ABHANDLUNGEN / ARTICLES

A Social Rights Model for Social Security: Learnings from India

By *Jayna Kothari**

Abstract: *A vast majority of states have formally committed to respect, protect, and progressively fulfill the right to social security by ratifying human rights and ILO conventions. Accordingly, social security systems should guarantee indiscriminate access to health services, provide benefits in the case of work losses due to illness, disability, death of family members, old age, unemployment, and maternity, and further support families, children and adult dependents. As a matter of law and fact, however, social security systems in developing countries usually benefit only a minority of the population. From a human rights perspective, enormous efforts are necessary to increase the coverage of social security systems, reaching people in the informal sector and from poorer parts of the population. The present contribution highlights how important the implementation of right to social security is for developing countries.*

***

Introduction

In the last 10 years, India has really emerged as a welfare state. There has been a spate of new welfare legislations introduced in the last few years guaranteeing the right to food[1], the right to free and compulsory education,[2] the right to public information,[3] and the right to livelihood[4] among others with many more draft legislations on the anvil.[5] These developments place social rights clearly at the core of the national agenda of the present UPA govern-

* The writer is an advocate in the Karnataka High Court and the Supreme Court of India and Director, Centre for Law and Policy Research, Bangalore and can be contacted at jayna.kothari@clpr.org.in.

1 The National Food Security Act, 2013.

2 The Right of Children to Free and Compulsory Education Act, 2009.

3 The Right to Information Act, 2005.

4 Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

5 The National Health Bill 2009; The Mental Health Care Bill 2013; The Rights of Persons with Disabilities Bill 2012; The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012; The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Bill, 2011; The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

ment.[6] Placing such emphasis on social rights is timely considering the state of poverty, starvation, and unemployment existing in the country. The number of poor in India is now estimated at 269.3 million, of which 216.5 million reside in rural India[7], over 21 million people having one or the other kind of disability,[8] India is among countries with the highest unemployment rate[9] and has 212 million undernourished people with almost 50 percent of Indian children underweight and more than 70 percent of the women and children with serious nutritional deficiencies as anemia.[10] In such a state of extreme poverty and deprivation, what kind of social security would really be effective to provide insurance and assistance to the most deprived?

This essay aims to answer these questions, and is divided into three parts. In the first part, I trace the historical evolution of social security in India where social security legislations in the fifties and sixties mainly focused on labour and workers' security. In the second part I trace the constitutional basis for the recognition of the right to social security in India and the manner in which courts have interpreted the right to life to include the right to social security. In the third part I discuss the developments in the last decade to argue that India's new social security has moved to a social rights model. Social security laws in India have evolved from being focused on labour and economic security to a universalised social security which is grounded in the belief that protection of basic social rights to food, livelihood, education must be ensured to all. This, I argue, is new social security which need not mean only 'social insurance for the formal sector' in the traditional sense of the term nor just poverty alleviation but socio-cultural empowerment as well, in the realm of gender, caste, disability etc. In this part, I shall also discuss three legislations, the Mahatma Gandhi National Rural Employment Guarantee Act 2005, the National Food Security Act 2013 and the Right of Children to Free and Compulsory Education Act 2009 as examples of strong social rights legislations which provide a new form of social security. I argue this social rights model developed in India can be a better model for social rights as it provides for assistance to basic needs grounded in a theory of protection of social rights and dignity.

6 *Prashant Jha* UPA Plays Up Aadhar, DBT, Welfare Legislations as Key Achievements, *The Hindu* October 20th, 2013.

7 *Kirthi Rao*, India's Poverty level falls to a record 22%: Planning Commission, http://www.livemint.com/Politics/1QvbdGnGySHo7WRq1NBFNL/Poverty-rate-down-to-22-Plan-panel.html (last accessed on 23 January 2014).

8 Ministry of Home Affairs, Census, 2001, http://censusindia.gov.in/2011-common/CensusDataSummary.html (last accessed on 23 January 2014.).

9 Rediff Business, India among Countries with highest unemployment rates, http://www.rediff.com/business/slide-show/slide-show-1-special-india-among-countries-with-highest-unemployment-rate/20130917.htm (last accessed on 23 January 2014).

10 National Family Health Survey, 2005-2006; *See also* Hunger and Malnutrition Survey, 2011.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

A. Evolution of Social Security in India

I. Western Approaches

The term 'social security' has taken different meanings in different jurisdictions, depending on the different national contexts and histories. In the United States, the term predominantly has a narrower usage referring to the federal government's social insurance programmes, including retirement, health programs etc.[11] In Europe too it refers mainly to income protection programmes such as contributory social insurance which arises out of contingencies in work and economy. But in developing nations like India, social security has taken on a much broader scope of not just social insurance and income protection but also security of basic social rights of health care, food, health, livelihood and education. In India,

merely focusing on income assistance schemes would not be sufficient as they would only address the organized sector workers which constitute only about 6% of the total workforce of about 450 million in the country.[12] The remaining 94% of the work force are in the unorganised sector, which require a different approach to providing social security.

Social security in the West has been understood largely as a form of 'economic security'. Traditionally it has been understood as a form of monetary assistance from the state for persons having no income or earnings. The dominant form of social security was the *social insurance system* where individuals contribute to a common pool of funds which are managed by governments, and this fund is used to provide security to individuals in case of contingencies such as accidents, disability, death, retirement etc. Labour and economies, both are constrained by contingencies and hence social insurance became a central model of security.

One of the first social security retirement systems was in place by 1889 in Germany, followed soon by workers' compensation and workers' health insurance programs. The Great Depression of 1929 in the United States also led to a proliferation of welfare programs including the "pension movement" and the adoption of the Social Security Act, 1935.[13] The Social Security Act aimed to provide social insurance progams to cover the risks of old age and unemployment.[14]

But all these forms of social security were largely focussed on organised labour and the formal sector. They were economic in character and the security they provided was to account mainly for the economic contingencies that might arise. As James Midgley notes "…the re-

11 *Kwong-Leung Tang & James Midgley,* The Origin and Features of Social Security in Social Security, in: James Midgley/Kwong- Leung Tang (eds.) Social Security and Development New York 2008, p. 22.

12 Planning Commission of India, Ministery of Labour and Employment, Report of The Working Group on "Social Security" (for Twelfth five year plan 2012-2017) available at: http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_social_security.pdf (last accessed on 23 January 2014).

13 *Larry DeWitt,* Development of Social Security in America, in: Social Security Bulletin, Vol. 70, No. 3, (2010) p. 3, 4.

14 *Edward D. Berkowitz*, The Historical Development of Social Security in the United States, in: Ric Kingson/ James Schulz (eds.), Social Security in the 21st Century New York 1997, p. 22- 38.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

lationship between social security and economic development has been constrained by a framework that has narrowly limited analysis to conventional social insurance and means-tested programmes. Social security policy innovations that do not rely on social insurance or social assistance approaches have been largely disregarded, and their potential to contribute positively to economic development has not been properly assessed."[15]

II. Early Indian approaches

The history of early social security legislation in India is closely intertwined with its colonial history and the subsequent creation of the nation-state in 1947. India was influenced heavily by the models existing in Europe and the United States. The Beveridge Committee Report (1942) in the UK was a significant influence that led to the enactment of strong contributory social insurance programs focusing on labour relations in the organised sector. [16] In the Beveridge Committee Report, "social security was defined as 'Freedom from Want' and it was a term that was used to denote the securing of income in place of regular earnings when such earnings were disrupted due to contingencies such as unemployment, sickness, death of the earning member of the family or accident also included the provisions made for retirement through age, against loss of support by the death of the breadwinner and meeting of exceptional expenditures such as those connected with birth, marriage and death".[17]

Thereafter in 1943, the Adarkar Committee in India responded to the efforts of the International Labour Organisation and recommended a scheme of protection for workers which led to the introduction of the Employees State Insurance Act which came into operation on February 24, 1952 provding compulsory health insurance.[18] Around the same time, the Industrial Disputes Act was passed in 1947 providing for gratuity, thus making it a legal right.[19]

Early social security laws in India like the west also focused largely upon labour and economic security in the organised sector. These laws were mainly "contributory laws" as defined by the Planning Commission,[20] which provide for financing of the social security programs by the contributions of workers and employers, sometimes supplemented by the government. Some of these legislations were insurance schemes and benefits for workers such

15 *James Midgley,* The United States: Social Security Policy Innovations and Economic Development, in: James Midgley/Kwong- Leung Tang (eds.), Social Security and Development, New York (2008) p. 161.

16 *K.P Kannan*, Long Road to Social Security, Hivos Knowledge Programme, Paper 2, (2010) p. 10.

17 *Madhava Rao*, Social Security Administration in India: A Study of Provident Funds and Pension Scheme, Hyderabad (2007) p. 13.

18 *K.P Kannan*, Long Road to Social Security, Hivos Knowledge Programme, Paper 2, (2010) p. 10.

19 *Rao*, note 17, p 14.

20 Planning Commission of India, Report of The Working Group on "Social Security" (for 10th five year plan 2002-2007), http://planningcommission.nic.in/aboutus/committee/wrkgrp/wg_soclscty.pdf p. 18 (last accessed on 23 January 2014).

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

as The Employees State Insurance Act, 1948 ("ESI Act") and the Employees Provident Funds and Miscellaneous Provisions Act, 1948. The ESI Act covers factories and establishments with 10 or more employees, providing medical care, cash benefits, sickness and maternity benefits to workers and the families as well. Similarly, benefits such as provident fund, family pension, workmen's compensation etc available in the respective acts, applies to certain scheduled factories and establishments only. The Employee's Provident Fund Act (EPF Act) caters to the needs of establishments with 20 or more workers and provides for compulsory pension benefits as well as disability benefits to some 39 million workers.[21]

There were also several non-contributory social assistance legislations enacted soon thereafter that provided benefits and security for workers, such as the Maternity Benefits Act, 1961, the Payment of Gratuity Act, 1972 and the Workmen's Compensation Act, 1923. However, all of these legislations only covered workers in the organised sector and left out of their fray the millions of workers in the unorganised sector.

III. Recent Reforms: Focus on the Informal Sector

The coverage that the above legislations provided were only for the organised workers which were the tip of the iceberg. More than 94% of India's workforce of 450 million are in unorganised employment and there were attempts by the UPA government from 2004 onwards to extend social security to them in some meaningful way. In 2004, The Ministry of Labour & Employment drafted the ''Unorganised Sector Workers Bill, 2004' which envisaged provisions for the safety, social security, health and welfare matters for workers in the informal sector. This was followed by several similar draft bills on social security for the unorganised sector but these bills were not passed.[22]

In 2004, the Labour Ministry finally gave up its ambitious plan of pushing the above Bills and came up with the idea of implementing "a pilot scheme" for two years for the unorganized sector. It launched the 'Unorganised Sector Workers' Social Security Scheme 2004', on a pilot basis in 50 districts covering all States.[23] The scheme would cover all the workers in the unorganised sector earning not more than Rs 6,500/- per month and envisaged three benefits: old age pension at the rate Rs. 500/- per month on attaining the age of 60 years; personal accident insurance cover of Rs. one lakh; and coverage under Universal Health Insurance

21 *Wouter van Ginneken*, India: Inclusive Development through the Extension of Social Security, in: James Midgley/Kwong- Leung Tang (eds.) Social Security and Development, New York (2008), p. 291.

22 For example, the National Advisory Council drafted the The Unorganised Sector Workers Social Security Bill, 2005, the National Commission for Enterprises in the Unorganised Sector ("NCEUS") also drafted two bills being the Unorganised Sector Workers (Conditions of Work & Livelihood Promotion) Bill, 2005 and the Unorganised Sector Workers Social Security Bill, 2005.

23 Planning Commission of India, Report of The Working Group on "Social Security" (for 10th five year plan 2002-2007), http://planningcommission.nic.in/aboutus/committee/wrkgrp/wg_soclscty.pdf (last accessed on 23 January 2014).

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

Scheme. There was provision of contribution by the Worker, Employer and the Central Government.

But the scheme failed to work. It was observed that the Scheme was not financially viable because it had no statutory backing and was voluntary in nature.[24] Further, contribution from the employers was also not forthcoming. The contributory nature of the social insurance had failed to appeal the informal sector.[25] There was a general sense of reluctance to be a part of the formal sector through contributions of money, a sense of distrust of the government and several in the informal sector felt overwhelmed by the bureaucratic obligations involved in a formal scheme, with registrations and legal formalities.[26]

Finally in 2008, the Unorganised Workers' Sector Social Security Act was passed. As the first attempt to legislate security for more than 93% of the workforce, the Unorganised Workers' Social Security Act 2008 was welcomed. However, the statute does not make it mandatory for the government to introduce new welfare schemes or implement existing ones, unfairly divides unorganised workers into those below the poverty line and those above, and is silent on a national minimum wage, improving working conditions and the problems of women workers like unequal pay and sexual harassment at the workplace.[27] Even after five years, this Act has remained mainly on paper and many of the institutional authorities required under this Act are not formed.

There have been several schemes and policy initiatives which provide social security and pensions to the unorganised sector and children for disablement, sickness, age, measures for women and children and education for children. These social security schemes and programmes were introduced from the Third Five Year Plan onwards, and started providing welfare assistance. These schemes were without any legislative backing. For example, the National Social Assistance Program (NSAP) is a welfare program administered by the Ministry of Rural Development. It is a centrally sponsored scheme sanctioned by the Central Budget for 1995-96. The difficulty with such schemes which have no legislative backing is that they are not made into entitlements, awareness is minimal and non-compliance with the schemes usually would not have any effective redressal. Legislation providing for social assistance would place an enforceable obligation on the state, creating more accountability, and hence being more durable. Schemes on the other hand can be altered or even cancelled by bureaucrats, whereas changing the law requires an amendment.[28]

24 Ibid.

25 *Ginneken*, note 21, p. 293.

26 Ibid.

27 *Paromita Goswami*, A Critique of the Unorganised Workers Social Security Act, Economic and Political Weekly Vol. XLIV No. 11, 14 March 2009.

28 *Jean Dreze*, Employment Guarantee and the Right to Work, in: Niraja Gopal Jayal/Pratap Bhanu Mehta (eds.) The Oxford Companion to Politics in India, New Delhi (2010) p. 513.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

B. Recognising the Right to Social Security

From the 1980 s and 1990 s onwards, there was a gradual acceptance by the courts in recognising the right to social security as a constitutional right.

Human rights under the Indian constitution have been divided into two separate parts. Part III of the constitution contains the fundamental rights such as the right to life, the right to equality, the right to freedom of speech and expression, the right to freedom of movement and association, the right to freedom of religion, among others, which in conventional human rights language may be termed as civil and political rights. Part IV contains the Directive Principles of State Policy which includes all the social rights. By "social rights" or "socio economic rights", we refer to rights that protect the basic necessities of life such as the right to housing, health care, food, water, social security and education.[29]

The Directive Principles contain several guarantees to different forms of social security. Article 38 requires the State to secure a social order for the promotion of welfare of the people and to minimize inequalities in income, facilities and opportunities.[30] Article 41 mandates the State to make effective provisions for securing the right to public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want.[31] Article 42 and 47 are provisions relating to maternity relief and improvement of public health.[32]

The Directive Principles were initially considered to be non-justiciable rights due to the presence of Article 37 which states that the Directive Principles shall not be enforceable by

29 *Jayna Kothari*, Social Rights Litigation in India, in: Daphne Barak-Erez/Aeyal M Gross (eds.), Exploring Social Rights, Oxford 2011, p. 172.

30 Constitution of India, Article 38 (1): The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 39 (2): The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

31 Constitution of India, Article 41: Right to work, to education and to public assistance in certain cases. The 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.

32 Constitution of India, Article 42: Provision for just and humane conditions of work and maternity relief.The State shall make provision for securing just and humane conditions of work and for maternity relief. Constitution of India, Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs, which are injurious to health.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

any court.[33] Over the years however, the Directive Principles were slowly interpreted by the courts to be read into and along with the fundamental rights.[34] At the same time, there was a movement where fundamental rights, especially the right to life under Article 21 of the constitution was expanded by the Supreme Court and the state High Courts to include within its fold various social rights including the right to social security.

One of the first cases of the Supreme Court was *D.S. Nakara vs. Union of India*[35], which was a case where non-contributory retirement pension was denied to a class of persons who had retired on a different date. A constitutional bench of the Supreme Court held that looking to the goals for the attainment of which pension is paid and the welfare State proposed to be set up in the light of the Directive Principles of State Policy and Preamble to the Constitution, it indisputable that pension was a right. It held that the State while formulating a pension scheme in order to augment social security in old age to government servants, could not grant the benefits only to those who retired subsequent to the specified date and deny the same to those who had retired prior to that date. Pension was held to be a social-welfare measure by providing economic security in old age and that Article 41 mandated the State to ensure to the citizens a reasonably decent standard of life, medical aid and freedom from want.[36]

This case was followed by *C.E.S.C. Ltd. Vs. Subhash Chandra Bose*,[37] where the Supreme Court held that the right to social justice is a fundamental right. It held that the right to livelihood springs from the right to life guaranteed under Article 21, which includes the right to human dignity, development of personality, social protection, right to rest and leisure. The Court held that socio-economic rights are the basic aspirators for a meaningful right to life and that the right to social security and protection of the family are an integral part of this right. Right to social and economic justice was held to be a fundamental right so was the right of workers to medical care and health for protection against sickness.[38]

Finally, one of the most important cases was *LIC of India and Anr. vs. Consumer Education and Research*[39], where the Supreme Court held that the right to life would include the right to social security. It relied on Article 25 of the Universal Declaration of Human Rights which envisages that everyone has the right to an adequate standard of living for himself /

33 Constitution of India, Article 37: Application of the principles contained in this Part. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

34 *State Of Madras v. Shrimathi Champakkam Doarairajan* AIR 1951 SC 226; *Golak Nath v. State of Punjab* AIR 1967 SC 1643, *Randhir Singh v. Union Of India & Ors* 1982 AIR SC 879; *D.S. Nakara & Others v. Union Of India* 1983 AIR 130; *Federation of All India Customs & Central Excise Stenographers v. Union of India & Ors.* 1988 AIR (SC) 1291.

35 1983 (2) SCR 165.

36 Ibid.

37 (1992) 1 SCC 441.

38 Ibid.

39 1995 SCC (5) 482.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

herself and of their family including food, clothing, 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 the circumstances beyond their control. The Supreme Court also relied upon Article 7 of the ICESCR, which equally assures the right to everyone to the enjoyment of just and favourable conditions of work including adequate remuneration, fair wages and a decent living to the workers for themselves and their families. The Court held that the basic framework of the Constitution is to provide a decent standard of living to all and especially provide security as a welfare state. Based on these principles, the Court held that the Fundamental Rights and Directive Principles accord the right to livelihood so as to include a meaningful life and that the social security and disablement benefits are integral schemes of socio-economic justice for people especially of the middle class and lower middle class.

Thus, not only were social rights to livelihood,[40] food, health and housing slowly made part of the justiciable right to life, the right to social security was also specifically recognized as a facet of a meaningful life that would enable one to live with dignity.

C. A Social Rights Model of Social Security

In the last decade there have been groundbreaking developments in India in the field of social security. While social security has been constitutionally recognised as an integral part of the right to life, a strong welfare thrust has led to the the promulgation of exciting legislation that seeks to provide social security through protection of social rights. Forms of social assistance have moved from mere poverty alleviation to ensuring minimum standards of living by guaranteeing provision of food, health, work and education to all. The understanding that socio-economic rights such as the right to health, food, livelihood and education are integral to leading a meaningful life with dignity has led to legislation for guaranteeing these social rights, with a lesser reliance on social security in the form of cash or pension benefits.

The dominant human rights discourse during the Cold War showed a clear split between the civil and political rights and social rights. As Baxi argues, "*the latter was marked by the languages of progressive realisation are often as already noted, represented as manifesto or programme rights as compared with civil and political rights that have more or less, comparatively clear cut enforcement obligations.*"[41] This was the same principle underlying the Directive Principles in the Indian constitution which where not made mandatory but to be

40 In *Olga Tellis v. Bombay Municipal Corporation*, 1985 Supp (2) SCR 51, the Supreme Court held that the right to life includes the right to livelihood because no person can live without the means of living i.e. means of livelihood. It held that "*if the right to livelihood is not treated as part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.*".

41 *Upendra Baxi*, Failed Decolonization and the Future of Social Rights, in: Daphne Barak Erez/Aeyal M Gross (eds.) Exploring Social Rights: Between Theory and Practice, Oxford and Portland(2007) p. 46.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

progressively realised by the State as compared to the fundamental rights guaranteed in Part III. The split was also reflected in the post-1966 conventions such as the International Covenant on Civil and Political Rights (ICCPR)[42] and International Covenant on Economic, Social and Cultural Rights" (ICESCR)[43]. Civil and political rights continued to be contrasted with and as distinct from social rights. The split was also a hierarchical one, where the civil and political rights received a higher status as contrasted to social rights and the UN human rights system for a long time, focused on civil and political rights and accorded secondary status to social rights.[44]

Social rights are now recognised to be indivisible from civil and political rights and later international treaties and conventions have embodied this newer understanding of social rights.[45] The Indian Supreme Court and High Courts have pioneered the movement worldwide for enforcement of social rights as extensions of justiciable fundamental rights through various forms of litigation, most notably through public interest litigation.[46]

One way of charting the evolution of social security laws in India is to trace its movement from 'organised-labour based security programs' towards 'universalised social welfare based programs'. The model of social security in developed countries was one which was restricted to income maintenance, to maintain the standard of living by compensating them for contingencies. But in India, social security in the last decade has moved to a model based on social rights and distributive justice. There were several new social security schemes introduced towards this aim providing assitance to senior citizens, the disabled, widows among others.[47] In addition to such schemes, there were new legislations enacted to provide such welfare based entitlements.

In this part, I shall give a brief overview of three new legislations to argue that India has provided a unique model of social security by providing security for basic social rights to

42 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.

43 International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* 3 January 1976.

44 *Daphne Barak-Erez/Aeyal M Gross,* Introduction: Do We Need Social Rights ed. Daphne Barak Erez/Aeyal M Gross in: Exploring Social Rights: Between Theory and Practice, Oxford and Portland (2007) p. 4.

45 *Asbjørn Eide,* Economic, Social and Cultural Rights as Human Rights eds. Asbjørn Eide/Catarina Krause/Allan Rosas in: Economic, Social and Cultural Rights: A Textbook Martinus Nijhoff 2001;The UN Convention on the Rights of Persons with Disabilities, available at http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf (last accessed on 23 January 2014.).

46 *Kothari,* note 29, p. 172.

47 The National Social Assistance Scheme is a fully centrally funded program which includes old age pension schemes, disability pension schemes and schemes for single women, school going children, the sick, unemployed and disabled. Some of them are schemes or programmes established under the government's policy for social assistance such as the Indira Gandhi National Old-Age Pension Scheme, Indira Gandhi National Widow Pension Scheme, Indira Gandhi National Disability Pension Scheme, National Family Benefit Scheme.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

work, food and education. It is different from other models of welfare and social security measures provided by developing countries such as Brazil and South Africa in that it provides a statutory basis for guarantee of social rights. It would be useful to examine the contents and important provisions of these legislations:

I. The Mahatma Gandhi National Rural Employment Guarantee Act 2005

The National Rural Employment Guarantee Act was notified on 7th September 2005 and later renamed as the Mahatma Gandhi National Rural Employment Guarantee Act ("MGNREGA"). It is one of the world's largest employment guarantee programs and aims at enhancing the livelihood security of people in rural areas in India. It provides for the following entitlements:

1. The State Government shall in rural areas provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of unskilled manual work per year at the statutory minimum wage.
2. If an applicant is not provided with work within 15 days he/she must be provided with an unemployment allowance which is a quarter of the wage rate for the first thirty days and a half of the wage rate for the remaining period.
3. One third of the workdays are reserved for women.
4. Safe drinking water and facilities for children must be provided on site.
5. The Gram Panchayat or the village level institutions shall be responsible for identification of the projects in the Gram Panchayat area to be taken up under a Scheme and shall be responsible for executing and supervising such works.

Chapter IV of the MGNREGA provides for its implementation, wherein it is specifically stated that Panchayats or the district, intermediate and village level institutions shall be the principal authorities for the implementation of schemes under the Act. The MGNREGA also empowers the State Governments to, by rules, determine appropriate grievance mechanism mechanisms at the Block level and the district level for dealing with any complaint in respect to implementation of the Scheme and also lays down the procedure for complaints.

Legislations such as the MGNREGA have a long gestation period but far reaching economic, social and political significance.[48] Apart from its immediate aim of being a form of social security to the rural poor by providing them local employment, the MNREGA was envisioned to contribute to activating gram sabhas (the village leval institutions of local government), empowering women and developing rural areas.[49] Jean Dreze notes how it has helped significantly in empowering women by giving them independent income-earning op-

48 *Aruna Bagchee,* Political and Administrative Realities of Employment Guarantee Scheme, Economic and Political Weekly*,* Vol. 40, No. 42; 2005, p. 4531- 4537.

49 *Reetika Khera*, Empowerment Guarantee Act, Economic and Political Weekly, Vol. 43, No. 35, 2008, p 10.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

portunities and also empowered other marginalised groups.[50] The share of marginalised groups in NREGA employment (2007-08; Phase 2) was found to be 42% in case of women, 29% for Scheduled Tribes and 27% of Scheduled Castes.[51] It is also potentially seen as an opportunity to create useful assets in rural areas and also in realms of environmental protection through watershed development, land regeneration, restoration tanks, protection of forests etc.[52]

While the bulk of unemployment costs is borne by the central government, the unemployment allowance is to be paid by the state governments. As Reetika Khera argues, the one role of the unemployment allowance is to act as a 'fine' on the state if it fails to implement the employment guarantee and therefore the payment of the unemployment allowance plays a key role in the realization of the work guarantee.[53]

In all these ways, the MGNREGA, provides social security to the rural households not in the traditional sense of providing monetary support but by providing livelihood security which can ensure participation, empowerment and a sustained form of community engagement and support. South Africa, on the other hand, with its Expanded Public Works Programme (EPWP) is somewhat similar in the sense that it seeks to provide employment rather than money. The EPWP in fact highlights 4 areas in which work is to be provided; infrastructure, environment, social and economic. Each of these areas, especially the last involves some kind of vocational training.[54] However, the EPWP does not aim to guarantee to livelihood to every family in the way that the MGNREGA aims to do.

II. The National Food Security Act 2013

Much before the National Food Security Act 2013 was passed or even proposed, there were several food security related schemes provided in the country under the Public Distribution System ("PDS"). These started in mid-1995 when the government of India launched the National Programme of Nutritional Support to Primary Education or the Mid-Day Meal Scheme which was centrally sponsored. The Mid-Day Meal Scheme according to Dreze has three crucial perspectives: educational advancement, child nutrition and social equity.[55] The purpose of this scheme was not just economic and income support but also about overcoming

50 *Dreze*, note 28.

51 The Statistics are from the official reports available in www.nrega.nic.in (last accessed on 23 January 2014); *Jean Dreze and Christian Oldiges,* Work in Progress, *Frontline*, 14 February, 2009. http://www.frontline.in/navigation/?type=static&page=flonnet&rdurl=fl2604/stories/20090227260410100.htm (last accessed on 14 January 2014).

52 *Dreze,* note 28, p. 513.

53 *Khera*, note 50, p. 10.

54 *R. McCutcheon & F Taylor Parkins* South Africa's Expanded Public Works Programme: A Case Study, http://www.robert-mccutcheon.com/resources/Newcastle%20CofFEE%2009%20RM%20FTP%20Paper%20as%20Published%20Dec09.pdf (last accessed on 23 January 2014).

55 *Jean Dreze, Aparajita Goyal*, Future of Mid-Day Meals, Economic and Political Weekly, Vol. 38, No. 44(2003) p. 4673.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

social hierarchies and gender, class and caste discrimination as children in public schools would be provided with cooked mid-day meals which they would eat together.

In addition to the Mid-Day Meal scheme, the government established 8 other food related schemes, but there was no effective implementation of the same and people were dying due to starvation. This led to a huge public interest litigation being filed in the Supreme Court by the People's Union for Civil Liberties against the Union of India and all State Governments in what is now famously known as the Right to Food case.[56] By an interim order, the Supreme Court made 8 of these food schemes including the Mid-Day Meal scheme, into entitlements.[57] This started a national demand for a law providing food security, which led the the National Food Security Act 2013 ("NFSA"). In fact, it was the Right to Food case that prepared the ground for the framing of the right to food legislation.[58]

The NFSA, adopted in August 2013, aims to guarantee food security by providing basic entitlements to food grains to every household, food entitlements for pregnant and lactating women, and for children upto 14 years in the following manner:

1. Every person belonging to priority households shall be entitled to receive five kilograms of food grains per month at extremely subsidized rates from the State Government under the Targeted Public Distribution System.
2. Households covered under Antyodaya Anna Yojana Scheme shall be entitled to thirty-five kilograms of foodgrains per household per month at the specified rates.
3. Every pregnant woman and lactating mother shall be entitled to meals, free of charge, during pregnancy and six months after the child birth, through the local *anganwadi*, so as to meet the nutritional standards specified and a substantial cash maternity benefit.
4. Children in the age group of six months to six years would be entitled to get age appropriate meals, free of charge, through the local *anganwadi* so as to meet the nutritional standards specified.
5. Children within the age group of six to fourteen years, would get one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and in Government aided schools.
6. The State Government shall, through the local *anganwadi*, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified.
7. Food Security Allowance: In case of non-supply of the entitled quantities of food grains or meals to entitled persons, such persons shall be entitled to receive such food security

56 *People's Union of Civil Liberties (PUCL) v. Union of India & Others* WP (Civil) No. 196 / 2001, 23 July 2001, unreported.

57 These schemes included food distribution schemes and schemes guaranteeing income support such as the National Old Age Pension Scheme, the National Maternity Benefit Scheme and the National Family Benefit Scheme.

58 *Reetika Khera*, Right to Food Act: Beyond Cheap Promises, Economic and Political Weekly, Vol. 44, No. 29, 2009, p. 41.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

allowance from the concerned State Government to be paid to each person, within such time and manner as may be prescribed by the Central Government.

The implementation of the schemes covering the entitlements provided by the NFSA is the prerogative of the State Governments. The State Governemnt also has to establish an internal grievance redressal mechanism, which must mandatorily include District Grievance Redressal Officers for each district and a State Food Commission.

The UPA Government in its opening remarks when the NFSA was introduced in Parliament stated that this Act was proposed so as to ensure that no child goes to bed hungry in India. India has a wide variety of feeding programs, food subsidies, and schemes to alleviate hunger, but these programs were not enough because the schemes were not made into entitlements. They were not justiciable as they were not based on legislation and if not implemented, the people who were deprived of access to food had no redressal mechanism. Thus there was no justiciable right to access to food. The National Food Security Act is an important effort to ensure that the majority of India's population has access to an adequate quantity of food at affordable prices.[59] The combined coverage of all eligible households under the NFSA extends up to 75% of the rural population and up to 50% of the urban population.

In South Africa too, for example, the Integrated Nutrition Programme is a food security scheme with very specific focus areas such as Maternal Nutrition, Infant & Young Child Feeding, Micronutrient Malnutrition Control, Food Service Management, Disease-specific Nutrition Support, Treatment and Support.[60] India could benefit by including some of these focus areas. However, this programme is without legislative backing and one of the core arguments for the NFSA was to introduce a legislation that would make the existing food security schemes in India into entitlements.

Jean Dreze described the NFSA when it was at its draft stage as a Bill that "…*that is a form of investment in human capital. It will bring some security in people's lives and make it easier for them to meet their basic needs, protect their health, educate their children, and take risks*."[61] It remains to be seen how the implementation of this law will proceed, but as a form of social security this legislation goes to the heart of the problem by assuring food security and nutrition to every poor household, to women and children and guarantees them an allowance if the food provisions are not made and is a unique experiment in providing social security.

59 *Prachi Mishra,* Financial and Distributional Implications of the Food Security Law, Economic and Political Weekly, Vol 48, No. 39 (2013) p. 28.

60 Combating Malnutrition in South Africa: Input Paper for Health Roadmap http://www.dbsa.org/Research/Documents/South%20Africa%20Nutrition_%20input%20paper_roadmap.pdf?AspxAutoDetectCookieSupport=1 (last accessed on 23 January 2014).

61 *Jean Dreze*, Why the Food Bill is Sound Economics, Tehelka, Issue 15, Vol 10 (2013) http://www.tehelka.com/why-the-food-bill-is-sound-economics/ (last accessed on 23 January 2014).

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

III. The Right of Children to Free and Compulsory Education Act 2009

Finally, the Right of Children to Free and Compulsory Education 2009 ("RTE Act"), is another milestone in the State providing for free and compulsory education for all children from the age of 6-14 years. Some of its main provisions are as follows:

1. Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. No child shall be liable to pay any kind of fee or charges or expenses.
2. This right is guaranteed to children with disabilities as well.
3. Every non-government or private school shall have to provide free and compulsory elementary education to at least twenty-five per cent of the strength of that class to children belonging to weaker section and disadvantaged group. The school shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less.
4. Every school, government or private shall be mandated to have the basic norms and standards prescribed which include certain infrastructure facilities of a building, compound, library, playground, toilets for girls and boys, minimum teacher pupil ratio, cooked mid-day meals and clean drinking water.

There are other provisions relating to admission of children, freedom from discrimination in the provision of education. The state governments will identify children from disadvantaged groups and weaker sections every year. Unaided and private schools cannot segregate children weaker sections and disadvantaged groups in the classroom, nor shall their classes be held in places and timings different from classes held for the other children. They shall not be treated differently from the rest of the children in any manner pertaining to entitlements and facilities like textbooks, uniforms, library, ICT facilities, extra-curricular activities and sports.

The RTE Act differs from most other legislations, in the sense that it puts the duty of implementation of its provisions not just on State entities such as the Central and State Governments, but also on schools, teachers and parents. The Act also recognizes the concept of decentralization as the primary implementation unit is the "local authority" whose efforts are monitored and coordinated by the State and subsequently Central Governments. The RTE Act, somewhat unusually, provides for two separate grievance redressal mechanisms; a complaint to the State or National Commissions for the Protection of Child Rights as constituted under the provisions of the Commissions for Protection of Child Rights Act, 2005 as well as a written complaint to the local authority having jurisdiction. This is a welcome move as having two different mechanisms, one being significantly more straightforward provides more options for enforcement.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

Courts have been very active on enforcement of the RTE Act, especially on issues relating to implementation of basic norms and standards in all schools.[62]

We could compare the RTE Act to the Bolsa Familia Programme (BFP) in Brazil, where poor families with children receive an average of R$70.00 (about US$35) in direct transfers. In return, they commit to keeping their children in school and taking them for regular health checks. It is one of the world's largest conditional cash transfer programmes, but one of its criticisms has been that it does not address low-quality education in the public schools.

The RTE Act and its guarantee to quality education is a crucial part of a social protection strategy. Its focus on children from disadvantaged groups, disability, drop outs and provision of mid-day meals and basic facilities in schools to improve the quality of education is to ensure that there are no welfare losses for poor households who resort to extreme coping mechanisms, like withdrawing children from school, in response to increasing poverty. How well the RTE Act will be implemented in this regard is the real challenge.

Conclusion

The spectrum of social security in India has undergone a sea change in light of these new legislations. Social security now holds a whole new meaning, as it relates to providing basic facilities to food, livelihood and education among other basic rights to life and does not relate merely to providing an income supplement as traditionally understood. This is what I would term as social security based on the social rights model where security for basic needs is provided.

The International Labour Organisation also now looks at social security as providing a set of basic social protection interventions, which would include access to basic health care, access to basic education, targeted assistance to poor households, basic universal pensions and child benefits.[63] There is an extensive body of research that supports the link between education, nutrition and consequent social capital development. Both nutrition and education support health, and health raises not only the absorption of learning but also the total return to education by extending lifespan. International studies demonstrate that poor families allocate more than half of additional income to increased food consumption.[64] The resulting improvements in health and nutrition directly improve not only the well-being but also the pro-

62 *Environment & Consumer Protection Foundation vs. Delhi Administration & Ors*. AIR 2013 SC 1111. In this case, the Supreme Court directed all State governments to ensure that toilet facilities for boys and girls, drinking water facilities, sufficient class rooms, appointment of teaching and non-teaching staff etc. are provided in all schools whether State owned or privately owned, aided or unaided, minority or non-minority.

63 See ILO Global Extension of Social Security at http://www.ilo.org/gimi/gess/ShowTheme.do?tid=447 (last accessed on 23 January 2014.).

64 ILO and EPRI, Research Review on Social Security Reform and the Basic Income Grant for South Africa, 21 January 2002 http://epri.org.za/wp-content/uploads/2011/03/rp31.pdf (last accessed on 23 January 2014).

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.

ductivity of the poor. International studies document the positive impact of improved nutrition on productivity and earnings.[65]

Thus, the new social rights legislations in India guaranteeing food, nutrition, education and work can be seen as a substantial form of social security. The making of social rights enforceable and as legal entitlements in this manner, not only assures every citizen covered under it the right to food, education and work, but also equality and empowerment. The working of these new legislations needs to be seen, especially the NFSA and the RTE Act which are relatively newer legislations. The MNREGA has been in force for the last 8 years and has worked well in parts and still needs efforts at improving implementation. But in the regions where there is an active participation of the village community with NGOs and local empowerment groups, the MNREGA has been transformative.[66]

With these new social rights legislations, the earlier non-justiciable social rights to food, education and work have now become justiciable entitlements in India. While the challenge will still remain to ensure their effective implementation, it is certainly not in doubt that these have created a new social security in India that can be a model for other developing countries to emulate.

65 Ibid.

66 *Khera*, note 50, p. 10.

https://doi.org/10.5771/0506-7286-2014-1-5 - Generiert durch IP 216.73.216.36, am 18.01.2026, 15:29:11. © Urheberrechtlich geschützter Inhalt. Ohne gesonderte Erlaubnis ist jede urheberrechtliche Nutzung untersagt, insbesondere die Nutzung des Inhalts im Zusammenhang mit, für oder in KI-Systemen, KI-Modellen oder Generativen Sprachmodellen.