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Social Security Legislations and Schemes on Retirement Issue: Indian Approach

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Abstract—*It is a universal truth that there is no lasting peace without social security. Social security is a comprehensive approach designed to provide economic security for millions of people-retirees, disabled personal, and dependents of retired, disabled or deceased employees. Social security is one of the strengthening pillar on which the concept of Welfare State rests. Social security is powerful institutional expressions of social solidarity and an important means by which an adequate standard of living for the people is insured. Social security is being increasingly recognized as a dynamic concept; in modern welfare State the concept of social security is much too broad enough to ensure comprehensive social security from 'womb to tomb'. It is observe that to have a retirement benefits is the basic corner stone to achieve the social justice.*

Keywords*: Social security, Pension, Retirement, Employees.*

1. INTRODUCTION

It is a universal truth that every one of us tends to move through the life cycle and thus happen to go through different age categories from the time of birth till old age & then finally death. During this life cycle one such stage that each of us is definite to encounter is that of retirement. Social Security system which aims to achieve social an economic stability provides for income security after retirement when a source of active income is stopped. Retirement benefits as covered under the social security system assist an individual to maintain the same living standards.[1i]Retirement is the point where a person stops employment completely. Germany was the first country to introduce retirement in 1880. In most countries, the concept of retirement is of recent origin, being made known during the late 19th and early 20th centuries. Nowadays most developed and some developing nations have systems to give pensions on retirement in old age which may be sponsored by employers, the state and the contribution by the employees depends upon the nature of employment as the case may be. In present scenario retirement with a pension is considered a right of the employee/worker in many nations. [2]

1.1 Meaning and Scope 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 nation to nation. The developments of social security are closely connected to the gradual change in structure of society and economic growth. As per Lord William Beveridge, "The term 'Social Security' is used to denote the security of an income to take the place of earnings when they are interrupted" by unemployment, sickness or accident, to provide for retirement through person, and to meet exception expenditure, such as those connected with birth, death and marriage."[3]

International Labour Organization defines social security as "the security that society furnishes through appropriate organization against certain risk to which its members are exposed."[4]

Social security insures a person against economic distress resulting from various contingences and assures him a minimum level of living consistent with the nation's capacity to pay.[5] The social security programmes in India consist of preventive, protective and promotional social security measures. The protective social security measures comprise largely for the organized sector which includes medical care, benefits relating to sickness, maternity, employment injury, survivor, old age, employment, unemployment etc. and the promotional social security measures are for the unorganized sector in terms of self employment, unemployment etc. and the promotional social security measures are for the unorganized sector in terms of self employment, wage employment and consist provision of basic needs such as food, shelter, health and education. In present scenario social

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[1] https://www.policyadvisor.in/life-insurance–quotes/compare-retirement-plans/?affid=1&source..

[2] www.definitions.net/definition/retirement

[3] William Beveridge, "Social Insurance and Allied Services, Report presented to Parliament", London P.120

[4] Approaches to Social Security I.L.O. C (Geneva 1942) P.83

[5] Encyclopedia of social work in India, 1968 P. 302

security measures works at three levels. At the first level efforts are made to achieve the universal programmes and policies to ensure basic social human development such as the mission for literacy, health care services, drinking water and sanitation etc. At the second level are the social development schemes that are aimed to provide a measure of socio-economic security to the poorer citizens, irrespective of their status as working or non working. The third level as according to the NCEUS, 2006 should constitute a social security system for the unorganized workers.[6] In present scenario social security measured and schemes has become the backbone of new economic system. The area of work in our nation is generally divide into two broad segments i.e. organized sector and unorganized sector. Organized sector is characterized by its homogeneity, reasonable bargain, applicability of labour laws and clear visibility and the unorganized sector lacks all of these, it is generally recognized by its heterogeneity, employment in small scattered units, causal nature of work, low wages and low skills of workers, lack of unionization etc. Generally the social security system used in its broadest sense, it covers both formal and informal sector. Preventive social security provides for preventive measures, it related with income maintenance and income support.[7]

2. SOCIAL SECURITY SYSTEM AND SELECTED COMPONENTS OF RETIREMENT

In recent years the government of India has changed from defined benefit retirement benefits to defined contribution retirement benefits. In present era, the major social security retirement schemes in India include provident fund, gratuity and pension schemes. As per the nature of these schemes are categorized by the following common features i.e. they are mandatory, occupational based, earnings related and have embedded insurance cover against disability and death. The old age income security system in India can be defined into three categories. The first category consists of statutory pension schemes and provident funds for the organized sector employees, the second category is comprised of voluntary retirement saving schemes for the self employed and unorganized sector employees whereas the last category consist of targeted social assistance schemes & welfare funds for the under privileged people.[8] With the aim of inclusive growth, the government of India has introduced various measures for retrial benefits under social security system. The following are:

2.1 The Employers Provident Fund and Miscellaneous Provisions Act, 1952

The Employees, Provident Fund and Miscellaneous Provisions Act, 1952 is India's one of the most significant social security legislation which provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. The Act is administered by the Government of India through the Employees' Provident Fund Organization. It provides some significant provisions for the future of the industrial worker after his retirement or for his dependent in case of his early death.[9] In **Regional Provident Fund Commissioner, A.P. V. Hariharan,** the, Supreme Court regarding the object of the Employees' Provident Funds Act, 1952 made the following observation-

"This Act was brought on the Statute book for providing for the institution of a provident fund for the employees in factories and other establishment. The basic purpose of providing for provident funds appears to be to make provision for the future of the industrial worker after his retirement or for his dependents in case of his early death. To achieve this ultimate object the Act is designed to cultivate among the workers a spirit of saving something regularly and also to encourage stabilization of a steady labour force in the industrial center."[10]

Under the Act, the EPFO operates three schemes namely-

2.1.1 Employees' Provident Fund Scheme, 1952

The primary goal of the Employees' Provident Fund scheme is to generate retirement savings for the employees across India. The Employees Provident Fund is a corpus of funds built through regular, monthly contributions made by an employee & employer. Both the interest earned and the total amount withdrawn at maturity are tax-free, due to this feature the EPF becomes one of the most popular forms of long term retirement saving among the working population in India. The scheme also provides for financial security in times of emergency and in a case where employee is rendered unfit for unemployment.[11] It is a defined contribution scheme i.e. employee and employer both contributes towards the objective of retirement income. The contribution which shall be paid by the employer and employee in respected of establishment employing 20 or more persons and engaged in notified industry shall be 12% of the basic pay, dearness allowance and retaining allowance if any subject to a maximum of rupees 6500 per month.[12]

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[6] Dr. Ravi Prakash Yadav, "Social Security In India," P. 37, ed. 2015.
[7] Ibid, P. 24, 176
[8] Ranadev Goswami, "Indian Pension System: Problems & Prognosis," P.5, 7, available at www.actuaries.org/EVENTS/Seminars/Brighton/presentations/goswami.pdf.
[9] Jeet Singh Mann, "Comprehensive Social Security Scheme for workers," 2010, P. 134, See also Supra Note 5, P. 180
[10] AIR 1971 SC 1519
[11] Available at www.bankbazaar.com/saving-scheme/ept.html
[12] The Employees' Provident fund and Miscellaneous Provisions Act, 1952

Recently the Labour Ministry found that there were lakhs of inactive EPF accounts because most of employee had more than one PF account due to the number of Job changes one had made. The government hence decided to allow employees to merge all PF accounts into one with the use of Universal Account into one with the use of Universal Account Number (UAN). Employees Provident Fund Organization services are made available on a new application named UMANG.[13]

2.1.2 The Employees Pension Scheme 1995

This Scheme has replaced the Employees' Family Pension Scheme, 1971. Section 6 A of the Act provides for superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment class of establishments to which this Act applies and widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees. This Scheme is Compulsory for all the members of the Family Pension Scheme, 1971. According to the Employees' Pension (Amendment) Scheme 1996, private and public sector employee subscribing to Employee Provident Fund now stand secured with pensioner protection. [14] It is a defined benefit scheme which does not comprise the contribution of employee. Pension is admissible to employees on superannuation at the age of 58, provided they have rendered service of a minimum period of 10 years of service. The rate of pension is determined on the basic of the pensionable remuneration and the length of service rendered. Pension on discounted rate is also payable on attaining the age of 50 years. In the event of death of the pensioner, pension is payable to the family at the prescribed rate.[15] The Labour ministry in its meeting held on 6-December-2017 made a proposal to hike in minimum pension to rupees 7,500 per month under EPS 1995.[16]

2.1.3 The Employees Deposit Linked Insurance Scheme, 1976

Under Section 6C of the Act for the purpose of providing life insurance benefits to the employees of any establishment or class of establishment to which this Act applies, the central Government may by motivation frame a scheme to be called the Employees Deposit Linked Insurance Scheme.[17]

2.2 The Payment of Gratuity Act 1972

The Payment of Gratuity Act 1972 is a social security enactment. The significance of this enactment lies in the acceptance of the principle of gratuity as a compulsory statutory retiral benefit. The Act of 1972 accepts, in principle, compulsory payment of gratuity as a social security measure to wage earning population in factories, industries and establishments. The main aim and concept of gratuity is to assist the workman after retirement, whether retirement is the outcome of the rules of superannuation or physical disablement. The term Gratuity is derived is derived from the word 'Gratuitous' which simply means 'gift' or 'present'. However being operated as a social security measure, it ceases to retain the concept of a gift but it has to be taken as a social obligation by an employer towards his employee.[18] Under the Act, payment of gratuity has become a statutory obligation of employers & a statutory right of the employees to claim according to the specified procedure. The payment of gratuity provides economic security in the fall of life and assists the retired employees to lead an independent life without seeking any help from his relatives or family members.[19] In **Jeewan lal Ltd. V. Appellate Authority** the Supreme Court explained the objective of the Payment of Gratuity Act, 1972, “For wage earning population, security of income, when the worker becomes old or infirm is of consequential importance. The provision of social security measures, retrial benefits like gratuity, provident fund & pension (known as the triple benefit) are of social importance. In bringing the Act on the Statue book, the intention of the legislation was not only to achieve uniformity & a reasonable degree of certainly but also to create and bring into force a self- contained, all embracing, complete and comprehensive, complete code relating to gratuity.”[20] As the Supreme Court in **Som Parkash Rekhi V. Union of India**, made the following observation[21] “We live in a welfare State, in a socialist republic under a Constitution with profound concern for the weaker class including workers. Welfare benefits such as pension, payment of provident fund and gratuity are in fulfillment of the Directive Principle under Chapter IV of the Constitution.” In **D.V. Kapoor v. Union of India,[22]** the Supreme Court reiterated that the right to receive gratuity is a valuable right available to an employee in the evening of his life and is assured by Article 41 of the Constitution of India which deals with the right to work, to education and public assistance in certain cases. In **Jagdish Narian Chopra V. Allahabad District Co-operative Bank Ltd,[23]** Allahabad High Court observed that “gratuity is not a charity but a deferred payment by the employer for service rendered by his employee in the prime of his life." In **D.S.**

[13] Supra Note 14

[14] Section 6A of the EPF & MP Act, 1952

[15] Anwarul Hoda, Durgesh K. Rai, “Labour Regulations in India: Improving the Social Security Framework”, Working paper 331, P.6, Jan 210, Indian Council For Research on International and Economic Relations

[16] https://economictimes.Indiatimes.com/wealth/ersonal-finance-news/expect-hike-in-minimum- pension-finance-news/expect-hike-in-minimum-pension

[17] Section 6C of the EPF & M.P Act, 1952

[18] https://www.lawctopus.com/academike/payment-gratuity/

[19] http://www.icaiknowledgegateway.org/little..,CHAPTER 5-The payment of Gratuity Act1972

[20] 1984 II LLJ 464 (S.C.)

[21] AIR 1981 SC 212

[22] AIR 1990 SC 1923

[23] 2000 I ILJ 181 (All)

Nakara v. Union of India,[24] the Supreme Court observed as follows "Gratuity is a social welfare measure rendering socio economic justice by providing economic security in the fall of life when physical & mental process of the employee is ebbing corresponding to ageing process."

Gratuity shall be payable to an employee on the termination of his employment after he has served continuous service for not less than five years

a- on his superannuation, (Section 2 (r) "superannuation" in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment) or

b- on his retirement or resignation, (Section 2 (q) "retirement" means termination of the service of an employee otherwise than on superannuation) or

c- on his death or disablement due to accident or disease.[25]

2.3 The Employees State Insurances Act, 1948

Medical care to permanently disabled and retired insured persons

With the amendment of ESI Act in 1989, following provisions were added to Section 56 (3) w.e.f.1/2/91, which provides that subject to payment of contribution and such other conditions as may be prescribed by the Central Government an insured person who ceases to be in insurable employment on account of permanent disablement shall continue to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement. It also provides that an insured person, who has attained the age of superannuation, a person who retires under voluntary retirement scheme or takes premature retirement and his spouse shall be eligible to receive medical benefit subject to payment of contribution & such other conditions as may be prescribed after being insured for not less than five years.[26]

2.4 National Pension Scheme

Pension provides financial security and firmness during old age when people do not have a regular source of income. Retirement benefit guarantees that people live with pride and without compromising on their standard of living during advancing years of life. The primary focus of pension scheme is to gives an opportunity to invest and accumulate savings and get fixed amount as regular income through annuity plan on retirement.[27] The National Pension Scheme is a social security scheme, launched by Government. The government of India has in the year 1999, commissioned a national project titled 'OASIS' (an acronym for old age social and income security in India). On the basis of the recommendations of the OASIS report, Government of India introduced a new Defined Contribution Pension system for the new entrants to central state Government service, except to Armed Forces, replacing the existing system of Defined Benefit Pension System. The contributory pension system was notified by the Government of India on 22 December 2003, now named the National Pension System with effect from the January 1st 2004.[28]

2.4.1 Salient Features of the Scheme:

i- National Pension System is based on specified contributions in respect of all new entrants to Central Government services, excepting the Armed Forces, with effect from January 1st 2004.

ii- With effect from 1st May 2009, National Pension Scheme has been made available for all citizens of the nation including the self employed, unorganized sector worker on voluntary basis.

iii- National Pension Scheme aims to institute pension reforms and to promote the habit of saving from retirement amongst the citizens.

iv- Pension Fund Regulatory and Development Authority regulated the National Pension system.

v-The subscriber will be allotted a unique Permanent Retirement Account Number (PRAN), this number will remain the same for the rest of subscriber's life.

2.4.2 Who can join National Pension/New Pension scheme:

i- All citizens of India between the age of 18 and 60 years as on the date of submission of application to Point of Presence Point of Presence-Service Provider can join the Scheme.

ii- National Pension Scheme is applicable to all new employees of Central Government service (except Armed Forces) and Central Autonomous joining Government service on or after January 1st 2004. Any other government employee who is not mandatorily covered under the Scheme can also subscribe to National Pension Scheme under "All citizen Model" through a Point of Presence service provider.

iii- National Pension Scheme is applicable to all the employees of state Governments, State Autonomous bodies joining services after the date of notification by the respective state Governments.

[24] AIR 1983 SC 130

[25] Section 4 of The Payment of Gratuity Act 1972

[26] Other Important Matters Concerning Insured Persons & Their Families, 499 CHAPTER XII, 9 Feb 2009; P.4, available at- https://esic.nic.in/unlinks/ch12.pdf

[27] https://www.lawctopus.com/academike/payment-gratuity /

[28] https://pfrda.org.in/printmain.cshtml?Ibid=4

iv- A corporate would have the flexibility to decide investment choice either at subscriber level or at the corporate level centrally for all its underlying subscribers. The corporate or the subscriber can choose any one of Pension Fund Manager available under All Citizen Model.

Thus the National Pension Scheme Provides transparency to the subscriber and is a low cost investment option. Under the scheme, subscribers have the advantage of choosing their own pension fund schemes & they will be aware of how the investment is doing on day to day basis.[29]

2.5 Swavalamban Yojana

A citizen of India between the age of 18 and 60 years as on the date of submission of application, who engaged in the unorganized sector or is not in a regular employment of the Central or a state government, or an autonomous body/public sector undertaking of the Central or state government can open NPS-Swavalamban account.[30] The Swavalamban Yojana is an initiative launched by the Central Government for the benefit of people engaged in the unorganized sector. The Swavalamban Pension Scheme is one of the significant plan launched by Government of India in 2010. Swavalamban Pension Scheme has mainly focused on the retirement benefits for the self-employed, wage earners and farmers who fall under the unorganized section. With the launch of the Atal Pension Yojana, the beneficiaries enrolled under Swavalamban plan are being automatically migrated to the Atal Pension Yojana & further enrolment under Swavalamban is closed.[31]

2.6 Atal Pension Yojana

The Government of India has announced the introduction of universal social security scheme in the 'Pension and Insurance' sectors for all Indians, specially the poor and the under-privileged in the Budget of the year 2015-16.[32] Atal Pension Yojana with the status of national pension scheme is launched in 2015 by the Government of India with an objective to create a universal social security measure for all Indian (especially worker engaged in unorganized sector, who joins the National Pension Scheme administered by the Pension Fund Regulatory and Development Authority) that will secure that no citizen will have to worry about the contingencies faced during their life, like illness, accidents, or insecurity in old age. Under the Atal Pension Yojana, the subscribers will get the fixed pension of ranging between rupees 1000 of 6000 depending on their contribution. Under Atal Pension Yojana the Central government will also co-contribute 50% of the total contribution or rupees 1000 per annum, whichever is less, to each eligible subscriber account for a period of 5 years, i.e. from Financial year 2015-16 to 2019-20. This contribution would however, be enjoyed only by those who are not member of any statutory social security plans and who are not income tax payers and those who join the scheme before 31 December 2015.

2.7 Public Provident Fund Scheme

The Public Provident Fund is a scheme of the Central Government initiated under the Public Provident Fund Act of 1968. Public Provident Fund Scheme is a savings cum tax saving instrument. It is a long range small saving scheme backed by the government to ensure retirement security to self employed individuals and workers engaged in the unorganized sector. It is a fifteen years scheme, as per the rules Public Provident Fund account gets matured after the completion of 15 years from the end of the year in which the account was opened. The entire balance can be withdrawn on maturity and the interest received is tax free. Deposit to Public Provident Fund is tax deductible for individual assesses in India under section 80c of Income Tax Act, 1961.[33]

3. CONCLUSION AND SUGGESTIONS

Precisely our country still not has an existing universal social security system. However India addresses the challenges of twenty first century and manages its rise globally, constructing and implementing a modern social security system through various legislations and schemes. Presently, the concept of social security has come to be linked to job benefits that includes medical care, disability benefits, compensation for occupational/employment injury, maternity benefits, retirement benefits etc., tying social security to one's status as worker in both the working sector i.e. organized or the unorganized economy when, principally, it evolves from the notion of ensuring and securing everyone protection against the contingencies of life. As per the study it is quite clear that to have a retirement benefits is the basic corner stone to achieve the social justice. Though The Government of India has made certain efforts to provide the retirement benefits to both employees irrespective of their sector of work through some social security measures but it is found that these social security measures are biased towards employees in formal sector.

4. SUGGESTIONS

i- Integration of all major social security schemes is needed for improving the country's social safety net. Today we have plethora of social security measures which more often creates confusion & administrative hazards.

[29] National Pension System, available at https://www.india.gov.inspotlight/national-pension-system-retirement-plan-all,

[30] Ibid

[31] https://www.sbi.co.in/...SWAVALAMBANYOJANA...../f5an783e-bbbe-4cf7.., see also www.financialservice-gov.in/pension-referms-division/Swavalamban-Scheme,

[32] https://npscra.nsdl.co.in/nsdl/scheme-details/AP_Scheme...

[33] Public Provident Fund Scheme-PPF Benefits &Rules,https://www.allbankingsolutions.com/Personal-Finance/Public-Provident-Fund-PPF-Scheme.htm

ii- An efforts should be made towards universalization of social security system where uniform coverage should be made available to all workers irrespective of their working sector.

iii- It is noted that all the above discussed legislations has no coverage or limited coverage relating to retirement issue of self employed or informal sector workers. A new legislation just to deal with retirement issue is needed for the better administration.

iv- More emphasis should be focused on awareness generation programme for propagating and publicizing the existing social security measures especially relating to retirement benefits.

v- An efforts should be made to maintain transparency and to reduce the incidents of corruption at every level. The composition of most of provident and pension funds board in the private and public sector reflect to be insufficient expertise, autonomy, transparency and accountability in their operations.

vi- An efforts should be made to improve effective implementation of social security measures, in number of instances it is found that the scheme is unable to take off sometime because of lack of interest on the part of key implementation and to constitute the employee's suraksha courts at district level.

Vii- For Atal Pension Yojana/Swawlamban Yojana it is essential to look at the various processes and procedures in terms of registration of workers and their enrollment for the scheme to enhance more participation.

viii- National Pension System Should also focused on health care issue of workers after their retirement.

ix- A separate ministry to deal with social security is needed, it assist in better policy formulation, implementation and control on social security measures.

x- A separate social security budget should be introduced in the parliament for better allocations of funds.

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