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**A STUDY OF "CODE ON SOCIAL SECURITY
2019" - A RAY OF HOPE FOR UNORGANISED
SECTOR.**

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ABSTRACT

Amendments to Labour Laws, particularly to the Social Security aspect, for the unorganized sector has been since long waited. Adherence to the Directive Principles of State Policy under Articles 38 and 39 by the Legislators has shown a very grim response. Of all the categories of workers the most, negatively affected and neglected are the Unorganised Sector workers. The stagnation in the organized sector employment has shown an upward graph for the unorganized sector and the governmental efforts to provide social security to all workers has not been achieved due to many reasons from unskilled labours to illiteracy and economic constraints. The **Code on Social Security 2019** is a welcoming move that the political will has shown as its responsibility towards the Unorganised Sector. Though the Bill has intended to squash away with a few existing laws to be replaced, yet it will be time tested when it will be actually implemented. The Code has attempted to elaborately define/redefined certain key definitions to its true meaning. The Code also has made efforts to include the Unorganised Sector Workers in the Social Security provisions to give real meaning to the article 21 which intends to prove the basic essentials to form a civilized society. The article has intended towards making a study of the Code so as to highlight the proposed changes that would benefit the workforce as a whole.

Keywords - *Social Security, proposed Bill, Unorganised Workers, implementation, civilized society.*

INTRODUCTION

India has provided social security protection to the workers but it seems to be formal social security. A half-hearted attempt and negligible thought, towards providing social security has been given to the unorganized sector workers. At this stage is necessary to understand the basics of social security. It would be meaningful if, not only the worker/labourer but also his family feels secured and gets an assured minimum standard of living. Social security should aim at providing security of wages for those who work for economic gains. Social security is not only securing and protecting the present but also the future of the workers of the unorganised sector. We should not

forget that they are also the citizens of this country. This unorganized sector includes child labour which is between 10-18 years of age, domestic help, self-employed workers such as beauticians, rickshaw pullers/autorickshaw drivers, boot polishers, rag pickers, tailors, helpers in the shop, clinics, etc.

In spite of the Articles under the Directive Principles of State Policy in the Constitution, our lawmakers have not yet made efforts towards providing social security as the responsibility of the State. Article 21 has also not been able to include social security in its preview in spite of the International efforts. The judicial pronouncements have made efforts through its activism to recognize the unorganized labour and given its due share but it is the political will that lacks the State to vow social security of unorganized labour as its responsibility.

The Constitutional efforts through Article 38, 39, 41,42, 43 and 43A has shown a positive intention in providing social security to all those who work, but the parliament does not show this positivity through its efforts to minimize the economic disparity and to provide social security to the workforce in absolute terms. The concurrent list III through its entries 21,22,23,24 and 26 have also made provisions to regulate the trade, disputes, and social security arrangements to protect and ensure social security to all those who work for economic gains. These provisions must be implemented through legislation in the interest of the country.

The Labour Ministry has from time to time tried to evaluate the situation in the unorganized sector, their conditions of work, time, and place of work, wages, social security provisions and other facilities available to them by the existing legislation. The Ministry has recommended an amendment to the existing Unorganised Worker’s Social Security Act, 2008. The Act needs amendment for the sole purpose that the existing Act limits and prohibits extending the social security protection to the unorganized sector in an organized and formal way.

The amendment also aims to make an attempt to eradicate all possibilities in the existing Act, that prevent the inclusion of protection and security to the unorganized labourers that would cover them with the provisions of the Industrial Disputes Act, 1947 and other benefits pertaining to insurance, provident fund, gratuity and pension. The amendment aims at securing social security to the unorganized sector workers so as to reach the Constitutional provision of Article 21. The present **Code on Social Security 2019(“the Social Security Bill”)** intends to abolish the Unorganised Worker’s Social Security Act, 2008 along with other Acts, hopefully for the inclusion of the

unorganised sector. The quashing of the Act should not give a negative impact as it is the only legislation in the country for the unorganised sector to be regulated.

The unorganized sector workers are deprived of their secured future, the future of their family is also not protected, and they are unable to live a life of dignity as aspired by the Constitution. They are deprived of even a minimum wage; leave alone the social security provisions for those who work under the flagship programs of the Government. Chapter V of the Unorganised Workers' Social Security Act, 2008 provides for the Registration of every unorganized worker with eligibility conditions. The Act has failed in its provisions to provide identity cards by the District Administration. The unorganized workers could not be given their right through a special Act, we hope the Code to be a Ray of Hope for the unorganized sector. The Social Security Benefits under chapter II of the said Act also has remained in the statute wherein many schemes of welfare, included employment injury benefit, housing, educational schemes, skill up-gradation of workers, old age homes and provident fund. The Act was felt to be beneficial and thought that it would bring about significant change in the status of the unorganized workers. We look forward to the Code to be an enhancing factor in the status of living as enshrined by Article 21 of the Constitution.

On December 11 2019 the government introduced the **Code on Social Security 2019** in the Loksabha. The code proposes to consolidate the law on Social Security in India and replace the following Statutes:

1. Employees' Compensation Act, 1923.
2. Employees' State Insurance Act, 1948
3. Employees' Provident fund Act, 1952
4. Employment Exchange (Compulsory Notification of Vacancies) Act, 1951
5. Maternity Benefit Act, 1961
6. Payment of Gratuity Act, 1972
7. Cine Workers Welfare fund Act, 1981
8. Building and other Construction Workers Welfare Cess Act, 1996
9. Unorganized Workers Social Security Act, 2008

PROBLEM IDENTIFICATION

The political will is not positive thinking to implement the proposed Code on Social Security, 2019 which will be providing some relief to the unorganized workers if executed in its true meaning. It is necessary to bring in such a law at the earliest so that the hurdles could be rectified in the execution process of the Act.

HYPOTHESES:

THE PENDING CODE ON SOCIAL SECURITY 2019 IF PASSED AND IMPLEMENTED WILL HELP IN RECOGNISING THE UNORGANISED WORKERS IN ENCOMPASSING THEM UNDER THE SOCIAL SECURITY PROVISIONS.

OBJECTIVES:

1. To study the Code on social security 2019 in view of proposed changes.
2. To study the Code in light of it being helpful to provide social security in true sense to the unorganized workers.
3. To study the effectiveness of the implementation of the Code.

SCOPE OF STUDY

The study of the proposed Code has a wide scope in the sense that if its implementation and execution are carried on in accordance to Preamble and aims of the Code, then it shall be beneficial to the unorganized workers to secure and protect their future through Social Security provided under the said Code.

SIGNIFICANCE OF STUDY

The study of this proposed Code is significant as the researcher through this Article has triggered the possibility of the Code being very useful for the unorganized workers in availing Social Security in an organized, permanent and legal manner.

LIMITATION

The study of this article is limited only to the proposed pending Code on Social Security, 2019 to be passed by the Parliament with special reference to providing social security to the unorganized sector.

THE PROPOSED CHANGES:

The Code on Social Security, 2019 has made an attempt and equipped to overhaul and mend the existing law in favour of the unorganized workers by making structural changes to comply with. The Ministry of Labour and Employment has aimed at simplifying and rationalizing the Central Labour Laws by legislating differently, consolidated codes for Wages, Social Security, Occupational Safety, Health and Working conditions and Industrial Relations. The draft code has proposed for various welfare schemes suitable for the beneficiaries. The code intends at reaching with the beneficiaries in the unorganised sector to matters relating to life and disability insurances, maternity benefits, old age security, etc. The following changes are proposed in the code:

DEFINITIONS REDEFINED

DEFINITION OF WAGES-REORGANIZED: The Code has tried to align the definition of wages with the one under the Code of wages in 2019. As per the Code ‘wages’ shall mean all remuneration whether, by way of salaries, allowances or otherwise, which would, in terms of employment (express or implied) were fulfilled, be payable to a person employed in respect of his/her employment and includes basic pay, D A and retaining allowance.¹ The definition has now consolidated the exclusion from the definition of wages.

A significant change in the definition of ‘wages’ is the inclusion of a proviso which essentially provides that if the excluded components (other than retirement benefits such as gratuity) exceed

¹ Swati Thakur, “India’s code on social security 2019 and its implications on employee compensation”
blog.shrm.org, 2020

50% of all remuneration paid then the amount in excess of this 50% will be deemed to be ‘wages’ so that the wages portion remains at the 50% level.

“FACTORY” RE-DEFINED: Factory clarifies that the mere fact that an electronic data processing unit or a computer unit is installed in any premises as part thereof shall not make the establishment a factory. This clarification was confirmed in the case of Bombay High Court in *asst. Director, ESIC v. Western Outdoor Interactive Pvt Ltd* (Appeal No: 143 of 2012), wherein it was held that development, programming and application of software would amount to a ‘manufacturing process’ within the meaning of Employee’s State Insurance Act.

FIXED TERM FOR EMPLOYEE’S EMPLOYMENT: This term previously was largely contractually governed. But the notification dated 16/3/2018 where the Labour and Employment Ministry notified the Industrial Employment (Standing Orders) Central(Amendment) Rules, 2018 for the purpose of amending the Employment (Standing Orders) Central Rules, 1946, to allow fixed-term employment in all sectors of workers. The notification also provides that unlike the ‘fixed term workmen’ under the Industrial dispute Act, 1947, the hours of work, wages, allowances and other benefits shall no less than that of a permanent worker.² It also provides that the ‘fixed-term worker’ shall be eligible for all statutory benefits as are made available to the permanent workers.

These benefits shall be proportionate even if the worker does not fulfill the terms of employment with respect to the qualifying period of employment according to the statute. Thus it can be said that the Code tries to secure the benefits to every person who is a worker irrespective of ‘fixed-term employment’ or ‘permanent employment.’ The new Code intends to extend and encompass all types of workers into the purview of social security by adding the word ‘benefits proportionately’ keeping away that the worker has completed the required/eligibility/qualified service/ period of continuous service for being eligible for the benefits otherwise. The Code thus seems to be inspired by the aspirations of the Constitution for a life of dignity.

APPRENTICE-A NEW STATUS: The Code has clarified the ‘apprentice’ as under the Apprentice Act, 1961 that they will not be included in the definition of worker and will not be

² Govindarajan M, , “Social security Law-Unorganised Labour”, nentindia.com, 2019

considered as an employee. In accordance with the amended legislation, Apprenticeship Rules 1992, where an apprentice ought to be regarded as trainees and not workers and the provisions of any law with respect to employees would not apply to apprentice.

Application of provisions relating to Employees State Insurance if is made clear that Employees Insurance will apply only where there are 10 or more covered employees in the Factory/Establishment as agents the Supreme Court in E S I. v M M Suri (1998 8 SSC III) has held that when a scheme of the ESI Act is to provide certain benefits to employees who are such person falls within the wages ceiling.

EMPLOYEES STATE INSURANCE VOLUNTARY FRAMEWORK- A TREND SETTER: The Employees State Insurance does not provide voluntary coverage of employers and employees who are otherwise not covered under the Act. But the Code has made an attempt to give a new meaning to the word Insurance through the Code that where the employer and majority of employees have agreed that the chapter on Employees State Insurance should be made applicable to the establishment. The Director-General of the Corporation may apply the relevant provisions to such establishment by issuing a notification.

A NEW WAY-CALCULATING PROVIDENT FUND CONTRIBUTION: The Employees Provident Fund Act, 1952 provides for the calculation of the Provident fund contribution of the employees on basic wages, D.A and retaining allowance. The Supreme Court in Regional Provident fund Commissioner (II) W. Bengal v Vivekanand Vidyamandir & Ors (Civil appeal No. 6221 of 2011) held that the allowances which are uniformly, necessarily and ordinarily payable to all employees in a particular category will also be included as part of ‘Basic Wages’.³

The code has given a special provision by stating that the employee's Provident fund contribution shall be calculated on the ‘wages’ of the employees. However, the impact of the change is likely to be limited to the employees drawing wages less than or equal to the wages ceiling to be notified by the Central government under the Code. The Code has also proposed flexibility in contribution to be paid by the employees for certain categories. These categorized workers are of a particular

³ Yogima Sharma, “Labour Ministry proposes amendment to unorganized worker’s Act” mictimes.com, 2015

age group who shall pay a reduced contribution to PF which shall allow them to more salary in hand.

REFORMED STATUS-MEDICAL BONUS: The Maternity Benefit Act, 1961 while providing for the payment of medical bonus up to 3500/- also stipulates that the Central Government may increase the amount of reformed medical bonus subject to 20000/- maximum. The Code while mandating payment of a medical bonus of 3500/- removes the upper limit of 20000/-.⁴

The Code has inserted a new provision whereby if any employer fails or neglects to insure an employee or pay any contribution in respect to an employee, the authority may pay the benefit to such employee and recover the benefit from the employer to the extent of the ‘capitalized value of the benefit’ not of any principal amount, interest and damages paid by the employer.

The Code has also provided for setting up of career centers which would collect and furnish information relating to not only persons who seek to employ employees or persons who seek employment, but also to persons who seek vocational guidance or guidance to start their own ventures. The code requires notification of vacancies to career centers by every establishment.

The Code introduces that an employee, worker, or any other person will be required to produce Adhar Number for registration as a member or beneficiary, to avail benefits under the code or receiving any payment as an insured person or his/her dependent.

INCLUSION OF MAXIMUM UNORGANISED WORKERS- NEW TERM GIG WORKER: Due to advancements in technology and an increase in modes of business, their communication manner and growth in the various types of workers such as the gig workers, platform-based workers (for example Ola, Uber, Swiggy etc.) self-employed workers, home-based workers are on the higher note.⁵ These types of workers have a peculiar feature of not having one employer or they do not work for a single organization. Hence both the risk and determination of responsibility cannot be attached to anyone employer or organization, or the benefits and social

⁴ Anshul Prakash & Deeksha Malik, India: Consolidation or Reform, You decide-Government Introduces Code on Social Security, 2019 in Parliament, 2019, www.mondaq.com

⁵ Yogima Sharma, “Social Security Code Bill introduced in Lok Sabha”, 2019 mpproject.org

security can be ascertained to any single employer/organization. Therefore we see a shift of responsibility from employer/organization to the worker.

The Code on Social Security has made efforts to universalize the benefits of social security to such workers by considering the needs with a holistic view. The Code however has ensured tangible social security benefits to these unorganized workers by way of schemes which would be notified by the Government to include housing, pensions, employment injury cover, skilling, funeral assistance, etc.

SOCIAL SECURITY FUND- REAL MEANING TO ARTICLE 21: The Code on Social Security, 2019 proposes a novel provision to establish a Social Security Fund by utilizing a corpus available under the Corporate Social Responsibility allocation. This Fund shall be used for benefits to be provided for pension, medical coverage and death and disablement benefits to all unorganized workers including the gig workers.

LIMITATION PERIOD FOR VIOLATION: The Code proposes for a limitation period of 5 years on enquiry and determination of dues in matters of contribution from the date the alleged amount is due.⁶ The code also introduces stringent penalties for violation for failure to pay a contribution, benefits, cess, contravention of any other required provisions, etc. This limitation shall help to pay the dues after the quick determination.

CODE-A RAY OF HOPE IN TRUE SENSE

The Code seems to be a ray of hope for the unorganized workers in a true sense. The removal of a multiplicity of definitions paving way for different interpretations will prove to be a relief for the workers while settling claims or benefits in the courts or Government departments. Also defining and limiting the authorities while reducing the number will also cut down the time in various processes taken to reach the beneficiaries.

⁶ Code on Social Security, 2019, www.mondaq.com>employee-benefits-compensation

The extension of EIS facility evenly to all establishments irrespective of hazardous or non-hazardous, and a number of workers (employing less than 10) shall be of real help to the unorganized workers.⁷

Extending the benefit of Employees Provident fund, Employees' Pension Scheme and Deposit Linked insurance Scheme to all establishments employing 20 or more employees will definitely encompass the larger working section into the social security ambit. The shift to a voluntary National Pension Scheme from the previous compulsory EPF is also welcoming.

One more very important change in the Code shall give an assurance to the employees with respect to payment of dues. The employer now shall be charged on his assets to pay the dues as per the Insolvency and Bankruptcy Code of 2016. This shows a clear intention of the legislators that in any situation the employer shall not be able to run away from his responsibility.

The setting up of social security fund is another feature that shall help the unorganized workers in the new area of gig workers, those who are online and platform workers, those who are the new generation of service industry working for companies like the Ola, Uber, Meru Cabs, Zomato, Swiggy, Dominos and the various delivery boys working with online shopping portals, inter-state migrants, domestic workers and home-based workers.

The provision in the Code with respect to payment of Gratuity to the workers on contract for less than 5 years will also be a boon to the contractual workers who also are sincere and loyal while in employment. Providing maternity benefit to women employees and accidental compensation while in transit to office or home is also a thoughtful step to ensure social security to the workers which are in accordance with the definition of “workplace”.

The reshuffling of various authorities including the Inspectors, who shall be also now, is as a Facilitator has surely added to approach of the Code up to the last worker.

An effort also has been made to formalize the informal/unorganized sector by compulsory registration of all establishments under the Code.

⁷ www.prsindia.org> billtrac> code-social-security-2019

THE EFFECTIVENESS OF THE CODE

After studying the Code minutely the author was able to visualize the effectiveness of the Code. The Code has certain phrases/ words, like “as may be prescribed” “maybe framed” which are used with respect to provisions of entitlements, contributions and benefits. This gives us a sense of shift from democratic involvement and participation. The result of such sense shall be seen when changes in the provisions of the Code are to be made, the executive could easily surpass the Parliament and other agencies otherwise involved in making such amendments. Also, no mention of any welfare schemes has been made for the unorganized workers, instead the Code uses the frame of words “The Central Government shall formulate and notify, from time to time, suitable welfare schemes for the unorganized workers”. The Code also has failed to provide welfare schemes keeping in mind the various specific sectors.

The significant increase in penalties to the amount of Rs 3, 00,000/- and imprisonment up to 5 years shall surely bring in a change in the attitude of the employees making the implementation of the provisions possible to the maximum extent.⁸

The linking of identification of employees and beneficiaries through the Aadhaar Numbers shall also bring about smoothness in reaching the beneficiaries.

The implementation of the Code shall be worthless if implemented without drafting the social security schemes suitable to the large and diverse workforce. All the beneficiaries must be categorized according to the type of work performed by them and according to the capacity of the contribution they can make, so as to segregate them under the various schemes to their benefit.

The conversion of two Central Organisations, EPFO and ESIC to fund managers and vesting of all powers in them is also an area of concern while implementing the Code. Decentralization of monetary management shall be more appropriate for the proper distribution of funds and in an unbiased manner.

⁸ www.prsindia.org> billtrac> code-social-security-2019

CONCLUSION

The Code on Social Security, 2019 seems to be sufficient to meet the needs of the unorganized sector workers. It appears to be all-inclusive and has removed many discrepancies of the existing Acts. The Code has also proposed to repeal a few existing Acts by giving a replacement to satisfy the unorganized workers and to fulfill the aspirations of Article 21. It prima facie seems that the Code has tried to simplify the existing legislative structure of labour laws and have aimed at addressing and acknowledging the various aspects of the work culture prevailing in the country. The Code has also made an attempt to address the freelancers and online workers wherein an employer-employee relationship is absurd and difficult to establish. It is also proposed for the first time under the Code that all eligible establishments will have to register compulsorily for the purpose of the employees being covered under social security.

It shall be also a critical exercise for the employers to determine the benefits and contributions as mentioned in the Code when it shall be time for compliance of the Code becoming a Law. The Code has also proposed to notify suitable welfare schemes for unorganized workers for health and maternity benefits, old age protection, life and disability cover by the Central Government. The Code seeks to provide Social Security to the larger unorganized sector as a workforce. Yet it is doubted about the Code being meaningful to Social Security provisions to be applied on a large scale.

Though the Code aims at upgrading the levels of living of all the workers yet it is necessary to give a holistic rethink to the whole basic concept. A detailed reconsideration is necessary for the wake of technological advancement. The repealing and merger of laws pertaining to Provident fund and Employees State Insurance should be given reconsideration as they are governed by three parties, employer, employee and the government. The voluntary contribution in the case of the Insurance Fund is also a good move yet keeps in line with the promise of providing Social Security to all the workers.

The concept of setting up a Social Security Fund is also appreciated in the sense that the lawmakers have at every point of the situation not evaded that responsibility to provide and secure the future of the workers. It also indicates that corporate social responsibility is not only towards structural

facilities but also to look after the welfare of the employees and help them financially in their times of distress.

It is also necessary that the industry should be supportive of the change in the social security laws as they are to protect, stop exploitation and secure the future of the unorganized sector.

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