CHAPTER-4

EXISTING LEGAL FRAMEWORK OF
THE SOCIAL SECURITY LAWS IN INDIA


Social Security caters to the universal human need for reassurance and support in
times of unemployment, illness, disability, death and old age. The State bears the
primary responsibility for developing appropriate systems for providing protection
and assistance to its workforce and their families. Public support systems for social
security in India have gained prominence over traditional family support in tune with
the trends of urbanization and work place migrations. The dependence on social
security varies as per the need and income status.\(^1\) In India a large majority of
workforce is devoid of any formal social security protection. There is a dearth of
formal social security protection i.e. either a contribution based social insurance
scheme or tax/cess based social security benefits. This is a major challenge to the
existing social security systems that have evolved in the last century. Security and
institutional support are required by all persons in order to face difficulties and to
mitigate hardships in the event of losses due to sickness, injury, loss of income and
inability to work.\(^2\)

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.\(^3\) The Social Security Laws in India at present can be broadly
divided into two categories, namely, the 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

\(^2\) Available at http://www.Planningcommission.nic.in/aboutuc/committee/wrkgrp/wg_soclscty.pdf
accessed on 25 September 2012.
\(^3\) As per the survey carried out by National Sample Survey Organisation ((NSSO) 2000-2001.
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, 1952. 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.  

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.

4.2. The Interim National Government of India

The interim national government during its power had drawn up a programme for the welfare of the working classes in our country. This programme had the following major characteristics:-

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5 ibid
6 The term ‘land reforms’ involves procurement and redistribution of large holdings of agricultural land among the small farmers and landless agricultural labourers. It is an instrument to bring about improvements in the institutional framework of land. The responsibility of land reforms is owned by the government with a view of benefiting those who either have petty holdings or have no land at all. As big land owners are quite unlikely to share their holdings with their landless counterparts, intervention by the government using force of law/legislation is necessary to secure social justice for the masses.
7 The introduction of high-yielding varieties of seeds and the increased use of fertilizers and irrigation are known collectively as the Green Revolution, which provided the increase in production needed to make India self-sufficient in food grains, thus improving agriculture in India. High-yielding wheat was first introduced to India in 1963 by Dr. Borlaug has been hailed as the Father of the Green Revolution but M.S. Swaminathan is known as the “Father of the Green Revolution in India” The methods adopted included the use of high yielding varieties(HYV) of seeds.
8 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.
9 B. Singh, Labour Policy and Administration, (MD Publications Pvt Ltd, New Delhi 1996) 11-20
a) Statutory prescription of minimum wages in sweated industries and occupations in agriculture.
b) Promotion of fair wage agreements.
c) Steps to secure for workers in plantations a living wage.
d) Reduction in the hours of work in mines to bring the working hours in line with the hours of work in factories which have been reduced from 54 to 48 hours in a week.
e) Legislation to regulate the hours of work, spread over weekly rest periods and holidays with pay for other classes of workers not now subject to regulation, that is, those employed in shops and commercial undertakings, road transport services, docks and municipal labour.
f) Overhaul of the Factories Act with a view to the prescription and enforced of right standards in regard to lighting, ventilation, safety, health and welfare of workers. Conditions of work are to be improved, particularly in unorganised industries and workplaces, to which the present Factories Act does not apply.
g) Organization of industrial training and apprenticeship schemes on a large scale with a view to improve the productive and earning capacity of workers.
h) Steps to secure for workers in plantations, mining and other categories provision of housing.
i) Organization of the Health Insurance Scheme, applicable to the factory workers to start with for the provision of medical treatment and monetary relief during the sickness, maternity benefit on an extended scale, medical treatment in case of disablement and to dependants in case of death in place of lump sum payments.
j) A central law for maternity benefit to secure for other than factory workers the extended scale of benefits provided under the Health Insurance Scheme.
k) Right to leave with allowances during the period of sickness.
l) Provision for crèches and canteens.
m) Welfare of coal mining labour and welfare of the mica mining labour.
n) Strengthening of the inspection staff and the inspection of mines.
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.10

The term social security has been defined differently by various authorities and thus, there is no commonly accepted definition of the term. Recently, some new concepts viz. social safety nets,11 social protection and social funds relating to social security have emerged. Social safety nets are measures to mitigate the negative effects of structural adjustments mostly in form of cash payments. Broadly all these concepts are part of the all pervasive term ‘social security’.

4.3. The Provisions of Constitution of India on Social Security

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

11 In Southeast Asia, the issue of “Social Safety Nets” (SSNs) has emerged more prominently since the financial crisis. Despite the increased interest in social safety nets, there is still considerable confusion among scholars and national and international organizations regarding the use and meaning of the term. This article considers the different definitions of the term—particularly as it was used during the Asian Financial Crisis—and to attempt to clarify its meaning and proper use. The safety net analogy is drawn from high-wire walkers who are protected by a safety net if they fall. The safety net prevents any walker who falls—unexpectedly or not—from hitting the floor and incurring catastrophic injuries. Following this line of reasoning, it is not surprising to learn that some organizations and scholars use the term SSN such that it encompasses private and public mechanisms that assist individuals in maintaining a minimum level of consumption. The term “social safety net” (SSN) began to be used by Bretton Woods institutions in connection with structural adjustment programs related to their lending programs. Developing countries introduced SSNs to mitigate the social impact of structural adjustment measures on specific low-income groups. They were initially formulated to serve three objectives: poverty alleviation, to make adjustment programs more politically acceptable and institutional reform. During the Asian Financial Crisis, there was a great deal of confusion regarding the content and consequent identification of SSN programs. [Srawoopath P., Shigeyuki A., Nipon P., ‘The Meaning of Social Security Nets’ Journal of Asian Economics vol.19, Issues 5-6 Nov-Dec 2007 pp-467-473.]
influencing the social security legislations, which provide sufficient guarantee against exploitation.

**Article 21** - Right to life and liberty - 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 means of livelihood to everyone. In other words, right to social security is inherent in right to life.

**Article 24** - Prohibition of 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

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12 *Article 21. Protection of life and personal liberty* - No person shall be deprived of his life or personal liberty except according to procedure established by law.

13 *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 mere 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.

14 Article 38 renumbered as clause (1) thereof by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 9 (with effect from 20-6-1979).

15 Inserted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 9 (with effect from 20-6-1979).
(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.16

Article 41 - 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.

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16 Substituted by the Constitution (Forty-second Amendment) Act, 1976, sec. 7 for clause (f) (with effect from 03-1-1977).
Article 43A\textsuperscript{17} – 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.

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 laws are to be 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 - The Union List, entries 13,\textsuperscript{18} 28,\textsuperscript{19} 55,\textsuperscript{20} 61,\textsuperscript{21} 65,\textsuperscript{22} and 94.\textsuperscript{23} The State List, entry 9.\textsuperscript{24} The Concurrent List, entries 20,\textsuperscript{25} 21,\textsuperscript{26} 22,\textsuperscript{27} 23,\textsuperscript{28} 24,\textsuperscript{29} 25,\textsuperscript{30} 36,\textsuperscript{31} and 45.\textsuperscript{32}

The directives contained in Part IV are the common man’s pathway towards the attainment of socio-economic justice. As rightly pointed out by Justice Ramaswamy\textsuperscript{33}

“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

\textsuperscript{17} Inserted by the Constitution (Forty-second Amendment) Act, 1976, sec. 9 (with effect from 3-1-1977).
\textsuperscript{18} Participation in international conferences, associations, and other bodies and implementing of decisions made there.
\textsuperscript{19} Port quarantine, including hospitals connected therewith; seamen’s and marine hospitals.
\textsuperscript{20} Regulation of labour and safety in mines and oilfields.
\textsuperscript{21} Industrial disputes concerning union employees.
\textsuperscript{22} Union agencies and institutions for- a) professional, vocational or technical training, including the training of police officers; or b) the promotion of special studies or research; or c) scientific or technical assistance in the investigation or detection of crime.
\textsuperscript{23} Inquiries, surveys and statistics for the purpose of any of the matters in this list.
\textsuperscript{24} Relief for disabled and unemployable.
\textsuperscript{25} Economic and Social planning.
\textsuperscript{26} Commercial and industrial monopolies, combines and trusts.
\textsuperscript{27} Trade unions; industrial and labour disputes.
\textsuperscript{28} Social security and social insurance; employment and unemployment.
\textsuperscript{29} Welfare of labour including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pensions and maternity benefits.
\textsuperscript{30} Education, including technical education, medical education and universities, subject to the provisions of entries 63,64,65,and 66 of List I; vocational and technical training of labour.
\textsuperscript{31} Factories.
\textsuperscript{32} Inquiries and statistics for the purpose of any of the matters specified in the list II or list III.
\textsuperscript{33} Air India Statutory Corporation v United Labour Union, AIR 1997 SC 645 at p. 648.
living wage, a decent standard of life, education and leisure. To them these are fundamental facets of life....”

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 which every workmen realize socio-economic justice assured in the Preamble, Article 14, 15, 21 and Directive Principles of the Constitution

34 PU.D.R. v Union of India AIR 1982 SC 1473, the Supreme Court held “it is the constitutional obligation of the state to take necessary steps for the purpose of interdicting such violation and ensuring observance of fundamental rights”. In National Textile Workers Union v Ramakrishnan AIR 1983 SC 75, The Supreme Court observed: “The workers therefore have a special place in a socialist pattern of society. They are 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”. So also 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 aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met the basic needs”

35 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

36 Article 14. Equality before law- 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.

37 Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, 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
Social Security was also one of the topics discussed at the Fifth Asian Trade Union seminar held at New Delhi from 30th November, to 3rd December, 1977. It made several recommendations, of which some of the important ones related to (a) provision of basic needs, essential services, medical care and legal aid; (b) work guarantee as an integral part of social security; (c) adequate and effective measures for rural social security; (d) rate of interest paid to the provident fund beneficiaries to be well comparable with the bank rates (e) long term social security benefits to be linked with the cost of living index; (f) creation of voluntary alternative investment for the provident fund money into suitable government controlled or guaranteed schemes yielding higher return. (g) Income redistribution effect of social security programmes; (h) integration of various social security institutions.38

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 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.39

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 P.B. Gajendragadkar. The Commission submitted its report in August, 1969 after detailed examination of all aspects of labour problems, both in the organised and unorganised sectors. The recommendations covered issues like recruitment agencies and practices, employment service

40 Available at <http://pib.nic.in/focus/fojan99/fo1101991.html> accessed on 11 June 2012.
Social Security and Five Year Plans

The First Five Year Plan\textsuperscript{43} apportioned with labour and industrial associations with a humanistic approach. It standard the importance of labour in the self-actualization of the targets of the plan and creating an economic order in the country. With this view, the first plan associated certain rights and obligations with the role which labour had to play.

The rights comprised aspects like adequate provision for the basic requirement of the workers in respect of food, clothing and shelter so as to enable them to remain healthy and efficient, provision for improved health conditions, wider provision for social security, better educational opportunities and increased recreational and cultural facilities; conditions of work that would safeguard the worker’s health and protection

\cite{NCRL:1991} The National Commission on Rural Labour (NCRL), 1991 under the Chairmanship of Dr. C. H. Hanumantharao, discussed the issue of social security and recommended minimal social security benefits for rural labourers such as old age pension, life insurance, maternity benefit, disability benefit accident compensation, minimal health care and sickness benefit. Available at \url{http://rural.nic.in/sites/downloads/gramin-bharat/gb_mar_eng09.pdf} accessed on 11 June 2012.

\cite{Government:1951} It suggested for (a) insurance against death or disability, (b) health insurance, (c) maternity cover, and (d) old age benefits. Available at \url{http://rural.nic.in/sites/downloads/gramin-bharat/gb_mar_eng09.pdf} accessed on 11 June 2012.

against occupational hazards, right to organize and to take lawful action in furtherance of their rights and interests. The plan called upon labour to realize the fact that in an underdeveloped economy, it cannot build for itself but they have to make a substantial contribution. This will ultimately lead to peaceful industrial relations. The plan envisaged for establishing a tripartite body for determining norms and standards, standardization of wages with principles of social policy, profit sharing, permanent wage boards etc. Above all, a full and effective implementation of minimum wage legislations was the main recommendations in First Five Year Plan.

**Second Five Year Plan**[^44] dealt with employment aspects. This plan gave importance to the employment opportunities with an objective of maximizing rate of growth output through the utilization of available resources as a means for economic development. The task is divided into three, firstly about providing employment opportunities for the existing urban and rural growth, secondly, providing natural increase in the labour force and lastly about those underemployed in agriculture and household activities to be provided with increased work opportunities. With the adoption of the policy of socialistic pattern of society, the labour policy in the Second Plan was accordingly influenced.

The main emphasis of the Second Five Year Plan was on the problem of unemployment and under employment. The plan gave high priority to the development of large scale joint stock enterprises on the one hand and village and small scale industries on the other for solving the unemployment problem.

**Third Five Year Plan,**[^45] apart from the implementation of the schemes drawn up in the first two plans, social security measures were taken into consideration. It declared the labour policy by emphasizing states’ responsibility in providing facilities and co-operative arrangements for settling disputes. It visualized that “the object is to secure not peace alone but higher levels of industrial efficiency and rising standard of life of working class.”

**The Fourth Five Year Plan**\(^{46}\) analysed the Employees State Insurance Scheme, industrial training to craftsmen, employees provident fund scheme and initiate that these expanded steadily. This plan endorsed for adoption of the ideology of ILO that includes “development involving comprehensive programs of rural development, labour intensive public work programmes and fuller utilization of industrial capacity, promotion of labour intensive products in domestic and foreign markets and application of economically sound labour intensive techniques in industrial production”\(^{47}\).

**The Fifth Five Year Plan**\(^{48}\) found that “stray progress is being achieved in social security measures”. It reiterated the suggestion of the Committee on Perspective Planning appointed by the Employees’ State Insurance Corporation that the Employees’ State Insurance Scheme should carry out a 5-year phased programme of extension of additional categories of establishments, including smaller factories, shops and commercial establishments, mines and other establishments. The Plan also stated that the scope for integrating certain important social security measures is being studied.

**The Sixth Five Year Plan**\(^{49}\) recognize that the time had come when labour policy should be much more concerned with the interests of vast masses of workers who are outside the organized sector and are unable to protect their interests. *The plan spoke about industrial policy i.e., ‘industrial development policy’ in a developing country like India, it has to meet two conflicting requirements. It must protect the right of the working class to organize and to struggle for its economic and social betterment by all democratic and legal means.*

The plan also envisaged for extension of benefit of minimum wages to more beneficiaries, revising wage policy assuring similar wages for similar work, worker’s

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\(^{47}\) In the report of United Nations Environment Programme (UNEP), the International Labour Organisation (ILO) has forcefully agreed for the integration of employment creation to economic development through the maximum possible productive resources available labour to accelerate economic growth and more particularly, to substitute labour for scarce capital where there is economically feasible.


share in profit and income, expansion of working of National Safety Councils and National Council for Safety in Mines.

The Plan debated social security of workers under Employees State Insurance Act, 1948; Employees Provident Fund and Miscellaneous Provisions Act, 1948; Payment of Gratuity Act, 1947 and Family Pension Scheme. The Plan envisaged for expansion of coverage of these Acts not only to factories employing 10 to 19 persons using power but also to shops, hotels, restaurants, cinemas, theatres, and motor transport and newspaper establishments employing 20 workers or more.

The Seventh Year Plan\(^{50}\) recognize that the labour entered the production process from the supply side as well as from the demand side and the thrust of Seventh Plan was an improvement in ability utilization, efficiency and productivity. This plan has given emphasis to industrial safety and required constant attention due to its significant impact on the working conditions and welfare of workers and also on the production mechanism.

The objective in the Eighth Five Year Plan\(^{51}\) was giving employment generation and economic growth as complementary rather than conflicting processes. The plan took the aspect of need of important scrutiny in the impact of macro-economic, sectoral and labour policies on employment.

During Ninth Five Year Plan\(^{52}\) period. Appreciating the encouraging results of these reforms, the plan document observed that Indian economy has responded well to the change in policy direction.

The Tenth Five Year Plan\(^{53}\) as approved by National Development Council (NDC) envisaged an annual growth of 8% which is higher than 5.5% achieved during the Ninth Five Year Plan period. The plan targeted 10 million employment opportunities per year over Tenth Plan period. The plan especially emphasised on social security and framed a working group. The report\(^{54}\) elaborately discussed the present system of

\(^{50}\) Planning Commission, Government of India- Seventh Five Year Plan 1985-1990.


social security in India. The objective of this plan was to support attainment of economic and social objective in labour sector through a set of strategies. It is believed that a reasonable return to labour is facilitated by labour laws including provisions for social security to workers. The Plan envisaged that to reach out to the entire labour force employed, many of the existing institutions, laws and programmes including those on social security have to be restructured.

**The Eleventh Five Year Plan**\(^{55}\) considering the achievements made by the ESIC\(^{56}\) and the EPFO\(^{57}\) in providing institutionalized social security cover to a majority of the workers in the organized sector has recommended that an attempt would be made to widen their coverage and strengthen them. To cover more number of beneficiaries, measures should be taken to enhance the capability of these institutions to cope with the workload. To reduce harassment and corruption in these institutions, the government will strive to streamline the delivery system in these institutions.

**Twelfth Five Year Plan,\(^{58}\)** for growth to be inclusive it must create adequate livelihood opportunities and add to decent Employment commensurate with the expectations of a growing labour force. India’s young age structure offers a potential demographic dividend for growth, but this potential will be realized only if the extent and quality of education and skill development among new entrants to the workforce is greatly enhanced.

India is characterized by ambiguity in policy as well as in responsibility and lack of effective implementation of legislations. There are many schemes but these have been framed at various points of time and, therefore, do not conform to any overall design reflecting a comprehensive and consistent policy or direction. The working group on Labour Policy\(^{59}\) set up by the Planning Commission also pointed out that the schemes of social security, types of benefits or protection provided there under do not conform to any overall plan or design. The public expenditure on social security in

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\(^{56}\) Employees State Insurance Corporation

\(^{57}\) Employees Provident Fund Organisation

\(^{58}\) Planning Commission, Government of India -Twelfth Five Year Plan 2012-2017

\(^{59}\) Report of Working Group for 11th Five Year Plan 2007-2012 under the Chairmanship of Prof. B.L.Mungekar
India is 1.8% of the GDP against 4.7% in Sri Lanka and 3.6% in China. This itself 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.

4.4. An Overview of Social Security Legislations

The Indian Social Security legislations can be classified as follows:-

(a) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.
(b) Labour laws enacted by Central Government and enforced both by Central and State Governments.
(c) Labour laws enacted by Central Government and enforced by the State Governments.

4.4.1. Social Security laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement

The following are the Social Security laws wherein Central Government plays vital role for the enforcement.

The Employees’ State Insurance Act, 1948

The Employees’ Provident Fund and Miscellaneous Provisions Act, 1952

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61 The Royal Commission on Labour had ‘recommended that legislative authority should remain with the Central Government, though the states could also be given jurisdiction provided that no legislation was undertaken by the states without the previous concurrence of the Central Government and that such legislation did not impair or infringe the Central Government’s legislation’. Report of the Royal Commission on Labour in India, (1931) 38-83.
The Dock Workers (Safety, Health and Welfare) Act, 1986

The Mines Act, 1952


The Beedi Workers Welfare Cess Act, 1976

The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972

The Cine Workers Welfare (Cess) Act, 1981

The Beedi Workers Welfare Fund Act, 1976


4.4.2. Social Security laws enacted by Central Government and enforced by both Central and State Governments

The following laws are enforced by both Central and State Governments

The Child Labour (Prohibition and Regulation) Act, 1986.

The Building and Other Constructions Workers’ (Regulation of Employment and Conditions of Service) Act, 1996.


The Equal Remuneration Act, 1976.

62 ibid
The Industrial Disputes Act, 1947.

The Industrial Employment (Standing Orders) Act, 1946.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

The Maternity Benefit Act, 1961

The Minimum Wages Act, 1948

The Payment of Bonus Act, 1965

The Payment of Gratuity Act, 1972

The Payment of Wages Act, 1936

The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981

The Building and Other Construction Workers Cess Act, 1996

The Apprentices Act, 1961

Unorganized Workers Social Security Act, 2008

Working Journalists (Fixation of Rates of Wages) Act, 1958.

Merchant Shipping Act, 1958

Sales Promotion Employees Act, 1976

Dangerous Machines (Regulation) Act, 1983

Dock Workers (Regulation of Employment) Act, 1948
Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997

Private Security Agencies (Regulation) Act, 2005

4.4.3. Social Security laws enacted by Central Government and enforced by the State Governments

The following laws are enforced by the State Governments:

The Employers’ Liability Act, 1938

The Factories Act, 1948

The Motor Transport Workers Act, 1961

The Personal Injuries (Compensation Insurance) Act, 1963


The Plantation Labour Act, 1951

The Sales Promotion Employees (Conditions of Service) Act, 1976

The Trade Unions Act, 1926

The Weekly Holidays Act, 1942

The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

As a matter of constitutional law, legislative power over labour and employment relations had been largely shared concurrently by both Central and State governments since 1919, and hence the Royal Commission was merely recommending the continuance of existing arrangements. This legal division of power was also continued in the Constitution of India which came into effect in 1950, following the securing of Indian independence from Britain in 1947. Under such legal arrangements Central and State governments have continued to legislate for labour relations. However, there has been ongoing debate over the years concerning the problems of co-ordination and uniformity of labour laws due to the overlap of powers. Available at <http://www.buseco.monash.edu.au/blt/wclrg/working-papers.html> accessed on 15 June 2012.
The Workmen’s Compensation Act, 1923

The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

The Children (Pledging of Labour) Act 1938

The Bonded Labour System (Abolition) Act, 1976

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

The founding fathers of India adopted the course of a mixed economy\textsuperscript{64}, and the economic development of India since independence is unique in several ways. India's development pattern during 1959-1980 was characterized by strong centralized planning, excessive regulation and control of private enterprises, state ownership of basic industries, trade protectionism and a cautious and selective approach towards foreign capital\textsuperscript{65}. It was nothing but a permit and license regime.

Since 1985, successive governments realized the lower rate of growth and carried forward reforms in industrial, financial, fiscal and external affairs. It reached a stage of liberalization, privatisation and globalization\textsuperscript{66} all the way. In the new liberalized industrial and trade environment, the government is allowing competition and market forces to guide investment decisions. Government started progressively assuming the role of promoter, facilitator and catalytic agent instead of a controller and licenser of private economic activities.

\textsuperscript{64} Capitalism and Marxism were the other two options. Mixed economy means economy where private and public enterprises co-exist. “An economy in which a substantial number, though by no means all, of the activities of production, distribution and exchange are undertaken by the government, and there is more interference by the State than there would be in a market economy. A mixed economy thus combines the characteristics of both capitalism and socialism.” Alan and Trombley, \textit{the Norton Dictionary of Modern Thought}, (W. W. Norton & Company 1999) 535.

\textsuperscript{65} All these are regulated by specific laws and rules. The most important enactment was Foreign Exchange Regulation Act, 1973.

\textsuperscript{66} These are the main components of new economic policies. See, Economic Reforms since 1991, Chapter 7 p.98. The replacement of license, quota and permit (LQP) Rajy by liberalization, privatization and globalization (LPG) Regime. Available at <http://www.ncert.nic.in/textbooks/XI/Economics XI/Ch-7.pdf> accessed on 3 November 2011.
4.5. Organized and Unorganized Sectors in India

The organized sector includes primarily those establishments which are covered by the Employees State Insurance Act, 1948, Factories Act, 1948, the Shops and Commercial Establishments Acts of State Governments, the Industrial Employment Standing Orders Act, 1946 etc. This sector already has a structure through which social security benefits are extended to workers covered under these legislations.  

The unorganized sector on the other hand, is characterized by the lack of labour law coverage, seasonal and temporary nature of occupations, high labour mobility, dispersed functioning of operations, casualization of labour, lack of organizational support, low bargaining power, etc. all of which make it vulnerable to socio-economic hardships. The nature of work in the unorganized sector varies between regions and also between the rural areas and the urban areas, which may include the remote rural areas as well as sometimes the most inhospitable urban concentrations. In the rural areas it comprises of landless agricultural labourers, small and marginal farmers, share croppers, persons engaged in animal husbandry, fishing, horticulture, beekeeping, toddy tapping, forest workers, rural artisans, etc. where as in the urban areas, it comprises mainly of manual labourers in construction, carpentry, trade, transport, communication etc. and also includes street vendors, hawkers, head load workers, cobblers, tin smiths, garment makers, etc.

4.6. The Principal Social Security Legislations in India

The below are the Primary Social Security Legislations in India for the organised sector.

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67 Available at <http://labour.nic.in/content/division/social-security.php> accessed on 15 June 2012.
68 ibid
4.6.1. The Employees’ State Insurance Act, 1948 (ESI Act)\(^69\)

The question of introducing a Health Insurance Scheme in India was engaging the attention of the Royal Commission on Labour appointed in 1929. However, the publication of the Beveridge Report in 1942 outlining the health insurance scheme for industrial workers in the United Kingdom renewed the interest for introducing a similar health scheme in India. This coupled with the mounting pressure from trade-unions for positive action for introducing social security scheme for industrial workers culminated in appointment of Professor B.P. Adarkar by the Government of India to prepare a scheme of health insurance for industrial workers. On August 15, 1944, Professor Adarkar submitted a scheme of health insurance for workers to the Government of India for covering workers below a certain wage ceiling in three major groups of industries: Textile, Engineering and Minerals & Metals. The Scheme was intended to provide medical care and sickness benefit for the insured persons.

Before proceeding to enact a health insurance law, the Government of India sought the technical assistance from the ILO\(^70\) for carrying out an expert examination of the scheme prepared by Prof. Adarkar. Accordingly, two ILO Experts, M. Stack and R. Rao, examined the scheme and while agreeing with the fundamental principles laid down by Adarkar regarding coverage of contingencies, the financial participation of the provincial governments and the adoption of an integrated scheme covering sickness, maternity and employment injury. Prof. Adarkar’s Scheme and the suggestions made by the ILO experts were incorporated into the Workmen’s State Insurance Bill of 1946, which was passed by the Legislative Assembly in April 1948 as the Employees’ State Insurance Act\(^71\) (ESI Act).

Presently, under Section 2(12) of the ESI Act, it is applicable to non-seasonal factories employing 10 or more persons. Under Section 1(5) of the Act, the Scheme has been extended to shops, hotels, and restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing

\(^69\) An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto

\(^70\) International Labour Organisation.

\(^71\) This was, in fact, the First Social Legislation adopted by the Country after independence.
20 or more persons. The Scheme is administered by a Corporate Body called the Employees’ State Insurance Corporation which has the members representing employers, employees, Central & State Governments, medical profession and the Parliament.

A Standing Committee constituted from amongst the members of the Corporation acts as the Executive Body for administering the Scheme. There is a Medical Benefit Council to advise the Corporation in matters connected with provision of medical care. The Director General who is the Chief Executive Officer (CEO) of the Corporation is also an Ex-Officio Member of the Corporation and its Standing Committee.

The Scheme is financed mainly by contributions from employers and employees. While the employer’s share of contribution is 4.75% of the wages payable to employees and employees’ share of contribution is 1.75% of their wages. Employees

72 Under Section 1(5) of the ESI Act, the Appropriate Government is empowered to extend the Scheme to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Thus, a State Government may extend the provisions of the Act in consultation with the ESI Corporation, and with the approval of the Central Government, after giving six months notice of its intention in the official gazette; provided that where the provisions of this Act have been brought into force in any part of State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishments or class of establishments in another part of that State.

73 Employees’ State Insurance Scheme of India is a multidimensional social security system tailored to provide socio-economic protection to worker population and their dependants covered under the scheme. Besides full medical care for self and dependants, that is admissible from day one of insurable employment, the insured persons are also entitled to a variety of cash benefits in times of physical distress due to sickness, temporary or permanent disablement etc. resulting in loss of earning capacity, the confinement in respect of insured women, dependants of insured persons who die in industrial accidents or because of employment injury or occupational hazard are entitled to a monthly pension called the dependants benefit. Available at <http://www.esic.nic.in/esi_act.php> accessed on 25 March 2012.

74 Section 3 of ESI Act 1948- Establishment of Employees’ State Insurance Corporation— (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the administration of the scheme of Employees’ State Insurance in accordance with the provisions of this Act a Corporation to be known as the Employees’ State Insurance Corporation.(2)The Corporation shall be a body corporate by the name of Employees’ State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued.

75 Section 8 of ESI Act 1948- Constitution of Standing Committee. — A Standing Committee of the Corporation shall be constituted from among its members, consisting of a) a Chairman [appointed] by the Central Government ;(b) three members of the Corporation, [appointed] by the Central Government ; (bb) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the Official Gazette, specify from time to time ;(c) [eight] members elected by the Corporation as follows- (i)[* * *] (ii) [three] members from among the members of the Corporation representing employers ; (iii) [three] members from among the members of the Corporation representing employees ;(iv) one member from among the members of the Corporation representing the medical profession ; and (v) one member from among the members of the Corporation elected by [Parliament];(d) the Director-General of the Corporation ex-officio.
drawing wages up to Rs.100/- per day are not required to contribute. However, employers are required to pay their share of contribution. The State Government’s share of expenditure on provision of medical care is to the extent of 12.5% of the total expenditure on medical care in their respective States subject to a per capita ceiling prescribed by the Corporation from time to time, beyond which the expenditure is borne by the State Governments. An employer is liable to pay his contribution in respect of every employee and deduct employee’s contribution from wages bill and shall pay these contributions at the above specified rates to the Corporation within 21 days of the last day of the Calendar month in which the contributions fall due. The Corporation has authorized designated branches of the State Bank of India and some other banks to receive the payments on its behalf.\textsuperscript{76}

\textbf{The section 46\textsuperscript{77} of the Act envisages the following social security benefits}

\textsuperscript{76} Available at \textless http://www.esic.nic.in/esi_act.php\textgreater  accessed on 25 March 2012.

\textsuperscript{77} \textit{Section 46 Benefits. —}\n
(1) Subject to the provisions of this Act, the insured persons, [their dependants or the persons hereinafter mentioned, as the case may be,] shall be entitled to the following benefits, namely: —

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner [or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf] (hereinafter referred to as sickness benefit);

(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants’ benefit);

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit); and

(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as [funeral expenses]. Provided that the amount of such payment shall not exceed [such amount as may be prescribed by the Central Government] and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorized by it in this behalf may allow.
Medical Benefit (MB): Full medical care is provided to an Insured person and his family members from the day he enters insurable employment. There is no ceiling on expenditure on the treatment of an Insured Person or his family member. Medical care is also provided to retired and permanently disabled insured persons and their spouses on payment of a token annual premium of Rs.120/-.

System of Treatment

Scale of Medical Benefit

Benefits to Retired IPs

Administration of Medical Benefit in a State

Domiciliary treatment

Specialist consultation

In-Patient treatment

Imaging Services

Artificial Limbs & Aids

Special Provisions and Reimbursement

Sickness Benefit (SB): Sickness Benefit in the form of cash compensation at the rate of 70 per cent of wages is payable to insured workers during the periods of certified sickness for a maximum of 91 days in a year. In order to qualify for sickness benefit the insured worker is required to contribute for 78 days in a contribution period of 6 months.

(2) The Corporation may, at the request of the appropriate Government, and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person.
Extended Sickness Benefit (ESB): SB extendable up to two years in the case of 34 malignant and long-term diseases at an enhanced rate of 80 per cent of wages.

Disablement Benefit:

Temporary disablement benefit (TDB): From day one of entering insurable employment & irrespective of having paid any contribution in case of employment injury. Temporary Disablement Benefit at the rate of 90% of wage is payable so long as disability continues.

Permanent disablement benefit (PDB): The benefit is paid at the rate of 90% of wage in the form of monthly payment depending upon the extent of loss of earning capacity as certified by a Medical Board.

Dependants’ Benefit (DB): DB paid at the rate of 90% of wage in the form of monthly payment to the dependants of a deceased Insured person in cases where death occurs due to employment injury or occupational hazards.

Other Benefits:

Funeral Expenses: An amount of Rs.10000/- is payable to the dependents or to the person who performs last rites from day one of entering insurable employment.

Confinement Expenses: An Insured Women or an Insured Person (IP) in respect of his wife in case of confinement occurs at a place where necessary medical facilities under ESI Scheme are not available.

In addition, the scheme also provides some other need based benefits to insured workers:
**Vocational Rehabilitation:** To permanently disabled Insured Person for undergoing VR Training at VRS.

**Physical Rehabilitation:** In case of physical disablement due to employment injury.

**Old Age Medical Care:** For Insured Person retiring on attaining the age of superannuation or under VRS/ERS and person having to leave service due to permanent disability insured person and spouse on payment of Rs. 120/- per annum.

**Rajiv Gandhi Shramik Kalyan Yojan:** This scheme of Unemployment allowance was introduced with effect from 01-04-2005. An Insured Person who become unemployed after being insured three or more years, due to closure of factory/establishment, retrenchment or permanent invalidity are entitled to :-
Unemployment Allowance equal to 50% of wage for a maximum period of up to one year. Medical care for self and family from ESI Hospitals/Dispensaries during the period IP receives unemployment allowance. Vocational Training provided for upgrading skills - Expenditure on fee/travelling allowance borne by ESIC.

The medical care services under ESI scheme in the states are provided by the respective State Government except in Delhi and Noida where the medical care services are provided directly by ESI Corporation. Besides this ESI Corporation is also running one hospital in the state (which has been designated as Model hospital) and five Occupational Disease Centres. Medical care services to beneficiaries are provided by two ways:-

- Direct Provision through ESI schemes own network of dispensaries, diagnostic centres and hospitals.
- Indirect Provision by contracting with private clinics (panel system), diagnostic centres and hospitals.

ESI Scheme is providing medical care under different systems depending upon the requirements of the region. The various systems prevalent are:-

- **Allopathy**

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78 Allopathic medicine refers to the practice of conventional medicine, and especially the practices now referred to as heroic medicine it was coined by Samuel Hahnemann (1755–1843) in 1810. Allopathy is the treatment of symptoms of a disease by unrelated or opposite substances. The method of treating
- **AYUSH** which include
  - Ayurveda,
  - Siddha,
  - Unani,
  - Homeopathy and disease by the use of agents that produce effects different from those of the disease treated (opposed to homeopathy). The treatment of disease by conventional means, i.e., with drugs having opposite effects to the symptoms.


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 <http://indianmedicine.nic.in/> accessed on 22 Dec 2012.

Ayurveda can be defined as a system, which uses the inherent principles of nature, to help maintain health in a person by keeping the individual’s body, mind and spirit in perfect equilibrium with nature. Ayurveda is a Sanskrit term, made up of the words ‘ayus’ and ‘veda.’ ‘Ayus’ means life and ‘Veda’ means knowledge or science. The term ‘ayurveda’ thus means ‘the knowledge of life’ or ‘the science of life’. According to the ancient Ayurvedic scholar Charaka, ‘ayu’ comprises the mind, body, senses and the soul.


The Siddha Medicine is one of the oldest medical systems known to mankind. This system of medicine originated from south India in Tamil Nadu, as part of the trio Indian medicines - ayurveda, siddha and unani. This system was believed to be developed by the 18 siddhas of the south popular called the Siddhars. Siddhars were spiritual adepts who possessed the ashta siddhis, or the eight supernatural powers. Sage Agathiyar is considered the guru of all Siddhars, and the Siddha system is believed to have been handed over to him by Lord Muruga, son of the Hindu God - Lord Shiva and Goddess Parvathi. So, are the siddhars the followers of Lord Shiva (Shaivaites). Agathiyar is the first Siddhar and his 18 disciples contributed thousands of texts on Siddha, including medicine, and form the propounders of the system in this world.


Unani medicine as the name suggests, originated in greece or unan. It was the greek philosopher-physician Hippocrates (460-377BC) who freed medicine from the realm of superstition and magic and gave the status of science. The theoretical frame work of unani medicine is based on the teachings of Hippocrates. He believed that whenever and where ever possible medicine should be gentle and safe. This is the main objective of unani medicine. After Hippocrates, a number of Greek scholars enriched the system and it imbibed the best from contemporary system of medicine in Egypt, Syria, Iraq, Persia, and India, china and other Middle East and Far East countries. That’s why the system is known in different parts of the world by different names, like Greco-Arab medicine, Ionian medicine, Arab or Islamic medicine, Oriental medicine and so on. The fundamental principle of the unani system recognises that disease is a natural process and symptoms of a disease are body’s reaction to disease. The chief function of the physician is to aid the natural forces of the body. The unani medicine is based on the Humoral theory-which presupposes the presence of four humors. They are Dum (blood), Balgham (phlegm), Safra (yellow bile) and Sauda (black bile). The body has the power of self preservation to maintain a correct balance of these humors, which is called as Quwwat-e-Mudabbira (Medicatrix natura). Unani medicines help the body to regain this balance. The essential constituents and the working principles of the body, according to Unani, can be classified into seven main groups: arkan or elements, comprising earth, water, air and fire as different states of matter and the building blocks of everything in the universe; mizaj (temperament); akhlat (humours); aza (organs); arwah (life, spirits or vital breaths); quva (energy); and af'al (action). Available at <http://www.unanidoctors.com/unanimedicine.htm> accessed on 21 Dec 2012.

Homeopathy is a system of medicine which involves treating the individual with highly diluted substances, given mainly in tablet form, with the aim of triggering the body’s natural system of healing.
- Yoga\textsuperscript{84}

- ESI Scheme provides all three different levels of care i.e. Primary care, Secondary care and Tertiary care (Super specialty care). Primary care is provided through dispensaries & panel clinics. Secondary care is provided through diagnostic centres and hospitals. Tertiary care is provided by entering into tie up arrangement with specialized private and government diagnostic facilities and hospitals.

ESI scheme is providing full medical care to its beneficiaries which include preventive, promotive, curative and rehabilitative services. The various benefits available are\textsuperscript{85}:-

- Health education
- Family welfare services
- Immunization services
- HIV and AIDS control services
- Outpatients, inpatients, emergency medical services
- Diagnostic laboratory and radiological services
- Antenatal, natal and post natal services
- Occupational health services
- Super specialty services including specialized investigations
- Physical and vocational rehabilitation
- Ambulance services

Based on their specific symptoms, a homeopath will match the most appropriate medicine to each patient. Homeopathy is based on the principle that you can treat ‘like with like’, that is, a substance which causes symptoms when taken in large doses, can be used in small amounts to treat those same symptoms. For example, drinking too much coffee can cause sleeplessness and agitation, so according to this principle, when made into a homeopathic medicine, it could be used to treat people with these symptoms. This concept is sometimes used in conventional medicine, for example, the stimulant Ritalin is used to treat patients with Attention Deficit Hyperactivity Disorder (ADHD), or small doses of allergens such as pollen are sometimes used to de-sensitise allergic patients. However, one major difference with homeopathic medicines is that substances are used in ultra high dilutions, which makes them non-toxic. Available at <http://www.homeopathy-soh.org/about-homeopathy/what-is-homeopathy/> accessed on 22 December 2012.

\textsuperscript{84} If you thought that yoga was all about bending and twisting your body in odd shapes, it’s time to rethink. Yoga is much more. In very simple words, giving care to your body, mind and breath is yoga. This means that the century-old practice includes yoga postures (asanas), breathing techniques (pranayamas) and meditation. Through these, the body, mind and breath come in harmony with each other and that very moment yoga (Union) happens. Available at <http://www.artofliving.org/in-en/yoga> accessed on 22 Dec 2012.

\textsuperscript{85} Available at <http://www.esic.nic.in/esi_act.php> accessed on 25 March 2012.
• Artificial aids and appliances such as spectacles, dentures, hearing aids, artificial limbs etc.
• Drugs and dressings

**Major initiatives of corporation in recent past for carrying out perfection in the scheme**

The Corporation has gradually increased the scope of coverage to bring more and more employees within the Social Security umbrella. Some of the major steps taken in this direction were as under –

Initially the scheme applies only to factories using power and employing 10 or more persons. Based on the recommendation of a Committee on Perspective Planning (1972), the Corporation gradually extended the threshold for coverage to non-power using factories employing 20 or more persons. Side by side several non-factory establishments such as shops, hotels, restaurants, cinemas including preview theatres, road-motor-transport undertakings and newspaper establishments employing 20 or more persons were brought within the purview of the scheme (now employing 10 or more persons irrespective of using power), by using the enabling provisions of Section 1(5)\(^{86}\) of the Act, which empower the appropriate Govt. to extend the scheme to new categories of establishments.

The Scheme, which started with just two centres, namely, Delhi and Kanpur with effect from 24.2.1952, to-day, applies to 718 centres in 25 States and Union Territories covering 84.98 lakh insured persons and a total of 329.73 lakh beneficiaries. This was achieved by phased implementation of the scheme with the cooperation of the concerned State Governments in so far as the States have to first be convinced that it is in the interest of workers to extend the scheme.

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\(^{86}\) Section 1(5): The appropriate Government may, in consultation with the Corporation and [where the appropriate Government is a State Government, with the approval of the Central Government], after giving [one month’s] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment, or class of establishments, industrial, commercial, agricultural or otherwise. [Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.]
create necessary infrastructure for providing medical care before the scheme can be extended to a new area.\(^{87}\)

Initially when the scheme was introduced only employees drawing wages up to Rs.400/- were covered under the Scheme, the wage ceiling for coverage was gradually extended from time to time to keep pace with rise in the wages due to increase in the cost of living index. The ceiling was enhanced from Rs.400/- to Rs.500/- in 1966, Rs.1, 000/- in 1975, Rs.1, 600/- in 1985, Rs.3, 000/- in 1992, Rs.6, 500/- in 1997, and Rs.7, 500/- from 1.4.2004. The Corporation has since approved in its 136\(^{th}\) meeting of the Corporation held on 15.6.2006 approved enhancement in the wage ceiling from Rs.7,500/- to Rs.10,000/- and at present the ceiling limit is Rs. 15000\(^{88}\) per month for the coverage of the workers (Minimum wage limit for Physically Disabled Persons for availing ESIC Benefits is Rs. 25,000/-). When the Scheme was initially introduced, medical care under the scheme was provided only to the insured worker himself. However, with effect from 1977 the medical care was also extended to families of insured worker.\(^{89}\)

An interesting feature of the ESI Scheme is that the contributions are related to the paying capacity as a fixed percentage of the workers wages, whereas, they are provided social security benefits according to individual needs without distinction. Cash Benefits are disbursed by the Corporation through its Branch Offices (BOs) / Pay Offices (POs), subject to certain contributory conditions.\(^{90}\)

A Sub Committee of the Corporation known as General Purpose Medical Care Sub Committee comprising of representatives of employers and employees visits the States to supervise and monitor the functioning of the Scheme. Recommendations and observations of this committee are placed before the members of ESI Corporation for its consideration and implementation. In order to facilitate the flow of funds, to the State Governments. A Scheme of Revolving Fund has been introduced. Under this, an amount as per requirement of State Govt. is kept with the Regional Directors for the purpose of super-speciality treatment of the beneficiaries. The amount is also to be utilised for speciality treatment if not available in ESI institutions. This methodology

\(^{87}\) Available at <http://www.esic.nic.in/esi_act.php> accessed on 25 March 2014
\(^{88}\) With effect from 1\(^{st}\) May 2010.
\(^{89}\) Available at <http://www.esic.nic.in/esi_act.php> accessed on 25 March 2014
\(^{90}\) ibid
has become very popular with the States, since the funds are directly and readily available.

*Hospital Vigilance Committees* have been constituted at the hospital level with the representatives of employees, employers and medical professions to monitor the activities of the hospital in a participative way. A Perspective Plan has been drafted to take various steps with regard to removal of duality of control in administration, reorganization of hospitals and dispensaries infrastructure, upgradation of primary health care services, direct flow of fund to ESI scheme, utilization of rate contract for drugs and equipments, utilization of training funds and human resource development etc. The Perspective Plan aims at ensuring efficiency in service and cost effectiveness through optimum utilization of the already constructed infrastructure, wherein it has been proposed to upgrade and modernize hospital services wherever bed occupancy is good, open the services to general public wherein there is low occupancy of hospital but adequate coverage exists and involve Third Party Participation for the administration of hospitals, wherein the bed occupancy is low and there are inadequate number of I.Ps.

A scheme of model hospitals has been implemented in 2001 as per the decision of the ESI Corporation. As per the model hospital scheme one hospital in the state is to be taken over from the state government and run by ESI Corporation directly. Till now twelve hospitals have been taken over from the state governments by the ESIC. Besides these Five ESIC hospitals cum Occupational Disease Centres are also functioning as model hospitals for these states. To monitor the functioning of the Schemes regular inspections are taken up through the Medical Referees, SSMCs/SMCs, Regional Directors, Officers of the Hqrs. Office and Ministry etc. and remedial actions are taken on their observations.91

A Project Implementation Plan 1999-2004 had been approved through World Bank/NACO92 to take up various activities for prevention and control of HIV/AIDS

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91 ibid
92 National AIDS Control Organization.
amongst ESI beneficiaries. Under this plan a number of Blood Banks, Blood Storage and STD clinics/VCTCs have been set up in ESI Hospitals.

### 4.6.2. Workmen’s Compensation Act, 1923

The Workmen’s Compensation Act is the oldest of the social security legislations intended for the welfare of workers. At present, the Act is applicable to workers employed in 50 hazardous employment/occupations. When it was originally enacted there was a wage ceiling for coverage under the Act. However, it has been subsequently, removed and the provisions of this Act are now applicable to all the workers including casual workers employed in industries etc. mentioned in the Schedule. This Act takes care of two contingencies namely disablement due to employment injury and death due to employment injury. A lump sum compensation amount is paid to the disabled worker or the dependants as the case may be during both the contingencies. The maximum amount of compensation for disablement is Rs.5.48 lakhs and for death is Rs. 4.56 lakhs. In case of temporary disablement monthly payments are made at 50% of wages up to 5 years.

It is an employer’s liability scheme, which mainly relies upon the good behaviour of employers. Where the employers are enlightened or where there are powerful trade unions, the rights of the workers are protected and the compensations are paid as per the Act. In all other cases there is a tendency to pay a nominal compensation or even to deny it. In such cases the only remedy available to the workers or the dependants is to approach the State labour Department concerned and seek their intervention which goes up to arbitration which is a time consuming process. Even after arbitration there is no way by which the State authorities are in a position to enforce the payment of compensation. Very often, it is seen that small employers even with good intentions do not have adequate funds to discharge their liabilities.

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93Voluntary Counselling and Testing Centres
95 ibid
96 ibid 19
The lump sum payment, which the worker or the dependant receives, does not provide real social security. In our social conditions there is a tendency to spend the money immediately even on non-essential items. As a result the lump sum amount paid is spent within a short time and the worker or the dependants are again in dire financial straits. Even in cases where they manage to retain the money, due to lack of knowledge about proper investment, they do not get adequate returns. With the cost of living going up year after year the standard of living deteriorates due to reduced availability of resources. In the case of periodical pensions, there is a system of indexing, which takes care of the adverse effect of increase in cost of living to a large extent. Such a provision is not available in the Workmen’s Compensation Act.\(^{97}\)

*The Workmen’s Compensation Act is not applicable to those workers who are covered by the ESI Act.*

### 4.6.3. Maternity Benefit Act, 1961\(^{98}\)

This Act is applicable to every establishment being a factory, plantation or mine and to every shop or establishment in which 10 or more persons are employed. The State Governments may, with the approval of the Central Government, declare that all or, any of the provisions of the Act shall apply also to any other establishments or class of establishment, industrial, commercial, agricultural or otherwise.

Under this Act female workers are entitled for paid holidays not exceeding 12 weeks in the case of maternity and during this period they are eligible to receive full wages. There is also provision for pre-natal confinement and post-natal care free of charge failing which employer is liable to pay medical bonus of Rs.250/-. In the case of miscarriage, maternity leave is available for a period not exceeding six weeks. There is also provision for sick leave for a period not exceeding one month in case of sickness arising out of maternity.

\(^{97}\) *ibid*

This Act is also based on employer’s liabilities. Like Workmen’s Compensation Act, the actual implementation of the benefit provisions of this Act also depends largely upon the good will of the employer. Here also the implementation is not satisfactory. Where employers are enlightened or where there are powerful trade unions, the rights of the workers are protected and the compensations are paid as per the law. In all other cases, it is very difficult for the female workers to take advantage of the provisions of this Act. Not infrequently the female workers are discharged even well before their due date of confinement and they are not paid anything till they are fit enough to resume their duties.

4.6.4. Payment of Gratuity Act, 1972

Extending to whole of India, the Act applies to factories, mines, oil fields, plantations, ports, railway companies, and to shops and establishment employing ten or more persons. The Act came into force on 16 September 1972. Other establishments included by notification are Motor Transport, Clubs, Chambers of Commerce & Industry, Inland Water Transport, Local Bodies and Solicitors Office.

This Act provides for payment of lump sum gratuity to the employees. Under the Scheme Gratuity is payable at 15 day’s wages for every completed year of service subject to monetary ceiling of Rs.3.50 lakh. In case of seasonal establishments gratuity is payable at 7 day’s wages. The gratuity is payable in the contingency of superannuation, retirement, resignation, death or disablement due to accident or disease subject to completion of 5 years continuous service. The condition is however, not applicable in case of death or disablement. Like Workmen’s Compensation Act and Maternity Benefit Act the Payment of Gratuity Act is also an employers’ liability scheme. In the absence of proper enforcement, many of the provisions of this Act also are observed only in their breach. The financial constraints of small employers also add to the problems in proper enforcement.

99 ibid 21
4.6.5. The Employees’ Provident Fund Act, 1952

The Employees’ Provident Fund Act was passed in 1952 to provide for institution of provident fund for the employees of factories and other establishments. The Scheme came into force from 1st November 1952. The Scheme is presently applicable to 180 industries/class of establishments employing 20 or more persons. Coverage under the Scheme is restricted to employees drawing pay plus dearness allowance not exceeding Rs.6,500/- per month. At present 4.40 lakh establishments having 2.6 crore employees are covered under the EPF Scheme.

The Scheme is basically meant for security of workers after their retirement. It provides for lump sum payment of provident fund, monthly pension and deposit linked insurance. The basic rate of provident fund contribution is 10% of basic wage/salary and the higher rate is 12%. The basic rate of 10% applicable to 5 main industries namely, beedi, brick, jute, coir and guar gum for the rest it is 12%. Out of the employer share of contribution, a sum equal to 8.33% of wages is diverted to pension fund account while the balance of employer’s share of contribution and employee’s share of contribution is credited to the provident fund account.

The accumulation in the provident fund account of a member becomes payable for final settlement under following situations:

- On retirement from service after attaining the age of 55 years.
- On retirement as a result of total and permanent disablement rendering the Worker incapable of working.
- Immediately before migration from India for permanent settlement abroad for taking up employment abroad;
- Termination of service upon mass or individual retrenchment;
- Termination of service under a voluntary retirement scheme; and
- Termination of job and remaining unemployed for over two months or leaving the job from a covered establishment and joining an establishment not covered by P.F.

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100 ibid 25
4.7. Social Security Schemes in India

India has implemented the following Social Security schemes in different areas

(a) Preventive Schemes: Preventive Schemes are the Schemes aimed at risk prevention. In the strategy of social management of risks, preventive approach tries to prevent poverty and helps people under below poverty line to come above poverty line. Preventive health care, vaccinations against diseases forms part of the preventive strategies. Majority of the schemes are of social assistance in nature.

(b) Promotional Schemes: Promotional social security schemes are mainly of Means tested Social Assistance type, where to guarantee minimum standards of living to vulnerable groups of population, the Governments at the State and Centre draft schemes financed from the general revenues of the Government. These are the strategies of risk mitigation. This guarantee:

*Food and Nutritional Security* by ensuring per capita availability of food grains, access to food, developing agriculture sector, targeted Public Distribution system etc.

*Employment security* by ensuring employment by generating employment, redeploying the surplus manpower in any sector, creating rural employment opportunities, encourages technological up gradation.

*Health Security* by ensuring availability of medical facilities, maintaining standards of sanitation and drinking water, eradication and control of communicable diseases, timely vaccination of children and child bearing women, health insurance, old age homes and social insurance for the elderly.

*Education Security* by ensuring opening of schools, Encouraging children to attend classes, making education compulsory up to certain age, opening adult learning centres or formulating schemes like Sakshara, running schemes like mid day meals etc.

*Women Security* by empowering women, encouraging women literacy, banning dowry, designing widow pension schemes. Assistance to the disabled by undertaking programmes to promote health and education among the disabled persons, providing
rehabilitation services and reservations in services so as to enable them to participate in social and economic activity.

All the above form part of promotional social security schemes where State Governments are more involved than the Central Government. Examples of schemes in the promotional social security area include:

- Food for work
- Jawahar Rojgar Yojana
- Antyodaya
- Rural Landless Labourers Employment Guarantee Schemes
- Programmes of Integrated Rural Development Project
- Drought prone area Programmes
- Sakshara
- Integrated Child Development Scheme (ICDS)
- Public Distribution System
- Reservations for the disabled in services
- Special educational institutions for the disabled persons

4.8. The Present Initiatives

The various Central Acts on Social Security are being examined in the light of the recommendations of the 2nd National Commission on Labour. Relevant amendments are proposed in the EPF and MP Act as also the ESI Act. The consultation process is on with reference to the amendment suggestions received in case of the Maternity Benefit Act and the Workmen’s Compensation Act.

Innovative measures are proposed in the running of the Social Security Schemes of EPFO\textsuperscript{101} and ESIC\textsuperscript{102}. This includes flexible benefit schemes tailored to the specific requirements of different segments of the population.

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\textsuperscript{101} Employees’ Provident Fund Organization  
\textsuperscript{102} Employees’ State Insurance Corporation
The profiles of the Employees’ Provident Fund Organization and the Employees’ State Insurance Corporation are being changed towards greater accessibility and client satisfaction.

The EPFO extends to the entire country covering over 393824 establishments. At present, over 3.9 crore EPF Members and their families get benefits under the social security schemes administered by the EPFO. The total corpus of the EPF Scheme 1952, EDLI\textsuperscript{103} Scheme 1976 and Employees Pension Scheme 1995 together amounts to about Rs.1,39,000 crores. Over the years, the volume of service rendered to subscribers as well as investments made, etc. by EPFO have grown manifold. With a view to provide better services to subscribers and employers, the organization has launched the Project Re-Inventing EPF, India since June, 2001. The prime objectives of this Project are to provide the subscribers better and efficient services, to help the employers by reducing the cost of compliance and to benefit the organization to register geometric growth\textsuperscript{104} in all fields. An important part of this Project is the allotment of the Unique Identification Number, Social Security Number to the EPF subscribers, issuing of Business Numbers to the employers and business process re-engineering. The strategy for implementation has been evolved and the allotment of the Social Security Number has begun with the entire activity being carried out in smaller phases for effective data collection. The criteria considered for the allotment of SSN\textsuperscript{105} include the centralized control of Uniqueness, ensuring the least manual intervention during allotment and near 100% Uniqueness accuracy levels. The Social Security Number in a nutshell is a big effort towards solving the problem of providing social protection to migrant labour and to make the data base of EPFO adaptable to the present trend of high job mobility among workers.

Social security is essential for the well being of people and society. It is the basic human right and its fulfilment will contribute to achieving various developmental goals of nation. Social Security measures have far reaching benefits in the form of improving and bringing sense of pride and self respect amongst the citizens. Such measures also help in providing the minimal level of providing protection against

\textsuperscript{103} Employees’ Deposit Linked Insurance  
\textsuperscript{104} Geometric growth refers to the situation where successive changes in a population differ by a constant ratio  
\textsuperscript{105} Social Security Number
health and life hazards in work situations. It can progressively pay standard to social security welfare measures involving provisions of better Health Care, Maternity Care, and Old Age Pension etc.

4.8.1. 45th Session of the Indian Labour Conference Concludes with a Resolve to Provide Universal Social Security Coverage and Assured Pension to the Entire Working Population

During the course of Conference the Labour Ministers of State Governments, Central Trade Union Leaders, Employers’ representatives, and Officials of the central and state governments deliberated on four agenda items namely, (a) service conditions, wages and social security for various categories of workers employed in different Central and State Government schemes; (b) social security with special reference to Assured Pension with indexation for all workers including self-employed; (c) labour laws for MSME sector; (d) and measures to improve employment and employability.

Some of the salient points, which emerged during the two-day deliberations, were extending social security benefits to all workers working under various government schemes and to regulate their service conditions. It was also suggested that these workers should be provided with basic amenities, suitable working place and right to organize and collective bargaining. The stakeholders also unanimously agreed for providing universal social security coverage and assured pension to the entire working population. Suggestions were also made for making pension benefits responsive to price rise and to enhance current government spending on social security measures. All the stakeholders recognized the enormous contribution of the MSME sector in terms of employment, export and economic growth and felt the need for simplification and consolidation of existing laws without compromising crucial aspects related to workers such as wages, social security and conditions of work. There were also suggestions by social partners to adequately focus on off-farm and on-farm sector and continued investment in infrastructure projects for enhancing

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employment opportunities. In context of skill development social partners recommended for strengthening Labour Market Information System (LMIS) to bridge the skill demand-supply mis-match, enhancing the outreach of and access to skill development centres, recognizing MSME enterprises as ‘on-the-job training centres and to put in place a National Skills Qualifications Framework to ensure quality assured training and facilitating horizontal and vertical mobility.

Shri Mallikarjun Khargee\textsuperscript{108} said the Conference Committee on Service conditions, wages and social security for various categories of workers employed in different Central Government and State Government schemes (Anganwadi, Mid-day meal, ASHA, Sarva Shiksha Abhiyan and other schemes) under various Ministeries of Central Government” deliberated for extension of Social Security benefits under Rashtriya Swasthya Bima Yojna and Aam Aadmi Bima Yojna to these workers. Moreover, it was also recommended that these categories of workers should be granted Right to Collective Bargaining. There have been other important recommendations by this Committee.

The Conference Committee on “Social Security with special reference to Assured Pension with indexation for all workers including self-employed” recommended that we should work towards the goal of universal social security coverage. It has also been recommended that Government should examine implementation of the ‘Right to Work’.