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# **SOCIAL SECURITY: A COMPARATIVE STUDY** **BETWEEN INDIA, FRANCE, GERMANY AND** **UNITED KINGDOM**

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## **ABSTRACT**

This article attempts to compare the constitutional protection of Social Security programs in several nations, including India, France, Germany, and the United Kingdom. The extent of constitutional commitment to social security and the binding effect of constitutional laws varies greatly from one country to the next. These commitments take the shape of either extremely precise provisions governing the operation of social security programs or, on the other extreme, comprehensive pronouncements outlining the State's approach to social welfare. India's social security system is made up of numerous schemes and programs that are governed by a range of laws, rules and regulatios.

**Keywords:** *Social Security, Constitutional Protection, India, France, Germany and United Kingdom.*

## **INTRODUCTION**

Although several national constitutions do not directly mention "Social Security," the vast majority include clauses that acknowledge the necessity for one or more types of social safety. The most prevalent forms of social protection included in national constitutions around the world are social security, social insurance, social aid and support, and social services. These means are frequently provided for in the context of protecting against specific social risks or life situations, such as motherhood, fatherhood, childhood, or old age, as well as for specific demographic groups,

such as children and young people, families with children, the elderly, and people with disabilities. Health insurance and healthcare are frequently treated independently from other forms of social risk protection. Other forms of protection may include income security, minimum income, social pensions, and the minimal subsistence level. The combination of these regulations and their amount of detail varies substantially, frequently reflecting a redistribution of responsibilities among executive, legislative, and judicial bodies. The Constitution, as a legal manifestation of human values, gives social security rights a significant moral dimension: to avoid the wrongful denial of human dignity and income.

### MEANING OF SOCIAL SECURITY

The term social security refers to programmes established by statute that ensure individuals against interruption or loss of earning power and for certain special expenditures arising from marriage, birth or death. This also includes allowances to families for support of children.<sup>1</sup>

The Oxford Dictionary defines social security as money provided by the state for people with little or no income.

In the Black Laws Dictionary it is defined as “ A federal law, originally enacted in 1935 in response to the Great Depression, creating a system of benefits, including old-age and survivor benefits and establishing the Social Security Administration<sup>2</sup>”.

International Labour Organisation defines social security as “Security that society furnishes through appropriate organisations against certain risks to which its members are exposed.”

### INDIA’S SOCIAL SECURITY SYSTEM

The Indian Constitution does not define social security, but in accordance with the mandate of Article 22 of the Universal Declaration of Human Rights of 1948, the spirit of social security has been incorporated within the framework of Parts III and IV of the Indian Constitution.

However, the **Code on Social Security, 2020**, defines Social Security as “*the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code*”.

Further the term "Social Security" finds place in the constitution along with other related matters under Concurrent List of the Seventh Schedule as under:-

**List III, Entry I No. 23:** Social Security and insurance, employment and unemployment.

**List IV Entry No. 24:** Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.

A comprehensive social security scheme must be designed in order to overcome the obstacle of want, disease, ignorance, squalor and idleness.

Also the schemes must:-

- 1) Guarantee income in case of involuntary loss of large or all part of income from work.
- 2) Be initiated by legislation that define obligation upon public or other organisation.
- 3) Be administered by public or private organisations.
- 4) Assure that benefit will be available when required and quantity will be adequate.

The need for social security is in the roots of poverty.

India is one unique example of non-institutional form of social security which form the backbone of the current social security system. Joint Family culture being an example in which needy and unfortunate ones are protected this include members suffering due to unemployment, economic difficulty, old age, widowhood etc.

Thus India has had its own social security system from the ancient ages in the form of –

- a) Self-sufficient village economy
- b) Caste system
- c) Joint family
- d) Organisation for charity<sup>1</sup>

### **Pre - Independence Era**

India can aptly be defined as a country where economic resources are less but needs are more. As discussed earlier the social security schemes were only restricted to the organised working classes hence here too we see that the labour laws which now are a part of the public law was originally a private law.

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<sup>1</sup> Mamuria and Doshi, Labour problems and social welfare in India, KitabMahalpvt.Ltd. Allahbad (1966) pg. 339.

With the dawn of factory system in India in 1850 factories saw workers working in awful conditions<sup>11</sup>. The timeline shows that changes had happened- in 1859 (Indian Merchant Shipping Act was passed); 1860 (Employees and workmen dispute Act); 1881 (Indian Factory Act); 1892 (Island Emigration Act); 1901 (India Mines Act); 1919 ILO established - aimed at welfare of workers globally; 1919 (Montague- Chelmsford reforms); 1923 (Workmen Compensation Act); 1925 (Provident Fund Act); 1929 Royal Commission on labour appointed; 1935 (Government of India Act); 1943 Standing Labour Committee.

### Post-Independence Era

The timeline shows that changes had happened in -

- i. 1947 - Interim Government – included welfare plan for labourers in 5 year plans
- ii. 1947 - Industrial Disputes Act including Gratuity as legal right.
- iii. 1948 - Employers State Insurance Act
- iv. 1948 - Coal Mines Provident Fund and Bonus Scheme Act
- v. 1948 - Employees State Insurance Act
- vi. 1948 - Employees Provident Fund and Misc Act
- vii. 1949 - Payment of Gratuity Act
- viii. 1952 - Employees provident fund Act was passed
- ix. 1954 - India adopted a socialistic pattern of society .
- x. 1961- Maternity Benefit Act

### Legal Framework

The Preamble declares that India would be a sovereign, socialist, secular democratic republic and secure to all its people's justice, liberty, equality and fraternity.

**(I) Concurrent List-** Social Security and labour welfare falls under Concurrent list, it means both union and state Government can make laws regarding these topics.

- a) (List III in the Seventh Schedule of the Constitution of India)
- b) Item No. 23
- c) Social Security and insurance,
- d) Employment and unemployment.
- e) Item No. 24
- f) Welfare of Labour including conditions of work,
- g) provident funds,
- h) employers' liability,

- i) workmen's compensation,
- j) Invalidity and old age pension and maternity benefits

## **(II) Part IV – Directive Principles of State Policy**

### **a. Article 38 (i)**

Directs state to promote the welfare of people by securing and protecting as efficiently as it may a social order in which justice – social , economic and political shall inform all institutions of national life.

### **b. Article 38 (ii)**

The 44<sup>th</sup> amendment added clause (2) which directs the state to minimise the irregularities in income and to endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also group of people residing in different vocations<sup>12</sup>.

### **c. Article 39**

Lays down certain specific objectives clauses (a) , (b) and (c) particularly lay down the norms for an egalitarian operation of economic and social system of the country.

### **d. Article 41**

(a) Right to work, to education and to public assistance in certain cases

(b) State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

### **e. Article 42**

(a) Provision for just and humane conditions of work and maternity relief

(b) State shall make provision for securing just and humane conditions of work and for maternity relief.

## **(III) Social Security Laws in India**

- i. The National Food Security Act, 2013
- ii. The Code on Social Security, 2020

### **Salient features of The National Food Security Act, 2013<sup>2</sup>**

1. The Parliament with object to provide food and nutritional security in human life cycle had enacted the National Food Security Act, 2013.

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<sup>2</sup> Ajinkya Tanksale and J K Jha, "Implementing National Food Security Act in India: Issues and Challenges" 117 British Food Journal 1315-1335 (2015).

2. Life cycle approach: Care of the person taken by the Government considering the nutritional requirements throughout the life cycle.
3. The paradigm shift from welfare based approach of the government to the right based approach of the citizens, as this act tends to preserve the basic and fundamental right of every citizen of India to have food.
4. Provision of food for the vulnerable sections in the society (e.g. homeless, destitute and people suffering from disasters or natural calamities).
5. Women empowerment: decisions like considering eldest women in a family as the head of the family, giving preference to women or their self-help groups for issuing license of new FPS, etc. will help in empowering women of the country.
6. An effort to bring transparency in the operations of the entire PDS.
7. Aiming at universal PDS.
8. States are free to further subsidize the foodgrains or extend the limits of coverage of the population.

### **Salient features of Code on Social Security, 2020<sup>3</sup>**

1. The Code on Social Security, 2020 has been notified on 29.09.2020.
2. Proposes to create a comprehensive framework legislation for social security.
3. A right based system for phased universalization of social security contribution to be made by the employer/employee.
4. Government may contribute for deprived category of worker.
5. Social Security Code has subsumed the following enactments:
  - i. The Employees' Compensation Act, 1923;
  - ii. The Employees' State Insurance Act, 1948;
  - iii. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
  - iv. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
  - v. The Maternity Benefit Act, 1961;
  - vi. The Payment of Gratuity Act, 1972;
  - vii. The Cine- Workers Welfare Fund Act, 1981;
  - viii. The Building and Other Construction Workers Welfare Cess Act, 1996; and
  - ix. The Unorganised Workers' Social Security Act, 2008.

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<sup>3</sup> Government of India, Report: Annual Report 2020-21 (Ministry of Labour and Employment, 2021).

### **General Features**

1. Social Security Code is applicable to every establishment subject to the minimum threshold of employees employed therein.
2. Every establishment to which SS Code applies shall be required to be registered within such time and in such manner as may be prescribed by the Central Government.
3. Maintenance of Records and Registers: The employer of an establishment shall: Maintain records and registers containing particulars such as (a) number of hours of work performed by employees, (b) wages paid, (c) leave, leave wages, wages for overtime work, attendance etc.
4. Issue wage slips to the employees, in electronic form or otherwise;
5. File return electronically or otherwise before the authorized officer.

## **FRANCE'S SOCIAL SECURITY SYSTEM**

The legal principles of the social security system are contained in the Constitution and its Preamble, and have been enforced by constitutional and benefits courts: labour courts for labour matters, social security Courts for members of the various schemes, and administrative courts for state official schemes.

### **Main Documents**

#### **Article 1 of the Ordinance of 10 October 1945-**

“A social security system that insures workers and their families against all kinds of risks that may impair or take away their earning capacity and covers maternity costs or family costs is hereby established.”

#### **Articles 10 and 11 of the Preamble to the Constitution of 1946**

“The Nation shall provide individuals and families with the conditions necessary for their development. It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working shall have the right to receive suitable means of existence from society.”

#### **Article L111-1 of the social security code as amended by the Act of 21 December 2001**

- i. Social security is organized based on the principle of national solidarity.

- ii. It guarantees workers and their families against risks of all kinds that may reduce or suspend their earning potential
- iii. It also covers maternity, paternity and family costs. It provides, for all people and for all family members residing on French territory, coverage for sickness, maternity and paternity costs as well as family costs.
- iv. This coverage applies through membership of the concerned parties and their dependants to one (or more) compulsory scheme(s).
- v. It guarantees benefits covering social insurance, occupational accidents and diseases, old-age allowances and family benefits within the framework of the provisions set out in this code.

#### **Article 1 of the Act of 13 August 2004 on Health Insurance**

“The Nation affirms its commitment to the universal, compulsory and comprehensive nature of health insurance. Regardless of age and physical or mental condition, each insured person benefits from protection that he finances according to his resources against the risk and consequences of sickness”

#### **Article 34 of the Constitution of 1958**

Statutes shall also lay down the basic principles of:

- i. Employment law,
- ii. Trade union law and social security.
- iii. Social security financing laws shall lay down the general conditions for the financial stability thereof and, taking into account forecast revenue, shall determine expenditure targets on the conditions and with the reservations provided for by an institutional act.

Drawing on these provisions, the Constitutional Court recognized the constitutional status of the right for every individual to obtain a job,<sup>4</sup> of the principle of workers' participation,<sup>5</sup> and of the right to social protection<sup>6</sup> or health protection.<sup>7</sup> Pursuant to these principles, and the main constitutional principles of equality before the law and equality in terms of public burdens, the Constitutional Council implemented a rule related to social security that states that "the principle

<sup>4</sup> Constitutional Council, Decision No. 98-401 of 10 June 1998, framework and incentive Act related to the reduction of working hours.

<sup>5</sup> Constitutional Council, Decision No. 77-83 of July 1977, Act amending Article 4 of the Amending Finance Act of 1961 (Service obligation of Civil servants)

<sup>6</sup> Constitutional Council, Decision No. 86-225 of 23 January 1987, Act establishing various social order measures.

<sup>7</sup> Constitutional Council, Decision No. 80-117 of 22 July 1980, Act on the protection and control of nuclear materials.

of equality shall neither conflict with what the legislator rules in different situations, nor with the fact that he derogates from equality for general interest reasons, as long as, in another case, the difference in the resulting treatment is in relation to the intention of the law that establishes it", in line with the European Court of Justice and the European Court of Human Rights.

The general French social security system divides risks into three branches:

1. Sickness/Accidents at work and occupational diseases
2. Family
3. Old Age

Each branch is managed by a group of private local funds specialized in one of the risks that share the national territory, and abide by the directives set out by a public national body:

- The Caisse nationale d'assurance maladie des travailleurs salariés (CNAMTS) - the National Health Insurance Fund for Salaried Employees) is a public institution made up of local funds (private entities) that dictates the direction of those funds. The local funds (CPAM), governed by the principle of equality (trade unions that represent employers and workers) but subject to a large extent to the policies decided at the national level, are in fact responsible for implementing this policy.
- The Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés (CNAVTS) - National Old Age Insurance Fund for Salaried Employees) centralizes all the resources of old-age insurance and manages old-age and survivors' insurance through core organizations. Since the 2010 reform, the core organizations that are responsible for managing pension schemes are also responsible for managing occupational accident prevention schemes. The CARSAT falls under the supervision of both the CNAV and the CNAM.
- The Caisse Nationale d'Allocation Familiale (CNAF) - National Fund for Family Allowances finances all the family benefit schemes through its network of core funds (the CAF). Acting in connection with all branches, the Agence Centrale des Organismes de Sécurité Sociale (ACOSS) Central Agency of Social Security Organizations is tasked with managing the funds for the various risks related to the three national funds. These local organizations, known as the URSSAF, collect social security benefits and hold employers for their social obligations. Accountable for their social obligations.

## GERMANY'S SOCIAL SECURITY SYSTEM

The Constitutional Guarantee of Social Rights only few a few social rights' guarantees primarily as to women, mothers, children and handicapped persons are explicitly stipulated. Therefore, in the current German legal thought social human rights are regarded as neither fundamental, nor integral parts of human rights.

The Basic Law lacks a fully elaborated catalogue of social human rights. Only a few of the provisions can be interpreted as giving rights due to social need or with social intentions. These are above all the equal treatment clauses for men and women or with respect to handicapped persons. They do not only provide for equal rights, but also for equal living conditions to all addressed persons. So, they matter in the context of fundamental freedoms. Further examples are the commitment to assist families, to protect mothers and their children, to guarantee equal treatment between marital and non-marital children and to respect the rights of collective bargaining and action for both employees and employers.

The Basic Law established a substitute for its lacking social human rights; this is the principle of the "Social State" (Sozialstaat). In articles 20, 28 of the Basic Law Germany defines itself as a *democratic, federal, republican and social state*, which is based on the rule of Law.<sup>8</sup> These five characteristics of the German state cannot be altered, nor abolished even not by a change of the Constitution itself. These five characteristics assume with other words the character of "eternal", i.e. unchangeable principles of the Constitution.<sup>9</sup>

As to the social state clause the state has to control, on whether from the freedoms guaranteed under the constitution follow detrimental social effects, above all unacceptable disequities, unjustifiable differences as to incomes, pensions or social status. Whenever those impacts are about to happen, the state is obliged to react and fight against poverty and exclusion, reduce inequalities in income and fortune and to overcome social dependencies. Under the social state clause the state is supposed to make a social order becoming to exist, which is based on "social justice" and strives to overcome "social contracts".

From this characteristic of Germany as a "social state" does not stem any individual rights'

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<sup>8</sup> Article 20(1) - The Federal Republic of Germany is a democratic and social federal state.

<sup>9</sup> Article 79(3) – Amendments to this Basic Law affecting the division of the Federation into Lander, their participation in principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible.

guarantee, but it obliges the state to create a whole range of social legislation, which has to create individual social rights. So, under the social state clause the state becomes mandatory to create social rights, which have to assume a legal, but not a constitutional rank.

As the German Constitution strives to give a full-fledged protection of the individual as to all circumstances, which stem from acts of the state, the freedom of action,<sup>10</sup> the equality,<sup>11</sup> and the property clauses<sup>12</sup> had been addressed as instruments to protect social rights.

As to the universal guarantee of the freedom of action the Constitutional Court did examine on whether a legal provision on a mandatory inclusion in a special scheme of old age protection for self employed medical doctors can cope with the freedom of action. The Court held that this is possible, as the obligatory inclusion into social security schemes is to be assessed as an appropriate means to a legitimate end, necessary and proportionate to achieve its end. As to the social legislation a series of very distinct questions had been examined by the Constitutional Court, on whether they comply with the principle of equality of each person before the law. As to the case law of the Constitutional Court social legislation has to be enacted in accordance with the principle of equal treatment of each person.

Since the first years of the Constitutional Court case law there was a broad debate about whether under the German Constitution a social right can be conceived as a property right. Whereas the Federal Social Security Court already very early qualified social insurance rights as property under the Basic Law, the Constitutional Court held in the formative era till 1980, that social insurance does not correspond with the requirements to property, which are peculiar to an entitlement under private law. Social insurance rights are, however, rights under public law; so they could fall into the substantial scope of the property clause of the Basic Law. But in 1980 the Constitutional Court changed its position and accepted, that also social insurance rights are to be conceived as property under the Basic Law. This case law coincides with the one of the ECHR. But the meaning and the substantial scope of application of the property clause differs as to the case law of both courts. Under the latter all social benefits based on a legal entitlement can be taken as property in the meaning of the 1<sup>st</sup> Additional Protocol to ECHR. Under the German constitutional law, however, only those social rights can be regarded as property, which are based and stem from own

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<sup>10</sup> Article 2, Clause (1) – Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.

<sup>11</sup> Article 3 Clause (1) – All persons shall be equal before the law.

<sup>12</sup> Article 14 Clause (1) – Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.

contributions made by payments to the social security administration or own work.

Within the social legislation of Germany the Social Code plays an important role, as it contains all the relevant provisions on social legislation in Germany. An integral part of this legislation is to be found in the basic social rights. They are enacted in the introductory and most general part of the Social Code. It plays a key role to outline the purpose, function, structure and content of the German system of social security. The social rights in the context of the Social Code shall describe the targets of social benefits; it shall keep pace with the international development, where a rights-based approach to social legislation becomes more and more common and gained ground. Social rights shall emphasize, that the individual in a modern welfare state is supposed to be not an object for social policy but that social policy intends to establish the beneficiary as a subject of rights.

## CONCLUSIONS

Constitutions embody the right to social security in a variety of ways: some include social security as a constitutional goal of state policy; others impose a duty on the state to realize social rights without establishing a corresponding individual right to claim social security; and still others confer an individual right to social security while indirectly acknowledging the state's obligation to fulfill this right. In this continuum of soft to hard constitutional obligations to provide social security, some states grant individual rights and impose duties, but only require the State to gradually realize the right or fulfill the duty. While the variety of constitutional provisions ensuring social protection continues to increase, there is a noticeable pattern of their convergence around three main approaches: affirming social security as an individual right of a human being, defining the social responsibility of the State in social security provisions; and placing social security among the guiding principles of state policy.