

Corporate Responsibility Towards Workers Health

Dr. Jyoti Angrish, (LL.B, LL.M, Ph.D)¹

Synopsis

Introduction:.....	154
Acts Connected With Health Of Workers	155
The Employees State Insurance Act, 1948	156
Sickness Benefit.....	157
Maternity Benefit	158
Disablement Benefit.....	158
Medical Benefit.....	160
Employees' State Insurance Corporation (ESIC)	162
Conclusion.....	164

¹ Assistant Professor, Bhai Gurdas College of Law, Sangrur

Introduction:

Corporate initiative should be to assess and take responsibility for the company's effects on the environment and impact on social welfare. The term generally applies to company efforts that go beyond what may be required by regulators or environmental protection groups.² Corporate social responsibility is becoming a key initiative and an essential tool in the growth of multinational corporations and the development of third world countries throughout the globe. The two concepts can work hand in hand to provide benefits for all. However difficulties in regulating and implementing corporate social responsibility needs to be overcome before effective changes can be made.

Human rights are based on the principle of respect for the individual. Their fundamental assumption is that each person is a moral and rational being who deserves to be treated with dignity. They are called human rights because they are universal. Whereas nations or specialized groups enjoy specific rights that apply only to them, human rights are the rights to which everyone is entitled – no matter who they are or where they live – simply because they are alive.³ In ages past, there were no human rights. Then the idea emerged that people should have certain freedoms. And that idea, in the wake of World War II, resulted finally in the document called the Universal Declaration of Human Rights and the thirty rights to which all people are entitled. On October 24, 1945, in the aftermath of World War II, the United Nations came into being as an intergovernmental organization, with the purpose of saving future generations from the devastation of international conflict. Everyone has the right to life, liberty and security of person.⁴ Everyone has the right to a standard of living adequate for the health and well being of himself and of his family.

The right of everyone to "the enjoyment of the highest attainable standard of physical and mental health." "Health" is understood not just as a right to be healthy,

²Investopedia. (2016). *Corporate Social Responsibility*. [online] Available at: <http://www.investopedia.com/terms/c/corp-social-responsibility.asp> [Accessed 27 Dec. 2016].

³ Available at www.humanrights.com/what-are-human-rights.htm. (visited on sept.8,2014)

⁴ Article 25, Universal Declaration of Human Rights, 1948.

but as a right to control one's own health and body (including reproduction), and be free from interference such as torture or medical experimentation. States must protect this right by ensuring that everyone within their jurisdiction has access to the underlying determinants of health, such as clean water, sanitation, food, nutrition and housing.⁵

The ILO Conventions have been greatly adored by the working class all over the world for their beneficial, humanitarian and missionary influence. The principal means of action in the ILO is the setting up the International Labour Standards in the form of Conventions and Recommendations. Conventions are international treaties and are instruments, which create legally binding obligations on the countries that ratify them.⁶ There are Workmen's Compensation (occupational diseases) Convention, 1925, The Social Security (Minimum Standards) Convention, 1952, The Medical Care and Sickness Benefits Convention, 1969 applies to medical care and sickness benefit of the employees, Occupational Safety and Health Convention, 1981, Safety and Health in Mines Convention, 1995, the Maternity Protection Convention, 2000 these are relating to the workers health.

Acts Connected With Health Of Workers

Human Rights are the rights, which entitle mankind a decent, civilized life in which the inherent dignity of each human being will receive respect and protection. The idea of human rights does not imply merely the comforts and conveniences that science and technology can provide. Those conditions of life which allow mankind to develop and use their human qualities of intelligence and conscience and to satisfy their spiritual needs.⁷ Above all, human rights are fundamental to our nature and in the absence of these rights we cannot live as human being. So many laws relating to the human being especially concerned with the workers. Both central and state governments have been taking initiatives for the welfare and health of the workers in the organized sector. A variety of labour laws provide for certain facilities

⁵ Article 12 of the International Covenant on Economic, Social and Culture Rights, 1966

⁶ Ilo.org. (2016). *Social Protection Department (SOCPRO)*. [online] Available at: <http://www.ilo.org/public/english/protection/secsoc/areas/legal> [Accessed 27 Dec. 2016].

⁷ A.N.Sen, *Human Rights*,1 (2002).

and benefits to be given to workmen and employees. For instance, Employees Compensation Act, 1923, facilities regarding health, safety, welfare, working hours, annual leave with wages under the Factories Act, 1948, contributions and benefits under the Employees State Insurance Act, 1948⁸, Maternity Benefit Act, 1961, Contract Labour (regulation and abolition) Act and Mines Act. The factories were sick not only of economic evils but also of social evils. Overcrowded cities with insanitary slums, and acute housing shortage because of large-scale migration of village population to industrial towns had its natural effect on health, morality and social life of workers. Work in factories was very hazardous and strenuous with long hours, no rest, and no facility for recreation. Factories and industries were taken care of by the owner who had little regard for health and welfare of the workers. The wages paid to the workers were very low. Wages were the only source of their income. The workers found it extremely difficult to live with the wages so earned by them. Therefore, they could not take proper care of their health. The Ministry of Labour & Employment is implementing various legislations relating to the workers health e.g. Employees Compensation Act, 1923, The Employees State Insurance Act, 1948, The Maternity Benefit Act, 1961 etc. but The Employees State Insurance Act, 1948 is main enactment in the corporate sector relating to health.

The Employees State Insurance Act, 1948

The Act also provides for the Employees State Insurance (ESI) Scheme. The Act was originally applicable to non-seasonal factories using power and employing 20 or more persons. However, it is now applicable to non-seasonal power using factories employing 10 or more persons and non-power using factories employing 20 or more persons. Seasonal factories, mines and plantations have not been covered under the Act.⁹ It also does not cover the unorganized labour or self-employed workers. The Employees State Insurance Act gives the benefits relating to sickness, maternity

⁸ Dr. V.K.Anand, *Human Rights*, 163 (2001).

⁹ Employees State Insurance Act, 1948, Sections 2 (12).

benefit, disablement benefit, and medical benefit.¹⁰ These benefits are explained below:

Sickness Benefit

"Sickness" means a condition that requires medical treatment and attendance and necessitates abstention from work on medical grounds.¹¹ Periodical payments are to be made to any insured person in case of his sickness, certified by a duly appointed medical practitioner [or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf.¹² The qualification of a person to claim sickness benefit, the conditions subject to which such benefits are given, the rates and period thereof are such as are prescribed by the Central Government.¹³

Sickness benefit is payable to an insured person in the form of periodical payment. The sickness is to be certified by a duly appointed medical practitioner or any other person authorized by the corporation. To avail of the sickness benefit the sickness should have occurred during any benefit period as defined in the Act and if during the corresponding contribution period weekly contribution in respect of him were payable for not less than 13 weeks.¹⁴

In *K.K. Nair v. The Regional Director, ESI Corporation and Another*.¹⁵ It was held that the benefit is payable to an insured person in case of his sickness certified by a duly appointed medical practitioner or by any person in case possessing such qualifications as the corporation may specify. During the corresponding contribution period weekly contribution in respect of him were payable for not less than 13 weeks. Under Sec. 70 (a) a claim for benefit or for disablement benefit for temporary disablement for any period, arises on the date of the issue of the medical certificate in respect of such period.

¹⁰ *Id.* Sections 46-73F.

¹¹ *Id.* at Section 2 (20).

¹² *Id.* at Section 46 (1) (a).

¹³ *Id.* at Section 49.

¹⁴ R.C.Sexena, *Labour Problems and Social Welfare*, 371 (1974).

¹⁵ *K.K. Nair v. The Regional Director, ESI Corporation and Another* AIR 2008 SC 1726 (India).

The Act provides for disablement benefit to insured persons suffering from disablement due to employment injury sustained to an employee in a factory or establishment to which the Act applies. Employment injury means personal injury to an employee caused by accident or occupational disease arising out of and in the course of his employment, which is an insurable employment whether the accidents occur or the occupational disease is contracted within or outside the territorial limits of India.¹⁶

Maternity Benefit

The Maternity Benefit legislation has been framed and administered by State Governments. The Mines Maternity Benefit Act was passed in 1941 for the benefit of women employees in mines. With the passage of the Employees' State Insurance Act, 1948, maternity benefits became the responsibility of the Corporation and the State Acts applied to residuary employments/areas till the Maternity Benefit Act, 1961 was passed. This Act applies to every establishment—whether factory, mine or plantation, except the factories to which the provisions of the Employees' State Insurance Act, 1948 apply. Periodical payments to an insured woman in case of confinement¹⁷ or miscarriage¹⁸ or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations.¹⁹

The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.²⁰

Disablement Benefit

¹⁶ K.M. Pillai, *Labour & Industrial laws*, 310 (2012).

¹⁷ Employees State Insurance Act, 1948, Section 2 (3), "Confinement" means labour resulting in the issue of a living child or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead.

¹⁸ *Id.* Section 2 (14B), "Mis-carriage" means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any mis-carriage, the causing of which is punishable under the Indian Penal Code.

¹⁹ *Id.* at Section 46 (1) (b).

²⁰ *Id.* at Section 50.

This refers to periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations.²¹

"Employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.²²

Some important provisions of this Act are as under-

1. a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment [at such rates and for such period and subject to such conditions as may be prescribed by the Central Government];
2. a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment [at such rates and for such period and subject to such conditions as may be prescribed by the Central Government].²³

This Act creates certain presumptions in the favour of the insured employee with respect to the accidents arising out of and in the course of employment.²⁴ These are as following:

- Presumption as to accident arising out of and in course of employment.
- Accidents happening while acting in breach of regulations, etc.
- Accidents happening while travelling in employer's transport.
- Accidents happening while meeting emergency.

The Supreme Court gave this landmark judgement, while awarding compensation to a young worker. In *Govind Yadav v. New India Insurance Company Ltd.*²⁵ the appellant was 24 years of age when he met with an accident resulting in amputation

²¹*Supra* note 8, Section 46 (1) (C).

²²*Id.* at Section 2 (8).

²³*Id.* at Section 51.

²⁴*Id.* at Section 51-A to 51-D.

²⁵CIVIL APPEAL No.9014 OF 2011 (Arising out of S.L.P. (C) No.30556 of 2009).

of his one leg and awarded compensation of ₹1,78,500 treating his income as ₹1500 per month, disability to be 70% and by applying a multiplier of 17. In appeal, the High Court enhanced the compensation to ₹3,06,000 with interest at the rate of 7% per annum at treating his income as ₹2000 per month.

The Highest Court held that both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were ₹3000 per month. Therefore, compensation payable to the appellant for loss of earning would be ₹4,53,600.

Considering increase in the cost of living, cost of artificial limbs the honorable court awarded a sum of ₹2,00,000 to the appellant for future treatment. As it is not possible to make precise assessment of compensation for pain on suffering, the appellant must be awarded a sum of ₹1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.

The appellant can be expected to live for at least 50 years and during the period he would not lead and enjoy life like a normal man. Prospects of his marriage had also considerably reduced. Hence a sum of ₹1,50,000 must be awarded towards loss of amenities and enjoyment of life. Thus, overall compensation of the appellant must be enhanced to ₹9,53,600 with interest @7% per annum from the date of filing the claim petition till the date of realization.

Medical Benefit

Medical benefit is the medical treatment for and attendance on insured persons.²⁶ An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit. Such medical benefit may be given either in the form of outpatient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as inpatient in a hospital or other institution. A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit [or is in receipt of such

²⁶*Supra* at 8 Section 46 (1) (e).

disablement benefit as does not disentitle him to medical benefit under the regulations].²⁷

It provides that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations. An insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement. It provided also that an insured person, who has attained the age of superannuation²⁸, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government.²⁹

The promulgation of Employees State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantees reasonably good medical care to workers and their immediate dependants.³⁰ Section 2(c)(vi) of the Act was amended in May 24th 2010 according to which in case the insured person is unmarried his or her parents are not alive, a minor brother and sister wholly dependent upon the earning of the insured person are eligible for it.

Principal employer has to pay contribution in the first instance, in case he has contractor etc. and the contractor etc. does not pay contribution, the recovery of

²⁷*Id.* at Section 56.

²⁸"Superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment.

²⁹Employees State Insurance Act, 1948, Section 56.

³⁰*Id.* Section 46 to 56.

contribution from immediate employer, can be made from the principle employer.³¹ There is a bar against receiving or recovery of compensation or damages under any other law. There are certain matters, which are to be decided by Employee's Insurance Court whether any person is an employee within the meaning of this Act etc. under section 75. If any person fails to pay contribution under the Act he is punishable under section 85. If there is a dispute regarding the percentage of the injury/disability appeal can be filed under rule 20-A to Medical Appeal Tribunal. Neither employer can reduce wages etc. of an employee nor can dismiss or punish employee during period of sickness.

Employees' State Insurance Corporation (ESIC)

Employees' State Insurance is a self-financing health insurance scheme for Indian workers. For all employees earning ₹15000 or less per month as wages, the employer contributes 4.75 percentage and employee contributes 1.75 percentage, total share 6.5 percentage.³² This fund is managed by the Employees' State Insurance Corporation (ESIC) according to rules and regulations stipulated in the ESI Act 1948, which oversees the provision of medical and cash benefits to the employees and their family through its large network of branch offices, dispensaries and hospitals throughout India. ESIC is an autonomous corporation under Ministry of Labour and Employment, Government of India. The concerned state governments run most of the dispensaries and hospitals.³³

The scheme, which was first introduced at two centres in 1952 with an initial coverage of 1.20 lakh workers, today covers 1.55 crore workers in about 790 centers in the country. It benefits about 6.02 crore beneficiaries including the family members of the insured persons, across the country. The scheme is being gradually implemented to cover new centers and steps are being taken for creation of requisite

³¹Section 40 and 41 of Employees State Insurance Act, 1948.

³²Employees State Insurance (Central) Rules, 1950, at Rule 51.

³³*Id.*

infrastructure for providing medical care to a larger number of insured persons and their families.³⁴

There have been a number of developments in the Employees State Insurance Scheme during the past three years. Each year, it is extended to new areas to cover additional employees. The new employees covered in 2009-10, 2010-11 and 2011-12 are 1.23 lakh, 1.14 lakhs and 1.58 lakh respectively. Low paid workers in receipt of daily wages up to ₹100 have been exempted from payment of their share of contribution. Earlier this limit was ₹70.³⁵ This measure has benefited about eight lakh insured workers across the country. In order to provide relief to insured persons suffering from chronic and long term diseases, the list of diseases for which sickness benefit is available for an extended period up to two years at an enhanced rate of 70% of daily wages, was enlarged by adding four new diseases,³⁶ keeping in view the international classification of disease profiles and the quantum of malignancies of some diseases which had come to light over the last few years.³⁷

In order to improve the standard of medical care in the States, the amount reimbursable to the State Governments for running the medical care scheme has been increased from ₹1200 to ₹1500 Per family unit per annum w.e.f. 01.04.2012. The ESIC has formulated action plans for improving medical services under the Employees' State Insurance Scheme with focus on modernization of hospitals by upgrading their emergency and diagnostic facilities, development of departments as per disease profiles, waste management, provision of intensive care services, revamping of grievance handling services, continuing education programme, computerization and up-gradation of laboratories etc. The Employees' State Insurance Corporation has also taken new initiatives to promote and popularize

³⁴Ministry of Labour and Employment, Government of India, available at <http://labour.nic.in/content/division/social-security.php> (visited on December 12, 2013).

³⁵Employees State Insurance (Central) Rules, 1950, Rule 52.

³⁶*Id.* at Rule 55.

³⁷*Id.* at Rule 55 (2).

AYUSH systems of treatment in Employees State Insurance Corporation Hospitals and Dispensaries in a phased manner.³⁸

Conclusion

It is clear from above discussion that there is multiplicity of social welfare laws run by different government units at central and state level, there is some amount of confusion at the level of beneficiaries as to what exactly they are entitled to. This involves the problem of duplication of efforts, record keeping and there is also a possibility of double or multiple benefits reaching the same person under different laws due to manipulation and corruption Administration of each scheme involves huge administrative cost. This will save huge costs on one hand, and simplify the system from the beneficiaries' point of view on the other hand. There should be one centralized database for all the health laws and access to the health benefits should be made available against one single identity number. Corporate sector cover for the organized sector, which can address medical care, accident benefits and old age pension should receive priority attention.

It has been observed that many establishments covered under this Act do not get a number of their employees insured under the same. When an accident /sickness occurs it causes a dispute over which Act benefits must be claimed through. Therefore stringent punishment needs to be levied on those defaulters who fail to cover their employees under this Act. It is suggested, to extend it food agencies in different states, have one single number of ESI, open more ESI hospitals, cover establishments with five employees and awareness about all the benefits of the ESI scheme.

³⁸Ministry of Labour and Employment, Government of India, available at <http://labour.nic.in/content/division/social-security.php> (visited on Dec. 12, 2013).