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EXAMINING THE EFFICACY OF THE EMPLOYEE'S STATE INSURANCE ACT, 1948 IN ENSURING SOCIAL SECURITY IN INDIA

AUTHORED BY - VIVEK PANWAR

ABSTRACT

The implementation of the Employee's State Insurance Act, 1948 in India serves as a cornerstone in the pursuit of socio-economic justice as enshrined in the constitutional principles outlined in Articles 41, 42, and 43. Aligned with international labor conventions such as the Social Security (Minimum Standards) Convention, 1952, the Act provides a framework for securing the rights to work, education, and public assistance in instances of unemployment, old age, sickness, and disability. Through its provisions for medical and cash benefits, the Act ensures comprehensive coverage for employees, with the latter structured to complement the former effectively. Mandating contributions from employers, employees, and the government, the Act establishes a sustainable funding mechanism through the Employment State Insurance Corporation (ESIC). This paper examines the multifaceted implementation of the Act and its efficacy in safeguarding social security in India.

Keywords: *Employee's State Insurance Act, 1948; socio-economic justice; constitutional principles; international labor conventions; medical benefits; cash benefits; funding mechanism; Employment State Insurance Corporation (ESIC).*

INTRODUCTION

Social Security holds a pivotal role in the society; it helps in abridging gaps between people which is often caused due to low income and status in the society by giving a sound working environment lowering the inequity and inequality among people. Social Security eradicates the factors of discrimination on the basis of nationality, ethnicity or gender by ensuring the rights or benefits as a matter of legal entitlements.¹

¹ Social Security for Social Justice in a Fair Globalization Report VI ILO, https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_884393.pdf (Accessed: 16 March 2024).

Although DPSPs are not enforceable before the Court of law, the Apex Court in *State of Madras v. Champakam Dorairajan*² has recognized its significance and its need to run subsidiary to the Fundamental Rights guaranteed under the Constitution.

The right to social security is recognized as a human right in fundamental human rights instruments, namely the Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and enshrined as such in other international and regional legal instruments. In 1952 the International Labour Office defined social security as:

*"the protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children."*³

In February 2021, in the matter of *Uber BV v. Aslam*⁴, the UK Supreme Court upheld that Uber drivers are "workers" within the meaning of the statutory definition under labour laws (which includes anyone employed under a contract of employment but also extends to some individuals who are self-employed) and directed that Uber must pay its drivers the national living wage, paid annual leave and other benefits provided to employees, from the time that drivers log onto the Uber app, and are willing and able to work.

The concept of Employees State Insurance Scheme is regarded as one of the measures of social security. The scheme functions under the Employees State Insurance Act 1948.⁵ The Labour Department is one of the major departments of the government which has the primary objective of bonding relations between the industries and its workers by ensuring their basic rights for them in the workplace.

There state and centre have worked on mechanism in providing social security on the society in form of various measures in form of Minimum Wages Act, Payment of Gratuity Act, Industrial

² State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.

³ International Covenant on Economic, Social and Cultural Rights (no date) OHCHR. Available at: <http://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (Accessed: 16 March 2024).

⁴ [2021] UKSC 5.

⁵ Employees State Insurance Act 1948 (No date) ESIC. Available at: <https://www.esic.nic.in/Tender/ESIAct1948Amendedupto010610.pdf> (Accessed: 16 March 2024).

Dispute Act, Trade Unions Act and such others along with state based legislations.

Social Security and social protection has been guaranteed under the Constitution under Part IV, Directive Principles of State Policy but these directives are not enforceable in the court of law though the Supreme Court from time to time has said that for the proper functioning of the Government it has to be an integral part and incorporating the same while framing policies and laws. Social Security is usually given by the prevalent social insurance laws and policies in the society. India did not have a formal social security regime during the British Government, the concept of joint family system was held to be a source of social protection.

In 2017, a writ petition was filed before the Delhi High Court in *Delhi Commercial Driver Union v. Union of India*⁶ for determining if taxi aggregators were merely playing the role of online conduits connecting drivers to customers through a mobile app and whether the drivers associated with these platforms came under the legal category of “employees” qualifying for benefits under labour laws. However, the petitioner withdrew the writ petition to approach the appropriate government for making a reference under the Industrial Disputes Act, 1947.

The Employees State Insurance Act has a contributory nature of functioning where employers, employees and to a certain extent the State contribute to a fund out of which various types of benefits are provided to the beneficiaries. The benefits covered under the Act are proportionate to the average daily wage of the employee concerned. The Employees State Insurance Act 1948 encompasses is one of the primary social insurance schemes in India.

IMPACT AND IMPORTANCE OF SOCIAL SECURITY ON SOCIETY

Social security benefits must reach the targeted groups at optimised cost. The benefits are required to be managed in a proper way so that there is no miss-utilisation of funds and stop any such mal-practice which might come in the way of the beneficiaries of the Scheme. There has been a discussion over time with proper delivery, adjudication and supervision of the scheme. The study compiled by ILO in regard to cash transfer programmes which have run for ten years in the developing countries has resulted in a positive human impact along with bringing stability in the

⁶ (W.P.(C) 12422/2018)

society. Families also benefitted from the cash transfer schemes economically as they would invest the cash in purchasing cattle's or in setting up or adding small business.⁷

The medical benefits such as such as sickness, maternity, temporary or permanent disablement, Occupational disease or death due to employment injury, resulting in loss of wages or earning capacity-total or partial covered under the Act holds a pivotal position in the ESI Scheme because this is the only benefit which provides benefit to the insured person as well their families. The cash benefits included under scheme are linked in such a way that it caters to the need of medical treatment. The benefit can be given out to out-patient treatment and attendance in a hospital or dispensary, clinic, or other institution or by visit to the home of the insured person or treatments relating to in-patient in a hospital. The scheme provides facilities such as immunizations of young children of the insured persons for diseases like diphtheria, pertusis, polio, tetanus, measles, mumps, rubella, tuberculosis, etc. The ESI scheme caters for the social welfare of the beneficiaries by providing cash benefits by encouraging sterilization method by sickness cash benefit to that of equal to full wage for a period of seven days for vasectomy and fourteen days for tubectomy. Insured persons long with their family are also provided with medical treatment of artificial limbs, hearing aids, artificial appliances like spinal supports, cervical collars, walking callipers, crutches, wheel chairs, pace makers as a part of medical benefits under the act.

Convention on Maintenance of Social Security Rights, 1982 ensures that each member can participate with every other concerned member in schemes for the maintenance of rights with respect to various branches of social security. The Convention mandates that the members to provide schemes for maintenance and to determine the policy for benefits disbursement of old age, survivor's benefits and pensioners benefit in respect of occupational diseases and the calculation of cost for such disbursement. The Convention further ensures that each member shall guarantee the provision of invalidity, old age and survivor's cash benefits, pension in the case of employment injuries and death grant and other benefits, which are received by the parties when they mutually agree. The members are also required to promote the efficiency of services to assist person who come under the purview of this convention, primarily for the migrant workers along with their family.⁸

⁷ ILO: Effects Of Non-Contributory Social Transfers in Developing Countries: A Compendium (Geneva, 2010) https://www.research.manchester.ac.uk/portal/files/32800126/FULL_TEXT.PDF (Accessed: 16 March 2024).

⁸ C157 - maintenance of Social Security Rights Convention, 1982 (no. 157) (no date) Convention C157 - Maintenance of Social Security Rights Convention, 1982 (No. 157). Available at:

(g) dependents benefit and (h) funeral expenses. Section 46¹² of the Act enumerates the following:

1. Medical Benefit: The Medical Care and Sickness Benefits Convention, 1969 protects the workers by determining the amount of medical care by adopting a curative and preventive approach along with determining compensation for loss of earning through sickness. The Convention mandates the ratifying states to implement the provisions of medical care and sickness benefit for the employees or specified classes of persons. It further talks about expanding the scope of medical care to wives and children of persons covered and must include the provisions of hospitalisation, pharmaceutical and surgical supplies and dental treatment. The provision of sickness benefit must be a periodical payment in relation to the wage of a male member of a beneficiary's previous earnings or at proper rate by which their family can be maintained which cannot be less than 60% of the earnings of the respective class of employees to which the beneficiary belongs.

The insured persons under the ESI Act across areas along with their family members are entitled to hospitalisation which comes as medical care for the employees. In-patient services are provided to the insured persons in the ESI hospitals or by making reservations in government- run hospitals or such other private organisations. Benefits under medical care include indoor treatment for IP's and their families in hospitals, including all specialities. In- house treatment of implantation of pacemaker, cardiology treatment, oncology, hand surgery and other treatments are provided. Facilities for out-patient treatment including Service Dispensaries Insurance Medical Practitioners clinics are also provided. Women beneficiaries are provided with ante-natal and post-natal care.

2. Sickness Benefit: The ESI Act prescribes periodical payment of Cash Benefit made to the insured persons in respect of sickness certified by insurance medical practitioners. The Supreme Court in the case of Kishore Lal v. Chairman, Employees State Corporation¹³ has made a point to hold the medical practitioners of the ESIC liable to the members, the court further ruled that the Consumer Protection Act, 1985 is applicable to the dispensaries and hospitals run by the ESIC and in such instances the doctors and hospitals can be held responsible for the consequences of their negligence towards consumers this will increase the sense of responsibility amongst the doctors.

¹² Section 46, Employees State Insurance Act, 1948.

¹³ 2007 (6) SCALE 660 SC.

The rate of Sickness Benefit corresponds to the Standard Benefit Rate and the rate at which, such benefit is payable, is around 66% of the average daily wages at the maximum, which an employee gets for a maximum period of 91 days in two consecutive benefit periods. The insured person has to work for at least 78 days during the contributing period to avail this benefit.

3. Extended Sickness Benefit: This benefit is provided to an I.P. for any of the 34 listed specific long-term diseases, like TB, Cancer and other malignant diseases requiring prolonged treatment. The rate at which Extended Sickness Benefit is given to the employee is 40% more than the Standard Benefit Rate, which comes to 80% of the average wages at the maximum, which is initially payable for a period of 124 days, in addition to 91 days' of Sickness Benefit and can be extended to 309 days. In certain cases, Extended Sickness Benefit for an additional period of 330 days is also allowed, on recommendation of the Special Medical Board. A few uncommon diseases, over and above 34 diseases listed, can also qualify for the same benefit under discretion of the competent Medical Authority of E.S.I. Corporation, New Delhi.

4. Maternity Benefit: Maternity Protection Convention 1952 covers industrial organisations, non- industrial establishments, home workers and domestic servants. The objective behind this convention is to provide adequate period of leave with allowance and medical benefit. Maternity Benefit represents periodical payment in cases of confinement, miscarriage, medical termination of pregnancy and sickness arising out of pregnancy. The rate of benefit is double the standard benefit rate, which works out to full average wages and more. The criteria for payment being that an insured woman should have worked for 70 days in two consecutive contribution periods immediately preceding the date of confinement, expected date of confinement, etc. The maximum period for which this benefit is admissible is twelve weeks in case of confinement and six weeks, in case of mis-carriage. Additional period of one month benefit is also admissible, in case, there is prolongation of sickness arising out of pregnancy/confinement.

In *Ram Bahadur Thakur (P) Ltd. v. Chief Inspector Plantations*¹⁴, the Supreme Court clarified the interpretation of Section 5(2) of the Maternity Benefit Act concerning the calculation of the 160-day period for eligibility to claim maternity benefits. The Court held that the period during which a woman worker was laid off should be taken into consideration for ascertaining eligibility. It was emphasized that during the lay-off period, a woman worker cannot be expected to have

¹⁴ AIR 1966 SC 1889

actually worked in the establishment. Therefore, actual work for 160 days cannot be insisted upon as a condition precedent for claiming maternity benefits.

5. Disablement benefit consists of temporary disablement benefit and permanent disablement benefit.

5.1. Temporary Disablement Benefit: This type of benefit is available for injuries caused during employment. The maximum limit for the disbursement of benefit not limited; however, the employer should be certified to be incapacitated to work for the entire period. The employee is entitled for the benefit from the first day of his insurable employment.

5.2. Permanent Disablement Benefit: This type of benefit is further categorised as permanent partial disablement benefit and permanent total disablement benefit. This benefit is extended to an insured person who loses earning capacity either partially or fully during the course of employment. The loss of earning capacity is assessed by a medical board and the benefit is paid till the death of an insured person. There is also the facility to commute and receive the benefit in total the maximum benefit should not exceed Rs. 30000/-.

6. Dependents Benefits: Recommendation concerning Invalidity, Old age and Survivors Benefit, 1967 extended towards the protection of persons whose employment is of a casual nature. The Convention also covers invalid and dependant widower for survivors benefit. This benefit is for the dependent members of the insured person who died during the course of his employment. Such benefits are available to widows of the insured persons, dependent's widow mother and children's up to 18 years of age are the first categories of dependants, this also includes infirm children who were infirm at the time of death of the insured person and such benefit will last till the infirmity lasts. Such the case may be when the insured person is not survived by the dependents in the first category the benefits then can be given out to others such as parents, grandparents, minor brothers, sisters of dependents. The calculation of the temporary disablement benefit is 80% of the average daily wages of an insured person.

7. Funeral Expenses: Under the ESI scheme, a payment is made as funeral expenses up to a maximum of Rs. 10000/- in case of death of an insured person. In the year 2012 -13 a sum of Rs. 1398.50 lakh was paid as cash benefit under the head of funeral expense.

8. Unemployment Allowance under: Rajiv Gandhi Shramik Kalyan Yojana (RGSKY) was in force to formulate unemployment allowance to the insured persons who has been termed as involuntarily unemployed due to closure of factory or any other establishment, retrenchment, or permanent invalidity, which arises from non-employment injury. The scheme is available to an insured person who has been in insurable employment for a minimum of three years which can be paid maximum for a period of twelve months and the benefit ceases when the person is re-employed. The rate of unemployment allowance shall be the “standard benefit rate” as stipulated under Standard Benefit Rates under Rule-54, corresponding to the average daily wage drawn by insured persons during the last four completed contribution periods, which immediately precedes the date of unemployment.

ISSUES IN THE IMPLEMENTATION AS SOCIAL SECURITY

- 1. Defaulters on rise- lack of contribution:** There has been a major concern about the depositing the contribution by the employer which they deduct from the employees are often not credited in the ESIC in their designated accounts which creates huge over dues and disturbance in disbursement of benefits. This accumulation of funds sometimes also leads to fraud and mal practice and poor employees have to suffer for the delay caused.¹⁵
- 2. Establishment with less than 10 workmen:** As ESI Act is only applicable to establishment which employs 10 workmen or more drawing a maximum salary of Rs. 15000/- there comes up an issue regarding the establishment which has employees of less than 10 as ESI will not be a mandate for the employer to adopt. This makes thousands of people working in smaller organisations vulnerable as they do not receive any kind of social security.
- 3. Construction workers:** ESI does not apply to construction workers which has been an issue lately. Construction workers and seasonally employed workers often change jobs as and when they find work which again involves the question of change of employers at every job location and also the question of legal mandate which requires 10 employees at an establishment to adopt ESI. Construction workers have a casual nature of work and they do not hold identity cards nor can they give a one month notice which is a requisite in any regular firm or establishments, thus excludes them to enjoy medical benefits and dependent benefits. Construction workers are getting benefits under Building and Other

¹⁵ Section 39, the Employees State Insurance Act 1948.

Construction Workers (BOCW) but which comes to a less contribution of Rs. 5/- per day to be entitled for receiving the benefits and even if the ESI scope is being extended to the construction workers one should be aware of the duplicity of the scheme and thus make it into a single one scheme designed for only construction workers rather extending the scope.¹⁶

- 4. New schemes and training programmes:** There is a need for increasing training programmes across the state which can come handy to gain expertise for example training courses for the nurses, compounders, attendants and other people. The government along with NGOs to adopt policies where the youth can get training by applying the Apprentice Act - it includes an apprentice who is appointed under the standing orders as an employee for the purpose of this Act. Section 59B of the Amendment Act of 2009 enables the ESIC to establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees which will improve the quality of services provided under the ESI Scheme.¹⁷
- 5. Un-organised Sector:** The workers engaged in agriculture sector and that of similar activities, household industry, building and construction, small factories/establishments, home workers, domestic servants, artisans, self-employed persons such as fishermen, hawkers, auto-rickshaw drivers, etc, all constitute the informal or unorganised sector. Workers in the unorganised sector face problems are under employment due to scattered nature of work places, high incidence of home- based or, low collective bargaining power and the absence of an employer-employee relationship. Medical benefit under the scheme can be extended to other beneficiaries on payment of user charges subject to the framing of schemes by the Central Government. Further the Govt. of India, Ministry of Labour & Employment has introduced a Scheme called "Rashtriya Swasthya Bima Yojana" for providing social security to Below Poverty Line workers in the unorganised sector.¹⁸
- 6. Social security officers:** These officers are appointed and authorised by the ESIC under section 4578 of ESI Act to carry out investigations for proper implementation of the Act across West Bengal. Such officers are entitled to visit any establishment which comes under the purview of this Act, inspect records, books, makes copies thereof with respect

¹⁶ Chief labour commissioner (central) THE BUILDING AND OTHER CONSTRUCTION WORKERS | Chief Labour Commissioner. Available at: <https://clc.gov.in/clc/acts-rules/building-and-other-construction-workers> (Accessed: 17 March 2024).

¹⁷ The employees' state insurance (amendment) Bill, 2009 (2024) PRS Legislative Research. Available at: <https://prsindia.org/billtrack/the-employees-state-insurance-amendment-bill-2009> (Accessed: 17 March 2024).

¹⁸ Rashtriya Swasthya Bima yojana. Available at: <http://www.rsby.gov.in> (Accessed: 16 March 2024).

to Section 44 of the Act and file report if there is any discrepancy with the Corporation.

CONCLUSION

The Employee's State Insurance Act stands as a pivotal legislation, encompassing a significant number of organizations and instilling a sense of security and peace among employees, thereby potentially bolstering workplace productivity. Crafted in alignment with international laws and conventions, the Act positions India's social security framework on par with that of other developing nations. However, to fully realize its intended benefits, diligent implementation and oversight are imperative. Employers must adhere to timely fund deposition to ensure the Act's smooth operation. Enhanced monitoring mechanisms are essential to ascertain the effective disbursement of medical and cash benefits as mandated by the Act.

Moreover, proactive measures such as awareness programs on employee rights, blood donation drives, and free legal aid can foster a culture of compliance and accountability. The 2010 Amendment Act, extending medical benefits to voluntarily retired individuals, expands the Act's reach, while empowering the ESIC to collaborate with local bodies enhances medical care facilities within ESI hospitals, benefiting both employees and society at large.

Suggestions

- 1. Strengthen Implementation:** Ensure strict adherence to the Act's provisions by both employers and employees, with robust monitoring mechanisms in place to address any lapses promptly.
- 2. Enhance Awareness:** Conduct regular awareness programs to educate employees about their rights under the Act and promote a culture of compliance.
- 3. Improve Medical Facilities:** Continuously upgrade medical facilities within ESI hospitals and foster partnerships with local bodies to enhance healthcare delivery.
- 4. Streamline Fund Management:** Implement transparent and efficient fund management practices to facilitate seamless disbursement of benefits.
- 5. Foster Collaboration:** Encourage collaboration between stakeholders, including employers, employees, government agencies, and civil society, to collectively ensure the Act's effective implementation and address emerging challenges.