CHAPTER-1

INTRODUCTION

In the words of Dr. B.R. Ambedkar, “Bread a house, adequate clothing, education, good health and above all the right to work with dignity on the world’s boulevards”.

As rightly pointed out by Justice Ramaswamy:

“The poor, the workman and common man can secure and realize the economic and social freedom only through the right to work and right to adequate means of livelihood, to just and humane conditions of work, to a living wage, a decent standard of life, education and leisure. To them these are fundamental facets of life....!”

The provision of social security is an effective and important means of reducing poverty and social exclusion as it prevents people from falling into poverty and enables the poor to escape the poverty trap. In the absence of social protection, people, especially the most vulnerable, are subjected to increased risks of sinking below the poverty line or remaining caught in conditions of poverty.

In addition, there is strong evidence that social security fosters long-term economic growth by raising labour productivity and enhancing social stability.

In the Beveridge Committee Report (1942)\(^2\), Social Security was defined as “Freedom from Want”.

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1 Air India Statutory Corporation v United Labour Union, AIR 1997 SC 645 at p. 648.
2 In 1941, William Beveridge one of the Britain’s leading economist, was asked by Winston Churchill’s Government to look at the problems of building a post-war Britain and was also asked to consider how the various Social Security schemes could be harmonized. His report covered the five threats to society: Want,
Unexpected life circumstances, the loss or reduction of productive capacity, and discrimination can hinder a person’s or a family’s well-being. Everyone needs protection from social risks and resulting insecurities. Social security benefits - or social transfers - are powerful tools to combat poverty and inequality, and to invest in social and economic development. As such, they are key to achieve the Millennium Development Goals (MDGs). Social protection, through social security policies that are aligned with economic and labor policies, is an economic, social and political necessity that has been recognized by several international declarations and agreements as a human right.

Social security is a human right and is enshrined as such in the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), and in other major United Nations Human Rights instruments.

The achievement of social security for all is at the core of the International Labour Organisation’s (ILO) Constitution and mandate. The Declaration of Philadelphia (1944), which is an integral part of the ILO Constitution, recognizes that the extension of social security worldwide is one of the Organizations’ main objectives. More precisely, it recognises the solemn obligation of the ILO to further among the nations of the world programs that will achieve, inter alia, “the extension of social security measures to

Ignorance, Disease, Squalor and Idleness. Available at <www.bbc.co.uk/history/ww2peopleswar/timeline/.../a1143578.shtml> accessed on 12 November 2012.

3 The Millennium Development Goals (MDGs) are eight international development goals that were established following the Millennium Summit of the United Nations in 2000, following the adoption of the United Nations Millennium Declaration. All 189 United Nations member states and at least 23 international organizations committed to help achieve the Millennium Development Goals by 2015, the goals follow: To eradicate extreme poverty and hunger, To achieve universal primary education, To promote gender equality and empowering women, To reduce child mortality rates, To improve maternal health, To combat HIV/AIDS, malaria, and other diseases, To ensure environmental sustainability, To develop a global partnership for development. Available at <http://www.un.org/millenniumgoals/global.shtml> accessed on 20 January 2013.

4 The Philadelphia Declaration, which prefigured and served as a model for the United Nations Charter and the Universal Declaration of Human Rights, remains the charter of ILO’s goals and principles. The recommendations set out in the Declaration are to be considered from the broadest possible point of view: they concern not only the world of labour but also human beings as a whole. The Declaration directly addresses “all human beings, irrespective of race, creed or sex”. Available at <http://www.ilo.org/public/english/support/lib/century/content/1944.htm> accessed on 24 April 2012.
provide a basic income to all in need of such protection and comprehensive medical care”, as well as “provision for child welfare and maternity protection”, thereby extending the protection from workers to all those in need. To this end, the ILO has adopted Conventions and Recommendations on social security that lay down obligations and guidelines for States. These international standards have greatly contributed to the development of international social security law and to the definition of the human right to social security.

Two of the most influential programmes are the United States’ 1935 Social Security Act and the Social Security Programme implemented in the UK, summarised in the 1942 Beveridge Report. These programmes established the basis for modern forms of social security, defined by the International Labour Organisation (ILO) as “the protection which society provides for its members through a series of public measures against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, invalidity and death; the provision of medical care; and the provision of subsidies for families with children”.

An essential means of action available to the ILO for the realization of its mandate of extending social security to all is the setting of International Labour Standards. Since 1919, the ILO has adopted 31 Conventions and 23 Recommendations in this area, which have greatly contributed to the development of social security as a Universal Human Right notably by laying down specific obligations and guidelines for Member States. In 2002, the ILO Governing Body confirmed 8 out of these 31 Conventions as up-to-date

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5 Since 1919, the ILO has sought to define and guarantee labour rights and improve conditions for working people by building a system of international labour standards expressed in the form of Conventions, Recommendations and Codes of Practice. The ILO has since adopted more than 180 Conventions and 190 Recommendations covering all aspects of the world of work. In addition, dozens of Codes of Practice have been developed. In areas as varied as maternity leave, occupational safety and health, and protection of migrants, these standards play an important role in the drawing up of national legislation. Available at <http://www.ilo.org/public/english/support/lib/century/content/1944.htm> accessed on 24 April 2012.

social security conventions. Most prominent among these is the Social Security (Minimum Standards) Convention, 1952 (No. 102)\(^7\). It is the only International Convention that defines the nine branches\(^8\) of social security, sets minimum standards for each of these branches, and lays down principles for the sustainability and good governance of those schemes. Another important feature of this Convention is that it contains flexibility clauses, thereby allowing ratifying member States to accept as a minimum three out of the nine branches of social security, with at least one of those three branches covering a long-term contingency or unemployment, so as to allow as many countries as possible to comply with the requirements laid down in the Convention.

The Income Security Recommendation, 1944 (No.67)\(^9\), together with the Medical Care Recommendation, 1944 (No.69)\(^10\) has laid down for the first time in history the guiding principles for the eight classical social security contingencies, as well as medical care and benefits to be provided to all residents through social insurance and complemented by social assistance. (The Governing Body decided to maintain the status quo of Recommendation No.69, due to the strong link with Recommendation No.67). These two instruments, which were adopted in 1944 in Philadelphia at the 26th Session of the International Labour Conference, paved the way for the adoption of Convention No.102. On top of these, ILO adopted OSH- Occupational Safety and Health related mandates

\(^7\) Social Security (Minimum Standards) Convention, 1952 is an International Labour Organization Convention on social security and protection at the contingencies that include any morbid condition, whatever its cause and pregnancy. It was established in 1952, with the preamble stating: Having decided upon the adoption of certain proposals with regard to minimum standards of social security. Available at <http://www.ssa.gov/policy/docs/ssb/v15n10/v15n10p3.pdf> accessed on 24 April 2012.

\(^8\) Medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors’ benefit. Available at <http://www.ilo.org/public/english/support/lib/century/content/1944.htm> accessed on 24 April 2012.

\(^9\) Recommendation concerning Income Security which was Adopted in Philadelphia, 26th International Labour Conference session (12 May 1944), to provide by social insurance may be closely adapted to the variety of needs, the contingencies covered as follows: (a) sickness; (b) maternity; (c) invalidity; (d) old age; (e) death of breadwinner; (f) unemployment; (g) emergency expenses; and (h) employment injuries. Available at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312405:NO> accessed on 15 May 2012.

such as Convention No.187 and Recommendation No.197 on “Promotional Framework for Occupational Safety and Health” to lower the toll of work-related injuries and diseases.

The ILO promotes a rights-based approach to social security with ILO standards as its principal means of action for assisting member states towards the realisation of this right. The ILO also adopts further initiatives to support international efforts aimed towards the realization of social security for all. In 2003, it launched the “Global Campaign on Social Security and Coverage for All” reflecting a global consensus on the part of governments and employers’ and workers’ organizations to broaden social security coverage among working people, particularly in the informal economy, and raising awareness about the role of social security in economic and social development. The campaign also seeks to develop a broad partnership involving international organizations, donor countries, social security institutions and civil society organizations.

In 2008, “The Declaration on Social Justice for a Fair Globalization”\(^\text{11}\) established a new foundation on which the ILO can effectively support the efforts of Member States to promote and achieve progress and social justice through the four strategic objectives of the ILO’s Decent Work Agenda: the promotion of fundamental rights, employment creation, social protection and social dialogue.\(^\text{12}\)

Through insurance, assistance programmes and social security together they help in preventing people from falling into poverty and/or escape the poverty trap. As such, they also avoid or lessen social tensions, violent conflicts and uncontrolled migration. The 2009 global financial and economic crisis stressed the role of social security schemes as automatic social and economic stabilizers. Countries at all levels of development, which have social security systems in place, are in a much better position to cope with the social

\(^{11}\) ILO Declaration on Social Justice for a Fair Globalization Adopted in 2008 by the representatives of governments, employers and workers from all ILO member States, the Declaration expresses the contemporary vision of the ILO’s mandate in the era of globalization. Available at <http://www.ilo.org/global/about-the-il0/WCMS_099766/lang--en/index.htm> accessed on 15 May 2012

\(^{12}\) ibid
fall-out of the crisis. In response to this crisis, the UN Chief Executives Board for Coordination (CEB) adopted the Social Protection Floor Initiative (SPFI) as one of the nine joint crisis initiatives.

In 2009, the ILO designed a framework to guide national and international policies aimed at stimulating economic recovery, generating jobs and extending social protection for all. The Global Jobs Pact\(^\text{13}\) specifically calls on countries to give consideration to build “adequate social protection for all, drawing on a basic social protection floor including: access to health care, income security for the elderly and persons with disabilities, child benefits and income security combined with public employment guarantee schemes for the unemployed and working poor.”

The Social Protection Floor Initiative (SPFI), launched in 2009, is also grounded in a rights-based framework. Its concept is based on shared principles of social justice and reflects the call of the Declaration of Human rights for adequate life standards, access to health, education, food, housing and social security. Moreover, the SPFI enables the concrete realization of human rights. The results of ILO research shows that a social protection floor can be afforded by virtually all countries and that it would constitute an effective tool in the fight against poverty and in reaching the Millennium Development Goals.

In 2011, the recurrent discussion on the strategic objective of social protection (social security) at the 100\(^\text{th}\) International Labour Conference came out with strong conclusions regarding the extension of social security to all through national defined social protection floors.

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\(^\text{13}\) The Global Jobs Pact is a set of balanced and realistic policy measures that countries, with the support of regional and multilateral institutions, can adopt to ease the impact of the global crisis and accelerate recovery in employment. Adopted in June 2009 by the International Labour Organization, it calls on its member States to put decent work opportunities at the core of their crisis responses. It addresses the social impact of the global crisis on employment and proposes job-centered policies for countries to adapt according to their national needs. Guided by the Decent Work Agenda and commitments made by the ILO constituents in the 2008 Declaration on Social Justice for a Fair Globalization. It proposes a portfolio of policies aimed at: Generating employment, Extending social protection, respecting labour standards, Promoting social dialogue, shaping fair globalization. Available at <http://www.ilo.org/jobspact/about/lang--en/index.htm> accessed on 12 January 2013.
In June 2012, the International Labour Conference adopted the *Social Protection Floors Recommendation, 2012 (No. 202)*\(^4\). This Recommendation provides guidance to Member States, so as to ensure that all members of society enjoy at least a basic level of social security throughout their lives.

Employment and social protection are indispensable avenues to socio-economic development, poverty reduction and human dignity. Better and more productive jobs raise incomes and help finance social protection, which not only contributes to stable and better household incomes but also improves the productivity and employability of the population. As it has been found that actions in these two areas are mutually reinforcing, the linkages between social protection and employment have been placed in the centre stage in current development policy debates in G20 Labour Ministerial Joint Statement by OECD\(^5\) Secretary-General and ILO Director-General\(^6\).

Employment Injury Insurance (EII), or Workers’ Compensation Insurance, is an important part of the social security system and originated in Germany in 1884\(^7\). It can be said to be the most popular social insurance scheme and now exists in about 165 countries in the world. It has been proven that EII schemes have played a positive role in

\(^{14}\)(a) Access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality; (b) basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services; (c) basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and (d) basic income security, at least at a nationally defined minimum level, for older persons. Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:3065524 accessed on 12 January 2013.

\(^{15}\) Organisation for Economic Co-operation and Development.

\(^{16}\) On 17/07/2013 - Joint statement by ILO Director-General Guy Ryder and OECD Secretary-General Angel Gurría on the occasion of the G20 Labour and Employment Ministers’ Meeting, Moscow, 18-19 July 2013. “We, the Heads of the International Labour Organisation and the Organisation for Economic Cooperation and Development, call upon the Ministers of Labour and Employment of the G20 countries to reinforce their cooperation with a view to enhancing the design and scale of their employment, labour market and social protection policies in order to achieve higher levels of productive and rewarding employment and to contribute to a strengthening of the world economy”. Available at <http://www.oecd.org/g20/topics/employment-and-social-policy/oecd-ilo-call-on-g20-labour-ministers-to-reinforce-cooperation.htm> accessed on 15 October 2013.

\(^{17}\) Otto Von Bismark’s Social Legislations. The 1st Chancellor of the German Empire-in office from 21st March 1871 to 20th March 1890.
protecting workers’ safety and health, in maintaining sound industrial relations and in pooling risks arising from occupational accidents and diseases among enterprises\(^{18}\).

EII is a form of mandatory social insurance to compensate employees who suffer from industrial injury or disease. In principle, it is the most desirable mechanism to prevent employees from accidents. When employees are inevitably involved in accidents or diseases in and out of the workplace, EII aims to provide them with appropriate compensation\(^{19}\).

EII has three theories. The first is the social compromise theory. Employees are compensated by EII on the condition that they give up litigations whereas employers are required to pay EII benefits to employees who suffer from industrial injuries or diseases regardless of their negligence. The payment of EII benefits excludes employers from the process of civil litigation. The second is the least social cost theory. The ‘no-fault liability’ under EII is much more efficient in terms of time and cost than the judicial system which focuses on who is responsible for the accidents. The third is the occupational risk theory. In a broad sense, industrial accidents are inevitable under a capitalist system and employees should be compensated regardless of who bears the responsibility. Thus, the expenditure for industrial accidents should be considered as a part of production cost\(^{20}\).

In addition, considering types of employment injury scheme by region, the predominance of social insurance scheme type is found. The types might be categorized into social insurance type. They are, employer liability system, mandatory private insurance, social assistance and universal type.


\(^{19}\)ibid

\(^{20}\)ibid
Article 71\textsuperscript{21} of Convention No. 102 states that “the costs of the benefits (…) and administration (…) shall be borne collectively by way of insurance contributions or taxation or both”. Therefore, direct employer liability for the cost of benefits would not be in conformity with ILO Conventions. In this context, social insurance type scheme such as EII has to be implemented.

Most countries in the world offer some coverage for work-related injuries. Many also include occupational disease. In fact, in most countries employment injury was the first contingency covered by social security; these schemes are often closely linked to occupational health and safety regulations. Many schemes also include preventive elements, aimed at improving workplace safety.

According to ILO Convention No. 102 (Article 32)\textsuperscript{22}, the contingencies covered include the following accident-at-work or employment-related diseases: (a) sickness (“morbid condition”), (b) temporary incapacity for work resulting from such a condition, (c) total or partial loss of earning capacity, likely to be permanent and (d) the loss of support suffered by dependents as the result of the death of the breadwinner. In addition, the

\begin{itemize}
\item[21] \textsuperscript{1} The cost of the benefits provided in compliance with this Convention and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected.
\item[22] \textsuperscript{2} The total of the insurance contributions borne by the employees protected shall not exceed 50 per cent. of the total of the financial resources allocated to the protection of employees and their wives and children.
\end{itemize}
range of benefits required by Convention No. 102 includes necessary medical care, sickness benefit for the period of incapacity for work, disability pension in case of loss of earning capacity, and survivors’ pension in case of death of a breadwinner. The Employment Injury Benefit Convention (Convention No.121, Article 26)\(^2\) requires member countries to provide rehabilitation services which are designed to prepare a disabled person for the resumption of his/her previous activity, or, if this is not possible, the most suitable alternative work, having regard to his/her aptitudes and capacity; and to take measures to further the placement of disabled persons in suitable employment.

In addition, sustainability of EII scheme can be achieved by allowing implementation of policies to minimize the side effects of the disability through prevention measures, early-stage medical treatments, and rehabilitation.

In employment injury scheme, compensation and prevention are not separable logically and practically. It is obvious, of course, that the most desirable way to reduce the cost of occupational injuries and disease is to reduce their incidence. For the effective setting of preventive strategy, the collection and analysis of data on occupational accident and disease is very important. In this regard, reporting system can be supplemented by sharing the broader data on occupational accident & disease and compensation among related institutions. Also certain portion of EII fund can be allocated for occupational safety & health and economic incentive such as experience rating system from EII be considered for facilitating employers to invest more on prevention. As a result, Successful prevention programmes to reduce industrial accidents not only decrease the number of beneficiaries naturally, but also reduce the expenditure of disability

\(^2\) 1. Each Member shall, under prescribed conditions- (a) take measures to prevent industrial accidents and occupational diseases; (b) provide rehabilitation services which are designed to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity; and (c) take measures to further the placement of disabled persons in suitable employment. 2. Each Member shall as far as possible furnish in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation information concerning the frequency and severity of industrial accidents.

compensations thus facilitating stable finance. The evidence can be observed if we examine the experience of countries with long history of operating employment injury insurance.\(^{24}\)

Of the total number of international labour standards approved by the International Labour Conference (ILC), nearly half deal with occupational safety and health, more than any other subject. Among them, Convention No. 187 (The Promotional Framework for Occupational Safety and Health Convention, 2006) promotes the development of a national policy, system and programme of occupational safety and health, in consultation with employers’ and workers’ organizations.\(^{25}\)

Men and women in modern societies depend mainly on income from work in order to have access to the goods and services produced and provided by others. While employment is the main and usual source of income, and decent work, the best form of income security, the global deficit in quality jobs means that enough well-remunerated work is not always available for everyone. A temporary or permanent drop in income may result from a range of contingencies, of which unemployment is just one. Contingencies include, for example, unemployment, sickness, disability or old age, and they can affect individuals throughout their lifecycle. They may not only alter the ability to work and earn but also create a burden of high levels of out-of-pocket expenditure, such as health care costs in the case of sickness. The basic aim of social protection is to protect people from uncertainty and poverty that may result from the vagaries of the market and the contingencies and changing circumstances of life by compensating for temporary or permanent shortfalls in income and redistributing risk. Social protection is redistributive in nature, transferring income from the more to the less fortunate; it can be argued that it is also redistributive across time. In addition, social protection ensures


\(^{25}\text{Article 4 (f): The national system shall include, a mechanism for the collection and analysis of data on occupational injuries and diseases, taking into account relevant ILO instruments; and (g) provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and diseases.}\)
access to health care (social health protection) and may facilitate access to social services, such as education, which are crucial for creating an employable and productive workforce and guaranteeing human development in the longer-run. In sum, together social protection and employment may alleviate the problems of short- and long-term poverty.

Increasingly, it is becoming well-understood that social protection contributes to the dynamism of the whole economy, as well as the number and quality of jobs. Social protection strengthens the multiple channels through which this happens: distribution, protection, production and reproduction. Therefore, it is actually an investment that enhances the productive potential of individuals, or “unlocks human potential”, for instance by directly providing employment to those who lack it, improving employability and encouraging entrepreneurship. It is argued that, historically, because poor people seek to reduce their vulnerability to risk, they have chosen to engage in economic activity that is of low productivity and low profitability. Investing in a risky activity can cause a significant economic loss in case the risk materialises, and may well push a family into deep poverty in the absence of an appropriate social protection mechanism. Reducing risks and protecting families against possible losses through social protection measures can thus stimulate innovation and growth. Social protection may also facilitate the inclusion of the poor in the labour market, as it lessens the risk of, for instance, undertaking an entrepreneurial activity, investing in a business or studying a new degree. Finally, well-designed social protection policies may promote equal opportunities and boost female employment as they allow people to balance family responsibilities with work and other social roles. For instance, child care or long-term nursing services make it easier for both parents, father and mother to work. Yet, it is clear that social measures for boosting employability cannot be effective without employment opportunities with decent remuneration and working conditions.

The social security schemes in India cover only a very small segment of the organised work force, which may be defined as workers who are having a direct regular employer-employee relationship within an organization. Out of an estimated work force of about
397 million, only 28 million are having the benefit of formal social security protection\textsuperscript{26}. The Social Security Laws in India at present can be broadly divided into two categories, namely, the \textit{contributory and the non-contributory}. The contributory laws are those which provide for financing of the social security programmes by contributions paid by workers and employers and in some cases supplemented by contributions/grants from the Government. The important contributory schemes include the Employees State Insurance Act, 1948 and the Provident Fund, Pension and Deposit Linked Insurance Schemes framed under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1948. The three major non-contributory laws are the Workmen’s Compensation Act, 1923, the Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972\textsuperscript{27}.

India being a developing nation is faced with traditional public health problems like communicable diseases, malnutrition, poor environmental sanitation and inadequate medical care. However, globalization and rapid industrial growth in the last few years has resulted in emergence of occupational health related issues. Agriculture (cultivators i.e. land owners + agriculture labourers) is the main occupation in India giving employment to about 58\% of the people. The major occupational diseases/morbidity of concern in India is silicosis, pesticide poisoning, musculo-skeletal injuries, coal workers pneumoconiosis; chronic obstructive lung diseases, asbestosis, byssinosis, and noise induced hearing loss. \textit{There are many agencies like Employees State Insurance Corporation, National Institute of Occupational Health, Industrial Toxicology Research Centre, Central Labour Institute, etc.} working on issues like Asbestos and Asbestos Related Diseases, Pesticide Poisoning, Silica Related Diseases other than Silicosis and Musculoskeletal Disorders. Still much more is to be done for improving the occupational health research. The measures such as creation of advanced research facilities, human resources development, creation of environmental and occupational health cells and development of database and information system should be taken. One such measure to protect employees from losses due to occupational hazards is Employee’s State Insurance

\textsuperscript{26} As per the survey carried out by National Sample Survey Organisation ((NSSO) 2010-2011.

\textsuperscript{27} Patricia Justino “Social Security from Developing Countries: Myth or Necessity Evidence from India” PRUS (Poverty Research Unit at Sussex) University of Sussex Working Paper NO.27 of 20 Sept 2003.
Act, 1948 which is legislation for social welfare and offers various benefits to the employees during their time of need\footnote{ibid}.

The Act is designed in the interest of “employees” and its dependents to provide cash benefit in the case of sickness, maternity, “employment injury”, payment in the form of pension to the dependent of workers who died of employment injury and medical benefit to workers. It introduces the contributory principle against such contingencies, provides protection against sickness, replaces lump sum payments by pension in the case of dependents benefit and places the liability for claims on a statutory organisation.

In March 1943 Government of India appointed a committee presided over by Professor B P Adarkar\footnote{He is said to be the “Father” of Indian Social Security.}, an officer on special duty and an eminent scholar and visionary for the purpose of formulating a scheme of Health Insurance for Industrial Workers. The first document on social insurance was “Report on Health Insurance” submitted to the Tripartite Labour Conference, headed by him. The Report was acclaimed as a worthy document and forerunner of the social security scheme in India and Prof. Adarkar was acknowledged as “Chhota Beveridge”\footnote{In 1941, William Beveridge one of the Britain’s leading economist, was asked by Winston Churchill’s Government to look at the problems of building a post-war Britain and was also asked to consider how the various Social Security schemes could be harmonized. His report covered the five threats to society: Want, Ignorance, Disease, Squalor and Idleness. Available at <\texttt{www.bbc.co.uk/history/ww2peopleswar/timeline/.../a1143578.shtml}> accessed on 12 November 2012.} by none other than Sardar Vallabhbhai Patel.\footnote{Vallabhai Jhaverbhai Patel was an Indian barrister and statesman, one of the leaders of the Indian National Congress and one of the founding fathers of the Republic of India}

An important pillar of India’s social protection policies is the food programme, implemented in the late 1960s and integrated within a wider rural poverty alleviation scheme. This combined a large programme for land reforms and the introduction of new technologies and crops in the agriculture sector (the ‘Green revolution’), with an extensive rural employment scheme, designed to address the unemployment problems of the landless.
The labour policy followed in the successive five year plans since independence adopted an approach which rested on considerations that the basic needs of workers for food, clothing and shelter must be satisfied. The objective of achieving ‘socialistic pattern of society’ was the avowed goal of early five year plans and provisions were made accordingly for the welfare of workers. However, not much could be achieved by way of all these efforts. Majority of the labour laws enacted sought to benefit only the organized sector. The Employees State Insurance Act was enacted in 1948, and similarly the Factories Act too was enacted in the same year. The Employees’ Provident Funds and Miscellaneous Provisions Act came on the Statute Book in 1952. The unorganized sector, however, was left almost out of all these efforts as far social security coverage was concerned.

The Constitution of India has affirmed social and economic justice to all its citizens. The fundamental rights and directive principles of state policy, enshrined in our Constitution, need a special mention in view of their supreme importance and influencing the social security legislations relating to the fundamental rights and directive principles of state policy which provide sufficient guarantee against exploitation.

The Constitution of India guarantees fundamental rights to every citizen. The most significant among them is Article 21 which guarantees Right to Life. The Supreme Court has elaborately considered this Article many times and categorically held that right to livelihood is inherent in right to life. The ultimate aim of social security is to ensure

32 In National Textile Workers Union v Ramakrishnan AIR 1983 SC 75, The Supreme Court observed: “The workers have a special place in a socialistic pattern of society. They are the producers of wealth. They produce labour without which capital would be impotent. Our Constitution has shown profound concern of the workers and given them a pride of place in the new socioeconomic order envisaged in the Preamble and Directive Principles of State Policy. The Preamble contains the profound declaration conceived with meaning and hope of millions of peasants and workers that India shall be socialist democratic republic, where, social and economic justice will inform all institutions of national life and every endure shall be made to promote fraternity ensuring the dignity of the individual”.

33 No person shall be deprived of his life or personal liberty except according to procedure established by law.

34 Olga Tellis v Bombay Municipal Corporation AIR 1986 SC 180. The court held that the term ‘life’ in Art. 21 is not restricted to the mear animal existence of a person. It means something more and the inhibitions against the deprivation of life extents to all those limits and faculties by which life is enjoyed.
means of livelihood to everyone. In other words, right to social security is inherent in right to life.

Chapter I of the part XI of the Constitution of India deals with legislative relations between Union and State. The matters in respect of which have been ascribed in three lists, a) Union List b) Concurrent List and c) State List. The part XXII, schedule VII, mentions the above three lists.

*The matters of workers interest*\(^35\) - The Union List, entries 13,\(^{36}\) 28,\(^{37}\) 55,\(^{38}\) 61,\(^{39}\) 65,\(^{40}\) and 94.\(^{41}\) The State List, entry 9.\(^{42}\) The Concurrent List, entries 20,\(^{43}\) 21,\(^{44}\) 22,\(^{45}\) 23,\(^{46}\) 24,\(^{47}\) 25,\(^{48}\) 36,\(^{49}\) and 45.\(^{50}\)

*The Article 24. Prohibits employment of children in factories, etc.* - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
Article 38. State to secure a social order for the promotion of welfare of the people
(1)
The State shall strive to promote the welfare of the people by securing and protecting as
effectively as it may a social order in which justice, social, economic and political, shall
inform all the institutions of the national life. (2) The State shall, in particular, strive to
minimize the inequalities in income, and endeavour to eliminate inequalities in status,
facilities and opportunities, not only amongst individuals but also amongst groups of
people residing in different areas or engaged in different vocations.

Article 39. Certain principles of policy to be followed by the State, the State shall, in
particular, direct its policy towards securing (a) that the citizens, men and women
equally, have the right to an adequate means to livelihood; (b) that the ownership and
control of the material resources of the community are so distributed as best to sub-serve
the common good; (c) that the operation of the economic system does not result in the
concentration of wealth and means of production to the common detriment; (d) that there
is equal pay for equal work for both men and women; (e) that the health and strength of
workers, men and women, and the tender age of children are not abused and that citizens
are not forced by economic necessity to enter avocations unsuited to their age or strength;
(f) that children are given opportunities and facilities to develop in a healthy manner and
in conditions of freedom and dignity and that childhood and youth are protected against
exploitation and against moral and material abandonment.

Article 41. Provides for Right to work, to education and to public assistance in certain
cases - The State shall, within the limits of its economic capacity and development, make
effective provision for securing the right to work, to education and to public assistance in
cases of unemployment, old age, sickness and disablement, and in other cases of
undeserved want.
Article 42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43. Living wage, etc., for workers - The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43A. Participation of workers in management of industries - The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

The directives contained in Part IV are the common man’s pathway towards the attainment of socio-economic justice.

Though not justifiable, these principles are fundamental in the governance of the Country and State is duty bound to apply these principles in making laws. In a series of decisions on the subject, the Supreme Court has categorically held that the State has responsibility to protect the interests of workmen for establishing social and economic democracy in

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51 Inserted by the Constitution 42nd Amendment Act, 1976 (with effect from 3-1-1977)
which every workman realize socio-economic justice assured in the Preamble\textsuperscript{52}, Article 14\textsuperscript{53}, 15\textsuperscript{54}, 21\textsuperscript{55} and Directive Principles of the Constitution of India\textsuperscript{56}.

Social Security legislations also have been shaped and influenced by the recommendations of the various National Committees and Commissions such as First National Commission on Labour (1969) under the Chairmanship of Justice Gajendragadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma etc. and judicial pronouncements on labour related matters specifically pertaining to minimum wages, bonded labour, child labour, contract labour etc.

In 1995, the Government of India introduced for the first time an all-India protective type social security scheme, the National Social Assistance Programme (NSAP). The NSAP encompasses a national policy for social assistance benefits to poor households in the

\textsuperscript{52} WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:- JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

\textsuperscript{53} The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

\textsuperscript{54} The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. (2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to- (a) access to shops, public restaurants, hotels and palaces of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

\textsuperscript{55} See Supra note, 33

\textsuperscript{56} In A.B.S.K. Sangh (Rly) v UOI AIR 1981 SC 298; it was held that, “Article 37 of the Constitution emphatically state that Directive Principles are never the less fundamental in the governance of the country. And it shall be the duty of the state to apply these principles in making laws. So we have to say that the constitutional goal is the establishment of a Socialist Democracy in which justice, economic, social and political is secured and all men are equal and have equal opportunity. The underprivileged, the deprived and exploited are to be protected and nourished so as to take their place in an egalitarian society. State’s action is to be towards these ends”. The decision in Chandra Bhavan Boarding v State of Mysore AIR 1970 SC 2042 also sounds the same. The Court held that: “The mandate of the Constitution is to build a welfare society in which justice, social, economic and political shall inform all institutions of our national life. The hopes and aspirations assured by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met the basic needs”
case of old age, death of breadwinner and maternity. The programme has, so far, three main components: the National Old Age Pension Scheme, the National Family Benefit Scheme, and the National Maternity Benefit Scheme. The provision of social security for the poorest sections of society is included in the 2011-2012 budget as an area of priority within India’s social sector, together with other areas such as the empowerment of women, population policy and health, which extends the system of social security in India beyond the objectives of standard programmes implemented in more advanced economies. The apt examples for this are Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREA). National Pension System (NPS).

India is a vast country with a surface area of about 3.3 million square km. Total population of India (According to Census of 2010-11) is 1.226 billion. About 72% of the population lives in rural area. India is a developing nation and presents the demographic features similar to the other developing nations of the world. Growing population is the major concern of the government and is considered as the principal obstacle to the economic growth of the country. Emerging occupational health problems are to be

57 The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) aims at enhancing the livelihood security of the people in rural areas by guaranteeing hundred days of wage employment in a financial year, to a rural household whose members volunteer to do unskilled manual work. The objective of the Act is to create durable assets and strengthen the livelihood resource base of the rural poor. The choice of works suggested in the Act address causes of chronic poverty like drought, deforestation, soil erosion, so that the process of employment generation is on a sustainable basis works suggested in the Act addresses causes of chronic poverty like drought, deforestation and soil erosion, so that the process of employment generation is maintained on a sustainable basis. Available at <http://nrega.nic.in/nregarpt_eng.pdf> accessed on 16 September 2013.

58 Government of India established Pension Fund Regulatory and Development Authority (PFRDA) - External website that opens in a new window on 10th October, 2003 to develop and regulate pension sector in the country. The National Pension System (NPS) was launched on 1st January, 2004 with the objective of providing retirement income to all the citizens. NPS aims to institute pension reforms and to inculcate the habit of saving for retirement amongst the citizens. Initially, NPS was introduced for the new government recruits (except armed forces). With effect from 1st May, 2009, NPS has been provided for all citizens of the country including the unorganised sector workers on voluntary basis. Additionally, to encourage people from the unorganised sector to voluntarily save for their retirement the Central Government launched a co-contributory pension scheme, ‘Swavalamban Scheme - External website that opens in a new window’ in the Union Budget of 2010-11. Under Swavalamban Scheme - External website that opens in a new window, the government will contribute a sum of Rs.1,000 to each eligible NPS subscriber who contributes a minimum of Rs.1,000 and maximum Rs.12,000 per annum. This scheme is presently applicable up to F.Y.2016-17. The subscriber will be allotted a unique Permanent Retirement Account Number (PRAN). This unique account number will remain the same for the rest of subscriber's life. This unique PRAN can be used from any location in India. Available at <http://india.gov.in/spotlight/national-pension-system-retirement-plan-all> accessed on 2 November 2013.
tackled along with the existing traditional public health problems like communicable
diseases, malnutrition, poor environmental sanitation and inadequate medical care.
Globalization and rapid industrial growth (about 7% annual economic growth) in the last
few years have further complicated the occupational health related issues. The public
expenditure on social security in India is 1.8% of the GDP\textsuperscript{59} against 4.7% in Sri Lanka
and 3.6% in China. This shows the disparity of human development that these countries
have achieved and that we are yet to achieve. In the light of the inadequate expenditure
on social security in India, it is necessary that plans and programmes be devised to
address the needs of diverse vulnerable sections of the people, comprising the total
population of India.

In the wake of globalization, rapid industrial growth and the international principles the
Government of India in order to improve the standard of medical care in the States, the
amount reimbursable to the State Governments for running the medical care scheme has
been increased from Rs.1200/- to Rs. 1500/- Per Insured person (IP) family unit per
annum with effect from 01.04.2012. The Employees State Insurance Corporation (ESIC)
has formulated action plans for improving medical services under the ESI Scheme with
focus on modernization of hospitals by upgrading their emergency and diagnostic
facilities, development of departments as per disease profiles, waste management,
 provision of intensive care services, revamping of grievance handling services,
 continuing education programme, computerization and up-gradation of laboratories etc.
The ESIC has also taken new initiatives to promote and popularize AYUSH\textsuperscript{60} systems of
treatment in ESIC Hospitals and Dispensaries in a phased manner.

ESIC IT Project ‘Panchdeep,’ one of the largest e-governance projects is under
implementation at present. All ESI Institutions are being networked under this project for
enabling IPs and their family members to avail ESI benefits anywhere anytime. Two
smart cards christened as “Pehchan Cards”, one for insured person and other for the

\textsuperscript{59} Gross Domestic Product

\textsuperscript{60} AYUSH is an acronym that is used to refer to the non-allopathic medical systems in India. It includes
the Indian medical system of Ayurveda, Yoga, Unani, Siddha, and also Homeopathy. Available at
family are being issued. Also, the ESI Act, 1948 has been amended with effect from 01.05.2010 for enhancing the Social Security coverage (Rs 15000)\(^61\), streamlining the procedure for assessment of dues and for better services to the beneficiaries.

*The following are some of the significant and recent judicial pronouncements from the Supreme Court and High Courts on the research topic.*

In the most recent case (2014) *Occupational Health and Safety Association v Union of India*\(^62\) the Supreme Court directed the Ministry of Labour to ensure that the suggestions made by the petitioner for the welfare of workers are properly implemented by the Centre and the State governments. The suggestions included -

1. Comprehensive medical checkup of all workers by doctors appointed in consultation with the trade unions. First medical check up to be completed within six months and to be done on yearly basis.

2. Free and comprehensive medical treatment to be provided to all workers found to be suffering from an occupational disease, ailment or accident, until cured or until death.

3. Services of the workmen not to be terminated during illness and to be treated as if on duty.

4. Compensation to be paid to workmen suffering from any occupational disease, ailment or accident in accordance with the provisions of the laws.

5. Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.

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\(^61\) The decision to enhance the pay limit for ESI coverage was taken at ESIC’s 160th meeting held in September 2013. And thereafter the Government’s recent decision to raise the pay limit from Rs 15,000/month to Rs 25,000/month, but yet to be officially introduced. Available at [http://www.hrindya.com/esi-wage-limit-to-be-increased-to-rs-25000/](http://www.hrindya.com/esi-wage-limit-to-be-increased-to-rs-25000/) accessed on 14 November 2013

\(^62\) 2014 STPL (web) 68 SC
6. Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation as recommended by the National Institute of Occupational Health (NIOH) Ahmadabad, Gujarat.

7. All employees to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.

8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.

9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO’s to look into the issue of Health and Safety of Workers and make recommendations.

Royal Talkies, Hyderabad v E.S.I. Corporation,\textsuperscript{63} is a landmark decision of the Supreme Court explaining the meaning of the term “employee” under the Act. In this case a cinema theatre manager, who had no statutory obligation to run a canteen or provide a cycle stand but, for the better amenities of his customers and improvement of his business, entered into an arrangement with another to maintain a canteen and a cycle stand and that other employed, on his own, workers in connection with the canteen and cycle stand. It was held the persons so employed are employees of the cinema theatre. They were covered by the definition of employee because under Section 2(9) anyone who is employed in “connection with the work of an establishment” is an employee provided that such an employee works on the premises of establishment, or under the supervision of the principal employer or his agent “on work which is ordinarily part of the work of the establishment or which is preliminary to the work carried on or incidental to the purpose of the establishment. However some nexus must exist between the establishment and the work of the employee, although it may be a loose connection. Such work should

\textsuperscript{63} AIR 1978 SC 1478: (1978) II LLJ 390 (SC)
not be extraneous or contrary to the purpose of the establishment but need not be integral to it either. Here the two operations namely, keeping a cycle-stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre. An establishment like a cinema theatre is not bound to run a canteen or keep a cycle-stand nevertheless such activities have connection with the cinema theatre and even further the revenue.

In this case the court has held that, the loaders and unloaders are engaged by the contractors only to make a casual entry on the premises of the appellant-Corporation’s depots for the purpose of loading and they are answerable only to the contractor for due performance of the said work and not to the appellant-Corporation as held by Andhra Pradesh High Court. The Court also held that the Petroleum Corporation is not to pay ESI contributions for loaders and unloaders by transporters.\(^{64}\)

In *Employees’ State Insurance Corporation, Hyderabad v A.P. Electrical Equipment Corporation, Visakhapatnam*,\(^{65}\) the Supreme Court held that the persons engaged in building repairs through contractor were not employees of the respondent Corporation within the meaning of Section 2(9) of the E.S.I. Act, 1948. In order to hold a person employee the important factor is basic control over employee.

In *Employees’ State Corporation, Hyderabad and Others v Chirala Co-operative Spinning Mills Ltd, Chirala Prakasam*,\(^{66}\) certain persons who were sent by Polytechnic Institute as trainees in the respondent spinning mill. The corporation sent demand notice under the Act regarding these trainees. The respondent pleaded that these persons were only trainees from polytechnic Institute sent for training under a scheme introduced by the Ministry of Human Resources and Development and as such were not employees. They were paid only conveyance charges and no wages of any kind was paid to them. The appellant corporation treated the said amount of conveyance charges as wages and on that basic sought of justify the levy of contribution. It was held by the High Court that

\(^{64}\) *Hindustan Petroleum Corporation Ltd v Employee’s State Insurance Corporation*, 2008 LLR 490 (Andra Pradesh)

\(^{65}\) (2005) II LLJ 181 (Andra Pradesh)

\(^{66}\) (2005) I LLJ 910 (Andra Pradesh)
basically the payment of wages was the important factor to decide whether a person was an ‘employee’ or not. In this case it was not even alleged that the respondent paid any wages to the persons concerned. Further traveling allowance paid to them could not be treated as wages under the Act and the persons who were trainees were not employees of the respondent. Hence spinning mills were not liable to contribute in respect of these trainees. The appeal was dismissed.

In *E.S.I. Corp v Tata Engg. & Co* the court held that apprentices are not employees. They are engaged by a Company merely as trainees for a particular period for a distinct purpose and the Company is not bound to employ them in their work after the training period is over. The object of apprenticeship is learning under certain agreed terms. Simply because certain payment is made to him and he has to be under certain rules of discipline do not convert him to a regular employee. They are not said to be employed in or in connection with the work of the Company. They are also not given wages within the meaning of that word in Section 2(2). Later the definition of “Employee” was amended and as per that an Apprentice is within the definition at present.

In *Maherunisha Ahemad Khan Pathan and other v Employees State Insurance Corporation*, a workman while returning home was assaulted by a mob during communal riots and died. It was held that the place of accident need not necessarily be located within the limits of the factory premises so long as the accident falls within a zone which can be notionally deemed to be the zone of the factory for the propose of the Act by recourse to the theory of notional extension. Therefore death was employment injury within the meaning of Section 2(8) of Act.

In *Sathybhama v E.S.I. Corpn.*, a woman employee while returning home was hit by a scooter on public road in front of the factory gate. It was held that theory of notional extension cannot be reduced to a mathematical formula of distance and time. Decision

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67 AIR 1976 SC 66: (1976) I LLJ 81 (SC); See also *Regional Director, E.S.I. Corporation v M/s. Fire Manglore (p) Ltd.* (1986) I LLJ 216 (Karnataka)
68 (1995) II LLJ 1 (Gujarat)
69 (1992) I LLJ 831 (Kerala)
would be depend on the facts and circumstances of each case. In the present case considering both the point of time as that of distance the theory of notional extension shall apply and the injury sustained is an employment injury.

In *Sheela v E.S.I. Corpn.*,\(^70\) an employee of M/s. Electronic Product of India, Chandigarh left his house at about 8.30 a.m. to join his duties at 9 a.m. He died at bus-stand while waiting for the local bus. It was held that the employee died while he was going to his place of work. The theory of notional extension will apply and the death occurred in the course of employment.

In *Indian Rare Earths Ltd. v Subaida Beedi*,\(^71\), a workman of the appellant was involved in an accident while traveling by his cycle to the work spot. The employer has provided for bus subsidy to its workmen but the concerned workman was not residing on any of the bus routes and hence he used to go by bicycle. While on way to the work spot a car dashed against him on public road and he died. It was held that although traveling by bus was an implied condition of service but in view of the fact that the concerned workman was not on any of the bus route, the exigencies of the employment and circumstances obliged him and the company allowed him to ride a bicycle to the work place. In other words it was an implied condition of his employment that he may travel to his work place from his residence and back home by a bicycle. Therefore, the workman was in the course of his employment from the moment he began to ride the bicycle for reaching his work place.

In *Regional Director E.S.I. Corpn. v L, Rung Rao*,\(^72\), an employee of M/s. Mysore Breweries Ltd., working as Refrigerator operator was run over and killed on the spot by unidentified motor vehicle when he was on his way to factory to join his duty. His father claimed benefits under the Act by moving E.S.I. Court. The injury was held to be an employment injury. It was held that if it is proved that the injury to the employee was

\(^{70}\) (1991) II LLJ 247 (Punjab & Haryana)  
\(^{71}\) (1981) II LLJ 293 (SC)  
\(^{72}\) (1982) I LLJ 29 (Karnataka)
caused by an accident arising out of and in the course of employment then it is immaterial whether it occurred inside the factory or outside or whether it occurred during office hours or after. However, the place or time of accident should not be totally unrelated to the employment. There should be a nexus or causal connection between the accident and employment.

In Employees State Insurance Corporation, Calcutta v Abdul Salam and others\textsuperscript{73}, the respondent No. 1 was an employee of respondent. 2. Respondent No. 1 came to resume his duty after a gap of about 4 years but he was not allowed to join duty in spite of producing medical certificate and at that point of time the respondent No. 1 being a paralytic patient had an accidental fall resulting in injury for which he claimed benefit as permissible under the Employee’s State Insurance Schemes. The claim was opposed by respondent No. 2 as well as the present petitioner. It held that the relevant time respondent No. 1 was not in employment and hence the injury was not out of and in the course of employment. Therefore, no benefits could legally be claimed under the Employee’s State Insurance Act, 1948.

In Employees State Insurance Corporation v Sasi,\textsuperscript{74} while the respondent was returning to his house after the night shift, he was assaulted by some persons near the bus stop adjacent to the factory. The investigation revealed that he was assaulted on account of personal vengeance. He sustained injury on his left hand and claimed benefits admissible for employment injury as defined under Section 2 (8) of the Employees State Insurance Act. The appellant denied the injury to be an employment injury in as it was the result of an assault by a stranger outside the premises of the factory and had not arisen out of employment. Allowing the appeal the High Court held that the injury sustained by the employee was due to an assault to him by strangers outside the premises of the factory and while he was on his way to his house. This could not be said to have its origin in his employment in the factory and as such was not employment injury under Section 2(8) of the Employees State Insurance Act, 1948 and no benefits were payable under the Act.

\textsuperscript{73} (2003) I LLJ 765 (Calcutta)
\textsuperscript{74} (2002) II LLJ 273 (Alkahabad)
It is submitted that this judgment of the Honorable Court is not in tune with the present trend of welfare legislation. The injured employee had left for his house after night shift. Although he was not at the place of accident in connection with his employment but he was there because he happened to be in that employment.

In *Regional Director, E.S.I.C., Ahmedabad v Batulbibi and another*\(^75\), the workman of a textile mill while on duty had gone to canteen during the short recess to take tea, where he died of mio-cardiac infraction. His widow son claimed compensation. It was held that the death arose out of and in the course of employment because the recess period is not so long as to disrupt the continuity of the employment. If the recess was indeed short, the liberty of an employee to go away does not in reality mean anything, since he could not have gone so far as to snatch the continuity of his employment.

### 1.1. Research Problem

The following research problems, which have encouraged and obliged the researcher to chose the present topic. They are- the application of the ESI Act only to the non-seasonal, power using factories or manufacturing units employing ten or more persons and non-power using establishments employing twenty or more persons (At present, under Section 2(12) of the ESI Act, it is applicable to non-seasonal factories employing 10 or more persons); the enabling provisions of the Act with regard to the notification for the implementation of the ESI scheme; coverage of the employees of the factories or establishments; the manner in which wage ceiling for purpose of coverage is revised from time to time; the appropriate government’s power to extend the provision of the ESI Act to various classes of establishment- industrial, commercial, agricultural or otherwise in nature; whether industry has the right to opt out of the ESI scheme; the scope of the term ‘Employee’; the scope of the term ‘Employment Injury’ and other relevant aspects.

\(^{75}\) (1988) II LLJ 29 (Gujarat)
1.2. Significance and Utility of the Study

Therefore, the study focuses on the present day World Scenario where labour concerns are hitting the headlines and the clash is prominent with Developmental programmes, with India as no exception, this study has good significance and utility. The argument that insistence on occupational health and safety may adversely affect the industrial growth and development is not always true. On the contrary, neglect of occupational health and safety of the workers may result in invisible burden to the economy, which, in some cases, may be substantial. Ill health of the workers results in reduced production due to inefficiency of the workers and sickness absenteeism. Moreover, the workers have to be paid sickness benefits and compensation. There is also increased expenditure either on the part of the factory management or the Government to meet the medical expenses for treatment. Further, it must be realized that most of the occupational diseases are incurable and, therefore, the best course of action in dealing with them is their prevention. The economic benefits and incurable nature of occupational diseases must be highlighted while proposing for the investment in occupational health and safety programmes. In the light of the above said, on the completion of the study, the researcher will be well outfitted to strengthen the knowledge base with respect to Labour Issues, and Human Rights.

1.3. Hypotheses of the Study

The researcher has formulated the following hypotheses;

1. That, the Fundamental Right i.e. Right to Life under Article 21 of the Indian Constitution, cannot be meaningfully enjoyed unless a clean, healthy and wholesome environment is provided.

2. That, the ESI Act is ineffective in dealing with employee’s health issues due to the lack of proper coverage of employees belonging to different segments.
3. That, while the Country has adequate legal mandates to solve employee’s problems, the gaps in policy implementation mechanism indicate that the enforcement policy is rather weak, sometimes non-existent.

4. The Apex Court has through judicial activism struck a golden balance between Development, Economics and employees health issues.

5. That, poverty, illiteracy and population explosion are the major hurdles for ineffectiveness in dealing with employees’ health and safety issues.

1.4. The Researcher in the process has formulated the following research questions for carrying on the study

1. What are the constitutional provisions in India for the protection and improvement of the employee’s interest?

2. What is the existing legal mechanism ensuring employee’s health and safety?

3. What is the impact of socio-economic problems such as poverty, illiteracy and population in handling the health and safety issues of the employees?

4. Is the existing legal mechanism fool proof to ensure protection and quality of life for all employees?

5. What are the International Social Security Standards for the safety and promotion of employee’s interest?

1.5. Research Methodology of the Study

This Research is purely a Doctrinal Study. The Research concerned is, at the International level, the study of the International Conventions, International
Commissions, Declarations and Documents of International Institutions with their Reports.

On the National scene the source material consists of the different Social Security Legislations, the Constitutional Provisions, their interpretations and construction. Also relevant for the study are the policy documents, their execution and implementation both at the State and the National level.

The study also takes in its embrace the in-depth analysis of the role of the Judiciary. The different High Courts and the Supreme Court have in the process of their adjudication often been called to answer the critical and difficult question of Development and the Employees interest.

As the study is a Doctrinal the analysis shall be based on the qualitative data, based on the primary and secondary sources. Further, much of the sources of data to be used are the secondary sources. Case Laws, Number of books, Legal Journals and articles written by eminent authors relating to the subject matter of the research shall be used. Electronic publications will also be referred. A uniform mode of citation will be adopted throughout the thesis.

1.6. Scope and Limitation of the Study

The concept, philosophy and law of ESI Act are multidimensional and multifaceted. Due to the vastness of the subject, the researcher would restrain to limit the area of the study and shall focus mainly on the achieving of effective implementation of the provisions of the ESI Act with reference to the term ‘Employee’ and ‘Employment Injury’ along with related Human Rights issues emphasizing on the legal aspects, substantiating the study with the landmark judgments of the superior courts.

The scope of the study covers the international standards prescribed by the ILO through conventions, conferences and recommendations for the social security concept and legislations. The researcher focuses on important committees and commissions at
international and national level. The study further emphasizes on information system in occupational health recognition, evaluation and control of hazards, Evaluation of effectiveness of the control strategy (periodic medical and environmental monitoring), Management of cases of occupational diseases and Creation of awareness in workers, trade unions and management.

1.7. **Scheme of the study/chapterisation and its presentation**

The Thesis has been divided into seven chapters, which are as under:

Chapter. 1: Introduction

Chapter. 2: Historical Perspective of the Social Security

Chapter. 3: International approach to the Social Security

Chapter. 4: The Existing Legislative Frame work of the Social Security Laws in India

Chapter. 5: An analysis of the term ‘Employee’ with the decisions of the High Courts and Supreme Court

Chapter. 6: An analysis of the term ‘Employment Injury’ in the light of the High Courts and Supreme Court judgments

Chapter. 7: Conclusion and Suggestions

The **First Chapter** deals with the *Introduction*. The researcher in this chapter has given a Bird’s Eye View of the topic, its importance in the present day, the Social Security, Social Security Legislations, Social Security and Human Rights. It also includes the research problem, scope, limitation, significance, utility, research questions and hypothesis of the study. The methodology of the study is also dealt.
**Second Chapter** is the *Historical Perspective of Social Security*. In this, there is an endeavour to travel into the past, down the lanes of history and understand as to the concern of humanity towards the Social Security.

All people throughout all of human history have faced the uncertainties brought on by unemployment, illness, disability, death and old age. In the realm of economics, these inevitable facets of life are said to be threats to one’s *economic security*. For the ancient Greeks economic security took the form of amphorae of olive oil. Olive oil was very nutritious and could be stored for relatively long periods. To provide for themselves in times of need the Greeks stockpiled olive oil and this was their form of economic security. In medieval period (in Europe), the feudal system was the basis of economic security, with the feudal lord responsible for the economic survival of the serfs working on the estate. The feudal lord had economic security as long as there was a steady supply of serfs to work the estate, and the serfs had economic security only so long as they were fit enough to provide their labor. During the middle Ages the idea of charity as a formal economic arrangement also appeared for the first time. Family members and relatives have always felt some degree of responsibility to one another, and to the extent that the family had resources to draw upon, this was often a source of economic security, especially for the aged or infirm. And land itself was an important forms of economic security for those who owned it or who lived on farms.

India has enjoyed a joint family system that took care of the social security needs of all the members even with minimal ownership of material assets like land. In keeping with its cultural traditions, family members and relatives have discharged their shared responsibility towards one another. To the extent that the family has resources to draw upon, this is often the best relief for the special needs and care required by the aged and those in poor health. However, with increasing migration, urbanization and demographic changes there has been a decrease in large family units, and the need for a formal system of social security gains importance.
The Third Chapter discusses International approach to the Social Security: International Scenario, draws a chronological list of the different conventions, charters, conferences and recommendations with respect to Social Security at the international scenario. International Labour Organization (ILO) is one of the 12 specialized agencies of UNO. 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 of freedom of association, the organization of vocational and technical education and such other measures.

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.

Further, the study emphasizes on how ILO is distinct from other international institutions as its major concern is social justice? The aims and purposes of this institution are explained and discussed. In 1946, ILO and United Nations made agreement and ILO was recognized as a specialized agency of UN. In the era of UN, there was more attainment of social justice as an aim of International co-operation and cooperative actions.

The study also explains the Philadelphia Charter which 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.

From the International scenario the Fourth Chapter, i.e. *the Existing Legal Framework of the Social Security Laws in India: National Scenario*, moves to chronological list of the different legislations and policy documents on the national scene. It provides the Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement; Labour laws enacted by Central Government and enforced both by Central and State Governments and Labour laws enacted by Central Government and enforced by the State Governments. It also explains the programmes of the Interim National Government during its power for the welfare of the working classes in our country. The Interim National Government of India was formed on 2nd Sept 1946 from the newly elected Constituent Assembly of India and Pakistan from British rule to Independence. It was in power until 15th August 1947.

Further, the study focuses on the labour policy followed in the successive five year plans since independence, adopted an approach which rested on considerations that the basic needs of workers for food, clothing and shelter must be satisfied. The objective of achieving ‘socialistic pattern of society’ was the avowed goal of early five year plans and provisions were made accordingly for the welfare of workers. It also discusses the chief Social Security Legislations, The Employees’ State Insurance Act, 1948 (ESI Act) Workmen’s Compensation Act, 1923 Maternity Benefit Act, 1961 Payment of Gratuity Act, 1972 The Employees’ Provident Fund Act, 1952 and also the different Social Security Schemes in India.

The Fifth Chapter, *An analysis of the term ‘Employee’ with the decisions of the High Courts and Supreme Court*, makes a sincere effort to fathom the depths of the term ‘Employee’ in the light of the Section 2 (9) of the Employees State Insurance Act, 1948 which defines the term ‘Employee’ with reference to the decisions of High Courts and Supreme Court. For example, coverage of seasonal and non-seasonal employees, casual employee, exempted employee, over time remunerated employee, incentivised employee,
if the total number of employees, as prescribed for coverage, falls below the said limit, if a company becomes sick what about the contribution of its share? How long an employee as member of ESI Will remain covered when his wages increase above the coverable ceiling? Will the loaders and unloaders (employees) engaged casually or by the transporters, be covered under the ESI Act? Will different branches be taken into consideration in calculating the number of employees for coverage under the ESI Act? Will the employees engaged through the fabricators for an export house be covered under the ESI Act? Whether a partner of a firm, being an establishment under the ESI Act, would be covered under the Act? Whether a Managing Director of a Company, getting wages below the prescribed limit, would be covered under the ESI Act? Apprentice-Is he an employee? List goes on.

Further, it also discusses the Rules and Regulations relevant to the term ‘Employee’ framed under the ESI Act.

The Sixth Chapter, An analysis of the term ‘Employment Injury’ in the light of the High Courts and Supreme Court, makes an honest effort to understand the depths of the term “Employment Injury” in the light of the Section 2 (8) of the Employees State Insurance Act, 1948 which defines the term “Employment Injury” with reference to the decisions of High Courts and Supreme Court. The following ingredients of an Employment Injury are discussed in depth: The injury must be personal to an employee. The injury must be caused by an accident; or occupational disease. The accident must arise out of and in the course of employment. The Employment must be insurable. Presumption as to, accident arising in the course of employment. Notional Extension. Employers’ Liability in case of occupational disease. Contracting of an occupational disease after discontinuance of service.

Additionally, it also discusses the Rules and Regulations relevant to the term ‘Employment Injury’ framed under the ESI Act.

The Researcher proposes to conclude the study on hand in Chapter Seventh by proposing conclusions and suggestions based upon the study of various Committee and