

SOS POLITICAL SCIENCE AND PUBLIC ADMINISTRATION

MBA HRD – 204

SUBJECT NAME: INDUSTRIAL WELFARE

UNIT-V

TOPIC NAME- “INTERNATIONAL LABOUR ORGANISATIONS SOCIAL SECURITY CONVENTIONS”

Social Security Conventions -Implementation in Indian Labour Legislations

17. C. No. 18 Workmen’s Compensation (Occupational Diseases), 1925	30-09-1927
18. C. No. 19 Equality of Treatment (Accident Compensation),1925-	30-09-1927
19. C. No. 42 Workmen’s Compensation (Occupational Diseases) Revised, 1934	13-01-1964
20. C. No. 118 Equality of Treatment (Social Security), 1962	19-08-1964

International Labour Organizations Social Security Conventions - Implementation in Indian Labour Legislations

Existence of Social Security provisions is the sign of existence of the civilized society. This social responsibility is indispensable for social justice. The ILO, being committed to the cause of social justice, adopted 22 Conventions directly concerning with Social Security, apart from a number of other Conventions containing similar provisions. Several other recommendations also deal with the same subject.

Employment injury is the most imminent and common injuries to which workers are exposed. Thus, the ILO adopted as many as six Conventions providing for the payment of compensation to the workman, the first and foremost being C.No.12 adopted in the year 1921 concerning Workmen’s Compensation (Agriculture) and other five Conventions were adopted between 1925 to 1964. They are C.No.17.C.No.18, C.No.19, C.No.42 and C.No.121.

For Medical care and sickness benefit, the ILO adopted three Conventions namely, C.No.24, C.No.25 and C.No.130. For old age, invalidity and survivors benefit, the ILO adopted 8 Conventions viz., C.No.35, C.No.36, C.No.37, C.No.38, C.No.39, C.No.40, C.No.48 and C.No.128. The provisions containing in C.No.35 to 48, have been consolidated in the form of comprehensive provisions made in the C.No.128 adopted in the year 1967.

Apart from the above, the ILO also adopted three Conventions providing for comprehensive standards. These Conventions are C. No. 102, C.No. 118, and C. No. 157.

Unemployment benefits are provided in C.No.44 and C.No.168. Maternity Protection was already contemplated in C.No.3 and C.No.103 adapted in the year 1919 and 1952 respectively.

Out of the above 22 Conventions concerning social security, India ratified only 4 Conventions viz.

- i. C.No.18: Workmen's Compensation (Occupational Diseases), 1925.
- ii. C.No.19: Equality of Treatment (Accident Compensation), 1925.
- iii. C.No.42: Workmen's Compensation (Occupational Diseases) Revised 1934.
- iv. C.No.118: Equality of Treatment (Social Security) 1962.

Although Indian response in terms of ratification of the I.L.O. Conventions relating to Social Security has been poor, nevertheless India made every attempt to provide for many of the obligations contemplated in the I.L.O. Conventions and enacted several social security legislations.

It is also pertinent to note that in one of the General Conference of the ILO held in the early years of 1919-1921, a remark was made that among the industrial countries; probably India is the one that has no social security provisions for the industrial workmen to compensate employment injury. The official delegate of the Govt. of India assured the Conference that he would inform the Govt. of India about the feelings of the Conference and would take steps to legislate upon the subject at the earliest. It was in response to the assurance that India enacted the Workmen's Compensation, Act, 1923 providing for the payment of compensation for "personal injury by accident arising out of and in the course of employment". It is to be noticed that the C.No.12 concerning Workmen's Compensation in Agriculture, 1921 contained the phrase in Article 1 thereof with a little difference of conjunction 'or' in place of 'and' but this little difference in the word 'or' made lot of difference in the coverage of the benefit. This point needs elaboration. The phrase 'arising out of and in the course of employment' was first used in the New Zealand and Australian Acts pertaining to the same subject.

The phrase consists of two parts viz., 'arising out of and 'in the course of employment'. The first part arising out of refers to the cause of injury and the second part in the course of employment' refers to the time suffering injury. Thus, in order to be eligible to compensation, a workman has to prove that he has suffered injury which arose out of his employment and at the time of injury he was in the course of employment. In Indian legislation this phrase is found in the same manner as it is obtained in the Australian Act and therefore, under Employees Compensation Act, 2010, a workman has to establish both the facts relating to his injury. Whereas in the ILO C.No.12 this phrase, although contained both the parts, used the conjunction 'or' instead of 'and'. Thus enlarged the scope of benefit as arising out of and in the course of employment' are alternatively used and it is sufficient for the workman to prove either of them in order to claim compensation. Therefore ILO C.No.12 provides for compensation for personal

injury by accident if it arose either out of or in the course of employment. To sum up, it may be stated that the scope of C.No.12 is wider than Indian or Australian Acts.

However, this deficiency was later cured in the Employees State Insurance Act, 1948 which provided that if the injury is proved to have been suffered 'in the course of employment' it shall be presumed that it arose 'out of the employment' also. Thus by the presumptive clause incorporated in the ESI Act, 1948, it is sufficient to satisfy the latter part of the phrase. Section 51-A of the ESI Act, 1948, stated thus, "For the purposes of this Act, an accident arising in course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of the employment."

India ratified C. No.18 of 1925 on 30.9.1927 i.e. after the enactment of the Employees Compensation Act, 2010. Since the Indian legislation was already in force, there was no difficulty in ratifying the C.No.18 of 1925. The C.No.18 was subsequently revised in 1934 by C.No.42, India ratified C. No. 42 also on 13-01-1964 in its revised form. The main contribution of revised C. No. 42 is the addition of certain other diseases and toxic substances to the list of Schedule attached to the C.No.18 of 1925, which included Silicosis, Phosphorous poisoning, Arsenic poisoning, Poisoning by Benzene, other radio-active substances, X-rays and primary epitheliomatous cancer of the skin. The C.No.42 specified the list of such corresponding trades, industries and processes as are likely to give rise to occupational diseases mentioned in the schedule.

Convention No.42 was further revised in 1964 by C.No.121 which provided with sufficient elaboration all details of occupational diseases, corresponding occupations, calculation of compensation and other medical benefits. India could not ratify this Convention as the Convention contemplates for such medical and paramedical services and other relevant infrastructure which are difficult to provide due to shortage of trained medical, paramedical staff and other infrastructural facilities.

The effective implementation of the ILO Conventions ratified by India can be noticed in almost 52 entries and legislations having incorporated the relevant obligation contemplated in the ratified and even un-ratified Conventions.

The ESI Act, 1948, was further amended in 2001 and Section 15, 58 and 59 have been suitably modified. In section 58 the words "widow & children" are substituted by "widow, children and widowed mother" and the words legitimate son' are replaced by 'legitimate or adopted son'. And the words Adopted children' are substituted by adopted children and widowed mother'

Other Social Security Legislations and the relevant rules framed there under; inter-alia, include Employees Compensation (Amendment) Act 2010, ESI (Central) Amendment Rules, 1991, Mysore Workmen's Compensation (Occupational Disease) Rules 1968, The Bhopal Gas leakage Disaster (Processing of Claims) Act, 1985, Tamil Nadu Labour Welfare Fund Act, 1972, Personal Injuries (Compensation Insurance) Rules, 1965, Kerala Labour Welfare Fund Act, 1994, and Orissa Pension Rules, 1968 etc.

