

Code on Social Security, 2020 and Draft Code on Social Security (Haryana) Rules, 2021

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ABSTRACT

Social security in India has gained great importance in past few years. This concept is developing around the world. For providing social democracy, Social security is the necessity as in the absence of security, nobody can enjoy the democracy. Social security is matter of concurrent list where CG makes legislations for the workers and the responsibility of enforcement is on state government through State Labour Department. With the change in time, legislation on social security has undergone a revolutionary change in respect to its goals and scope. So, in this paper we will talk about the recent amalgamation of social security legislations in the name of Code on social security, 2020 and Draft Code on Social Security (Haryana) Rules, 2021.

Key Words : Social Security Code, Gig Workers, Unorganized Sector, legislation, Platform Workers

INTRODUCTION

The Code of Social Security, 2020¹:

Presently, 9 legislations on social security have been amalgamated into CoSS, 2020 included The ESI Act, 1948, The ECA, 1923, The MBA, 1961, The PGA, 1972 and The EPFMPA, 1952 and Unorganized Workers' Social Security Act, 2008. The amalgamation is suggested by the 2nd NCL (2002) *i.e.* National Labour Commission and to consolidate 29 central legislations 4 bills are introduced by the Ministry of Labour and Employment in 2019 in following groups:

- Social Security
- Wages
- Health, Conditions of work and Occupational

safety

- Industrial Relation

The Parliament has been passed the Code on Wages, 2019 but the remaining 3 bills were referred to the Standing Committee on Labour. On these bills report has been submitted by the Committee. Then on 19 Sept. 2020 these bills have been replaced by the government with newly ones. The object of the CSS, 2020 is the consolidation and amendment of social security laws so that social security can be extended to all workers and employees of unorganized or organized sector.²

Comparison of main provisions of Bills of 2019 and 2020 in relation of Social Security³ (Table 1):

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1. Code of Social Security, 2020
 2. https://labour.gov.in/sites/default/files/SS_code_gazatte.pdf
 3. Bill on Social Security 2019, 2020

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Table 1 : Comparison of main provisions of Bills of 2019 and 2020 in relation of Social Security

Sr. No.	Title	2019 Bill	2020 Bill
1.	Social security entitlements	Social security was obligatory for some undertakings depending on their income and size etc.	Application of the Code is discretionary on the part of the Centre Government .
2.	Social Security funds for unorganized workers, gig workers and platform workers	The Centre Government was empowered to frame social safety funds for workers of unorganized sects.	Such a fund will be Set up by the Central Government. – Distinct funds for social security will be administer and set up by the government of states. – Registration provision for platform workers, workers in unorganized sector and gig workers.
3.	National social safety of platform workers and gig workers	Establishment of boards for unorganized sectors for scheme's administration at state and national level.	Apart from scheme's administration boards can monitor and recommend the schemes
4.	For gratuity term of eligibility	At least 5 year's employment was required for payment of gratuity.	Reduces the period of gratuity for working journalists from 5 to 3years.
5.	Working Hours	Daily working hours will be notified by the appropriate govt.	8 hours are fixed as daily working hours.
6.	Employment of Women	Prohibits Women employment where dangerous operations are performed.	Entitlement of women to get appoint in all establishments irrespective of the work.

Sources: Existing Social Security Acts, NCL's 2nd report, Bill 2019, 2020 Bill.

Legislative History of Code on Social Security:

As labor is a matter of concurrent list so law-making power is given to both state legislature and parliament of India. As stated by the Central Government, Wages, Social Security, working conditions, and industrial disputes were regulated by more than a hundred state and forty central legislations⁴. 2nd NCL (2002) found the inconsistency in definitions and complexity in the legislation⁵. To bring uniformity and to improve compliance, the committee recommended that central legislations on labor need to be consolidated in wide groups as (i) wages, (ii) Industrial relations, (iii) safety, (iv) welfare and working conditions and (v) social safety. Therefore, for the consolidation of twenty-nine central legislations, four bills were introduced by the Ministry of Labor and Employment in 2019 *i.e.* (i) Industrial Relations, (ii) social security, (iii) health, working conditions, and Occupational Safety, and (iv) wages. Parliament has passed Codes on wages, 2019, and remaining bills were sent to Labor Standing Committee and on these three bills report was

submitted by it. Now, these three bills have been replaced with the latest bills on 19 Sept. 2020. This trend of labor codes is not new in fact such labor codes are already prevailing in Germany, Poland, Russia, Canada, and Hungary⁶.

New Provisions vs Old Provisions: A Comparison⁷:

- a) Under the CoSS, 2020 new terms *i.e.* Unorganized Worker, fixed-term employment, Career Centre, Self-employed worker, Aggregator, Gig and Platform workers and Home-based worker are defined which were not there in old legislations. The term 'employee' has been newly defined again under the CoSS which is applicable to all covered laws in CoSS. Earlier this term was under 'Building and Other Construction Workers Welfare Cess Act, Maternity Act, Welfare Fund Act, Unorganized Workers' Social Security Act and Cine workers Act'.

4 List of Central labor Laws under Ministry of Labor and Employment, Ministry of Labor and Employment

5 Report of the National Commission on Labor, Ministry of Labor and Employment, 2002, <http://www.prindia.org/uploads/media/12375548159/NCLII-report.pdf>

6 (Burning Issue) The code on social Security, 2019 www.civildaily.com.

7 Cod of Social Security, 2020, Maternity Benefit Act, 1961, ESA, 1923, Payment of Gratuity Act, EPF Appellate Tribunal (Procedure) Rules, Unorganized Workers Social Security Act, 2008

- b) Under the old legislations the cancellation and registration of establishment were needed. Under CoSS registration of an establishment is not needed if it is registered under any current Central Labour legislation.
 - c) State Unorganized Workers' Board and National Social Security Board were not in existence under the previous legislation but provisions of these Boards are there under Section 6 of CoSS for the administration of welfare schemes of platform workers and gig workers.
 - d) According to EPF Appellate Tribunal (Procedure) Rules, Rules-7 before a tribunal the employer's appeal was not entertainable until a payable demand draft of 75% of the due amount but in new provisions, the deposited amount is only 25% of the due amount.
 - e) Provisions for gig workers, Platform workers, and unorganized workers were not there in old legislations but schemes for these workers' benefits are there in CoSS under sec.45.
 - f) The term of gratuity payment was five years under PoGA for working journalists but this term is reduced to three years under CoSS section 53.
 - g) Under old labor legislations there was no set up of facilitation centre or helpline no. for gig workers, unorganized workers, and platform workers but these provisions are under new code under section 112.
 - h) The provisions for the appointment of inspectors were there in old enactments for inspection and in new code provision of inspector-cum-Facilitators to inspect the establishment are there under section 122.
 - i) To determine the due money from the employer limitation period was there in previous laws but in the new code, the period of limitation is 5 years to determine the dues in case of a dispute. (Section 125)
 - j) Provisions of enhanced punishment were not there in old legislations but enhanced punishment is included in the new code under section 134.
- code makes provision to establish different bodies named as (SSO) Social Security Organizations. These SSOs are:
1. 'Central Board of Trustees of Employees' Provident Fund': This Board is to administer the funds and constitutes 1 or more than 1 committee of similar composition to assist the Central Board.
 2. Employees' State Insurance Corporation: This Corporation has consisted of 2 committees i.e. Standing Committee and the Medical Benefit Committee. This Medical Benefit Committee aids the standing committee and the corporation to administer the medical benefits whereas, the standing committee exercises the powers, performs functions of the corporation regarding administering the corporation's affairs.
 3. National Social Security Board for Unorganized Workers: The functions of the Board are to recommend the CG to frame and monitor appropriate schemes for unorganized workers related to distinguish sections and to review state functions to keep records and expenses of the funds. The Board's tenure is of 3 years and for the observance of procedural rules regarding business transactions it has to meet 3 times in 1 year.
 4. State Unorganized workers' Social Security Board: The Board recommends to frame and monitor appropriate schemes to SG for various sects of unorganized workers and to review state functions to keep records, registration process, issue of i-cards to workers of unorganized sect and expenses of funds at the district level. The Board's tenure is of 3 years and for the observance of procedural rules regarding business transactions it has to meet 3 times in 1 year.
 5. State Building and Other Construction Workers' Welfare Board: The functions of the Board is to provide benefits to dependents and beneficiaries in case of disability and death, pension payment to those who completed sixty years and are beneficiaries, framing the schemes on education for the welfare of beneficiaries' children, to treat the beneficiaries' serious diseases, payment to motherhood interests to beneficiaries and make awareness and skill development programmes

Organizations of Social Security under the CoSS, 2020⁸:

To administer the schemes of social security this

8. Code of Social Security, 2020

etc.

The Draft Code of social Security, 2021:

In compliance with the directions of Labour Commissioner Haryana issued on 20 Nov. 2020 vide letter no. 12149-52 orders were issued to constitute a sub-committee to draft the state rules under Central codes. Under the supervision of Mr Anuj Saharan, ALC-4, Gurugram a sub-committee was constituted comprised the following members:

- 1) Mr Akash Mittal, (ALC on training).
- 2) Ms Kamna, (ALC on training).
- 3) Mr Pawan Sharma, LI-11, Gurugram.

Then on 16 Sept. 2021, Haryana Labour Department issued the draft code on Social Security (Haryana) Rules, 2021 which will be applicable in the whole Haryana state on industrial undertakings and establishments and appropriate govt. is Haryana govt.

Constitution of Boards⁹:

Chapter 2 of the code relates to the Social Security Organizations.

Haryana Unorganized Workers Social Security Board:

Under sec. 6 of the code this board will be constituted. Haryana Labour Commissioner shall be Board's Member Secretary. All other nominated members of the board shall hold the office for 3 years and be eligible for re-nomination. The State govt. has the power to nominate the members of the boards.

The composition of the board is as follows:

i)	7 representatives from Unorganized Workers Association	Members
ii)	7 representatives from Unorganized Employers Association	Members
iii)	2 MLAs nominated by the Speaker of the legislative assembly	Members
iv)	10 representatives of various departments of the state	Members
v)	Labour Commissioner, Haryana	Member Secretary

This board shall meet quarterly in a year.

'The Haryana Building and Other Construction Workers' Welfare Board':

Under section 7(4) this board shall be constituted

and shall meet quarterly in a year. All the meetings of the boards shall be in the chairmanship of the chairperson. Board CEO shall be the member secretary of the Board. This Board has also been given the power for appointing the sub-committees under it for the adequate performance of its duties. This sub-committee shall be comprised of the Board chairman, 2 representatives of the employer, 2 representatives of building workers, and 2 govt. representatives. This sub-committee shall be constituted for 1 year. This board shall make the policies for deposition of the amount in the fund, will submit an annual budget for sanction of state govt., audit the accounts of the Board annually and recovery of due account to Board within time, etc.

Main Provisions under the CoSS (Haryana) Rules, 2021:

Chapter 3 of the code deals with gratuity. It says that if the minor heir or nominee is there then the amount of the gratuity shall be deposited in any Nationalized Bank or SBI through DD or credit the bank account for the minor's benefit within 30 days it becomes due. Chapter 4 of the code deals with the Maternity Benefit. The woman employee has to give the proof of pregnancy, childbirth, termination of pregnancy medically, premature delivery, miscarriage, tubectomy operation for getting the medical and maternity benefit under the code. 2 nursing breaks of 15 minutes each shall be given to feeding employees. Inspectors cum facilitators shall be appointed under the code to decide the complaints. Chapter 5 summarizes the provisions of Employee Compensation. It includes memorandum Rights, Memorandum Form, Examinations and Applications, etc. At least Rs. 20,000 shall be given to employees as funeral expenses. At the expiry of the employee, the compensation money may be deposited in the dependants' account by the authority having competency. The examination of a female worker shall be conducted by the female medical officer and in case of unavailability of a female officer by a qualified male medical officer but in presence of another female. The employer after receiving the information of employee's accident shall present a memorandum to the competent authority regarding the institution of no claim of compensation after payment of fees *i.e.* Rs. 500. In case the party to the proceeding is a minor and can not appear, the competent authority can appoint some other suitable person to represent the minor. Chapter 6 deals

9. Chapter 2 of Code of Social Security Rules (Haryana), 2021.

with Social security and Cess for Building and Other Construction Workers and the provisions are made for manner and time of collection of Cess, refund, Assessment, and Information by the employer. Under section 68 it is the duty of the Board /employer/contractor for registration of those building workers who are eligible linked with their AADHAR and UAN number on the State govt. portal. During the registration period, all registered workers shall become entitled to get the interest made available by the Board. Chapter 7 deals with the social security of Unorganized Workers. For getting benefit under the chapter the unorganized worker shall be registered linked with Aadhar on SG portal after it URN no. shall be generated. It shall be the obligation of the Board/employer/contractor/SG for registering the eligible workers if they are not registered with ESIC or EPFO on SG portal. Chapter 8 deals with authorities, assessment, compliance, and recovery whereas chapter 9 covers the offense and penalties under the code.

The provisions of Code on Social Security, 2020 and Draft code on Social Security Rules (Haryana), 2021 are not implemented as the rules framed under the Act have not been notified. There is no timeline for rolling out these labor codes yet¹⁰. Social Security Code and the Code on Occupational Safety, Health and Working Conditions may come in from next fiscal¹¹.

Conclusion:

After analysis, the conclusion is that these codes seek to expand the coverage of social security to include the unorganized sector, the self-employed, migrant workers etc. within the legislative framework. However, an examination of the code reveals that universalisation of social security remains an unfulfilled aspiration. The provision of social security could be used to formalize

the workforce to a certain extent. The provisions regarding the enforcement of the code are unclear.

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