

Social Security in a Welfare State

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Abstract: The Crux of achieving “Social Security” lies in the “quality of life” and thus it can only be achieved by improving the same. Right to life is a Fundamental Right under the Constitutional Scheme but it does not mean mere a right to alive or live. Rather it does not mean an animal existence too. What the Right to Life means is living a life with “human dignity”. The Supreme Court in Francis Coralie v. Administrator, Union Territory of Delhi,ⁱ has Observed that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

Keywords: Welfare State, Social Security

1. Introduction

Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Another broad formulation of theme of life with dignity is to be found in case of *Bandhua Mukti Morcha v. Union of India*,ⁱⁱ where the Supreme Court observed that “to live with human dignity, Free from exploitation. It includes Protection of health and strength of workers, men and women. In *Chameli Singh vs. State of Uttar Pradesh*,ⁱⁱⁱ the Supreme Court while dealing with Article 21 has held that for a decent and civilized life includes the right to food, water and decent environment. The court has observed that in any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. Again in *Board of Trustees of the Port of Bombay vs. Dilipkumar R. Nandkarni*,¹ the court came to hold that ‘the right to life’ includes the ‘right to livelihood. In *Olga Tellis vs. Bombay Municipal Corporation*,² the Court has observed that one aspect of the right to life an equally important facet of that right is the right to livelihood because no person can live without means of

living, that is, the means of livelihood. But in *A.K Bindal vs. Union of India*,³ the court has acknowledge that what should be the salary structure to lead a life with human dignity is a difficult exercise and cannot be measured in absolute terms. ‘Right to health, medical aid to protect the health and vigour of a worker while in service or post – retirement is a fundamental right under Article 21.’⁴

2. What do we mean by Social Security?

Social security protection is clearly defined in ILO conventions and UN instruments as a basic human right. Social Security is broadly defined as a system of contribution based health, pension and unemployment protection, along with tax-financed social benefits; social security has become a universal challenge in a globalizing world. When India became Independent and drafted its Constitutional Scheme as a progressive democratic welfare state, it aims to achieve “Social Security” for every individual. A number of welfare legislations have been framed for the purpose which derives their strength and spirit from the Directive Principles of the State Policy. In *Life Insurance Corporation of India v. Consumer Education and Research Centre*⁵, the Supreme Court has 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 *Samal Chand Tiwari Son of Late Prem v. State Of U.P., Through Secretary*, the Allahabad High Court has stated that the quantum of retiral benefits although is governed by statutory rules but it is clear that Government servant has a legal right to receive his retrial benefits as soon as he retires. Because after retirement a Government servant is not paid any salary only some amount is paid in the form of retiral benefits to provide him monetary assistance to sustain himself and his dependents with honour and dignity. Retiral benefits are not bounty but a right earned by the employer and thus it is deferred wages payable to a Government servant in lieu of considerable length of service rendered by an employee to the

¹ AIR 1983 SC 109

² AIR 1986 SC 180

³ (2003) 5 SCC 163

⁴ CERC v. Union of India, (1995) 3 SCC 42

⁵ 1995 SCC (5) 482

employer. Nonpayment of pension, therefore, amounts to denying right to earn livelihood which includes his deferred wages in accordance with rules. And the nonpayment of the same will amount in violation of fundamental right under Article 21 of the Constitution of India.⁶ Unfortunately even after 71 years of Independence and 67 years of being Republic the annual report of Ministry of Labour and Employment, Government of India, 2016 - 2017 states that the Social Security schemes in India cover only a small segment of the organized Work - force.

3. Self-Sustainable Social Security

The pension sector 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.⁷ However a pension scheme or a pension plan provides a sense of social security and ensures that after hard labour of several years, one can afford to relax and start enjoying the fruits of his labour as long as he is gifted to live. The pension Plan can be broadly classified in to following three heads:-

1. Benefits, which are paid to the employees of Central Government and employees of Central Public Service Undertakings
2. Benefits, which are paid to the employees of State Governments and employees of State Public Service Undertakings
3. Benefits which are paid or available to the employees of Private Sector.

The employees of the Central Government are entitled, as per the provisions of Central Civil Services (Pension) Rules, 1972; to the employees of the State Government, as per the Rules adopted by the concerned State government⁸ and to the employees of Private Sector solely at the cost of the employers or on the basis of joint contribution of the employers and the employees.⁹

There are two major benefits which are provided to an employee after his or her retirement.

1. Pension
2. Medical facility

There are different classes of pension to which an employee is entitled too according to his or her condition of service and status, such as: -¹⁰

- i. **Superannuation Pension:** under superannuation pension an employee is automatically discharged / Retire from his service upon attaining the particular age as prescribed for the post he or she holds.
- ii. **Retiring Pension:** under retiring pension an employee retires from his service before attaining the age of superannuation. Either upon administrative discretion of the employer or the employee himself opts for retiring voluntarily.
- iii. **Invalid Pension:** invalid pension is a sort of disability pension where an employee is retired from his service "voluntarily" on the grounds of its prolonged illness and incapacity to carry out his or her further duties attached to the office.
- iv. **Compensatory Pension:** compensation is awarded for damages; here damages are caused to the employee on the part of employer or due to an unavoidable cause, for example. Where an employee is holding a particular permanent post and later that post or office is abolished by the government or by the employer and it renders the employee as surplus or not required anymore, in such a case a compensatory pension is awarded to such employee whose service was terminated due to such abolition. Compensatory pension is optional on the part of employee in case, where he is served with two options by the employer.
 - I. He can be appointed to another post of the like nature and can continue his remaining service.
 - II. Opt for taking compensatory pension.
- v. **Compulsory Retirement Pension:** compulsory retirement is granted as a measure of "Punishment" the authority, who propose to impose such punishment, is under an statutory obligation to satisfy themselves, after verifying the service Book of the employee concerned, that he has put in not less than the minimum required qualifying service. For example in case of a central government employee the minimum qualifying service is 10 years for claiming pension.
- vi. **Extraordinary Pension:** Extraordinary Pension is a sort of disability pension where the employee or his family is granted with the pension benefit in case of death or permanent/ partial disability of the employee but such

⁶ Samal Chand Tiwari Son of Late Prem v. State Of U.P., Through Secretary, Allahabad High Court , 6, Dec 2005

⁷ Ministry of Finance, " Pension Reforms", 222 (Annual Report, Govt of India, 2010)

⁸NHRC, Retrial Benefits as a Human Right, (New Delhi, 2014)

⁹ Annual Report 2016 – 2017 , 84 (Ministry of Labour and Employment, Govt of India)

¹⁰ Pension Portal, Retirement Benefits: Pension (Department of Pension & Pensioners' Welfare, Government of India, New Delhi) available at: <http://www.pensionersportal.gov.in/ContactUs.asp>

death or disability must have a casual connection with the service of the employee.

- vii. **Family Pension:** Family pension is granted to the widow / widower and where there is no widow / widower to the children of a Government servant who entered in service in a pensionable establishment.

Medical Facilities: Though the Center and the State governments provides medical facilities to their employees during their service period in government run hospitals across the country along with the medical allowance. Those who avail medical allowance they are not entitled to avail medical facility upon government expenses. However the medical facility is an optional benefit for an employee during his service tenure and also after retirement. The Center and the State governments provides comprehensive health care facilities under various healthcare schemes for their employees, pensioners and their dependents residing in cities covered under the medical scheme in specified hospitals across the country and the State. Benefits available to private Sector Employees or Workmen of unorganized sector is a sort of Social assistance, where funds and resources are raised by the Government particularly the Ministry of Labour and Employment on a Non – Contributory basis and delivery of welfare services affected without linkage to individual worker's contribution. Under the benefit program the Ministry of Labour and Employment provides Housing, Medical Care, educational and recreation facilities to the

workers under separate legislation that have been enacted in his behalf. The following categories of workers falls under the benefit program:-

- Workers engaged in Beedi Industries
- Certain Categories of Non - Coal Mine Workers
- Cine Workers

4. Conclusion

The annual report of Ministry of Labour and Employment, Government of India, 2016 - 2017 states that the Social Security schemes in India cover only a small segment of the organized Work – force is a matter of concern. Labour is the backbone of industrial growth and economic development. It is the segment, which contributes most significantly to the country's Gross Domestic Product. Realizing this, Government of India has enacted several laws giving protection to labour against retrenchment, employment injury, occupational diseases, and economical and social distresses. But the benefits of these laws have reached only to a small section of workers in the organized sector. There is ignorance of unorganized sector, on a comparative basis, the economic status of Government employees in is much better than a large section the majority of the populace, who suffer from poverty, financial insecurity, lack of adequate education and health facilities, etc. Thus, the government lacks equity considerations for taking proper care of the needs of employees, employed in different sectors.

ⁱ AIR 1981 SC 746

ⁱⁱ 1984 SCR (2) 67

ⁱⁱⁱ (1996) 2 SCC 549