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## THE RIGHT TO SOCIAL SECURITY: A CRITICAL OVERVIEW

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### Abstract:

*The 1948 United Nations Universal Declaration of Human Rights asserts that social security is an inalienable human right. The general definition of Social Security is to repair and compensate for all social risks that threaten the lives of individuals and families. In a more general sense, social security is a set of legal actions taken by public entities to protect income following retirement, unemployment, old age, disability, loss of guardian, homelessness, disease, and death, and to ensure the well-being of individuals and families by providing public services such as health, housing, and so on. In this article, an attempt is made to present some of the key determinants of social security, the definitions as well as its legalization process, and the results and obligations of the government and international obligations arising from this process. Because of the importance and necessity of social security and its association with fundamental human rights such as the right to life, it is a fundamental right of human rights.*

*Keywords:* social security, administration, legal aspects, human rights, coverage, international

### I. Introduction:

Social security is one of the key human rights which originated in Germany in the year 1883. It involves systematic and voluntary payments from the trade members to cater for food, lodging, hospital or funeral costs of the elderly and disabled members. The definition of social security is usually understood as a right to maintenance for people who cannot work because of sickness, disability, pregnancy, employment injury, unemployment or old age. Social security in turn is interpreted as one of the fundamental human rights through the ILO's Declaration of Philadelphia (1944) and its Income Security Recommendation 1944 (no. 67). This right is protected under the Universal Declaration of Human Rights (UDHR) as well as International Covenant on Economic, Social and Cultural Rights (ICESCR) and other conventions. This right has been taken and appreciated by most states across the globe and implemented through legal tools.

This special issue of the International Social Security Review Discusses one of the international policy objectives of social security the fulfillment of human rights to social security. In the Universal Declaration of Human Rights by United Nations in 1948, there is an assertion that everyone has the right to social security and this has been described as an inalienable right based on national as well as international cooperation. The Social Security Minimum Standards Convention of the International Labour Organization contains guidelines for setting up social security systems that afford a basic level of protection to all.

Social security programs must aspire to be transformative (UNRISD, 2016) and to be a vector to help overcome structural inequalities in society. To achieve this, they have to overcome the administrative, budgetary, legal and technical barriers which impede the actualization of the unalienable human right to social security. The objective must be to provide social security coverage that is universal,

accessible to all, and equitably addresses each person's needs. To this end, to support the effective design of social security policy and to strengthen the administration of social security programs that are universal, What it means for all is the call for attention that all have to be covered, and simultaneously, the statement that it should be comprehensively considered as a goal that must be accomplished with regard to the heterogeneity of individuals and their potential needs".<sup>387</sup>

#### I. The Concept and Scope of Social Security:

- The conceptual framework of social security

Social security has ambiguity as a feature of its definition, so most countries lack the legal description of social security. Since the term "social security" came into common use in 1935 and was included in international, regional, and national laws, it has had a flexible meaning,<sup>388</sup> and its definition and scope vary among countries and international organizations. The ILO said, referring to this matter, that "there is no internationally accepted definition of social security yet"<sup>389</sup> and that "its meaning is different from country to country."<sup>390</sup> It is sometimes employed with other phrases like social service, social welfare, or social insurance among others. Social security is, in the general sense, the government's efforts to cover damage in some social events according to their facilities and in proportion with the economic and social conditions of the society. Social security arrangements are defined so that they include private and public (government) measures or a combination of the two measures that aim to provide income security for individuals and families. who are victims of events such as

unemployment, old age, illness, work-related injuries, disability, and death<sup>391</sup>.

More generally, Social Security aims to help meet the basic human needs of safety and comfort and cover natural losses, fear of hunger, disease, old age, unemployment, death and survivors, disability, old age, death, and increased costs of treatment and care for family members." In some instances, social protection and social security are used interchangeably, but, according to one theory, social security is different from social protection and is a wider concept.<sup>392</sup>

This view is also reflected in the report of the International Labour Organization. In its strictest sense, social security can be used to refer to measures related to the protection of the poorest, most vulnerable, and most disadvantaged people in society. And in a broad sense, social security can include social insurance, social assistance, and social services. Social security is created by governments or private companies to maintain the income of people and may be in the form of pension insurance, disability insurance, health insurance, unemployment insurance, or survivor's insurance. As noted earlier, the social insurance schemes can be educated, forced or even contributory in form depending on the group targeted for such insurance. They are identified by the notion that both the risk and resources are shared and bear some form of redistributive aspect. On the other hand, social assistance includes benefits in kind or in cash, which are usually procured based on the ability of governments and out of the overall tax revenue.

Provision of food and service at events such as stopping the flow of work, retirement, disability, and unemployment, as well as some international fundraising projects to support children and families, are examples. It seems

<sup>387</sup> Reflecting on the human right to social security: Katja Hujo, Christina Behrendt, and Roddy McKinnon

<sup>388</sup> Olivier M.P., Smit N., & Kalula E.R. (Eds. ), Introduction to Social Security, Butterworth's Publications, 2004, p. 13. Systems of social security, New Zealand, 1949, P. 3; 14; the cost of social security, 1949–1957, P. 2.

<sup>389</sup> ILO, World Labour Report 2000: Income Security and Social Protection in a Changing World, ILO (2000). Available at <http://books>.

<sup>390</sup> The ILO Convention concerning Minimum Standards of Social Security, 1952 (No. 102), available at <http://www.ilo.org>.

<sup>391</sup> Taleb, M. (2002). Social security, Astan Quds Razavi, Vol. 6, p. 40.

<sup>392</sup> The ILO Convention concerning Minimum Standards of Social Security, 1952 (No. 102), available at <http://www.ilo.org>.



that, viewed from any angle, social security is a flexible concept and includes social protection, social insurance, and social assistance.<sup>393</sup>

- **The scope of social security coverage**

With regard to the general and relative definitions of social security, determining the scope of social security coverage is an open question. In this regard, Convention No. 102 of the ILO (1952) is a pioneer in determining the minimum standards for social security. Medical care, sickness benefits, unemployment benefits, old age benefits, work injury benefits, family benefits, disability benefits, and survivor's benefits are some of the nine parts/branches of the basic standards introduced under the Convention.<sup>394</sup> Convention No. 102 has been designed on the basis that for the right to social security, there is no proper pattern for social security but that such patterns are first created and then evolve over time, and so the Convention shall not impose specific obligations on states that ratify it but rather provide a series of objectives based on the principles mainly agreed upon that provide a socially acceptable minimum for most governments. In interpretative comment no. 19 of the Committee on Economic, Social, and Cultural Rights of the United Nations that interprets the provisions of the International Covenant on Economic, Social, and Cultural Rights Act, it states that the right to social security as provided for in the International Covenant on Economic, Social, and Cultural Rights includes the right of access to provide the benefits, and you are not paid in kind and/or cash for it and if this ceases there is no care provider available if the family member dies, if you fall ill, if you are pregnant, if you are involved in a workplace accident, if you get fired or if you become a pensioner or the lack of access to health care or insufficient support for families, especially children.<sup>395</sup>

Today, Social Security covers a variety of allowances and pensions. Old-Age Benefits, Disability Benefits, Sickness and Maternity Benefits, Medical Care for Dependents, Work Injury Benefits, Unemployment Benefits, Family Allowance, and Medical Benefits are examples of social security in different countries, especially developed ones. State funds to guarantee different aspects of social security are different. But these resources can generally be classified into five categories: Employment-Related System, Universal System, Means-Tested System, Provident Funds System, and Employer-Liability System.

## II. **Social Security as a Human Right:**

- **International and Regional Instruments**

Many international, regional, and charter instruments have recognized the right to social security; some of them are as follows:

- *Universal Declaration of Human Rights (1948):* According to Article 22 of the Universal Declaration of Human Rights, "everyone has the right to social security as a member of society and can benefit from the size of national and international efforts given the organization and resources of each country's economic, social, and cultural rights in accordance with dignity and the expansion of the human soul. the text of the Article twenty-third states that, "a) everyone has right to work, to free choice of employment, to just and favorable remuneration, adequate social security and just and favorable conditions. b) Everyone has the right to be paid an equal wage for the same work, without advantage. C) Everyone has the right to receive a fair wage and satisfying work such that it would provide him and his family with a means of livelihood that is worthy of the dignity of human perfection and, if appropriate, the right to use all means of social protection".

<sup>393</sup> ILO, World Labour Report 2000: Income Security and Social Protection in a Changing World, ILO (2000). Available at <http://books>.

<sup>394</sup> Ibid.

<sup>395</sup> Charles Fombad, op. cit., P. 3.

Article 25 states that 'Everyone has the right to an adequate living standard that sustains their health and that of their family, including food, clothing, shelter and medical services.' This article concludes the preceding articles and states that the right to basic social aid in case of illness, unemployment, disability, widowhood, old age, or in any other situation when circumstances forced one to be independent against his will.

- *International Covenant on Economic, Social, and Cultural Rights (1966)*: This binding covenant formally recognizes the right to social security as a human right that belongs to the category of economic and social rights, but also supports families and recognizes the right of everyone to have a good standard of living, including food, clothing, and housing, and the progress of living conditions.<sup>396</sup> According to the Covenant, member states recognize that every person has the right to social security, including social insurance. The Convention also contains provisions on the protection of mothers on maternity leave<sup>397</sup> and social security benefits during pregnancy, the public enjoyment of the provision of medical assistance in case of illness,<sup>398</sup> and the right to work<sup>398</sup> and labor conditions, all of which are related to social security.
- *Documents of the ILO (1919)*: This organization, before and after the founding of the United Nations and the ratification of international human rights instruments, played a quite substantial role in the popularization and commencement of the right in social security in the international level. After the Second World War, the organization adopted dozens of protocols and twenty recommendations indicating approval

of social security, the most important of which is protocol number 102 which provides the minimum basis for social security, and the Protocol that was approved in 1952, which provides the international minimum standard for the level of social security, based on the principle that social security shall cover all events and extend to all people gradually. Out of the Latin American and Caribbean countries, most of them follow the guidelines set by the Convention-II and out of the European countries, it is almost everyone who follows the guidelines. ILO Recommendation No. 202 (2012) also affirms that the right to social security is a human right and is an economic and social necessity for development and progress.<sup>399</sup>

- **National regulations**

The right to social security is one of the human rights that has been incorporated in the constitutions and statutes of most countries. Social rights have only been included in the constitutions after the Second World War and rapidly after the formation of the International Labour Organization (ILO) in Europe. Some of the countries encompassing social rights in their constitutions were Estonia, Poland Italy, Greece Portugal Spain and Ireland. Similar to China, the United States of America passed the US Social Security Act in 1935 as a social insurance legislation that requires employers to provide for certain defined risks including; At other Risks: Old age, Survival, Disablement, and Unemployment. In the 1920 and 1930s, the countries like – Brazil, Uruguay, Argentina, Cuba and Chile. Honduras, Guatemala, El Salvador have introduced the first insurance plan. Later, in the year 1940s the insurance plan was also launched in many other countries of Central and South America including Mexico, Costa Rica, Ecuador, Panama, Colombia, and Peru. The first countries to adopt insurance plans were

<sup>396</sup> International Covenant on Economic, Social, and Cultural Rights". Office of the United Nations High Commissioner for Human Rights, 1966.

<sup>397</sup> United Nations Charter, 1045, Article 1.

<sup>398</sup> Ibid, Article 3.

<sup>399</sup> Ibid, Article 12

Nicaragua and Bolivia in the 1950s, while Venezuela, Guatemala, El Salvador, and Honduras adopted insurance plans in the 1970s.

Following the Second World War and the creation of the United Nations, governments for the first time identified social security as a human right and thus acknowledged its existence in legislation and adoption. To-day nearly all the European States include the right to social security in their constitutions. This human right is enshrined in the constitution of France, Belgium, Greece, Czech Republic, Denmark, Estonia, Spain, Ireland, Italy, Cyprus, Netherlands, Latvia, Lithuania, Luxemburg, Hungary, Malta, Poland, Portugal, Slovenia, Slovakia and Finland. As a result, although most African countries can provide social security on a basic level, their constitution recognizes this right, and, consequently, a number of African countries, including South Africa, Kenya, Ethiopia, Nigeria, and Uganda guarantee social security. Meanwhile, governments have chosen various methods for the realization of the right to social security. For example, the South Korean government has adopted a gradual approach in which, over a 12-year period, health insurance coverage was extended to the entire population.<sup>16</sup> The same procedure adopted by the Tunisian government for health and pension coverage for 60 percent of the working population in 1989 was increased to 84 percent in 1999. Karstaryka similarly made a gradual expansion of health coverage, and the Brazilian government chose to increase in three decades the support for older people. Thus, it might be suggested that almost all states today strive to create conditions that would ensure their citizens' right to social security through legislation or accession to regional and international treaties.

### **III. The Features and Advantages of the Right to Social Security:**

The right to social security as a human right shares features of other rights and further has specific advantages and characteristics. It applies for virtually all characters and thus is

the first and most broad. According to Articles 22 and 35 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Economic, Social, and Cultural Rights, social security belongs to everyone. It means the necessity of supporting (by governments) all residents (territory) and the expansion of social risk insurance for all the members of the community.<sup>400</sup> Universalism also means that Social Security is not limited to formal employment; informal employment is also covered by it. Such nature leads to the protection of women, children, migrants, asylum seekers, deprived minorities, and the permanent disabled. The second advantage of the social security entitlement is that, it is comprehensive.

The social security system covers all social risks, including the nine branches set out in ILO Convention No. 102 as a minimum standard, and on the other hand, the benefits and protections provided shall be such as to provide a decent life for people. In fact, support for social security should not only be comprehensive but also have the necessary depth<sup>401</sup>. These are some of the characteristics of non-discrimination, equality and equal treatment. Based on this principle, all citizens have equal social security, no matter their ethnicity, race, language, gender, or even nationality. As was already mentioned, more than 150 states have ratified the International Covenant on Economic, Social, and Cultural Rights, and 192 states have ratified the CRC. Both documents stipulate regulations on social security, and Convention No. 102 of international organizations ratified by nearly 50 governments has laid down the standards of the said rights.

Despite the important issues that were discussed, perhaps the most important advantage of the right to social security is the existence of international institutions supervising its implementation and exploring

<sup>400</sup> Badini, H. (2008). A critical study of the legal system of social security of Iran. *Journal of Law of the Faculty of Law and Political Science of the University of Tehran*, 38(4).

<sup>401</sup> *Ibid*, 62-63.



and developing it. The International Labour Organization, since its establishment, has always supported the establishment of social security systems and the realization of its objectives, in particular during the Second World War. Moreover, to ensure the sustainability of the international aspects of social security, the UN, the ILO, and the International Social Security Association have adopted measures in this regard and were required to monitor their implementation. The International Union of Social Security is the most important international institution that has brought together organizations, management departments, and institutions of social security and has always worked closely with the ILO in the development of social security. The Committee on Economic, Social, and Cultural Rights has had the leading role in defining and interpreting the provisions of the Covenant on Economic Rights, especially the right to social security, as mentioned in previous discussions of an interpretive comment by this committee.

#### IV. **Conclusion:**

720-800 million out of a population of 6 billion plus or roughly about 75 to 80 percent of the world's population is still not covered by social security, in spite of globalization. Furthermore, some of them have witnessed an actual decline of social security coverage due to problems which their governments encountered recently. This fact shows that international cooperation in view of paragraph 2 of Article 55 of the UN Charter to promote the right to social security (as a social right) has not been achieved as desired. State must uphold, defend, encourage and fulfil the right of access to social security as set out in the international instruments, while in real sense the State has not done so to the optimum. The social security legislation does not cover most of the deserving and vulnerable people in the society, this is due to the fact that most of these people are not recognized as employers in the nation. Those excluded from social security legislation are the unemployed, informally-employed, migrant workers and non-citizens. Rural and unorganized workers are

completely ignored from the coverage of such laws, which deprives them of getting benefits under Social Security laws that are being enjoyed by organized workers.

Therefore, it can be concluded that the state has not fully realized the right to social security. It can, however, be safely concluded that the state is gradually advancing the right through mechanisms that have been put in place, such as policies, programs, projects, and legislation that enable the fulfillment of the right in question. However, the second generation of human rights, including social security and welfare rights, can be expected to be realized only proportional to the resources, facilities, and capabilities of the government and some social and cultural realities. It should be noted that the commitment to progressive realization cannot and should not be an excuse for neglect or abuse of the right. Second-generation rights, despite the difference in quality and process of realization, are not different in terms of the government's commitment to the implementation of effort and good faith in the execution, as are civil and political rights (first generation), and this marks the indivisible nature of human rights.

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