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# UNIT 23 SOCIAL SECURITY LEGISLATION : AN OVERVIEW

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## Objectives :

The objectives of this unit are to:

- give a brief account of the historical evolution of social security laws in India.
- examine in brief the problems associated with the administration of social security schemes.

## Structure

23.1 Introduction

23.2 Problems and Prospects

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## 23.1 INTRODUCTION

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Historically, the development of social security systems in their modern form is traced from the enactment in 1883 of the first social insurance law in Germany under Bismarck. The modern concept of social security is the offshoot of industrialisation. In the industrialised countries, social security was first introduced in the form of social insurance. Its application was limited to certain occupational groups and it was financed by contributions from the employers and the workers. In course of time it was generalised; its coverage was extended to all or more occupational groups, and the State assumed the liability for financing the schemes wholly or partly. It has since been further expanded in terms of the numbers covered and the benefits provided and has taken the form of social protection.

In our country social security programmes have been in existence since times immemorial. Joint families, panchayats, (guilds), religious and charitable institutions have continued to provide assistance to the needy for various common risks, misfortunes and calamities. Kautilya's Arthashastra and Manusmriti bear testimony to the fact that the social structure in those days was so evolved and codes so designed as to provide security to all people. The joint Hindu family was the original cell of security and first line of defence which could cope only with limited misfortunes. In cases of longer calamities, appeal was made to the neighbours or the guilds. Reference to such guilds was found in Rigveda, Upanishads' and in Other ancient Indian literature. Their main purpose was collective security of life and property, freedom from want and misery, and security against common risks., But organised social security measures in statutory form are only of recent origin. Our Constitution guarantees social security in the following words:'

The State shall, in particular, direct its policy towards securing:

- a) "Right to an adequate means of livelihood." [Article 39(a)]
- b) "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 want." (Article 41)
- c) "The State shall endeavour to secure to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life ".....(Article 43)

Social security legislation in India in the industrial field consists of the following enactments: (1) the Workmen's Compensation Act, 1923; (2) the Employees' State Insurance Act, 1948; (3) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; (4) the Maternity Benefit Act, 1961; and (5) the Payment of Gratuity Act, 1970.



The Workmen's Compensation Act is being administered exclusively by the State Governments/Union Territory administrations. The Employees' Provident Funds and Miscellaneous Provisions Act is administered by the Government of India through the Employees' Provident Fund Organisation.-In the administration of the Employees' State Insurance Act, the Central Government and State Governments share the responsibility. Cash benefits under the ESI Act are administered by the Central Government through the Employees' State Insurance Corporation (ESIC), whereas medical care under the ESI Act is being administered by the State Governments and Union Territory Administrations. The Payment of Gratuity Act is being administered by the Central Government in establishments under its control, and also establishments having branches in more than one state, major ports, mines, oil fields and the railways; and by the respective State Governments and Union Territory Administrations in all other cases. In mines and circus industry, the provisions of the Maternity Benefit Act are being administered by the Central Government through the Chief Labour Commissioner (Central) and by the State Governments in factories, plantations and other establishments.

In our country, the institutionalised form of social security began with the Workmen's Compensation Act which "provides for the payment by certain classes of employers to their workmen of compensation for injury by accident." As in the industrialised countries the protection under the Act was limited to certain occupational groups and the contingency covered was also limited to occupational injuries and diseases. The Act was based on the principle of employer's liability. Social insurance came later with the enactment of the Employees' State Insurance Act.

The International Labour Organisation was founded in 1919 and India was a founder member of the ILO. One of the major functions of the ILO is to set standards for protection of workers against exploitation. Social security is-one of the subjects on which ILO has adopted a number of Conventions and Recommendations. Workmen's compensation, maternity benefit, sickness. insurance and unemployment insurance were some of the matters in which the ILO adopted Conventions or Recommendations in the very first few years after its formation.

The Government of India examined the question of enacting a law for payment of compensation to workers on the pattern of the Workmen's Compensation Act of Great Britain. The matter was. referred to the local Governments and a committee was set up to consider the matter. Eventually, the Workmen's Compensation Act was passed in 1923 and it came into force in 1924.

The enactment of this law is of great significance from the point of view of social security because it established the principle that compensation was payable to the workers not as a penalty for an omission or commission on the part of the employer which resulted in the accident or disease but as an insurance benefit. It created a new type of liability to pay compensation at% fixed rate to an employee who is incapacitated or to his dependent in the event of his death by accident arising out of and in the course of employment. This liability is independent of any neglect or wrongful act on the part of his master or his servants. In other words, it is not a liability which arises out of tort. It is a liability arising out of the very relationship of master and servant: .

Maternity benefit was the second contingency to receive attention. Some of the provincial legislatures enacted a legislation providing for payment of a cash benefit to women workers for a period ranging from 7 to 12 weeks of their absence from work as a measure of maternity protection. The Presidency of Bombay was the first to pass the Maternity Benefit Act in 1929. It was followed by Central Provinces, Sind, Ajmer-Merwara, Madras, Delhi, U.P., Bengal, Punjab, Assam and Bihar. The last state to enact maternity benefit law was Orissa in 1953. In the meantime the Government of India also enacted a separate maternity benefit legislation for mine workers. The Royal Commission on Labour in its report submitted in 1931 suggested a central legislation to replace the provincial laws. The central law was enacted in 1961.

The Royal Commission on Labour also examined the question of introducing a scheme of health insurance for workers. It recognised several difficulties in its Implementation and yet it drew up a broad outline of a tentative scheme and suggested its introduction on an experimental basis. Subsequently, the Government appointed



Prof. B.P. Adarkar to frame a fresh scheme of health insurance for industrial workers. Prof. Adarkar submitted his report in 1944. The Government initiated further consultations on the report of Prof. Adarkar. The matter was referred to the ILO and the ILO deputed two experts to advise the Government. The experts suggested certain modifications in the scheme proposed by Prof. Adarkar. The Adarkar Plan as modified by the ILO experts culminated in the enactment of the Employees' State Insurance Act, 1948.

The ESI Act was followed by the Coal Mines Provident Fund and Bonus Schemes in 1948 and the Employees' Provident Fund and Miscellaneous Provisions Act in 1952. There are different types of P.F. Schemes in India. Some of the establishments are covered under the Provident Fund Act, 1925 and others under the Employees Provident Fund and Miscellaneous Provisions Act. Besides, there are a number of special enactments like the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 which provide for the establishment of provident fund in the coal mines.

The next statutory measure in the field of social security was the Payment of Gratuity Act, 1971, which provides for payment of gratuity as a retiral benefit.

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## 23.2 PROBLEMS AND PROSPE&S

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India has been a pioneer in introducing social security for its people. The beginning of social security may be traced back to the 1920s when the Workmen's Compensation Act was passed. Subsequently, the country made significant progress during the first decade after independence from 1947-57 and again between 1967-77. Since then, however, the situation has stagnated with the result that the social security benefit expenditure in terms of percentage of the GDP seems to have dwindled from 2.4 to 0.5.

The social security system in India is characterised by multiplicity of schemes ' administered by different agencies without any co-ordination. Schemes have been floated by the Central Government, State Governments and also by some voluntary organisations in response to their own perception of the needs leading to wide gaps in the coverage on the one hand and overlapping of benefits on the other. A co-ordinated or systems approach has been lacking. It would, therefore, be a misnomer to call the existing arrangements a system.

The basic feature of these arrangements is their narrow coverage. As there is no unified system of social security, there is also no uniform coverage. The coverage varies from scheme to scheme. The maximum coverage so far as statutory schemes are concerned is that of the EPF Act which is about 17 million. The next in importance in terms of coverage is the ESI Scheme being about 7 million. A significant aspect of the coverage of the ESI Scheme is that it has been fluctuating due to the ceiling on wages for application of the Act.

Another significant feature of these arrangements is that different groups of people receive different types of benefits. No one receives the full range of all the benefits. In other words no one is insured against all the contingencies or risks of life. It is, therefore, said that the system is inadequate, highly skewed, complex and fragmented.

Further all the schemes are procedure ridden with the result effective access to it is severely constrained by a variety of factors. Lack of awareness of the schemes and the procedure involved in availing the benefits under the schemes is a major handicap in the implementation of the schemes.

The initiative to introduce the schemes has come mainly from the Central Government. Except in the case of cash benefits under the ESI Scheme and the schemes under the EPF Act which are administered by central organisations, the administration of all other schemes is in the hands of the State Governments. The result is a dichotomy in the administration of the schemes which is not conducive to effective implementation.

Considering that nearly 90 per cent of the workforce is in the informal sector characterised by lack of continuity of employment and low wages it has not been



possible to make much headway in extending contributory social insurance schemes. The social security types of schemes are, therefore, based largely on employers' liability or social assistance. Employers' liability schemes are notoriously subjective in their approach and social assistance schemes are subject to budgetary constraints. These factors have circumscribed the effectiveness of the, schemes.

The situation calls for an integrated and comprehensive social security system evolved by a national authority and administered by Central -and State authorities providing minimum benefits at the cost of the State preempting a prescribed percentage of the GDP for the purpose with a system of social insurance superimposed over it to provide additional benefits at higher levels to those who can contribute to it.

On the whole, the social security legislation of our country suffer from such defects as uneven scope, inadequacy of benefits, duplication and overlapping provisions, and different administrative authorities for implementation and enforcement. Hence there should be integration of various social security measures with a unified scheme of administration and contribution, providing for medical care and coverage against sickness, maternity, employment injury, old age and death.

The statutory social security schemes in our country cater-only for a small proportion of the population. Even all industrial workers are not covered as smaller establishments and those drawing salaries exceeding certain limits are excluded from the benefits of the various social security programmes. A vast majority of labour force in the unorganised and agricultural sector are beyond the benefits of, organised social security schemes.