CHAPTER – III

SOCIAL SECURITY - CONCEPTUAL BASIS
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Social Security is as old as society itself, but its form has evolved according to its needs and the level of social consciousness of the people. The changing conditions of life as affected by the changes in technology, new experiences etc, have led to the creation of new demands of social legislation, social assistance and social protection.¹

Social security, as at present understood, is one of the dynamic concepts of the modern age which has deeply influenced the social and economic policy of many countries in the world.²

The idea of social security is that, the State shall make itself responsible for ensuring a minimum Standard of material welfare to all its citizens on a basis wide enough to cover all the main contingencies of life.³

In the life of a man there are two stages of dependency; childhood and old age, in the intervening years of adult life there are likely to occur ‘spells during which he cannot earn a living. The social security system aims to help individuals in such times of dependency. The main risks of insecurity, to which human life is liable and in relation to which organized society can afford relief to the helpless individual, are incidents of life occurring right from childhood up to old age and death and include

mainly sickness, maternity, invalidity, accident and industrial disease, unemployment, old age, death of the bread-winner and other such emergency.4

3.1 Evolution of Social Security

The word "Social Security" was first used by Bismarck in 1880's in Germany, and could get its official recognition, it was authoritatively used in the United States of America only in 1935 for the first time, and it now used throughout the world.5

It was mainly in the nineteenth century that the different European countries came forward to take up the problem of social security. Till then it was more or less left in the hands of the charitable trusts of the religious or philanthropic bodies.6

Germany under Bismarck gave a lead in the field of social security.7 It was during the eighties of the nineteenth century that Germany introduced quite a number of schemes including a compulsory scheme of insurance for safeguarding the economic condition of the Germans.8 If Germany gave this lead in 1883, Austria did not lag behind. Within five years, i.e. in 1888 Austria followed the suit. Hungary took up the matter in 1891. The theory of economic protection by the State was getting popular in European countries during this period. It was not before 1912 that Great

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Britain took up the compulsory health insurance but that too was done in a sporadic manner. The scheme was thrown open to general public only in 1920.9

The British people, however, had the first Old Age Pensions Scheme, “giving non-contributory pensions at the age of 70, subject to a means test” as early as in 1908. By 1925 Great Britain had contributory pension schemes for the old, the widows and the orphans. It was not before 1934 that Britain had unemployment insurance under the unemployment assistance Act along with “a new national system of unemployment assistance”.10

The United States took up the problem of social security in 1934 and accepted in principle the philosophy of social security in 1935.11 It was on June 8 1935 President Roosevelt stated before the Congress, “We are compelled to employ the active interest of the nation as a whole through government in order to encourage a greater security for each individual who composes it”.12

He appointed a committee to study the pros and cons of the problem. The committee submitted its report by the beginning of 1935. On the basis of this analysis the Social Security Bill was placed. At the time of introducing the legislation President Roosevelt said,

“The Act represents a corner-stone in a structure which is being built but is by no means complete-a structure intended to lessen the force of possible

10 Supra note 2, at 58
future depressions, to act as a protection to future administrations of the government against the necessity of going deeply into debt and furnish relief to the needy-a law to flatten out the peaks and valleys of deflation and of inflation in other words, a law that will take care of human needs and at the same time provide for the United States an economic structure of vastly greater soundness".13

The Social Security Act had three principal objectives namely

(i) Care of the needy, the aged, the blind, and dependent children;
(ii) Care of the unemployed; and finally;
(iii) Old age insurance for the persons working in the industry;

Besides these, there were provisions in the Act for extension of State public health scheme under the Public Health Service and for development of State maternal and child health under Federal Children’s Bureau.14

3.2 Concept of Social Security

Social Security is a dynamic concept. Being a dynamic subject no rigid limit can be laid down for all time to come. It varies from time to time and country to country. The growth and development of national economy will profitably affect the social security scheme. Whatever may be the scope of social security it is now considered in almost all the countries of the world, developed and developing, as an indispensable chapter of a national programme to strike at the root of poverty, unemployment and disease. Social security may provide for the welfare of persons

14 Supra note 11, at 198.
who become incapable of working by reason of old age, sickness and invalidity and are unable to earn anything for their livelihood. It has been considered essential for workers, though with the development of the idea of welfare State, its scope should be widened to cover all sections of society.\(^\text{15}\)

In order to appreciate the nature of the concept of social security, it is necessary to examine the meaning given from time to time.

Firstly, a systematic attempt to define social security was made by the I.L.O which defines “Social Security”, as “the security that society furnishes through appropriate organizations against certain risks to which its members are exposed. These risks are essentially contingencies, against which the individual of small means cannot effectively provide for by his own ability or foresight or even in private combination with his fellows, these risks being sickness, maternity, invalidity, old-age and death. It is the characteristic of the contingencies that they imperil the ability of the working man to support himself and his dependents in health and decency.”\(^\text{16}\)

This view clearly points out that the dynamic concept of social security implies protection afforded by the society as an aspect of human right, through appropriate organizations, and against certain risks.

Secondly, Sir William Beverage in his Report on Social Insurance and Allied Services in England, commonly known as ‘Beverage Plan’ define “social security” as a scheme of social insurance against interruption and destruction of earning power


and for special expenditure arising at birth, marriage or death". He regarded social security as "an attack on five giants, namely, want, disease, ignorance, squalor and idleness". Accordingly, attack on want means securing every citizen in return for his services adequate income for his maintenance and that of his dependents-both when he was working and when he was not. Attack on disease implies: - Ensuring every citizen against possible attacks of disease and providing medical facilities for the maintenance of a reasonable standard of health. Attack on ignorance is: - providing greater educational facilities for all the members of society. Attack on squalor means: - security against unplanned, disorderly growth of cities. Attack on idleness implies- ensuring every citizen a reasonable opportunity of productive services and reasonable earning services.

Thirdly, International Social Security Association Report define social security as "A concerted effort to provide for alternative sources of income to the workers at the time of contingencies, like unemployment, sickness, accidents and after the age of retirement".

Lastly, The National Commission on Labour has endorsed the I.L.O. definition of social security and observed "social security envisages that, the members of a community shall be protected by collective action against social risks causing undue

18 Ibid. p.36.
hardship and privation to individuals whose prime resources can seldom be adequate to meet them''.

3.3 Aims of Social Security Measures

The aims of all social security measures are three-fold; Compensation, Restoration, and Prevention. Compensation goes to income security and is based upon the idea that during spells of risks, the individual and his family should not be subjected to a double calamity involving both destitution and loss of health, limb, life or work. Restoration implies cure of the sick and the invalid, re-employment and rehabilitation, and is in some ways, an extension of the earlier concepts of the functions of social security. Prevention is designed to avoid the loss of productive capacity due to sickness, unemployment or invalidity and to render available the resources which are used up by avoidable disease and idleness and thus increase the material, intellectual and moral well-being of the community.

3.4 Methods of Providing Social Security Benefits to Workers

Social Security is a very comprehensive term. The methods of providing social security benefits to the workers are two types, these are; Social Assistance and Social Insurance. These may be said to be the two faces of the same coin. Both of them are integral part of a social security system. Social Assistance refers to the assistance rendered by the society to poor and needy persons voluntarily, without placing any

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obligation on them to make certain contribution for becoming entitled to relief, such as workmen's compensation, maternity benefits, old age pensions, etc.

Social Insurance refers to scheme of maintaining an insurance fund from the contributions made by the prospective beneficiaries as well as others and to grant out of it such benefits as sickness, injury, maternity, unemployment, old age pensions, and etc.22

3.5 Types of Benefits Available to the Workers under Social Security Schemes

There are NINE distinct branches or types of programmes which may be classified as either short term or long term, depending upon the length of payment for individual cases.23 Out of these four branches involve entirely long-term risks, namely, old age benefit, survivor's benefit, disability benefit and family benefit and five branches covering primarily short-term risks, which are, unemployment benefit, sickness benefit, medical benefit, maternity benefit and employment injury benefit.

Old age benefit: - provides for the payment certain (consolidated) amount of money depending upon one's contribution before the retirement age. It also requires sometimes the completion of a particular length of services. Apart from this previous schemes there are old age assistance schemes providing for non-contributory pensions.

Survivor's benefit: - This benefit, grants payments to the aggrieved family following the death of the bread winner either for the life or for a limited.

22 Supra note 3, at 493.
23 Supra note 5, at 151.
Disability benefit: Sometime known as invalidity benefit this benefit is in terms of periodic payments covering both the temporary and permanent workers who suffer form disability arising out of sickness or accidents resulting in the suspension of earnings temporarily or permanently the benefit continues till the workers is cured to the illment.

Family benefit: - Forth branch is some extent a long term risk this covers the responsibility for the maintenance of family members during the entire period of contingency, periodical payments, provision for food, housing, clothing or any other domestic help should be provided to the family member.

Unemployment benefit: - These benefits cover the loss of earnings during a worker's unemployment period when he is capable of doing the job and is available until he remains unemployed.

Sickness benefit: - These benefits cover the stage of incapacity in a person to work due to a morbid condition resulting in a loss of earnings. This requires periodical payments based on convention specification passed by I.L.O. the worker need not be paid for the first three days of injury resulting in the suspension of earnings and the payment of benefit is limited to a minimum period of 26 weeks in a year.

Medical care: - Medical or health care benefits are either cash reimbursement or service granted in varying degrees and for varying periods to the individual and some time to his family in the event of illness.

Maternity benefit: - This benefit consist of both medical care and periodic cash payments, it covers females for a period of 12 weeks, 6weeks before and 6 weeks
after the confinement. Thus it provides benefits covering pregnancy, confinement and their consequents. Thus provision includes the pre natal and post natal confinement care and also hospitalization, if necessary.

*Employment Injury benefit:* The ninth branch is Employment (industrial) injury benefit, under this benefit are included the following contingencies during the course of or out of employment. Morbid condition and inability to work, following a morbid condition leading to the suspension of earnings, the total or partial loss of earnings capacity which may be temporary or permanent, the death of the bread winner in the family resulting in the loss of financial support, and medical care and periodical payment corresponding to an individual needs;

### 3.6 Social Security in India

A system of social security exists in India since time immemorial. It has taken different manifestations at different points of the time in history of Indian civilization. Modern social security system has its roots in the history.

#### 3.6.1 Social Security in Ancient India

The structure of Hindu Society in ancient India was by itself a great security against economic calamities. It has been very aptly observed that, in ancient India, Joint Hindu family was the unit of social organization and was also the original cell for security, prototype and analogous to the further institutions. The reciprocal obligations of the parents to support the child in infancy and of the son to support the parents in old age were represented in social insurance by the solidarity of generations. The parental responsibility was further illustrated across the ancient
Indian history in the relationship of the patron to his clients, the lord to his vassals and the master to his servant, and as such it survives even today in a variety of legal obligations of the employer to protect his workers and in the manifold welfare schemes set up voluntarily by the employers.  

In his 'Theory of Social and Economic Organisation' Professor Max Weber has made special mention of this mutual security scheme. He said that a caste, guild may "assign every member strictly to the enjoyment of certain advantages such as claims over customers or particular business opportunities, for life or even on a hereditary basis. This is particularly characteristic of India".  

Besides this guild system, the joint family system too played its role in the social security for the dependent members. Looking after the dependent persons was a part of regular duty of every one in ancient India. Any departure from that meant punishments by the State. It is recorded by Kautilya that "the government believed in social co-operation and enforced social duties on its subjects. Any dereliction of such duties was penalized. As such, punishments were inflicted on men forsaking wife and children or husbands refusing to maintain wives or on brothers with means, refusing to take care of minor brothers and sisters".  

The philosophy of social security was quite well known in ancient India. According to scriptures, he alone was a good ruler who could look after the welfare of all his subjects even at the cost of his personal pleasure.  

Ramachandra, the idol of Hindu philosophy, sacrificed his personal pleasure to look after the welfare of his subjects. Indian history bears testimony to the earlier accounts of social welfare and social security schemes in ancient India. Dr. K.M. Saran gives vivid description of the laws protecting labour in India centuries ago in his *Labour in Ancient India*.27

In this respect India was certainly leading in the past. Provisions were made by the State for the protection of the orphans, the widows and the old even in the seventh to eighth century A.D.28 Even much earlier there were standing instructions for those in charge of administration to look after the destitute as a part of governmental duties. Kautilya’s *Arthashastra* gives numerous instructions on this subject. However, “In some countries some provisions were made independently of the State by the workers themselves through mutual provident associations; but only part of the field was covered by this means and the less thrifty section of the community, which was most in need of protection, was rarely included”.29

3.6.2 Kautilya’s ARTHASHASTRA on Social Security

Kautilya was a great Economist of Ancient India. His work “Arthashastra” commonly known as “Kautilya’s Arthashastra” is a guiding example of the introduction of the philosophy of social security in ancient India.30 It has been observed that, “Ancient Indian jurists like Brihaspati, Yagnavalka, Vishnu etc., had

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29 Ibid., p.16.
framed extensive laws regarding wages and conditions of work, technical and vocational training, women and child labour, regulation of industrial relations etc. These scriptures bear testimony to the fact that social structure in those days was so evolved and codes so designed as to provide security to the people in general and the workers in particular."

Kautilya mentioned quite a number of pension schemes in his *Arthashastra*. Some of the more important of them were educational pension, pensions to officials and the most important was Public Poor Relief. Bandyopadhyaya tells us that during the days of *Arthashastra* "the Acharyas and Vidyavantas who were teachers of the non-sacred branches, got pensions varying from 500 *panas* to 1,000 *panas.*"

Kautilya mentions grant of pensions to retired officials. Provision was made even for those who died in harness. Their wives and children were well looked after by the State."

The most important among the pensions was the Public Poor Relief which was one of the major duties of the King. "The King was regarded by the jurists and thinkers of India as the natural guardian of the orphan and the widow, the patron of the Srotriya and the protector of the helpless, the aged or the starving poor. Kautilya too, inculcates upon kings this royal duty though; with his own characteristic brevity he speaks less of theory or principle and simply entrusts to the king the above duty of

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maintaining the orphan or indigent".\textsuperscript{34} It is interesting to note that in making these gifts for subsistence, the rulers never took into consideration the caste or creed of the recipient. Poor relief was a universal practice of the State.\textsuperscript{35}

Kautilya tells us that the head of the State was responsible to save the countrymen facing any natural calamity. It is recorded that "The royal government was not content with these (above) provisions, but remained always prepared for greater emergencies. In times of famine, it took emergency measures as well as in times of pestilence or epidemics. It did something more. It kept in reserve half the produce of the royal farms or the taxes paid in kind, for relieving the distress of the subjects".\textsuperscript{36}

At another place Kautilya says, "The State itself should provide support to poor, pregnant women, to their newborn offspring, to orphans, to the aged, the infirm, the afflicted and the helpless".\textsuperscript{37}

Although Kautilya made provision for pensions and maintenance allowances, he strongly discouraged the introduction of doles. He stressed that all must work and it was the duty of the States to provide them with work. For instance, the widow, the virgins, the convicts, the old prostitutes, the devadsis etc., were to depend upon the financial assistance of the State. He did not discourage the State assistance. He, however, pleaded that all these persons must render some service in return of the assistance received. For this, he suggested their employment by the State in

\textsuperscript{34} Supra note 24, at 64.
\textsuperscript{37} Supra note 30, at 51.
government spinning factories. These factories could employ them and get work from them. There was provision for jobs even for the women who observed purdah.\textsuperscript{38}

Kautilya also made provision for payment of assistance in kind. “kautilya further lays down that if the employer fell short of cash, then he should make payments in kind e.g. cattle, land etc., but large payments in goods were not permitted. Perhaps the ideas were to provide them with permanent means of livelihood”.\textsuperscript{39}

Beggary was always a problem in all countries. In England, Poor Relief came to be recognized as a function of the government, owing to the teachings of the church. But gradually, the number of beggars became so great, that by the time of Edward III, steps had to be taken against vagabond mendacity.\textsuperscript{40} Almsgiving was made an offence by law. And “indiscriminate almsgiving was punished with fines ten times the amount paid”. In India the problem of beggary was tackled with tact and determination. Kautilya tells us that iron rods were used to punish the able-bodied beggar, tramp and vagabonds.\textsuperscript{41}

This was a check, practices much later in England, against the exploitation of religious sentiment or liberal grants by the governments to the Poor Houses. Able bodied persons were checked from begging.

Kautilya's *Arthashastra* made it clear that whereas the government must establish alms-houses and infirmaries “the women and children left destitute by men who had fallen victims to the monastic propaganda” are not the responsibilities of the State. Also those “who out of laziness refused to work for their own living” were outside the benevolence programme of the State.\(^4^2\)

Persons were not allowed to join the monastic order if they had made no provision for the maintenance of their family members. “Men were allowed to take to orders, only when they were too old to procreate, or when they had made full arrangements for the maintenance of their family. On the contrary, men who left wife and children to join any of the mendicant orders were punished”.\(^4^3\) In the eighth century, the great Sanskrit scholar Shukracharya gave us *Shukraniti* or the Policies as laid down by Shukracharya. In this treatise, Shukracharya makes special provision for social security particularly “regarding sickness benefits, pensions and old age benefits, family pensions and maintenance allowances.\(^4^4\) Shukracharya made it clear that when a servant was ill and could not work temporarily, the master should make no deduction from his salary. Shukracharya made it obligatory for the master to pay the servant even when the latter had been ill for a long time. “In cases of prolonged illness, servants, who had put in more than five years of service, were entitled to three-fourths of their usual wages for three months but in no case sickness benefits or

\(^{4^2}\) *Supra* note 37, at 48.


wages for the period of illness were payable for more than six months".45 Shukracharya made provision not only for old age pension. He also advocated the grant of allowance at half the rate of salary in the premature death of case of a worker.

3.6.4 Social Security in Medieval India

However, there was a long interruption in the smooth progress of social security measures as adopted by the rulers of the land. During the medieval period there was hardly any progress in this field. The Muslim rulers hardly took any positive action in this regard. Charity was advocated by the Holy Prophet and some of the pious rulers made some provisions for the beggars just as a religious duty. That was more for their personal salvation than for actual relief to the poor.46

The Social Security for the poor was better looked after by the religious trusts—Hindus and Muslims alike than by the rulers. The rulers were more eager to rule than to look after the ruled. The early Muslim rulers were too busy in their expeditions and internal wrangles. The Tughlak did much less for social welfare of the Delhi public than the Divine Saint Nizamuddin Aulia, the popular saint of Delhi. The Saint ran feeding House popularly known as Langar for the poor near his hermitage in Delhi. It is surmised that he was financed by his followers and admirers, but not by the king of Delhi who has been jealous of his popularity.47

45 Supra note 34 at 238-240.
Many charitable trusts sprang up around such philanthropists and saintly persons. For centuries, these charitable trusts conducted efficiently what morally and ethically should have been the responsibility of the State. This was the state of affairs for a long time.

Among the Mughal rulers, Akbar the Great made certain provisions for the learned. He was known for his kindness too. So also were Shahjehan and Aurangzeb. But their charity was too sporadic and the motive was religious rather than safeguarding the economic interests of the poor.48

It is recorded that, Shahjehan made liberal grants to spiritual guides, literary satellites and musician. The amount of grant varied depending upon the status of the recipients. This depended also on many occasions on the personal relation between the latter and the emperor. Kavindracharya Saraswati, for instance, got Rs. 1,500 on October 7, 1651 at Lahore. Mulla Shah Badakshi the spiritual guide of Dars Shikon and Jahanar received Rs. 5,000 on the completion of the fast of Ramzan on July 12, 1656. The musician of Dara was given Rs. 2,000 on March 31, 1655 and his poet, brother of his Diwan Mulla Sahib was given Rs. 1,000 on May 2, 1655.49 Shahjehan’s charity on the occasion of Jahanara’s recovery from burn injuries is a historically memorable event.50 These were only occasional charities or gifts and cannot be accepted as a systematic state plan for social security. Aurangzeb’s Court was a ‘God’s Court’ or Zilli-i-subhani. It was a sample of God’s kingdom-namuna-i-darbar-

48 Ibid., p.328.
50 Ibid., p.184.
It is indeed surprising that the emperor paid little attention to the protection of the poor.

The entire Mughal rule, in spite of its rich contribution in the field of art, architecture and culture, could not leave a sound economy for the ordinary people because of the personal characteristics of the different rulers. There was hardly any stable economic foundation. “In Mughal India, as in other absolute monarchies, popular happiness has been under the best of sovereigns was unstable, because it depended upon the character of one man”.

3.6.5 Social Security during British Raj

Labour legislation was initiated in India by the British rulers under pressure of jealous Lancashire and Dundee in 1881. Their jealousy and pressure were mainly responsible for most Indian Labour laws till 1912. After the First World War labour movement started in our country with the establishment of the Madras Labour Union in 1918 to redress the distress caused by post-war rise in prices not followed by rise in wages. Similar bodies sprang up in other industrial centers. Labour aimed for higher wages. There was a series of strikes in the jute mills in Calcutta, in Jamshedpur, in the coal fields and in cotton mills of Bombay and Ahmedabad. There were also strikes of employees in Railway, Docks, in the postal department etc. In such circumstances the social security measures were taken in India under the provisions of various social security enactments. It may be recalled that the British Legislation such as the

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51 Ibid., p.211.
52 Supra note 47, at 330.
Factories Act, the Workmen’s Compensation Act, and the Trade Unions Act. In the meantime, the Indian Labour movement became linked with the International Labour movement. In 1929 a Royal Commission on Labour, presided over by J.H. Whitley was appointed. Its report and recommendations became the foundation of labour legislation in India till the advent of Congress Ministry in a number of provinces of the then British India in the middle of 1937. Some of the Indian States had also undertaken human labour legislation.53

It was only during the 20th century that the alien rulers tried to look into the problem of social security. That too was mainly restricted to the factory workers and the like.54 The different sessions of the International Labour Conference, the recognition of social security as a responsibility of the State by different State in Europe and America and advances made in these countries inspired the Government of India to study the problems. Quite a number of study teams and committees were appointed including the Royal Commission on Labour (in 1931), the Kanpur Labour Enquiry Committee (1938), The Bihar Labour Enquiry Committee (1940), and The Bombay Textile Enquiry Committee (1940), and the Adarkar Committee (1943), They gave numerous suggestions and agreed on one point that the social security measures for the workers in India were not quite adequate.55 It was mainly after the attainment of freedom that India could take up the problem of social security at par with all advanced countries of the world in a planned and co-coordinated manner.

3.6.6 Social Security in Free India

Free India adopted generally Mahatma Gandhi’s ideas as far as practicable and made laws to regulate labour demands in the country. Ours was a pluralistic and multipolar society. Perhaps justice, liberty, equality and fraternity never existed in it. Dignity of labour was never understood. Workers and peasants were looked down for centuries as belonging to ‘Sudra’ or ‘Low’ and sometimes even untouchable castes. For centuries people put up with oriental despotism of thousands of precarious and predatory princes and priests who ruled the society and country as gods on earth. Occasionally they were controlled to some extent by emperors like Ashoka and Akbar until our country was conquered by the British ruled primarily in their own interests. It was in their interest to protect capitalists and also to promote labour welfare. This started in a new form the internal war between the profitmakers and the wage-earners.56

Rashtra-pita Mahatma Gandhi in 1946 observed:

“The class struggle has always been there. It can be ended if the capitalists voluntarily renounce their role and become all labourers. The other way is to realize that labour is real capital, in fact, the maker of capital. What the two hands of the labourer would achieve, the capitalists would never get with all his gold and silver. Can any one live on gold? But labourer has to be made conscious of his strength. The whole trouble arises from the fact that neither labourers, nor those who are guiding the labour movement, realize the dignity and strength of labour. It is like the lame leading the blind. I entertain high regard for his great industry and acumen. But I cannot believe in his conclusion. I have no faith in violence being able to usher in non-violence.

World thought is moving and is outstanding Karl Marx. That, however, does not detract from the merit of the great man’s labour”.57

Equally important were thoughts of Pt. Jawahar Lal Nehru who remarked in 1953 “I think every employer should realize the terrible time labourer has had for generations, how they were crushed”.58 Same thoughts were repeated by Sardar Vallabha Bhai Patel in forceful words in 1948: “Like Gandhiji I want to make the capitalists also understand which way their true duty lies”.59 Again he said, “In the tasks ahead we have to take labour and capital with us. If we fail to do so, we are doomed to disappointment. I have no doubt whatsoever that the conflict between labour and capital, and, may I say, also the government, at this stage would be nothing but ruinous to the country. We have just now finished one chapter of exploitation. We are exploited by different types of forces which nevertheless are destructive and even more dangerous because they are internal”.60

These thoughts were written into the Constitution of India and the labour laws made by the Parliament and State legislatures in free India. The Indian Constitution promises security to all. It says, “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life”.61

58 Supra note 53, at 14.
59 Ibid.,p.15.
61 Constitution of India Article 38.
The Constitution further says: "The State shall endeavor 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 endeavor to promote cottage industries on an individual or co-operative basis in rural area".

Within a year of attaining independence, India adopted the Scheme of Employees State Insurance Scheme. According to the Employees State Insurance Act, 1948, "factory workers on selected industrial areas can obtain sickness, disablement and medical benefits". A workers can now get free consultation, medicines, drugs and treatment by some specialists. Medical assistance is extended even to the home. Where the sick worker lives at a far-flung distance, mobile dispensary is sent to give him medical treatment.

The Indian Constitution guarantees social security in the following words: "The State shall within the limits of its economic capacity and development, make effective provision for securing public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved wants".

As a part of the programme, many steps were taken to safeguard the interests of the workers. In the field of mining, the Coal Mines Provident Fund was put into force in 1947 and within five years the Employees Provident Fund Act 1952 was also

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62 Ibid. Article 43.
63 Section 46 of the E.S.I. Act, 1948.
64 Article 41 of the Constitution of India.
introduced. Under the Act, both the workers and the management were to subscribe 6 per cent of the wage and dearness allowance from both sides. Besides the factory workers, the scheme embraces also some mining and plantation establishments.

Gratuity and retirement benefits are some other forms of social security safeguarding the interests of the factory workers. For instance, when a factory worker puts more than one year's continuous service, and he is entitled to a month's notice before getting retrenched or in lieu must get one month's gratuity.

In August 1953 the Central Social Welfare Board was set up with a view to "surveying the needs and requirements of social welfare organizations, evaluating their programmes and objectives, to coordinate the assistance given by various Central ministries and State departments, promote the development of voluntary organizations in the areas where no such organizations exist, and render financial assistance to deserving agencies." The Board functions through voluntary organizations.65

The Third Five-Year Plan had laid emphasis on planned child welfare schemes. In 1960, a committee on child care was set up. On the basis of the recommendations of that Committee, The Central Social Welfare Board was to organize, (i) Model homes for children on cottage basis providing homily atmosphere; (ii) foster care for orphans and destitute children; (iii) services in the field of health, education etc.; (iv) pre-schools for physically and mentally handicapped children.66

65 Supra note 9, at 20.
66 Ibid., p.23.
3.7 Social Security Legislations in India for the Workers

There are mainly two classes of employment sector, which is organised sector and unorganised sector. Although the unorganized sector and organized sector are classified into separate sectors, there is no clear divide between them since often they are interdependent and provide services for each other. The unorganised sector works in conjunction with, rather than in isolation from the organised sector. Generally the difference lies in the fact that the workers in the unorganized sector are often largely unaware of their rights, cannot organize themselves, and have little or no bargaining power with their employers and intermediaries. The bargaining strength of the workers in organized sector is relatively higher because of their superior skills and political militancy of their trade unions, while workers in the unorganized sector are not capable of building up such bargaining strength because of lack of superior skills and trade unions, and therefore continue to work under inferior working conditions.67

Table-20
Present Employment Scenario in India’s Organized and Unorganized Sector
For the year 2000-01

<table>
<thead>
<tr>
<th>Sector</th>
<th>Public Sector</th>
<th>Private Sector</th>
<th>Total</th>
<th>Unorganised Sector as % of 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>0.52</td>
<td>0.87</td>
<td>1.39</td>
<td>189.55 (61.4) 99.3</td>
</tr>
<tr>
<td>Mining &amp; Quarrying</td>
<td>0.93</td>
<td>0.09</td>
<td>1.02</td>
<td>1.24 (0.4) 54.9</td>
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<td>5.18</td>
<td>6.75</td>
<td>34.04 83.5</td>
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<th>Industry</th>
<th>1.15</th>
<th>0.96</th>
<th>0.04</th>
<th>1.00</th>
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<tr>
<td>Community, Social &amp; Personal services</td>
<td>30.84</td>
<td>9.79</td>
<td>1.70</td>
<td>11.49</td>
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<td>Total</td>
<td>336.75</td>
<td>19.42</td>
<td>8.70</td>
<td>28.11</td>
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Source: Compiled and computed from Planning Commission, report of special group on targeting Ten Million Employment opportunities per year (2002)

Even though, the unorganized sector has been the most vulnerable and ignored sector in India, but it holds an inevitably very important place in Indian economy. According to Table -20, 92 per cent of the India’s total work force is in this sector, leaving just 8 per cent of the population of the country covered by organized sector. As per table-20 employment in the organized sector has been hardly 8.34% of which the public sector accounts for 5.77% and private sector only for 2.57% in the total employment generated during 1999-2000. The organized sector is dominated by the public sector which accounts for 70% of the total employment in this sector. This is mainly in the areas of (i) Mining (ii) Electricity and Water, and (iii) Community and Social Services. These three collectively constitute nearly 60% of the public sector
employment figures and unfortunately all of them show negative employment elasticity.

The main source of employment generation is the unorganized sector of the economy including self-employment and small business wherein the present contribution is as high as 92% of the total employed labour force. It means employment generating activities are a) agriculture and allied activities b) trade, restaurants and hotels including tourism c) some social sectors like education and health d) small and medium enterprises mainly in the rural non-farm sector and e) transport and construction.

After this bird’s eye view of the vast and undulating terrain of the unorganized sector, it is now necessary for us to look at the few existing social security laws to see how they cover the entire unorganized labour force, and whether they are adequate to give even the minimum of protection, safety and social security to the vast and varied workforce in the unorganized sector.

3.7.1 Workmen’s Compensation Act, 1923

The Workmen’s Compensation Act, 1923 provides for the payment of compensation to workmen for injuries sustained in accidents. After the amendments effected in 1995, the Act has 4 schedules. Schedule I provides a list of injuries with percentage of disablement (loss of earning capacity). If the injury is not a scheduled injury, the loss of earning capacity has to be proved by evidence. The majority of workers who are not insured under the ESI Scheme are covered under the Workmen’s Compensation Act. The Act does not apply to those who are employed in occupations
enlisted in the Schedule II. Nor is relief available if the injury has taken place when the injured worker was not actually engaged in discharging duties related to the employer’s trade or business. The employer is liable to provide monetary compensation to the worker or dependant in case of death or disablement provided it occurs out of and in the course of employment. An occupational disease listed in Schedule III of the Act is also accepted as an accident that occurred while on duty. But provided that the employer shall not be so liable: in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days; in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to: the workman having been at the time thereof under the influence of drink or drugs, or the willful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen. The Supreme Court in Saurashtra Salt Manuufacturing Co. v. Bai Valu Raja, has explained the maxim ‘arising out of and in the course of the employment’ with references to the theory of ‘notional extension.’ Held “as a rule, the employment of a workman does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is

68 Supra note 58, at 386.
69 Section 3(1) of the W.C. Act, 1923.
70 AIR 1958 SC 881.
subject to the theory of 'notional extension' of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. When a workman is on the public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him”.

The burden of proving that the accident arose out of and in the course of employment is upon the worker. The method of claiming compensation for disability is any qualified medical practitioner can certify the case and the victim can file a claim in the court of the workmen compensation Commissioner with a copy to the employer. The Commissioner decides the case, and the revenue department recovers the amount of compensation. But workers, who are in the unorganized sector, often find it very difficult to prove who is their employer, and as a result cases are prolonged, and often workers die without receiving any compensation.71

3.7.2 The Minimum Wages Act, 1948

The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefit of unorganized labour. This Act provides for fixing the

minimum rates of wages in certain employments. The Act defines wages to include all remuneration capable of being expressed in terms of money which would be payable to a person employed in respect of his employment or of work done in such employment.\textsuperscript{72} The ‘employee’ is defined under the Act as any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which the minimum rates of wages have been fixed and includes an out-worker.\textsuperscript{73} The contractors who engage workmen will be employers. The term ‘wages’ includes payment of remuneration in respect of days of rest. The appropriate government may fix the minimum rate of wages for time work, piece work, at guaranteed time rate and overtime work. The Act casts a statutory obligation upon the state government to fix or revise the rates of minimum wages strictly according to the cost of living index.\textsuperscript{74} The fixing of minimum rate is not touched by the contract rate.

Minimum wages must be paid in cash unless there is a custom to pay wages wholly or partly in kind which the appropriate government may notify in the official Gazette. The appropriate government can also fix the number of hours of work, provide a day of rest. The Inspectors appointed under the Act shall be deemed to be public servants within the meaning of Indian Penal Code, 1860. The Act provides a mechanism for enforcing minimum wages, inspection by appropriate authorities, and settlement of claims relating to non-payment or short-payment of wages by defaulting

\textsuperscript{72} Ibid., p.705.  
\textsuperscript{73} Section 2(i) of the M.W.Act, 1948.  
\textsuperscript{74} Bhikusha Yumasa Kshatriya v. Akola Taluka Bidi Kamgar Union, 1959 2 LLJ SC 578.
employers. The judicial pronouncements relating to the Act make it clear, that exaction of labour and services against payment of less than the minimum wages, amounts to forced labour and is violative of Article 23 of the Constitution of India; workers temporarily employed by contractors in construction work are entitled to seek the implementation of the Act under Article 32 and minimum wages and dearness allowances have to be paid even at the cost of the closure of the industry.75

The Act helps unorganized workers who are working in the scheduled employments. But nearly 60% of the workforce in the unorganized sector is self-employed or home-based. Thus, they remain outside the purview of the Minimum Wages Act, 1948, although they constitute the majority in the sector.

3.7.3 The Employees (Provident Fund and Miscellaneous Provisions) Act, 1952

The Act76 has been enacted with a view to provide for the institution of the provident fund, family pension fund and deposit linked insurance fund for employees in factories or other establishments. The Act, subject to the provision of section 16, is applicable to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed.77 It is also applicable to any other establishment employing twenty or more persons or class of such establishment which the central government by notification in the official Gazette, may specify in this behalf. After giving not less than two month notice of its intention so to do by such notification the government may apply the provisions of

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75 People's Union for Democratic Right v. Union of India, 1982 II ILJ S C 454.
76 Act no 19 of 1952.
77 Ibid. S. 1(3) (a).
this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.\textsuperscript{78}

The EPF Act is applicable to the factories and establishments that employ 20 or more persons. A large number of workers, working in smaller units, remain out of the ambit of this Act. But the contract workers in bigger establishments, though they get covered under law are often denied the benefits of these laws.\textsuperscript{79}

3.7.4 The Maternity Benefit Act 1961

The object of the Maternity Benefit Act 1961 was to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Act intends to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide maternity and certain other benefits. The Act is applicable to every shop, establishment, commercial organization or a public institution where ten or more persons have been employed in the preceding twelve months.\textsuperscript{80} The Act prohibits the employment of a woman during the six weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy.\textsuperscript{81} Similarly, no woman shall be required to do any arduous work during the period of six weeks immediately preceding the date of her expected delivery. The Act confers on woman workers the right to payment of maternity benefits at the rate of average daily wage for a maximum period of 12 weeks, provided she actually worked for a period of 80 days in

\textsuperscript{78} Ibid, S. 1(3) (b).
\textsuperscript{79} Supra note 71, at 707.
\textsuperscript{80} Act no 53 of 1961 S.2 (1).
\textsuperscript{81} Ibid, S.4.
the 12 months immediately preceding the date of her expected delivery. Every woman entitled to maternity benefit is also entitled to receive from her employer a medical bonus of Rs. 250, if no pre-natal confinement and post-natal care is provided for by the employer. A woman is also entitled to leave with wages for a period of 6 weeks in case of miscarriage and 2 weeks in case of tubectomy operation. It is unlawful for an employer to dismiss or discharge a woman and to vary her conditions of service to her disadvantage during her absence from work due to pregnancy. In case of violation of the provisions of the Act, any aggrieved woman, an office-bearer of the registered trade union or any registered voluntary organization or and inspector can file a complaint within one year from the date of offence, in the court of a Metropolitan Magistrate or first class judicial Magistrate. In practice, this Act also does not cover women workers in the unorganized sector.

3.7.5 The Payment of Gratuity Act 1972

This Act, has been enacted to provide a scheme for the payment of gratuity to employees in factories, mines, oil Fields, Plantations, port, railway companies and shop or other establishment in which ten or more persons are employed or were employed on any day of the preceding twelve months. The central government has been empowered to make applicable the provisions of this Act by notification to such other establishments or class of establishments in which ten or more persons are

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82 Ibid, S.5 (2).
83 Ibid, S.8.
84 Ibid, S.9 & 9-A.
85 Ibid, S.12.
86 Act no 39 of 1972.
87 Ibid, S.1 (3) (a) and (b).
employed, or were employed to any day of the preceding twelve months.88 This Act entitles employees employed on wages not exceeding ten thousands rupees per mensem in an establishment, for gratuity on termination of their employment provided they have minimum qualifying service of at least five years of continuous service.89 The termination of employment may be brought about by the workers superannuation, retirement, resignation or his death or disablement. In case of termination of employment caused by death or disablement the qualifying period of continuous service of five years is not necessary. If the service of an employee has been terminated for any act or willful omission or negligence causing any damage or loss to or destruction of property belonging to employer, he will even then be eligible to gratuity though the same cane be forfeited to the extent of damage or loss so caused to the employer.90 Gratuity is payable at the rate of fifteen days wages for every year of service, based on the rate of wages last drawn by the employee. The maximum amount of gratuity payable is three laks fifty thousands rupees. The Act also provides authorities for determination of the amount of gratuity and recovery of gratuity. But it is evident that a large number of workers do not meet the eligibility criteria.

Although there are a number of laws purporting to provide basic economic and social benefits to the workers in the unorganized sector, the gains to this category of workers have been marginal. The implementation and enforcement of that legislation has so far been very inadequate. The exploitative situation and conditions are in-built

88 Ibid, S.1 (3) (c).
90 Ibid.
into the system itself. The plethora of labour laws and committees under them supported through Plan Funds to achieve equity and justice has failed to make a dent. Moreover, the laws which are applicable to the organized sector have been made applicable to an entirely different capital labour environment of the unorganized sector also. The vested interest groups represented by employers or capitalists or industrialists have made every attempt to evade the provisions of various labour legislations relevant to the unorganized sector, so that the status quo is maintained and the extraction of surplus remains available. The labour movements and associations in the unorganized sector are still in the embryonic stage to lead any struggle against the dominant position of capitalist.

Law as an instrument of change is not easy to apply and, therefore, has failed to deliver the goods as the unorganized sector is spread over a vast area and the enforcement authorities have been able to touch only the fringe of the unorganized sector. Legal sanctions are not stringent enough to act as a deterrent, as the emphasis for punitive action is not on imprisonment but on fines which too is abysmally low in relation to their income and their position in society.91

However, law alone cannot solve the problem of workers in the unorganized sector. In the absence of organizations or associations their bargaining power is very weak. Moreover, the current availability of rules and laws are completely detached form the social relations or the social reality. In this kind of situation, it is absolutely

necessary that the marginalized section of the unorganized labour be provided with continuing education, social and legal awareness about their rights. There is also an urgent need for an alternate strategy to organize the workers in the unorganized sector. Moreover, the Central Government and State Governments must be pressurized to take effective steps to improve the lot of workers in the unorganized sector. So there is need for a comprehensive law regulating industrial relations that will not only simplify but also integrate the existing labour laws under a single umbrella. The jurisprudence of labour law must be extended to the underprivileged labour force to provide them social benefits and economic justice, failing which the unorganized labour force will be subjected to unmitigated hardships and indignities.

The social security legislations providing for “keeping out” excludes large number of unorganized workers from the benefits. However, there are government sponsored programmes for the welfare of the unorganized which will be discussed in the next chapter.