



Legal empowerment of the poor code on social security, 2020

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Abstract

The preamble of the “Code of Social Security, 2020” (“Code”) states, “An Act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors and for matters connected therewith or incidental thereto.”

The main purpose of the introduction of the code is to provide for a new law based on the pre-existing laws with amendments as needed due to the changing times. It seeks to remove the lacunas and defects of the earlier laws. It provides protection and social security to the workers or employees working in the organized or unorganized sector. It was passed by both houses of the Parliament and given presidential assent in September 2020.

It repeals and re-enacts, “nine Central labour legislations relating to social security”. These include “Employees’ State Insurance Act, 1948”; “Employees’ Provident Funds and Miscellaneous Provisions Act, 1952”; “Maternity Benefit Act, 1961”; etc.

Keywords: Informal sector, provisions, migrant workers, applicability, provident fund, marginalized

Introduction

Most of the labour laws in India were drafted several decades ago. Despite occasional amendments, they still reflected the needs of the era they were drafted. With globalization, digitization and now Covid-19, there was an urgent need to address the demands of the new working class that has emerged. Moreover, the unorganized sector which comprises of a significant chunk of the Indian working population was not adequately covered under the benefits provided by the Labour Laws. The laws were also voluminous with several provisions that were out dated and hindered the overall economic development of the country. With a view to promote the ease of doing business and empowering the employees, the Code of Social Security, 2020 was enacted by the Parliament. The act provides social security for the employees. It is primarily applicable to workers or employees working in the organized or unorganized sector. There was little protection in the earlier laws for the unorganized sector. Moreover platform workers and gig workers did not have any protection in the previously existing laws. Moreover, it seeks to take into account the plight of the migrant workers and several other classes of workers which did not have adequate protection earlier.

Appicability of the Code

The applicability of different provisions under the code has been defined under the First Schedule for each scheme. Some of the examples are:

- “Employee Provident Fund (EPF)”: It is covered under Chapter III of the code. It is applicable to, “Every establishment in which twenty or more employees are employed.”
- “Gratuity”: It is covered under chapter V of the code. It is applicable to, “every factory, mine, oilfield, plantation, port and railway company and also to every shop or establishment in which ten or more employees

are employed, or were employed, on any day of the preceding twelve months; and such shops or establishments as may be notified by the appropriate Government from time to time.”

The code is in general applicable to any establishment (subject to size-threshold as may be notified) for making certain benefits mandatory. All eligible establishments are required to be registered under the Code, unless they are already registered under any other labor law. In a first, it also has schemes applicable to gig and platform workers which were not applicable earlier. The funding for the schemes will be given by government, state governments, and aggregators (as mentioned in Seventh Schedule).

Important Provisions under the Code and Their Analysis

1. “Regarding PSU’s”

It provides that even if the holding of the central government in a Central Public Sector Unit (PSU) becomes less than 50% its commencement, the appropriate government shall still remain the Central Government. (PRS India, 2020) This is primarily done to allay the fears of the workers in the government sector who feared they could be laid off or forced to work under private companies post the disinvestment. However, it is pertinent to note that the government has been undertaking both stake sales as well as privatisation recently and has not provided any clarity under the code on the status of the employees of the PSU that will be privatised yet.

2. “Compounding of Offences”

It also provides that the offences punishable with imprisonment up to one year or with fine will be compoundable. Such a provision is used to serve a warning to the defaulter by letting them get away with a fine at the first instance. This will reduce prison terms while still enforcing a strict measure to comply with the provisions.

3. “Standing Orders and Retrenchment”

The standing orders that are listed in the Code shall have to be prepared by an establishment with at least 300 workers. These relate to:

- “Classification of workers”
- “Manner of informing workers about work hours, holidays, paydays, and wage rates”
- “Termination of Employment”
- Providing a mechanism to redress the grievance of the workers.

This was increased to 300 from 100 in the draft bill that was floated in 2019. This move is shocking as 100 is a significant number for the company to prepare standing orders. This provision is much more beneficial for the establishment and has been amended to increase the “ease of doing business”. However, it is not in the benefit of the workers as it denies them complete accountability in case of standing orders. Moreover, even the permission of the government for retrenchment of workers is needed for the establishments having over 300 employees, a big jump from the 100 proposed in the draft bill. This will make it easier for establishments to lay-off employees and compromise the job security.

4. “Trade Union”

The code has laid down that if a trade union has over 51% of the workers as its members, it would be recognised as the sole negotiating union. Moreover, in case there is no sole negotiating union, a union must have at least 20% of the workers as its members to be on the negotiating council. This provision is particularly damaging to the workers as it would give rise to factionalism and also lead to the majority opinion prevailing irrespective of the demands of the minority. The 2019 Bill had set the limits at 75% and 10% which were inclusive and reasonable. However, the provisions in the actual code are against the welfare of employees and make them vulnerable.

5. “Resolution of dispute concerning termination of individual worker”

The 2020 code adds that the worker will now have the right to have the matter adjudicated by the industrial tribunal after an application for conciliation of the dispute was made.

This is a welcome step as previously the bill was denying the right to approach the civil courts. It will aid in providing justice under these circumstances.

6. “Social Security Coverage for Gig Workers, Unorganised Workers and Platform Workers”

It is the first time that gigs and platform workers have been included under legislation. All three categories will have the option to be registered. A special social security fund for gig workers will be set up by the central government. Moreover, funds will also be administered for unorganised workers. It also stipulates coverage of gig workers and their families under the ESI framework. (Dwivedi & Chowdhary, 2020)

This is a very progressive inclusion as it provides benefits to the category of workers which had been ignored for ages and lacked any specific scheme and legislation.

7. “Migrant Workers”

The displacement allowance (equalling 50% of the monthly wages) which was proposed in the 2019 Bill has not seen

the light of the day in the code. A database is set up for inter-state migrant workers. They can register themselves and avail the benefits of the portal. Moreover, a social security fund is to be set up for them which have the amount collected as penalty under the code credited to it.

The lack of displacement allowance is a setback. However, the setting up of the fund and the database is beneficial for the workers as it will enable them to receive the benefits and increased social security.

Impact of the Bill on the Poor and Marginalized

The code has consolidated and made changes in the labour laws of India. It lays down its objective to provide social security to both organised and unorganised workers. However, on examination of the provisions it seems like a mixed bag with a significant amount of focus on promoting the ease of doing business in India while neglecting the rights of the poor and the marginalized. While some of the provisions like the ones for gig and platform workers are new and beneficial, it misses out on many inclusions and changes that were needed for the welfare of the poor and the marginalized. Some of the reasons why the code may play into the hands of the industrialists and enable them to exploit the working class are listed below.

- Provident Fund: In order to be covered under it, an establishment should have at least 20 workers. There is an emergence of a large number of micro enterprises functioning with less than 20 employees.
- Power of government to grant exemption: The government has unlimited power to exempt any new industrial establishment or class of establishment from any or all of its provisions, in the name of public interest. The exemption could cover a wide range of provisions including those related to hours of work, safety standards, retrenchment process, collective bargaining rights, contract labour, etc. Moreover, public interest could be interpreted in a broad manner to provide favourable terms to the industrialists while clamping down on the interests of the working class.
- The ambit of the establishments covered under the bill is very specific. For the Occupational Safety Bill there should be greater than 10 workers for it to apply. Similar provisions are also there for layoff, retrenchment and closure in the Industrial Relations Bill. This brings a lot of establishment outside the scope of specific provisions of the bill which would be against the interest of the workers.
- The definition of worker under the Code is, “any person who work for hire or reward.” It excludes anyone who earns over Rs 18000/- a month working in a managerial or administrative capacity. The terms “supervisor” and “manager” are not clearly defined despite the recommendation of the standing committee.
- Neutralizing Trade Unions: The limit on trade unions having less than 51% membership and preventing any union having less than 20% of the membership to form a part of the negotiating council is detrimental as it will crush the voice of the minority. It would always result in the imposition of the majority and render the voice of the minority unheard.

All of the above cited reasons make the code a rough deal for the marginalized and the poor. The scheme is called the

social security scheme but has more in it for the establishment owners than the workers. Certain provisions are good and address the neglected area. However, on a large scale the bill is not enough to meet their demands.

Recommendations

As mentioned previously, several recommendations of the Standing Committee were ignored and provisions that were presented in the 2019 Bill were modified in the actual code. Some of them could be reincorporated in conjunction with the following recommendations:

- The ceiling to recognize a trade union as the sole negotiating union should be raised to over 80% of the workers and if there is no such union, every union having at least 10% of the workforce as its members should form a part of the negotiating council. This will provide greater inclusivity to all sections of workers.
- There should be no ceiling limit at all for the Occupational Safety Bill. The safety of the workers should be the utmost priority, be it an extremely small establishment or a large establishment.
- Considering that a large amount of work is seasonal and requires migrant workers, a fixed displacement allowance must be provided to them. It could be to the tune of Rs 4,000/- and can be revised as per the changing conditions. Displacement can also be defined to be a certain distance like 300 km or more to provide more clarity to the provision.
- The definition of public interest under the act should be made very clear in order to prevent any arbitrary exemptions by the government.
- A special allowance provision can be made where workers are entitled to basic living expenses at the time of a pandemic or a disaster. This could be paid collectively by both the employer and the government.

Conclusion

The Code on Social Security, 2020 sought to consolidate the existing provisions of labour law and amend them to meet the demands of the modern times; it has not adequately addressed the concerns of the working class. Moreover, with the government having a real life example on the plight of labourers during hard times like the Covid-19 pandemic, it was expected to roll out a code that would be in the welfare of the working class. While the intent is seemingly good, there are a lot of shortcomings which need to be ironed out. It is hoped that the government will take the recommendations and the reaction of the working class into consideration and amend the code accordingly to enhance its effectiveness and provide actual social security to the working class.

References

1. Security, 2020. Retrieved April 18, 2021, from Mondaq: <https://www.mondaq.com/india/employee-benefits-compensation/1001268/evaluating-the-code-on-social-security-2020>.
2. PRS India. (2020). the Code on Social Security, 2020. Retrieved April 16, 2021, from PRS Legislative Research: <https://prsindia.org/billtrack/the-code-on-social-security-2020>
3. Singh T. (2020, October 18). The Code on Social Security, 2020. Retrieved April 16, 2021, from Law

Brit: <https://www.lawrbit.com/article/code-on-social-security/>

4. Working People's Charter. (2020, September 23). Why the new labour codes leave India's workers even more precariously poised than before. Retrieved April 18, 2021, from Scroll: <https://scroll.in/article/973877/why-the-new-labour-codes-leave-workers-even-more-precariously-poised-than-before>