

**ASSESSMENT OF EMPLOYEES STATE INSURANCE SCHEME AS SOCIAL
SECURITY IN WEST BENGAL**

Surja Kanta Baladhikari*

ABSTRACT

The Employees State Insurance Corporation is an autonomous corporation under Ministry of Labour and Employment, Government of India and it regulates the functioning of the Employees State Insurance Act. It can set up hospitals either independently or State Government or other private organization. The Act intends to attain the goal of socio-economic justice incorporated in the principles of state policy under Part 4 of India's constitution, in particular Articles 41, 42 and 43 of The Constitution of India which enable the state to make provision for securing the right to work, education and public assistance in cases of unemployment, old age, sickness and disablement. The Employees State Insurance Act has been drafted according to the International Conventions of Indian Labour Organization such as Social Security (Minimum standards) Convention, 1952, and such other Conventions and such others. The ESI Act has provision for various benefits under the heads of medical benefit and cash benefits, the cash benefits have been structured in such a way that it solves the purpose of medical benefits. The Act is legislated in such a way that the employer, employee and government has to contribute based upon the employment to generate funds to run the ESIC. The State of West Bengal has been selected by the author to assess the implementation of the ESI Act where it is understood that the State and the Centre has to work together to make further policies, laws and regulations for better implementation of social security rights of the people.

* Surja Kanta Baladhikari, Research Assistant, Centre for Regulatory Studies, Governance and Public Policy, West Bengal National University Of Juridical Sciences, Kolkata. E-mail- surjakanta@gmail.com

(1) INTRODUCTION:

Employees State Insurance Scheme is one of the measures of Social Security and plays a very important role by taking care of the health of the employees and their families working in several small organizations. Social Security holds a pivotal role in the society; it helps in abridging¹ gaps between people which is often caused due to low income and status in the society by giving a sound working environment lowering the inequity and inequality among people. Social Security eradicates the factors of discrimination² on the basis of nationality, ethnicity or gender by ensuring the rights or benefits as a matter of legal entitlements.

The right to social security is recognized as a human right in fundamental human rights instruments, namely the Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights³ (ICESCR) and enshrined as such in other international and regional legal instruments. In 1952 the International Labour Office defined social security⁴ as:

"the protection⁵ which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children."

The concept of Employees State Insurance Scheme is regarded as one of the measures of social security. The scheme functions under the Employees⁶ State Insurance Act 1948. The

¹ Social Security for Social Justice in a Fair Globalization Report VI <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_152819.pdf> accessed 8 April 2016

² *Ibid.*

³ International Covenant on Economic, Social and Cultural Rights <<http://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>> accessed 8 April 2016

⁴ Convention 102.

⁵ (ELO 1984:2-3).

⁶ Employees State Insurance Act 1948 <<http://www.esic.nic.in/tender/esiact1948amendedupto010610.pdf>> accessed 8 April 2016

Labour Department⁷ is one of the major departments of the government which has the primary objective of bonding relations between the industries and its workers by ensuring their basic rights for them in the workplace.

There state and centre have worked on mechanism in providing social security on the society in form of various measures in form of Minimum Wages⁸ Act, Payment of Gratuity⁹ Act, Industrial Dispute¹⁰ Act, Trade Unions Act and such others along with state based legislations such as West Bengal Payment of Subsistence Allowance¹¹ Act, 1974, West Bengal House Rent Allowance Act 1974, West Bengal Unorganized Sector Workers Welfare¹² Act 2007 and many.

Social Security and social protection has been guaranteed¹³ under the Constitution¹⁴ under Part IV, Directive Principles of State Policy but the these directives are not enforceable in the court of law though the Supreme Court from time to time have said that for the proper functioning of the Government it has to be an integral part and incorporating the same while framing policies and laws. Social Security is usually given by the prevalent social insurance laws and policies in the society. India did not have a formal¹⁵ social security regime during the British Government, the concept of joint family system was held to be a source of social protection.

⁷ Annual Report 2012-13 of Employees State Insurance Corporation; Panchdeep Bhawan C.I.G. Marg, New Delhi – 110002 <http://www.esic.nic.in/publications/annaul_report_30.6.14.pdf> accessed 8 April 2016

⁸ Minimum Wages Act 1948 <<http://www.ilo.org/dyn/travail/docs/623/minimum%20wages%20act%201948.pdf>> accessed 8 April 2016

⁹ Payment Of Gratuity Act 1972 <<https://mahakamgar.maharashtra.gov.in/images/pdf/payment-of-gratuity-act-1972.pdf>> accessed 8 April 2016

¹⁰ Industrial Dispute Act 1947 <http://pblabour.gov.in/pdf/acts_rules/inustrial_disputes_act_1947.pdf> accessed 8 April 2016

¹¹ West Bengal Payment of Subsistence Allowance Act, 1974 <<http://www.commonlii.org/in/legis/wb/act/wbposaa1969427.pdf>> accessed 8 April 2016

¹² The West Bengal Unorganised Sector Workers' Welfare Board <http://wb.gov.in/wblabour/download?alf_path=webcontent/directorates/labourdir/schemes&alf_f_name=west_bengal_unorganised_sector_workers_welfare_board_saspfuw.pdf> accessed 8 April 2016

¹³ Debi S. Saini, *Social Security Law in India* (Wolters Kluwer, 2011), 44

¹⁴ The Constitution of India in the seventh schedule contains three lists such as Central List, State List and Concurrent List where the primary objective of social protection laws is the responsibility of the state that whether the implementation is based on the Central approach as the Central Government provides aid for the implementation of such schemes. The matters relating to labour disputes, trade unions, social security, social insurance, labour welfare age-old pensions finds place in the Concurrent list.

¹⁵ *Supra* N. 14.

The Indian system of social security can be divided under four heads as employer's unilateral¹⁶ liability, social insurance, provident funds and social assistance. The most common type of social security is the employer's unilateral liability as imposed by legislation to insure the liability according to the Laws. The Employees State Insurance Act has a contributory nature of functioning where employers, employees and to a certain extent the State contribute to a fund out of which various types of benefits are provided to the beneficiaries. The benefits covered under the Act are proportionate to the average daily wage of the employee concerned. The major sources¹⁷ of social security laws in India are: (a) Primary Legislation – Acts of Parliament and State Assemblies (b) Secondary Legislation – Regulations and Rules to give effect to the legislations (c) Case Law – Decisions of Supreme Court and High Courts and Employees Insurance Courts (d) Collective Bargaining (e) Individual Contracts (f) International Standards and International (g) Agreements and Conventions. The Employers State Insurance Act 1948 encompasses¹⁸ is one of the primary social insurance schemes in India.

(2) The Employees State Insurance Act as Social Security:

The Social Security (Minimum Standards) Convention¹⁹, 1952 covers nine social security benefits such as (a) Medical²⁰ care (b) Sickness²¹ Benefit (c) Unemployment²² benefit (d) Old-age²³ benefit (e) Employment²⁴ injury (f) Family²⁵ (g) Maternity²⁶ (h) Invalidity²⁷ and (i) Survivor's²⁸ benefit. The objectives stated in the Convention are guarantee of certain defined benefits, participation of employers and workers in the administration of the schemes. The convention also ensures equality in treatment of non-nationals and nationals when money is paid from public fund.

¹⁶ *Ibid* 47.

¹⁷ *Ibid* 49.

¹⁸ *Supra* N 6.

¹⁹ Convention No. 102 <
http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::p12100_ilo_code:c102> accessed 8 April 2016

²⁰ Part II of Convention No. 102.

²¹ Part III.

²² Part IV.

²³ Part V.

²⁴ Part VI.

²⁵ Part VII.

²⁶ Part VIII.

²⁷ Part IX.

²⁸ Part X.

The state has the role in the proper implementation of the Scheme and in the effective running of the institutional infrastructure in terms of financing of the benefits and ensuring the flow of contributions from employees and employers. The persons who are said to be covered under these schemes are special categories of employees, active population of residents and families of beneficiaries. Employees State Insurance Scheme is one of the largest social security benefits in the country. The scheme is monitored and administered by The Employees State Insurance Corporation in conjunction with the respective State Governments. The benefits under Employees State Insurance Scheme include medical benefits and cash benefits which are provided to the insured persons through ESIC, which is entrusted to administer the medical benefits to the insured persons and their families with a family size of 3.8 in State of West Bengal²⁹. ESIC comprises member's representing from employers, employees, the Central Government, State Government, medical professionals and Parliament. The division for sharing of expenses for medical benefits between ESIC and the State Government in the ratio of 7:1 which is however subjected to a limit per insured person as fixed by ESIC. The present ceiling of expenditure of Rs. 1500 per Insured Person per annum was fixed³⁰. There is at present 11, 16,515 I.P's and 44 lakhs beneficiaries. The ESI scheme applies to bodies or establishments with 10 or more persons employed in such organizations ESI scheme such as small shops, factories having facilities of power or not, private educational institutions and private health care institutions have also been brought under the scheme with a wage ceiling of Rs. 15000/- per month and 25,000 /- per month for physically challenged employees to avail the benefits under the Scheme.

²⁹ Here the author primarily focuses in the assessment of the ESI Scheme in West Bengal.

³⁰ w.e.f. 01/04/2012.

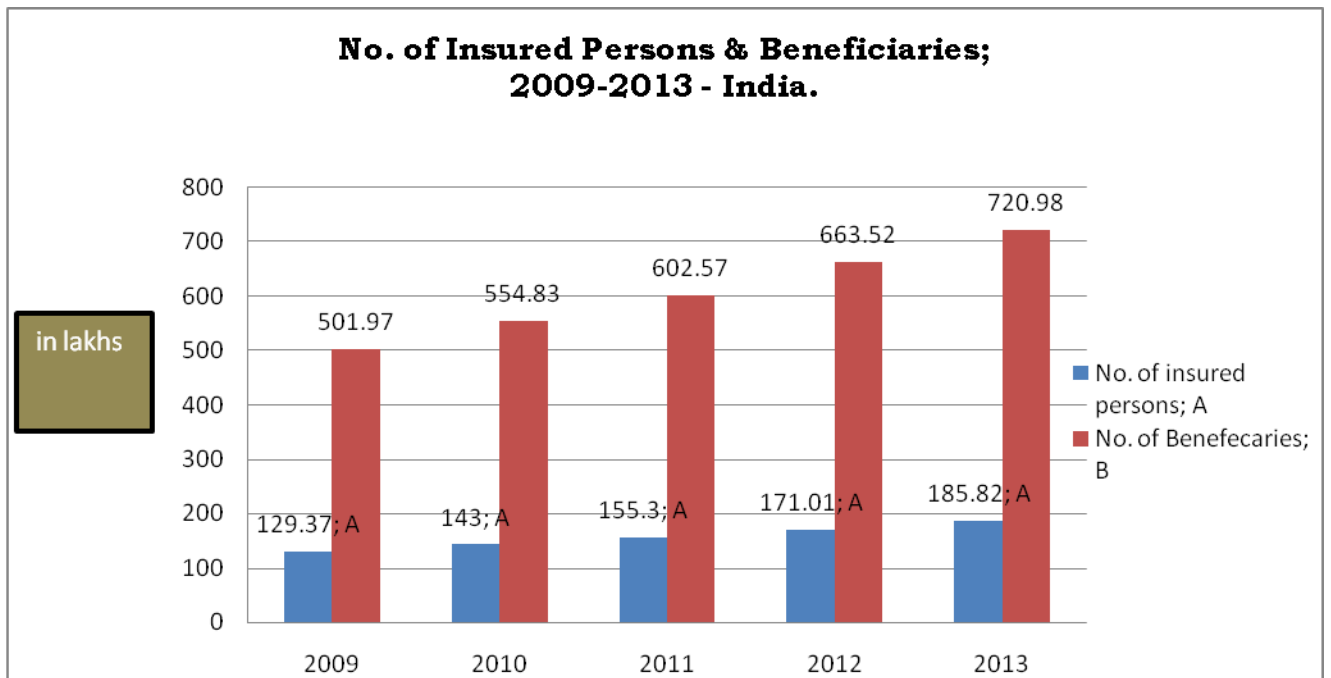


Figure 1: Source: Annual Report on Employee’s State Insurance Corporation as on 31.03.2013.

When a person is employed in an establishment, he is required to fill in a declaration form thereafter he is allotted a registration number, which gives him an identity to receive the benefits under the scheme. A person is registered once and only upon his entry in insurable employment. In the case of *Balakrishna v ESIC*³¹ it was held that a worker covered under the Act will be entitled to benefit from the date of his employment and not from the date of registration after contribution by the employer.

(2.3) IMPACT AND IMPORTANCE OF SOCIAL SECURITY ON SOCIETY:

Social security benefits must reach the targeted³² groups at optimised cost. The benefits are required to be managed in a proper way so that there is no miss-utilisation of funds and stop any such mal-practice which might come in the way of the beneficiaries of the Scheme. There has been a discussion over time with proper delivery, adjudication and supervision of the scheme. The study compiled by ILO in regard to cash transfer programmes

³¹ M Gopinath & Hari Krishna, ‘Employee State Insurance: For A Handful of Contribution, A Bagful of Benefits’ <http://ccs.in/internship_papers/2003/chap6.pdf> accessed 8 April 2016

³² Social Security for Social Justice and A Fair Globalization <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_152819.pdf> accessed 8 April 2016.

which have run for ten years in the developing countries has resulted in a positive human impact along with bringing stability in the society. Families also benefitted³³ from the cash transfer schemes economically as they would invest the cash in purchasing cattle's or in setting up or adding small business.

The medical benefits such as such as sickness, maternity, temporary or permanent disablement, Occupational disease or death due to employment injury, resulting in loss of wages or earning capacity-total or partial covered under the Act holds a pivotal position in the ESI Scheme because this is the only benefit which provides benefit to the insured person as well their families. The cash benefits included under scheme are linked in such a way that it caters to the need of medical treatment. The benefit can be given out to out-patient treatment and attendance in a hospital or dispensary, clinic, or other institution or by visit to the home of the insured person or treatments relating to in-patient in a hospital. The scheme provides facilities such as immunizations of young children of the insured persons for diseases like diphtheria, pertusis, polio, tetanus, measles, mumps, rubella, tuberculosis, etc. The ESI scheme caters for the social welfare of the beneficiaries by providing cash benefits by encouraging sterilization method by sickness cash benefit to that of equal to full wage for a period of seven days for vasectomy and fourteen days for tubectomy. Insured persons long with their family are also provided with medical treatment of artificial limbs, hearing aids, artificial appliances like spinal supports, cervical collars, walking callipers, crutches, wheel chairs, pace makers as a part of medical benefits under the act.

Convention on Maintenance of Social Security Rights³⁴, 1982 ensures that each member can participate with every other concerned member in schemes for the maintenance of rights³⁵ with respect to various branches of social security. The Convention mandates that the members to provide schemes for maintenance and to determine the policy for benefits disbursement of old age, survivor's benefits and pensioners benefit in respect of occupational

³³ ILO: Effects Of Non-Contributory Social Transfers in Developing Countries: A Compendium (Geneva, 2010) < https://www.research.manchester.ac.uk/portal/files/32800126/FULL_TEXT.PDF> accessed 8 April 2016.

³⁴ Maintenance Of Social Security Rights Convention, 1982 < http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::p12100_instrument_id:312302> accessed 8 April 2016

³⁴ *Ibid.*

³⁵ Social Security: International Labour Organization and India < http://shodhganga.inflibnet.ac.in/bitstream/10603/6251/7/07_chapter%203.pdf> accessed 8 April 2016

diseases and the calculation of cost for such disbursement. The Convention further ensures that each member shall guarantee the provision of invalidity, old age and survivor's cash benefits, pension in the case of employment injuries³⁶ and death grant and other benefits, which are received by the parties when they mutually agree. The members are also required to promote³⁷ the efficiency of services to assist person who come under the purview of this convention, primarily for the migrant workers along with their family.

The concept Basic Social Security Floor³⁸ is an international concept which is practised by social transfers in cash and in kind for all citizens ensuring:

1. All the residents having access to essential health care benefits³⁹ with the help of the State make sure the proper delivery of the benefits and its smooth financing.
2. All children enjoy income security at least when they are at the poverty level by various family and child benefits policies whose primary objective is to provide nutrition, education and care.
3. Targeted income support for the poor, unemployed in the active age group who are able and fit to work.
4. Old-age residents or persons with disabilities to enjoy social security benefits by way of pensions.

(2.1) Steps to provide better and efficient services:

(2.1.1) Project 'Panchdeep': Digitisation⁴⁰ of records for ensuring efficiency in providing the services to employers and insured persons, IT Project titled '*Panchdeep*' has been launched.

(2.1.2) Employer Portal under 'Panchdeep': The Employer Portal⁴¹ allows several transactions online which does not require visiting ESIC thereby saving time for services like registrations of employer and employee being online. The portal also helps employers to file

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ This is a part of The Concept of a Global Social Floor or Global Socio-Economic Floor that was promoted Inter-Alia by The World Commission on Social Dimension of Globalization in 2004 P. 110.

³⁹ Social Protection Floor <<http://www.ilo.org/secsoc/areas-of-work/policy-development-and-applied-research/social-protection-floor/lang--en/index.htm>> accessed 8 April 2016

⁴⁰ Making India a Better Workplace for all < <http://www.esic.nic.in/pdf/mole-e-book.pdf>> accessed 8 April 2016

⁴¹ *Ibid.*

monthly contributions, generate temporary identity cards and create monthly contribution challans online.

(2.1.3) e-Biz Platform: ESIC is set up to ensure flexibility⁴² of business and to cut down on transaction costs through e-Biz portal of the Department⁴³ of Industrial Policy and Promotion (DIPP).

(2.2) FINANCE:

The ESI Scheme functions from the contributions of employers and employees. The rate of contribution⁴⁴ by an employer is 4.75% of the wages payable to employees. The employees' contribution is at the rate of 1.75% of the wages payable to an employee. The State Government's share of expenditure on the provision of medical care is to the extent of 12.5%. The maximum sharable amount is subject to the ceiling prescribed by the Corporation from time to time, the expenditure above the prescribed limit is taken by the respective State Government. The contribution from the employer is deposited⁴⁵ in the designated branches of some nationalised banks. The employer has the right to deduct the employee's contribution from his wages relating to the period⁴⁶ in regard to the contribution.

(2.3) IMPLEMENTATION OF THE ESI ACT:

The ESI Act has been implemented⁴⁷ for the benefit of insured persons of the districts Kolkata, the District of South 24-Parganas, North 24-Parganas, Howrah, Hooghly some parts of Nadia District (Kalyani, Haringhata Fulia, Saguna, Chakdaha and Ranaghat), in Burdwan District (Asansol, Ranigunj, Durgapur, Burnpur, Hirapur P.S.) In Midnapore District (Haldia, Kharagpur) are now covered under full medical care benefits. The Scheme has also been extended to Jalpaiguri district of Siliguri in North Bengal.

⁴² *Ibid.*

⁴³ Role and Functions of the Department of Industrial Policy & Promotion < <http://dipp.nic.in/English/AboutUs/Roles.aspx>> accessed 8 April 2016

⁴⁴ *Supra N.6.*

⁴⁵ The Employees State Insurance Act 1948, s. 26 & 27; *Supra N. 6.*

⁴⁶ Employees Guide-2003 'Know Your Scheme'.

⁴⁷ There are 13 ESI Hospitals across The State of West Bengal. See Labour in West Bengal 2012-13, Annual Report.

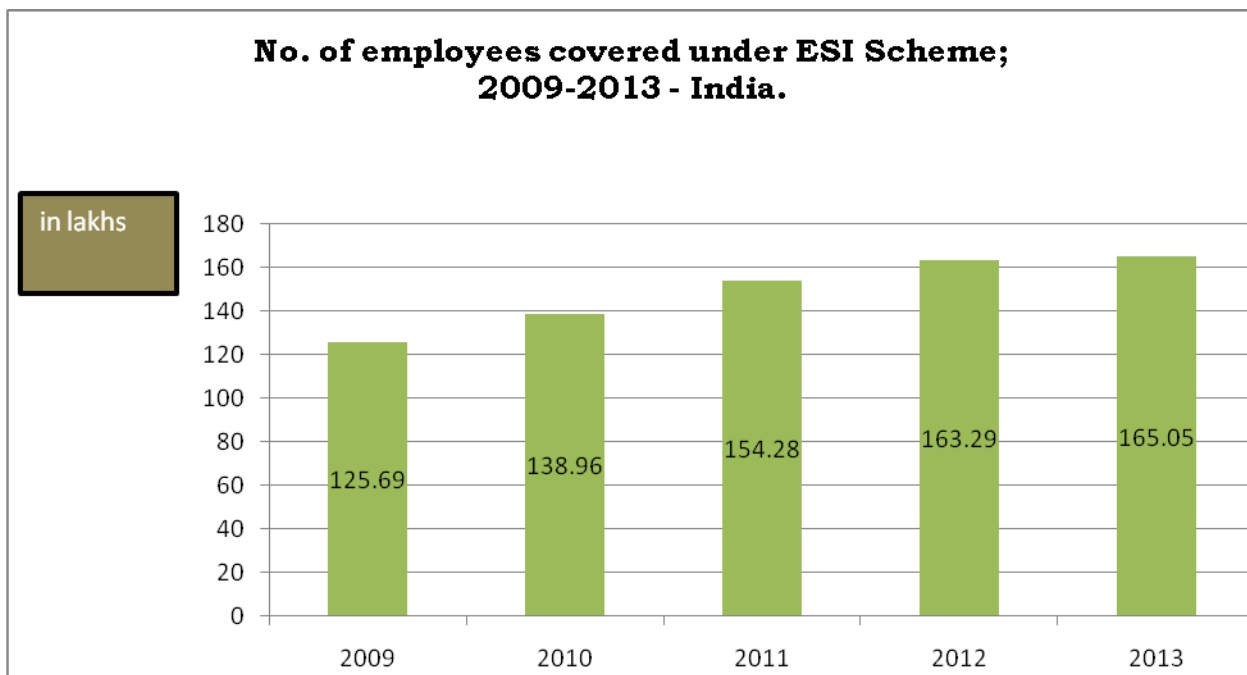


Figure 2; Source: Annual Report on Employee's State Insurance Corporation as on 31.03.2013.

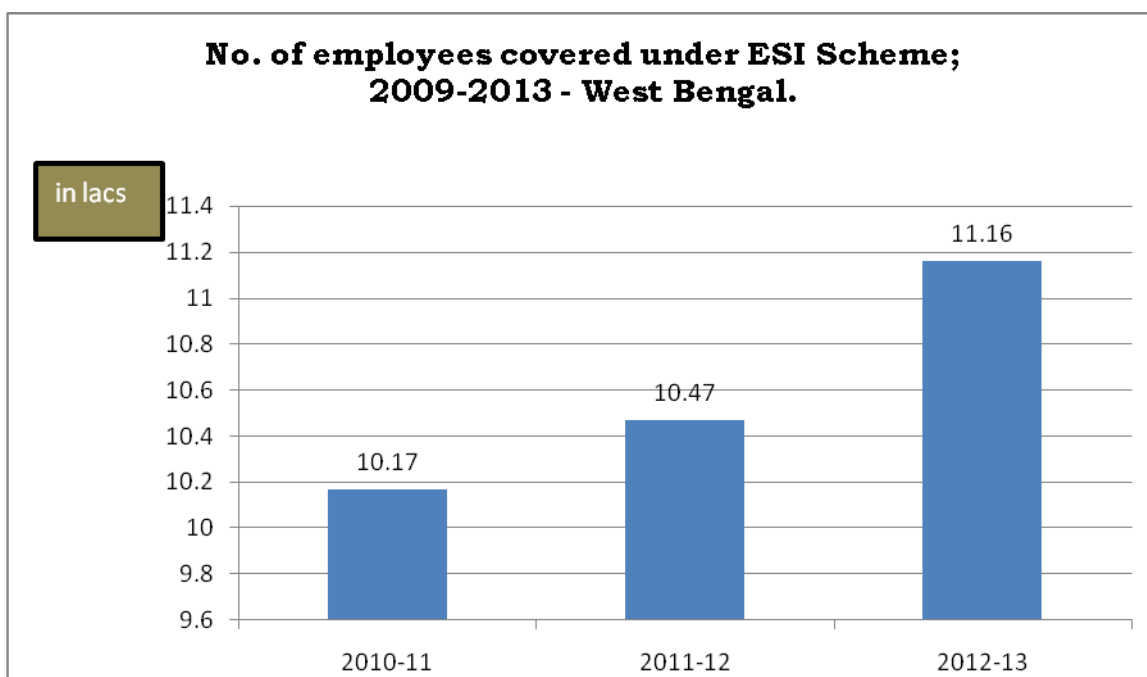


Figure 3: Source: Labour in West Bengal, 2012-13 Annual Report.

The ESI Act covers workers in the organised⁴⁸ sector only. At present about 14.30 million workers (i.e. 52.44% of organized sector) are covered under the Employees' State Insurance Act, which represents only about 3.11% of the total work force in the country. The ESI Scheme as on 31.03.2011, applied to 4.43 lakhs employers employing 1.55 crores insured persons at 790 centres. The cash benefits are distributed through ESIC using its local offices, sub-local offices, pay offices by maintaining contributory conditions.

(3) BENEFITS UNDER THE ESI ACT:

The Employees State Insurance Act discusses various benefits Act the insured employees and their dependants are entitled to. The benefits⁴⁹ are categorized as medical benefits and cash benefits. Under medical benefits (a) medical benefit (b) sickness benefit (c) extended sickness benefit (d) maternity benefit (e) temporary disablement benefit (f) permanent disablement benefit (g) dependents benefit and (h) funeral expenses. Section 46⁵⁰ of the Act enumerates the following:

(3.1) Medical Benefit: The Medical Care and Sickness Benefits Convention⁵¹, 1969 protects the workers by determining the amount of medical care by adopting a curative and preventive approach along with determining compensation for loss of earning through sickness. The Convention mandates the ratifying states to implement the provisions of medical care and sickness benefit for the employees or specified classes of persons. It further talks about expanding the scope of medical care to wives and children of persons covered and must include the provisions of hospitalisation, pharmaceutical and surgical supplies and dental treatment. The provision of sickness benefit must be a periodical payment in relation to the wage of a male member of a beneficiary's previous earnings or at proper rate by which their family can be maintained which cannot be less than 60% of the earnings of the respective class of employees to which the beneficiary belongs.

⁴⁸ S T A N D A R D N O T E on Employees' State Insurance Scheme < <http://www.esic.nic.in/publications/standardnote310712.pdf>> accessed 8 April 2016

⁴⁹ *Supra* N. 6; Section 46 of The Act Employees State Insurance Act 1948.

⁵⁰ *Ibid.*

⁵¹ C130 - Medical Care and Sickness Benefits Convention, 1969 (No. 130) < http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::no:12100:p12100_instrument_id:312275> accessed 8 April 2016

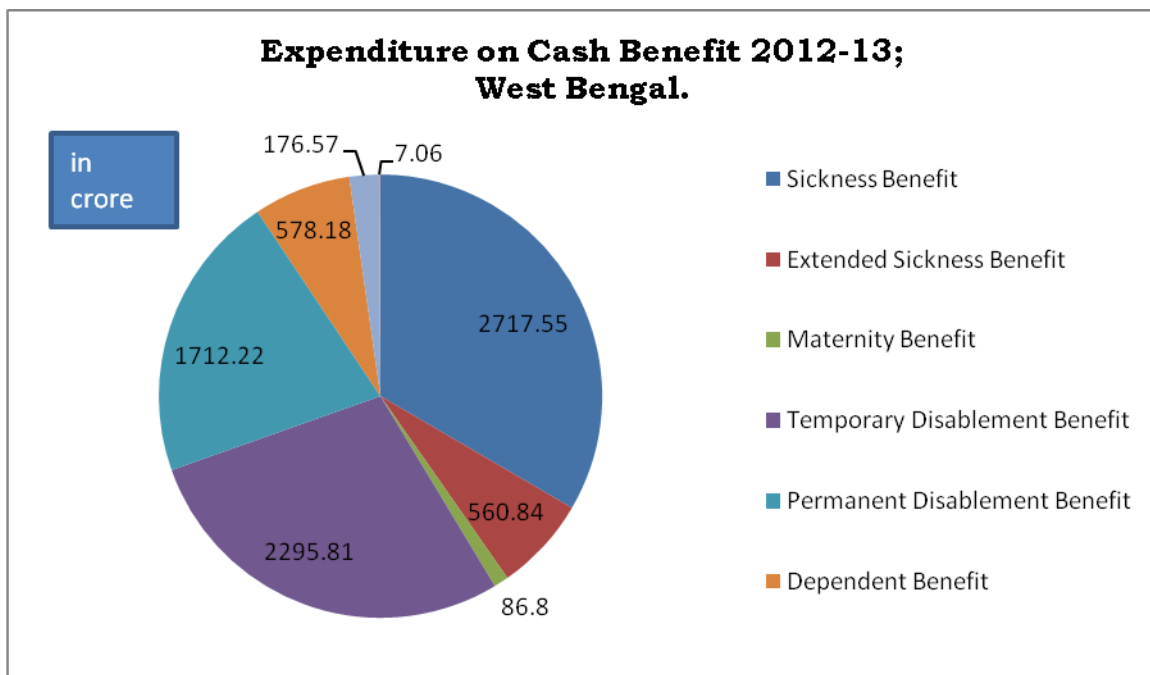


Figure 4 Source: Labour in West Bengal, 2012-13 Annual Report.

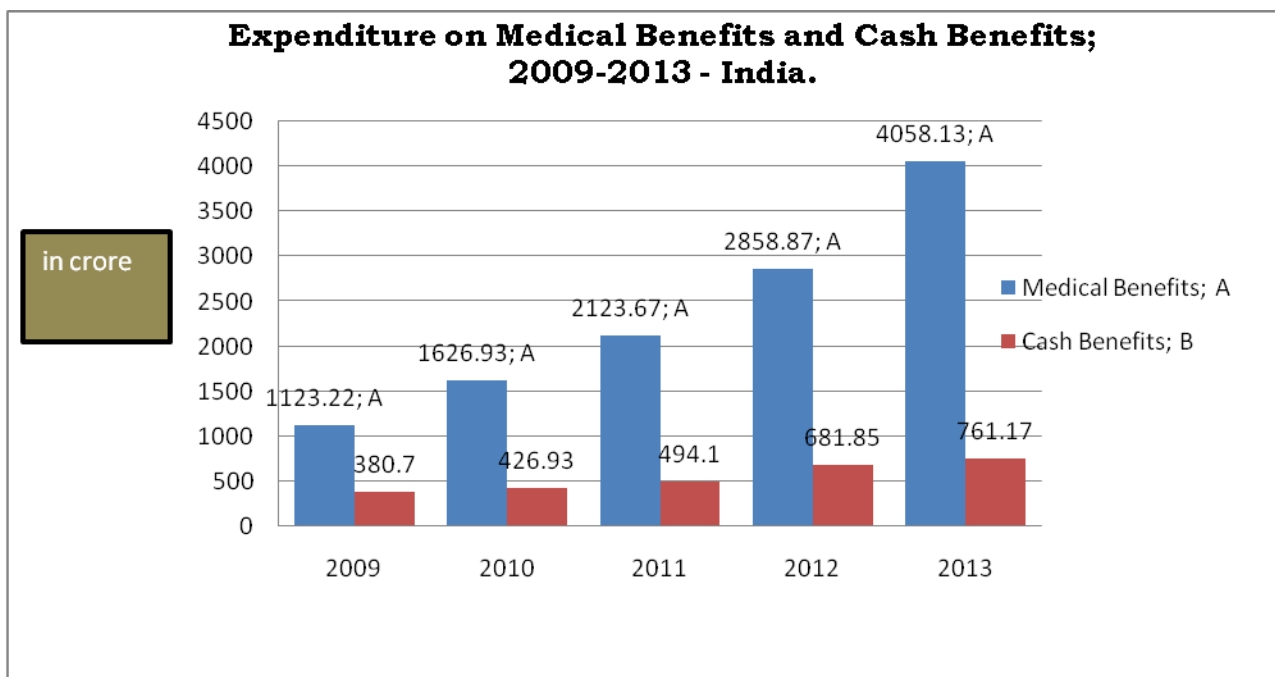


Figure 5 Source: Annual Report on Employee's State Insurance Corporation as on 31.03.2013.

The insured persons under the ESI Act across areas along with their family members are entitled to hospitalisation which comes as medical care for the employees. In-patient

services are provided to the insured persons in the ESI hospitals or by making reservations⁵² in government- run hospitals or such other private organisations. Benefits under medical care include indoor treatment for IP's and their families in hospitals, including all specialities. In-house treatment of implantation of pacemaker, cardiology treatment, oncology, hand surgery and other treatments are provided. Facilities for out-patient treatment including Service Dispensaries Insurance Medical Practitioners clinics are also provided. Women beneficiaries are provided with ante-natal and post-natal care. They are also educated on family planning with immunization. There are at present **57** Service⁵³ Dispensaries across all Districts of West Bengal for treatment of out-patients. The services or facilities for out-patients include radiological and pathological investigations, free supply of drugs, ambulance facilities, AIDS prevention, awareness and control initiatives, treatment of tuberculosis through DOTS, supply of hearing aids and spectacles. Insured persons are also issued certificates according to procedures in respect of sickness, maternity and other ailments.

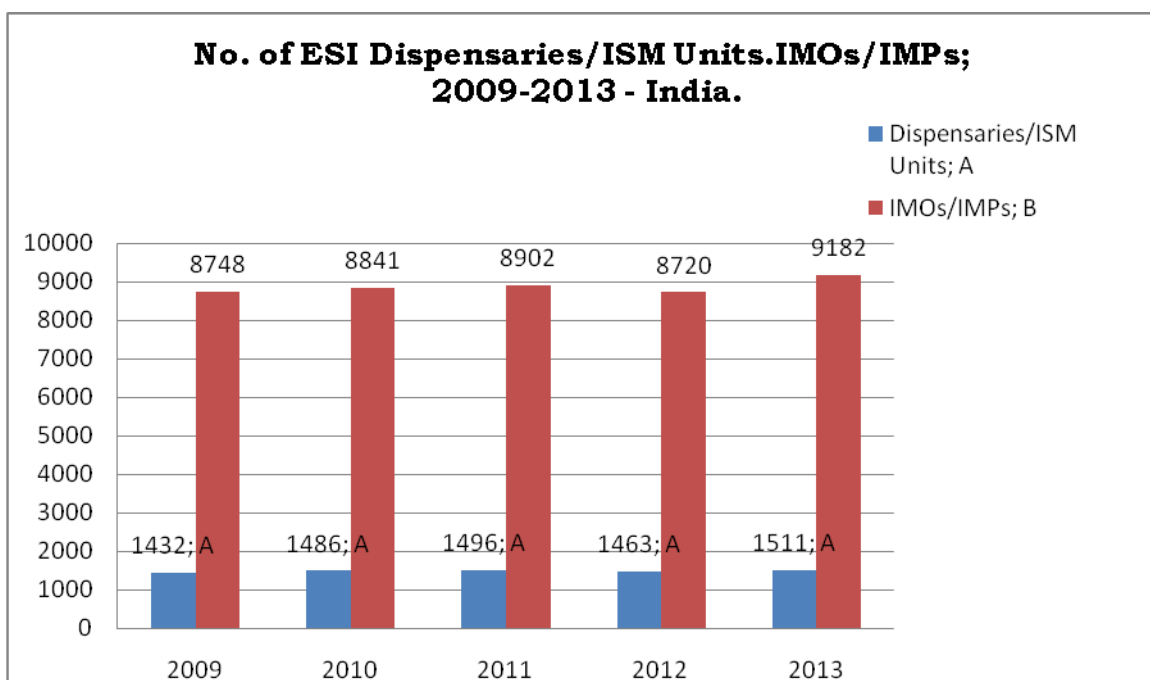


Figure 6: Source: Annual Report on Employee's State Insurance Corporation as on 31.03.2013.

⁵² *Ibid.*

⁵³ *Supra N. 7, 2253.*

(3.2) Sickness Benefit: The ESI Act prescribes periodical payment of Cash Benefit made to the insured persons in respect of sickness⁵⁴ certified by insurance medical practitioners. The Supreme Court in the case of *Kishore Lal v. Chairman, Employees State Corporation*⁵⁵ has made a point to hold the medical practitioners of the ESIC liable to the members, the court further ruled that the Consumer Protection Act, 1985 is applicable to the dispensaries and hospitals run by the ESIC and in such instances the doctors and hospitals can be held responsible for the consequences of their negligence towards consumers this will increase the sense of responsibility amongst the doctors.

The rate of Sickness Benefit corresponds to the Standard Benefit Rate and the rate at which, such benefit is payable, is around 66% of the average daily wages at the maximum, which an employee gets for a maximum period of 91 days in two consecutive benefit periods. The insured person has to work for at least 78 days during the contributing period to avail this benefit.

(3.3) Extended Sickness Benefit: This benefit⁵⁶ is provided to an I.P. for any of the 34 listed specific long-term diseases, like TB, Cancer and other malignant diseases requiring prolonged treatment. The rate at which Extended Sickness Benefit is given to the employee is 40% more than the Standard Benefit Rate, which comes to 80% of the average wages at the maximum, which is initially payable for a period of 124 days, in addition to 91 days' of Sickness⁵⁷ Benefit and can be extended to 309 days. In certain cases, Extended Sickness Benefit for an additional period of 330 days is also allowed, on recommendation of the Special Medical Board. A few uncommon diseases, over and above 34 diseases listed, can also qualify for the same benefit under discretion of the competent Medical Authority of E.S.I. Corporation, New Delhi.

⁵⁴ The Employees State Insurance Act 1948, s. 49.

⁵⁵ 2007 (6) SCALE 660 SC.

⁵⁶ Extended Sickness Benefit (ESB) <http://www.esic.nic.in/esb_benefits.php> accessed 8 April 2016

⁵⁷ *Ibid.*

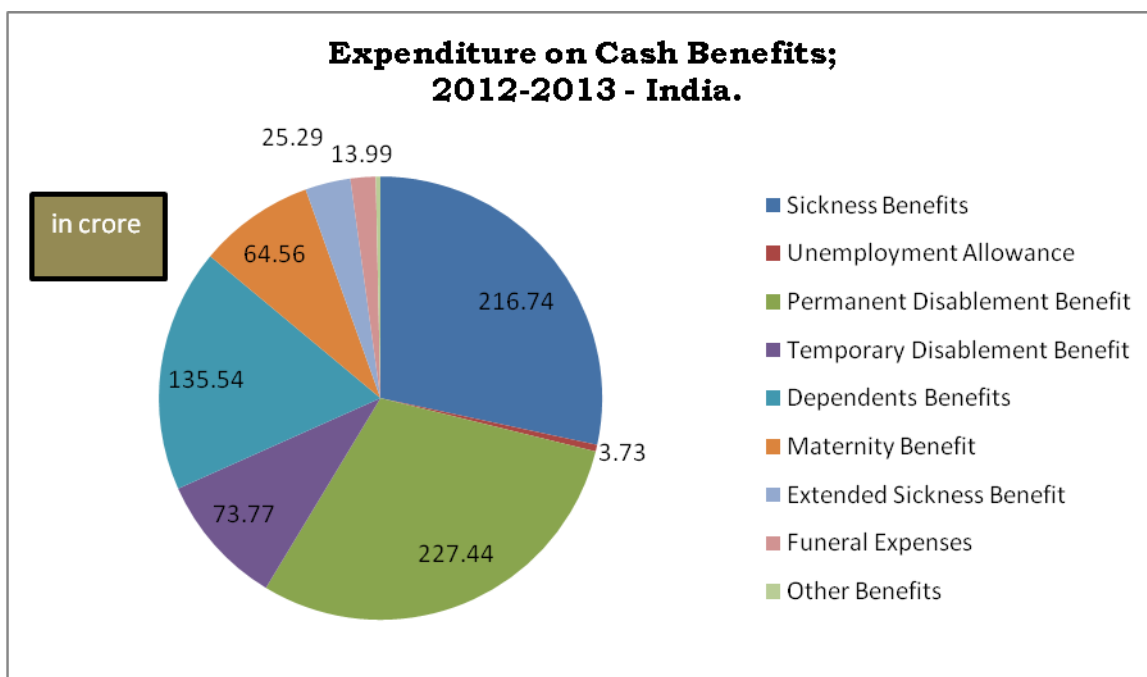


Figure. 7.: Source: Annual Report on Employee’s State Insurance Corporation as on 31.03.2013.

(3.4) Maternity Benefit: Maternity Protection Convention 1952⁵⁸ covers industrial organisations, non- industrial establishments, home workers and domestic servants. The objective behind this convention is to provide adequate period of leave with allowance and medical benefit. Maternity Benefit represents periodical⁵⁹ payment in cases of confinement, miscarriage, medical termination of pregnancy and sickness arising out of pregnancy. The rate of benefit is double the standard benefit rate, which works out to full average wages and more. The criteria for payment being that an insured woman should have worked for 70 days in two consecutive contribution periods immediately preceding the date of confinement, expected date of confinement, etc. The maximum period for which this benefit is admissible is twelve weeks in case of confinement and six weeks, in case of mis-carriage. Additional period of one month benefit is also admissible, in case, there is prolongation of sickness arising out of pregnancy/confinement.

⁵⁸ Maternity Protection Convention https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:312248:no accessed 8 April 2016

⁵⁹ The Employees State Insurance Act, s. 50.

(3.5) Disablement benefit consists of temporary disablement benefit and permanent disablement benefit.

(3.5.1) Temporary Disablement Benefit: This type of benefit is available for injuries caused during employment. The maximum limit for the disbursement⁶⁰ of benefit not limited; however, the employer should be certified to be incapacitated to work for the entire period. The employee is entitled for the benefit from the first day of his insurable employment.

(3.5.2) Permanent Disablement Benefit: This type of benefit is further categorised as permanent partial disablement benefit and permanent total disablement benefit. This benefit is extended to an insured person who loses earning capacity either partially or fully during the course of employment. The loss of earning capacity is assessed by a medical board and the benefit is paid till the death of an insured person. There is also the facility to commute and receive the benefit in total the maximum benefit should not exceed Rs. 30000/-.

(3.6) Dependents Benefits: Recommendation concerning Invalidity, Old age and Survivors Benefit⁶¹, 1967 extended towards the protection of persons whose employment is of a casual nature. The Convention also covers invalid and dependant widower for survivors benefit. This benefit⁶² is for the dependent members of the insured person who died during the course of his employment. Such benefits are available to widows of the insured persons, dependent's widow mother and children's up to 18 years of age are the first categories of dependants, this also includes infirm children who were infirm at the time of death of the insured person and such benefit will last till the infirmity lasts. Such the case may be when the insured person is not survived by the dependents in the first category the benefits then can be given out to others such as parents, grandparents, minor brothers, sisters of dependents. The calculation of the temporary disablement benefit is 80% of the average daily wages of an insured person.

⁶⁰ The Employees State Insurance Act 1948, s. 51; *Supra N.* 6.

⁶¹ R131 - Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 <http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::no:12100:p12100_instrument_id:312469> accessed 8 April 2016.

⁶² *Supra N.* 60.

(3.7) Funeral Expenses: Under the ESI scheme, a payment is made as funeral expenses up to a maximum⁶³ of Rs. 10000/- in case of death of an insured person. In the year 2012 -13 a sum of Rs. 1398.50 lakh was paid as cash benefit⁶⁴ under the head of funeral expense.

(3.8) Unemployment Allowance under: Rajiv Gandhi Shramik Kalyan Yojana (RGSKY)⁶⁵ was in force to formulate unemployment allowance to the insured persons who has been termed as involuntarily unemployed due to closure of factory or any other establishment, retrenchment, or permanent invalidity, which arises from non-employment injury. The scheme is available to an insured person who has been in insurable employment for a minimum of three years which can be paid maximum for a period of twelve months and the benefit⁶⁶ ceases when the person is re-employed. The rate of unemployment allowance shall be the “*standard benefit rate*” as stipulated under Standard Benefit Rates under Rule-54⁶⁷, corresponding to the average daily wage drawn by insured persons during the last four completed contribution periods, which immediately precedes the date of unemployment.

(3.9) ESI Hospital and Occupational Disease Centre: This is an initiative of the ESIC and the State Government of West Bengal to set up this centre in Thakurpukur, Joka⁶⁸ for the diagnosis and treatment of occupational diseases in the Eastern Zone.

(4) ISSUES/CONCERNS IN THE IMPLEMENTATION OF EMPLOYEE’S STATE INSURANCE SCHEME AS SOCIAL SECURITY:

1. **Geographical discrimination in the implementation of ESI:** At present, there are 13 ESI hospitals – Manicktala, Kalyani, Uluberia, Durgapur, Gourhati, Serampur, Budge Budge, Belur, Kamarhati, Bandel Baltikuri, Asansol, Sealdah and Bandel across West Bengal which have total sanctioned beds⁶⁹ of 3445, out of which 3144 are in operation. There are plans to constitute new ESI hospitals in Siliguri and Haldia along with increase of 100 beds in Durgapur ESI hospital – This discrimination

⁶³ Employees State Insurance Central Rules 1950, r. 59.

⁶⁴ *Supra N. 5*, 25.

⁶⁵ Rajiv Gandhi Shramik Kalyan Yojana <http://esickar.gov.in/rajivgandhi_kalyanayojana.htm> accessed 8 April 2016

⁶⁶ In the year 2012 Rs.3.06 crore was utilized as against 1348 claims under this benefit; *Supra N. 5*.

⁶⁷ Employees State Insurance (Central) Rules 1950

⁶⁸ *Supra N. 7*, 226.

⁶⁹ *Supra N. 7*, 223.

catches the eye of every individual as they face difficulties in receiving the benefits. The ESI Scheme lacks proper implementation throughout the State of West Bengal this deprives several beneficiaries to receive the benefits timely or some due to constrain of time and money fails to avail the benefits.

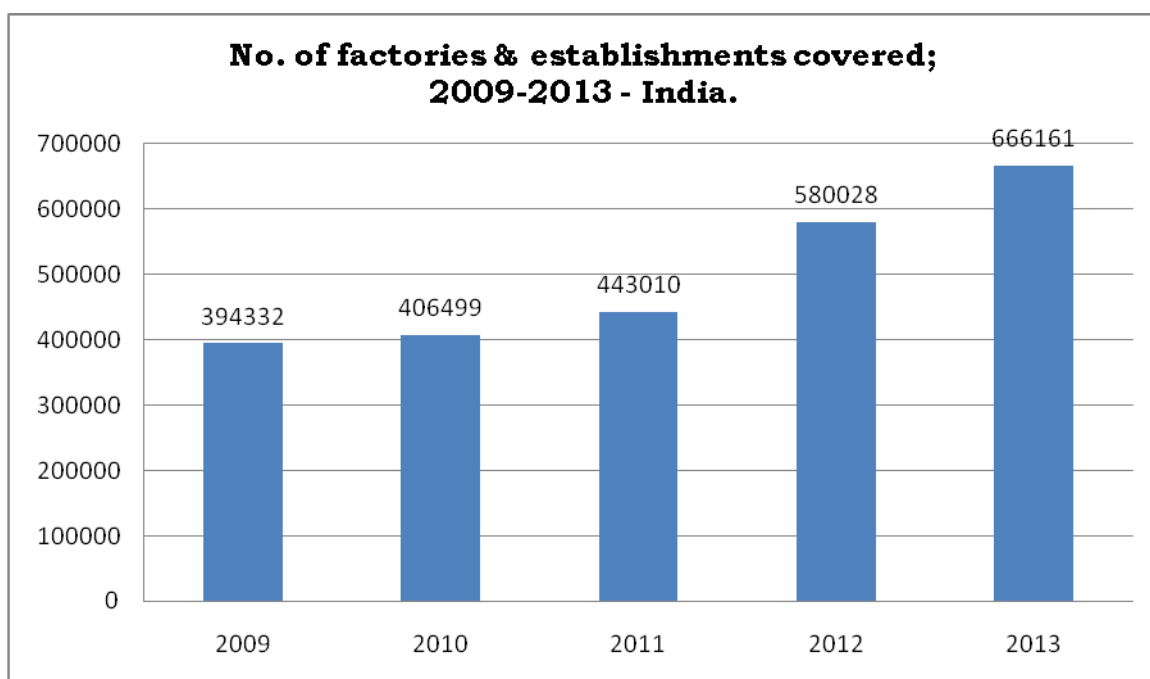


Figure 8: Source: Annual Report on Employee’s State Insurance Corporation as on 31.03.2013.

- 2. Defaulters on rise – lack of contribution:** There has been a major concern about the depositing the contribution by the employer which they deduct from the employees are often not credited in the ESIC in their designated⁷⁰ accounts which creates huge over dues and disturbance in disbursement of benefits. This accumulation of funds sometimes also leads to fraud and mal practice and poor employees have to suffer for the delay caused.

⁷⁰ The Employees State Insurance Act 1948, s. 39.

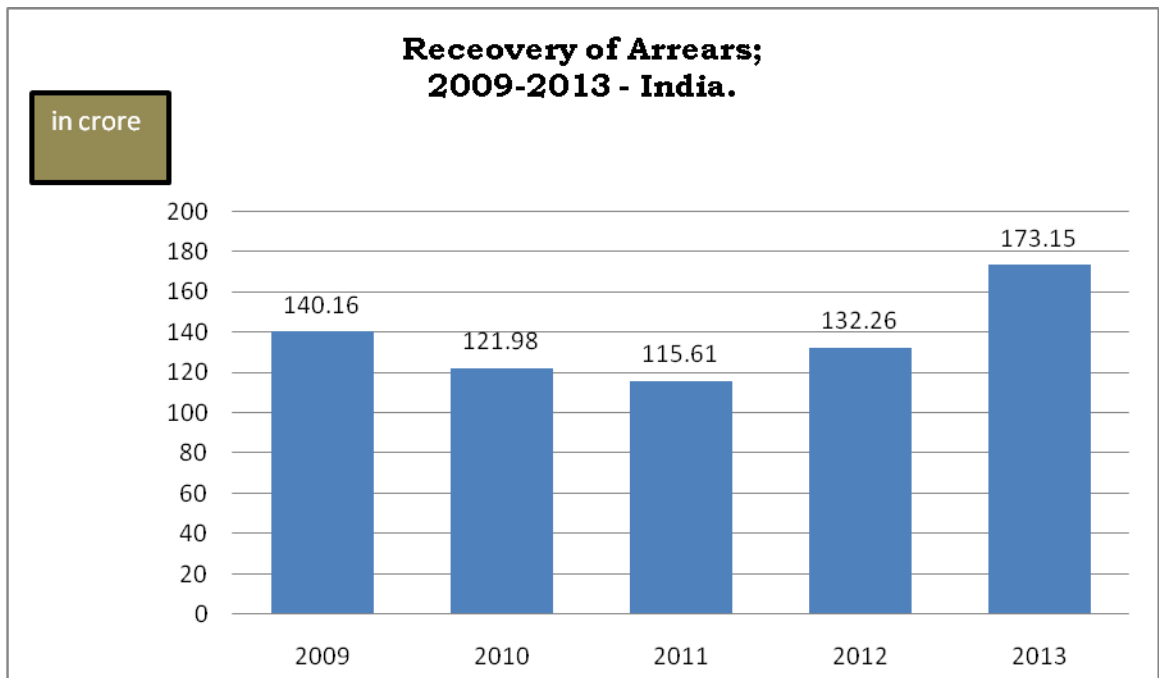


Figure.9: Source: Annual Report on Employee’s State Insurance Corporation as on 31.03.2013.

3. **Establishment with less than 10 workmen:** As ESI Act is only applicable to establishment which employs 10 workmen or more drawing a maximum salary of Rs. 15000/- there comes up an issue regarding the establishment which has employees of less than 10 as ESI will not be a mandate for the employer to adopt. This makes thousands of people working in smaller organisations vulnerable as they do not receive any kind of social security.

4. **Construction workers:** ESI does not apply to construction workers which has been an issue lately. Construction workers and seasonally employed workers often change⁷¹ jobs as and when they find work which again involves the question of change of employers at every job location and also the question of legal mandate which requires 10 employees at an establishment to adopt ESI. Construction workers have a casual nature of work and they do not hold identity cards nor can they give a one month notice which is a requisite in any regular firm or establishments, thus excludes them to enjoy medical benefits and dependent benefits. Construction

⁷¹ Bai’s letter on ESIC < <http://www.baionline.in/media/data/bai's%20letter%20on%20esic.pdf> > accessed 8 April 2016.

workers are getting benefits under Building⁷² and Other Construction Workers (BOCW) but which comes to a less contribution of Rs. 5/- per day to be entitled for receiving the benefits and even if the ESI scope is being extended to the construction workers one should be aware of the duplicity of the scheme and thus make it into a single one scheme⁷³ designed for only construction workers rather extending the scope.

5. **Blood Bank:** There is one single blood bank in Manicktala, ESI Hospital which caters to the requirements for blood for all the 13 ESI Hospitals in the State of West Bengal – There is an urgent need to increase blood banks from where the people covered under the ESI scheme can get the blood during emergency. Awareness programmes, blood donation camps are required to be arranged at regular intervals so that the youth are encouraged to donate blood.
6. **New schemes and training programmes:** There is a need for increasing training programmes across the state which can come handy to gain expertise for example training courses for the nurses, compounders, attendants and other people. The government along with the NGO's needs to adopt policies where the youth can get training by applying the Apprentice Act - it includes an apprentice⁷⁴ who is appointed under the standing orders as an employee for the purpose of this Act. Section 59B of the Amendment Act of 2009⁷⁵ enables the ESIC to establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees which will improve the quality of services provided under the ESI Scheme.
7. **Un-organised Sector:** The workers engaged in agriculture sector and that of similar activities, household industry, building and construction, small factories/establishments, home workers, domestic servants, artisans, self-employed persons such as fishermen, hawkers, auto-rickshaw drivers, etc, all constitute the informal or unorganised sector. Workers in the unorganised sector face problems are under employment due to scattered nature of work places, high incidence of home-based or, low collective bargaining power and the absence of an employer-employee

⁷² The Building And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Act, 1996 < <http://clc.gov.in/acts/shtm/bocw.php>> accessed 8 April 2016.

⁷³ *Ibid.*

⁷⁴ The Amendment in The ESI Act, 1948 w.e.f 01/06/2010 vide ESI (Amendment) Act, 2010 < <http://www.prsindia.org/uploads/media/esi/the%20employees%20state%20insurance%20amendment%20bill%202009.pdf>> accessed 8 April 2016.

⁷⁵ The amendment was passed in 2010 by the Rajya Sabha.

relationship. Medical⁷⁶ benefit under the scheme can be extended to other beneficiaries on payment of user charges subject to the framing of schemes by the Central Government. Further the Govt. of India, Ministry of Labour & Employment has introduced a Scheme⁷⁷ called "*Rashtriya Swasthya Bima Yojana*" for providing social security to Below Poverty Line workers in the unorganised sector.

8. **Social security officers:** These officers are appointed and authorised by the ESIC under section 45⁷⁸ of ESI Act to carry out investigations for proper implementation of the Act across West Bengal. Such officers are entitled to visit any establishment which comes under the purview of this Act, inspect records, books, makes copies thereof with respect to Section 44 of the Act and file report if there is any discrepancy with the Corporation.

(5) CONCLUSION:

The ESI Act is one of the most important legislations as it covers substantial number of organisations under its scope. People now have a sense of security and peace while going to work that will definitely increase the productivity at workplace. The ESI Act has been drafted according to the international laws and conventions which make it at par with the enactments of other developing countries of the world. The possible need and requirement is the proper implementation and overall functioning of the Act that will certainly curb the issues as discussed above. The employers need to keep in mind that timely deposition of the fund has to be practised properly so that there is smooth functioning of the legislation. There needs to be more monitoring of how the Act is actually functioning especially in terms of the disbursement of the benefits; whether the medical and cash benefit is disbursed in respect of the Act. Frequent awareness programmes on employee's rights, blood donation camps, free legal aid and counselling will ensure proper functioning of the ESI Act. The Amendment Act of 2010 has provided for medical benefits for voluntary retired persons which further expands the scope of the Act. The Amendment further authorises the ESIC to enter into an agreement with local bodies to improve the medical care facilities provided in the ESI hospitals. This enables not only the employees to seek better social security benefits but also the society to improve at large.

⁷⁶ *Supra* N. 65.

⁷⁷ Rashtriya Swasthya Bima Yojana < <http://www.rsby.gov.in/>> accessed 8 April 2016.

⁷⁸ *Supra* N. 6.