LEGISLATING SAFETY: COMPARING RECENT SOCIAL PROTECTION LAWS IN INDIA AND INDONESIA

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ABSTRACT

In recent years, several Asian countries have started moving far from patchwork welfare programmes, towards giving more thorough social security. This is a significant movement in an area where social welfare has not been politically prevalent, and the family has been generally faced with the pressure of supporting the young, the old and the ailing. Two of these states – India and Indonesia – have put new government-managed social security exercises into law, as opposed to just planning official strategy. In this paper, the authors examine social security laws in both the nations. They look specifically at India's National Food Security Law, 2013, and Indonesia's laws on the National Social Security System, 2004 and 2011. These laws deserve attention since they help to amplify advantages, as well as to promote economic and social rights. These recent social protection laws potentially deepen what Brinks and Gauri (2004) depict as the 'legalisation' of welfare approach, whereby legal rights assume importance in policy, and legal professionals, judges in particular, become significant in implementing it. In that capacity, these laws are likely to, and arguably should, force entirely hard-edged commitments on the administration and empower people to hold the legislature to its commitments. At the same time, recent social protection laws have the potential to allay concerns that legal enforcement of economic social rights distorts policy and dilutes the separation of powers. Through this paper, the authors want to show that social protection laws in both India and Indonesia have principally extended the policies that went before them, instead of in a general sense, rebuilding how specific types of social security are conveyed.

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Introduction

I. Social security systems have been under challenged for many years. Some consider that the systems are too expensive, and that they harm the process of economic growth and development. Other point to deficiencies in the level of protection and the scope of coverage, and argue that in times of increased unemployment and other forms of labour insecurity, social security is more needed than ever. As, social security defined by the International Labour Organization is the protection which is given by the society to its people for their betterment by the public measure, against the monetary and social distress.[1] The social security systems must respond to new demographic challenges, such as edging and changing family structures, with important implications for the financing of social protection.

II. The growth trajectory of the social security system of both India and Indonesia in the last two decades has generated one recurring theme: that the example of financial development is highlighting insecurities. Yet, there is a profound partition about whether the gains from growth should be ploughed back to accomplish social security for everybody. Social security is construed to provide employment-related benefits and advantages, it binds a person to his/her socioeconomic status as a specialist in the formal or the informal economy when, at a very basic level, it begins from the idea of ensuring everybody protection against vulnerability.

III. In recent years, a few Asian countries have started moving from patchwork welfare programmes, towards providing more effective social protection. This is a significant shift in a region where social welfare has not been politically popular, and the family has traditionally absorbed the burden of the young and the old.[2] Asian governments are, it seems, trying to tackle chronic poverty and inequality with fresh earnestness. Two of these countries India and Indonesia have opted to put new social protection initiatives in to law, rather than just simply formulating and executing policies and programmes.

[1] Vicki Paskalia, *Free Movement, Social Security and Gender in the EU* (1st edn, Hart 2007).
[2] I. Holliday, 'Productivist Welfare Capitalism: Social Policy in East Asia' (2000) 48 Political Studies.

IV. India and Indonesia have reformed their social security provisions over a period of time. Indonesia has developed a three-pillar social security system and India's social security comprises a number of schemes and programmes provided by the government over a period of time through laws and regulations. The National Food Security Act, 2013 in India and the National Security System (passed in 2004 and 2011) in Indonesia gave people a broader perspective of benefits.

Discussion

Why Comparing India and Indonesia?

V. Contrasting Indian legislation and Indonesian laws raises those difficulties that are regular to many similar explorations. In any case, there are additionally political and financial similarities between India and Indonesia that make comparative analysis compelling. Both the nations are majoritarian democracies, in spite of the fact that Indonesia's Assembly is driven by proportional representation, while the Indian Parliament is the consequence of a 'first past the post' electoral framework.

VI. Both Indonesia and India are middle income nations; however, Indonesia is all the more financially prosperous of the two. India's per capita income is $1489, Indonesia's is $35575.[3] Outright poverty has been falling in both India and Indonesia. In both the nations, declining poverty implies that individuals who are poor aspire for better standards of living, more education for their children and more noteworthy social mobility. Accordingly, there is apparently more weight on the State in both the nations to pad the troublesome existence of their poorest residents, even as financial development implies that there are more assets to do as such.

[3] 'GDP Per Capita (Current US$) | Data' (Data.worldbank.org, 2016) <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> accessed 6 July 2016.

VII. Provincial aberrations and population development raise potential difficulties with regard to ensuring general welfare of the citizens. From one viewpoint, there is the test of improving public infrastructure in poorer districts, and building the capacity of the nearby government apparatus to convey open administration. Then again, open administrations battle to meet the requests of a rising population in megalopolises such as Jakarta and Delhi, and in second-level urban communities such as Surabaya or Bangalore. In this way, while Indonesia is wealthier than India – its per capita GDP is 2.5 times[4] that of India's - both the nations are exploring comparable weights in furnishing their subjects with a satisfactory way of life.

VIII. Political corruption is a major issue in India. In Indonesia, indignation regarding the New Order's administrative corruption generated a mood of dissent against the Suharto government in 1998, at last pushing President Suharto to resign. Corruption not only impacts the real effect that a welfare measure may have but also shapes individuals' desires of the measure and their ability to bolster it. It is, along these lines, worth analysing how India and Indonesia have endeavoured to incorporate responsibility with the National Food Security Act and social security laws separately.

IX. It is essential to note the significant differences in political structures and functions of the two nations. Since India secured independence in 1947, the nation has had customary, although sometimes intermittent, political decisions that have been sensibly free and reasonable. Indonesia, on the other hand, was authoritarian until 1998, when the Suharto administration fell in the wake of the Asian currency crisis during 1996-98.

X. Indonesia's economy suffered more than that of some other Asian nations amid the crisis; its GDP in 1996 was 8.0% and in 1998 it fell down to -13.6%[5] (annual percent change) The

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[4] Ibid.

[5] H. Hill, *The Indonesian Economy* (2nd edn, Cambridge University Press 2000) 64.

sudden crisis presented the degree to which Indonesia was a plutocracy, with the public and private sector organised in the administration of the Suharto family and their partners. The period after 1998, known as reformasi era, with Suharto removed from office, it was by no means clear what direction Indonesian politics would head. Cynics saw President Habibie as Suharto's man, a tool of New Order interests who would ensure that Indonesia remained a corrupt autocracy with national wealth and political power concentrated in the hands of military-dominated Jakarta elite. Others hoped for a democratic transition comparable to that which had taken place in South Korea and Spain after the demise of long dictatorships and saw profound political rebuilding as Indonesia transitioned into a sacred majority- rule electoral system. Hence, when contrasted with India, Indonesia is a far more youthful majority- rule government.

XI. It is additionally critical to recognise that the laws being compared deal with very different types of social protection. Addressing widespread hunger in India, and universalising medical insurance and pensions in Indonesia are all attempts that raise their own specific political questions.

Social Security – 'The Very Foundation of Poor People in India'

XII. The significance of social security in social and financial advancement has turned out to be more apparent. Social security ought not to be seen as an expense, but rather as an interest in human capital that prompts better profitability. It is one of the viable methods of reducing poverty, empowering value and supporting monetary and social stability.[6]

XIII. Every country tries to ensure social security for its citizen, many schemes and programmes come but few are implemented well and show some results. India over a period of time has implemented its policies and schemes. While some schemes failed to meet their desired

[6] Gary Koenig and Al Myles, 'Social Security's Impact on the National Economy' (Mississippi State University, Public Policy Institute 2013).

objectives, some of them helped uplifting the poor and the under-privileged people. India through Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and National Food Security Act, 2013 has shown that social security laws and policies can yield outstanding results in many states; Gujarat is one of the success stories of MGNREGA.[7]

Mahatma Gandhi National Rural Employment Guarantee Act.

XIV. The Act came into force on 2nd February 2006 covering just the 200 poorest districts of the nation and was extended to cover every single rural area of the nation from April 2008. This is, possibly, the biggest programme of its kind for generating employment in the rural unorganised sector of India.[8] In the last 10 years, it has produced 19.86 billion man days of employment profiting 276 million workers,[9] with a large portion of the employment going to female labourers and around a third to scheduled castes (SC's) and scheduled tribes (ST's). The goal of the Act is the creation of strong resources and reinforcement of the business resource base of the rural poor. It mandates enhancing livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work. It is an interesting procurement for the individuals who can't be given work disregarding an appropriate demand being made. The unemployment recompense has been pegged at 1/4th the pay rate for the initial 30 days and afterward ½ the pay rate for the remaining period.

XV. The MGNREGA is not a dole. It means that the government accepts that the poor have a privilege to be employed and that the State ensures and reaffirms this privilege. At least 100 days

[7] Gunget Village in Gujarat has showed immense result through MGNREGA. Which is under usage in Patan district since 1/4/2008. As a result of these works practical long term resources are made and villagers get financial advantage. Troubles of individuals diminished and permanent facilities created are being utilized by villagers. Work was of stone pitching on embankment of the pond. The Estimated amount allotted for work was 10 Lakhs. It completed in 6.75 Lakhs. It generated 1690 Men days and the Average daily wage earned: Rs.86/- per day.

[8] Parmod Kumar and Dipanwita Chakraborty, *MGNREGA: Employment, Wages and Migration in Rural India* (Routledge India 2016)

[9] Prakash Jai, 'Poverty, Self-Employment and Minorities - A Study' (2001) 39 Southern Economist.

of work can be acquired per family in the non-agricultural season. So, a poor family can get work for eight months a year; four in the agrarian season and four through the MGNREGA.

Benefits of MGNREGA

XVI. The following are some of the benefits of MGNREGA:

(a) Providing unskilled work for rural India.
(b) Ensuring complete openness and ownership in the governance.
(c) Ensuring sustainable development by developing the natural resources such as land and water.
(d) Providing an important role to the Panchayati raj institutions.

XVII. Overall, MGNREGA has made life easy for the families of poor farmers and villagers as they are able to earn better and do not have to move to urban areas to earn their bread and butter. Also, it focuses on making the environment cleaner and greener, thereby reducing any risk of damaging the environment.

Ineffectiveness of MGNREGA

XVIII. Regardless of its success and good governance, the MGNREGA still needs to manage several identified issues, which are as follows:-

(a) Corruption,
(b) Job cards,
(c) Applications,
(d) Choice of work,
(e) Execution of work,
(f) Estimation of work done

XIX. The fundamental criticism, however, is of the idea itself. This has been blamed for as salary redistribution and thus may bring about swelling. Expansion of schemes under MGNREGA in 2008 hit a three- year high with the wholesale price index hitting 7% for the year up to March 22, 2008.[10] However, the benefits under MGNREGA where gradually faded due to non- cleared, record costs of rice, wheat and other foodstuff.

XX. India saw the need for reformation of its existing system for providing more benefits to the people, schemes under MGNREGA failed as they were not able to reach to the needy people; by changing the existing system and by providing more benefits to the people belonging to the informal sector.

National Food Security Act, (NFSA) 2013

XXI. As passed by the Parliament, the Government notified this Act on 10th September, 2013 with the goal to give food and nutritious security at reasonable costs to people to carry on life with some economic comfort. The Act covers 75% and 50% of rural and urban areas, respectively, for getting sponsored food grains under the Targeted Public Distribution System, therefore, covering around 67% of the population.[11] This is possibly the biggest experiment of a food-based welfare scheme in the world.

Background and Constitutional Framework

XXII. The Directive Principles of State Policy of the Indian constitution portrays that it is the obligation of the state to raise the level of nutrition and the way of life of its people, and to

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[10] Nareppa Nagaraj and Harish B. G, *An Economic Impact Analysis of MGNREGA* (LAP LAMBERT Academic Publishing 2012).

[11] Ashok Gulati and Surbhi Jain, 'Buffer Stocking Policy In The Wake Of NFSB: Concepts, Empirics, And Policy Implications' (Commission For Agricultural Costs And Prices Department Of Agriculture & Cooperation Ministry Of Agriculture Government Of India 2013).

enhance the general wellbeing.

XXIII. In 1996, in a case,[12] the Supreme Court announced that the right to live ensures in any enlightened society the right to food among different rights. In 2001, PUCL filed a writ petition arguing that the right to food is a part of the Fundamental Right to life embodied in Article 21 of the Constitution.[13] The Court issued a few orders and requested the execution of eight midway supported plans as legitimate qualifications. These incorporate the Public Distribution System (PDS), Antyodaya Anna Yojana, and the Midday Meal Scheme,[14] fair price shops,[15] among others. In 2008, the Court held that Below Poverty Line (BPL) families were qualified for 35 kg of food grains every month at financed costs.

XXIV. In 2010, the National Advisory Council drafted a National Food Security Bill, proposing legitimate privileges for around 75% of the population. In January 2011, an Expert Committee set up by the Prime Minister under the chairmanship of Dr. C. Rangarajan analysed the Bill and made a few suggestions, including decreasing the extent of the population qualified for advantages and modernising PDS. The Bill ensured the establishment of State Food Commissions[16]. Every such Commission should comprise a chairperson, five different members and a member secretary (counting atleast two ladies and one member each from SC and ST).[17]

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[12] *Chameli Singh v. State of U.P.* [1996] 2 SCC 549.
[13] *PUCL v. Union of India and Others* [2001] 196.
[14] N. Karunakaran and Krishnaraji. T, 'Impact of Mid-Day-Meal-Scheme (Mdms) On Nutritional-Level, Enrolment-Rate and Dropout-Rate of Primary School Children in Kerala: A Case Study' (2015) XI Journal of Economic & Social Development, Vol. - XI, No. 1.
[15] NFSA 2013,s 28.
[16] NFSA 2013, s 13.
[17] NFSA 2013, s 16 (6).

Eligibility and Benefits under NFSA

- The Act guarantees 75% of rural and 50% of urban families, the privilege to seven kg food grains per person, at Rs.3/2/1 per kg for rice, wheat and millets, respectively.[18]
- Priority households are qualified for five kgs of food grains per individual/month[19] and 2.43 crores Antyodaya families to 35 kgs every family/month.
- The general category will be given atleast three kgs food grains for every individual/month at half the base offering cost.
- Rations or cooked meals will be given to children under 14 years old, destitute including ladies, and persons living on the fringes of the society.[20]
- The Act will give least Rs. 1,000 every month for six months as maternity advantage to 2.25 cores pregnant ladies and lactating mothers.[21]
- The eldest person or the head of the family will be eligible for ration cards being issued in his/her name.[22]

Table 1: Category and Type of Meals[23]

SL. NO.	Category	Types of meal	Calories (Kcal)	Protein (g)
1	Children (Six months to three years)	Take Home Ration	500	12-15
2	Children (Three to Six years)	Morning Snack and Hot Cooked Meal	500	12-15

[18] NFSA 2013, s 3(2)
[19] NFSA 2013, art. 3 (1)
[20] NFSA 2013, s 5(1)(b)
[21] NFSA 2013, s 4
[22] NFSA 2013, s 13
[23] NFSA 2013, s 4(a), 5(1) and 6, Schedule II.

3.	Children (Six months to Six years) who are malnourished	Take Home Ration	800	20-25
4.	Lower primary classes	Hot Cooked Meal	450	12
5.	Upper primary classes	Hot Cooked Meal	700	20
6.	Pregnant women and Lactating mothers	Take Home Ration	600	18-20

Source: Section 4(a), 5(1) and 6, Schedule II, NFSA, The Gazette of India (2013)

Financial Burden on the States

XXV. The expense of the usage of the Food Act will be shared between the Centre and the States; however, it would put critical weight on the poor states. Unexpectedly, they are the ones requiring the most extreme help. The costs imposed on states (halfway or full) include: dietary support to pregnant ladies and lactating mothers, midday meals, anganwadi framework, dinners for children experiencing ailing health, transport and conveyance of food grains, making and maintaining storerooms.

Identification

XXVI. The state government is entrusted with the obligation of recognising the total number of qualified households further engaged for distinguishing proof of 'needy' families. It may vary from state to state. The Census population evaluation will be utilised by the central government to decide the state-wide coverage of the PDS and the rural urban population extent.

Opportunities generated under NFSA

XXVII. The following are the opportunities generated under NFSA:

- Employment Assurance Scheme
- Mid-day Meal Scheme
- Integrated Child Development Scheme
- National Benefit Maternity Scheme for BPL Pregnant Women
- National Old- age Pension Scheme for Destitute Persons over 65 Years
- Annapurna Scheme
- Antyodaya Anna Yojana
- National Family Benefit Scheme
- Public Distribution Scheme for BPL and Above Poverty Line Families

Impacts of NFSA

XXVIII. The following are the impacts of NFSA:-

Pros: NFSA proposes to give food grains to 67% of the population at exceedingly financed rates. The Act provides uniform allocation of 5 kg foodgrains (per person) at fixed rate of Rs. 3 (rice), Rs. 2 (wheat) and Rs. 1 (coarse grains) per kg to 75 per cent of the rural population and 50 per cent of the poor in urban India – about 800 million people. Protection to 2.43 crores poorest of poor families under the Antyodaya Anna Yojana (AAY) to supply of 35 kg foodgrains per month per family would continue. Nutritional support to pregnant women without limitation is among other changes proposed in the Act. The Act extends subsidised food to pregnant women and children under the age of 16. It is positive that it is including those who really need nutritious food. The eldest woman who is the head of the family in the household shall be entitled to secure food from the Public Distribution System for the entire household. The Act seeks to utilise already existing infrastructures like PDS and anganwadi. This has prevented further wastage of money to develop the infrastructures.

XXIX. **Cons:** There will be fixed share per state of grains designated. The onus is on the states to choose the beneficiaries. This can lead to differences, as a man not qualified for such great advantages in one state may be qualified in another state.

1. The number of beneficiaries is to be chosen at the state level. Corrupt ministers can illicitly store the grains and make deficiency of grains as an excuse.

2. The government should acquire a high amount from banks to finance such projects. So, banks will be lending more to the government, leaving less for overall population which will hamper the development of the private sector.

XXX. The aim animating the NFSA is getting food – in particular the basic staple grains that people consume – into the hands of those who cannot afford to feed themselves. Past experience shows that governments have not been very good at achieving this. The NFSA puts in place different mechanisms to monitor government performance, and grants recourse for getting benefits under NFSA to the individuals.

XXXI. The NFSA sets a handful of different mechanism to check government performance and raise individual complaints on board. The act doesn't have an effective grievance redress mechanism. In the Act, it begins at the district level which is outrageous; people need it the local Panchayat or Gram Sabha level.

An Analysis of Indonesian Social Security System

XXXII. The Indonesian legislature, the House of Representatives, passed several schemes such as Jamsostek Provident Fund scheme, Taspen programme scheme, etc., which cover multiple types of social security including health insurance, old-age pension programme, death benefits and work accident insurance which create plethora of opportunities for Indonesian citizens.

Jamsostek Provident Fund Scheme

XXXIII. Jamsostek programme includes work injury benefits, health-care, death benefits and retirement benefits. All the benefits are covered by the employer except retirement benefits where the employee has to contribute.[24] All these benefits are provided through provident fund managed by a state-owned company. The employer has to contribute about 7.24% to 11.24% and the employee has to contribute about 2% of his/her wages which is somewhat equal to a one month salary.

Table 2: Contributions/Premiums for Jamsostek Programme [25](% of wages)

Programme	Employers	Workers	Total
Workplace Accident Benefits Programme (JKK)	0.24 – 1.74	-	0.24-1.74
Death Benefits Programme (JK)	0.3		0.3
Retirement Benefits Programme(JHT)	3.7	2	5.7
Healthcare Benefits	3-6		3-6

[24] Claudia Rokx, *Health Financing In Indonesia* (World Bank 2009).
[25] Bambang Purwoko, 'He Social Security System in Indonesia: Current Investment Issues and Future Prospects' (2001) PT JAMSOSTEK (Persero) The University of Pancasila.

Programme (JPK)			
TOTAL	7.24 – 11.74	2	9.24-13.74

Source: PT Jamsostek (2001)

Taspen Programme for Civil Servants

XXXIV. Taspen programme was created in 1963 for providing benefits to civil servants under health care, death benefits, injury benefits and retirement benefits and the programme was extended to elderly members and their inheritors.

XXXV. Taspen programme includes monthly pension benefits for members' amount to 2.5% of their basic multiplied by the numbers of years they have served. The programme is funded not only by the national budget but also by contributions from members, which amount to 4.75% of their base salaries.

XXXVI. At present, there are four million civil servants contributing about 8% of the funds for the PT Taspen programme. PT Taspen contributes about 22.5% of the overall expenses derived from its enormous assets and investment income from member contributions and the rest is funded by the government.

Ineffectiveness of both the schemes under the Social Security System of Indonesia

XXXVII. Both the schemes failed because of the following inadequacies:

1. Jamsostek Provident Fund Scheme doesn't cover the workers belonging to the informal sector, self-employed workers and businesses with lesser number of workers (about, 80% of workers are not covered)
2. Jamsostek Provident Fund doesn't provide enough incentives for the workers to save for the retirement programme (total pension payment received by a Jamsostek recipient is only valued at about 7% of their basic salary after 35 years of active work.[26])
3. The rate of return in Jamsostek is quite low.
4. Taspen will be unsuccessful in the long run due to the increasing number of civil servants.
5. Restriction of existing law that imposes limitation on providing funding to Taspen scheme. (Additionally, 3.25% of the basic salaries of civil servants are required to fully fund the Taspen Scheme).

XXXVIII. In conclusion, both the Jamsostek and Taspen programme schemes have not been successful in attaining its goal to cover all informal workers in Indonesia. Given the limited number of providers willing to accept the schemes, the lack of health benefits effort and due to high administrative cost, it is no wonder that most workers chose to opt out of these schemes and instead chose other private health insurance plans for greater benefits.

National Social Security System Law 2004

XXXIX. The National Social Security System Law was formulated on 28th September 2004. The law provides a basic framework for the development of a national social security and social assistance system. The law includes informal workers and self-employed workers.[27] The

[26] Leechor Chad, 'Reforming Indonesia's Pension System' (World Bank 1996) <http://documents.worldbank.org/curated/en/1996/10/696208/reforming-indonesias-pension-system> accessed 6 July 2016.

[27] Muliadi Widjaja and Robert A. Simanjuntak, *Social Protection in Indonesia: How Far Have We Reached?* (9th edn, 2009).

government pays the contributions for the poor and disabled persons.[28] At a basic level, the law set up has expanded social security coverage to the whole population, through a combination of non-contributory social help plans for the most vulnerable and particular contributory insurance plans for each diverse class of labourers.[29]

Composition of National Social Security System Law 2004

XL. The law creates two level structures – (i) an advisory National Social Security Council reporting to the President to formulate general policies and to monitor the system. (ii) A Social Security Administrative Body to administer the social security fund and the delivery of the benefits. The law has combined four state-owned enterprises as operating bodies: PT Jamsostek (Pension and health-care), PT Taspen (Pension scheme for civil servants), PT Askes (Health insurance for civil servants) and PT Asabri (Pension for armed forces) to increase funds.[30] Setup of the three- pillar structure as recommended by ILO: (i) social assistance for citizens who lack financial means (ii) compulsory social insurance scheme as contributed by the employer and the employee (iii) voluntary private insurance in which people can take additional insurance.

XLI. The law has also formulated a National Social Security Board that will then examine the effectiveness of the Programme. It will consist of 15 members including five representatives from the central government ministers and five from labour unions. Members of the Board will be re-elected every three years.[31]

Eligibility and Benefits of the Bill

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[28] Yves Guerard, 'Implementing An Indonesian National Social Security System' (2005).
[29] Nunzio Dunzio, 'Indonesia'S National Social Security System: Providing Social Protection for All' UBI Business (2004)<http://www.ubibusiness.com/topics/business-environment/indonesias-national-social-security-system-providing-social-protection-for-all/#.V31xLzUaLIU> accessed 6 July 2016.
[30] Gulati (n 12) 8.
[31] Alex Arifianto, 'Social Security Reform in Indonesia: A Critical Analysis' (2004) SSRN Electronic Journal.

XLII. The scheme proposed by the government will consist of retirement, healthcare, death and disability benefits. It will cover all the citizens of Indonesia, including formal, self-employed and informal workers.

1. The proposed benefits of the bill –

- Mutual assistance (gotong royong) – under the programme, wealthier will help poor, healthier will help the weak person and so on.
- Compulsory membership – Government made compulsory scheme for all Indonesian citizens to participate.
- Trust funds – the funds collected by the participants will be used for their welfare.
- Not-for-profit – funds will be ultimately used for its members and not for any profit oriented programmes.
- Health benefits, Employment Accident (worker compensation), Old-age benefits (lump sums), Pension (monthly for life), and death benefits (uniform normal amount).[32]

Table 3: Increase in contribution of Jamsosnas for formal sectors workers (% of wages)

Programme	Total Jamsostek Contribution Rates	Total Known Jamsosnas Contribution Rates	Total Contribution Rates (estimated)
Workplace Accident Benefits Programme	0.24-1.74 (5 classes)	0.24-1.75	0.24-1.75
Death Benefits Programme	0.3	Unknown	0.3
Retirement Benefits Programme	5.7	Unknown	10.75

[32] Hasbullah Thabrany, *Social Security for all: A continuous challenge for workers in Indonesia*, (2011)

Healthcare Benefits Programme	3-6	6	6
Total	9.24-13.74	6.24-7-75	17.29-18.80

Source: Authors' calculations

Opportunities generated under National Social Security System Law 2004

XLIII. The law created two types of Pension schemes in Indonesia – (i) Public Pension Programme and (ii) old- age pension programme. It also included National Health Insurance Scheme.

Old-age Pension Programme

XLIV. The old-age pension is a long- term programme wherein participants make regular contributions so that an additional income is available to offset a reduction in or loss of income after retirement. This programme will only accumulate social security contribution for first 15 years, and will only start paying pension benefits to retirees after this. It is defined benefit social insurance programme[33], and it will presumably operate as a partially funded pay-as-you-go scheme.[34]

XLV. Old-age Pension Programme has benefitted the old-aged people, child, widow/widowers

[33] A defined benefit scheme is a retirement plan in which workers are guaranteed a benefit upon retirement, usually based on years of service, age, and final or lifetime earnings. The government/employers are responsible for funding the plan's promised benefits and are liable for the risks associated with the scheme. An alternative is the defined contribution scheme that is a retirement plan in which only the contribution rates and bases of benefits calculations are determined in advance (not the benefit level). The benefit is a direct product of the contributions paid to the investment accounts, plus the return on investments from these accounts. The risks, though not the control, of this pension scheme rest with the workers (ILO, xxii; Weller, 3-4)

[34] A pay-as-you-go system is a social security system in which no funds are set aside in advance and benefits for current retirees plus administrative costs are paid out of the current workers' contributions (ILO, "Academic Paper" xxii). A partially funded pay-as-you-go scheme means that the system is partially financed in advance to create a reserve fund for future use by retirees but does not pay contributions at the present. After the system matures, it would start paying out pension obligation to retirees and then it could return as a full pay-as-you-go scheme.

and disabled people. The fixed minimum pension is 70% of wages. The widow/widowers will receive 60% of their wages; they will be able to receive until they die, remarry or work full time. Pension contribution for the formal and informal workers will be different and their retirement age is 55. After contributing for 15 years they will receive their pensions.[35]

Table 4: Pension – Cost of Base Plan[36]

Year	2010	2020	2030	2050	2070
% of GDP	0.0%	0.1%	0.5%	2.0%	2.9%
% of Wages	0.0%	0.2%	1.7%	6.3%	9.8%

Source: PT Jamsostek (2001)

Retirement age: Age 60 with 15 years of contributions

Benefit formula: 0.5% of final average earnings for each year of contributions.

Past service credit: None; Social pension for elderly: None

Minimum benefit: None; Average cost = 5.27% of wages.

Old -age saving programme

XLVI. The old-age saving programme is a long-term programme in which participants will receive benefits both before and after retirement. The cost of the Programme is (i) Contribution rate – 3% (ii) Cost of % of GDP = 1.05% years.[37]

Benefits of the individual will depend on –

- Wages and pattern of wage change.
- Rate of return on investments
- Periods of absence from labour
- Investment management and administrative expenses.

Estimated growth –

[35] Lene Muliati, 'Pension Reform Experience in Indonesia' (The World Bank Office 2013).
[36] Chad (n 27) 13.
[37] Tulus, T.H., 'Tambunan and Bangbang Purwoko, Social Protection in Indonesia' (2002)

- Contribution rate: 3.0%
- Inflation: 4%
- Real rate of wage growth: 3%
- Real rate of return on Investment: 4%
- Years of Contributions: All
- Expenses: None
- Pre-retirement withdrawals: None

Table 5: Benefits of Old-Saving Programme

Benefits

Years of Contributions	Salary Multiple
5	1.9
10	3.9
15	6.0
20	8.2
25	10.5
30	13.0
35	15.5
40	18.2

Total Assets

Year	% of GDP
5	5.2%
10	10.1%
15	14.4%
20	18.0%

Source: Report of Pension fund 2010 by Pension Bureau- BAPEPAM- LK

National Health Insurance Scheme (NHIS)

XLVII. NHIS will cover the health expenditure of all the Indonesian Citizens. The first phase includes formal workers who have to pay 6% payroll tax, split equally with their employers. 6% will be deducted from the pension of the retired citizens and taxes for the informal workers will be decided accordingly.[38]

Impacts of National Social Security Law (NSSL) on Indonesian Labour Market

XLVIII. The following are the impacts of the NSSL:

- High contribution rate will create financial burden on the employers and the workers.
- Loss of job opportunities due to higher rate of contribution of social security.
- Conflict between informal (fixed contribution) and formal worker (may vary) due to payroll taxes.

XLIX. It is doubtful that current contribution rate will cover health expenses for all Indonesians in during next few decades. Higher contribution rates would be required, which would increase the burden of workers and employers and could cause the Indonesian economy, already less competitive.[39]

Changes under the National Social Security System Law 2004

L. In 2011, there were mainly four changes. First, an additional programme for four to five schemes. Second, the government's commitment to have general universal medical care for the entire population, in which the legislature will pay contribution. Third, adaptability of the law to

[38] Hasbullah Thabrany, 'Birth of Indonesias 'Medicare': Fasten Your Seatbelts' The Jakarta Post (2014) <http://www.thejakartapost.com/news/2014/01/02/birth-indonesia-s-medicare-fasten-your-seatbelts.html> accessed 6 July 2016.

[39] Gulati (n 12) 8.

cover the informal economy and the independently employed. Fourth, simplification of the government-managed savings establishment (It is run by a government for the benefit of its citizens. A provident fund is a form of social safety net into which workers must contribute a portion of their salaries and employers must contribute on behalf of their workers). There will be just two open autonomous organisations that will run the standardised savings, namely, the social security for healthcare- and the social security relating to employment.[40]

Need to Reform the Schemes of India and Indonesia

Indonesia

- The recent trend in pension provisions is characterised by pay as you go scheme to a fully funded one, from the publicly run to the privately run and the government can't go both as the regulator and the provider. Thus, the government should change its policies and make pension scheme privately owned, supported by the three-pillar paradigm.
- Under the retirement account scheme, a private scheme, workers should be given the chance to manage their accounts either by themselves or by their employers.
- The government should provide safeguard for workers' investment.
- A micro health insurance scheme for the informal sector should be created.

India

- Lessons from the MGNREGA should be drawn.
- For making more effective implementation of the NFSA, it could link it to education as in Bangladesh where school children and their families are given access to subsidized food.
- Government should have to import foodgrains during drought years.
- 'Food stamps' should be given to poor's because 'free market economies' use that mechanism.
- There is a need to reduce the leakage from the Act and make it more transparent.

[40] Rekson Silaban, 'The Reform of Social Security in Indonesia, Social Policy, Trade and Labour Standards, Development Corporation' (2015) ITUC, AP.

Conclusion

LI. The NFSA and National Social Security Act put into legal principles and goals that might, more traditionally, have remained exclusively in the realm of the policy. The state through its law tries to promise more than it is capable. Since the laws have been there, it is difficult to roll back the social protection in question. Laws serve as a commitment that is more public than policy, and is, thus, more difficult to rescind.

LII. The welfare laws restrict the state to make social security more protective, responsive and innovative. The laws examined in the paper, particularly the Indonesian laws, need more reformation through further legislation and executive regulation. While NFSA tries to fulfill its obligations and provides a better balance between detail and flexibility of the laws, yet every law doesn't guarantee concrete rights, duties, standards and deadlines and it takes a long time to take effect – eight years elapsed since the law being passed.

LIII. Law provides better opportunities to expose the government to careful examination and better monitoring. Due process rights give individuals a basic entry point, which can make it easier to press for service. Moreover, relying on individual complainants, welfare laws can create better institutional mechanisms and rural form to reduce inadequacies. This is, perhaps, the most concrete improvement that social welfare laws can achieve.

LIV. The Indian and Indonesian laws observed in this paper suggest that creating legislation does not replace policy-it provides the umbrella under which social welfare programmes must fit. However, passing such laws with regard to social welfare programmes must be through democratic checks and balances.