes Rs.100.\textsuperscript{129}

\textsuperscript{127} See Handlooms, Ministry of Textiles, Wcd.nic.in/ww/Bcconppt4.pdf.
\textsuperscript{128} See www.delhi.gov.in/wps/wps/wcm/connect/5f8f7bf004efbf483b01db9fe99da05a/hl_sch_hwcwshanloom.pdf?MOD=AJPERES&CACHEDID=5f8f7bo1df483bo1db9fe99da05a.
\textsuperscript{129} See Ministry of Textiles, Office of the Development Commissioner (Handlooms), Handlooms.nic.in/writereaddata/1232.pdf.
4.3.3.5 Handicraft Artisans’ Comprehensive Welfare Scheme

This scheme has been envisaged to address the needs of artisans who lack proper care on their welfare.

This scheme is also like Handloom Weavers’ Comprehensive Welfare Scheme but it covers the handcraft artisan and three family members including spouse. It covers all handicraft artisans but the rate of premium is different for different categories. The welfare scheme comprises of the following yojana:

**Rajiv Gandhi Shilpi Swasthya Bima Yojana (RGSSBY)**

This scheme aims at financially enabling the artisan’s community to access to the best of health care facilities in the country. This scheme provides with an annual limit per family of Rs. 30,000 in case of inpatient treatment and Rs.7,500 in case of outpatient treatment.\(^{130}\)

**Bima Yojana for Handicrafts Artisans (Aam Admi Bima Yojana (AABY))**

The object of this scheme is to provide life insurance protection to the handcraft’s artisans. The scheme provides Rs.75,000 in case of death due to accident, Rs.75,000 in case of Permanent total disability, and Rs.37,500 in case of loss of one eye or one limb in accident.\(^{131}\)

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\(^{130}\) See Government of India, Ministry of Textiles, Scheme of Office of the Development Commissioner (Handicrafts), (New Delhi: Office of the Development Commissioner (Handicrafts), p.3

\(^{131}\) Ibid., at 6
Support to Artisans in Indigent Circumstances

This scheme is proposed to support the artisans during their old age. The beneficiaries of this scheme are limited only to the recipients of Shilp Guru Awards, National awards, Merit Certificates and State Awards in handicrafts. The persons whose annual income is less than Rs.30,000 and do not have any financial assistance from any other source are eligible under the scheme. The scheme provides assistance from the government not exceeding Rs.2,000 per month.\(^\text{132}\)

Credit Guarantee Scheme

This scheme is envisaged to alleviate the problem of collateral security or 3\(^\text{rd}\) party guarantee and remove impediments to flow of credit to handicrafts sector. The scheme covers collateral free credit facility extended by Eligible Lending Institutions to artisans/manufacturers involved in manufacturing of handicrafts upto Rs. 25 lakh per borrowing unit.\(^\text{133}\)

Interest Subvention Scheme

The scheme facilitates credit access for handicrafts artisans through interest subvention for scheduled banks. It is proposed that a interest subvention shall be available for artisans for loan taken from scheduled banks. Admissible amount is upto Rs.50,000 for a period of 3 years.\(^\text{134}\)

\(^{132}\) Ibid., at 7  
\(^{133}\) Ibid., at 8-9.  
\(^{134}\) Ibid., at 10.
4.3.3.6 Pension to Master Craft Persons

The beneficiaries of this scheme are limited only to the recipients of national awards, merit certificates and state awards in handicrafts. The persons whose annual income is less than Rs.15000 and do not have any financial assistance from any other source are eligible under the scheme. The Central Government provides Pension of Rs.1000 per month through the field offices of the Development Commissioners of Handicrafts.

4.3.3.7 National Scheme for Welfare of Fishermen and Training and Extension

The scheme provides for insurance cover to active fishermen engaged in fishing in age group of 18-65. The Central and State Governments share equal proportion of funding. This scheme is implemented by the State Governments through the Fish Farmers Development Agencies. For the construction of the houses a sum of Rs.75,000 per house and tube wells for drinking water a sum of Rs.40,000 and in case Northeast states of Rs.45,000 is provided. For the construction of common work places or community halls Rs.2,00,000 per hall is provided. Further, during the fishing ban period a sum of Rs.900 per fisher is paid for 3 months. In case of partial disablement the compensation payable is disability Rs.1,00,000 and Rs.2,00,000 is provided in case of death.\textsuperscript{135}

4.3.3.8 Janshree Bima Yojana (Public Insurance Scheme)

This scheme covers in the events of natural and accidental death as well as partial or permanent disability. This scheme is

\textsuperscript{135} See Government of India, Press Information Bureau, Ministry of Agriculture, pib.nic.in/newsite/printRelease.aspx?relid=102142
implemented by the Life Insurance Corporation of India, wherein 50% of the annual premium of Rs.200 is paid by the government of India and the other 50% is paid either by the beneficiary, nodal agency or the state Government. The target groups are urban and rural poor who live below the poverty line or on the margin. This scheme provides a sum of Rs.30,000 on natural death and Rs.75,000 on accidental death to the beneficiaries. The scheme also provides in the case of total permanent disability Rs.75,000 and Rs.37,500 on partial permanent disability. Further, scholarship for 2 children studying in IX to XII class a sum of Rs.300 per quarter per child is paid.

At present Janshree bima yojana scheme has been merged with the Aam Admi Bima Yojana with effect from 01.01.2013.

4.3.3.9 Aam Aadmi Bima Yojana (Common People Insurance Scheme)

The role of life insurance is to cover the family earner in case of death are disability so as to assist the family in surmounting the economic hardship of having loss their main source of income. The scheme is confined to members of land less unorganised workers in the rural households of the age group 18-59. It is implemented through the agency of Life Insurance Corporation of India. The most current version of the scheme was launched in January 2013 by merging two previous Life Insurance Schemes Janashree Bima Yojana covering 45 occupation groups and Aam Aadmi Bima Yojana covering solely poor land less households in rural areas. This scheme is implemented by the Life Insurance Corporation of India,

137 Ibid.
wherein the beneficiary has to pay premium of Rs.200 per annum for a cover of Rs.30,000, out of which 50% premium will be subsidised from the Social Security Fund. In case of death due to accident Rs.75,000, Rs.75,000 in case of permanent Total disability and Rs.37,500 in case of loss of one eye or one limb, in an accident is provided.\textsuperscript{138}

\textbf{4.3.3.10 Rashtriya Swasthya Bima Yojana (National Health Insurance Scheme)}

This scheme provides provision of health insurance to workers families consisting of five units. The target groups are unorganised workers falling below the poverty line. The benefits are inpatient care which is restricted by package limits as it does not cover congenital external diseases, drug and alcohol induced illness, sterilization and family planning, vaccination, attempted suicide, and treatments from alternative medicines. In addition to that medicine for 5 days post hospitalisation and transportation costs of Rs.100 per visit up to maximum of Rs.1000 are provided. The benefits are subject to an annual ceiling of Rs.30,000 to a family, are covered on an cash less basis. To claim this benefit, smart cards are provided in which Rs.30,000 per year is credited to it for direct use at any empanelled hospital.\textsuperscript{139} However, there is no provision to cover outpatient treatment, which constitutes a major part of the medical expenses.

With regard to premium, a contribution of Rs.30 has to be paid by the beneficiaries as registration fee at the time of enrolment and at the time of renewal. The Central and State Governments contributes in the ratio of 75:25 respectively. In the case of North

\begin{footnotesize}
\textsuperscript{138} See https://www.licindia.in/aam_admi_features.htm.
\textsuperscript{139} Supra note 136, at 19.
\end{footnotesize}
Eastern States and Jammu and Kashmir, the central and state
government contributes in the ratio of 90:10 respectively.

4.3.4 Working of the Schemes

Current social security schemes are run by various
ministries. For instance, Aam Aadmy Bima Yojana is run by ministry
of finance while Rastriya Swastha Bima Jojana is run under Ministry
of Labour and Employment. This has led to a fragmented delivery of
schemes which has resulted in difficulty to access them through
multiple channels.

There are many schemes provided by centre and states
resulting in overlapping. For example, many state governments
provide a Minimum Pension Scheme that has come into conflict with
National Old Age Pension Scheme and National Pension service
provided by the Central Government. Due to lack of coordination
between centre and states there is inequitable pension coverage
across India.\footnote{Supra note 136, at 23.}

Moreover, the current schemes are implemented by various
Ministries and are regulated by different bodies. For instance, health
insurance is provided by insurance companies and hence it falls
under the purview of Insurance Regulatory and Development
Authority (IRDA). However, National Pension Scheme is regulated by
Pension Fund Regulatory and Development Authority (PFRDA). The
role of National Social Security Administration (NSSA) will have to
provide clarity on regulation setting for social security products.
There should be clarity between regulator and implementer.
To conclude, though the Government has taken several initiatives such as Legislative measures and welfare schemes to improve the conditions of the unorganised sector, this study reveals that the majority of workers remain uncovered due to inadequate and inefficient social security measures.