

The Modern Approach to Concept of Social Security In the Light of Labour Jurisprudence

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Abstract: Social Security and labour welfare is a basic need of all people regardless of the sector of employment in which they work. Social Security is one of the most powerful institutional expressions of social solidarity and an important means by which an adequate standard of living for the people is ensured. Social security and labour welfare is being increasingly recognized as a dynamic concept which has widely influenced the social and economic policies of all the developed and developing countries. It is one of the pillars on which the structure of welfare State is rests. The concept of social security and labour welfare in modern welfare State is much too broad enough providing comprehensive social security from 'womb to tomb'.

Keywords: Social Security, Labour Jurisprudence

I. INTRODUCTION

The Constitution of India provides for Social justice, Equality of treatment between men and women workers, ensuring a living wage and the social security of workers.¹ A large number of legislations have been enacted in support of the constitutional provisions for social security and insurance employment, protection against the unemployment and exploitation at work. Yet, the social protection mechanism in India is at the best rudimentary.

When one thinks of retirement, images of lush beach houses and yachts come to mind, or maybe a huge house with a luxury sports utility vehicle (SUV). However, not many people imagine a healthy and prosperous individual retirement account that can support them in their golden years. The numbers behind retirement can be quite intimidating. If the retirement age is around 62 to 65, and the investor expects to die approximately at age 85, then 20 years of income is needed. Once one reaches his retirement age, he will generally be earning what is needed to maintain his standard of living. While the thought of saving can be scary, utilizing the services of a financial planner can help to put retirement savings into a manageable process for the investor. Financial planners can take the big picture of investing, not only for retirement but for other investments as well, such as home purchases and college savings, and break it down for their clients to ease the tension surrounding these large investments.

However, People may delay retirement until they reach the minimum eligibility age for Social Security, but they may find

continued work to be difficult, especially if they are in poor health or work in physically demanding jobs. Furthermore, if policymakers increase the early or normal retirement ages while workers plan to claim Social Security relatively early, there may be many retirees living without a suitable source of income. This is also true if workers do not plan adequately for retirement at all.

Therefore, a pension plan has different characteristics: the level of the benefit, the certainty of the benefit the level of the contribution and the volatility of the contribution. Between these characteristics there exists a trade off. The more certainty given with regard to the benefit, the more volatile the contribution will be. Also, the higher the benefit, the higher the contribution needs to be.²

After India got independent, the major challenge before the government of that time, is the development of the nation and to create a fully secure welfare state, conforming all sort of social security among the working, labour and non - working classes. In the line, India ratified the ILO Convention on "Social Security" in 1964.³ And the legislation that has been enacted for social security are:-

1. Employees State Insurance Act, 1948
2. Workmen's Compensation Act, 1923
3. Employees Provident fund and Miscellaneous Provisions Act, 1952
4. Maternity Benefit Act, 1961.
5. Payment of Gratuity Act, 1972, etc

¹ Preamble. The Constitution of India, 1950.

² Kakes.J. & Broeders, D, The Sustainability of the Dutch Pension System, 18 (Occasional Studies Vol. 4/No.6, De Nederlandsche Bank, 2006)

³ International Labor Organization "Equality of Treatment (Social security) Convention, 1962 (Adopted: Geneva, 46th ILC session, June 28 1962)

A social security division has also been setup under the Ministry of Labour and Employment which mainly focuses on framing policies for social security for the workers of organized sectors. Article 41 of the Constitution of India provides that *"the State shall within the limits of its economic capacity and development, make effective provisions for securing the rights to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want"*. And the Government of India has more or less supported the view that there would be no peace without social justice and no justice without social security. The social security benefits are offered to workers through various pieces of labour legislation. Since from the last decade the government has initiated efforts to extend the benefits to the unorganized sector too, legislative enactments like:-

1. The national Rural Employment Guarantee Act, 2005.
2. Unorganized Sector Worker's Social Security Act, 2008
3. The domestic workers (registration, social security and welfare) Act, are the example of same.

The social security benefits includes:-

- a) Medical Care
- b) Sickness benefit in case
- c) Old age pension or retirement benefits
- d) Invalidated pension
- e) Maternity benefit
- f) Accident benefit

Article 2 of the International Convention on Equality of Treatment (Social security) Convention, 1962, which came in to fore in 1964 provides the following branches of social security:-

- a) Medical Care
- b) Sickness benefit
- c) Maternity Benefit
- d) Invalidity benefit
- e) Old – age benefit
- f) Survivor benefit
- g) Employment injury benefit
- h) Unemployment benefit and Family benefit.

In India, while the total population was expected to rise by 49% between 1991 and 2016, the number of elderly (person aged 60 and above) is expected to increase by 107% to 133.0 million. In other words, the share of the old age in the total population will rise to 8.9% in 2016. Demographic projections further suggest that the number of the aged will raise even more rapidly to 179 million by 2026 or 13.3% of the population.⁴ About, 177 industries and classes of establishment notified by the government and covered by the

EPF & MP Act, 1952, and which employ 20 or more person, are mandate to subscribe to the employees Provident fund scheme 1952, the Employees' Pension Schemes, 1995, and The Employees Deposited Linked Insurance Scheme, 1976. These schemes are managed by the Employees Provident Fund Organization (EPFO), Coals Miners Provident Fund, Seamen Provident Fund, Assam Tea Plantations Provident Fund, and J&K Provident Fund, The Employees' Pension Scheme (EPS) offers defined benefits of up to maximum of 50% of the average of the last 12 month salary. Despite standardized defined benefits, the contribution rate into the EPS varies across industries and classes of establishment. The board of trustee invests the pension fund accreted by the members using the same investment pattern as prescribed by them for Provident funds. The Board of Provident Funds is also responsible for the payment of benefits – i.e. of converting the lump sum accumulations under EPS into annuities and payment of Pension to Individuals.⁵ The Public Provident fund (PPF) was introduced in 1968-69 with the object of providing unorganized sector workers (who are excluded from participation in mandate provisions) with a facility to acclimate saving for old income security. This is an individual account system under which members are allowed to open PPF accounts either with some designated nationalized bank or with post offices. As on March 1998, State Bank of India had 1.84 million PPF accounts showings an outstanding balance of Rs 26 billion. As on March 1998, post offices had 0.92 million PPF accounts with an outstanding balance of Rs 24 billion. These accounts imply a combined coverage (bank and postal accounts) of less than 1% of the working population by this provision even after three decades of existence. The PPF accounts accept accretions of a minimum of Rs 100 and a minimum of Rs 60000 per member per year. The acceptance, accumulation and withdrawals from PPF are fully tax exempted. A PPF account matures in 15 years which is inadequate for generating meaningful accumulations for old age income security for younger workers. In addition, PPF allows partial withdrawal after 5 years of accumulation. As a result of premature withdrawal facilities and tax breaks, individual largely misuse this scheme for legitimized tax evasion and it does not serve the intended purpose of old age income security.⁶

In 2003, Government had decided to set up a separate regulatory authority to be named as Pension Fund Regulatory and Development Authority (PFRDA) to regulate and supervise the pension funds and also develop pensions in India, a specific developmental role being envisaged for the PFRDA. Government officials have subsequently gone on record to say that the Pension Fund Managers (PFMs) licensed

⁴ OASIS Foundation, "Old Age Social and Income Security Project", 6 (The Project OASIS Report, Jan 11, 2000)

⁵ OASIS Foundation, "Mandate Provisions for Organized Sector", 9 -10 (The Project OASIS Report, Jan 11, 2000)

⁶ OASIS Foundation, "Provisions for Unorganized Sector", 11 (The Project OASIS Report, Jan 11, 2000)

by the PFRDA would be regulated and supervised by the PFRDA and the pension products offered by the life insurers would be regulated and supervised by the Insurance Regulatory and Development Authority (IRDA).⁷ These reforms were initiated in India to establish a strong and financially self-sustainable social security arrangement in the country against the backdrop that only about 12-13 per cent of the total workforce was covered by any formal social security system. The New Pension System (NPS) was introduced by the Government from January 1, 2004 for new entrants to the Central Government service, except the Armed Forces. The features of the NPS design are self-sustainability, portability and scalability. Based on individual choice, it is envisaged as a low-cost and efficient pension system backed by sound regulation. As a pure "Defined Contribution" product with no defined benefit element, returns would be totally market-related. The NPS provides various investment options and choices to individuals to switch over from one investment option to another or from one fund manager to another, subject to certain regulatory restrictions.⁸ Under budget session of year 2017 the Government of India introduced a comprehensive web based interactive Pension Disbursement System for Defence Pensioners(personnel's). This system will receive pension proposals and make payments centrally. The object behind this sort of initiative is to will reduce the grievances of defense pensioners(personnel's).

Yet, India has ranked a lowly 131 among the 188 countries surveyed for human development, bracketing the third-largest Asian economy alongside its South Asian neighbors like Pakistan, Bhutan and Nepal. And only 63% Indians were "satisfied" with their standard of living in 2014-15.⁹ Also the judiciary under its ambit of policy for bringing about social justice has been very particular to give effects to the rights of unorganized labour rulings of the apex court of India reveals the issues of minimum wages, equality, social security, health care and maternity with regard to unorganized and women labour. The judicial pronouncements on the right to social security have been very scanty. The court has admitted the fact that it is only in the 20th century the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established. The right to social security has been recognized in order to ensure means of livelihood in loss of employment or disablement during employment. In **Life Insurance Corporation of India v. Consumer Education and Research Centre**¹⁰ observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the State to raise the

standard of living and to improve public health. In **Royal Talkies Hyderabad & Ors v. Employees State Insurance Corporation**,¹¹ the court held that the law is essentially the formal expression of the regulation of economic relations in society. In view of the complexities of modern business organizations, the principal employer is made primarily liable for payment of contribution "in respect of every employee, whether directly employed by him or by or through an immediate employer," under the Insurance Act, the main purpose of which is to insure all employees in factories or establishments against sickness and allied disabilities, but the funding. To implement the policy of insurance is by contribution from the employers and the employees. The benefits belong to the employees and are intended to embrace as extensive a circle as is feasible. In short the social orientation, protective purpose and human A coverage of the Act are important considerations in the statutory construction, more weighty than mere logomachy or grammatical nicety. In **Crown Aluminium Works v. Their workmen**¹² The Supreme Court observed that:-

"It is quite likely that in underdeveloped countries, where employment prevails on a very large scale, unorganized labour may be available on starvation wages, but the employment of labour may be available on starvation wages cannot be encouraged or favored in the modern democratic welfare state. If an employer cannot maintain his enterprises without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms."

In **Regional Provident Fund Commissioner v. Bombay Selection House**,¹³ the Punjab and Haryana High Court had an occasion to consider as to when an establishment be clubbed with another establishment under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). This question arose because section 2 A of the EPF Act provides that where an establishment consist of different departments or branches in the same place or in different places all such departments or branches shall be treated as part of the same establishment. The court examined several Judgments of Supreme Court and observed that:-

"What can be culled out of the various judgments on the issues, as referred to above, is that no straight - jacket formula has been laid down for considering as to whether two units should be considered one establishment for the purpose of coverage under the provisions of the EPF Act. Various steps, as are required to be considered for the purpose, are in the form of unity of ownership, management, control, finance, labour,

⁷ Government of India: Union Budget and Economic Survey, "Pension Reforms", 41 (Finance, Para 2.44, 2004 – 2005)

⁸ Government of India : Ministry of Finance, "Pension Reforms", 222 (Chapter -5, Para 1.3.2, Annual Report 2009 – 10)

⁹ Press Trust of India, "India Ranked 131 on Human Development Index, bracketed with Pakistan and Kenya", Hindustan Times, March 22, 2017.

¹⁰ 1995 SCC (5) 482.

¹¹ AIR 1978 SC 1478

¹² 1958 SCR 651

¹³ 2012 LLR 1139

employment and functional integrality. Place of business of two units is another factor.”

In **Joseph Varghese v. State of Kerala**¹⁴ the Kerala High Court decided the question whether the state and district co-operative bank covered under the Employees’ Pension Scheme, 1995 framed under section 6 A of EPF Act and registered under the Co-operative Societies Act, 1912 and employing more than 50 persons can be exempted under section 16 of the EPF Act? While dealing with the scope of the aforesaid provisions the court observed that:

“That there is a statutory exclusion under sub clauses (a), (b) and (c) of section 16 (1) of the EPF Act of the establishments mentioned therein. Explaining the scope of section 16 (1) (a) the court pointed out that the Act does not apply to any establishment registered under the Co-operative Societies Act employing less than fifty persons and working without the aid of power. Hence the state co-operative bank and the district co-operative banks employing more than fifty persons cannot seek statutory exclusion under section 16 (1) (a) of the Act”. Dealing with the scope of section 16 (1) (b) the court observed that the Act does not apply if the establishment belongs to or is under the control of the central government or a state government as it is settled law that there is no control of the state government over the state co-operative bank and district co-operative banks registered under the Kerala Co-operative Societies Act, 1969. The court then examined the scope of section 16 (1) (c) and observed that it does not apply to any establishment ‘set up’ under any central, provincial or state Act because the legislature has cautiously used the word ‘set up’ in contra distinction to the word ‘registered’ under section 16 (1) (a) of the EPF Act. Moreover the state co-operative bank and the district co-operative banks are not set up under the state Act even though registered under the Kerala State Co-operative Societies Act. The court accordingly held that section 16 (1) (b) and (c) do not apply to the state cooperative bank or the district co-operative bank and they are covered by the Act.

Dealing with the scope of section 16 (2) of the EPF Act the court held that no doubt the central government by notification in the official gazette has excluded a class of establishments from the operation of the Act but the power so exclude is available to the central government only and that too by notification in the official gazette either prospectively or retrospectively. But in the instant case the order has been passed by the Regional Provident Fund Commissioner, Kerala who has absolutely no authority to grant exclusion.

II. DISCUSSION

In **Consulting Engineering Services (India) Pvt. Ltd. v. Chairman, ESI Corporation**¹⁵ a question arose whether a company rendering engineering and architectural consultancy services is covered under the Employees’ State Insurance Act,

1948 (ESI Act). The High Court of Delhi answered the question in affirmative. In the present case, the appellant, a private limited company rendered various kinds of engineering and architectural services. However, it neither carried out any manufacturing activity nor it produce any goods for marketing and supply to any of its clients and customers nor it produce or supplies any goods to the public in general. The appellant was brought within the purview of ESI Act by the ESI authorities. Against this order the appellant filed a petition before the ESI Court which held that the appellant is covered by ESI Act. Against this order the appellant filed a writ petition before Delhi High Court. The court observed: I am of the view that the present case stands squarely covered by the decision of the Supreme Court rendered in the case of **Kirloskar Consultants Ltd. v. Employees’ State Insurance Corporation**.¹⁶ In the said case, as in this case, the business carried on by the appellant was of consultancy services to its customers in respect of industrial, technical, marketing and management activities and preparation of project reports by engaging the services of architects, engineers and other experts. The Supreme Court in the said case after reviewing the entire gamut of case law held that the nature of activities carried on by the appellant was commercial or economical and would amount to parting with the same at a “price”

The entire discussion in the light of judicial approach and labour jurisprudence clearly reveals that, 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. Social security is important for reducing social and economic inequalities and for making direct contributions to the well being of all. The gist 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 contingences of life. It aims to help individuals in their times of dependency. The main risk of insecurity to which human life is exposed and in relation to which organised society can afford relief to the helpless individuals are incidents of life occurring right from childhood upto old age & death and include mainly sickness, maternity, invalidity, accident and industrial disease, unemployment, old age, death of the bread-winner and other such emergency.

¹⁴ 2012 LLR 1154

¹⁵ (2012) 2 LLJ 407.

¹⁶ (2000) 2 LLJ 1657.