

SOCIAL SECURITY CODE

Dr. Otojit Kshetrimayum

Fellow

V. V. Giri National Labour Institute

otojit.vvgnli@gov.in

Percentage Distribution of Workers according to Usual Status (Principal status+subsidiary status) by kind of employment during 2017-18

| | Category of Employment | | | | |
|----------------|-------------------------------|--------------------------------|-------------------|---------------------|---------------|
| | Self Employment | | | Regular/Wage salary | Casual labour |
| | Own account worker & employer | Helper in household enterprise | All self-employed | | |
| Male | 44.1 | 8.2 | 52.3 | 23.4 | 24.3 |
| Female | 20.2 | 31.7 | 51.9 | 21 | 27 |
| Persons | 38.6 | 13.6 | 52.2 | 22.8 | 24.9 |

Source: PLFS (2017-18)

- Large and growing informal sector (90%);
- Low female participation (the PLFS 2017-18 shows continuation of declining trend of FLFPR with the coming down of rural women since 2011-12, to 25 % from 28% , whereas for urban women, the rate has remained the same at about 20 %)

RATIONALE FOR SOCIAL SECURITY REFORM

I. Present Scenario:

- India has well-established social security systems providing varying degrees of coverage in several of the nine branches of ILO Social Security (Minimum Standards) Convention, No. 102 (1952)
- However, despite the work done by several Commissions, e.g. the National Commissions on
 - Self-Employed Women and Women in the Informal Sector (Shramshakti Report, 1988)
 - Rural Labour (1991)
 - Labour (2002) (Second Commission)
- Coverage is essentially still focused on formal workers in the organised sector – the NCEUS estimated that only 6% of informal workers received any kind of social security

RATIONALE FOR SOCIAL SECURITY REFORM....

II. Key concerns, challenges and shortcomings are evident in different areas –

- Social security system:

- Duplication (e.g. health – RSBY/Ayushman Bharat and state health schemes)
- Fragmentation (e.g. Eight Union laws on SS, but no uniformity)
- Service delivery (lack of one stop shop facilities); Weak identification systems and enforcement
- Restricted coverage even in the organised sector as a result of thresholds for coverage, and insufficient adjustment of wage ceilings
- Differentiated approaches to funding and coverage

RATIONALE FOR SOCIAL SECURITY REFORM....

III. Constitutional Provisions and International Standards

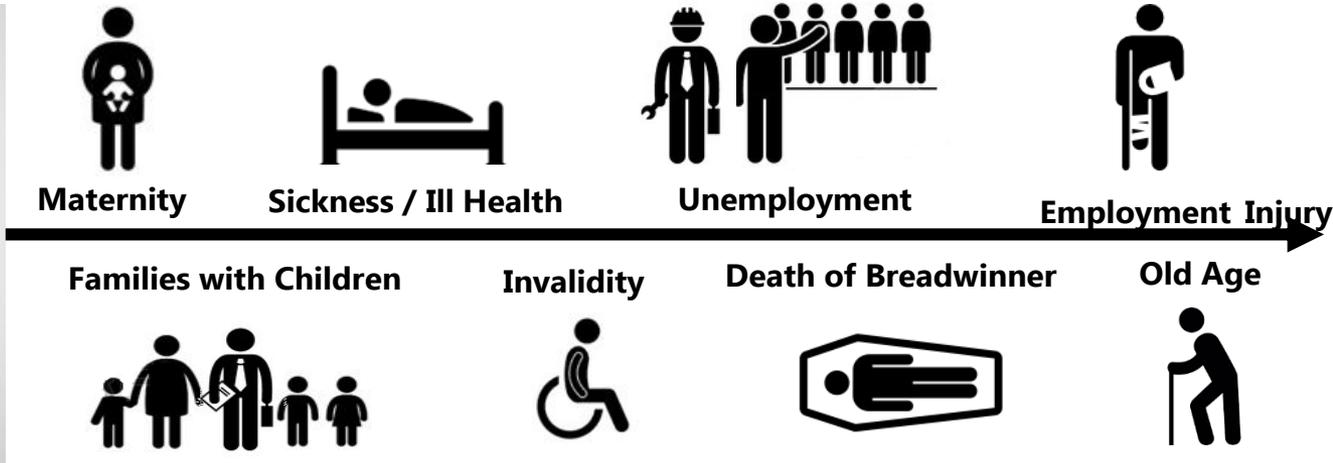
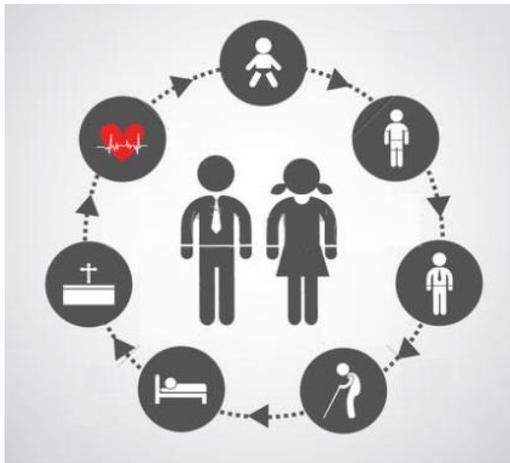
- Constitutional provisions -
 - some Directive Principles of State Policy directs for adequate livelihood to every citizen, including all men and women (Art. 39), rights to work (Art 41)
- India's commitment to some International Standards –
 - ILO Social Security (Minimum Standards) Convention 102 (of 1952)
 - Recommendation 102 on social protection floor (2012);
 - Recommendation 204 on transitioning from informality towards formality (2015).
 - SDG Goal 8 - Decent work and economic growth – for all workers of which social security is an important component.

RATIONALE FOR SOCIAL SECURITY REFORM....

IV. Objectives of Reform

- Universal floor level social security extended to all.
- To extend coverage of social security to presently excluded categories of workers particularly those belonging to the informal sector (i.e. self-employed and unorganised workers) and bring them, as far as possible, on par with the already covered categories.
- To bring into the fold of social security categories/groups of workers excluded due to the application of thresholds (thresholds based on income and number of workers respectively).
- To close the gaps in the identification of employers, employees and beneficiaries by moving towards grassroots' level registration and benefit delivery structure.
- To develop a modern and efficient delivery structure for social security.
- Integration of contribution and delivery systems and reducing of overlaps between schemes of different ministries and central and state government schemes to ensure economies of scale.
- To improve ease of compliances and ease of business.
- To come as close as practicable to ILO Convention 102.

What is social security?



People face contingencies in life and these have financial implications.

What is social security?



Social security is a Human Right
(Article 22, Universal Declaration of human rights)

- Flagship Convention 102 (1952)
 - Recommendation 202 (2012)
- Reaffirms universal right to social security

Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.

SOCIAL SECURITY CODE

- **As defined in the SS Code:**
 - "social security" means the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code.

Some Definitions

- **Employee:** It has been defined as any person (other than an apprentice engaged under the Apprentices Act, 1961) **employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied.**
- **Inter-state Migrant Worker** means a person who is employed in an establishment and who— (i) **has been recruited directly by the employer or indirectly through contractor in one State for employment in such establishment situated in another State;** or (ii) **has come on his own from one State and obtained employment in an establishment of another State** (hereinafter called destination State) or has subsequently changed the establishment within the destination State, under an agreement or other arrangement for such employment and **drawing wages not exceeding eighteen thousand rupees per month** or such higher amount as may be notified by the Central Government from time to time;

Some Definitions

- **"Self-employed Worker"** means any person who is not employed by an employer, but engages himself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government, as the case may be, from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.

Some Definitions

- **"Unorganised Sector"** means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;
- **"Unorganised Worker"** means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code;

THE CODE ON SOCIAL SECURITY, 2020 (NO. 36 of 2020)

- Introduced Lok Sabha Sep 19, 2020
- Passed Lok Sabha Sep 22, 2020
- Passed Rajya Sabha Sep 23, 2020
- Assent President of India Sep 28, 2020

Amalgamated Labour Laws under Social Security Code

- 1. The Employees' Compensation Act, 1923**
- 2. The Employees' State Insurance Act, 1948**
- 3. The Employees Provident Fund and Miscellaneous Provisions Act, 1952**
- 4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;**
- 5. The Maternity Benefit Act, 1961**
- 6. The Payment of Gratuity Act, 1972**
- 7. The Cine Workers Welfare Fund Act, 1981**
- 8. The Building and Other Construction Workers Welfare Cess Act, 1996**
- 9. The Unorganised Workers' Social Security Act, 2008**

Social Security Code in Brief

| Chapter No. | Chapter Heading | Sections |
|--------------|--|----------|
| Chapter I | Preliminary | 1-3 |
| Chapter II | Social Security Organisations | 4-13 |
| Chapter III | Employees' Provident Fund | 14-23 |
| Chapter IV | Employees State Insurance Corporation | 24-52 |
| Chapter V | Gratuity | 53-58 |
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| Chapter XIV | Miscellaneous | 141-164 |

Applicability of the Schemes

| Chapter No. | Chapter Heading | Applicability |
|-------------|----------------------------|--|
| III | Employees' Provident Fund | Every establishment in which twenty or more employees are employed. |
| IV | Employees' State Insurance | Every establishment in which ten or more persons are Corporation employed other than a seasonal factory |
| V | Gratuity | (a) every factory, mine, oilfield, plantation, port and railway company; and (b) every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such shops or establishments as may be notified by the appropriate Government from time to time. |
| VI | Maternity Benefit | (a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government; and (b) to every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such other shops or establishments notified by the appropriate Government. |

Applicability of the Schemes

| Chapter No. | Chapter Heading | Applicability |
|-------------|--|--|
| VII | Employee's Compensation | Subject to the provisions of the Second Schedule, it applies to the employers and employees to whom Chapter IV does not apply. |
| VIII | Social Security and Cess in respect of Building and Other Construction Workers | Every establishment which falls under the building and other construction work. |
| IX | Social Security for Unorganised Workers' | Unorganised sector, unorganised workers', gig worker, platform worker. |
| XIII | Employment Information and Monitoring | Career centres, vacancies, persons seeking services of career centres and employers. |

CHAPTER III - EMPLOYEES PROVIDENT FUND

Applicability:

- As specified in the First Schedule, the provisions of Chapter III – Employees Provident Fund will be applicable to every establishment in which twenty or more employees are employed

Section 14: Appointment of officers of Central Board Section 15: Schemes

•(a) frame a scheme to be called the Employees' Provident Fund Scheme for which the provident funds shall be established for employees **and specify the establishments or class of establishments to which the said scheme shall apply**

•(b) frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for—

- (i) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Chapter applies;
- (ii) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees;

- (c) frame a scheme to be called the Employees' Deposit Linked Insurance Scheme for providing life insurance benefits
- (d) modify any scheme referred to in clauses (a), (b) and (c) by adding thereto, amending or varying therein, either prospectively or retrospectively

CHAPTER III - EMPLOYEES PROVIDENT FUND

Section 16: Funds

(1) The Central Government may, for the purposes of—

- (a) **Provident Fund Scheme**, establish a Provident Fund where the contribution paid by the employer shall be ten per cent. of the wages payable to each of the employees (whether employed by him directly or by or through a contactor), and the employee's contribution shall be equal to the contribution payable by the employer in respect of him

- (b) **Pension Scheme**, establish a pension fund in respect of every employee who is a member of the Pension Scheme and such sums from the employer's contribution not exceeding eight and one- third per cent. of the wages

- (c) **Insurance Scheme** into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent. of the wages or such per cent. of wages as may be notified by the Central Government

CHAPTER III - EMPLOYEES PROVIDENT FUND

Section 17: Contribution in respect of employees and contractors

- The amount of contribution employers' as well as the employee's contribution any charge for meeting the cost of administering the Fund paid or payable by an employer or through a contractor by the employer
- No contractor can deduct the employer's contribution from the wages payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Section 20: Chapter shall not apply to —

- establishment registered under the Co-operative Societies Act, 1912
- to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension

Section 22: Transfer of accounts, for an employee—

- From an establishment to which this Chapter applies to another establishment to which this Chapter applies or not;
- employed in an establishment to which this Chapter does not apply, obtains employment in an establishment to which this Chapter applies,
- then, his accumulated amount in provident fund account or pension account, as the case may be, shall be transferred or dealt with in the manner as may be prescribed by the Central Government.

CHAPTER IV - EMPLOYEES STATE INSURANCE CORPORATION

Applicability:

- As specified in the First Schedule – Every establishment in which ten or more employees are employed other than a seasonal factory:
- shall also be applicable to an establishment, which carries on such hazardous or life threatening occupation
- employer of a plantation, may opt ESIC benefits where the benefits available are better than what the employer is providing

Section 24: Appointment of Principal Officers and other staff

Section 25: Employees' State Insurance Fund –

Section 28: All employees to be insured. Section 29: Contributions –

- The contribution payable under this Chapter in respect of an employee shall comprise of employer's
- Contribution employee's contribution, paid to the Corporation.
- The contributions rates to be prescribed by the Central Government.
- The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Chapter.

CHAPTER IV - EMPLOYEES STATE INSURANCE CORPORATION

Section 31: Provisions as to payment of contributions by employer, etc.

- The employer shall pay in respect of every employee, whether directly employed by him or by or through a contractor, both the employer's contribution and the employee's contribution.
- Neither the employer nor the Contractor shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

Section 32: Benefits:

- The insured persons, their dependents are entitled to the the following benefits —
 - (a) sickness benefit in case of his sickness certified by a duly appointed medical practitioner,
 - (b) maternity benefit to an insured person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage,
 - (c) disablement benefit to an insured person suffering from disablement as a result of an employment injury sustained by him as an employee),
 - (d) dependants' benefit to the dependants of an insured person who dies as a result of an employment injury sustained by him as an employee,
 - (e) medical benefit for and attendance on insured persons,
 - (f) funeral expenses to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person

CHAPTER IV - EMPLOYEES STATE INSURANCE CORPORATION

Section 33: Corporation's power to promote measures for insured persons in terms of health and welfare such as rehabilitation and re-employment of insured persons who have been disabled or injured etc.

Section 34: an accident arising in the course of an employee's employment shall be presumed, in the absence of evidence, to have arisen out of that employment.

Section 35. An accident shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer

Section 36: Occupational disease –

- If an employee contracts any disease peculiar to that employment be deemed to be an "employment injury " arising out of and in the course of employment.
- No benefit shall be payable to an employee in unless the disease is directly attributable to a specific injury arising out of and in the course of his employment.

CHAPTER IV - EMPLOYEES STATE INSURANCE CORPORATION

Section 38: Dependants' benefit-

- If an insured person dies as a result of an employment injury, dependants' benefit shall be payable to his dependents.

Section 39: Medical benefit –

- An insured person or where benefit is extended to his family, shall be entitled to receive medical benefit.
- Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution

Section 42: Corporation's rights when an employer fails to register, etc, then, the Corporation may, on being satisfied in the manner prescribed by the Central Government that the benefit is payable to the employee, pay to the employee benefit at such rate to which he is entitled, and the Corporation recover the amount from the employer

CHAPTER IV - EMPLOYEES STATE INSURANCE CORPORATION

Section 45: Schemes for unorganized workers, gig workers and platform workers and the members of their families frame scheme for providing benefits admissible under this Chapter by the Corporation.

Sections 48 & 49: Constitution of Employees' Insurance Court and in case of any dispute, matters to be decided by Employees' Insurance Court.

CHAPTER V -GRATUITY

Applicability:

- (a) every factory, mine, oilfield, plantation, port and railway company; and
- (b) every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such shops or establishments as may be notified by the appropriate Government from time to time.

Section 53: Payment of gratuity

• Shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation; or (b) on his retirement or resignation; or (c) on his death or disablement due to accident or disease; or (d) on termination of his contract period under fixed term employment; or

• For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages or as notified by the Central Government, based on the rate of wages last drawn by the employee concerned:

• For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

• a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused; or the gratuity payable to an employee may be wholly or partially forfeited.

CHAPTER V -GRATUITY

Section 54: Continuous service-

- an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave, lay-off, strike or a lock-out or cessation of work not due to any fault of the employee

- where an employee is not in continuous service, he shall be deemed to be in continuous service under the employer if the employee during the period of preceding twelve calendar months has worked under the employer for not less than 190 days in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and 240 days, in any other case;

CHAPTER V -GRATUITY

Section 55: Nomination

- Each employee, who has completed one year of service, shall make, a nomination, distribute the amount of gratuity payable to him amongst more than one nominee.
- Nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

Section 56: Determination of amount of gratuity

- A person who is eligible for payment of gratuity or any person authorised on his behalf shall send a written application to the employer, for payment of such gratuity.
- As soon as gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the competent authority specifying the amount of gratuity so determined.
- The employer shall arrange to pay the amount of gratuity within **thirty days** from the date it becomes payable
- If the amount of gratuity payable is not paid by the employer within the period specified, the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate notified by the Central Government
- In case of a dispute on amount payable or admissibility of any claim, the employer or employee (raising the dispute) may make an application to the competent authority.

CHAPTER V -GRATUITY

Section 57: Compulsory insurance

- Every employer, other than an employer or an establishment under the control of, the Central Government or a State Government, shall, obtain an insurance for his liability for payment towards the gratuity, from any insurance company regulated by the Authority of the Insurance Regulatory and Development Authority Act, 1999
- The appropriate Government may, exempt every employer who had already established an approved gratuity fund in respect of his employees

Section 57: Competent Authority

- The appropriate Government may, by notification, appoint any person having such qualifications and experience as may be prescribed by that Government to be a competent authority for implementation of any provision of this Chapter

CHAPTER VI - MATERNITY BENEFIT

Applicability:

- (a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government; and
- (b) to every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such other shops or establishments notified by the appropriate Government.

Section 59: Employment of, or work by, women prohibited during certain period

- No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy,
- No pregnant woman shall, on a request being made by her, be required by her employer to do during the period specified in sub-section (4), any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or adversely affect her health,
- The period referred to in sub-section (3) shall be—
 - (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;
 - (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 62. 60.

CHAPTER VI - MATERNITY BENEFIT

Section 60: Right to payment of maternity benefit.

- every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence.
- "the average daily wage" means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity,
- No woman shall be entitled to maternity benefit unless she has actually worked in an establishment for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

CHAPTER VI - MATERNITY BENEFIT

Section 61: Continuance of payment of maternity benefit

- Every woman entitled to the payment of maternity benefit under this Chapter, shall, notwithstanding the application of Chapter IV (ESIC) to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 32 (ESIC).

Section 62: Notice of claim for maternity benefit and payment thereof - to her employer for maternity benefit and any other amount to which she may be entitled

- In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery
- The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof
- The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Chapter.

CHAPTER VI - MATERNITY BENEFIT

Section 63: Payment of maternity benefit in case of death of a woman –

- to the person nominated by the woman in the notice .

Section 64: Payment of medical bonus - of three thousand five hundred rupees if no pre-natal confinement and post-natal care is provided for by the employer free of charge

Section 65: Leave for miscarriage, etc. –

- entitled to leave with wages for a period of six weeks

Section 66: Nursing breaks –

- in addition to the interval for rest, two breaks for nursing the child until the child attains the age of fifteen months.

Section 67: Creche facility –

- every establishment in which fifty shall have the facility of crèche
- employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her.

•Note: - From a practical point of view, there may be situations wherein only one or two employee intends avail these benefits. In such situation, the recurring cost of providing such facilities to the employer may be very high. Therefore, there can be a proviso for a fixed amount in lieu of creche facilities to the employees.

CHAPTER VI - MATERNITY BENEFIT

Section 68: Dismissal for absence during pregnancy –

- When a woman absents herself from work in accordance with the provisions of this Chapter, it shall be unlawful for her employer to discharge or dismiss her on account of such absence
- discharge or dismissal of a woman during her pregnancy shall not have the effect of depriving her of the maternity benefit or medical bonus

Section 69: No deduction of wages –

- (a) the nature of work assigned to her by virtue of the provisions contained in section 59; or (b) breaks for nursing the child allowed to her under the provisions of section 66

Section 70: Forfeiture of maternity benefit –

- to a woman who works for remuneration during the period she has been permitted by an employer to absent herself for availing the maternity benefits

Section 71: Duties of employer –

- An abstract of the provisions in local language shall be exhibited in every part of the establishment in which women are employed..

Section 72: Power of Inspector- cum- Facilitator to direct payments to be made

- to any woman claiming that,— (a) maternity benefit or any other amount to which she is entitled has been improperly withheld; (b) her employer has discharged or dismissed her during or on account of her absence from work
- Any person aggrieved by the order of the Inspector-cum-Facilitator may, within thirty days appeal to the authority prescribed by the appropriate Government.

CHAPTER VII - EMPLOYEE'S COMPENSATION

Applicability:

•Subject to the provisions of the Second Schedule, it applies to the employers and employees to whom chapter IV (ESIC) does not apply.

Section 73: Reports of fatal accidents and serious bodily injuries –

•Notice to competent authority, of any accident occurring on his premises which results in death or serious bodily injury, within seven days of the death or serious bodily injury, giving the circumstances attending the death or serious bodily injury

Section 74: Employer's liability for compensation

•If personal injury is caused to an employee by accident or an occupational disease listed in the Third Schedule arising out of and in the course of his employment, his employer shall be liable to pay compensation

Section 75,76: Compensation in case of death of or injury in plantation

Section 78: Method of calculating monthly wages for purposes of compensation Section 81:

Distribution of compensation –

•No payment of compensation in respect of an employee whose injury has resulted in death, and no payment of a lump sum as compensation shall be made otherwise than by deposit with the competent authority.

CHAPTER VII - EMPLOYEE'S COMPENSATION

Section 82: Notice and claim

- No claim for compensation shall be entertained by a competent authority unless notice of the accident has been given

Section 83: Special provisions relating to accidents occurring outside Indian territory.

- apply in case of employees who are— (a) masters of ships or seamen; (b) captain and other members of crew of aircraft; (c) persons recruited by companies registered in India and working as such abroad; (d) persons sent for work abroad

Section 84: Medical examination

- Where an employee has given notice of an accident, he, shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a medical practitioner, submit himself for such examination, and any employee who is in receipt of a half-monthly payment under this Chapter shall, if so required, submit himself for such examination from time to time

Section 85: Contracting

- Where any employer contracts with contractor for the execution whole or any part of any work which is ordinarily part of the trade or business, the employer shall be liable to pay to any employee employed in the execution of the work any compensation, and that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

CHAPTER VII - EMPLOYEE'S COMPENSATION

Section 88: Power to require from employers statements -regarding fatal accidents, within 30 days of serving of notice by competent authority

Section 91: Appointment of competent authority.

- The State Government may, by notification, appoint any person who is or has been a member of a State Judicial Service, or an advocate or a Gazetted Officer having educational qualifications and experience, for not less than five years.

Section 94: Power of competent authority to require further deposit in cases of fatal accident – with regard to compensation payable in respect injury resulted in death, and in the opinion of the competent authority such sum is insufficient

Section 95: Powers and procedure of competent authority. Section 99: Appeal against order of competent authority

CHAPTER VIII

SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

- **"building or other construction work"** means the construction, alteration, repair, maintenance or demolition in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, internet towers, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqua-ducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the Central Government, by notification,
- But **does not include** any building or other construction work of any factory or mine or any building or other construction work employing less than ten workers or any building or other construction work related to own residential property not employing the workers more than such number as may be notified by the Central Government from time to time;

CHAPTER VIII

SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

- **"building worker"** means a person who is employed to do any skilled, semi-skilled or unskilled, manual, technical or clerical work for hire or reward, whether the terms of such employment are express or implied, *in connection with any building or other construction work, but does not include any such person who is employed mainly in a managerial or supervisory or administrative capacity;*

CHAPTER VIII

SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

- The number of construction worker in the country is approximately 5.5 crore whereas only 3.5 crores workers or 63% are registered with the Board.
- Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 is subsumed in **OSH & WORKING CONDITIONS CODE**
- This code subsumes **Building and Other Construction Workers Cess Act, 1996**

CHAPTER VIII

SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

- **Section 100-108**
- **Section 100: Levy and collection of cess**
 - There shall be levied and collected a cess for the purposes of social security and welfare of building workers at such rate ***not exceeding two per cent but not less than one per cent of the cost of construction*** incurred by an employer, as the Central Government may, by notification, from time to time specify.
 - The cost of construction shall not include:— (a) ***the cost of land***; and (b) ***any compensation paid or payable to an employee or his kin under Chapter VII***.
- **Section 101: Interest payable on delay in payment of cess**
- **Section 102: Power to exempt from cess**
 - where such cess is already levied and payable under any corresponding law in force in that State.

CHAPTER VIII

SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

- **Section 103: Self assessment of cess**
 - within sixty days or such period as may be notified by the appropriate Government of the completion of his each building and other construction work
- **Section 104: Penalty for non-payment of cess within the specified time**
- **Section 105: Appeal to appellate authority**
 - Any employer aggrieved by an order of assessment made under section 103 or by an order imposing penalty made under section 104.

CHAPTER VIII

SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

- **Section 106: Registration of building workers as beneficiaries**
 - Every building worker who has completed **eighteen years of age**, but has not completed **sixty years of age**, and who has been engaged in any building or other construction work for **not less than ninety days** during the preceding twelve months
- **Section 107: Cessation as a beneficiary**
 - when a worker attains the age of sixty years or when she/he is not engaged in building or other construction work for not less than ninety days in a year.
 - if a person had been a beneficiary for at least three years continuously immediately before attaining the age of sixty years, then, he shall be eligible to get such benefits.
- **Section 108: Building and Other Construction Workers' Welfare Fund and its application**

State Building Workers' Welfare Board

- Under **Section 7 (1) of Chapter II**, every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the.....(name of the State) Building and Other Construction Workers' Welfare Board.
- The Building Workers' Welfare Board shall consist of
 - a Chairperson to be nominated by the State Government,
 - one member to be nominated by the Central Government and
 - such number of other members, **not exceeding fifteen**, as may be appointed to it by the State Government: Provided that the Building Workers' Welfare Board shall include an **equal number of members representing the State Government, the employers and the building workers** and that **at least one member** of the Board shall be a **woman**.
- The Building Workers' Welfare Board shall appoint a Secretary and such officers and employees as it considers necessary for the efficient discharge of its functions of the Building Workers' Welfare Board under this Code.
- The Secretary of the Building Workers' Welfare Board shall be its **chief executive officer**.

State Building Workers' Welfare Board

- **Functions**

- provide death and disability benefits to a beneficiary or his dependents;
- make payment of pension to the beneficiaries who have completed the age of sixty years;
- pay such amount in connection with premium for Group Insurance Scheme of the beneficiaries as may be prescribed by the appropriate Government;
- frame educational schemes for the benefit of children of the beneficiaries as may be prescribed by the appropriate Government;
- meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed by the appropriate Government;
- make payment of maternity benefit to the beneficiaries;
- frame skill development and awareness schemes for the beneficiaries;
- provide transit accommodation or hostel facility to the beneficiaries;

CHAPTER IX

SOCIAL SECURITY FOR UNORGANISED WORKERS

- **The code subsumes the Unorganised Workers Social Security Act, 2008**
- However even **after 12 years of the enactment of the act, only 6% of the unorganized workers are covered under one or other form of social security.** The experience interalia shows that application of UWSSA 2008 over more than a decade clearly demonstrates that it did not provide an adequate framework for extending entitlements to social security for unorganized workers.
- The major issues associated with UWSSA, 2008 are: (a) no empowered implementing body; (b) boards are advisory and not established in several states; (c) funding for boards functions has been lacking, as well as for record-keeping and administration of the Act; (d) no new schemes notified, except for 10 schemes already in operation listed in Schedule 1 which are deemed to be schemes for unorganised workers; (e) several of these listed contributory and non-contributory social assistance schemes lack a legislative basis and meant for both workers and non-workers; (f) lack of mobility and portability; (f) no administration machinery for inspection and no penalties.

CHAPTER IX

SOCIAL SECURITY FOR UNORGANISED WORKERS

- **"unorganised sector"** means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers **is less than ten**.
- **"unorganised worker"** means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code.
- **"wage worker"** means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be

CHAPTER IX

SOCIAL SECURITY FOR UNORGANISED WORKERS

- **Section 109-114**
- **Section 109:** Framing of scheme for unorganised workers, and constitution of social security fund for gig workers, platform workers, etc.
- The **Central Government** shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to (i) life and disability cover; (ii) health and maternity benefits; (iii) old age protection; (iv) education; (v) housing.

Funding

- (i) wholly funded by the Central Government; or
- (ii) partly funded by the Central Government and partly funded by the State Government; or
- (iii) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the Central Government; or
- (iv) **funded from any source including corporate social responsibility fund within the meaning of Companies Act, 2013 or any other such source.**
- The Central Government may, by notification, constitute a **Social Security Fund** or funds for provision of social security to the unorganised workers, platform workers or gig workers or any class of such workers comprising of the funding received.

CHAPTER IX

SOCIAL SECURITY FOR UNORGANISED WORKERS

The **State Government** shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to— **(i) provident fund; (ii) employment injury benefit; (iii) housing; (iv) educational schemes for children; (v) skill upgradation of workers; (vi) funeral assistance; and (vii) old age homes.**

Section 110:

- **Funding:**
- (a) wholly funded by the State Government; or (b) partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the State Government; or (c) **funded from any source including corporate social responsibility fund referred to in clause (iv) of sub-section (3) of section 109**
- The State Government may seek financial assistance from the Central Government for the schemes formulated by it.

CHAPTER IX

SOCIAL SECURITY FOR UNORGANISED WORKERS

- **Section 111: Record Keeping**
- **Section 112: Workers facilitation centres**
- The Central Government or the State Government may setup such **Workers Facilitation Centres.**
- **Functions:**
- (a) disseminate information on available social security schemes for the unorganised workers; (b) facilitate filling, processing and forwarding of application forms for registration of unorganised workers; (c) assist unorganised worker to obtain registration from the authority specified in the scheme; and (d) facilitate the enrolment of the registered unorganised workers in social security schemes.
- **Section 113: Registration of unorganised worker**
 - Every unorganised worker shall be eligible for registration, provided (a) he has completed **sixteen years of age** or such age as may be prescribed by the Central Government; (b) he has submitted a self-declaration electronically or otherwise in such form, in such manner and to such authority containing such information as may be prescribed by the Central Government.

CHAPTER IX

SOCIAL SECURITY FOR UNORGANISED WORKERS

- **"gig worker"** means a person who performs work or participates in a work arrangement and earns from **such activities outside of traditional employer-employee relationship** (eg. freelancers, independent contractors, project-based workers and temporary or part-time hires)
- **"platform work"** means a form of employment in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment;
- **"platform worker"** means a person engaged in or undertaking platform work;
- **Section 114: Schemes for gig workers and platform workers**
 - (a) life and disability cover;
 - (b) health and maternity benefits;
 - (c) old age protection; and
 - (d) any other benefit as may be determined by the Central Government.

National Social Security Board

- Under **Clause 6 of Chapter II**, The Central Government shall, by notification, constitute a National Social Security Board for unorganised workers with:
 - Union Minister for Labour and Employment as Chairperson;
 - Secretary, Ministry of Labour and Employment as Vice-Chairperson;
 - Director General Labour Welfare—Member Secretary, ex officio;
 - thirty-five members to be nominated by the Central Government
- The term of the National Social Security Board shall be three years.
- Functions:
 - **recommend** to the Central Government **suitable schemes** for different sections of unorganised workers;
 - **monitor** such **social welfare schemes** for unorganised workers as are administered by the Central Government;
 - **review the record keeping** functions performed at the State level;
 - **review the expenditure** from the funds under various schemes.

State Unorganised Workers' Board

- Under **Section 6 (9) of Chapter II**, every State Government shall, by notification, constitute a State Board to be known as (name of the State) Unorganised Workers' Social Security Board or **State Unorganised Workers' Board** with:
 - Minister of Labour and Employment of the concerned State as Chairperson, ex officio; Principal Secretary or Secretary (Labour) as Vice-Chairperson; Member Secretary as notified by the State Government
 - **twenty-eight members** to be nominated by the State Government
- **Functions:**
 - recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;
 - monitor such social welfare schemes for unorganised workers as are administered by the State Government;
 - review the record keeping functions performed at the district level;
 - **review the progress of registration and issue of cards to unorganised sector workers;**
 - review the expenditure from the funds under various schemes.

CHAPTER XII

OFFENCES AND PENALTIES

- **Section 135-140**
- **Section 135:** Penalty for failure to pay contributions, etc.
- **Section 136:** Enhanced punishment in certain cases after previous conviction
- **Section 137:** Offences by companies
- **Section 138:** Cognizance of offences
- **Section 139:** Prior opportunity before prosecution
- **Section 140:** Compounding of offences
- **Regarding penalties, *No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the Chapter XII of the SS code.***

CHAPTER XII

OFFENCES AND PENALTIES

- **Penal provisions**

- The code intends to **provide penalties, and the severity of the same will be based on the nature of the offence.** For e.g. failure to pay employees' contributions attracts a fine of Rs 50,000 (in the first instance) and a prison term that could extend to six months.
- However, **if the contributions have been deducted from employees' wages and not remitted, this is viewed more seriously.** Here the fine is double the amount (Rs 100,000) coupled with minimum imprisonment period of one year and could range up to three years.
- The messaging clearly seems to be that the **benefit to employees should not be compromised and acts as a deterrent to the employer from any non-compliance.**
- The Code on Social Security is clearly a move in the right direction to rationalise and consolidate social security related labour laws.
- **It is critical for employers to analyse the impact of the Code and the compliances thereunder in order to be able to undertake a smooth transition as and when the Code becomes a law.**

Highlights of Social Security Code

- The Code has widened coverage by including the unorganised sector, home based workers, self-employed workers, fixed term employees, gig workers, platform workers, inter-state migrant workers etc., in addition to contract employees.
- Aggregators, meaning “digital intermediaries or a market place for a buyers or users of a service to connect with the seller or the service provider”, are specifically required to contribute to the social security fund.

Highlights of Social Security Code

- The code for the first time recognises the need to provide social security benefits such as including life insurance and disability insurance, health and maternity benefits, provident fund and skill upgradation to workers in the unorganised sectors who form a significant part of the workforce but are not covered by any of the existing welfare schemes.
- Under the code, while the definition of wages is broadly similar to the EPF Act, a new concept of **deemed wages** has been introduced.
 - It means that if an employee receives more than 50% of the total remuneration in the form of allowances and other amounts that are not included within the definition of wages, then the excess amount would be deemed to be wages for the purposes of contributions towards EPF.
- The SS Code has fixed different thresholds with respect to eligibility for gratuity of permanent and fixed term employees. However, a continuous service of five (5) years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment. Gratuity under the SS Code is payable to employees hired directly or through a contractor.

Highlights of Social Security Code

- **Uniform definitions**

- Uniformity in determining wages for the purpose of social security benefits.

- **Consultative approach**

- the Code provides for an enhanced role of inspector-cum-facilitator whereby employers can look for support and advice to enhance compliances.

- **Career Centre**

- Setting up of career centres to replace the existing employment exchanges.
- To enable that demand for human resources is met and to monitor employment information employers have to report vacancies to career centres before filling up the same.

Highlights of Social Security Code

- **Digitisation**

- All records and returns have to be maintained electronically. Digitisation of data will help in exchange of information among various stakeholders/funds set up by the Government, will ensure compliance and also facilitate governance.

- **Stringent penalties**

- Any failure to deposit employees' contributions not only attracts a penalty of Rs. 1,00,000, but also imprisonment of one to three years. In case of repeat offence, the penalties and prosecution is severe, and no compounding is permitted for repeated offences.

Highlights of Social Security Code

- In the event of the death of a worker or injury to a worker due to an accident at his workplace, atleast 50 % share of the penalty would be given. This amount would be in addition to Employees Compensation.
- Provision of “Social Security Fund” for 40 Crore unorganized workers along with gig and platform workers and will help Universal Social Security coverage.
- The facility of ESIC would now be provided in all 740 districts. At present, this facility is being given in 566 districts only.
- EPFO’s coverage would be applicable on all establishments having 20 or more workers. At present, it was applicable only on establishments included in the Schedule.
- With the aim of making a national database for unorganised sector workers, registration of all these workers would be done on an online portal and this registration would be done on the basis of Self Certification through a simple procedure.

Labour Reforms under Atmanirbhar Bharat Abhiyan

- ***Universalization of right of minimum wages*** (a statutory concept of National Floor Wage to be introduced) and ***timely payment of wages to all workers including unorganized workers*** – presently minimum wages applicable to only 30% of workers.
- **Appointment letter** to be provided to all workers to promote formalisation.
- Occupational Safety & Health (OSH) code will also be ***applicable to establishments engaged in work of hazardous nature even with a threshold of less than 10 workers.***
- ***Definition of the inter-state migrant worker*** to include migrant workers employed directly by the employer.

Labour Reforms under Atmanirbhar Bharat Abhiyan

- ***Extension of ESIC coverage***, on a voluntary basis, will be extended to all districts and all establishments employing 10 or more employees as against those in notified districts/areas only.
- ***Mandatory ESIC coverage*** for employees in hazardous industries with less than 10 employees.
- Centre to introduce ***re-skilling fund*** introduced for retrenched employees and provision for ***Social Security Fund*** for unorganised workers.

Thank you