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# **A Comparative Study of Universal Declaration of Human Rights and The Constitution of India in View of Providing Social Security Rights to Unorganized Sector**

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**Abstract** - the right to social security is to serve as preservative of interests and rights of every person who works and of his family during the times of uncertainty and distress that occur by any reason of old age, sickness, accident, retirement, unemployment or death of the earning member. Social security aims to protect the individuals from adverse situations and help to strengthen them to overcome situations beyond their control. Accordingly universal declaration of human rights and the constitution of india has guaranteed certain basic human rights which are inalienable rights irrespective of cast, class, race, sex or nationality. The article intends to study the provisions of both the documents and make a comparative study in view of social security rights for every working individual.

**Key words:** social security, human rights, guaranteed rights, fundamental rights, sustenance, inalienable rights.

## **I. Introduction**

Human Rights are basic human values fundamental and inalienable rights of all members of the human family. Human rights are those rights which are equal in dignity and rights to all members of human family. They are inherent rights by virtue of their humanity. Human Rights are not dependent on any sanction or grant of any government or State. These moral values, claims and inherent rights of persons are articulated and formulated by United Nations and termed as the Universal Human Rights. Likewise when such moral values, claims and inherent rights of human rights are codified by the country's legislative system through which the citizens are guaranteed certain rights as fundamental rights and legal rights.

One of the greatest achievements of this century is an attempt to recognize the need to social security as a fundamental right as a basic human right entitled to all individuals. It is also appreciated that formal social security programs have been created by the respective governments for the realization of the principle of social security. It is also necessary for India to reform the social security systems in such a manner that would suit our social-economic conditions and also sustain the pressures of globalization.

When the Constitution of India was been drafted and specifically when the fundamental rights were been incorporated the makers of the Constitution had given proper thought to historical happenings, like the struggle for freedom, the Magna Carta, the French Revolution, principles of equality, liberty and other inherent rights, The American Bill of Rights, etc. The commission on human rights was also established in 1945 which had elaborately defined Human Rights. Our Constituent Assembly had taken note of these experiences while including the various rights in our Constitution.

One such legal right which is included as human rights in the Universal Declaration of Human Rights is right to social security which was recommended to be adopted by the member nations. According to the United Nations right to social security is a stage of development where human civilization is marked. Where it is not present, human beings will not be able to live with dignity and life would be reduced to mere subsistence. Absence of right to social security would lead to worst consequences for the present and future progress of the individual. Right to social security also would provide guaranteeing the enjoyment without discrimination according to International Convention on Elimination of all forms of Racial Discrimination. Similarly, The International Convention on the Protection of Rights of All Migrant Workers and their families also contain an express provision on the right to social security.

Apart from considering the global experiences, the constituent assembly had also studied the national requirements, its varied culture, language, regional diversities and such other components of our Indian social structure while formulating and drafting the chapter of Fundamental Rights. It was also necessary to study the economic capacity, that whether India would be capable of providing social security to all its working class, whether it is the organized or unorganized.

## II. Literature review

**“Study on discrimination of the girl child in Uttar Pradesh by social action forum manav adhikar New Delhi.”**- The study raises the issue of gender justice and the right to equality as enshrined in the constitution of India. It includes a thorough study of Universal Declaration of Human Rights and a comparative study of the Constitution and finds that yet there is denial of basic human rights to the girl child. The study aims at elimination of all forms of discrimination, public awareness and improves welfare provisions.

## III. Objectives

- 1) To study the Universal Declaration of Human Rights and other Conventions.
- 2) To study the provisions of Indian Constitution in view of social security.
- 3) To compare the two documents in view of social security provisions.

#### **IV. Scope of study**

It is a comparative study regarding the two documents, the Universal Declaration of Human Rights and The Constitution of India in view of providing social security to the unorganized sector.

#### **V. Purpose of study**

It has been observed that in spite of International efforts with regard to treating social security as a fundamental right, the Constitution and the States have shown no interest to include social security for the unorganized sector in the law books. This has worsened the position of the work force which is the highest contributory to the economy of the country. The purpose of the study is to compare both the documents and scrutinize if they provide for social security to the unorganized sector.

#### **VI. Research methodology**

The research is fundamental and is based on pure and applied research. The research has doctrinal method where the researcher has relied on library assistance, law books, law journals, Constitutional commentaries, law commission reports, ILO reports, e-journals and legal web sites.

#### **VII. Hypothesis**

**THE UNIVERSAL DECLARATION OF HUMAN RIGHTS HAS MADE EFFORTS BUT THE CONSTITUTION OF INDIA HAS FAILED TO RECOGNISE THE UNORGANISED SECTOR TO PROVIDE SOCIAL SECURITY.**

#### **INTERNATIONAL AND NATIONAL SENARIO IN VIEW OF SOCIAL SECURITY:**

The rights incorporated in UDHR and the two covenants ICCPR and ICESCR are legally binding on all those States which were parties to the treaties. These were elaborate legal rights which had emancipated in its preview all the inherent rights guaranteed by the States to any individual. Article 22 to 28 of the UDHR contains provisions relating to economic, social and cultural rights which are attributed to everyone in the universe.

Article 22 secures right to social security to every member of the society and accordingly national and international efforts should be made to realize these rights in accordance with the resources of each Member State. These rights are indispensable for the dignity and free development of the personality of the individual. Article 23 ensures to all the right to work and free choice of employment. It also ensures just and favourable conditions of work and protection against unemployment. Equal pay for equal work is also ensured under this Article. The Article also provides for just and favourable remuneration which would ensure an existence worthy of human dignity and supplemented by means of social security.

Article 24 gives every person a right to rest and leisure along with reasonable limitation of working hours and periodic with pay. Article 25 ensures everyone a right to a standard of adequate living for the health and wellbeing of his family. As food, clothing and medical care are necessary similarly, right to social security is important in the event of sickness, unemployment, disability, widowhood, old age or loss of livelihood in circumstances beyond one's control. Article 30 has very clearly laid down that the Declaration may not be interpreted as a right to engage in any activity or act aimed at the destruction of any of the rights and freedoms set forth in the Declaration.

Thus the UDHR is very clear about giving to every individual under employment a right to social security according to the economic capacity of the Member States.

It is revealed from the study that the nature of rights guaranteed by the Indian Constitution is different. The Constitution of India has two sets of rights – one contained in part III as fundamental rights and second contained in part IV as socio-economic rights. The part III rights relate to right to life, liberty, equality and are justiciable and the rights enumerated in part IV are non-justiciable and include right to employment, right to livelihood etc. The intension of fathers of the Constitution of setting aside these rights under part IV and non-justiciable, which are more important and relate to the subsistence of a person with dignity. They are basic socio-economic rights, may not be to deprive the citizens of their most important rights, but it only puts forward financial inabilities of the Indian Government.

Equal pay for equal work, right to work, education and assistance in case of unemployment, old age, sickness and disablement, humane conditions of work, living wage, decent standard of life, full enjoyment of leisure and social-cultural opportunities, interests of weaker sections of the society, raising the level of nutrition and living standard of people are all important rights which will recognize and decide the state of economy of any developing society. It is also necessary to decide whether these rights should belong to human rights or to socio-economic category that have enforceability. It is to be noted here that all the rights mentioned indicate that they all are social security laws which would help any individual lead a dignified life.

It's time to analyze and decide that those Human Rights identified by UDHR are included and find a respectable place as Fundamental Right in part III and IV of the Constitution of India. All these social security rights must be observed and we must feel pride in its observance than in their violation and breach or non-implementation. Article 51 of our Constitution provides that the States shall foster, respect for International laws, treaties and obligations. Article 253 gives power to the Parliament to make laws for implementing any treaty, agreement or convention.

#### **SOCIAL SECURITY-A STATE RESPONSIBILITY:**

Abiding to the various conventions of the United Nations and owing to safeguard and protect the individual's life from innumerable situations the Constitution of India has incorporated many Articles which has encompassed its organized sector in the social security circle. But it has been observed that there is lack of provisions for fulfilling the welfare state vision by organizing the unorganized sector that also work and contribute towards the per capita income of the economy. There are no provision for regulating the employment, working hours and other conditions of work of the unorganized sector. The minimum wage structure is also not made available to them. Under the ICESCR, the State parties are under obligation to adopt legislative and other measures keeping in view the progressive realization of the right to social security. Accordingly social security should be based on the ideals of welfare state, human dignity and social justice because the citizens who contribute or would contribute in future in the growth and development of the country should be provided protection socially, economically and politically. Social security should not be treated as a burden on the economy of any State but as a concern for the working class who would yield better dividends in future. The programs, plans and schemes of social security should be devised and addressed to meet the needs of the most vulnerable sections of the society.

It has been observed that the developing economy as India experiences severe financial crises. They also confront with a large number of workers with low, irregular and unsecured income that is unable to contribute to State based social insurance schemes. Another problem that is faced by the developing economies is incompetence in administration and management of social security

systems. The failure of social security schemes is also due to unqualified personnel's, illiteracy, poor working conditions, lack of regulatory laws and insufficient financial reserves.

A tabular format shall help us evaluate the various human rights that are incorporated in Indian Constitution. Article 12 to 36 provides various fundamental rights which are similar to some of the provisions under Universal Declaration of Human Rights.

<b>Sr. No.</b>	<b>Name of the Right</b>	<b>Universal Declaration</b>	<b>Indian Constitution</b>
1	Equality before law	Article 7	Article 14
2	Prohibition of Discrimination	Article 7	Article 15 (1)
3	Equality of Opportunity	Article 21 (2)	Article 16 (1)
4	Freedom of Speech & Expression	Article 19	Article 19 (1) (a)
5	Freedom of Peaceful Assembly	Article 20 (1)	Article 19 (1) (b)
6	Right to Form Association	Article 23 (4)	Article 19 (1) (c)
7	Freedom of Movement	Article 13 (1)	Article 19 (1) (d)
8	Protection from Conviction	Article 11 (2)	Article 20 (1)
9	Protection of Life & Personal Liberty	Article 9	Article 21
10	Protection of Slavery & Forced Labour	Article 4	Article 23
11	Remedy of Enforcement of Rights	Article 8	Article 32, 226
12	Right to Social Security	Article 22	
13	Right to Proper Social Order	Article 28	Article 38

## VIII. Conclusive suggestions

Social security laws, policies, plans and schemes would be meaningful if they provide adequate means and amount of economic help for what we consider today a respectful and dignified living. The laws must provide relief to the distress and loss caused by various reasons to the work force.

The existing Act of The unorganized worker's Social Security Act, 2008 should be revised and amended to incorporate for governance of the National Social Security Administration which provides suitable incentives to various stakeholders such as State Governments, fund managers, insurance companies, service providers and beneficiaries .

The State Social Security administration should be incorporated in each State which will be responsible for contracting of service providers and insurance companies, establishing the target beneficiaries, awareness creation, mobilizing resource for enrolment and grievance redresses. Addhaar linked benefits can be proposed since the scheme has gathered considerable momentum in these years. Social security schemes can be offered through Addhaar linked platform for which online connectivity must be established and ensured at service check points.

The Rashtriya Swasthya Bima Yojana should be revised through bidding for health insurance and the upper age for benefits of life insurance can be reduced to 55 years. Identification and enrolment of beneficiaries is the most important work to be done. Various NGO's can be involved in this process for different areas and simple group enrolment process can be introduced. Similarly the job provider can also be of help in identification and enrolment process. A duty must be cast upon the job provider/service provider to get enrolled the employee working with him. Also it can be made mandatory on the service provider to enroll themselves for engaging such workers.

It will be logical to enact universal law for the unorganized sector which would guarantee a minimum protection and welfare to all workers. Such arrangements will thus give full respect to the federal nature of our Constitution and the human rights declared by the UDHR through its various Conventions.

Awareness programs, seminars for the job providers regarding the laws and schemes existing for these unorganized workers should be encouraged so that they can help them avail these facilities and also enrolment process can be carried out through these job providers. Sensitization of the whole system which includes the governmental machinery, the NGO's, the employees and the job providers is also important. Looking at the unorganized sector in a humane way will help us achieve the dream that our Constitution makers had seen.

**“MY NOTION OF DEMOCRACY IS THAT UNDER IT THE WEAKEST SHOULD HAVE THE SAME OPPORTUNITY AS THE STRONGEST”. ----- M. K. GANDHI.**

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