

CHALLENGES BEFORE SOCIAL SECURITY & WELFARE CODE, 2017

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ABSTRACT

Recent National Democratic Alliance (NDA) government initiative to provide universal social security cover to the entire working population through 'Labor Code of Social Security & Welfare' is a welcome move. Although the draft in the present form fails to fulfill its stated objective and provides less than the existing benefits to the unorganized sector workers from whatever is available under the existing legislation. The draft needs to be rethinking and improved from the experience of the existing legal framework of Social Security such as Building & Other Construction Welfare Board.

KEYWORDS: *Social Security, Labor Code, Building & Other Construction Welfare Board, Welfare Benefits*

INTRODUCTION

Ministry of Labor & Employment has proposed to amalgamate the existing 15 labor laws (ESI Act, EPF Act, Payment of Gratuity Act, Unorganized Social Security Act, Maternity Benefit Act, Employees Compensation Act, and various Welfare Cess/Fund Acts) related to the social security into single code and drafted the 'Social Security & Welfare Code' on 16th March 2017. The ministry has uploaded the preliminary draft of the Social Security Code on its website and comments and suggestions from the stakeholders/public are invited.

The Code is a positive move as it is a right based approach to provide social security cover to the entire working population of the country. For the first time, social security benefits will be provided to self-employed, agricultural workers, domestic and home-based workers. This is quite an ambitious plan to cover the 45 crore workers through only one Board. The code coverage is vast but it is not free from the grave shortcomings. There are several provisions in the code which are loosely constructed and could have serious implication for the welfare of the workers.

The code proposes to open the portable social security account for all registered workers named VIKAS (Vishwakarma Karmik Suraksha Khata) which will be linked to the workers' aadhar number.

There are no clear provisions for the continuation of the registration of all those workers who are already being registered with existing Social Security Acts/Boards such as EPFO, ESI Act, BOCW Boards and Other Welfare Boards. Those who have already been registered under existing Social Security provisions should not be asked to re-register. The new registration of these workers will put them in financial loss and uncertainty, as the terms and conditions are not mentioned in the Act.

Under the new regime, workers registration is possible only through the employers, contractor or middleman. Options of self-registration and registration of the workers through the trade union are completely excluded. However, the experience of the registration of the construction workers in the Building & Other Construction Welfare

Boards shows that the most of the workers in the Welfare Boards have been registered by trade unions.

Welfare schemes provided under the new code does not cover all the existing schemes provided under different state-level provisions for eg. Education assistance for children, crèche and marriage assistance are missing. State Boards should have the flexibility to frame and provide welfare benefits on the basis of the occupational nature of employment. Moreover, the code does not define the percentage of benefits provided under each social security component. Instead of completely dissolving and re-establishing all the existing schemes, there is a need to clearly work -out which all existing schemes need to be continued under the new code, otherwise, it may lead to chaos and anarchy. The existing benefits under the various Social Security and welfare legislation shall be protected in the new regime.

For Maternity Benefits, the code defines “woman as an employee who is employed in an establishment for not less than the 80 days in the 12 months immediately preceding the date of her expected delivery”. The word employee used for the woman is exclusionary in nature. All provision of maternity protection should be universally applicable to all working and non-working women, regardless of the consistency or duration of work and independent of their current status of employment. Maternity Benefit is every woman right irrespective of the employment. There should be a Universal Maternity Benefit for every pregnant woman in the country.

Under the code, the creches are to be provided only when there are 50 employees, but what about breastfeeding women who are working in a situation where their establishment has less than 50 workers? Where there are less than 50 employees, there needs to be a locality-based arrangement that permit the mother to go and breastfeed close to the workplace.

In the proposed composition of social security organization such as National Council, Central Board, State Board, Executive Committee, which are established to perform numerous administrative functions constitute 52% to 85 % of government representatives. Instead, equal representation to government, employers and employees should be given for all organizations. For proper accountability, there should be adequate representation of workers in various committees and Boards. Administrative organizations headed by the Prime Minister, Chief Minister or even Ministers have not been the successful model in the part.

The code envisages that any revenue surplus in a State Welfare Fund, the State Gratuity Fund and Scheme Fund must be transferred by the State Board to the Central Board for the professional management of the scheme fund. A ‘Fund’ which is created partly with the worker’s contribution cannot be classified as ‘Revenue’ at the first instance. The fund, which is collected every year is not meant to be spent in the respective year instead it is for long term use for eg. In pension benefits funds need to given for longer duration. So State Board should keep aside certain portion of a fund as a corpus fund which is not meant to be spent every year. A more decentralized system of vesting Social Security funds in the occupation wise State board will have greater voice of the workers and State government. Social Security should not be considered a source of investment in the private Sector.

Using asset-based criteria for determination of the worker’s family’s income or wage seems ambiguous. Such criteria have failed the BPL system in delivering required benefit. Possessing certain items such as T.V at home must not be viewed as higher status. However, an overall ‘Economic Criteria’ based on needs criterion is most appropriate.

Like the present framework, the new one also has the similar provision for the registration of establishments and entities. Establishments can register with the Board if they employed a number of workers more than the certain threshold in preceding or current year. But the problem with this provision is that all establishments are showing less manpower than prescribed under the Factory Act, ESI & EPF Acts to get away from social security responsibilities. Every establishment should be registered under this new code even if a single employee has worked during the preceding and current year. For example, most of the families employ only one domestic worker. If all establishments are registered with the code then only the employer contribution can be insured for social security of the worker.

There is no explicit focus on the accountability, transparency, annual social audit, and decentralization of schemes. The code is silent about the monitoring mechanism and about the authority responsible for the same. New code should be improved upon from the weakness of the existing social security framework and incorporate these provisions to make it a more powerful Act. The draft needs to go through a more rigorous and thoughtful consultation process.

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