CHAPTER-7

CONCLUSION AND SUGGESTIONS

The fundamental scheme behind social security measures is that there is a duty on the society to defend the working class that contributes to the welfare of the society against hazards. It protects not just the workman, but also his entire family in financial security and health care. The social security can be provided by institutional and non-institutional agencies. The non-institutional agencies existed from time immemorial and they are the back bone of the present social security programmes. India is a good example of having non-institutional form of social security measures in the world.¹

The needy and unfortunate are seen protected in joint family set up and the caste system. The hardship due to unemployment, economic difficulties, old age, widowhood etc., was taken care of by joint family system. It had a religious backing also. An additional help from individual and institutions was provided to them through the guilds,² community and Panchayats, orphanages, widow homes and charity centers available during that time.

This indicates that India had its own social security system of following³

(1) Self-sufficient village economy;
(2) Caste system;
(3) Joint family system; and
(4) Organizations of charity.

¹Prof. Harry Calvert, Social Security Law, (Sweet & Maxwell, London 1978) 38
² An association of people for mutual aid or the pursuit of a common goal. Available at <www.thefreedictionary.com/guild> accessed on 12 January 2014
Following the development of liberalism and individualism fostered by the western influence, these roots of Indian society were shaken and ultimately lost its significance. The society, its culture and custom were affected a great deal by foreign impact and a new society based on class gradually emerged.

Industrialization created a new class and this rising up class with its rural background and without social and material resources urgently necessitated systematic help from various social security agencies other than the traditional ones. The ideals of social security ultimately became a social responsibility largely depending on the resources and needs of the country. India is a country where economic resources are less and needs are more. The social security enactments that we find today in India are an amalgam of the ideals and principles emerged over the years.

The development of modern state totally changed the social set up in India and the state assumed the role of protector of people from evils. The philosophy of welfarism has resulted in legislative schemes designed to channel all economic activity for collective good. Originally, labour law was almost a part of private law but now it has become part of public law.

From the middle of 19th Century to the end of First World War, the Indian industrial legislation was in the period of origin. It was through a slow and steady process that the industrial law took root in India.

Cotton mills and jute mills that were established during 1850s manifest the beginning of factory system in India. The condition of workers in those mills were pathetic due to long working hours without any safety and security. Based on the principles of torts, Fatal Accidents Act, 1855 was enacted for providing compensation to legal heirs of these employees where death occurred by an actionable wrong. Minimum rate of compensation, to some selected legal heirs and a restricted application were the main drawback of the said Act.

By 1881, factory system clearly emerged in India, but workers did not organize themselves simultaneously with the industrialization. The safety and working conditions of these workers were prime concerns for many members of the House of Lords and they argued for legislation. Thus in 1881, Indian Factories Act was passed. In order to improve the conditions of plantation
labours, Island Emigration Act 1892 was passed and to secure safe and healthy conditions of work in mines, Indian Mines Act, 1901 was passed.

During and after the First World War period, there had been incredible change in the approach of state and society towards labour. ILO\(^4\) was established in 1919 which aimed at welfare of workers globally. India is a member since its foundation. ILO has adopted many conventions and recommendations casting different types of liability on industry, Government and labour.

Under the Montague-Chelmsford Reforms in 1919, the central legislature was given specific legislative power to enact industrial laws. By means of that power, in 1923, India approved a major enactment called Workmen’s Compensation Act, 1923, with an object to do away with hardship caused to workmen injured, through providing timely payment of benefits in spite of fault from their side and with minimum legal formalities. It imposed obligation upon employers to pay compensation to workers for accidents “arising out of and in the course of employment” and for death and disablement. In 1925, Government of India enacted another Act, Provident Fund Act, 1925. Royal Commission on Labour was appointed in 1929 which suggested a scheme for health insurance to industrial workers on a contributory basis financed by employers along with small deductions from the wages of workers and provisions against old age and payment of gratuity.

Another phase when many significant development in the field of social security occurred on a firm and sound footing was the Second World War. The war created an acute shortage of man and materials. This necessitated increased production and that required greater co-operation of labour. To ensure this a number of concessions were made to the working class under Defence of India Rules (Rule 81-A).\(^5\)

\(^4\)International Labour Organisation
In 1943, a committee called the ‘Standing Labour Committee’ was appointed by Government of India. Constitution of this Committee and Indian Labour Conference effected outstanding changes in the approach of Government towards labour. The committee was constituted for the purpose of formulating a scheme for health insurance for individual workers. Another committee was also appointed to make survey on the position of health conditions and health organizations in existence. All these provided for a forum for the discussion of labour matters.

The two ILO publications viz; ‘Approaches to social security—an International Survey’ and ‘Social security—Principles and Problems Arising Out of War’ highlighted the tendency in planning social security to bring under a single scheme for assuring maintenance in case of inability to work and to extend this to all the employees, employed or self-employed, rural or urban.

The publication of Beveridge Report in England also had a significant impact on Indian scene. The Government of India made attempts to introduce sickness benefits in India. The provincial governments were entrusted with this task. But they doubted its success because of migratory nature of Indian workers and intricacy in locating them in villages. Shortage of medical staff for certification and treatment was yet another reason. About this, the ESI Review Committee observed:

“Sickness is an important contributory cause of indebtedness with all that debt entails. Under existing conditions at the time of greatest need the worker may find himself destitute of resources, unable to take proper measures to restore his health and in difficulties regarding even in the means of subsistence.”

Recommendations of the ESI Review Committee were measured by Government of India and positioned the same in the First Labour Minister’s Conference held in New Delhi in 1940. In the same year Employees Conference held at Bombay under the joint auspices of All India Organization of Industrial Employers and the Employees examined the question of sickness insurance and favoured the tripartite contribution. The decision in Second Labour Minister’s Conference held in 1941, Third Labour Minister’s Conference held in 1942 and the ILO

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6Employees State Insurance
7ESI Review Committee appointed by Government of India in (1966) p 87
Conventions and recommendations forced Government of India to appoint a commission in 1943 under the Chairmanship of Professor B.R. Adarkar. The scheme formulated by him envisaged to cover only perennial factories belonging to textile engineering, mineral and metal groups of industries. Government of India requested ILO to depute experts to examine Adarkar Report. ILO deputed Mr. Stack and Mr. Rao for evaluating Adarkar Report and they suggested certain modifications relating to classification of workers, contribution benefits, and the organization of medical services and financial structure of the scheme.

In 1947, India became independent and an interim government was formed which caused greater encouragement to worker’s legitimate ambitions and accelerated harmony in the industrial relations. The interim government formulated a five year programme for the welfare of the labour class. **The significant features of the programme were:**

(i) Organization of the health insurance scheme;
(ii) Revision of the Workmen’s Compensation Act;
(iii) Central law for maternity benefit; and
(iv) Extension to other classes of workers the right within specific limits to leave with allowances during sickness

Employee’s State Insurance Act was passed in 1948. It introduced a scheme of compulsory health insurance and benefits in the event of sickness, maternity and employment injury to workmen.

Soon after the commencement of the Constitution, Five Year Plans were introduced in India in order to ensure social justice and better standard of life to the people. In 1954, India declared and adopted a socialistic pattern of society and this reshaped the labour policy.

In 1952, the Employees Provident Fund Act was passed on the basis of experience of provident fund schemes of coal mine workers and constant demand from employees. The Act provided for old age, invalidity and survivorship benefits to the workforce in the organized sector.

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9 Constitution was Amended (Second Amendment-1952) and added the word ‘Socialist’ to the preamble
The Maternity Benefit Act was passed in 1961 replacing all state laws on this subject. It applies to all establishments, factories, plantations and shops where 10 or more persons are employed. Maternity benefits are also provided under ESI Act and an insured woman is entitled to maternity benefit in the form of periodical payments in case of confinement, miscarriage or sickness arising out of pregnancy. They are also entitled to medical care under the ESI scheme for maternity. The factories or establishment to which the provisions of ESI scheme apply are excluded from the purview of Maternity Benefit Act. But high salaried women above the wage ceiling under ESI Act are entitled to be benefited under this Act. There is no wage limit for coverage under the Maternity Benefit Act. The provisions under ESI Act for medical benefit are more comprehensive as they include medical care and maternity benefit than provision under Maternity Benefit Act.

In 1957 a study group on social security\textsuperscript{10} to work out a comprehensive social security scheme was appointed, their recommendations could not make any contact. Hence in 1966, a Committee on Labour Welfare and National Commission on Labour were appointed. The Committee on Labour Welfare was set up for examining the functioning of various welfare schemes in operation in industrial establishments and to suggest improvements. Both the Committee and the Commission submitted detailed reports in 1969.

Apart from the above mentioned legislative efforts, Committees and Commissions, a key role is being played by the Planning Commission. The five year plans included in their mandate adequate provision for the basic need 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 against occupational hazards, right to organize and to take lawful action in furtherance of their rights and interests. The plans have also called upon labour to realize the fact that in an undeveloped economy, it cannot build for itself but they have to make a substantial contribution. This will ultimately lead to peaceful industrial relations.

\textsuperscript{10}Recommendation of Study Group on Social Security, Government of India, 1957
The ESI Act is designed in the interest of “Employees” and its dependents to provide cash benefit in the case of sickness, maternity and 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. However, because of the vastness of the country and the considerable preparatory work involved, such as provision of building, equipment and personal, the scheme could not be implemented throughout the country simultaneously. Plan for its phased extension to different places was drawn up. The Act also envisages provisions requiring payment of special contribution by all employees in order to meet the requirement. The contribution of employers in the implemented areas was fixed at a rate higher than that of employers in non-implemented areas.

Under Section 2(12) the ESI Act 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 20 or more persons. Further under section 1(5) of the Act, the Scheme has been extended to Private Medical and Educational institutions employing 20 or more persons. The existing wage limit for coverage under the Act is Rs. 15,000/- per month (with effect from 01/05/2010).11

The Declaration of Philadelphia12 (paragraph III (g)) which provides that the ILO13 has the solemn obligation to further among the nations of the world programmes which will achieve adequate protection for the life and health of workers in all occupations.

The ILO Constitution sets forth the principle that workers should be protected from sickness, disease and injury arising from their employment. Yet for millions of workers the reality is very different. Some two million people die every year from work-related accidents and diseases. An estimated 160 million people suffer from work-related diseases, and there are an

11 Available at <http://www.esic.nic.in/coverage.php> accessed on 19 June 2014
13 International Labour Organization
estimated 270 million fatal and non-fatal work-related accidents per year. The suffering
due to such accidents and illnesses to workers and their families is incalculable. In
economic terms, the ILO has estimated that 4% of the world’s annual GDP 14 is lost as a
consequence of occupational diseases and accidents. Employers face costly early retirements,
loss of skilled staff, absenteeism, and high insurance premiums due to work-related accidents
and diseases. Yet many of these tragedies are preventable through the implementation of sound
prevention, reporting and inspection practices. ILO standards on occupational safety and health
provide essential tools for governments, employers, and workers to establish such practices and
to provide for maximum safety at work. In 2003 the ILO adopted a “Global Strategy to Improve
Occupational Safety and Health” which included the introduction of a preventive safety and
health culture, the promotion and development of relevant instruments, and technical
assistance. 15

The ILO has adopted more than 40 instruments specifically dealing with occupational safety and
health, as well as over 40 Codes of Practice. 16 Nearly half of ILO instruments deal directly or
indirectly with occupational safety and health issues. 17

In the landmark case Consumer Education and Research Centre and others v Union of India
and others 18, the apex court has held that the right to health and medical care to protect one’s
health and vigor, while in service or post-retirement, is a fundamental right of a worker under

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14 Gross Domestic Product
16 ILO Codes of Practice set out practical guidelines for public authorities, employers, workers, enterprises, and
specialized occupational safety and health protection bodies (such as enterprise safety committees). They are not
legally binding instruments and are not intended to replace the provisions of national laws or regulations, or
accepted standards. Codes of Practice provide guidance on safety and health at work in certain economic sectors
(e.g. construction, open cast mines, coal mines, iron and steel industries, non-ferrous metals industries, agriculture,
shipbuilding and ship repairing, forestry), on protecting workers against certain hazards (e.g. radiation, lasers, visual
display units, chemicals, asbestos, airborne substances), and on certain safety and health measures (e.g. occupational
safety and health management systems; ethical guidelines for workers’ health surveillance; recording and
notification of occupational accidents and diseases; protection of workers’ personal data; safety, health and working
17 ibid
18 (1995) 3 SCC 42
Article 21 read with Articles 39(e), 41, 43, 48-A and all related Articles and Fundamental Human Rights to make the life of the workman meaningful and purposeful with dignity of person. The Court held that the *compelling necessity to work in an industry exposed to health hazards due to indigence to bread-winning for him and his dependents should not be at the cost of health and vigor of the workman.*

**Right to Health i.e. Right to Live in a clean, hygienic and safe environment is a ‘Right’ flowing from Article 21.** Clean surroundings lead to healthy body and healthy mind. But, unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Article 39 and Article 41 and 42. Those Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. **Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity.**

**In the most recent case (2014) Occupational Health and Safety Association v Union of India** the Supreme Court directed the Ministry of Labour to ensure that the suggestions made by the

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19 Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law
20 (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
21 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.
22 Living wage, etc., for workers: The State shall endeavour to secure, by suitable legislation or economic organization 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
23 Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country
24 (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.
25 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
26 2014 STPL (web) 68 SC
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.
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.

In the light of the above mentioned the researcher would like to arrive at the following conclusion and suggestions:

Under a social insurance scheme the right of the beneficiary to any benefit is acquired by making a contribution. It is in one sense a contractual right, not a social right. It follows that if social security has to be provided to all citizens as a basic Human Right social insurance cannot be the appropriate vehicle for it. It calls for a non-contribution approach.
A sense of insecurity is inherent in human condition as man is exposed to various kinds of risks and dangers. Initially, the dangers were perceived in the external environment by the threats posed by natural phenomena, as civilization progressed man began to look upon his fellow beings as his enemies and to protect himself against them. Societies and States were formed and the institutions of the army and the police came into being. As civilization progressed further social ills and economic dangers began to pose greater threat to human life. So social security was born to protect them against such risks.

The ambush of globalization and privatization has caused concern for human welfare and the role of the State in promoting welfare. The private sector and the market economy have been ridiculing welfarism as outmoded and are advocating the dismantling of the welfare system, indeed there is an ongoing debate all over the world about the crisis of the welfare state which is said to be in liquidation or in retreat. This subject ranks high on the political agenda in many countries. But there has been no fundamental change in the welfare system in any country except perhaps the former socialist countries. Some adjustments have been made in the welfare schemes to tide over immediate financial difficulties but the welfare system as such exists and there is reason to believe that it will continue to exist. At the General Assembly of the International Social Security Association, an association of social security institutions, held in 1992, it was noted that all over the world in both developed and developing countries there is a growing need for social protection, and nowhere is this need diminishing.

India is avowedly a Socialist State. Its aim is to eliminate inequality of income and status and standards of living. The basic framework of socialism is to provide a decent standard of life to the working people. According to UNDP27

“For most people, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event. Will they and their families have enough to eat? Will they lose their jobs? Will their streets and neighbourhoods be safe from crime? Will they be tortured by a repressive state? Will they become a victim of violence because of their gender? Will their religion or ethnic origin target them for prosecution? In the final analysis,

27United Nations Development Programme
human security is a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced. Human security is not a concern with weapons; it is a concern with human life and dignity.”

Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life - whether in homes, in jobs or in communities. Such threats can exist at all levels of national income and development. The loss of human security can be a slow, silent processor an abrupt, loud emergency. It can be human made, due to wrong policy choices. It can stem from the forces of nature. Or it can be a combination of both as is often the case when environmental degradation leads to a natural disaster, followed by human tragedy.

The economically developed countries have established such safety nets on which they are spending up to 40 % of their GDP Developing countries generally and India in particular, are lagging behind in this area as well. According to the World Labour Report, 2000, the public expenditure on social security in India is 1.8 % of GDP against 4.7 % in Sri Lanka and 3.6 % in China. It is one of the measures of human development these countries have achieved and the distance they have yet to travel.

In view of the researcher “every country needs to establish effective social safety nets to catch the victims of the competitive struggle such as the temporarily unemployed, to protect the lowest income groups, the young, the old and the disabled.”

However, the analysis of researcher is that, for better focus on social security a more direct approach is called for, especially in the context of the commitment made to the United Nations by ratifying the Covenant on Social Economic and Cultural Rights. But the State has failed in its fundamental duty by not securing any enforceable Constitutional status to the social security.

28Preamble-In accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of
Right to Social Security is one of the basic Human Rights. Although the Constitution of India does not recognize it as a Fundamental Right, the Supreme Court has ruled that the Right to Livelihood is inherent in the Right to Life which is a Fundamental Right. As the ultimate object of social security is to assure everyone the means of livelihood it follows that the Right to Social Security is also inherent in the Right to Life.

Although social security is universally declared as a basic Human Right the Constitution of India does not recognize it as a Fundamental Right. Suggestions have been made to amend the Constitution so as to include the right to social security as one of the Fundamental Rights. The opinion contrary to this suggestion is that unless the State has the capacity to enforce the right it should not be made a fundamental right. But the researcher feels that there are no objective criteria to decide whether or not the country has the capacity to make provision for and to enforce it as a Fundamental Right. It depends on the priority that is attached to the various functions, activities and programmes of the Government and the allocation of resources thereto. In view of the fact that the right to social security is regarded as one of the basic Human Rights and the Government of India has recognized it as such by ratifying the Covenant on Social Economic and Cultural Rights. Hence, in my opinion it should be given the status of a Fundamental Right under the Constitution of India and necessary resources should be allocated to it.

The National Commission on Labour shall make a strong recommendation for amendment of the Constitution so as to make it a Fundamental Right.

Social security situation in India is characterized by lack of policy. There are a variety of schemes, namely, employers’ liability schemes, social insurance schemes, social assistance schemes, provident fund schemes, welfare funds etc. which are not called social security schemes but providing social security type benefits or protection, and lacking any clearly articulated freedom, justice and peace in the world and also recognizing that these rights derive from the inherent dignity of the human person. Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> accessed on 12 April 2014
goals or objectives. These schemes have been framed at various times at random and do not conform to any overall design. They do not represent a unified policy or plan. Therefore there is an obvious need for a social security policy for India.

The execution of such social security as is existing in the country is split between the Centre and the States and at each level among different ministries, departments and agencies. For example National Social Assistance Programme being administered by the Ministry of Rural Development; programmes for the elderly, disabled and other vulnerable sections being administered by the Ministry of Social Justice; programmes for women and children development administered by the Department of Women and Child Development; midday meal scheme being implemented by the Ministry of Education; food and housing schemes being administered by the Ministry of Urban Development; There is little consistency in policy formulation, programme scheming, execution and monitoring. The data base is mainly poor.

Having gazed at to the preceding facts, the Working Group on Labour Policy for the Ninth Plan had recommended that a national policy on social security should be announced with a view to ensuring uniformity and efficiency.

The researcher endorses the recommendation of the Working Group and emphasizes that, while evolving the policy the Directive Principles of State Policy of the Constitution concerning social security should be kept in view.

According to the ILO, the scope of social security is limited to maintenance of one’s income against loss or diminution. This is called protective form of social security.

According to the other view the object of social security is broader to enable a person to attain a decent standard of life and also to maintain it. It may be preventive or promotional as the case may be. It is said that in the Indian context social security policies and strategies would need to be addressed as a part of anti-poverty policies and that social security should include income support through promotional measures such as employment promotion, food subsidy and child nutrition and income maintenance through protective measures such as public assistance for old age, maternity, disability and death. Lately certain new concepts have come into vogue such as

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29The Ninth Five Year Plan, launched in the 50th year of India’s Independence (1997-2002)
social safety net, social protections social funds etc. There is no basic difference among them; difference, if any, lies in the scope of social security and the strategies for achieving the objective.

The conclusion of the researcher is that in the Indian context the term social security should be used in its broadest sense. It may therefore be defined as consisting of all types of measures preventive, promotional or protective as the case may be designed to:

(a) Prevent deprivation (preventive measures)
(b) Assure everyone of a basic minimum income which would be adequate for meeting the basic needs of oneself and one’s family or dependents (promotional measures)
(c) Protect the income against loss or reduction due to the occurrence of any contingency including sickness (protective measures.)

The measures may be statutory non statutory, public or private.

The term encompasses social insurance, social assistance, social protection social safety net and other such terms currently in vogue.

There are basically two approaches to social security, the community approach and the beneficiary approach. The schemes the benefits of which accrue to the community at large are said to be based on the community approach. The schemes the benefits of which accrue to an individual based on his or her constitutional, statutory or contractual rights are said to be based on the beneficiary approach.

Schemes drawn up under the Basic Common Services programs such as supply of food grains at concessional prices, drinking water etc. are examples of schemes based on community approach. Workmen’s compensation, maternity benefit, old age pension, etc. are examples of schemes based on beneficiary approach. Broadly speaking, preventive and promotional measures of social security are ordinarily based on the community approach and the protective measures are based on the beneficiary approach.
The Schemes drawn up under the beneficiary approach may also be of two kinds. They may be based on one’s citizenship or residential status (in the case of migrant workers) or they may be occupational (work based) in nature. Schemes the benefits of which accrue universally to all citizens subject to such eligibility criteria that may be prescribed are of the former kind. For example the National Social Assistance Programme. The schemes, the benefits of which accrue to a person by virtue of his/her employment and the contribution he/she makes are of the second kind. For example the Employees State Insurance Scheme is applicable to persons employed in the industries or classes of establishments to which it has been made applicable.

Dr. Amartya Sen\textsuperscript{31} and Jean Dreze\textsuperscript{32} have referred two other approaches, as follows:

“\textquoteleft It is possible in principle to distinguish two contrasting approaches to the removal of precarious living conditions. One approach is to promote economic growth and take the best possible advantage of the potentialities released by greater general affluence, including not only an expansion of private incomes but also an improved basis for public support. This may be called the strategy of ‘growth mediated security’\textquoteleft. Another alternative is to resort directly to wide-ranging public support in the domains such as employment provision, income redistribution, health care, education, and social assistance in order to remove destitution without waiting for a transformation in the level of general affluence. Here success may have to be based at discriminating use of national resources, the efficiency of public services, and a redistributive bias in their delivery. This may be called the strategy of ‘support led security’\textquoteleft. Having examined the experience of

\textsuperscript{30}The National Social Assistance Programme (NSAP) which came into effect from 15th August, 1995 represents a significant step towards the fulfillment of the Directive Principles in Article 41 of the Constitution. The programme introduced a National Policy for Social Assistance for the poor and aims at ensuring minimum national standard for social assistance in addition to the benefits that states are currently providing or might provide in future. NSAP at present comprises of Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi National Widow Pension Scheme (IGNWPS), Indira Gandhi National Disability Pension Scheme (IGNDPS), National Family Benefit Scheme (NFBS) and Annapurna. Available at <http://nsap.nic.in> accessed on 10 May 2014

\textsuperscript{31}Indian economist who was awarded the 1998 Nobel Prize in Economic Sciences for his contributions to welfare economics and social choice theory and for his interest in the problems of society’s poorest members. Sen was best known for his work on the causes of famine, which led to the development of practical solutions for preventing or limiting the effects of real or perceived shortages of food. Available at <www.nobelprize.org/nobel_prizes/economic-sciences/.../sen-bio.html> accessed on 14 May 2014

\textsuperscript{32}Jean Dreze is a development economist who has been influential in Indian economic policymaking. He is a naturalized Indian of Belgian origin. Available at <www.timesofindia.indiatimes.com> dated 24 July 2013 accessed on 14 May 2014
the various countries which have adopted these approaches in terms of one of the
indicators of success they have come to the conclusion that direct public support
has been the driving force behind the success of some of the major countries like
China and Cuba, while growth mediated security was an important part of the
experiences of countries like Korea and Singapore.

The Ninth Five Year Plan recognizes that a large number of people in India live in acute poverty.
The consumer expenditure data of the 55th Round on a 30 day recall basis yields the poverty
ratio for 1999-2000 of 27.09 percent in rural areas, 23.62 in urban areas and 26.1 percent for the
country as a whole. The corresponding figures from the seven day recall period was 24.02
percent in rural areas, 21.59 percent in urban areas and 23.33 percent for the country as a
whole.\(^\text{33}\)

According to the World Labour Report 2000 the percentage of persons with income under
poverty line in 1994 was 35 percent.

The child population (0-14 years) as per the 1991 Census accounts for 319 million (37.8%) which
include 153.85 million female children. Of the total child population, 18.9 million (5.9%) are
below 1 year (Infants) , 38.1 million (11.9%) are in the age group 1-2 years (toddlers) , 73
million (22.8%) are in the age group 3-5 years, (pre-school) and another 189.6 million (59.4%)
are in the age group 6-14 years.\(^\text{34}\)

According to the 1991 Census, India had an elderly population of 56 million of whom the old
numbered 20 million. It was expected to go up to 71 million by 2001, 96.30 million by 2011,
133.31 million by 2021, 236.01 million by 2041 and 300.96 million by 2051. In terms of
percentage it was 6.58 in 1991 and it was expected to go up to 7.1 % in 2001, 8.2 % in 2011, 9.9
in 2021, 11.39 in 2031, 14.5 % in 2041, and 17.3 % in 2051.\(^\text{35}\)

According to the National Sample Surveys conducted in 1981 and 1991 there were 136.74 lakh
disabled persons in 1981 and 163.02 lakh persons in 1991 who were having at least one other of

\(^{33}\)Available at <http://mospi.nic.in/Mospi_New/site/inner.aspx?status=3&menu_id=31> accessed on January 2014
(Ministry of Statistics and Programme Implementation)

\(^{34}\)ibid

\(^{35}\)ibid
the four types of disabilities, viz. Locomotive, visual, hearing and speech. The magnitude and the size of various disabilities as revealed by the latest survey are given below.

A sample survey conducted in 1991 showed that 3 percent of the child population had mental retardation. Among the adults, 1 percent was suffering from various forms of mental disorders 10 to 15 percent were suffering from various mental health problems.

The number of leprosy affected disabled persons was estimated to be about 4 million of whom about one fifth were children and above 15 to 20 percent were left with deformities. The prevalence was more than 5 per thousand in the 196 high endemic districts in the country.

The National Sample Survey (1981) identified 12 million persons having one or the other disability constituting about 1.8% of the total population. It has gone up to 14.56 million or 1.9% of the population by 1991. About 10% of these physically handicapped were reported to have more than one type of disability. A more recent survey (1986-89) estimated 12 million blind persons. The number of mentally retarded people was estimated to be about 3 to 4% of the total population.

The finale of the researcher is that, in the Indian context, Social Security policy and plans and programmes would have to be tailored to the needs of the diverse vulnerable sections of the people, comprising the total population of India. No single approach to the exclusion of the others would be adequate and the problem will have to be addressed by both. Pronged approach and all the approaches discussed above would be relevant in different contexts.

The requirements for social security differ according to the characterization of the term; there are extensive lists of social security needs drawn up by diverse authorities:

a) According to Lord Beveridge the primary needs for social security are of eight kinds, reckoning the composite needs of a married woman as one and including also the needs of childhood and the need for universal comprehensive medical treatment and rehabilitation. These needs are set out below:
Unemployment: that is to say, inability to obtain employment by a person dependent on it and physically fit for it met by unemployment benefit with removal and lodging grants;

Disability: that is to say, inability of a person of working age, through illness or accident, to pursue a gainful occupation, met by disability benefit and industrial pension.

Loss of livelihood: by person not dependent on paid employment, met by training benefit.

Retirement: from occupation, paid or unpaid, through age, met by retirement pension.

Marriage needs: of a woman met by Housewife’s Policy

Funeral expenses: of self or any person for whom responsible, met by funeral grant

Childhood: provided for by children’s allowances if in full time education, till sixteen.

Physical disease or Incapacity: met by medical treatment, domiciliary and institutional, for self and dependants in comprehensive health service and by post medical rehabilitation.

b) ILO

According to Recommendation No.67 of the ILO concerning Income Security, social security is required for meeting the following types of contingencies:

Unemployment

Sickness

Employment Injury

Maternity

Invalidity

Old age
Death

Emergency expenses

c) The Social Security (Minimum Standards) Convention 102 of the ILO added medical care and family benefits to the foregoing list and dropped Emergency Expenses (The rest Eight have been already mentioned in the Chapter 3) . Hence, total nine.

d) World Bank

The World Bank has adopted a typology of risks which consists of the following:

Natural (Disasters)

Health

Social

Gender

Economic Political and Environmental

The end view of the researcher is that, social insecurity in India is poverty and that is mostly due to need of sufficient or productive employment opportunities. It is described as “chronic or structural social insecurity, a ‘primary-order’ type of social insecurity arising from insufficient degree of overall economic development.” It is associated with the other insecurities, “emanating from conventional contingencies such as the loss of employment, disability, old age, death, etc.” which are called the ‘second-order’ type of insecurities or conventional social insecurity. We have to tackle both. Provision of sufficient and firm income will enable the poor to satisfy their basic needs and thereby their other social security needs as well. Till then the State has to assume the basic responsibility of providing social security, especially in respect of those contingencies which would be difficult for individuals to cover without assistance from the State.
The State also has the responsibility to provide the means of livelihood to those who cannot work and earn their living due to early childhood, old age or other infirmities.

Suggestions

On the journey of my loud thinking and in-depth analytical study fathoming the issues, concepts and consequential implementation, following are the pearls of wisdom that I as researcher have collected and intended to share the same.

1. Working Group on Social Security

The Ministry of Labour had appointed a Working Group on Social Security for the Ninth Five Year Plan. The Working Group had made the following observations. Even though the Social Security Programs/Schemes have been on the ground for many years, the Social Security System in the country continues to suffer from several weaknesses which, *inter-alia*, include the following:

(i) The Schemes of Social Security, types of benefits or protection provided there under do not conform to any overall plan or design. There is, as a matter of fact, no policy on social security, and the Five Year Plans are practically silent about this important aspect.

(ii) There is no commonly accepted definition of the term ‘Social Security’ in India and it means different things to different people.

(iii) The Social Security Schemes are limited in their scope of coverage which is decided with reference to wage ceilings, the number of workers employed in an establishment, the number of years for which an establishment has been in existence etc. Further there is no uniform criterion under various schemes for the purpose of coverage.

(iv) Even though the schemes have been revised from time to time, majority of the Schemes continue to be applicable to the wage earning classes of people employed in comparatively stable employments. Workers in the un-organized sector which constitute over 90% of the work and whose incomes and employment are uncertain because of uncertainty of markets, the recession or boom of economies, the whims and caprice of the
employment, the political situation and rapidly changing policies of government, continue to suffer from economic insecurity.

(v) There are different organizations which are implementing various social security schemes and in many cases there is duplication of effort.

Keeping in view the need for providing social security to workers both in the organized and unorganized sector, the need for simplification and cost effectiveness, the Working Group had recommended the following initiatives in the field of social security during the 9th Five Year Plan:

(i) A National Policy on Social Security should be framed with a view to ensuring, compulsion and direction. For this purpose the concept of social security should be clearly defined.

(ii) The ILO Convention on Social Security (Minimum) Standard, 1952 should be examined and efforts be made to ratify the same.

(iii) Social Security should be firmly and comprehensively be integrated with, the economic development and planning process and if necessary, the Union and State Governments should provide extra budgetary support for social security.

(iv) It should be the endeavour of the Government to evolve an Integrated Comprehensive Scheme of Social Security by combining in a single legislation the provisions of all existing social security schemes. This would definitely result in increased coverage, reduced overhead costs and improvement in the content and quality of the program.

If necessary, a separate department of social security within the Ministry of Labour should be set up with a strong Research and Development Wing to facilitate and accelerate the development process and achieve extension of social protection to all sections of the working population. This should also provide for introduction of contributory unemployment insurance scheme in the organized sector as because of restructuring of economy in the wake of liberalization, it may be necessary for many workers either to change jobs or to remain unemployed for some time.

The researcher strongly suggests and supports the above recommendations of the Working Group on Social Security of the Ninth Five Year Plan.
Later, the recommendations of the Working Group were considered by the Planning Commission and the National Development Council, subsequently included in the Approach Paper to the Ninth Five Year Plan. In pursuance of these recommendations the Government of India constituted, in December 1997, a Task force on Social Security headed by Mr. S.K.Wadhawan.

The Task Force submitted its report in 1999 recommending *inter alia* administrative merger of the ESIC\(^\text{36}\) and the EPFO\(^\text{37}\) as a first step towards introduction of a single comprehensive legislation. The Task Force has also recommended integration of the Workmen’s Compensation Act and the Maternity Benefit Act in the ESI component but till this time there is no action on the above mentioned.

### 2. Different Levels of Social Security System

In India there is already a *three level Social Security system* which is in existence and the same can be extended and consolidated.

In the *first level* there is National Social Assistance Programme and other Social Assistance Programmes.

At the *Second level* there are the social insurance schemes namely; the ESI Scheme, the Schemes framed under the EPF Act, the employers’ liability schemes and such others.

At the *third level* are the numerous voluntary health insurance and old age pension schemes which are being run by LIC,\(^\text{38}\) GIC,\(^\text{39}\) the UTI and other financial institutions.

Lately a *new set of schemes* have appeared on the scene and they are the welfare funds, subsidised insurance schemes, self-help groups, micro credit, micro finance and micro insurance schemes etc.

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\(^{36}\) Employees State Insurance Corporation  
\(^{37}\) Employees Provident Fund Organisation  
\(^{38}\) Life Insurance Corporation  
\(^{39}\) Guaranteed Investment Certificate
Each of these levels needs to be expanded to cover the whole population along with the following envisaged four levels, namely:-

(i) Social assistance programmes financed wholly tax based and financed form the exchequer
(ii) Schemes which are partly contributory and partly subsidized by the State
(iii) Wholly contributory social insurance schemes
(iv) Voluntary Schemes

**On the basis of the above mentioned the researcher suggests the following:**

Destitute and people below the poverty line who cannot make any contribution for their security may be covered under the tax based schemes in the first level. Workers in the unorganized sector who have some contributory power but cannot be self-sufficient may be covered under the subsidized schemes in the second level. Those who either by themselves or jointly with their employers can make adequate contribution to the schemes so as to be self-sufficient may be covered under the social insurance schemes in the third level. Others who are comparatively affluent and can make their own provision for meeting the contingencies or risks as they arise may be covered under voluntary schemes which the new insurance companies can provide.

3. **Consultative Committee of Parliament**

*In July, 1993, the Government of India constituted a sub-committee of the Consultative Committee of Parliament* attached to the Ministry of Labour to study the evils of the arrears of contributions and to suggest corrective measures. The committee headed by Shri Gurudas Dasgupta, Member of Parliament (MP), has recommended that the ESI and EPF authorities should be given the same powers for search, seizure and issue of warrants against delinquent individuals and establishments as are available with the Customs and Excise authorities for recovering statutory dues. The committee has also made the following recommendations.
1. Non-payment of PF and ESI dues should be made a non-bailable offence

2. Employers should be made to pay the dues within 90 days of the company being declared as a sick unit by the BIFR as a precondition for considering its revival proposal;

3. The PF and ESI Acts should be amended to allow attachment and sale of personal property of employers in case of default;

4. In case an employer does not agree with the recovery officers’ action and seeks judicial intervention in a Court, he should be allowed to do so only after depositing 75 per cent of the amount specified in the recovery order;

5. Special branches in High Courts and separate courts at district level should be created for adjudication of PF and ESI cases; and

6. The defaulter should be banned from getting import licenses and government patronage till such time as he remains a defaulter.

These recommendations are stated to be under consideration of the Government.

As a result of the various measures taken by the Corporation it could recover Rs.14.29 crores only from the defaulting employers during the year 1993-94, while there was an increase in the arrears to the extent of over Rs.37 crores during the same period.

The researcher completely agrees with the above mentioned suggestions and states that the Parliament shall amend the concerned enactments in the interest of the employees and the beneficiaries.

3. Appropriate Government’s Power of Exemption

Section 87 of the ESI Act provides that the appropriate Government may by notification exempt any factory or establishment or class of establishments from the operation of the Act for a period of one year at a time subject to periodical review and such other conditions as may be specified. The Act also provides for grant of exemption in favour of any person or persons employed in any
factory or other establishment to which the Act applies. There is also a further provision for grant of exemption to any factory or establishment belonging to the Government or a local authority if the employees of such factory or establishment are in receipt of benefits substantially similar or superior to those provided under the Act. Several factories and establishments have been granted exemption by virtue of these provisions. The main criterion for grant of exemption has been that the employees of the establishments enjoy benefits substantially similar or superior to those provided under the Act. For this purpose the standard of medical care and the scale of cash benefits provided are taken into account. The wishes of the employees are also taken into consideration before granting reviewing exemptions.

The ESI Corporation has been generally opposed to grant of exemption on the ground that it is against the principle of solidarity. But the appropriate Government has been granting exemptions liberally.

Neither the Government of India nor the Corporation has however published the number of factories, establishments of persons who have gone out of coverage because of the exemptions. It is also not clear whether the number of employees covered under the scheme as reported by the Corporation is inclusive of the number of persons employed with exempted establishments or exclusive of them.

*Therefore, the researcher suggests that the Corporation shall publish every year a clear depiction of the number of employees covered under the scheme as reported by the Corporation is inclusive of the number of persons employed with exempted establishments or exclusive of them, this is to know the exact number of employees covered under the ESI Act.*

4. **Application of the Wage Ceiling for Cover**

The power to fix the wage ceiling is vested with the Central Government. The Central Government however acts on the recommendations of the Corporation.
Since, the wage ceiling of those employees whose wages exceed the prescribed amount cannot be covered under the Act and those who are covered, their wages being below the prescribed amount also go out of coverage when their wages go above the ceiling. But they are again brought under cover when the ceiling is raised. Such fluctuation between coverage and non-coverage has been causing much difficulty to many employees.

*Therefore, the researcher suggests to remove the ceiling or to raise the ceiling more frequently proportionate with the rise in the wage levels. Further suggestion is that a provision should be made in the Act that an employee once covered remains covered even if his wages exceed the ceiling or an amendment to be made to the Act deleting wage ceiling limit all together.*

5. **Coverage of Seasonal Factories**

Seasonal factories are excluded from coverage under the Act. A series of recommendations have been made to amend the Act so as to cover seasonal factories, but the amendment has not been carried out so far. Proposals have also been made for evolving appropriate schemes for the seasonal factories. A modified scheme of contribution and benefits called ESI (Cashew Workers) Scheme 1989 was introduced for cashew workers in 1989 under Section 1(5) of the Act on an experimental basis. The working of the ESI (Cashew Workers) Scheme, 1989 was reviewed by a Sub-Committee of the Corporation and based on recommendations of the Committee. The Scheme was not extended beyond 30.09.1997. The Scheme ceased to exist since 30.03.1997. Thus the question of extending the Act to seasonal factories is still pending consideration.

*The researcher suggests that ESI Act should be amended to incorporate the seasonal factories also.*

The exclusion of seasonal factories from the purview of the Act has resulted in denial of the various benefits under the Act to a number of employees in the country. The employees in seasonal factories need as such care and protection against risk as those in factories now within purview of the Act. It is high time to widen the scope of the act to extend its operation to
seasonal factories also. In respect of seasonal factories the rate of contribution may be proportionally fixed depending upon the duration for which they function in a year.\footnote{ESI Corpn, Hyderabad v J.C.\&Co.Products Ltd 1980 Lab IC 1078 at P. 1081 (Andhra Pradesh)}


The rehabilitation of a worker disabled should be one of the most beneficial objectives of the Workmen’s Compensation Act, 1923 or the Employees State Insurance Act, 1948. If the disabled worker can be rehabilitated and returned to useful productive capacity, the cost saving in future benefits can move. This is also desirable from social view point. However, this benefit has not so far been provided under the labour legislation particularly in the Workmen’s Compensation Act, 1923 or the Employees State Insurance Act, 1948. In the absence of any legislative norm, the Supreme Court played a creative role to protect the interest of workers for premature incapacitation to do the required work due to occupational disability. Thus in *Anand Bihari v Rajasthan State Road Transport Corporation, Jaipur*\footnote{1991 Lab IC 494} the Court, *inter alia*, was called upon to decide whether the order of termination of service of drivers (over 40 years of age) for developing weak or sub-normal eyesight or losing required vision on account of their occupation as drivers of the corporation was proper, equitable and just? If not what should be done? Is it desirable to evolve a compensatory or alternate scheme for employment to meet the hardship? If so what should be the scheme in these cases? In the absence of any provision for compensation in the Employees’ State Insurance Act or in the Workmen’s Compensation Act to provide social security to workmen and for adequate safeguard to remedy the situation of the members of their family and dependents who have been thrown out of their employment for the occupational injury, the Supreme Court evolved the following scheme of relief:

(i) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform.
(ii) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows:

(a) Where the employee has put in 5 years or less than 5 years, service, the amount of compensation shall be equivalent to 7 days’ salary per year of the balance of his service;

(b) Where the employee has put in more than 5 years but less than 10 years service, the amount of compensation shall be equivalent to 15 days salary per year of the balance of his service;

(c) Where the employee has put in more than 10 years, but less than 15 years service, the amount of compensation shall be equivalent to 21 days salary per year of the balance of his service.

(d) Where the employee has put in more than 15 years service but less than 20 years service, the amount of compensation shall be equivalent to one month’s salary per year of the balance of his service;

(e) Where the employee has put in more than 20 years service, the amount of compensation shall be equivalent to two months’ salary per year of the balance of his service.

The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

(iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

(iv) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workman.\(^{45}\)

The aforesaid scheme is subject to three limitations, namely, (i) incapacitated workmen are not rendered incapable of taking any other job either in the company/corporation or outside, (ii) workmen must be at the advanced stage of their life and it would be difficult for them to get a

\(^{45}\text{ibid 501-502}\)
suitable alternative employment outside; and (iii) relief made available under the scheme should not be such as would induce the workmen to feign disability which in the case of disability such as the present one, viz., the development of a defective eyesight, it may be easy to do so.\footnote{SC Srivastava, ‘Occupational Health of Workers in India Law and Practice’ (2002) 31 11, 40-41}

In \textit{Consumer Education and research Centre v Union of India}\footnote{1996 (72) FLR 481}, the Supreme Court observed, be it the State or its undertaking or private employer to make the Right to Life meaningful; to prevent pollution of workplace; protection of the environment; protection of the health of the workmen or to preserve free and unpolluted water for the safety and health of the people. The authority or even private persons or industry are bound by the directions issued by this court under Articles 32\footnote{Remedies for enforcement of rights conferred by the third part of the Indian Constitution} and 142\footnote{Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.} of the Constitution.

The court accordingly issued the following direction to all the industries: (i) to maintain and keep maintaining the health record of every worker up to minimum period of 40 years from the beginning of the employment or 5 years after retirement or cessation of the employment whichever is later; (ii) the Membrane Filter test, should be adopted by all the factories or establishments at par with the Mines Regulations, 1961 and Rules issued under the Vienna Convention to detect asbestos and fiber; (iii) all the factories whether covered by the Employees’ State Insurance Act or Workmen’s Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker; (iv) the Union and the State Governments are directed to review the standards of permissible exposure limit value of fiber/cc in tune with the international standards reducing the permissible content. The review shall be continued after every 10 years and also as and when the ILO gives directions in this behalf consistent with its recommendations or any conventions; (v) the Union and the State Governments are directed to consider inclusion of such of those small scale factory or factories or industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary products; (vi) the appropriate Inspector of Factories directed to send all the workers, examined by the concerned ESI hospital, for re-examination by the National Institute of Occupational Health (NIOH) to detect whether all or many of them are suffering from asbestos.
The Court directed all the industries large, medium, small, mines milling units etc. to cover their workers by health insurance. The Court also directed the Government of India to evaluate TLV\textsuperscript{50} as and when necessary and to take it up to 1 or 4 ml by the methods recommended by ILO. The Court instructed all the concerned authorities i.e. industries, State and Central Governments research institutes, Bureau of Indian Mines and Bureau of Indian Standards to follow ILO Convention accepted by Government of India.

\textit{Aforesaid decisions are a milestone in the progress of Social Security Law not for what the Supreme Court decided in these cases but for the reason that in the first case it has formulated a scheme for compensatory relief to safeguard the interest of such workmen who have to face premature termination of service on account of disabilities contracted from their job and in the second case protection of Health of workmen. Hence, it is suggested that the Governments and Employees State Insurance Corporation shall implement strictly the above mentioned in the interest of workmen.}

8. Coverage of Other Non-Factory Establishments

The coverage of the Employees’ State Insurance Act, 1948, is very limited. There is large body of workers in the unorganized sectors of employments such as power looms, diamond cutting workshops, quarries and tanneries and agricultural labour that are more prone to occupational diseases are outside the scope of the ESI Act. This constitutes one of the most serious short coming of the Scheme under the Act.

\textit{The researcher however feels that it can be done in phases and to begin with at least the medical and disablement benefits are to be extended to such employees suffering from occupational diseases.}

Section 1(5) of the Act provides that the appropriate Government may in consultation with the Corporation, after giving six months’ notice, extend the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. By

\textsuperscript{50} Threshold Limit Value (in chemicals)
virtue of this provision the scheme has been extended to shops, hotels, restaurants, cinemas including preview theatres, road motor transport and newspaper establishment’s employing 20 or more persons.

The researcher suggests that in addition to above mentioned, all educational institutions should also be brought within the purview of the ESI Act through an amendment.

9. Regular examination of the sufficiency of existing facilities

One of the main reasons for dissatisfaction with services of ESI scheme is that improvement in facilities has not been keeping pace with increase of number of workers covered in the covered area. Hence, there is, a need to periodically review the growth of industries in the covered area and the adequacy of existing facilities as suggested by the ESI Scheme Review Committee, 1982.51

10. Training in Occupation Diseases

A scheme be framed and executed for systematic training in occupational diseases in collaboration between the Employees’ State Insurance Corporation and the Director General, Factories Advise Service and Labour Institute working in the area of occupational health for systematic training in occupational diseases for a substantial proportion of insurance doctors. The ESI corporation may collaborate with other agencies working in the field in surveying and investigating the incidence of occupational diseases in different areas and industries and devising means for medical checkup and treatment of the affected workers.

51The ESI Scheme Review Committee (1982) had recommended that wherever Government or other dispensaries are available and can be utilized local insurable population may be covered even if the concentration of such population is below 500. But the Corporation did not accept this recommendation.
11. **Preventive Measure**

There is a need to shift the emphasis to prevention of occupational diseases. **The most important and effective means of prevention of diseases is periodical medical checkup.** All the workers covered over the Employees’ State Insurance Act, on their entry into regular services should be required to undergo a medical checkup and thereafter at least once in one year. This should be done particularly in those cases where workers are liable to contract occupational diseases and also there is a need to take more effective steps for proper identification of occupational diseases in each industry.

12. **Revision of the List of Occupational Diseases**

The current list of occupational diseases in the Third Schedule of the Employees State Insurance Act, 1948 and the Factories Act, 1948 and the Workmen’s Compensation Act, 1923 should as far as possible be uniform and the list of diseases should be reviewed and revised in the light of the list of occupational diseases laid down in the ILO Convention\(^{52}\) on the subject taking into account the nature of industries and occupations prevalent in the country. The government/corporation has power to add new diseases to the schedule.

13. **Strengthening of Inspection Machinery**

The labour inspection machinery should be strengthened. Further, there should be frequent inspection to detect occupational diseases.

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\(^{52}\)See in the chapter 3 under the point 3.5.9
14. **Capacity building**

Occupational health not only deals with work-related disorders/diseases but it also encompasses all factors that affect workers’ health. With changing business scenario, the role of an Occupational Health Physician has become more demanding and those unable to keep pace with such developments may find themselves redundant. Hence, there is an urgent need for strengthening skills, developing newer capacities and broadening knowledge in the area of occupational health. If the efficiency of the currently existing training facilities in India is increased, the prospect of occupational health will obviously improve a great deal.

The need for competent professionals is of critical importance in the management of occupational health in the liberalized economy. The country needs close to 10,000 qualified Occupational Health Professionals and there is a tremendous gap between the need and availability of qualified personnel.

15. **Reporting system**

Occupational accidents and diseases, in particular the ones which occur in small workplaces, are often left unreported in the government reporting system. We need to increase our efforts to develop well-functioning reporting systems and help occupational accident and disease victims receive timely treatment and compensation. *Accident and disease reporting can be strengthened in many ways such as frequent campaigns, easy-to-use reporting systems. Several countries have succeeded in increasing the number of accidents and diseases reported through linking accident and disease reporting to the employment injury insurance scheme.*

16. **Integration of Occupational Health with Primary Health Care**

In India, occupational health is not integrated with primary health care. Occupational Safety and Health till date remains under the mandate of the Ministry of Labour and not under the Ministry
of Health. The researcher suggests that for the smooth, efficient and effective conduction the area of occupational health should be brought under the mandate of Ministry of Health.

17. **Non-contributory system**

States must ensure, at the very least, minimum essential levels of non-contributory social protection not as a policy option, but rather as a legal obligation under International Human Rights Law.\(^{53}\)

18. **Gender-sensitivity**

States should ensure that all social protection programmes are subject to gender-sensitive eligibility criteria which take into account intra-household dynamics to ensure that women are reached by and able to benefit from social protection.\(^{54}\)

19. **Removing of obstacles to accessibility**

A number of factors can prevent people living in poverty and illiteracy from accessing the social protection benefits to which they are entitled. These include:

- *Administrative requirements*, such as the production of identification documents or biometric information;
- *Application processes* that require literacy or involve complex or formalistic language;
- *Geographical remoteness* necessitating long-distance travel or high opportunity or transport costs;

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\(^{54}\) ibid
• Limited physical mobility, safety concerns and inadequate transport and infrastructure facilities.

The above mentioned obstacles should be removed.

Path Ahead

Today, the need for a Human Rights-based approach to social security is greater than ever. Ever since the global economic and financial crises in the financial markets arose in 2007, they have had a devastating impact on the prevalence and severity of poverty and presented a serious threat to the lives and livelihoods of hundreds of millions of people across the globe. Their disastrous impact has been amplified by the fact that only 20 per cent of the world’s working-age population and their families had effective access to social security at that time.55 The onset of the crises therefore exacerbated deprivations and resulted in inequality and poverty becoming not only more widespread, but more deeply entrenched.

According to World Bank estimates, as a result of the crises, an additional 50 million people fell into income poverty (less than $1.25 a day) during 2009 and an estimated 64 million more were living in income poverty by the end of 2010. Furthermore, around 71 million additional people will remain in extreme poverty until 2020.56 Because ingrained discrimination and structural disadvantage restrict the access of vulnerable groups to services and social protection, they have endured, and continue to endure, the gravest effects of the crises.

The critical role played by social security systems in helping States respond to the crises gives further weight to the claim that social security could be a key strategy to reinvigorate efforts to achieve the Millennium Development Goals (MDG) by 2015, and the ideal successor to the MDG agenda. In the Outcome Document of the 2010 Millennium Summit, States first

acknowledged that social security was one of the more successful approaches which could contribute to consolidating and achieving further gains towards the MDGs, and then strengthening their political commitment to replicate and scale up social security initiatives. It is hoped that, as 2015 approaches, social security will continue to gain prominence and political support, enough that it can provide the framework for the post-2015 development agenda.

As we navigate these uncertain times, with inequality steadily rising and official development assistance budgets shrinking, the imperative to adopt social security is increasingly clear. However, unless a Human Rights framework is applied to the design, implementation, monitoring and evaluation of social security programmes, the impact and outcomes of social security will not be equitable or sustainable, and the poorest and most vulnerable will be left behind.

The world has made remarkable progress in reducing extreme poverty. In 1990, close to half of the people in developing regions lived on less than $1.25 a day. This rate dropped to 22 per cent by 2010. This means that the world reached the MDG57 target—of halving the proportion of people living in extreme poverty—five years ahead of the 2015 deadline. Meantime, the absolute number of people living in extreme poverty fell from 1.9 billion in 1990 to 1.2 billion in 2010. Despite this overall achievement, progress on poverty reduction has been uneven. Some regions, such as Eastern Asia and South-Eastern Asia, have met the target of halving the extreme poverty rate, whereas other regions, such as sub-Saharan Africa and Southern Asia, still lag behind. According to World Bank projections, sub-Saharan Africa will be unlikely to meet the target by 2015.58

The overwhelming majority of people living on less than $1.25 a day belong to two regions: Southern Asia and sub-Saharan Africa. In 2010, one third of the world’s 1.2 billion extreme poor lived in India alone. China, despite much progress in poverty reduction, ranked second, and was home to about 13 per cent of the global extreme poor. Nigeria (9 per cent), Bangladesh

57Millennium Development Goal
(5 per cent) and the Democratic Republic of the Congo (5 per cent) followed. Nearly two thirds of the extreme poor lived in those five countries in 2010.\textsuperscript{59}

Further, there are many factors, which are changing the industrial environment, such as globalization, outsourcing, transfer of technologies, newer type of jobs (IT, Call Centre), change in employment patterns, etc. Additionally, factors like increasing literacy / education are also ensuring worker awareness and more and more “Right to Know” demands from workers. Nongovernmental organizations (NGO), media and employee pressure groups are also playing a positive role in this matter.

The above mentioned necessitates having international collaboration in the following key areas:

- Creating awareness / felt need for occupational health
- Research in occupational health
- Generation of data in priority areas through research studies
- Capacity building and competence building
- Technical exchange of experts / fellowships
- Quality assurance, accreditation
- Model programmes/pilot projects may be undertaken with the support from ILO / WHO along with NGOs.

\textit{The researcher would like to conclude with the following paragraphs:}

\textbf{Can we realize that “what does a common man expects in a living environment?”} We may not find that a common man needs more than the basic life security, family security, health care, education, employment, housing, water, electricity, roads, corruption free administration. It

\textsuperscript{59}ibid
seems amazing that after 67 years of independence, none of the basic measure or accountability of the livelihood for millions of Indians has been secured by any administration. More amazingly this serious matter of urgency is not the agenda of any people group or political group!

The existing System of Administration in India has been unable to deliver the prosperity to most of the Indian People due to small number of vested interest Political Ideologies that have segregated the society in different wings. Most importantly - None of these ideologies work for the benefit of Common People of India or the universe. The ideologies such as “Independence Movements” “GaribiHatao”, “Ram Mandir”, “North East Movements”, “Violent Movements”, “Samajwadi Movements”, “Separatist Movements”, “Communism Movements”, “Religious Movements,” “Dalit movements” and numerous others have not been able achieve prosperity and justice to the common man of India. Though, with the help of these popular ideologies, their leaders are successful to achieve desired political platforms of vested interests.

Hence, unless a Human Rights framework is applied to the design, implementation, monitoring and evaluation of social security programmes, the impact and outcomes of social security will not be equitable or sustainable, and the poorest and most vulnerable will be left behind.
THE EMPLOYEES' STATE INSURANCE (AMENDMENT) ACT, 2010

(No. 18 of 2010)

[24th May, 2010.]

An Act further to amend the Employees’ State Insurance Act, 1948.

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

1. Short title and commencement. - (1) This Act may be called the Employees’ State Insurance (Amendment) Act, 2010.

(2) Section 18 shall be deemed to have come into force on the 3rd day of July, 2008 and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 1.B - In the Employees' State Insurance Act, 1948 (hereinafter referred to as the principal Act), in section 1, in sub-section (5), for the words "six months'", the words "one month's" shall be substituted.

3. Amendment of section 2. - In section 2 of the principal Act, —

(A) in clause (6A),—

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:—

"(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter;";

(b) in sub-clause (ii), for the words "eighteen years", the words "twenty-five years" shall be substituted;

(B) in clause (9), for the words "or under the standing orders of the establishment;", the words "and includes such person engaged as apprentice whose training period is extended to any length of time" shall be substituted;

(C) in clause (11), for sub-clause (v), the following sub-clauses shall be substituted, namely:—

"(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;"
(vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person;"

(D) for clause (12), the following clause shall be substituted, namely:

‘(12) "factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.’

4. Amendment of section 10. - In section 10 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:

"(a) the Director General, the Employees' State Insurance Corporation, ex officio as Chairman;

(b) the Director General, Health Services, ex officio as Co-chairman;"

5. Amendment of section 12. - In section 12 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

"(3) A person referred to in clause (i) of section 4 shall cease to be a member on becoming a Minister or Speaker or Deputy Speaker of the House of the People or Deputy Chairman of the Council of States or when he ceases to be a member of Parliament.".

6. Amendment of section 17. - In section 17 of the principal Act, in sub-section (2), in clause (a), after the proviso, the following proviso shall be inserted, namely:

"Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis,"

7. Amendment of section 37. - In section 37 of the principal Act, for the words "five years", the words "three years" shall be substituted.

8. Amendment of section 45. - In section 45 of the principal Act, —

(a) for the words "Inspectors" and “Inspector”, wherever they occur, the words "Social Security Officers" and "Social Security Officer" shall respectively be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:

"(4) Any officer of the Corporation authorised in this behalf by it may, carry out re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer.".
9. Amendment of section 45A. - In section 45A of the principal Act, in sub-section (1),—

(i) for the word "Inspector", the words "Social Security Officer" shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.".

10. Insertion of new section 45AA. -After section 45A of the principal Act, the following section shall be inserted, namely:—

"45AA. Appellate authority. - If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation:

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation.".

11. Amendment of sections 51A and 51B. - In the principal Act, in sections 51A and 51B, for the words "an insured person's", the words "an employee's" shall be substituted.

12. Amendment of sections 51C and 51D. In the principal Act, in sections 51C and 51D, for the words "insured person", the word "employee" shall be substituted.

13. Insertion of new section 51E. - After section 51D of the principal Act, the following section shall be inserted, namely:—

"51 E. Accidents happening while commuting to the place of work and vice versa. - An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.".

14. Amendment of section 56. - In section 56 of the principal Act, in sub-section (3), for the third proviso, the following proviso shall be substituted, namely:—

"Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be prescribed by the Central Government.".
15. Amendment of section 58. - In section 58 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:

“(5) The State Government may, in addition to the Corporation under this Act, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury:

Provided that any reference to the State Government in the Act shall also include reference to the organisation as and when such organisation is established by the State Government.

(6) The organisation referred to in sub-section (5) shall have such structure and discharge functions, exercise powers and undertake such activities as may be prescribed.”.

16. Amendment of section 59. - In section 59 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:

"(3) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families, to their families."

17. Insertion of new section 59B. - After section 59A of the principal Act, the following section shall be inserted, namely:

"59B. Medical and para-medical education. - The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees' State Insurance Scheme.".

18. Substitution of new Chapter for Chapter VA. - For Chapter VA of the principal Act, the following Chapter shall be substituted, namely:

CHAPTER VA

SCHEME FOR OTHER BENEFICIARIES
73A. Definitions. - In this Chapter,—

(a) "other beneficiaries" means persons other than the person insured under this Act;

(b) "Scheme" means any Scheme framed by the Central Government from time to time under section 73B for the medical facility for other beneficiaries;

(c) "underutilised hospital" means any hospital not fully utilised by the persons insured under this Act;

(d) "user charges" means the amount which is to be charged from the other beneficiaries for medical facilities as may be notified by the Corporation in consultation with the Central Government from time to time.

73B. Power to frame Schemes. - Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, frame Scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is underutilised on payment of user charges.

73C. Collection of user charges. - The user charges collected from the other beneficiaries shall be deemed to be the contribution and shall form part of the Employees' State Insurance Fund.

73D. Scheme for other beneficiaries. - The Scheme may provide for all or any of the following matters, namely:—

(i) the other beneficiaries who may be covered under this Scheme;

(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;

(iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation;

(iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

73E. Power to amend Scheme. - The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.

73F. Laying of Scheme framed under this Chapter. - Every Scheme framed under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or to be of no effect, as the case may be; so, however, that any such
modification or annulment shall be without prejudice to the validity of anything
previously done under that Scheme.’.

19. Validation. - All things done, or, omitted to be done, and all actions or measures
taken or not taken during the period beginning on or after the 3rd day of July, 2008 and
ending immediately before the date of commencement of the Employees' State Insurance
(Amendment) Act, 2010, shall in so far as they are in conformity with the provisions of
this Act, as amended by the Employees' State Insurance (Amendment) Act, 2010, be
deemed to have been done, or taken, or not taken, under the provisions of this Act, as
amended by the Employees' State Insurance (Amendment) Act, 2010, as if such
provisions were in force at the time such things were done or omitted to be done and
actions or measures taken or not taken during the said period.

20. Amendment of section 87. - In section 87 of the principal Act, the following
provisos shall be inserted at the end, namely:—

"Provided that such exemptions may be granted only if the employees in such
factories or establishments are otherwise in receipt of benefits substantially similar
or superior to the benefits provided under this Act:

Provided further that an application for renewal shall be made three months
before the date of expiry of the exemption period and a decision on the same shall be
taken by the appropriate Government within two months of receipt of such
application.".

21. Amendment of section 91A. - In section 91A of the principal Act, for the words
"either prospectively or retrospectively", the word "prospectively" shall be substituted.

22. Insertion of new section 91AA. - After section 91A of the principal Act, the
following section shall be inserted, namely:—

"91AA. Central Government to be appropriate Government. - Notwithstanding
anything contained in this Act, in respect of establishments located in the States
where medical benefit is provided by the Corporation, the Central Government shall
be the appropriate Government.".
23. Amendment of section 95.- In section 95 of the principal Act, in sub-section (2),—

(i) after clause (ef), the following clause shall be inserted, namely:—

"(eff) the income of dependant parents from all sources;";

(ii) after clause (eh), the following clause shall be inserted, namely:—

"(ehh) the conditions under which the medical benefits shall be payable to the insured person and spouse of an insured person who has attained the age of superannuation, the person who retires under Voluntary Retirement Scheme and the person who takes pre-mature retirement;".

24. Amendment of section 96. - In section 96 of the principal Act, in sub-section (1), after clause (e), the following clause shall be inserted, namely: —

“(ee) the organisational structure, functions, powers, activities and other matters for the establishment of the organisation;”.

25. Amendment of section 97. - In section 97 of the principal Act, in sub-section (2),—

(i) in clause (xx), for the word "Inspectors", the words "Social Security Officers" shall be substituted;

(ii) after clause (xx), the following clause shall be inserted, namely:—

"(xxa) the constitution of the appellate authority and the interest on amount deposited by the employer with the Corporation;".

V. K. BHASIN,
Secy. to the Govt. of India.
### List of International Labour Organization Conventions Ratified by India

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