

An Overview of Reformed Code on Social Security and its Impact on Women Employment in Unorganised Sector

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Abstract

Access to social security and social welfare has become a fundamental human right for which every individual is entitled to as a member of the society. It is a pertinent aspect for the establishment of public policy today as it gives assurance from the risk coming from uncertainty in the jobs. In this dynamic and contingent time of employment, social security serves as an economic, social and financial justice to the human diasporas with different needs.

However the social security of the workers is not equally distributed in various segments of the society. Social security in organised sector is highly regulated but is least regulated in unorganised sector. Moreover women workers in the unorganised sector are facing major issues as they are less aware of the legal frameworks provided for their protection as compared to their male counterparts. They still lack the education and skills set which is required as a bare minimum to sustain their life. The purpose of newly reformed Code on Social security is to simplify and modernise the complicated and exhaustive labour regulation so as to provide a universal social welfare benefits and assistance to all workers, including women in unorganised sector, gig and platform workers. There still a gap in equal distribution of legislation because of gender parity and the biological and physical built differences between the men and women.

The paper will give an insights on salient features of the new reformed code on social security. It will further discuss about the steps taken by the Government for its contrasting challenges and implications in the contemporary times and its impact on women employment in unorganised sector. Lastly suggestions to improve the working condition of women in unorganised sector shall be highlighted.

Keywords: Code on Social Security, women employment, social welfare, human rights, unorganised sector.

Introduction

"I measure the progress of a community by the degree of progress which women have achieved."

-Dr. Bhimrao Ramji Ambedkar

In India, the term "social security" mainly refers to a variety of government-sponsored plans and initiatives intended to help out economically and socially weaker, disadvantaged and vulnerable groups of people. These programs are created to provide a safety net to people and families in times of financial

difficulty, disability, old age, and other difficult situations. In India, social security consists of the following important elements:

1. **Public Provident Fund (PPF):** The PPF is an extended savings program provided by the Indian government that enables people to deposit money and earn interest on their savings without paying taxes. It is primarily intended to give retirees financial security.
2. **Employee's Provident Fund (EPF):** For workers in the organised sector, the EPF is a required savings program. This fund, which functions as a retirement savings plan, is financed by a portion of the employee's pay that is contributed by both the employer and the employee themselves.
3. **Employee State Insurance (ESI):** For employees in specific industries, the ESI program offers health insurance. In the event of sickness, pregnancy, disability, or mortality, it offers covered employees and their dependents medical and financial compensation.
4. **The National Pension System (NPS)** is a perdurable retirement savings schemes open to all Indian residents. Through methodical investments made while a person is employed, it seeks to ensure for their financial security in old age.

The social security measures is categorically divided into three segments

1. Compensation
2. Restoration
3. Prevention

Compensation for income stability is intended to prevent an individual and his family from suffering a double catastrophe that includes both impoverishment and the loss of health, limb, life, or employment during periods of danger. Healing the ill, finding new work, and rehabilitation are all part of Restoration. Prevention aims to prevent the loss of productive capacity brought on by illness, unemployment, disability, or job loss due to company's bankruptcy. It was intended to render the resources that are being consumed by inevitable idleness. The community benefits more in terms of its material, intellectual, and moral well-being. (Sharma, 2015)

Informal sector, Informal workers and Social Security

The term informal sector refers to all privately owned, unincorporated businesses (also known as informal enterprises) that are engaged in the production and sale of goods and services and (b) have an employment size below a predetermined threshold, according to the international definition accepted by the UN Economic and Social Council (SNA, 1993). The term informal workers refer to people whose working connection is, legally or practically, exempt from labour laws, social security, and certain employment benefits. The International Labour Organization combined the two and came up with the phrase 'informal economy' (ILO, 2002).

All temporary employees and unpaid family members in all businesses, regardless of industry, are regarded as unorganised workers. 'Unorganised Workers' are any employees in the previously mentioned unorganised sector as well as any employees in the formal sector who do not have access to the employment security and social security benefits given by their employer. A 'gig worker' is an individual that executes or engages in a work agreement for revenue independent of the traditional employer-employee relationship. A person who performs work for an employer from their home or another location other than the employer's place of business for payment is referred to as a "home-based worker," regardless of whether the enterprise provides the necessary tools or additional resources.

Two types of workers' social security difficulties exist in the unorganised/informal economy. The first is due to a lack of assets or capacity, such as a lack of work, poor income, or a lack of education. Health and educational levels, for example, are all connected to the pervasive deprivation of the community's poorest members. The second result of hardship is the lack of appropriate backup capabilities (safety nets) to deal with unforeseen circumstances such as ailments, accident, mortality, and old age. The fact that the vast majority of staff are from socially disadvantaged groups. In that sense, a level of social security should also be regarded as a sort of social upliftment of the marginalised group of people in the society.

Need for Social Security Measures

The seasonality or temporary nature of their employment and the lack of a formal employee-employer connection, Covid-19 Pandemic have adversely impacted informal labourers in rural and urban regions. In accordance to the Periodic Labour Force Survey (PLFS), almost ninety percent of employees are in the unregulated or informal sector, which indicates that 419 million out of 465 million individuals are working in the informal sector. Furthermore, India's Covid-19 problem has occurred against a context of pre-Existent high and rising unemployment. Unorganised workers' job losses, rising unemployment, obligations, health and nutritional awareness, and lack of educational opportunities have the potential to throw an extended spell on the macro economy resulting in irreversible harm. The rise of the gig economy has accentuated India's continuous informalisation of the formal workforce in manufacturing and services. While this informalisation has provided more income-generating opportunities, this informality has resulted in employment that is increasingly marked by unpredictability.

Just over fifty percent of those in the informal economy have access to some type of risk-related safeguards, such as coverage for life, health care coverage, or a retirement fund. The e-Shram system has been leveraged by more than ninety-four percent of the 27.69 million unregulated marketplace personnel.

E-SHRAM Portal

The E-Shram platform was established after the Supreme Court asked the Government to complete the process for signing up in unorganised personnel to ensure they could gain an advantage from different government undertakings. The E-Shram service was launched by the Department of the Ministry of Labour and Employment. This aspires to enrol a total of 38 million unregistered workforces, which comprises building labourers, vagrant workers, sidewalks sellers of goods, and labourers at home. Individuals will receive an E-Shram card featuring a 12-digit distinctive identity. If a worker has been verified on the E-SHRAM portal and endures an accident, he is entitled to Rs 2 lakh in the occasion of accidental death or permanent incapacitation, and Rs 1.0 lakh in the occurrence of partial disorder. The paperwork procedure will be conducted by UT/State Government.

Department of Labour and Employment has classified unregulated workforce population into three groups:

Trade: Micro and marginal cultivators, stranded labourers in farming, farmers who shared land, fishers, livestock breeding, tobacco manufacturers, and other related industries are examples of employment.

Occupational Setting: This category comprises affiliated labourers working in agriculture, indentured wage earners, temporary and seasonal labourers.

Vendor of Amenities: Birth attendants, household helpers, women, barbers, merchants of groceries and paper distributors.

Protection of Unorganised Workers under Government Schemes

In order to provide support and protect the right to livelihood of unorganised workers, the government has taken up various initiatives to provide social assistance and benefits to them which includes:

The Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY): The following is a twelve months insurance coverage program that is revised each year and includes demise from any kind of incident.

The Pradhan Mantri Suraksha Bima Yojana (PMSBY): This constitutes a twelve months unforeseen life insurance plan that automatically renews each subsequent year and reimburses for accidental fatalities or permanent impairments.

The Pradhan Mantri Shram Yogi Maan-dhan: The Department of Labour and Employment supervises this Public Area Scheme, which is carried out through the Life Insurance Company of India and community-based Service Facilities.

The Atal Pension Yojana: In the month of May 2015, this initiative was launched with the purpose of creating unified social security benefits accessible to all citizens of India, specifically poor, economically disadvantaged, and informal labourers.

The Government of India's Ministry of Rural Affairs has suggested raising the recurring pensions of the old-aged poor, disabled, and widowed under the **Nationwide Social Assistance Plan (NSAP)** from two hundred to eight hundred

The Garib Kalyan Rojgar Abhiyaan: This mission encourages and hires migrant laborers and people from rural areas who were forced to return to their native states due to the lockdown instigated by the Covid-19 pandemic.

The Aam Aadmi Bima Yojana (AABY): This is a social security scheme for rural families that don't have ownership of land. It provides coverage for both life and disability to the breadwinner or head of the family

Key Provisions of Code on Social Security 2020

The Government of India established Code on Social Welfare in the year 2020, which revised antiquated occupational and labour legislation associated with social security, with the purpose of providing social security advantages to a wider range of individuals who work in either the formal or unorganised industries. This Code annulled nine major labour law regulations.

Existent Legal Framework vs Subsequent Legal Framework

1. Establishment Registration

Existent Framework: At the moment, all past labour and employment legislation requires establishment registration.

Subsequent Framework: Under the guidelines of this Code, all entities need to sign up in the Shram Suvidha Portal. A facility that has been authorized under Existent labor laws is not obligated to sign up again; nevertheless, such organizations must modify their membership information on Shram Suvidha Portal to ensure compliance with the Code.

2. Employees' Provident Fund's Industrial Tribunal: Time Limit and Fees

Existent Framework: Currently, the Tribunal has a time restriction of 6 (six) months from the date of registration to determine the appeal, and the filing fee is INR 2000 (Indian Rupees Two Thousand). The

percentage of deposition of money due on the part of the employer for an appeal to be raised before the Tribunal is 75 percent (seventy-five percent).

Subsequent Framework: According to the Code, the Tribunal must rule on the appeal within one year of the date it was filed, and the filing fee has been increased from INR 2000 (Indian Rupees Two Thousand) to INR 5000 (Five Thousand). The fraction of the payment owed by the employer has been cut from 75 percent to 25 percent.

3. Term of Limitation

Existent Framework: There is currently no time limit for initiating proceedings under the Employees' Provident Fund ("EPF") and the Employees State Insurance Corporation ("ESIC") to determine any dues from an employer and disputes concerning its relevance to an establishment.

Subsequent Framework: The Code prescribes a five-year limitation period for initiating procedures to determine any dues from an employer and disputes regarding the applicability to an establishment under the EPF and the ESIC.

4. Prior notice before conviction

Existent Framework: Currently, no such prior chance is provided to the employer to fix non-compliance in terms of the EPF, ESIC, or any other labour law legislation.

Subsequent Framework: In accordance with the Code, before any legal action is taken against the employer, the employer is given a chance to address any violations of the EPF, ESIC, or other rules set forth in the Code within a given time frame. However, if an employer violates the same temporary standards more than once within 3 (three) years of the first breach, no such opportunity will be offered.

5. Employment with a Fixed Tenure

Existent Framework: Currently, the phrase 'fixed term employment' is not defined in labour law legislation.

Subsequent Framework: The phrase 'fixed term employment' has been defined in the Code as the engagement of an employee on the basis of a recorded commitment for employment for a specific period of time. Furthermore, the hours of labour, pay, allowances, and other benefits must not be fewer than those of a permanent employee, and such benefits must be appropriate to the length of service provided by such employee.

6. Gratuity

Existent Framework: Currently, gratuity is not given to an employee on a pro rata basis or upon termination of the contract period under the fixed term employment. Furthermore, the time limit for making an application to the competent body for issuing a directive by the claimant employee, nominee, or legal successor is 90 (ninety) days in issues related to the amount of gratuity, admissibility of claim, person entitled to receive gratuity, and so on. Moreover, the Central Government has mandated that the amount of gratuity payable to an employee under the Payment of Gratuity Act of 1972 not exceed 20 (twenty) lakh rupees or 2 million.

Subsequent Framework: Gratuity is granted to an employee under the Code upon termination of the contract period under the fixed term employment or the occurrence of any such event declared by the Central Government. Furthermore, completion of 5 (five) years of continuous service is not required where fixed-term employment has terminated or where any such occurrence announced by the Central Government occurs. In addition, employees on fixed-term contracts will be entitled for pro-rata gratuities from the business. An employee on a fixed-term contract is entitled for gratuity if he serves under the contract for one year and is awarded gratuity at the rate of 15 (fifteen) days' salary. In disputes

pertaining to the amount of gratuity, admissibility of claim, person entitled to receive gratuity, and so on, the time period for making an application to the competent authority for issuing a direction has been increased from 90 (ninety) days to 180 (one hundred and eighty) days under the Code. Furthermore, the Central Government has yet to notify the amount of gratuity due to an employee under the Code.

7. Consolidated explanation of the word 'Wages'

Existent Framework: Currently, different labour law legislations define the term 'wages' differently.

Subsequent Framework: The Code introduces a single, standard definition of 'wages' with specified inclusions and exclusions throughout all four (four) codes. According to the Code, the word "wages" refers to all compensation provided in the form of salary and allowances, including "basic pay," "dearness allowance," and "retaining allowance" (if any). It does not include components such as a bonus, the cost of housing or energy, water or medical attendance, provident fund contributions, conveyance allowance, home rent allowance, overtime allowance, and so on. Another clause has been added to the definition to provide that if an employee receives any remuneration in kind from the employer, the value of such remuneration in kind shall be deemed to form part of the wages payable to such employee if it does not exceed 15 (fifteen percent) of the total wages.

8. Social security benefits for gig, platform, and unorganised workers

Existent Framework: Presently, the Central Government has developed welfare programs for unorganised employees in areas include life and disability insurance, health and maternity benefits, old age protection, and so on. Additionally, for registration reasons, every unorganised worker needs to be 14 (fourteen) years old.

Subsequent Framework: According to the Code, every unorganised worker, gig worker, or platform worker who has reached the age of 16 (sixteen) must register with Aadhar on a self-declaration based in the form on the Shram Suvidha Portal. Provided that such person has worked as a gig or platform worker for at least 90 (ninety) days in the previous 12 (twelve) months. Plus, the Central Government will develop appropriate social assistance schemes for gig workers and platform employees in areas consisting of life and disability insurance, accident insurance, health and maternity benefits, old age assurance, crèche, and so on.

Moreover, education is provided as one of the Central Government's relevant assistance initiatives for unorganised employees. Furthermore, the Central Government has established a social security fund for the social security and welfare of unorganised workers, gig workers, and platform workers, into which aggregators must contribute 1 (one percent) to 2 (two percent) of their annual turnover. For convenience, the word 'aggregator' refers to a digital middleman or marketplace that connects a buyer or user of a service with the seller or service provider.

9. Voluntary EPF and ESIC Insurance

Existent Framework: There is currently no notion of discretionary opt in and opt out regarding the application of EPF and ESIC.

Subsequent Framework: According to the Code, the employee threshold for eligibility for EPF and ESIC stays the same. However, the Code includes the notion of voluntary opt-in and opt-out of social security plans. In order to opt in or out of the applicability of EPF, an application must be presented to the Central Provident Fund Commissioner by the employer of the business, and an agreement must be reached between the employer and the majority of workers. If the employer of the establishment wants to opt in or out of the application of ESIC, they must submit an application to the Director General of the Corporation and come to an understanding with the majority of the employees.

10. Employee's State Insurance Corporation

Existent Framework: At present, the Employees State Insurance Act of 1948 applies to all factories (including government-owned companies) employing 10 (ten) or more people on any day in the previous 12 (twelve) months, except seasonal enterprises. Additionally, under Existent regulation, the corporation's rights are limited in the event that the major employer fails or neglects to pay any payment.

Subsequent Framework: The Code broadens the scope of the ESIC's applicability, such that, aside from establishments employing 10 (ten) or more people that are not seasonal factories. It also applies to enterprises that carry out dangerous or life-threatening occupations as specified by the Central Government, even if only one person is employed. Furthermore, the Code broadens the scope of the corporation's rights when an employer fails to pay the employee's contribution, which includes the employer's failure or neglect to insure (i) an employee at the time of his appointment, depriving him of the entitled benefits, and (ii) an employee on/after the date of the accident, disentitles him to receive dependent benefit or disablement benefit.

11. Maternity Benefit

Existent Framework: There is currently no idea of a communal crèche facility being provided by an enterprise. Furthermore, the Central Government provides a maximum medical bonus of INR 20,000 (Indian Rupees Twenty Thousand).

Subsequent Framework: A common creche facility has been introduced under the Code, wherein any establishment may avail of such common creche facility provided by the Central Government, State Government, municipality, or private entity, or provided by a non-governmental organization, or by any other organization or group of establishments who may pool their resources for the establishment of a common crèche. Furthermore, the Code is silent on the maximum amount of medical bonus awarded by the Central Government.

12. The terms "principal employer" and "immediate employer" have been dropped

Existent Framework: Currently, the Employees' State Insurance Act of 1948 covers both the "principal employer" and the "immediate employer." According to the Employees' State Insurance Act of 1948, the major employer of an establishment or factory may engage employees through an immediate employer, who will then carry out the job of the factory or establishment under the supervision of the principle employer.

Subsequent Framework: Under the Code, the relationship between a major employer (including a contractor) and an immediate employer has been reformed under the respective headings of "employer" and "contractor" (including a subcontractor).

13. Employment remuneration

Existent Framework: Currently, the Employees Compensation Act of 1923 applies to a certain type of employers for the payment of compensation to their employees who have been injured in an accident. Furthermore, in the legislation, disablement was classified into two categories: partial disablement and total disablement.

Subsequent Framework: According to the Code, the Employee's Compensation is applicable to employers and employees who are not covered by ESIC. Furthermore, the Code distinguishes disablement into three (three) categories: permanent partial disablement, permanent entire disablement, and temporary disablement. The Code has extended the employer's obligation for compensation to the employee, which includes an accident occurring to an employee while traveling from his house to the place of work for duty or from the place of employment to his residence after performing duty. Such

accident shall be held to have happened as a result of and in the course of work if a link is shown between the circumstances, time, and location of the accident and his job (India, 2020). This clause was not included in the previous statute.

14. Prospects for Employment

Existent Framework: Currently, the purpose of employment exchange is confined to collecting and disseminating information through keeping registers of individuals wishing to engage employees, individuals seeking employment, and openings to which those seeking employment may be assigned.

Subsequent Framework: Under the Code, the concept of 'career centre' has been introduced, which includes any office (including an employment exchange, place, or portal) established and maintained for providing career services (including registration, collection, and furnishing of information, either by keeping registers or otherwise, manually, digitally, virtually, or through any other mode). Furthermore, the work of the career centre has been expanded to encompass career counselling, vocational assistance, self-employment guidance, holding job fairs and job drives, conducting employment-related surveys and research, increasing employment opportunities, and so on.

Working condition of Women

Individuals who work independently in the unauthorized economy and their various sources of income are routinely ignored or penalized by public laws and ordinances. These employees encounter with an array of issues, including harassment, abuse, and seizure of their belongings, which leads to volatility and insecurity in their income and livelihoods, as well as property loss (Organisation, 2018). The most affected segment of the informal sector is probably street sellers. They supply individuals with basic supplies at low and affordable prices. Their services serve the urban poor. (Bhowmick,2014).

Women in these sector work mostly for economic independence and need. Women employment are more prevalent in the unorganised sector, such as part-time house-help in families, construction centres, tanneries (setting, separating, and drying), match and beedi businesses, and so on. These women who are mostly daily wage earners lack the awareness of social security benefits provided by the Government. Working condition is also not hygienic which often leads to have an adverse impact on their reproductive health. In organised sector the working hours of the women employees are fixed and in certain areas they are not legally allowed to work in night shifts, but women who are working in the unorganised sector have no such advantage as they have an obligation to earn for their livelihood. Hence, they are overworked. Crèche facility is also not available to these women who carry their new born or toddlers on the construction sites where they are exposed to hazardous metals, cements, sharpen tools etc. Women have no proper job security in informal sector as work is generally irregular, low skilled, low paid and provision of payment of minimum wages is neither clearly defined nor mentioned in the existent labour laws. The benefits provided in various welfare schemes are ambiguous. Since social security comes under the concurrent list, different state government have laid different regulations which are exhaustive to amalgamate and implement on the grass root level.

Measures for Prevention

Government of India has now highlighted the various gap and needs in the reformed Code on Social Security; declaring that entitlements to social security would be granted to unstructured personnel, freelance employees, and platform staff members who had been barred due to prior labour standards' limited applicability.

National Social Security Board and the State Unorganised Worker's Board has been established who will look after the schemes of social security on the state level on a time to time basis. In order to streamline the registration of workers in unorganised sector the Government have introduced E-SHRAM portal and Shram Suvidha Portal thus creating a common database for them. Judy Fudge (2020), a labour law professor, advises that we look at the worker and her activities to tackle economic and social risks rather than the risk perpetuating from the job. For example, in the case of street sellers, because there is no employer that regulates their labour trading and location of work, we must consider functional substitutes--perhaps the municipality where they work.

Conclusion and Suggestions

Throughout the paper the author has extensively elaborated the provisions which was undertaken in the new reformed code on social security. Furthermore there is an eminent need to create awareness about the social welfare schemes to the workers and women employees in informal sector as usage is less than the availability. Flexibility and Social Security: It is critical to find a balance between giving social security benefits and guaranteeing informal sector flexibility. Due to numerous duties, such as childcare, many women in the unorganised sector engage in part-time or informal occupations. Policies that acknowledge this demand for flexibility while still providing social security benefits can have a favourable influence on women's employment. Most of the workers in this sector are illiterate thus Government should take initiatives to spread the information regarding the schemes by collaborating with NGOs, local self-help groups, social work communities and foundations.

Fostering development of skills and business initiatives which are women centric that is customized to the requirements of women. Strengthening the participation of women in trade unions and supporting collective bargaining. The tool of dissemination can be in the form of workshops in career centre, nukkad natak, street plays, etc. Hence government should rigorously push these schemes through decentralised system.

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