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Social Security Code, 2020

TANVI GUPTA¹

ABSTRACT

The Prime Minister of India, Narendra Modi stated that 'Dignity of labour has to be our national duty; it has to be a part of our nature', and on these lines, the four broad codes on Social Security, Wages, Industrial Relations, and Occupation, Health, Safety and Working Conditions have been passed by the Ministry of Labour and Employment. The current research paper exclusively focuses on the Social Security Code, 2020. Apart from the salaries received by the employees, it is a stated fact that employees must get the benefit of certain social securities like Pension, Maternity Benefits, etc as this increases employee commitment, loyalty, and satisfaction.

A total of 9 legislations were amalgamated and the new code is quite elaborate in nature. There are total 14 chapters in the code. The paper discusses all the chapters along with the salient features of the entire code. The researcher then points the differences between the old legislation and the new code. Further, after analysing the standing committee report, international legislations in this regard as well as briefing out Gender sensitive reforms, at the end of the paper, there is a mention of Suggestions and Recommendations.

The researcher has indulged in a detailed doctrinal research to come up with the potential solutions to the lacunae present in the Code. At the same time, the fact that the legislature consolidated the legislations after improvising on it shows a glimpse towards a newer India which does not only favour and protect the elite class but also smiles at the labour class.

Last but not the least, this paper was made during the researcher's internship with the Women's Indian Chamber of Commerce & Industry under supervision of Ms. Umang Pathak, National President, Legal Awareness Council, WICCI. I thank them for the opportunity and the support.

I. INTRODUCTION

In recent years, India has undergone a major change in the labour legislations. Earlier, there were more than 30 legislations governing the labour work force in our country and they all have been amalgamated into 4 codes. These legislations were spread over a number of years because they came into existence as and when the country felt their need. And as of now, when almost all labour laws are legislated, four codes were made by the Parliament of India, namely

¹ Author is a student at Bennett University, Times of India Group, Greater Noida, India.

– Industrial Relations Code, Social Security Code, Occupational Safety, Health and Working Conditions, and Code on Wages.

This research report essentially focuses on detailed analysis of The Social Security Code which has substituted previous nine legislations. All the provisions of the code have been seen individually, and are compared with the earlier legislations. The international conventions and the social security schemes of different countries will also be seen in the report. Thereafter, keeping in consideration the gender-specific reforms, the researcher has put forward certain suggestions and recommendations.

India has a total of 471,689,092 thousand total labour force² and the social security benefits which includes diverse things starting from pension fund, maternity benefit, to employee state insurance and cess tax, everything is included in this one single code. And therefore, a critical and careful scrutiny of the code is essential to ensure that the employees and employers, none are subject to either unnecessary exploitation or ripped of the basic social security benefits which are their basic and human rights.

II. SOCIAL SECURITY CODE ANALYSIS

INTRODUCED – December 11, 2019

REFERRED TO STANDING COMMITTEE – December 24, 2019

PRESENTATION OF REPORT – March 23, 2020

PASSED BY BOTH THE HOUSES

RECEIVED PRESIDENTIAL ASSENT – September 28, 2020

INDEX OF THE CODE

- **Chapter 1 – Preliminary (Includes definitions)**

Establishments are subject to provisions of this code as per thresholds mentioned but central government by notification include/exclude any establishment, in reg establishment itself can bestow upon them any provision with consent of both employers and employee. Further, if once a provision has started applying to an establishment, it will continue to do so even after number of employees fall before the threshold.

Section 2 has various definitions ranging from employee to establishment. Section 3 deals with registration of establishments.

² *Labour force, total – India*, The World Bank, read @ https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=IN&most_recent_year_desc=true, Last Accessed - April 6, 2021.

▪ **Chapter 2 – Social Security Organizations**

Central government given the power to constitute a central board (Body corporate) i.e., a Board of Trustees of the Employees' Provident Fund. Central board also can set a Medical Benefit Committee and National Social Security Board for benefit and purpose of unorganized workers. In such boards adequate representation has to be given to minorities which includes women, Scheduled Tribes, and Scheduled Caste. Apart from the centre, even the state can make boards for providing social security benefits to unorganized workers gig workers, and platform workers. Another board to be set by the state government is the Building Workers' Welfare Board for powers assigned under Chapter VII. Central government can assign extra duties and responsibilities to any social security organization.

▪ **Chapter 3 – Employees Provident Fund**

The applicability of such scheme has been set by the code. The code states that this fund will be applicable to all those establishments having either 20 or more employees. Both employer and employee have to make equal contributions i.e., 10% of the wages which can be increased by the Central Government up to 20%. If employer pays to an employee employed via contractor, then employer has option to get it reimbursed from contractor. Employees get benefit of periodical payments and medical treatments.

The code has also specified that in case of non-compliance by employer, he will be liable to be punished under this code. The employer can also not deduct the salary of employee to make such contribution. These contributions are charge on assets of establishment.

Central government can also set a Deposit Linked Insurance Scheme and pay 1 per cent of the wages of the employee. For the pension fund, not exceeding 8% but according to the pension scheme and as notified by the government. Grieved persons can appeal to a tribunal but if employer appeals, he has to deposit 25% of the amount to be determined and assessed.

▪ **Chapter 4 – Employees State Insurance Corporation**

The code very explicitly states, there can be voluntary registration under this scheme if there is consent by both, the employer, and the majority of employees. But in few cases, even if no agreement, the government can extend its applicability to those establishments who are involved in hazardous works. The rate of contribution at Centre's discretion. Fund to be used for payment of medical treatment of employees and other benefits. Every employee has to mandatorily be insured. At the failure of employer to pay/ register, the corporation can pay to the employee and get that recovered from the employer later. Appeal can be to Employees Insurance Court established by the State government.

▪ **Chapter 5 – Gratuity**

There are two kinds of employees – permanent and fixed term employees and for both, the code has set out different thresholds. This provision extends to those establishments who have either 10 or more employees. Gratuity is paid when employment is terminated but service has to be ‘n’ years where ‘n’ is not less than 5 years (Except in case of working journalist). The code states four reasons of termination.

The rate for such payment is of 15 days wages for every completed year and in case of non-payment, there is prescribed punishment.

▪ **Chapter 6 – Maternity Benefit**

Such benefits are to be provided to all women by the employers if establishments have 10 or more employees. Few basic features of this chapter are as follows –

1. Employer cannot employ any women on any date 6 weeks preceding the date of delivery/ miscarriage/ termination of pregnancy
2. If a woman chooses to work under the above-mentioned duration, she must not do any tiring work.
3. The benefits can be reaped by women only if she has worked for not less than 80 days in the prior 12 months calculated from the date of her expected date of delivery.
4. Maximum period of benefit – 26 weeks and not more than 8 weeks shall precede expected date of delivery
5. Maximum period of benefit for women already having 2 or more surviving children – 12 weeks and not more than 6 weeks shall precede the expected date of delivery
6. If woman dies during maternity benefit, her benefit is ceased after date of death but if she dies after giving birth, then it is payable for full period.
7. If work done by woman can be converted into work-from-home, she can avail that option even after completion of her maternity period
8. A woman is also entitled to a sum of Rs. 3500/- if no pre-natal and post-natal care is provided by employer (free of cost).
9. After the woman joins back, she has an entitlement of two breaks for child nursing till child attains age of one and half.
10. In case there is miscarriage or medical termination, woman entitled to 6 weeks of maternity benefit and leave.

11. Illness out of pregnancy, if any, makes the woman entitled to a leave of one additional month.
12. No dismissal during the time of maternity benefit and if it done, she will still be entitled to maternity benefit
13. Establishment having more than 50 employees to have creche facility and woman allowed four visits a day
14. In an adoption where age of child is up to 3 years, entitlement of leave for 12 weeks
15. If employer fails to provide, or penalizes the women, or reduces her rank, or dismisses or discharges her, then he shall be liable for either imprisonment or fine or both.

▪ **Chapter 7 – Employee’s Compensation**

If in premises, any death or serious injury occurs, notice of the same is to be given by employer as a report to appropriate authority. If this is during course of employment, employer is liable to pay compensation. If death occurs, amount as 50% of the monthly wages, for permanent disability, 60% of monthly wages must be paid. In case of non-agreement by employer, a provisional payment has to be made for liability he accepts. If employee gives notice for any injury, he has to, on statement of employer, get a free medical examination done within three days of date of injury (Or else no right to compensation). The competent authority can increase the deposit in case of fatal injury.

▪ **Chapter 8 – Social Security and Cess in Respect of Building and Other Construction Workers**

For building workers, a cess should be levied at a rate between 1-2% of cost of construction. Delay in payment of cess leads to interest charges as decided by the Centre and arrears leads to imposition of penalty. The government also has the power to exempt any employer for payment of cess. Every building worker (above 18 years of age) has to get himself registered with the Building Workers’ Welfare Board. The board also has to create a Welfare Fund.

▪ **Chapter 9 – Social Security for Unorganized workers, gig workers, and platform workers**

The code does not specifically provide any benefit for workers of unorganized sector like gig and platform workers. But both the State and the Central Government have authority to make any law for benefit of such workers. The schemes shall be made for various aspects which includes housing, maternity, health, provident fund, etc. But to obtain such benefits, the workers must be registered according to the prescribed purpose. For both Centre and State,

different topics have been mentioned in Section 109. The government can also set a toll-free helpline number for benefit of unorganized, gig and platform workers but these workers have to get themselves registered to avail such benefits provided they are above 16 years and they sign a self-declaration.

▪ **Chapter 10 – Finance and Accounts**

The Social security organization responsible for administering such schemes have to make a budget of probable revenues and expenditures for any financial year and have to submit the same to appropriate government. They also have to keep a track of revenues and expenditures and must get themselves audited at regular intervals by Comptroller and Auditor General. Each year, an annual report must be submitted to the CAG. The auditor further has authority to demand for any register, book, or record for purpose of inspection and final report have to be forwarded to appropriate Government.

▪ **Chapter 11 – Authorities, Assessment, Compliance and Recovery**

Central government for Chapter III and IV can appoint an Inspector-cum-facilitator, lay down an inspection scheme. The duty includes advising the employers of compliance requirements, taking into account the grievance of employees among other important tasks. The employers have to maintain records and registers in form prescribed for every detail as mentioned in the provision.

▪ **Chapter 12 – Offences and Penalties**

1. Failure to contribute on side of employer – imprisonment between one to three years and fine of 1 lakh.
2. Failure to pay gratuity – imprisonment up to one year or fine of 50k or both
3. Acts in contravention of the ESIC, Maternity Benefits, does not cooperates with Inspector-cum-facilitator – imprisonment up to 6 months or fine of 50k or both
4. Deduction of wages to fund contribution or fails to pay compensation – fine of 50K

Compounding of Offences – offences with imprisonment up to 1 years can be compounded for a sum of 75% of maximum fine and 50% in case of fine. But this is the case only for first time offenders.

▪ **Chapter 13 – Employment Information and Monitoring**

If there is a vacancy in the establishment, then as per rules of either the State or Central Government, have to report the same to appropriate authority before filling it up. There are

certain exemptions to this also mentioned in the code.

▪ **Chapter 14 – Miscellaneous**

This provision talks about social security fund and how funds are allocated into it. For getting benefit under this code, employees have to mandatorily get their Aadhaar made and also obtain an Aadhar number. But the Central government has power to exempt an establishment too. Further, the Centre, State Governments and Corporations also have the power to make certain rules but that should not be inconsistent with provisions of code but these have to be published according to a prescribed format.

SALIENT FEATURES

1. Employees' state insurance coverage – establishments having 10 or more than 10 employees, for others on voluntary basis which includes plantations.
2. Applicability – establishments involved in hazardous work
3. Extension of Employees provident fund, employees' pensions scheme and employees deposit linked insurance scheme – establishments having 20 or more than 20 employees
4. Provision for – different rates of employee contribution – for provident fund
5. Money dues of employees – charge on asset of employer – paid in priority basis
6. Employer – bound to – register employee for employee state insurance corporation and make contribution for employee state insurance corporation - or else – benefit recovered from employer
7. Central government – duty – make schemes for gig/ platform workers
8. Central government – duty – make social security fund for gig/ platform/ unorganized workers
9. Payment of gratuity even for fixed term for any duration (even less than 5 years)
10. Provide maternity benefit
11. Compensation for accident – while commuting between home and place of work
12. Levying and collection of cess – for social security and welfare of building workers
13. Limitation period (determination of money dues) – five years)
14. Expansion in sources of funds (including csr)
15. Special purpose vehicle – implementation of schemes for unorganized workers
16. Inspector – renamed to – inspector cum facilitator

17. Powers – supply information, advice to employer and workers (for compliance)
18. Filing of a single return
19. Interest charged on delayed payments
20. Penalties for violations
21. Aadhaar mandatory for any registration
22. Government has power of exemption

III. COMPARISON BETWEEN PREVIOUS NINE LEGISLATIONS AND THE NEW CODE

The Social Security Code amalgamated 9 legislations and integrated their major provisions. These 9 legislations are as follows –

1. Employee’s State Insurance Act, 1948
2. Payment of Gratuity Act, 1972
3. The Cine Workers Welfare Act, 1981
4. The Employee Exchange Act, 1959
5. The Employee Provident Fund and Miscellaneous Provisions Act, 1952
6. The Maternity Benefit Act, 1961
7. The Unorganized Workers Social Security Act, 2008
8. The Women’s Compensation Act, 1923
9. The Building and Other Construction Workers’ Welfare Cess Act, 1996

The researcher has compared the provisions mentioned in the previous legislations to those mentioned in the new code and have pointed out the major differences.

<u>PROVISIONS IN OLDER LEGISLATIONS</u>	<u>PROVISIONS IN NEW CODE</u>
No provisions for establishment of social security organizations	Section 4 deals with establishment of such organizations
No provision for National and State Social Security Board	Section 6 talks about such boards and their administration with other details
Sickness benefit not covered under any	Expenditure for sickness in case of bad

provision	working conditions due to neglect of owner is provided in Section 43
No schemes for workers outside traditional employer-employee relationship	State insurance benefits provided to unorganized workers as well as gig and platform workers under section 45 and power given to centre and state to make schemes for them
Payment of gratuity for journalists – 5 years	Payment of gratuity for journalists – 3 years
No funds or health centres for unorganized, gig and platform workers	Schemes for such workers under Section 109, 114 and 112 at both centre and state level
Appointment of inspectors for inspection	Appointment of inspector-cum-facilitator for inspection (Section 122)
Ambiguous provision on maintenance of records	Section 123 states a detailed provision for maintenance of registers and records.
No limitation period	Limitation period set as 5 years for determination of dues from employer
Exhaustive details about offences and penalties	Enhanced punishment for each kind of contravention
No delegated power for exemption	Section 144 gives the power to central government to reduce any employer's or employee's contribution
Employers can manage their provident fund freely	The threshold has been set as 100 and any establishment having lesser number of employees cannot manage their provident funds
After voluntarily consenting to be subject to scheme like provident fund even being below the threshold, no option of opting out	Opting out is permitted after voluntarily being subject to such schemes

IV. STANDING COMMITTEE REPORT ANALYSIS

1. Crucial decisions which are concerned with the provision of social security to the workers have been left with delegated legislation.

To illustrate –

- Powers and functions of social security organizations
- Power to nominate members in committees
- Qualification to receive benefits
- Contributions to be made by the three arenas – government, employer and employee
- Registration
- Power of exemption

The ministry replied to this stating that section 159 of the code provides that for each new rule created, it must be laid before each house of Parliament and it is necessary to make sure of flexibility and dynamism. Committee recommends for inclusive legislation.

2. The Employment Exchanges (Compulsory notification of vacancies) Act, 1959 – must not be subsumed as it does not relate to social security on any front.
3. Considering that the Cine Workers Welfare Fund Act, 1981; The Building and Other Construction Workers Cess Act, 1996; The Unorganized Workers Social Security Act, 2018 – are being amalgamated in the social security code but if we, prima facie, consider the objectives of the act, then many other related acts have been left out by the legislature like iron Ore Mines, Manganese Ore Mines and Chrome Ore Mine Labour Welfare Fund Act, 1976; The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972, etc.
4. The preamble of the act provided that the code amends and consolidates the social security laws. Committee said that there must be a provision which explains the importance of social security codes and this was adopted.
5. The name should include labour welfare and social security, however, the ministry said that the social security is not exhaustive and it includes labour welfare.
6. The committee exclaimed there is no time frame for the enforcement of the code – it must be there for effectiveness.

7. The committee recommended that there must be unambiguous definition of 'Appropriate Government' as to whether it provides for Central or State Government.
8. More clarity to be there on gig workers and platform workers as to whether they are a part of organized workers or unorganized workers.
9. Few terms need to be reviewed in order to avoid conflict of opinions – 'regularly employed'; 'employment governed by mutually accepted standards of conditions of employment'; 'engagement on permanent basis'; 'periodical increment'; 'other welfare benefits.'
10. The term 'contribution' should be exhaustive and must include more sources.
11. Committee recommended that the appropriate government should also contribute in cases where there is not traditional relationship of employer and employee.
12. The definition of 'employee' has left out workers like Anganwadi and ASHA workers.
13. The wage threshold should not be decided by the appropriate government but via an automatic process of wages indexation with Consumer Price Index.
14. The unorganized workers must also get benefit of employment injury.
15. Definition of 'establishment' does not cover agricultural holdings and households.
16. No difference per se between fixed term and regular employee and it must be an objective definition so as to avoid exploitation by the employer.
17. Status of gig workers and platform workers must be clearer.
18. The International Labour Organization Convention on Social Security (minimum standards) 1952, states nine aspects for a social security - medical care, sickness benefits, unemployment benefits; old age benefit; employment injury benefit, family benefit, maternity benefit; invalidity benefit and survivors' benefits.
Committee recommended to include all such aspects.
19. Definition of 'enterprise' must be defined in a clearer way.
20. The term unorganized workers must be dissolved and included in other categories of workers like gig workers, platform workers, agricultural workers, etc.
21. Definition of 'wage worker' must be modified.

22. Registration process should be more comprehensive and must include each and every type of establishment and worker without any exception, and must be with single body, online and periodically updated.
23. More compact system for social security governance. There must not be more than one body taking care of the social security provisions like national social security board and state social security board, etc.
24. A model to be provided for composition of social security organizations so that there is adequate representation of SC, ST, OBC, Women workers, Unorganized workers, Minorities, etc and to bring in uniformity.
25. Threshold for inclusion in employee provident fund is 15,000 and requirement is of 20 employees which can be overlooked via delegated legislation. Such provisions must be addressed by the ministry to have an inclusive approach.
26. Parliament should define the thresholds and it must be changed along with economic development.
27. Provisions should be made to reduce the contribution in certain situations (natural calamities, pandemic, etc).
28. Penal provisions must be incorporated in the code when employers do not make required contributions in the schemes.
29. Coverage of Employee state insurance coverage is less and thus the committee must look into the threshold and make relevant changes.
30. Employees in establishments having less than 10 employees are at mercy of employers to include themselves in the ESIC scheme, so the provisions to do so voluntarily must be more enabling.
31. Committee recommended that there should be prescribed manner to calculate the compensation required in case of an accident.
32. There must be a system of health care system to extend health care facilities to workers.
33. An online single body must maintain the records of all insured persons (IPs).
34. Time limit and procedure of medical assessments must be unambiguous.
35. The time limit period for filing claims must be mentioned by the statute and not be left at the disposal of state government.

36. The employee state insurance corporation must not have the duty of establishing and maintaining medical education related aspect as it might stop them from effectively dispensing their original duty which is to protect the insured persons and the funds must not be directed to any other cause.
37. Time period for gratuity must be changed to continuous service of one year and not 5 years and should be there for all employees.
38. Procedure for claiming gratuity, retrenchment and reskilling must be eased to avoid any inconvenience to employees.
39. The committee doesn't agree that employees must visit competent authority in case gratuity is not paid and instead the employer must be held responsible for the same.
40. Gratuity via pro rata basis should be clearly provided for contract labours, piece rate and time rate workers.
41. In event of no payment of gratuity, option of imprisonment must be invoked cautiously howsoever, fines should not be lenient to avoid wilful default.
42. Definition of 'work of arduous nature' must be more specific to ensure proper interpretation.
43. Universal coverage of maternity benefit has to be given and the period of eight days immediately preceding the date of expected delivery is too much to be complied by women working in unorganized sectors.
44. The contractor should be responsible for paying maternity benefits and the principal employer must be liable to recover from contractors the contribution towards maternity benefit.
45. The committee recommends the cost of establishing creche in the facility is very high and there must be common creche in the vicinity either by government or MSMEs.
46. For filing a claim, different authorities mentioned in different clauses. There should be clear definition of authority which takes care of maternity benefits which are to be provided to women.
47. Clear mechanism of appeal for maternity benefit must be mentioned.
48. Expenses of medical injuries caused at work place must not be burden for employees as well as small employers. Adequate consideration for both of them must be there in the provisions of the new code.

49. The funeral expenses must be either 15000 or percentage of last drawn salary, whichever is higher.
50. Details of benefits provided to the building and other construction workers must be clearly spell out. (Like way of calculation and claim etc., and must not be left at disposal of delegated legislation).
51. Periodical meetings with boards managing cess funds for effective functioning.
52. Self-assessment of cess can be a potential way of building contractors misusing their power.
53. Portability amongst states so that even when cess is collected in one state, it can be paid in a different state.
54. There must be legislative check to see where the cess fund is spent so there is no misutilization.
55. Internal audits and CAG audits to oversee the expenditure of cess funds.
56. There must be uninterrupted electronic registration for BCOWs workers and they should be given identification numbers. Recommendation for creation of central online portal.
57. For benefit of migrant workers, few governments-initiated schemes like support centres, help desk, etc., they should be a part of the code so other state governments can also replicate the same.
58. Separate funds must be created for purpose of inter-state migrant workers.
59. There is duplication of provisions where there is creation of funds for gig and platform workers. Also, they shouldn't be read as gig or platform workers but as gig and platform workers as they are both different.
60. The code merely lays down schemes to be followed by central and state government for benefit of unorganized workers, however, there is no specific legal framework for that which results in inefficient application.
61. A comprehensive model as minimum mandatory entitlement to all workers to be followed by state government to ensure uniformity.
62. Mention of specific schemes for skill upgradation, housing and skilling.
63. Practices of state government must be seen to identify the best scheme and codify it in the code.

64. Specific mention of gig and platform workers in different schemes to advance to them undisputed benefit.
65. Government tends to not fund schemes meant for unorganized workers in an appropriate manner and thenceforth there must be specific measures taken for that aspect.
66. The fines collected after compounding of offences must be made a source of funding for fund of unorganized workers in four categories – hospitalization, health insurance, life insurance, and old age pension.
67. Central database of all workers which will help migrant workers.
68. Central helpline number should be set up in addition to online grievance redressal committee.
69. It should be binding on government to set up workers facilitation centre.
70. Incorporation of unemployed insurance for unorganized sector workers.
71. There are much arbitrary provisions for inspection done by inspector cum facilitator. It must be friendly and with aid of modern technology.
72. Recommendation of single registration and compliance system to begin a new regime of unifies registration process.
73. For new labour registration framework, there should be a single application which enables all registrations under Common Labour Registration Number in line with GSTN for better enforcement.
74. The limitation period of five years should be reduced.
75. Conditions of appeal must be vivid.
76. Time limit for reopening of cases must be reduced.
77. The aggrieved party must have authority to reach court in case he/ she is not satisfied with decision of appellate authority.

V. INTERNATIONAL ARENA

Each country has a different culture and distinct social security schemes. The researcher's focus would be to find out the provisions of social security benefit schemes of more advanced economies and to also look at a few guidelines provided by International Labour Organization, The Universal Declaration of Human Rights, 1948, etc.

EUROPEAN UNION

All EU members states have agreed to be subject to certain regulations which provides allowances, pensions, healthcare, etc. European Commission manages a database called Mutual Information system on Social Protection which gives information about the administration of social security schemes, and their funding. The entire details of the scheme are duly mentioned by the commission³ and nothing important per se is left for delegation. The coordination of such schemes over different European nations are guided by 4 major principles – Equal treatment; the laws of only one member state apply at a time; export of pensions, allowances and benefits; and the insurance periods add up.⁴

India as a country, is also a union of states. But the schemes of social securities, and their information is managed by individual states. More advanced economies like those in the European Union have a centralized database so as to the workers can avail the benefits without paying heed to the country they are in at the moment. If a similar mechanism gets introduced in India, then workers like those who travel inter-state for their work nor alike others would get ripped off the benefit of social security schemes.

CANADIAN SOCIAL SECURITY SYSTEM

In Canada, to access benefits, a Social Insurance Number is required. The federal governments have to set standards for various facilities including healthcare. A scheme called Child benefit Scheme was introduced wherein anyone responsible for upbringing of child could claim the same. The employment benefit scheme is broad in nature which includes in its various other benefits like maternity, sickness, unemployment, etc. For the pension plan, it is not mandatory for the employers to contribute for the scheme.⁵ One can conclude that the social security system of Canada is too precise and covers major variety of workers into its ambit.

ASIAN COUNTRIES

Social security programmes in many Asian countries are similar in nature and therefore many schemes are curated for the larger benefit of workers working only in the organized sector. Contrary to this, Malaysia and Singapore, both the countries provide provident funds to

³ *Your social security rights in the United Kingdom*, European Commission Employment, Social Affairs and Equal Opportunities. Your social security rights in the United Kingdom, European Commission, European Union 2011, December 2010 read @ https://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20United%20Kingdom_en.pdf, Last Accessed – April 5, 2021.

⁴ *Social Security in the European Union*, Republic of Estonia, Social Insurance Board, read @ <https://www.sotsiaalkindlustusamet.ee/en/social-security-european-union> Last Accessed – April 5, 2021.

⁵ *Social Security Benefits in Canada*, Anglo Info, Canada, read @ <https://www.angloinfo.com/how-to/canada/money/social-security#>, Last Accessed – April 5, 2021.

workers of both sectors – organized as well as unorganized.⁶ Another country, Thailand has an advanced economy but doesn't have explicit public pension programmes which covers the workers outside the traditional employer-employee relationship.⁷

Similar obligations have been cast by a number of international instruments in place pertaining to labour rights viz, The Universal Declaration of Human Rights, 1948; International Covenant on Economic, Social and Cultural Rights, 1976; International Labour Organisation (ILO) Conventions; and Sustainable Development Goals.⁸ The report will now explain a few of those.

Firstly, the ILO lays down nine benefits which must be included in the social security scheme and the same has been reiterated by the Standing Committee as well. These include maternity, sickness, family, old age, medical care, employment injury, survivors' benefit, unemployment and invalidity.⁹ The Social Security (Minimum Standards) Convention, 1952 also states that though these benefits are to provided by each country yet the countries should introduce it only after taking due consideration of their economic conditions.

The Social Security code do not provide explicit benefits for the migrant workers who merely travel inter-state but the ILO Convention, Maintenance of Social Security Rights Convention, 1982 (No. 157) provides for benefit of migrant workers who travel even inter-country.

VI. GENDER SENSITIVE REFORMS

When a person talks about equality, they say that men and women should be at par and at an equal footing. However, people forget to consider the aspect of biological differences between both the genders which leads to emotional and physical differences as well. The divine power has created two different genders so that they can be seen differently but not discriminatorily!

What women actually deserve is equity which means equality definitely but special provisions for them so that they can overcome the extra responsibilities that they bear. India is home to 0.65 billion women and they deserve the life with rights written not only on paper but rights which can in reality be attained.

World Economic Forum recently issued a statement and said – “Gender Parity will not be

⁶ Siti Sheikh Hussin, Gautam Mitra, Diana Roman, Wan Kamaruzaman, Wan Ahmad, *Employees' Provident Funds of Singapore, Malaysia, India and Sri Lanka: A Comparative Study*, Assets and Liability Management Handbook, Palgrave Macmillan, London, 2011, ISBN - 978-1-349-32573-3, read @ https://doi.org/10.1057/9780230307230_8, Last Accessed – April 5, 2021.

⁷ *Pension System in Thailand*, Pension Funds Online, Wilmington Pic, read @ <https://www.pensionfundsonline.co.uk/content/country-profiles/thailand>, Last Accessed – April 5, 2021.

⁸ Standing Committee Report on Social Security Code, 2020.

⁹ *International Labour Standards on Social Security*, International Labour Organization, read @ <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang-en/index.htm>, Last Accessed – April 05, 2021.

attained for 99.5 years”.¹⁰ It issues a report of Gender Gap and ranks the countries according to the Gender Gap that prevails in each country. In the recent report, which was issued in 2020, India stood at rank 140 out of 156 countries and comparing with the previous report, its ranked dropped down by 26 places.¹¹

In the gender gap, labour participation plays a major role and that has slipped from 24.8% to 22.3% in India.¹² The reason for this can be assumed, that, women either do not get the opportunity to enter into the labour market or they purposely don't enter due to many problems faced by them.

If the gender gap is reduced in specifically the labour force, then there can be a substantive increase in the GDP of an economy.¹³ International Labour Organization also states that work-life balance, affordable care, are some challenges towards lesser number of women working in this sector and quality care can be a plausible solution. It is imperative to understand that such issues can be eliminated by efficient and effective social security laws which are equitable but also are inclined towards reducing gender gap by providing necessary benefits to the women workers.

Purva Khera, an Economist in the International Monetary Fund researched on decreasing number of Female labour force participation. She said that gender-specific policies can increase the number of female workers by approximately 10%. It was also said that women are generally a part of informal work force, i.e., under the umbrella of unorganized labour sector.¹⁴

After stating the above facts and figures about how gender gap can be reduced to an extent with social security code, the following are a few suggestions for gender-specific reforms.

The first and foremost reform should be the policies made of the unorganized sector, i.e., the gig and platform workers. As said earlier, a large portion of these workers are women as said they do not have the required internal resources to work in a traditional employer-employee relationship and to manage their homes alongside work, they prefer such works which consist

¹⁰ World Economic Forum, <https://www.weforum.org/>.

¹¹ Global Gender Gap Report, Insight Report, March 2021, World Economic Forum, read @ http://www3.weforum.org/docs/WEF_GGGR_2021.pdf, Last accessed – April 05, 2021.

¹² Shekhar Gupta, *Why India's poor WEF's Global Gender Gap ranking isn't part of a foreign conspiracy*, Episode 715 of 'Cut the Clutter', The Print, April 2, 2021, read @ <https://theprint.in/opinion/raining-bad-news-on-rankings-as-india-falls-28-spots-in-wefs-global-gender-gap-report/632864/>, Last accessed – April 4, 2021.

¹³ *The Gender gap in employment: What's holding women back?* Infor Stories, International Labour Organization, read @ <https://www.ilo.org/infostories/en-GB/Stories/Employment/barriers-women#intro>, Last accessed – April 4, 2021.

¹⁴ Purva Khera, Economist, International Monetary Fund, *Expanding opportunities in India's labour market: Gender, skills and migration*, International Growth Centre, read @ <https://www.theigc.org/blog/expanding-opportunities-in-indias-labour-market-gender-skills-and-migration/>, Last accessed – April 4, 2021.

of freelancing, work from home, shorter projects, etc. The code doesn't lay down any specific provision for their benefit and gives the power to the government to make the provisions, then this doesn't only blur the line of separation of power by bestowing upon the executive the power of legislature.

The code is not a gendered code and it provides equal provisions for both men and women. Prima facie, this seems the best step towards equality but as stated above, to bring women to equal footing, there has to be special schemes for them which considers fair work conditions suitable for them, redressal mechanism for fair wages, adequate representations, etc. To illustrate, in the Social Security Boards, the code explicitly states that women and minorities should be given preference but there is no specific provision which caters to this and such vague words do not guarantee required representation of women and this leads to unintended consequences. If a model is provided to the establishments which tells us how these minorities are to be given preference, or that ratio of women to men in a board, then it will make things vivid for the employers.

The code aptly provides maternity benefit to the women but the number of years to feed children should increase. Even World Health Organization states that, a woman should feed her child for a period of 2 years. Further, apart from the creche facilities, there should be provisions for child care centres as well.

Yes, we have a come long way to ensure an equal footing for women but even at this point the journey doesn't stops.

VII. SUGGESTIONS AND RECOMMENDATIONS

- **Delegated Legislation:** The social security code delegated a large amount of work to the government for example setting the thresholds for establishments which affects the applicability of various social security schemes. Delegation up to a certain limit which includes rule making power is fair but delegating more than required work essentially point towards the blurring of lines between different organs of the State and ultimately affecting one of the basic pillars of democracy i.e., Separation of Powers.

- The code is not comprehensive enough to cover all kinds of workers – the code for certain schemes has set the threshold to either 10 or more workers or 20 or more workers which largely affects the number of workers covered under the code. And because of delegated legislations, the government have the power to increase the threshold which will benefit them as it will reduce the compliance and supervision work but will definitely adversely affect the workers not covered. This will also induce the firm to remain small sized. If the code cannot

include all establishments in such schemes, there can be different compliances for small sized firms.

The report given by Periodic Labour Force Survey (2018-19) indicates that 52% of total salaried/wages employees were not having any kind of social security benefit.¹⁵ The definition of 'establishment' can be expanded and thresholds can be revisited to include more enterprises into its purview.

- Differentiation in treatment of employees – the code differentiates between employees of same establishment. In provision of provident fund and medical insurance, the threshold is based on the amounts of income earned.

- Fragmented set up administration – the code has laid down the following boards to cater to different social security schemes:

1. Central Board of Trustees for Employee Provident Fund, Employee Provident Scheme, and Employee Deposit Linked Insurance;
2. Employees State Insurance Corporation for Employee Scheme Insurance;
3. National and State Level Social Security Boards for unorganized workers; and
4. Cess-based Labour Welfare Boards for construction workers

Such decentralized mode of supervisions leads to various inefficiencies in the system starting from problems for migrant workers to corruption. A centralized body of administration is recommended to overcome all above-mentioned issues. But this has to be done making sure there is no excess expenditure in administration of social security schemes for a country like India which is even at present, i.e., after more than 70 years of independence, a growing economy. The same is required after making sure to prevent political and social unrest.¹⁶

- The divine power has created two different genders so that they can be seen differently but not discriminatorily. And in furtherance to this, a few suggestions for gender specific reforms are as follows. Firstly, if there will be more elaborate provisions for unorganized workers, then the major benefit will be availed by women as due to their personal and social life, it is difficult for them to enter into traditional employer-employee relationship. Vague provisions essentially disregard the requirements of women. Mere mentioning the fact that women must be given preference while selection into social security boards doesn't ensure

¹⁵ Periodic Labour Force Survey Report (2018-19), Ministry of Statistics and Programme Implementation, June 2020.

¹⁶ Yasuhito Asami, Professor of Comparative Politics, Hitotsubashi University, *Overview of the Evolution of Social Security in Asian Countries*, Read @ mhlw.go.jp/topics/2011/03/dl/h05.pdf, Last Accessed – April 6, 2021.

the compliance to it. A model structure of the board must be provided so that the employers can conveniently understand the intent of the legislature as laymen.

VIII. CONCLUSION

Social Security Code is the code which provides for many benefits for the labourers and workforce of the country. Provisions related to pension fund, state insurance, maternity benefit, unemployment benefit, compensation in case of sickness or accident happened during the course of employment, etc. all covered into it. After keeping into due consideration, the above-mentioned facts and figures, the researcher has devised certain subjective opinions for the benefit of not only the employers but the employees as well.

To mention a few in crux, the unorganized sector workers, gig workers and platform workers are essentially overlooked by the social security code and the legislature must devise certain concrete provisions for them. Further, a lot many rules for the implementation of the provident fund, etc. are being delegated to the appropriate governments and is at the disposal of the Executive organ of the state as opposed to the Legislature. Further, the provisions of the code though gender-equal yet they do not serve well to the demands of gender justice in India. And, another thing being, a single system has to established for registration of all the workers so that migrant workers can also utilize the benefits given by this code.

The legislature did adopt many recommendations put forward by the standing committee report but even as of now, more changes are to be done to code so that effective and efficient administration and provision of benefits is there. References can and ought to be taken from the international standards too as done by the researcher in the report.
