



# SOCIAL SECURITY CODE 2020 RIGHT TO SOCIAL SECURITY

By Professor (Dr.) Mahesh Koolwal \*

Professor (Dr.) Manju Koolwal \*\*

\* Professor (Dr.) Mahesh Koolwal Dean & Director School of Law, JECRC University, Jaipur

\*\* Professor (Dr.) Manju Koolwal Dean & Principal School of Law, NIMS University Jaipur

## ABSTRACT

*Right to social security is a kind of natural right and it is recognized as a basic human right by most of international personality. The concept of social security was first introduced in German in the year 1883. Internationally the concept of social security as a basic human right came to play by ILO declaration Philadelphia (1944). Then this right is upheld various International Instruments like international bill of human rights (UDHR, ICESCR) and is reflected in various International conventions. The research article talks about the development and trend of the Human rights and the future of it.*

## AIM OF THE STUDY.

The aim of the research paper is to highlight the global and national trend of the development of the Human rights while giving special focus to the labour laws protocol stipulated in various International convention and also highlights the possible future and impact of the Social Security Code.

## INTRODUCTION

Internationally the concept of social security as a basic human right came to play by ILO declaration Philadelphia (1944). Then this right is upheld various International Instruments like international bill of human rights (UDHR, ICESCR) and is reflected in various International conventions. Most of the states in world accepted and recognizes this right as a Human right and enforce it their legal instruments.

## INTERNATIONAL HUMAN RIGHTS LAW:

Social security was established as a basic Human right in the ILO declaration of Philadelphia 1944 and its income security reasonable 1944(No. 67). This Right is upheld in the universal declaration of Human right 1948, and the International Covenant of Economic Social and Cultural Rights, 1966.

## UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948.

The universal declaration of human rights recognizes the right to Social security in Article 22; which states that "everyone as a member of society, has the right to social security and is entitled to realization though national efforts and international co-operation and in accordance with the organization and resources of each state, of the economic social and cultural rights indispensable for his dignity and for development of his personality.

International Covenant Economic Social and Cultural Rights (ICESCR). Article 9 of the International covenant economic social and cultural rights recognizes "the right of everyone to social and cultural rights recognizes "the right of everyone to social security including social in insurance".

## STATE PARTIES OBLIGATION;

State Parties to ICESCR have the obligation to respect protect and fulfil the right to social security. Indian Laws;

Following are social security laws followed in India;

✓ **Constitution:**

- ✓ Preamble- The preamble of the Indian constitution is the sole repository of social security measures and provides for establishment of socialist state. According to Supreme Court of India, the principle aim of socialism is to eliminate inequality of income, status and standard of the life and to provide a decent standard of life to the working people. The preamble of the Constitution of India reads as under;

"We the people of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure all to all its citizens Justice, Social, Economic, And Political. Liberty of thought, expression, belief, faith and Worship. Equality of status and opportunity and to promote among them all; fraternity assuring the dignity of individual and unity and integrity of the nation. Though, the Preamble is not technically enforceable to court of law. It is useful in interpreting the various provisions of the constitution and act as a beacon in conflicting situations. These objectives can be achieved through various Directive Principle of State Policy enumerate in part IV of the Indian Constitution.

- **Directive Principles.**

Preambles objective can be achieved through various directive principle of State Policy in enumerated in part IV of the Indian constitution. they are as follows;

Article 38 is a mandate to the state to secure social order for the promotion of welfare of the people.

Article 38(1) directs the state to promote the Welfare of the people by securing and protecting as efficiently as it may or social order in which justice, social, economic, and political shall inform all Institution of National Life. This directive only reaffirms what has already been said in the Preamble according to which the function of the republic is to secure to all its citizen Social, Economic, and Political Justice. The 44<sup>th</sup> Amendment added clause (2) to Article 38 which directs the state to minimize the irregularities in income and to India work to eliminate inequalities in state facilities and opportunities not only amongst in divided but also group of people residing in different areas or engaged in different vocations. The clause represents the group equality.

Article 39 provides for equal rights to adequate means of livelihood to all citizens and distribution of wealth and material resources to sub serve common good and prevention of concentration of wealth and means of production etc. Article 39 lays down certain specific objective clause A, B, and C particularly lays down norms for an egalitarian operation of economic and social system of the country. Securing of adequate means of livelihood for citizens preventing the concentration of economic power in few hands and ensuring the operation of economic system for general good and stated as the guiding principle ensuring of equal pay for equal work and production of Health and strength of workers from abuse are some other objectives of the Article. Securing the right to work education and public assistance in case of unemployment, old age, Sickness and disablement and in other cases of understood want are significant measures of social security under article 41. Article 41 provides for right to work, education public assistance in certain cases such as employment, old age, sickness and disablement. Article 42 stands for providing just and human condition of work and Maternity relief. Article 43 deals with living wages for workers and Article 43(A) intend to secure workers participation in management of industries. Though, these provisions are intended to bring socialistic order in the Indian society, these provisions are not enforceable in the court of law, Supreme Court of India has declared that they are nevertheless fundamental in the Governance of the country and it is the duty of the state to apply these in making laws. A separate chapter on directive principle of State Policy incorporated in the constitution as embodies the fundamental principle based on Social Justice concerning labour. Right to life Article 21 includes all the right that are essential to main human life in a civilized society, such as to close house medicines and education. The right to work means the citizens right on his society to have work according to his ability skill with suitable minimum wages that enable him to maintain his life in a civilized society.

## **ILO social security and other labour standards**

The ILO has played a major role in developing an international defined normative framework guiding the establishment, development and maintenance of social security systems across the world and has become the world's leading point of reference for efforts to this end. Following its establishment in 1919 and being the first to recognise

the right to social security in 1944 through the Declaration of Philadelphia, now appended to the ILO Consociation, the Organization's tripartite constituents (Governments, employers and workers organisations of the ILO's 186 member States) have elaborated and adopted a series of Conventions and Recommendations establishing social security as a separate branch of international law and providing a framework to enhance and extend social protection in countries from all regions of the world.

The Committee on Economic, Social and Cultural Rights' (CESCR) Genial Comment 19 on the right to social security was influenced by the content of social security instruments adopted by the International Labour Organization (ILO). The ILO has progressively developed the normative content of the right to social security since the adoption of its constitution in 1919; laying the foundations for the establishment of a separate branch of international law, namely international social security law. Of the 31 conventions and 24 recommendations adopted in the area of social security between 1919 and 2012 by the ILO's tripartite constituents, the Social Security (Minimum Standards) Convention, 1952 (No. 102) <sup>1</sup> is considered the flagship social security instrument. Convention No. 102 is unique for both its conceptual formulation of social security, and the guidance it provides for establishing social security systems. The notion of social security in the Convention classifies the of social security systems into nine standard branches, namely:

- health care,
- sickness,
- old age,
- unemployment,
- employment injury,
- family and child support,
- maternity,
- disability, and
- Survivors and orphans.

For each of these branches, Convention No. 102, complemented by other-conventions and recommendations setting higher standards, also specifies how the systems are to be set up, namely:

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<sup>1</sup> (<https://socialprotection-humanrights.org/instru/social-security-minimum-standards-convention-no-102-1952/>)

- what circumstances each branch is meant to protect;
- who/ should be protected;
- what type of benefit should be provided;
- how do persons become eligible for benefits; and
- for how long the benefit should be granted.

The most recently adopted ILO social security standard, the Social Protection Floors Recommendation, 2012 (No. 202) expands the normative framework for the extension of social security by introducing the concept of nationally-defined social protection floors that guarantee at least access to essential health care and basic income security throughout the life course.

### **Conventions**

Social Security (Minimum Standards) Convention, 1952 (No. 102)<sup>2</sup>

A key reference for the development of social security systems, Convention No. 102 is the flagship of the up-to-date social security Conventions since it is deemed to embody the internationally accepted definition of the very principle of social security. It sets out, into a single, comprehensive and legally binding instrument, the minimum standards for each of the nine classical branches of social security (medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivors' benefit) and places them under the principles for good and sustainable governance. The Convention sets minimum objectives for each contingency with regard to population coverage, benefit adequacy and qualifying conditions, as well as a set of key principles. In addition, Convention No. 102 also provides for flexibility and guidance as regards the type of schemes member States may establish for the implementation of the Convention (universal schemes, contributory social insurance schemes, means-tested social assistance schemes).

Equality of Treatment (Social Security) Convention, 1962 (No. 118)<sup>3</sup> Convention No. 118 addresses the issue of the social security of migrant workers in a global manner. It covers the nine branches of social security and provides that, for each branch accepted under the Convention, a ratifying State undertake to grant equality of treatment to nationals of other ratifying States (and their dependents) with its own nationals (including refugees and stateless persons, if specifically accepted) within its territory.

<sup>2</sup> (<https://socialprotection-humanrights.org/instru/social-security-minimum-standards-convention-no-102-1952/>)

<sup>3</sup> (<https://socialprotection-humanrights.org/instru//equality-of-treatment-sopial-security-convention-no-118-1962/>)

Convention No. 118 further lays down the principle of the provision of benefits abroad and the need to endeavour to participate in schemes for the maintenance of acquired rights and rights in the course of acquisition under the legislation of the nationals of the States for which the Convention is also in force.

Maintenance of Social Security Rights Convention, 1982 (No. 157) <sup>4</sup> and Maintenance of Social Security Rights Recommendation, 1983 (No. 167) <sup>5</sup>

Convention No. 157 and its accompanying Recommendation No. 167 specifically address the issue of the maintenance of social security rights of migrant workers and complement Convention No. 118, focusing on equality of treatment and exportability. Unlike Convention No. 118 however, which allows State Parties to choose one or more out of the nine branches, Convention No. 157 applies to all branches regardless of the type of scheme: general and special, contributory and non-contributory, as well as schemes consisting of obligations imposed on employers by legislation. The objective of Convention No. 157 is to promote a flexible and broad form of coordination between national security schemes and in particular through the conclusion of bilateral or multilateral social security agreements. Convention No. 157 also establishes a system based on the principle of the maintenance of acquired rights and the rights in the course of acquisition. Recommendation No. 167 proposes model provisions for the conclusion of bilateral or multilateral social security agreements regarding all contingencies and provides rules on maintaining social security rights and exporting benefits. It also proposes a model agreement for the coordination of bilateral or multilateral social security instruments.

Employment Injury Benefits Convention, 1964 (No. 121) <sup>6</sup>

The contingency covered by Convention No. 121 includes: a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease, and the loss of support as a result of the death of the breadwinner following employment injury. It belongs to ratifying States to define the notion of "industrial accident", including the conditions under which this notion applies to commuting accidents. Convention No. 121 indicates the cases in which accidents should be considered by national legislation as industrial accidents and under which conditions the occupational origin of the disease should be presumed. The national list

<sup>4</sup> (<https://socialprotection-humanrights.org/instru/maintenance-of-social-security-rights-convention-no-157-1982/>)

<sup>5</sup> (<https://socialprotection-humanrights.org/instru/maintenance-of-social-security-rights-recommendation-1983-no-167/>)

<sup>6</sup> (<https://socialprotection-humanrights.org/instru/employment-injury-benefits-convention-1964-no-121/>)

of employment-related diseases has to comprise at least the diseases enumerated in Schedule I to the Convention. Convention No. 121 envisages that all employees, including apprentices in the public and private sectors, and in cooperatives, are to be protected. The Convention further lays down three types of benefits: medical care, cash benefits in the event of incapacity for work and loss of earning capacity (invalidity), and cash benefits in the event of the death of the breadwinner.

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)<sup>7</sup>

Reflecting the trend to find all three long-term benefits (i.e. invalidity, old-age and survivors' benefits) in a single national pension system, Convention No. 128 regroups these three branches into one instrument and extends coverage to all employees, including apprentices, or not less than 75 per cent of the whole economically active population, or all residents whose means during their contingency do not exceed certain limits. It further sets the periodical payment rate for invalidity benefit to at least 50 per cent of the reference wage and envisages the adoption of measures for rehabilitation services. In the case of old-age and survivors' benefit, the minimum amount should correspond to at least 45 per cent of the reference wage.

Medical Care and Sickness Benefits Convention, 1969 (No. 130)<sup>8</sup>

Convention No. 130 covers both the contingency of medical care benefits and cash sickness benefit reflecting the trend to establish comprehensive health insurance systems. All employees, including apprentices, or at least 75 per cent of the whole economically active population, or all residents whose means do not exceed certain limits should be covered for both contingencies. In relation to medical care, wives and children of employees should also be covered. Convention No. 130 further extends the medical care required under Convention No. 102 to dental care and medical rehabilitation, including the supply, maintenance and renewal of prosthetic and orthopaedic appliances. It also provides for entitlement to benefit throughout the contingency and restricts the possibility of limiting the duration of sickness benefits; a limitation corresponding to 26 weeks is only authorized where the beneficiary ceases to belong to the categories of persons protected and if the sickness started while the beneficiary still belonged to such categories.

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<sup>7</sup> (<https://socialprotection-humanrights.org/instru/invalidity-old-age-and-survivors-benefits-convention-1967-no-128/>)

<sup>8</sup> (<https://socialprotection-humanrights.org/instru/medical-care-and-sickness-benefits-convention-1969-no-130/>)



Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168) <sup>9</sup>

The main aim of Convention No. 168 is twofold: the protection of unemployed persons through the provision of benefits in the form of periodical payments and through the promotion of employment. Convention No. 168 therefore recognises the value of linking social security to broader social and economic policies directed at one priority goal: the promotion of full, productive and freely chosen employment. In addition to provided benefits in case of unemployment at a minimum replacement rate of 50 per cent of the reference wage, ratifying States are therefore also called to adopt appropriate steps to coordinate their system of protection against unemployment and their employment policy. The system of protection against unemployment should therefore be such to encourage employers from offering, and workers from seeking, productive employment. Persons protected must comprise prescribed classes of employees, constituting not less than 85 per cent of all employees, including public employees and apprentices, or all residents whose resources during the contingencies do not exceed prescribed limits.

Maternity Protection Convention, 2000 (No. 183) <sup>10</sup>

Under Convention No. 183, all employed women, including those in atypical forms of dependent work, should be covered for pregnancy, child birth and their consequences. In particular, persons protected should be entitled to maternity benefits for a minimum period of 14 weeks (including six weeks of compulsory leave after childbirth) at not less than two-thirds of their previous earnings. The medical benefits provided to protected persons must include prenatal, childbirth and post-natal care. Convention No. 183 also lays down the right to work breaks for breastfeeding, as well as provisions relating to health protection, employment protection and non-discrimination.

## Conclusion

Income Security Recommendation, 1944 (No. 67) <sup>11</sup> and Medical Care Recommendation, 1944 (No. 69) (<https://socialprotection-humanrights.org/instru/medical-care-recommendation-1944-no-69/>)

<sup>9</sup> (<https://socialprotection-humanrights.org/instru/employment-promotion-and-protection-against-unemployment-convention-1988-no-168/>)

<sup>10</sup> (<https://socialprotection-humanrights.org/instru/maternity-protection-convention-2000-no-183/>)

Recommendations No. 67 and 69 are at the origin of the development of social security in ILO instruments and can be considered the blueprint for comprehensive social security systems. Together, they establish a comprehensive system of income security and medical care protection for each of the nine classical branches of social security in addition to general neediness (called "general want" in 1944), with the objective of relieving want and preventing destitution. Recommendation No. 67 and No. 69 are grounded on the guiding principle of universal coverage following which income security and medical care services should be extended to the population as a whole through a combination of social insurance and social assistance.

Social Protection Floors Recommendation, 2012 (No. 202) <sup>12</sup>

Recommendation No. 202 is the first international instrument to offer guidance to countries to close social security gaps and progressively achieve universal protection through the establishment and maintenance of comprehensive social security systems. To this aim, the Recommendation calls for (1) the implementation, as a priority, of social protection floors (SPF) as a fundamental element of national social security systems and as a starting point for countries that do not have a minimum level of social protection; and (2) the extension of social security with a view to progressively ensure higher levels of social security to as many people as possible according to national economic and fiscal capacity and as guided by ILO's other-social security standards. Social protection floors should comprise at least four basic social security guarantees including access to essential health care and basic income security for children, persons of active age who are unable to earn sufficient income, and older persons and should be set at a level that allows people to live in dignity. Through the social protection floors concept, Recommendation No. 202 provides the minimum core content of the human right to social security. A major achievement of Recommendation No.202 is the policy guidance it offers States to give effect to their general and overall responsibility to establish and maintain these comprehensive social security systems. It does this through a set of principles that provide instructions for the design and implementation of social security programs. These guiding principles intentionally echo both fundamental

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<sup>11</sup> (<https://socialprotection-humanrights.org/instru/income-security-recommendation-1944-no-67-and-medical-care-recommendation-1944-no-69/>)

<sup>12</sup> (<https://socialprotection-humanrights.org/instru/ilo-social-protection-floors-recommendation-2012-no-202/>)

human rights principles but also core principles related to the good governance, delivery and financing of social security systems.

Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)

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This Recommendation recognizes the lack of protection of workers in the informal economy, and provides guidance for improving their protection and facilitating transitions to the formal economy. It also includes guidance on the extension of social security coverage to workers in the informal economy and its role in facilitating transitions to the formal economy.

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