

Recommendations on Code on Social Security Draft Rules 2020

Sl. No.	Components on which change needs to be made	Change Proposed	Reasons
1.	Code on Social Security's applicability is very limited.	To make the Code on Social Security a universal Act instead of it being a limited conditional Act.	The applicability of the Code on Social Security at present is restricted to manufacturing firms having workers greater than 299. Because of this, 71 percent of the manufacturing companies will remain out of the scope of this Code.
2.	All benefits under this Code requires a formal and contractual relationship between an employer and employee as an essential pre-requisite.	The Code must ensure inclusion of unorganized sector workers that might not have a written contractual agreement with their employers.	To ensure better inclusivity in terms of applicability of this Code.
3.	The provision of 'Career centres' in chapter 1 of the Code rules, is not applicable to the state of Punjab and Haryana	The excluded states should be included and should also fall under the ambit of the Code on Social Security rules	These career centres are useful counselling centres for workers which includes provision of vocational training as well. The reason to exclude the states of Punjab and Haryana from this provision is not justified in the rules as well.
4.	The Code mandates registration of all workers on the <i>Shram Suvidha Portal</i> (a portal developed by the Ministry of Labour and Employment).	The Code does not spell out any online platform for the registration of all employers. The <i>Shram Suvidha portal</i> is not designed to allow employers to register using their PAN and TAN numbers	Code should make provision for registration of employers as well. At present, employers in the unorganized sector do not have enough working capital to be able to register on an online platform.
5.	The Code has mandated AADHAR for any employee to register on the Shram Suvidha portal to realise any form of social security benefit	AADHAR should not be mandated	This will firstly lead to AADHAR led exclusion and will not allow unorganised sector workers (not having AADHAR) and not having any trade union or any other organisational support to receive any form of social security benefits as they will not be able to self-register themselves.
6.	The Code bestows power to the Central government alone in decision related to exempt a particular sector from the provisions of this Code	The power to exempt a particular sector from the provisions of this Code must also be given to the State government	Labour being in the Concurrent list under Article 146 of the Indian constitution, this power to include or exempt an industry or sector must rest

			in the hands of both State and Central government.
7.	In Chapter two, where the composition of the Employers' State Insurance Corporation and Employers' Provident Fund Board is spelled out, representation of trade unions is missing.	The Code rules state that the Central government will nominate worker's representative but have not specifically mentioned anything about trade unions representation. Exclusion of Trade union from the key social security boards is in direct violation of Industrial Relations Code.	To mandate representation of trade unions in these boards to ensure inclusivity on key decision making processes and to ensure labour/worker representation.
8.	In Chapter two: The term of office (which is of 4 years) of the Chairperson, Vice –Chairperson and the Trustee of the ESIC Central Board differs from the term of office (which is of 3 years) of the member of the National Social Security Board for Gig worker and platform workers. The term of office for the National Social Security Board has been kept as two years in the Code rules.	In order to ensure uniformity, these terms should be same.	Difference in terms of office in these critical social security boards will lead to unnecessary delays and disruptions in decision-making processes on matters related to social security of unorganised sector workers including gig and platform workers.
9.	As per the Code, ESIC and Employees' Provident Fund members can now only appeal in Tribunals and not in Labour Courts	Provision to allow filing of appeals in Labour Courts as well.	In tribunals, the presiding officer in comparison to a labour court judge, often do not have the required powers to take decisions on matters related to labour issues. This is against the welfare of unorganised sector workers.
10.	Under this Code (Chapter 2, section 16), ESIC has been established as a profit making company.	ESIC should remain a public body	
11.	In Chapter 2 of the rules, under section 17, clause (k), limitations have been imposed on defraying of expenditure for promotion of measures for health and welfare of Insured Persons	Limitations to be removed	To ensure promotion of welfare and benefits to workers in unorganised sectors, this limitation should be removed.
12.	In Chapter 2, Section 9 (h), the composition of an expert committee to advise on matters related	Clear mentioning of who will be a member of the expert committee is required in the code rules	For efficient promotion of welfare of gig and platform workers, representation of all relevant stakeholders in

	to the welfare of gig workers and platform workers is not clearly mentioned		the expert committee is desirable.
13.	Under draft Social Security Code 2020, chapter VIII u/s 50(2)d, "A gig worker or platform worker, who has completed the age of sixteen years, but not attained the age of sixty years, shall be eligible for registration as mentioned in clause (a) above" shows that any worker who have attained the age of 16 are eligible for registration under the code.	It has been advocated to increase the existing age threshold for 16 to 18 years of age so to ensure India's compliance with global labour standards.	This section contravene the ILO 138 binding Minimum Age convention which India has ratified in 2016. Moreover, it also violates section 9 of Child and Adolescents Prohibition Act of 2016.and Section 11 of Motor vehicles Act of 2019 that prohibits employment of adolescent workers and use of learning driving licence for commercial purposes for under 18 years of age. Theoretically this provision will enable unfettered employment of adolescent workers especially in the hazardous occupation and process in the industry and work space.
14.	As per Section 50 (h) of the Code rules, unorganised sector workers are required to update their particulars from time to time. In the absence of updated information on the portal, an unorganised sector worker will not be eligible to receive any form of social security benefit.	This should not be kept mandatory in view of seasonal or cyclical or short term migrant workers who might not be able to update their particulars on a regular basis.	Updating information regularly will be a huge challenge for migrant workers and this would lead to non-receipt of social security benefits.
15.	Often one particular gig worker is associated with multiple aggregators. Registration of all gig workers on the Shram Suidha platform in such case becomes an operational challenge	The code rules are silent about how these registrations will be implemented.	
16.	Definition of wages excludes statutory bonus payment	Definition of wages-It must include bonus as a component as in the tea gardens the practice has been that around 8% is deducted for payment of bonus from their wages and it is paid annually	Now, if this is withdrawn and let upto the discretion of the management, the management may declare that during one particular year, no profit has been made so no bonus can be paid to the workers.

17.	Non-pecuniary benefits to be upto 15% of total pay	Non-pecuniary benefits cannot be limited to 15% only	The Tea garden workers already are getting low wages, and if the ceiling of the non-cash benefits is limited to 15% then, it will further worsen the condition of the workers.
18.	Defining Employers and including Contractors in the definition		This will push the entire tea industry to further privatization and more sub-contracting will take place and hence might expose the workers to more chances of exploitation
19.	Defining employees and including Fixed Term Employees as a category	For tea sector already a significant numbers of workers fall under temporary category.	Fixed Term category will gradually pull out the permanent workers out of the system and more and more of temporary/fixed term contractual workers will be employed
20.	SSC fails to define the nature of industry for the tea industry	It should be recognised as a "scheduled industry"	
21.	Redressal- For any kind of redressal now the Tribunal will be the sole authority	Labour Courts and its power cannot be subsumed into just tribunals	
22.	The Code also provides for setting up of National Social Security Boards and all other boards will be subsumed under this	The role of the other boards like Provident Fund, ESIC is vague under the Code. There needs to be more clarity around this.	
23.	Use of Gender bias language throughout the code and the draft rules	Change of language is proposed i.e. use of pronouns such as he, him, his throughout the entire code and the draft rules needs correction to ensure that the document is more gender inclusive.	To ensure gender inclusivity on paper.
24.	The code is discriminatory towards women who have more than two children. The discrimination in this case is also automatically towards the child.	Number of leaves is lower from the third child onwards needs to change and should be uniform for all children and child births.	
25.	Code rules are discriminatory towards adopting mothers.	The leave to an adopting mother is also less than 12 weeks given the child is of less than 3 months old is also discriminatory. This needs to change.	Against child rights and women rights.
26.	Section 67(1) requires every establishment employing "fifty or such number of employees as	This should not be women employee specific and should rather be employee specific.	Making the crèche provision gender neutral because making it women specific will dis-incentivize

	may be prescribed” to establish creches “within such distance as may be prescribed”. But Rule 39(1) has changed the eligibility condition from the wider term of “employees” (which include men, women and other employees) to fifty “women employees”, which violates the Code.		employers from hiring women employees/workers or will keep women employees out of the formal registration system.
27.	No details have been provided about who will provide the funds to build the creches in the draft rules		
28.	Requirement of proof of child birth or being pregnant from a certified medial practitioner is difficult.	Registration at Anganwadi centres or with ANM worker should be sufficient to prove that a women worker in unorganised sector is pregnant or have had a child birth.	To ensure inclusivity.
29.	Often one particular gig worker is associated with multiple aggregators. Registration of all gig workers on the Shram Suvidha platform in such case becomes an operational challenge	The code rules are silent about how these registrations will be implemented.	

Overall comments:

- Unlike earlier Provident Fund Act, violation on the part of any employer in relation to delaying of payments of PF amount was punishable by law, leading to imprisonment of the employer in question. However, in the Codes, there is no such punitive action mentioned in case of violation in terms of non-payment of provident fund amount.
- Except for the building and construction industry, no other employer of the unorganised sector is required to contribute in the form of 2 percent cess out of which the social security benefits will be paid its employees/workers. Therefore, it is not clear how will the social security fund for the unorganised sector workers will be created.
- Even for the building and construction workers, it isn't clear (from the Code) how will the cess be collected for the construction workers' fund. A construction worker often connects with contractors and other labour intermediaries. So, if the fund is collected in one state, how will the code on social security be applicable to migrant worker who whose destination states can be multiple.
- In the current code, employers are allowed to route some or all of the 2 percent CSR money into government's social security funds. This is in clear contradiction of the fundamental reason behind creating the provision of 2 percent CSR based expenditure. Earlier, it was voluntary for companies to spend the CSR money into

any development sector but now the CSR money will have to flow into social security funds.

- Code on Social Security stated the establishment of worker's facilitation centres. It was understood that these workers' facilitation centres will also support unorganised sector and migrant workers in the self-registration process on the *Shram Suvidha Portal*. However, this has not been highlighted in the rules.
- Portability aspect in case of migrant workers with respect to social security codes needs to be stated the rules clearly. For instance, a migrant worker having an AADHAR card registered in his home state (Rajasthan) might not be eligible to social security benefits in the destination state of Gujarat where he/she is currently employed. So, it is important for the Code on Social Security Rules to state how its applicability will unfold with respect to migrant workforce. In addition, AADHAR registration has been kept as pre-requisite only for the unorganised sector workers (to receive any form of social security benefit) which is exclusionary.
- The Code on Social Security rules excludes the informally contracted employees within the unorganised sector.
- Social Security Code does not recognise the seasonal nature of tea work.
- While clubbing the entire 'unorganised sector' under one basket, other forms of unorganised labour force including women domestic workers, or self-employed women workers wherein the employer-employee relationship is not clearly defined, it then becomes difficult to understand how the Code rules will apply to these particular forms of unorganised workforce.
- The maternity benefit entitlements in the Code on Social Security still looks restrictive as it does not clearly mention benefits with respect to women workers employed in home based work or the farm work or the scheme based women workers or where women are not employed with any formal establishment or engaged informally without any establishment. Although, Chapter 6 of the code rules mentions that the maternity benefits will be applicable to all women but the definition of woman in the Code reads as "a woman employed, whether directly or indirectly through any contractor, for wages in any establishment". Therefore the applicability of maternity benefit provisions to domestic workforce and farm women workers is not clear.
- In the Schedule of the Unorganised Workers Social Security Act 2008, it sees the Janani Suraksha Yojana as the scheme with respect to Maternity benefits. This still remains true under the code on social security and requires change because the Janani Suraksha Yojana is nothing but a provision of one-time payment to any pregnant women incentivising her to deliver at an institutional establishment. This therefore cannot be considered as social security under maternity benefit. The draft code rules do not lay out anything on such maternity benefit schemes that will be in place.
- The draft rules are also silent on the State's contribution as far as the social security of gig/platform workers, home based women workers, scheme based women workers, etc. wherein the traditional employer-employee relationship is missing or is difficult to establish.

List of person/organisation who had provided recommendations

S. No.	Name of Person	Name of Organisation
1)	Dithhi Bhattacharya	Centre for Workers' Management
2)	Rinku Sharma	Maharashtra App Based Transport Workers Union
3)	Ms. Kavya	Ajeevika Bureau
4)	Daulat Ram Kashyap	Atma Samiti, Chhattisgarh
5)	Kuntal Mukharjee	Pradan
6)	Shaik Salauddin	President
7)	Dr. Rahul Sapkal	TISS
8)	Mohammed Sajjad Hussain	Telangana Four-Wheeler Driver Association
9)	Prashant Sawardekar	President Maharashtra App Based Transport Workers Union
10)	Ranjana Das	Oxfam India
11)	Ileena Roy	Oxfam India
12)	Sushmita	Oxfam India
13)	Muniv Shukla	Gram Mitra
14)	Namita Mishra	State Head ICRG
15)	Bal Paritosh Dash	UNICEF, Chhattisgarh
16)	Sangeeta Sahu	MGNREGA Sangharsh Morcha
17)	Rebecca David	COVID cell, Chhattisgarh (Joined initiative between UNICEF and State Planning Commission, Chhattisgarh)
18)	Lata Netam	Lok Astha Samaj Sevi Sanstha
19)	Ganga Ram Paikara	Chaupal
20)	Anand Shukla	Oxfam India
21)	Pooja Adhikari	Oxfam India
22)	Barnabas	PAJHRA
23)	Nimisha Katakee	Oxfam India
24)	Rustum Kujur	All Assam Adivasi Students Association
25)	Stephen Ekka	PAJHRA
26)	Dr. Kalyan Das	Cotton University, Assam
27)	Indrani Mazumdar	
28)	Dipa Sinha	
29)	Bhanupriya Rao	Behenbox
30)	Kanika Jha Kingra	IWWAGE
31)	Roshan Ara	
32)	Dr. Soma KP	
33)	Ritika Sibal	
34)	Manasi Mahanty	
35)	Udita Chatterjee	
36)	Suman	
37)	Anushree Jairath	Oxfam India
38)	Amita Pitre	Oxfam India
39)	Janhavi Sharma	
40)	Nusrat Khan	UNDP
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