Legislative Comment on Code on Social Security, 2020

Arindam Sood & Adity Srivastava, Symbiosis Law School, Pune.

Abstract

In numerous countries, social security is viewed as the most effective way of resolving and mitigating the economic insecurities of the population in working-class population. The sectors and population matrix on which the social security benefits shall be bestowed upon have been a subject matter of constant debate ever since the inception of Social Security policies in India. Finally, in 2020, the Social Security Code was enacted with the aim of consolidating and amending the laws pertaining to the Social Security regime in India and extending the benefits to the employees of each sector, organised or unorganised. This legislative analysis intends to lay out its lacunae, new incorporations, salient features, and to what extent this code may practically serve the purpose of reducing the economic hardships of the employees, whether organised or unorganised.

Keywords: *Code On Social Security, Salient Features, Reducing Economic Hardships, Insecurities, Working Class.*

Introduction

The Indian labour market has been predominantly unorganized. In the year 2018-19, the nature of employment for around 90% of workers in India's labour market was unorganized. These workers are either inadequately or not at all covered under existing labour legislation, social protection schemes, and other employment benefits. Due to the lack of governmental oversight, a large proportion of these workers work in exploitative and precarious conditions.[1] According to the cited report, India was amongst the worst 10 countries in the world when the matrix pertains to Worker Rights.[2] It is in this context that the Code on Social Security, 2020[3] is analysed in this document. The longing for social security has been a constant urge. This urge has assumed several forms, according to the need of people and their level of social consciousness, the advancement of technology, and the pace of economic development.[4]

Social security is in itself a relatively new phenomenon in India, it is the bell which resonates to answer the economic insecurities of the masses.[5] The term Social Security has originated in the United States of America, has spread throughout the world.[6] According to the International Labour Organization, Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security on the loss of a breadwinner.[7] The Code on Social Security[8] is a result of recommendations of the Second National Commission on Labour, 2002.[9] Which in turn recommended the unification of labour laws on the pretext of subject matter. In India, the legislative inquiry into the subject of Social Security started with the tabling of the draft of the labour code on social security and welfare in 2017. It was duly placed before the Ministry for review. The code was introduced in December of 2019, and thereby, the first report by the Parliamentary Standing Committee was

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[1] International Trade Union Confederation, 2020 ITUC Global Rights Index: violations of workers' rights at seven-year high, https://www.ituc-csi.org/violations-workers-rights-seven-yearhigh.
[2] Ibid.
[3] The Code on Social Security, Act No. 38 of 2020, INDIA CODE (2020).
[4] Report of the National Commission on Labour (1969), p. 62, https://casi.sas.upenn.edu/sites/default/files/iit/National%20Co mmission%20on%20Labour%20Report.pdf.
[5] VICTOR GEORGE, SOCIAL SECURITY: BEVERIDGE AND AFTER 1 (Routledge, 2018).
[6] Social Security - Developments since c. 1900 (Britannica), https://www.britannica.com/topic/social-security-governmentprogram/Historical-evolution.
[7] Facts on Social Security, (International Labour Organisation, Dec. 8, 2021), https://www.ilo.org/wcmsp5/groups/public/--- dgreports/---dcomm/documents/publication/wcms_067588.pdf.
[8] Id at 3.
[9] Report of the Second National Commission for labour, https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf.

prepared by the end of July 2020. The Code on Social Security, 2020,[10] was gazetted on 29th of September, 2020, which is a diluted version of its earlier draft which was placed before the Ministry for consultation and review in 2018. Thereby creating a code for the implementation of social security laws thereby reducing multiplicity of definitions and streamlining the number of authorities under this singular code so as to preserve the basic concepts of welfare of workers. The Social Security Code 2020 replaces the Code of 2019, which has consolidated and amended laws relating to employees' social security with the aim of extending social security to all employees and workers, whether organized /unorganized or any other sector.[11]

Analysis of Important Provisions & Landmark Judgements

The Code on Social Security, 2020 (herein referred to as 'CoSS') with respect to economic security amalgamates rationalises and simplifies the relevant provisions of 9 central Labour Legislations:

1. Cine Workers Welfare Fund Act, 1981.[12]
2. Employees' Compensation Act, 1923[13]
3. Employment Exchanges Act, 1959[14]
4. Employees' State Insurance Act, 1948[15]
5. Employees' Provident Fund and Misc. Provisions Act, 1952[16]
6. Payment Of Gratuity Act, 1972[17]
7. Maternity Benefit Act, 1961[18]
8. Unorganised Workers' Social Security Act, 2008[19]
9. Building & Other Construction Workers' Welfare Cess Act, 1996[20]

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[10] Id at 3.

[11] Trishal Jeet Singh, The Code on Social Security, 2020 (May 25, 2021), https://www.lawrbit.com/article/code-on-social-security/. 17 Santhosh & Sarkar, Social Security Code, 2020 and Rules, 56 ECONOMIC AND POLITICAL WEEKLY, 12 (2021),

[12] Cine Workers Welfare Fund Act, No. 33 of 1981, INDIA CODE (1981).

[13] Employees' Compensation Act, No. 8 of 1923, INDIA CODE (1923).

[14] Employment Exchanges (Compulsory Notification of Vacancies) Act, No. 31 of 1959, INDIA CODE (1959).

[15] Employees' State Insurance Act, No. 34 of 1948, INDIA CODE (1948).

[16] Employees' Provident Funds and Miscellaneous Provisions Act, No. 19 of 1952, INDIA CODE (1952).

[17] Payment of Gratuity Act, No. 39 of 1972, INDIA CODE (1972).

[18] Maternity Benefit Act, No. 53 of 1961, INDIA CODE (1961).

[19] Unorganised Workers' Social Security Act, No. 33 of 2008, INDIA CODE (2008)

[20] Building & Other Construction Workers' Welfare Cess Act, No. 2 of 1996, INDIA CODE (1996).

"The Code comprises 164 Sections divided into 14 Chapters. The Chapters are: The Code also has seven Schedules as:

1. The First Schedule: Applicability [See sections 1(4), (8) and 152 (1)]

2. The Second Schedule: List of persons who are employees within the meaning of the third proviso to clause (26) of Section 2 [See sections 2(26), 74(3), (5), 132 and 152(2)]

3. The Third Schedule: List of Occupational Diseases [See sections 2 (51), 36(1), 74 (1), (3), (5), 131(5), 132 and 152(2)]

4. The Forth Schedule: List of Injuries Deemed to Result in Disablement [See sections 2(55), (56), 76(1) and 152(1)]

5. The Fifth Schedule: Matters that may be provided for in the Scheme [See sections 15(2) and 152(1)]

6. The Sixth Schedule: Factors for working out lump sum equivalent of compensation amount in case of permanent disablement and death [See sections 75, 76(1) and 152(1)]

7. The Seventh Schedule: Classification of Aggregator [See section 114(4)]"[21]

The Social Security Code provides the social security and protection to the workers in the unorganized sector to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code.[22]

Important Provisions in the Act are as follows:

Gig Workers: Under Section 2(35) of Code on Social Security,2020,[23] The code defines a gig worker as "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship." In general, a Gig Worker is a person who temporarily performs a job or someone who takes up part-time jobs on an hourly basis. It was introduced for the first time in India under labour laws and was later

[21] Lakshmikumarn & Shridharan, Code on Social Security, 2020 (June. 3, 2021), https://lakshmisri.com/insights/articles/code-on-socialsecurity-2020-an-overview/.
[22] The Code on Social Security, Act No. 38 of 2020, Preamble, INDIA CODE (2020).
[23] *Code on Social Security*, No. 36 of 2020, § 2(35), Acts of Parliament, 2020 (India).

incorporated into CoSS. It was the need of the hour to give legal recognition to such category of workers as it consists of a large number of workers who freelance or work on temporary basis.

Platform Workers: CoSS takes platform workers into account in various sections of Charter IX of COSS.[24] This term refers to the workers whos' work is based on providing a special service or solving a problem through a platform, for example Amazon and Flipkart.

Unorganised Workers: Unorganised workers are taken into account in all the chapters of CoSS.[25] In general, this term refers to self-employed workers, home-based workers, or wage workers in the unorganised sector.

Benefits to Workers: CoSS not only recognises workers as gig, unorganised, or platform, but it also confers certain benefits to the recipients. As there was no specific legislation pertaining to all the benefits that may be sought by the workers as such, this code accounts for them. Under this Code, the workers can claim benefits like Hours of work, minimum wages, leave, overtime, etcetera. The code aims to give an equal quantum of Social Security as in the case of Government employees and Private Sector Employees.

Under the code, The Central Government and the State Government both are conferred with the right to frame, pass and notify schemes under the umbrella of Social Security in the matters pertaining to old age protection, accidents, insurance claims, disability cover, health benefits, maternity benefits, creche, etcetera. Funding of the schemes may be 50:50 Central Government: State Government or in any other combination.

The Overhauling feature of CoSS is that the Central Government has the obligation to constitute "National Social Security Board."[26] The National Social Security Board is to be constituted for the welfare of the Unorganised Sector Workers, including Gig Workers and Platform Workers. By virtue of this National Social Security Board, the Government may Setup helplines and such other facilitations. Making sure that the upcoming working force opts for unorganised jobs to avail such benefits.

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[24] The Code on Social Security, Act No. 38 of 2020, Ch. IX, INDIA CODE (2020).
[25] The Code on Social Security, Act No. 38 of 2020, INDIA CODE (2020).
[26] *Code on Social Security*, No. 36 of 2020, § 2(49), Acts of Parliament, 2020 (India).

Registration: CoSS has provision for compulsory registration of every unorganised worker, platform worker, or gig worker to avail the benefits conferred under schemes under the purview of the act. However, it is subject to certain conditions under Section 113 of CoSS.[27]

"(a) he has completed sixteen years of age or such age as may be prescribed by the Central Government;

(b) he has submitted a self-declaration containing information prescribed by the Central Government."[28]

The applications shall be based on a specified form along with the Aadhar number or as may be prescribed by the Central Government.

Employee Provident Fund (EPF): CoSS entails the revised applicability of the Employee Provident Fund Scheme under section 153 of CoSS.[29] Twenty or more employees are required for the EPF provisions to apply. Under the established provident fund under this act, the central government shall contribute to the tone of 10% of wages for the time being payable to each employee, and the employees' contribution shall be equal to the employers' contribution. An employee can contribute much more than 10% when the employer is subjected to contribute more than 10%, provided that the Government by virtue of its notification modify the rate from 10% to 12%.

Employee State Insurance (ESI): Provided that more than 10 employees are employed by the firm. Notwithstanding this, Employee State insurance shall be applicable to an establishment that by virtue of its work, is hazardous or life-threatening for the employees, even if a single employee is employed. In a case where the Employer omits to pay the ESI contributions, the Employee State Insurance Corporation (ESIC) shall pay the benefit to the employee, and in turn, recover it from the Employer at a capitalized value of the benefit, including the contribution, interest and damages as a result of such omission under section 25 of Coss.[30]

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[27] *Code on Social Security*, No. 36 of 2020, § 113, Acts of Parliament, 2020 (India).

[28] Ibid.

[29] *Code on Social Security*, No. 36 of 2020, § 153, Acts of Parliament, 2020 (India).

[30] *Code on Social Security*, No. 36 of 2020, § 25, Acts of Parliament, 2020 (India).

Gratuity: Under Section 53 of CoSS,[31] Every establishment in which 10 or more than 10 employees are employed shall pay gratuity to every mine, plantation, oilfield, factory, railway, or port worker on any day preceding the 12 prior months. Such Gratuity is to be payable for on termination of his/her employment, subject to 5 years of continuous service by the employee, this is waived off in case such worker dies while working the job. The Social Security Code entitled the fixed term employees (i.e., employed for a fixed duration) to receive gratuity on a pro-rata basis, based on the term of their contract.

Maternity Benefits: Under the purview of Section 59 of CoSS,[32] No woman shall work in any firm or establishment in the six weeks immediately following the day of her delivery. This provision also extends to miscarriage or Medical Termination of pregnancy as per procedure prescribed by law.

A maximum of twenty-six weeks is granted to every woman as maternity leave, in which not more than 8 weeks shall be granted pre-delivery.

Every woman shall be entitled to payment of maternity benefit at the average rate of daily wage during the period of her absence as if she has actually worked for the period of absence.

The Code on Social Security (CoSS), enacted in India in 2020, was designed to unify various social security laws and improve the welfare system for employees and workers. While there haven't been many landmark rulings directly interpreting the Code, several key judicial decisions have helped shape India's legal framework on labour rights and social security.

One of the most notable cases in this area is *People's Union for Democratic Rights v. Union of India* (1982),[33] where the Supreme Court emphasized that the state has a duty to ensure social welfare and security for workers. The ruling also reinforced that fundamental rights under Part III of the Constitution extend to labour protections.

[31] *Code on Social Security*, No. 36 of 2020, § 53, Acts of Parliament, 2020 (India).
[32] *Code on Social Security*, No. 36 of 2020, § 59, Acts of Parliament, 2020 (India).
[33] 1982 AIR 1473.

Over the years, courts have played an active role in protecting workers' rights. Some important cases include:

- *Workmen of Sudamdih Colliery v. Union of India* (1967),[34] which examined workers' entitlements and highlighted the government's responsibility in ensuring employee benefits.[35]
- *Bangalore Water Supply and Sewerage Board v. A. Rajappa* (1978),[36] which expanded the definition of 'industry,' ensuring greater protection for workers in various sectors.[37]
- *Employees State Insurance Corporation v. Sree Chandran* (1993),[38] where the Supreme Court reaffirmed employees' rights to social security benefits and stressed the importance of effective implementation.[39]

Another significant ruling, *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* (1986),[40] held that the right to livelihood is an essential part of the right to life under Article 21 of the Constitution, strengthening the legal foundation for social security measures.[41]

Additionally, in several cases, courts have linked the right to work with fundamental rights, reinforcing the importance of social security for labourers. Although the Code on Social Security is relatively new and has not yet been the subject of many judicial decisions, these rulings provide a strong foundation for how courts may interpret and apply its provisions in the future.

[34] AIR 1969 PATNA 147.
[35] Ibid.
[36] [1978] 3 S.C.R. 207.
[37] Ibid.
[38] AIR 1993 SUPREME COURT 2767.
[39] Ibid.
[40] 1986 AIR 1571.
[41] Ibid.

Suggestions

The Code on Social Security (CoSS), 2020, is a major reform in India's labour law framework, but certain provisions need improvement to ensure better worker protection, easier implementation, and broader inclusivity. Below are some suggested modifications:

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1. Strengthening Protections for Gig and Platform Workers

- While the Code acknowledges gig and platform workers, it lacks a clear framework for implementing their social security benefits.
- A mandatory contribution system should be established, where platform companies and the government both contribute to a social security fund for these workers.
- A sector-specific approach should be adopted, ensuring fair distribution of benefits across different gig industries, such as food delivery, ride-hailing, and digital freelancing.

2. Expanding Parental Benefits

- Maternity leave benefits should be extended to include gig workers and those in the informal sector, ensuring financial security during pregnancy.
- A statutory paternity leave provision should be introduced to encourage shared parenting responsibilities and promote gender equality in workplaces.

3. Making Social Security Accessible to All Workers

- Benefits like Employee Provident Fund (EPF) and Employees' State Insurance (ESI) should not be restricted to specific worker categories.
- The Code should be amended to include temporary, part-time, self-employed, and gig workers through a contributory model, ensuring universal access to social security schemes.

4. Ensuring Portability of Benefits for Migrant Workers

- Social security benefits like pension, provident fund, and insurance should be made easily transferable across different jobs and states.
- A centralized digital database should be implemented to track contributions and entitlements for workers who frequently change jobs.

5. Revising Gratuity Rules for Fixed-Term Employees

- While the Code allows fixed-term workers to receive gratuity, they must complete a minimum tenure to qualify.
- Gratuity should be provided from the first day of employment, ensuring fair financial security for workers at the end of their contract.

6. Reducing Compliance Burden for Small Businesses

- Although the Code aims to streamline labour laws, compliance remains challenging for small and medium enterprises (SMEs).
- A simplified self-reporting system should be introduced for businesses with fewer than 50 employees, reducing administrative complexity.

7. Enhancing Workplace Safety and Insurance Coverage

- Hazardous job roles in the unorganized sector, such as sanitation work and daily wage labour, should be given mandatory insurance and safety coverage.
- Employers should face strict penalties for failing to adhere to workplace safety norms, helping to prevent accidents and exploitation.

8. Strengthening the Social Security Fund for Informal Workers

- While the Code proposes a Social Security Fund, it does not specify clear funding sources.

- Industries relying on unorganized labour should be required to contribute to the fund, and the government should match contributions to ensure adequate financial support for workers' pensions, healthcare, and insurance.

9. Improving Dispute Resolution and Grievance Handling

- Lengthy delays in resolving labour disputes remain a significant issue under the Code.
- A fast-track mechanism should be set up for cases related to social security, employment benefits, and wage disputes.
- A digital grievance redressal portal should be introduced, allowing workers to submit complaints directly to labour authorities.

Conclusion

The Code on Social Security, 2020, marks a crucial move toward streamlining and broadening social security coverage in India. By integrating multiple labour laws, it seeks to simplify regulations and extend benefits to a larger workforce, including gig workers, platform workers, and those in the unorganized sector. The implementation of digital registration and dedicated social security funds is expected to improve accessibility and efficiency in benefit distribution.

Despite its progressive vision, challenges persist, particularly in ensuring the proper registration of unorganized workers and employer compliance. Successful implementation will require strong oversight, widespread awareness initiatives, and effective coordination between central and state authorities.

In conclusion, while the Code is a positive step toward strengthening economic security for workers in India, its success depends on proper execution and adaptability to shifting labour trends. If enforced effectively, it could help close existing social security gaps and provide crucial financial support to millions.