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Insurance as a Social Security Mechanism in India: Constitutional, Legal and Regulatory Perspectives

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Abstract

Insurance has progressively emerged as one of the most significant instruments of social security in India. The situation has gradually developed insurances as one of the most influential social security tools in India. This paper focuses on discussing the complex role of insurance as a social security tool, the constitutional basis, the history, the theoretical background, the regulatory framework, and the experience of having government-sponsored programs. I consider the interface between welfare state theory and insurance-based social protection, evaluate the statutory and judicial environment on the sector, and critically review such flagship schemes as Pradhan Mantri Jeevan Jyoti Bima Yojana, Pradhan Mantri Suraksha Bima Yojana, Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana and Atal Pension Yojana. The paper finds major gaps in awareness and access and equity in the regions and closes with policy suggestions in fortifying insurance based social security in India.

Keywords: insurance; Social Security; Welfare State; IRDAI; Constitutional Provisions; Micro-Insurance; Informal Sector; India.

I. INTRODUCTION

In the modern administration of Indian society, the notion of social security has been broadened and transformed in its slow gestures of limited perceptions of welfare distributed by a state to include a wide array of practices of risk mitigation. Having been traditionally viewed as a privately-oriented financial tool, insurance has been gradually re-framed as a backbone of the social protection system of the country. The legislative pillars, on which this architecture is based, are the Insurance Act, 1938[1] and the Insurance Regulatory and Development Authority Act, 1999.[2]

The large informal economy of India marked by precariously constructed livelihoods and little occupational welfare is a daunting challenge to conventional social security. Article 38[3] and Articles 41 to 44[4] of the Constitution of India unleash the Directive Principles of State Policy providing a positive obligation on the state to provide adequate means of livelihood and to arrange old age and sickness and disablement and unemployment. To a large extent, Article 21 has been widely interpreted by the Supreme Court to encompass the right to access healthcare and social protection as part of the right to life.[5]

The schemes based on insurance have been presented and adopted as scalable, cost-efficient solutions that can target the economically vulnerable aspects of the population. The policyholders dissatisfied with substandard services have yet another provision of recourse at consumer protection laws, especially Consumer Protection Act, 2019.[6]

The Code on Social Security, 2020[7] is a historic legislative consolidation, as nine core labour laws are condensed into one law and social security responsibility is, for the first time, directly applied to the unorganised, gig, and platform economies workers. The micro-insurance regulation framework issued by the IRDAI[8] also aims to help the population

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with low income to gain insurance cover by the means of simplified products and distributors beyond the conventional insurance offerings.

The following are the aims of the research paper: to review the constitutional and historical placed roots of insurance as a social security tool, to analyse theoretical frameworks that resource insurance as a social security tool, to review the administrative and regulatory landscape in which insurance products are constructed, to review the schemes of insurance coverage and implementation results, and resource challenges and policy recommendation that are evidence-based. The methodology of the study is doctrinal and analytical based on the provisions of the Constitution, major laws, the regulations of the IRDAI, the work of the judiciary, governmental reports, and international comparisons.

II. RESEARCH QUESTIONS

The research questions that will direct the present study include:

1. Is the Indian constitutional system ever a sound normative basis of insurance based social security and to what degree have they really implemented this basis by legislation and judicial interpretation?

2. Which are the major theoretical frameworks such as welfare state theory, risk theory and human rights discourse that locate insurance within the wider architecture of the social protection and how do these considerations manifest themselves in India policy decisions?

3. Does the current legal system and regulations, including the Insurance Act 1938, the IRDAI Act 1999, as well as the Code on Social Security 2020, attain the objectives of universal, equitable and effective insurance based social security?

4. To what extent have the big government-funded insurance programs, Pradhan Mantri Jeevan Jyoti Bima Yojana, Pradhan Mantri Suraksha Bima Yojana, Ayushman Bharat-PMJAY and Pradhan Mantri Pension yojana widely offered social

security to vulnerable groups and what do the main barriers to implementation entail?

5. What policy and regulatory mobilizations must be applied to overcome those structural exclusions, regional differences and lack of awareness, which today hinder the actualisation of insurance-based social security on the most marginalized Indian population?

III.HISTORICAL AND CONSTITUTIONAL EVOLUTION OF INSURANCE AS A SOCIAL SECURITY MECHANISM

The story of Indian insurance is basically divided into three phases. When it was still a colony, it was a pre-independent pre-emptive affair that was restricted to the rich and the business persons. When the state gained independence the state then embarked on a large scale nationalisation of life insurance in 1956 general insurance in 1972[9] as the thinking was that insurance as a social good cannot just be left to the market. Liberalisation followed, when in 2000 the sector was opened up to the private player, the IRDAI was established and a competitive market boom ensued, yet the state continued to maintain a foot in the door in terms of using insurance as a means of social protection.

The Constitution does not expressly say a social security, but the Directive Principles provides that in articles 38, 41, 42 and 43 there is the assertion that the state must afford a decent standard of living, old age, sickness and disability, unemployment and the human working conditions. However, they are not mere symbols - the Supreme Court has applied these articles to expand fundamental rights, in particular Article 21, into the arena of social security.

Things that when placed alongside the welfare-state typology developed by Esping-Andersen[10] including the social democratic, the conservative, and the liberal regime, India does not fit easily into either category. It is a combination of provision by the state, contributory insurance plans and market delivery based on its separate development trajectory and financial limitation.The ILO Social Protection Floor[11] model of a minimum income and a basic services provision offers a helpful marker on how the Indian system of social security through insurance measures compares to the rest of the world.

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IV. THEORETICAL FRAMEWORKS: WELFARE STATE, RISK THEORY, AND INSURANCE AS A HUMAN RIGHT

V. LEGAL AND REGULATORY FRAMEWORK

The IRDAI is the highest regulatory organization in the Indian insurance market that the IRDAI Act of 1999 established. Its primary role lies in the protection of the policyholders, leading to the proper development of the market and ensuring financial stability of the insurance companies. The IRDAI possess far-reaching regulatory authority, where it issues regulations in registration, solvency margins, investment limit, and protection of policyholders and design of policies. Annual Report[15] is evidence of the expanding insurability in place, but continues with dire gaps in cover in the social sector.

I believe the involvement of the judiciary in the development of the insurances-based social security is immense. Consumer Education and Research Centre v. Union of India (1997)[16] the Supreme Court noted that the right to health was inherent in the right to life, and health insurance received a solid constitutional basis. The social nature of motor vehicle insurance was supported when the Court in National Insurance Co. Ltd. v. Swaran Singh[17] established that insurers are required to indemnify against third-party claims against them.

The latest significant change in legislation is the 2020 Code on Social Security. It links the insurance sector to labour law by combining nine labour laws and including unorganised, gig, and platform workers in the coverage. According to the Ministry of Finance data[18], the enrolment in the schemes supported by the government has increased impressively, but the rate of claim settlement and the awareness of policyholders remain to be low.

Despite all these precautions, however, real issues remain: regulatory arbitrage due to excessive number of statutes and other supervising bodies, ineffective supervision of payments made in claims, and financial illiteracy of the low-income policyholders. The conflict between market efficiency and social equity is obvious, and we should have a more closely knit, pro-poor regulatory policy.

VI. COVERAGE AND IMPLEMENTATION OF GOVERNMENT-SPONSORED INSURANCE SCHEMES

Hence, the Indian government push in implementing insurance based social security schemes is simply a reaction to a vast social protection issue that also has to operate within a narrow fiscal constraint. Consider Take the Pradhan Mauri Jeevan Jyoti Bima Jeevan Jeevan Yojana (PMJJBY)[19] which provides renewable life-insurance cover of Rs 2 lakh to individuals aged between 18 and 50 at an annual premium of 436, all done through banks. PMSBY[20] however is an accidental death and disability scheme in which the benefit amounts to Rs 2lakh and is given at only Rs 20 per year and is targeted at the poorer segment of society. Then there to the Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) [21] that provides the secondary and tertiary hospitalisation to the 107 previously mentioned poor and vulnerable families with an annual coverage of Rs 5, lakh per-family which makes it the largest health-insurance program in the world funded by the government. Lastly, there is the Atal Pension Yojana (APY)[22] which guarantees a monthly pension of between 1000 and 5000 on reaching 60 years old targeting the unorganised sector workers and providing them an incentive of government co-contribution to eligible subscribers.

The real challenge is in the informal sector. Judging by the fact that more than 90% of the Indian workforce in the informal sector is engaged in informal employment, providing meaningful insurance cover to them, indeed, demands completely innovative delivery models. The evaluation of World Bank of social safety nets[23] indicates that digital infrastructure has become significantly both a facilitator and inhibitor of insurance-based social security: the Jan Aadhaar Mobile (JAM) trinity simplifies collecting premises and paying claims, but excludes individuals without bank accounts, identity documents, and mobile-internet connections.

Redressal of grievances is also in chronic poor condition. Insurance Ombudsman is able to deal with the complaints of policy-holders, but it lacks the bureaucratic capability to deal with the mass-disputes of these mass-cover schemes. Regional disparities: enrolment and claim-settlement efficiency under AB-PMJAY in the south and west are higher than in the north and east, as many years of administrative capability gap, presence or absence of banking infrastructure, public education and awareness. The social inequalities are superimposed on the regional inequalities, as the Scheduled

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Castes, Scheduled Tribes, and women receive less than their proportion of the actual beneficiaries compared to their proportion of the eligible population.

VII. CRITICAL ANALYSIS AND POLICY RECOMMENDATIONS

The evaluation of the insurance-based social security in India reveals that despite the rising rates in the number of enrolments, the actual contents of the insurance cover, in terms of the actual utilisation of claims, the sufficiency of sum assured, and the ease of accessing hospitals enrolled in the scheme do not match the claims made by the schemes. The fact that the insurance market will shun the most economically marginal makes the situation more problematic since individuals are not financially literate, the claims infrastructure is a maze, and banks and digital infrastructure is not uniform across the regions and social classes of the country**.**

VIII.CONCLUSION

The role of insurance as a social security mechanism holds an even more central role in the social policy of India. The fact that its size is scalable, cheap, and sustainable to a very large and diverse populace does not need further elaboration. The promise of Indian social security via plays of insurance, though, in practice has not been fulfilled completely due to the lack of regulation, lack of implementation, structural exclusion of the most needy and a depth of regional and social inequality in accessibility and uptake.

The constitutional vision of welfare state that is devoted to the economic and social safety of every citizen entails the fact that insurance should not be considered as a financial product but as a public good that needs the maximization of the regulatory and promoting abilities of the state. It is the law and regulatory framework that gives the institutional architecture; what is needed is the political will, administrative capacity and long run public investment to put this framework into lived social security to the most marginalised Indian masses.

The sufficiency and fair distribution of the social protection mechanisms of India will become a very crucial factor to determine the inclusiveness of the development as the country proceeds with its developmental process. Insurance, well regulated, well financed, and fairly administered could be one of the strongest tools in the struggle to enhance social justice and human dignity - values which are at the core of the Indian constitutional order.

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