



# Relevance Of New Social Security Codes In Indian Labour Scenario

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## Abstract

‘Labour’ as a subject is added in the concurrent list of the Indian Constitution. ‘Social Security’ means various protective measures that have been provided to the employees particularly in old age, retirement, sickness, work injury, maternity or the loss of the only bread winner in the family. With the objective of simplifying labour laws, the Indian government has formulated new labour codes. It is considered as an important step not only towards reforming and facilitating various labour laws but also in removing the rigidities imposed by them. This paper highlights the provisions of the new codes and their relevance in the present scenario in the labour market.

**Key words:** Labour, Social Security, Labour Codes, Labour Welfare, Relevance.

## Introduction

“Labour” is the “subject” of “Concurrent List” of “Constitution of India”. The “Parliament” and “State Legislatures” can both make laws for regulating it. The existing legislation is “complex with archaic provisions” and “inconsistent definitions” by the second “National Commission for Women”. To ensure “uniformity in labour laws”, the commission suggested the “amalgamation” and “consolidation” of central labour laws into wider groups such as: -

- “Industrial Relations”;
- “Wages”;
- “Social Security”;
- “Occupational Safety”; “Welfare Provisions” and “Working Conditions”.

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## “The Social Security Code”, 2020

“Code of Social Security”, 2020 defines “social security” is the measure of protection for employees including the “unorganized workers”<sup>2</sup>, “gig workers”<sup>3</sup> and “platform workers”<sup>4</sup>. The objective is to ensure “health care” and “income security” in times of “sickness”, “unemployment”, “invalidity”, “maternity” or the “loss of the only breadwinner” because of “death”. There are various schemes framed and the rights conferred on such persons under the “Social Security Code”, 2020.

“Code on Social Security”, 2020 consolidates the law relating to “social security” to extend it to all the employees working either in the “organized sector” or “unorganized sector”. This Code “subsumed” and “replaced” the following enactments:-

- “Employees Compensation Act, 1923”
- “Employees Provident Fund & Miscellaneous Provisions Act, 1952”
- “Maternity Benefits Act, 1961”
- “Payment of Gratuity Act, 1972”
- “Cine Workers Welfare Fund Act, 1981”
- “Building and Other Workers Welfare Cess Act, 1996”
- “Unorganized Workers’ Social Security Act, 2008”

The Code provides some vital provisions and benefits with respect to “gig workers”, “platform workers” and has also introduced alterations in the following labour legislations:-

### “Benefits” to “Gig Workers” and “Platform Workers”

The “Central Government” and “State Government” can notify schemes for “**Gig Workers**” and “**Platform Workers**” related to “life” and “disability cover”, “health”, “maternity”, “provident fund”, “employment injury benefit”, “housing” etc.<sup>5</sup> It also mandates that the “central government”, “state government”, and “Aggregators” should “collectively contribute” in the “funding of the notified schemes”.<sup>6</sup>

Records of “Gig Workers” and “Platform Workers” must be maintained as prescribed by the “central government” and “state governments” and every such worker must “register by applying through his Aadhar number”, by fulfilling the following conditions:-

- (i) “he has completed sixteen (16) years of age or any other prescribed age”; and
- (ii) “has submitted a self-declaration containing information prescribed by the Central Government”.

<sup>2</sup> “The Code on Social Security”, s.2 (86) defines “an unorganized worker as a home-based worker, self-employed worker or a wage worker in the Unorganized Sector.”

<sup>3</sup> *Id.*, s.2 (35), “a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship is a gig worker.”

<sup>4</sup> *Id.*, s. 2(61) “platform worker” is defined “as a work arrangement outside of a traditional employer employee relationship in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems.”

<sup>5</sup> *Id.*, s.109.

<sup>6</sup> *Id.*, s.2 (2) defines an “aggregator as a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider”.

### Alterations in the “Employees' Provident Fund”<sup>7</sup>

The Code has modified the applicability of the “Employees' Provident Fund” Scheme. From now onwards it applies:-

- to every “establishment” in which twenty (20) or more employees are employed.
- “The Central Government may, establish a provident fund where the contributions paid by the employer to the fund shall be ten per cent (10%) of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contractor)”.
- “The employee's contribution shall be equal to the contribution payable by the employer in respect of him. The Central Government, may, by notification, increase the contribution percentages to twelve percent (12%) for both employers and employees of certain establishments”.
- “If any person being an employer, fails to pay any contribution under the SS Code or rules, regulations or schemes made thereunder, he shall be punishable with:
  - (i) imprisonment for a term which may extend to three (3) years, but which shall not be less than one (1) year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of Rupees One Lakh (Rs. 1,00,000/-); or
  - (ii) which shall not be less than two (2) months but may be extended to six (6) months, in any other case and shall also be liable to a fine of Rupees Fifty Thousand (Rs. 5,000/-).”

### “Gratuity”<sup>8</sup>

Different criteria of eligibility for “gratuity” of “permanent employees” or “fixed term employees” is fixed under the Code as follows:-

- “Every shop or establishment in which ten (10) or more employees are employed, or were employed, on any day of the preceding twelve (12) months shall pay the “Gratuity” to eligible employees”.
- “Every “employee” who has rendered continuous service for not less than five (5) years shall be entitled “Gratuity” on his “termination from the “employment”, “superannuation”; “retirement”, “resignation”, “on his death” or “disablement due to accident” or “disease”; on “termination of his contract period” under “fixed term employment”.
- “Where the “termination” of the employment of any “employee” is due to “death” or “disablement” or “expiration of fixed term employment”, a continuous service of five (5) years is not necessary”.
- “Employer” shall pay “gratuity” to an “employee at the rate of fifteen (15) days' wages for every completed year of service or part thereof in excess of six (6) months”.
- “Amount of “gratuity” payable to an “employee” shall not be in excess of amount notified by the Central Government”.
- “Person who fails to pay any amount of “gratuity” to an “employee” shall be punished with an imprisonment for a term of one (1) year or with fine upto Rupees Rs. 50,000/-, or with both”.

### The “Employees State Insurance”

Important provisions with regard to the “Employees State Insurance” under the code are the following:-

<sup>7</sup> *Id.*, s. 16 and Chapter –III.

<sup>8</sup> *Id.*, Chapter –V.

- “The “Social Security Code” allows “voluntary registration” under the “Employee State Insurance” with the “mutual consent of the employer and majority of the employees”.
- Further, “the Government has the power to extend the provisions of the Employee State Insurance Scheme” to any hazardous occupation” irrespective of the number of working employees”.
- “Social Security Code” covers within its ambit the “Gig Workers”, “unorganized Sectors” under “Employee State Insurance Scheme”.

### **The “Maternity Benefit”<sup>9</sup>**

**The provisions relating to “Maternity Benefits” under the “Social Security Code” are mentioned below:-**

- Every employee working in any “shop or establishment in which ten (10) or more employees are employed, or were employed, on any day of the preceding twelve (12) months” is entitled to “Maternity benefits”.
- The “**Social Security Code**” provides that “during the six (6) weeks immediately following the day of her “delivery”, “miscarriage” or “medical termination of pregnancy”, no “employer”, man or woman can knowingly employ a woman/work in any establishment”.
- Further,” a woman can claim “maternity benefit” from the “employer” under whom she has continuously worked for a period of not less than eighty (80) days in the twelve (12) months immediately preceding the date of her expected delivery”.
- “A woman shall be entitled to “maternity benefit” for the twenty-six weeks (26) of which not more than eight (8) weeks shall precede the expected date of her delivery”.
- “A woman having two (2) or more surviving children is entitled to “maternity benefit” only for twelve (12) weeks of which not more than six (6) weeks shall precede the date of her expected delivery”.
- “Person who “dismisses”, “discharges”, “reduces in rank” or otherwise penalizes a woman “employee” or fails to provide any “maternity benefit” to which a woman in contravention of the provisions of “maternity benefits” shall be punishable upto six (6) months of imprisonment or with fine upto Rupees Fifty Thousand (Rs. 50,000/-), or with both”.

The Social Security Code”, 2020 is not a mere consolidation of previous legislations. It has “subsumed” various existing labour laws in India and included the “unorganized sector”, “fixed term employees” and “gig workers”, “platform workers” etc., in addition to “contract employees”. Another highlight of the Code is the “uniformity in determining wages” for the purpose of “social security” benefits.

### **Provisions on Penalties**

The “Social Security Code”, 2020 changes the penalties for certain offences.

- The “punishment for obstructing an inspector from fulfilling his duty is reduced from one year to six months”.
- “If a person unlawfully deducts the employer’s contribution he shall now have to pay only fine of Rs 50,000. Earlier the penalty for this was an imprisonment of one year or fine of Rs 50,000”.

<sup>9</sup> *Id.*, Chapter- VI.

## The “Code on Occupational Safety, Health and Working Conditions, 2020”

The “Occupational Safety, Health and Working Conditions Code”, 2020 is one comprehensive act that will not only expand the “social security” net for workers but will also “consolidate” the bulk of “labor legislation” in India. It will also streamline “labor compliance” for “benefit of workers”. The Act apply on “factories with 20 or more workers” or “in which the manufacturing process is carried” with the help and “assistance of power or 40 or more workers”.

The central focus of the Code is on “health measures” and “safety measures”. The main aim is the “welfare of workers” employed in various sectors like “industry”, “trade”, “business”, “manufacturing”, “factory”, “motor transport undertaking”, “building and other construction work”, “newspaper establishments”, “audio-video production”, “plantation”, “mine & dock-work”, “service sectors” and to the “contract labour”. Such workers may be given the employment by “contractor in the offices” where “Central Government” and “State Government” is the “principal employer”.

The “Occupational Safety, Health and Working Conditions Code”, 2020 has various schedules which include the names of “industries” involved in “hazardous process” and activity. It also contains the list of matters where adequate standards are to be followed with respect to “health” as well as “safety”.

The schedules also mention the “list of certain diseases” which are to be brought in the notice of the concerned authority as they are “communicable” in nature and “can spread and affect large number of persons”.<sup>10</sup>

## New “Labour Code” and the “Corresponding Laws”

The “Code on Occupational Safety, Health and Working Conditions”, 2020 will subsume the below mentioned legislations for the “welfare of labour class”:-

<b>“Code on Occupational Safety, Health and Working Conditions”, 2020</b>	“Factories Act, 1948”
	“Mines Act, 1952”
	“Dock Workers Act, 1986”
	“Contact Labour Act, 1970”
	“Inter- State Migrant Worker’s Act, 1979”
	“Plantation Labours Act, 1951”
	“Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979”
	“Beedi and Cigar Workers (Conditions of Employment) Act, 1966”
	“Working Journalist(Fixation of rates of Wages) Act, 1958”
	“Cine Workers and Cinema Theatre Workers Act, 1981”

<sup>10</sup> Monika Taparia, “The Occupational Safety, Health and Working Conditions Code” available at: <https://www.lawrbit.com/article/the-occupational-safety-health-and-working-conditions-code-2019/> (last visited on March 21, 2020).

	“Motor Transport Workers Act, 1961”
	“Sale Promotion Employees (Condition of Service) Act, 1976”

### **Main provisions in the “Code on Occupational Safety, Health and Working Conditions”, 2020 for Female Workers**

The key highlights of this Code in which changes are introduced for the benefit of female workers at their work place or in relation to their employment are<sup>11</sup>:-

- The limit of female workers must be enhanced to 50 female workers from 30 “for the purpose of creating Creche facility for children of less than 6 years of age” in an “establishment”.
- The establishment should appoint “welfare officers” if the number of workers in it is 500 or more according to the provisions under The Factories Act, 1948. The limit is reduced from 500 employees to 250 employees after the implementation of this Code”.
- The establishment which employs 100 workers has the responsibility to provide “canteen facility”. This limit is increased to 250 employees at present.
- The Code introduced the provision of late work hours beyond 7 pm till 6 am for the employment of female employees in an establishment with their “consent”.
- The Code also provides for “safety”, “holiday”, “working hours” of female workers.
- The Code also lay down that “the workers are not required to work for more than 6 days in a week. They are entitled to a day off during the period of 20 days of work and a one day off every week”.

### **Social Security Provisions in “Unorganized Sector”**

“Unorganised workers” consist of those working in the unorganized enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/ social security benefits provided by the employers”.<sup>12</sup>

In India, they are most often presented as a complex majority of the working population who is usually identified through statistics of poverty. They are the exclude classes who have not been able to continue to fulfill their common interests as a result of ignorance and illiteracy. They are the people who are generally paid less and do not get “social security”. “Indian government” has made various laws to provide protection of these workers.

### **The “Unorganized Sector Workers’ Social Security Act”, 2008**

This Act was implemented with the objective of ensuring social security to the “unorganised workers” in times of contingencies. “The importance of the Act was realized when in *National Domestic Workers welfare Trust v. State of Jharkhand & others*”<sup>13</sup>, the court highlighted that the “Current labour laws” such as “Industrial Disputes Act”, “Maternity Benefits Act”, The “Minimum Wages Act” do not give “social security” of “unorganized workers”.

<sup>11</sup> *Id.*

<sup>12</sup> Social Security for Unorganized Workers in India 8, available at: <https://www.actionaidindia.org/wp-content/uploads/2019/05/Social-Security.pdf> (last visited on March 12, 2021).

<sup>13</sup> W.P. (PIL) No. 2810 of 2012.

Various benefits proposed under the Act are “life” and “disability cover”, “health” and “maternity benefits”, “old age protection” generally and “any other benefit” as determined by “Central Government”.

Act also envisages that the “state government has the authority to formulate suitable welfare schemes” including “provident fund”, “employment injury benefit”, “housing”, “educational schemes” for children, “skill upgradation” of workers, “funeral assistance” and “old age homes”.<sup>14</sup> The “Central Government” may wholly fund such facilities/ benefits or it will be shared by “Central” and “State Government” along with contribution from “employees” also.

“Social security” is defined in the Act and is used interchangeably with “welfare”.<sup>15</sup> Moreover definition of “unorganized workers” is narrow and excludes “forest workers”, “domestic workers” and “anganwadi workers”. The Act has laid down various schemes in its “First Schedule” but they are not mentioned anywhere in the Act<sup>16</sup>.

## Conclusion

There are many laws on social security in India but most of them provide provisions only for the benefits of organized workers. Most of them have mentioned the limitation on the number of workers employed in them in order to avail the benefits. Another point for consideration is the clauses for barring.

For instance, as the “Employees State Insurance Act” and “Plantation Act” provide certain “medical benefits”; the “maternity benefit” is provided under “Employees State Insurance Act” and various maternity Acts of “Central government” and “State government”. The legislations are though multiple in number but the crux is that these legislations lack implementation and proper coverage.

The “Social Security Code”, 2020 is another important step in the “uniform application” of various labour provisions and benefits on the workers of both the “organized sectors” and the “unorganized sectors”. It has enhanced the coverage of “labour benefits” and introduced the provision of maximum benefits under minimum governance.

Further, the “**Code on Occupational Safety, Health and Working Conditions**”, 2020 has replaced and simplified “13 laws” regulating “health”, “safety” and working conditions of workers. So it can be said that the present “labour legislations” aims at the “simplification” and “universal application” of their provisions in relation to the “labour class”.

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<sup>14</sup> The “Unorganised Workers’ Social Security Act”, 2008 ACT NO. 33 OF 2008, s.3.

<sup>15</sup> T.S. Sankaran, “The Unorganised Sector Workers’ Social Security Act, 2008-2008- A Critique”, *available at*: <http://lawyerscollective.org/magazine/dec2008-jan2009/feature5> (last visited on May 17, 2020).

<sup>16</sup> Available at: <https://legislative.gov.in/sites/default/files/A2008-33.pdf> (last visited on March 20, 2022).