



THE CHANGING DIMENSIONS OF CONCEPT OF SOCIAL SECURITY WITH SPECIAL REFERENCE TO THE CONSTRUCTION INDUSTRY -AN INTERNATIONAL PERSPECTIVE

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Abstract

Everywhere, social security systems have been under challenge. Some consider that the systems are too expensive, and that they harm the process of economic growth and development. Others point to the deficiencies in the level of protection and the scope of coverage, and argue that in times of increased unemployment and other forms of labour insecurity, social security (SS) is more needed than ever. Particularly in the developed countries, social security systems must respond to new demographic challenges, such as ageing and changing family structures, with important implications for the financing of social protection. In developing countries, there is dissatisfaction with the administration of social security through Welfare Boards and calls for reform involve a review of the role of the State, the responsibilities of the social partners and the desirability of greater participation of the private sector. This article focuses on the employment relationship in construction industry, documenting and explaining the changes that have taken place in the past 30 years. The objective of this paper is to analyse, how the changing global context affects the ability of developed and developing states to maintain or extend social security (SS) protection. It is the need of the hour to evolve special system to extend social protection to migrant labour.

Keywords: Social security, International Labour Organization, Construction workers, Migrant labour, Informal sector, Welfare board.

1. Introduction

Everywhere, social security systems have been under challenge. Some consider that the systems are too expensive, and that they harm the process of economic growth and development. Others point to deficiencies in the level of protection and the scope of coverage, and argue that in times of increased unemployment and other forms of labour insecurity, social security (SS) is more needed than ever.

Particularly in the developed countries, social security systems must respond to new demographic challenges, such as ageing and changing family structures, with important implications for the financing of social protection. In developing countries, there is dissatisfaction with the administration of social security through Welfare Boards and calls for reform involve a review of the role of the State, the responsibilities of the social partners and the desirability of greater participation of the private sector. The objective of this paper is to analyse, how the changing global context affects the ability of developed and developing states to maintain or extend social security (SS) protection. With an increasing share of the labour force outside the formal labour markets, such protective security is not available or accessible to all workers. The need for more effective approaches and instruments toward social protection is therefore, evident. It is the need of the hour to evolve special system to extend social protection to migrant labour in specific.

2. Review of Literature

The changes in the employment relations and the nature of work that lead to incompatible social security protection, have caught the attention of researchers on both developed and developing countries. In developed countries, where many welfare services have become rights for all citizens, the discussion is largely based on the rigid social welfare system's inability to cope with the increasingly flexible working pattern in the construction industry.¹In formalization in the labour markets in part derived from the increasing competitive pressure in the global markets, which has forced firms to minimize costs, especially labour, by avoiding high payroll taxes and social security contributions. This has been made possible in part by the weakening power of trade unions in most countries.²Neo-liberal policies resulted in assaults on labour rights and social welfare. In developing countries, where many welfare rights are not yet universal, the discussion is more about the inability of the state to provide social protection to the building and other construction workers in the informal sector. The formal-informal divisions in social security leave a large proportion of the construction labour force exposed to high risks. The key issue is the mismatch between social protection and the changes in the world of work.

¹Bingqin Li and Huamin Peng, "The Social Protection of Rural Workers in the Construction Industry in Urban China", 2007, <https://www.researchgate.net/publication/291575251>, visited on 20/03/2016.

²Sudharshan Canagarajah and S.V. Sethuraman, "Social Protection for the Informal Sector: The Issues", <http://www.worldbank.org/sp>, visited on 20/03/2016.



The predominant theme of this study is about the extension of social protection and security to this class of workers.³ Also, the role of self-financed and self-managed social security schemes, often closely associated with the activities of the NGOs and international organisations, and area based new initiatives, involving collaboration between local governments and a wide variety of possible social security partnerships are recognised in the informal sector.

3. Construction Industry-Issues and Challenges

The building and other construction workers are vulnerable as they work in the construction industry which brings with it a set of work related and status related risks. This industry generates demand for both skilled and semi-skilled labour force. The workers face inherent risk to life and vital body parts due to occupational hazards. The construction workers suffer all forms of abuse, long work days, unstable and casual employment, low and irregular wages, and have neither rights nor protection. Main problem is to identify, who the real employer of construction workers is, and thus who is responsible for their exploitative labour conditions. Women engaged in construction work, are the most exploited. The labour supply in the construction industry is managed through the labour subcontracting system and thus is crucial in the life of frontline construction workers from rural areas. Construction companies do not hire frontline workers directly, and instead sign contracts with the subcontractors. This current system has several inherited problems. A network of middlemen and contractors ensures that the construction worker remains unaware of his principal employer.⁴ The informality of their work arrangement places them at considerable risk, with limited or no resources for Redressal of their grievances.⁵ Withholding of wages, underpayment, zero compensation in the event of accidents or death, bondage-like conditions, and physical and sexual abuse at the workplace are commonplace. Real employers are hidden at the end of a long complicated chain of the subcontracting of construction work and the recruitment of workers. Workers are exposed to frequent unemployment. Construction workers are hired on a per project basis. The job is thus of transitory nature. Construction work involves hard labour and operation of heavy equipment. Work site accidents are frequent, especially among poorly trained and inexperienced workers. There is no monitoring as to the number and nature of accidents in this field, and therefore, was quite difficult to fix responsibility or to take corrective measures. Quite often, construction companies need to meet deadlines or cut costs of labour protection. Many are officially employed, but are forced by their employers or sub-contractors to work in dangerous weather, unhygienic, and illegal conditions, below the official minimum wage. They are at a greater risk of developing certain health disorders and sickness than workers in many other industries. They are exposed to multiple physical, chemical and biological agents, which make them vulnerable to various health problems that include - injuries, respiratory problems, dermatitis, muscular-skeletal disorders and gastro-intestinal diseases.⁶

Absence of employer-employee relationship, lead to a lack of identification, which is the first requirement in order to be able to provide any sort of benefit, hence rendering these workers almost invisible. The great bulk of migrant workers recruited by large-scale labour contractors, have no formal employment relationship with the contractor or employer, rather they work on daily basis.⁷ Trust without contract makes it difficult to ensure that workers will be paid on time, or at all, or have any chance of compensation for damages. The extent of trade unionism in the construction industry has been very low, due to migratory, seasonal nature of workers, and scattered location of work sites. Despite the increased recognition of informal sector's contribution to employment and GDP among others, the lack of worker rights and legal status has tended to adversely affect this industry's prospects. Trade Unions which traditionally tended to focus on protecting the formal sector workers have recently become increasingly aware of the need to bring the informal sector into their fold.⁸

4. Conceptual Basis of Social Security (SS)

The current thinking of social security within the context of poverty and development in the developing countries reflect the growing understanding and acceptance of social security as a non-negotiable responsibility of the state. Social security may be viewed in a developing country context in terms of a basic SS (BSS) to meet deficiency and a contingent SS (CSS) to

³Cook, et al., "Social protection in Asia", 2003, Har-Anand, New Delhi.

⁴See Supra note 1, Bingqin Li, 2007

⁵RupaKulkarni, "Seasonal Migration-A Developmental Challenge?" *Indian Journal of Occupational and Environmental Medicine*-April 2015-Vol.19-Issue 1, <http://www.ijoem.com>

⁶Jayakrishnan T, Thomas B, "Occupational health problems of construction workers in India". *International Journal of Med Public Health*, 2013

⁷"The Deterioration of Labour Conditions in China's Construction Sector", *Development Viewpoint* Number 77, June 2014 <http://www.soas.ac.uk/visited> on 14/05/2016

⁸VenkataRatnam, (1999) "India in Trade Unions in the informal sector: Finding their bearings, Nine Country papers", ILO, Labour Education Series No. 116. Geneva, pp. 25-47



meet adversity. BSS is directly linked to the problem of deficiency of those who are not in a position to access minimum of resources to meet their economic and social requirements for a dignified life in their society.⁹ This takes care of human deprivation and vulnerability. Here we identify four realms of security that could constitute the BSS: Food security, Housing security, Health security, and Education security. It goes without saying that inherent in all these is a dimension of employment security. In this sense BSS is a foundational requirement in that the commonly accepted notion of social security for meeting contingencies (what we call CSS) will not make any sense in its absence. In fact, those who enjoy social security today for meeting contingencies are those who have been able to take care of their basic social security, in their ascent to development. Insecurity defined in terms of insufficient income and vulnerability seems to be greater for these categories of workers. There has already been some attempt to broaden the concept of social security in the context of developing countries.

5. ILO and Social Security

The International Labour Organization (ILO) foresees universal coverage of workers for social security in its Conventions on Social Security.¹⁰ The ILO has played a major role in developing an internationally 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.¹¹ 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) 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 social security systems into nine standard branches, namely:

- sickness,
- old age,
- unemployment,
- employment injury,
- family and child support,
- maternity,
- disability, and
- survivors

Derived from the above considerations, and based on the 1952 Convention 102 – the Social Security (Minimum Standards) Convention - the ILO, which recently undertook a global review of issues pertaining to social protection, has defined social security-as the protection which society provides for its members through a series of public measures:

1. to offset the absence or substantial reduction of income from work resulting from various contingencies (notably sickness, maternity, employment injury, unemployment, invalidity, old age and death of the breadwinner)
2. to provide people with health care; and
3. to provide benefits for families with children."

The International Labour Organization (ILO) has developed international instruments on regulating precarious work since 1990s.¹² Although precarious work evolved beyond the employment relationship, the ILO instruments took the employment relationship as a starting point as to worker protection. In 1997 and 1998, the International Labour Conference examined an item on 'contract labour', but the proposal to adopt new international instruments failed, mainly due to controversies over the term. This consequently oriented discussions towards the scope of the employment relationship in 2003, and the Employment Relationship Recommendation (No. 198) was adopted in 2006. While it recognizes that the regulatory scope of the employment relationship does not accord with the realities of working relationship, the Recommendation associates again worker protection with the employment relationship.¹³ 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

⁹Kannan K P and Vijayamohan Pillai N. "Social Security in India: The Long Lane Treaded and the Longer Road Ahead Towards Universalization", Centre for Development Studies, Trivandrum, June 2007.

¹⁰<http://www.ilo.org>, visited on 14/05/2016

¹¹<http://www.socialprotection.humanrights.org>, visited on 14/05/2016.

¹²Veronica Sheen, "The Future of Work: New Challenges for Women's Employment and Economic Equality", ILO, 2015, www.rdw2015.org

¹³"Romania: Builders' Social Fund: A Bipartite Sectoral Approach for Construction Workers" ILO Social Protection Department, <http://socialprotection-humanrights.org>



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.

6. Changing Employment Relationships in the Construction Industry

Construction industry has a poor image in the eyes of its workforce, which is generally thought to stem from the nature of the work. The increase in the practice of employing labour through subcontractors has also had a profound effect upon occupational safety and health. It has undermined collective bargaining agreements and training provision. The level of skill in the construction industry in some countries has fallen significantly as a result.¹⁴ The changes in the employment relationship in construction have taken place in the past 30 years, and have great impact upon the structure of the industry, collective bargaining, social security, safety and health, training and skill formation.

Subcontracting has increased significantly in the past two to three decades. Recruitment is through labour agents and is based on family, caste and village ties. It is not uncommon to identify worksites by the caste or the village or the language of those working there. Often the whole family, including children and the old, migrate to work in a kind of caravan that moves to the construction site. Outsourcing offers contractors and subcontractors flexibility in the recruitment of labour. It enables them to get the labour they need when they need it and to pay for it only when it is needed. Flexibility is particularly important in construction due to fluctuating labour requirements. Building construction in particular requires a variable mix of skills. No contractor is aware of his workload in advance so he cannot plan his labour requirements and is not able to adapt his portfolio of projects to suit the skill mix of employees. The use of temporary contracts or subcontracting represents an easy way of adjusting to changing labour requirements and it also offers the possibility to delegate the responsibility for supervision. It can therefore contribute substantially to a reduction in costs, even if all labour regulations are adhered to for the subcontracted labour. Moreover, the outsourcing of labour also offers the opportunity to secure a further reduction in costs by avoiding restrictive labour legislation and welfare regulations. The changes in the employment relationship have a profound effect upon the construction workforce and their labour rights and upon skill formation in the industry.¹⁵ The huge bulk of the workforce in the construction industry is unorganized. The Collective bargaining has been undermined almost everywhere.

7. Social Security-A Human Right Approach

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹⁶ Motherhood and childhood are entitled to special care and assistance. Recently, some new concepts viz. social safety nets, social protection and social funds relating to social security have emerged.¹⁷

Most of the times, the workers do not meet such standards for decent work and social protection. Heat, exhaustion, and inadequate safety requirements pose serious health and safety problems for labourers, who are subject to substandard and often inhumane work and living conditions and systematic violation of basic human rights. It is important to have a holistic approach which tackles the different factors that affects human development.¹⁸ Social security is very important for the well-being of workers, their families and the entire community. It is a basic human right and a fundamental means for creating social cohesion, thereby helping to ensure social peace and social inclusion.¹⁹ Along similar lines, the ILO has been advocating the idea of 'decent work'. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of

¹⁴“Tripartite Meeting on the Construction Industry in the Twenty-first Century: Its Image, Employment Prospects and Skill Requirements”, ILO, Geneva, 2001

¹⁵<http://www.indianmirror.com>, visited on 15/05/2016

¹⁶Article 25, Universal Declaration of Human Rights, UN, 1948

¹⁷“Introduction to Social Security”, International Labour Office, Geneva, Switzerland, .p.124

¹⁸K.P Kannan.AndVijayamohan Pillai N. (2007), “Conceptualizing Social Security in a Human Development and Rights Perspective”, Indian Journal of Human Development, Vol. 1, No. 1; January 2007; pp. 31 – 51.

¹⁹K.P. Kannan, “The Long Road to Social Security”, The Challenge of Universal Coverage for the Working Poor in India, www.cds.edu, visited on 19/03/2016.



opportunity and treatment for all women and men.²⁰ These rights, in particular the so-called economic and social rights, or welfare rights, have claimed the domain of human rights.²¹

8. Social Security in Indian Scenario

There are some central laws in India, to protect the interest of building and other construction workers, such as the Contract Labour Act, 1970, the Inter State Migrant Labourers of Employment Conditions of Service Act, 1979, The Building and Other Construction Workers (Regulations of Employment and Conduct of Service) Act, 1996, and the Building and Other Construction Workers Cess Act, 1996. Through these welfare legislations, the State Governments are directed to improve the employment security of the workers, including aspects like regulation of conditions of work, hours of work, payment of minimum wages, over-time, safety measures, accident compensation and other social security, etc. The contingent social security available for the construction workers Central and State adopted is the Welfare fund model. This model is a tripartite one consisting of the workers, employers (wherever identifiable), and the government. Defined social security cover is given to the registered beneficiaries and their dependents of the fund for which contributions are collected from beneficiaries, levy of a cess on construction works at a rate ranging between 1 and 2 per cent of the construction cost incurred by an employer and non-mandatory grants by the State/Central governments. The benefits include support in the event of accident, old age pension, housing loans, payment of insurance premium, children's education, and medical and maternity benefits.

Most of the Social security programmes launched by the Government through the Building and other Construction Workers Welfare Board flow the benefit in form of kind only to the registered beneficiaries and their dependents.²² However, information and awareness are the vital factors in widening the coverage of Social Security schemes. These programmes are far short of the rights envisaged in the Constitution. Civil society organizations and NGOs may assist the workers by offering services and solutions that turn migration into a safe opportunity for workers such as securing labourers identity cards to avoid harassment in cities, getting registration as beneficiaries under welfare board, skill training programmes, legal mediation between workers and contractors for the swift settlement of disputes, labour help lines for workers in distress, collectivization of migrant workers to advocate for better safety and working conditions, etc.

9. Migrant Workers – Issues and Challenges

Internal mobility is critical to the livelihoods of migrant construction workers. Migrants are disadvantaged as labourers and labour laws dealing with them are weakly implemented. They have very little bargaining power. Laws and regulations concerning working conditions of migrants are largely ineffective: legislation fails because regulatory authorities are over-stretched, the state sees migrants as a low priority and because migrant workers are vulnerable with little support from trade unions and civil societies. These workers have to depend upon advances and irregular payments in the destination dominated by contracting and sub-contracting relationships. Migrants often get lower wages than local labourers. Employers often prefer migrant labourers to local labourers, as they are cheaper and do not develop social relationships with the place of destination. Women migrants are generally paid less than male migrants. Workers have to depend upon advances and irregular payments. Migrants often get lower wages than local labourers. It is the need of the hour to implement State oriented Intervention Programmes and schemes to ensure that migrant constructions workers are safe and secure, and are able to access their entitlements both at the destination and source states, and to sensitize members to their vulnerability to discrimination and exploitation, as well as to their occupational health hazards, education and legal rights, addressing the concerns of woman migrants specifically.

10. Skill Development in Construction Industry

Rapid mechanization and the introduction of new technologies into the construction sector are reducing the employment opportunities for unskilled or low-skilled workers, particularly women. In the absence of any institutional mechanism for skill formation, construction workers continue to be trained by the traditional master craftsmen. Apart from its inadequacy in quantitative terms, the traditional system neither utilizes new technologies and work methods, nor does it absorb the benefits of research and development. Also, women workers are not trained in any trade and they remain head load carriers or helpers, all their working life.

²⁰ILO (2006) "Decent work - the heart of social progress", ILO: Geneva.

²¹ Ivan Hare, "Social Rights as Foundational Human Rights," in *Social and Labour Rights in Global Context*, ed. Bob Hepple (Cambridge: Cambridge University Press, 2002), See also in Amartya Sen, "Elements of a Theory of Human Rights", *Philosophy and Public Affairs*, 2004, 32 (4): p.316

²²Uday Shankar, "Right to Social Security: A Universal Human Right," *Indian Bar Review*, Vol.35, 2008, p.91.



11. Need for Training in Occupational Safety and Health (OSH)

The link between accident risk and the lack of worker's protection has been observed in situations where there is extensive use of sub-contracting.²³ The issue is not sub-contracting itself, but its improper use, which can aggravate risks. Two factors underscore the serious health and safety risks in the industry. Firstly, many construction activities are inherently hazardous: working at height; working underground; working in confined spaces and in close proximity to falling materials; handling loads manually; handling hazardous substances; using plant and equipment, often in difficult, uncontrolled and unpredictable environments. Secondly, the structure, organization and size of the industry influence the extent of the harm experienced by its workers in all countries. Small firms, the self-employed, casual and agency labour predominate, and their frequent simultaneous engagement on multi-employer and temporary worksites presents a major barrier to the implementation of modern preventive health and safety strategies based on risk communication, assessment and management. Moreover, while there are many skilled jobs in the industry, it has always attracted unskilled and semi-skilled labour, as well as young and inexperienced workers. In many countries it is also a source of employment for migrant labour, which presents problems of risk communication to multi-employer, temporary and constantly changing worksites where many workers do not possess an adequate command of a common language. In addition, the fragmented organizational structures and substantial presence of non-standard forms of employment conflict with the development of trade union organization and conventional workplace labour relations practices. In many countries, average trade union membership in construction is less than half of the average across economic sectors as whole. There are, for example, special provisions aimed at promoting safety for workers working at height, manually handling materials, working in confined spaces, working underground, etc. There are requirements for the safe design and construction of buildings, and technological solutions have been developed to meet these and others aimed at constructing safer buildings. ILO Convention 167 (1988) on safety and health in construction, and the Asbestos Convention 162 (1986) addressing specific exposures common in the industry, set standards of health and safety that could be adopted internationally. The ILO Code of Practice on Safety and Health in Construction provides further guidance on good practice. Although considerably different in their detail, most national provisions start from the basis that employers share a fundamental duty of care over the health, safety and welfare of their workers. To carry out this duty they are required to implement systems that access and manage workplace risks. Conversely, workers have a right to information, consultation and representation on health and safety issues. Nearly all construction sites are temporary in nature and, during the construction process, are constantly changing. This always leads to the temptation to compromise on health and safety issues, such as the provision of adequate welfare facilities or the safe re-routing of site traffic. It is not unusual that several sub-contractors are involved in a single construction project, often more than one at a time, with varying influence on their own and other sub-contractors' working conditions.

12. Conclusion

There is a renewed concern for social protection in recent years in both the developed and developing world, in part due to the growing trend toward formalization in the labour markets, but more importantly due to a rise in the level of poverty in several countries. The status related risks need a more integrated system which will take into account worker's background and income levels, and grant flexibility to workers moving between employers and between cities and villages. Most commonly, the lack of understanding of risks has resulted in public or state-run social protection programs being ineffective in assisting the informal sector risks. The overview of the tremendous problems of state based social security schemes in the whole, clearly demonstrates the need to look for alternatives like market based security schemes or public-private partnership. In most countries there is adequate legislation in place to ensure that construction workers are safe. The problem is a lack of implementation. In both developed and developing countries the changes in the employment relationship and the structure of the construction industry have also raised the barriers to training and led to problems in implementing joint training schemes. A way has to be found of involving subcontractors in training programmes if current skill shortages are to be overcome and the general level of skill is to be raised. Employment in small enterprises on casual and temporary terms, often through intermediaries, which is now the norm in the construction industry in much of the world, has a profound effect upon the construction workforce and their labour rights and upon skill formation in the industry. It may be concluded that the widespread trend towards the adoption of flexible employment practices in the construction industry has undermined collective action, eroded workers' security, contributed to the high rate of accidents in the industry and reduced the effectiveness of training provision.

²³The Employment Relationship, Part 1, p.10 <https://books.google.co.in/books?isbn=9221166112>, visited on 16/05/2016