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SOCIAL SECURITY FOR LABOUR IN INDIA

Provision of appropriate social security measures to the labour force in India, particularly those engaged in the unorganised sector, is pivotal for inclusive and sustainable growth. It is increasingly acknowledged that social security is fundamental for enhancing human capital endowments and raising productivity levels. Though India's social security system has evolved and diversified over time, it is seen that a significant percentage of the working population, mainly those engaged in the unorganised sector, remain excluded from social security coverage.

Considering that the unorganised sector contributes significantly to the gross domestic product (GDP) in India, it is imperative that suitable strategies are evolved and implemented to provide social security to the workers in this sector. The fact that nearly 70 per cent of the workforce in India – either own account or casual workers – is vulnerable, further signals the need to provide basic social security to tackle the various insecurities they confront. From an economic perspective, experiences across the world have shown that universalisation of social security will have a considerable impact in terms of reduction of poverty, decline in the fertility rate and preventing people from falling into a debt trap.

It is in this context that the Ministry of Labour and Employment, Government of India, has drafted a Code on Social Security with the fundamental objective of universalising social security. The key components of the Code that will benefit all the workers in the country are provisions related to old age pension, death and disability benefits, medical and accidental insurance, maternity benefits, etc. This Code, with modifications as necessary on the basis of further discussions, has the potential to be a game changer in improving workers' lives and livelihood choices.

It is important to recognise that the task of providing universal coverage is complex and cumbersome given the variegated nature of the labour force in India. Even today, 48 per cent of the workforce is in agriculture and a substantial number of agricultural workers are either small farmers or landless agricultural labourers. An overwhelming proportion of the self-employed people are own account workers. Among the wage and salaried workers, casual or contract workers constitute the major proportion. Identifying the most vulnerable among them for extending State supported social security is a significant challenge. Evolving strategies to ensure that the social security measures intended for the vulnerable sections actually reach them is another tough challenge. There is also a need to establish systems that will make the administration of social security on such a large scale efficient, transparent and cost effective. Technology could be used to enhance compliance and ensure portability. Trade unions and employers' organisations could also play a pivotal role in making the social security system people centred.

This Special Issue of the VVGNLI POLICY PERSPECTIVES focuses on the theme *'Social Security for Labour in India'*. It includes articles authored by senior level policymakers, renowned experts and academics, trade union leaders and representatives of employers' organisations. These also address some core issues in relation to the proposed draft code on Social Security (version 2.1) to provide clarity on the policy intent and the ways it can be successfully implemented.

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भारत में सामाजिक सुरक्षा के मायने

संतोष कुमार गंगवार*

लम्बे समय तक सामाजिक कार्यकर्ता के रूप में कार्य करने पर ऐसा लगता है कि देश में सामाजिक सुरक्षा के क्षेत्र में बहुत कुछ करने की आवश्यकता है। देश के सभी नागरिकों को सामाजिक सुरक्षा मिले, यह न केवल समाज के लिए आदर्श है बल्कि वर्तमान सरकार का भी लक्ष्य है। इस विषय पर कोई भी चर्चा शुरू करने से पहले सामाजिक सुरक्षा के मायने को साधारण भाषा में जानना/समझना जरूरी है।

सभी कामगारों के जीवन में ऐसा भी समय आता है जब वे अपने जीवन-यापन के लिए आय अर्जित करने में असमर्थ हो जाते हैं। ऐसा अनेकों कारणों जैसे वृद्धावस्था, दुर्घटना, बीमारी या मातृत्व आदि की वजह से हो सकता है।

अंतर्राष्ट्रीय श्रम संगठन (ILO) की कन्वेंशन 102 में 10 ऐसी परिस्थितियाँ दर्शाई गईं हैं, जिनमें कामगार को एक सहारे की आवश्यकता होती है। सरकार का दायित्व होता है कि वह एक ऐसी व्यवस्था प्रदान करे जिससे किसी भी कामगार को ऐसी विपरीत परिस्थितियों में सहारा दिया जा सके और उसे अपने जीवन-यापन में न्यूनतम कठिनाई का सामना करना पड़े। इसी व्यवस्था को प्रदान करने वाले ढांचे को 'सामाजिक सुरक्षा' कहते हैं।

सामाजिक सुरक्षा की कमी लोगों को अपने जीवन चक्र में बीमारी, गरीबी, असमानता और कुछ स्थितियों में तो सामाजिक बहिष्कार तक का सामना करने के लिए बाध्य करती है।

अंतर्राष्ट्रीय श्रम संगठन (ILO) की विश्व सामाजिक सुरक्षा रिपोर्ट 2017-18 के अनुसार सामाजिक सुरक्षा का वैश्विक औसत 29 प्रतिशत है। इस सन्दर्भ में इस तथ्य का उल्लेख प्रासंगिक हो जाता है कि एशियन विकास बैंक (ADB) की वर्ष 2013 की रिपोर्ट के अनुसार हम सामाजिक सुरक्षा पर सकल घरेलू उत्पाद (GDP) का लगभग 4% खर्च करते हैं।

सामाजिक सुरक्षा के अभाव में समाज के इस वर्ग की पूंजी एवं बचत समाप्त हो जाती है और आर्थिक विषमताएँ समाज में बड़ा रूप ले लेती हैं। वहीं अगर देश के सभी लोगों को 'सार्वभौमिक सामाजिक सुरक्षा' दी जाए तो यह गरीबी उन्मूलन, असमानताओं को घटाने, आर्थिक विकास की गति को बढ़ावा देने और सही मायने में सामाजिक न्याय प्रदान करने में एक महत्वपूर्ण भूमिका निभा सकती है। कुछ रिपोर्टें ऐसा भी दर्शाती हैं कि भारत में केवल 15% लोगों को ही विधिवत सामाजिक सुरक्षा प्रदान हो पा रही है, जिसे बढ़ाए जाने की आवश्यकता है।

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वर्तमान सरकार जब से आई है उसने सामाजिक सुरक्षा प्रदान करने के लिए बहुत सारे कार्य किए हैं:

- पिछले 2 वर्षों में ही 1 करोड़ से अधिक मजदूरों को ESIC एवं EPFO से जोड़ा गया है।
- प्रधानमंत्री रोजगार प्रोत्साहन योजना में नियोक्ता द्वारा दी जाने वाली सम्पूर्ण 12% राशि सरकार वहन करेगी। अभी तक प्रधानमंत्री रोजगार प्रोत्साहन योजना में लगभग 31 लाख लोग संगठित क्षेत्र में आए हैं और आने वाले एक वर्ष अर्थात 31.03.2019 तक इस योजना के अंतर्गत 1 करोड़ नए लोग संगठित क्षेत्र में आ जाएंगे।
- मातृत्व अवकाश को भी 12 सप्ताह से बढ़ाकर 26 सप्ताह कर दिया गया है।

आज केंद्र और राज्य सरकारें बहुत सी विखंडित योजनाएं चला रहीं हैं जो कि कुछ चुनिंदा जन समुदाय को सामाजिक सुरक्षा का एक हिस्सा प्रदान कर रही हैं। इन सभी योजनाओं का यदि एक '**एकल सामाजिक सुरक्षा तंत्र**' में समावेश कर लिया जाये तो इन योजनाओं पर वर्तमान में किए जाने वाले व्यय का प्रयोग हम सम्पूर्ण सामाजिक सुरक्षा प्रदान करने के लिए कर सकते हैं।

इसी अनुक्रम में श्रम कानूनों के सरलीकरण एवं बदली हुई सामाजिक आर्थिक परिस्थितियों के अनुरूप बनाने के क्रम में Code on Social Security का एक नया draft सभी हितधारकों से सुझावों के लिए Website (Public domain) पर उपलब्ध है। संपूर्ण कार्यशील आबादी को सामाजिक सुरक्षा के दायरे में लाना एक अत्यंत ही चुनौतीपूर्ण कार्य है। किसी भी चुनौतीपूर्ण स्वप्न को साकार करने के मार्ग में हमेशा से बाधाएं रही हैं, भविष्य में भी रहेंगी। लेकिन इसका यह आशय नहीं कि इन बाधाओं के भय से हम चुनौतियों के मार्ग पर अग्रसर ही न हों। सामाजिक सुरक्षा के ढांचे का न होना भारत के आर्थिक और **संतुलित विकास** में एक बाधा है और अब समय आ गया है कि हम इस अवरोध को भी मिटा दें।

सामाजिक सुरक्षा का मुद्दा क्योंकि व्यापक मानवीय सरोकारों से सीधा जुड़ा हुआ है, अतः मुझे पूर्ण विश्वास है कि इस दिशा में हमें सभी हितधारकों का भरपूर सहयोग मिलेगा। साथ ही मेरा विश्वास है कि इसके लिए ज़रूरी आर्थिक प्रबंध केंद्र एवं राज्य सरकारें आपस में मिलकर उपलब्ध कराने में अवश्य ही सफल होंगी और सामाजिक सुरक्षा का यह कदम समाज कल्याण की दिशा में हमारी सरकार की एक महत्वपूर्ण उपलब्धि होगी।

SOCIAL SECURITY FOR UNORGANIZED WORKERS: A MORAL AND ECONOMIC IMPERATIVE

Santosh Mehrotra*

The Union government, Ministry of Labour and Employment (MOLE) specifically has been working on a code for social security for all workers for the last couple of years. A draft code is ready, combining the 15 current laws on social security (most of which cover only the organized sector). What distinguishes this current law is its laudable ambition to cover unorganized sector workers.

Old age pension, death/disability insurance and maternity benefit are key components of social insurance (SI). Why should such SI be available for the unorganized sector (all units employing less than 10 workers)? There are many reasons.

First, although the ratio of the poor was declining, the numbers of poor were not for 30 years (from 1973-4to 2004-5). The numbers did decline between 2004-5 and 2009-10 from 406mn. to 268 mn in 2012 based on the Tendulkar Method. The fact remains that most poor work in the unorganized sector. 'Inclusive growth', or 'antoyada', cannot have much meaning without some minimum social safety net for our unorganized sector workforce.

Second, 93% of India's work force only has access to informal employment, and hence without any social protection. Only the organized sector workforce (i.e. units with >10 workers) has access to social protection (and even there, only a third did in 2011-12). That number has certainly grown since demonetization as well as the introduction of the Goods and Services Tax in July 2017 (as the *Economic Survey 2018)* recognizes. However, the majority of workers are still, and are likely to remain, unorganized, and millions within the organized sector firms still lack social insurance.

Third, this workforce in the unorganized sector (and the informal workers in the organized) contributes a very significant proportion of total exports and half of total GDP and deserve more respect by policy-makers and more dignity from their employers. Unorganised sector enterprises, as long as they are registered, are also generating tax revenues for the state, and are entitled to receive some protection. This is especially so since the state has not quite universalized even quality elementary education (with reasonable learning levels) for the workers' children or to provide universal publicly funded healthcare.

While these first three reasons for providing social insurance for unorganized workersare moral ones, the next four are purely economic ones. The first economic reason is that, the lack of social protection reduces productivity. Not only does lack of health protection reduce man-days of work, but out-of-pocket medical costs are the second most important cause of households first falling into debt, and then poverty, after dowry.

The second economic reason is that the lack of SI leads to coping mechanisms by the vulnerable and insecure, which run the risk of turning transient poverty into long-term poverty. Thus, transient poverty may lead to the withdrawal of children from school or lead to workers in agriculture into debt bondage, thus causing long term damage to human capital formation. This will lock the family into an inter-generational transmission of poverty.

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A third reason is that historical evidence from the now industrialized countries suggests that SI for workers has a downward effect on the total fertility rate. Fertility rates are kept high by the need of poor parents for children as an insurance against old age. Son preference is part of this phenomenon which results in raising fertility rate to a level greater than it might otherwise be.

Finally, there is another important economic reason for providing SI for workers in the unorganised sector, who have incomes below the poverty line. These workers still normally own agricultural land in their villages, albeit very small plots. However, these small plots are their safety net, their social security. They will never part with this land as long as they don't have at least some partially similar sense of SI at the workplace in urban areas.

Moreover, the rate of urbanisation in India has been very slow, and one reason for this is precisely the attachment to their land of the small, marginal farmers (who are 84 per cent of all cultivators in India) tilling < 2 hectares of land, as a form of personal insurance. If the 28 percent of India's rural population estimated by the Planning Commission to be poor (in 2011-12) had access to SI, these smallest of farmers who migrate for urban employment only to diversely their portfolio of livelihood sources would be able to do so on a more permanent basis.

We suggest that first the focus should be to ensure that the BPL are covered by the three essential components of SI: old age pension, maternity benefit, and life/disability insurance. In 2013, I had estimated that ensuring universality for BPL (22% of the population who were poor by the Tendulkar poverty line, 268 mn people in 2012) will cost the government a total of only 0.38% of GDP at 2012-13 prices (less than what the government spends on MGNREGA).

Once all BPL households arecovered, the aim should be to widen the sweep in concentric circles of those abovethe poverty line, using possibly occupational groups as a criterion to bring theminto the sweep. The total cost to government will increase with increasing coverage, though for those unorganised sector workers who are non-poor the SIshould be designed on a contributory basis with only a small subsidy from governments, central and state. The main contributions for the non-poor unorganized workers should come from the workers themselves, though the workers contribution will increase as their income level increases, and that of the government correspondingly fall. However, with increasingly registration of even smaller employers with the GST authority, it should be possible to ensure that the employers will pay their side

of the contributions to EPFO/ESIC, thus eliminating the need for any government contribution.

Ideally, this 'bottom up' approach should be supplemented by a 'top-down' one, with informal workers lacking SI in the organized sector securing coverage, funded with contributions by workers and employers.

The implementation of such a comprehensive SI for the BPL population would begin with the registration of all unorganised sector workers. For this purpose the Socio-economic and Caste Census completed in 2013 canhelp identify the potential share segment of the population both rural and urban. But that listing needs to be converted into a system whereby they are registered. These registered workers could have their Aadhar identity cards seeded with the registration number.

The 'Unorganised Workers' Social Security Act, 2008, already providesfor the issuance of an 'identity card' (a document or certificate) issued to anunorganised worker (i.e. in enterprises employing less than 10 workers) by the district administration. The Act also provides for the constitution of a National Social Security Board, chaired by the Labour Minster, with representation of both workers and employers in the unorganised sector. Similarly, the Act provides that every state government shall constitute a State Social Security Board.

How would this compare with the NDA government's Atal Pension Yojana, PM Suraksha Bima Yojana and PM Jeevan Jyoti Yojana initiated in June 2015? These were laudably started tied to new bank accounts being opened in public sector banks (the Jan Dhan Yojana), thus it promoted financial inclusion as well. However, there have been a number of issues with these schemes. First, the government was committed to meeting these costs over its five year term in office. What happens after five years? Second, each element in these schemes of SI was voluntary for the insured, not mandatory. The international evidence is that voluntary SI does not work. Third, whether these new bank accounts to which the insurance was tied will actually remain open (or become dormant for lack of use or no funds) was open to question. What must replace these is mandatory programmes, with statutory backing, and secure funding.

STATES GET MORE POWERS UNDER THE NEW SOCIAL SECURITY CODE

Manish Kumar Gupta*

A few days back, I got a call from a fellow officer in Labour Department in one of the State Government asking me 'why Centre wants to usurp State Government's powers in the domain of Social Security under the new Code?'. I was confused. Only recently, a delegation from ESIC officers had met me asking the opposite question – 'why is it that Centre wants to dismantle the Central Organisations like ESIC and EPFO and give it to States who cannot even manage their own organisations?'. Since the time the Ministry of Labour and Employment has put the draft Social Security Code in public domain for comments of stakeholders, there are a lot of apprehensions. It reminds me of the childhood story - 'Five Blind man and an Elephant'.

For understanding the concept of 'Powers' under the Social Security Policy (and the Code) we need to understand the overall context and the Big Picture. First we have to understand that 'Labour', and consequently 'Social Security' is a Concurrent subject as per our Constitution. The forefathers of our Constitution had envisaged that States should have the major role in policy formulation on this issue, and the Centre, if it thinks fit, can frame general policy for the nation with role for states in actual implementation and execution of policies.

Most of the labour laws since our independence have followed this concept, and more so in laws related to Social Security. Be it Maternity Benefit Act 1961, or Employee Compensation Act 1923, or even Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 or Unorganised workers' Social Security Act 2008, etc. All these Acts have followed the same pattern – A Central Law & execution by States. Even the two laws, which are by-and-large administered by Central Organisation, viz. – The Employee Provident Fund and Miscellaneous Provisions Act 1952 and the Employees' State Insurance Corporation Act 1948, the respective laws envisage roles for States such as Regional Committees under EPF and ESIS system under ESIC. To that effect, there is no departure from the current policy in the new Code – i.e. the Central Government frames the Law and State Government (or institution or bodies under the State Government) do the execution. In-fact, under the new Code the State Boards have been given far more powers and role (such as collection of contributions, enforcement and vesting of funds) which were earlier with the central organisations (i.e. EPFO and ESIC) have been transferred to the State Boards.

The objective of the Code is to integrate the fragmented system of Social Security in the country, and bring all the plethora of schemes under one umbrella. This will simplify the administration as well as remove duplicity and gaps. In my previous field assignments, on one side I have seen some persons receiving pensions from multiple sources, and on the other side seen deserving persons not getting any support because of lack of funds. It will not only save a lot of money, but also ease the businesses in their compliance obligations. It is just like integrating and harmonising the indirect tax regime under GST whereinthe Central government and the State Government have partnered together to bring in the largest tax reform in the country.

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Similar partnership is expected in the reform of social security. While the jurisdiction and powers to provide social security to its citizen remains that of the States, it is envisaged that states come together (under the aegis of National Social Security Council) and harmonise their policies on social security. This is all the more necessary for taking care of migratory workforce. They need to be provided portability of their social security benefits, and therefore it is necessary that all States implement a basic social security programme all across the country which is portable. Therefore the concept of National Council & National Basic Social Security Schemes has been envisaged in the Code. The States are free to add, fund and implement more schemes (to the basic National Schemes) as per their finances. This power remains with the states. However, just like in GST Council, in order to harmonise such schemes, States are expected to consult the National Social Security Council.

As per the recommendation of 2nd National Commission on Labour, an overarching regulatory body is proposed in the Code to regulate and coordinate this multi-disciplinary/multi authority jurisdiction of social security. The National Social Security Council includes Labour Ministers of all States/Union Territories apart from representatives from Central Government, workers and employers. It is envisaged as the apex body to bring out harmonious co-ordination amongst different ministries and also at the Centre-State level.

It has been our experience that many States who are implementing ESIS Scheme complain about their lack of powers and authority in financing the ESIS expenditure, because funds are sanctioned from ESIC Headquarters. The new Code vests the Scheme Funds with the State Board, and the State Boards have full powers to collect, use and sanction expenditure from the Scheme Funds for the purpose of the Scheme. Similarly, under EPF, states had no role (except advisory). Under the new Code, State Boards have been given all authority to manage the EPF, EPS and EDLI Funds and service their beneficiaries. Only in respect of investment of Funds (on behalf of State Boards), the jurisdiction is given to the Central Board so that professional investment can take place, and gives best possible returns to the State Boards.

It is envisaged that all social security schemes and programmes will be run through this comprehensive administrative set-up – so as to remove the problem of fragmentation. A single administrative structure for implementation of all the Schemes (whether National Basic Schemes or State Schemes) has been provided – i.e. the State Board. State Boards are under the jurisdiction of State Governments, and the Commissioner is appointed by the State. It has roles/functions for Registration of workers and establishments/entities, Collection of Contributions, Enforcements, Assessments, sanctioning benefits, providing services, as well as managing Funds. As stated earlier, all scheme Funds are vested in the State Boards. There is no additional financial burden on States to operate this Structure as State Boards are self-financed through the concept of administrative charges.

The concept behind the design of the Social Security Organisations is to build strong tripartite autonomous organisations that can reach remotest rural parts of the country. Very important role has therefore been given to the Local Bodies (i.e. panchayats and municipal bodies) in administration of the social security system. They will provide registration services (on behalf of the State Boards), grievance redressal service and will be a link between the workers and the State Boards.

A universalised social security system will require a set-up to service almost 50 Crores workers and therefore, the scope of this Code expands to almost 10 times as compared to the present EPF/ESIC. Hence, there is no option but to go for a decentralised structure (with overall coordination and regulation by National Council). States therefore get far more powers than present under the new Social Security Code.

A CHANGING PARADIGM OF SOCIAL SECURITY

Virjesh Upadhyay*

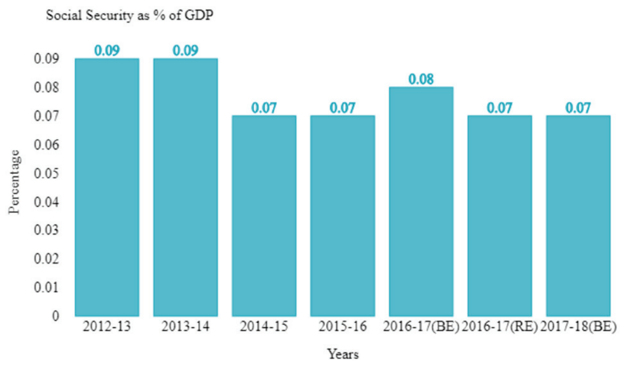
The concept of social security has gained popularity throughout the world more so since the Universal Declaration of Human Rights in 1948. As per ILO, 'Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.' Several other terms – social floor, social protection floor, social safety nets, etc. – are used in a similar context. All these terms have a few common fundamentals which recognise social security as a human right, and a social and economic necessity. Moreover, such policies are focused on achieving a balance between taking care of the poor and the vulnerable and long-term equality, social and economic development.

Article 42 (Chapter IV) of the Indian Constitution directs the State to secure just and humane conditions of work and for maternity relief. Article 47 requires the State to raise the level of nutrition and the standard of living of its people, and lists improvement of public health as among its primary duties. Unfortunately, in the last five years, India's budget outlay for major social security schemes as a percentage of the total budget expenditure has never been more than 0.65. This means that the budget outlay for major social security schemes as a percentage of Gross Domestic Product (GDP) works out to a mere 0.07–0.09. Further, for the achievement of the sustainable development goals (Goal 8: Decent Work and Economic Growth), essential for inclusive growth and development, it is crucial to set up an efficient structure for social security.

Social security coverage in India occurs through social assistance, social insurance and other social safety nets. The social security structure in India is highly complex. Different schemes are enforced by different agencies such as Employees State Insurance Corporation (ESIC), Employees Provident Fund Organisation (EPFO), Chief Labour Commissioner (CLC), Director General, Labour Welfare (DGLW) and welfare boards. India has 15 social security laws and several other state level schemes. For the organised sector there are employer-sponsored as well as contributory schemes such as ESI and EPF, and for the unorganised sector there are government-sponsored and cess-funded schemes. Many benefits are overlapping. Due to the lack of efficient infrastructure, poor outreach, multiplicity and duplicity, these schemes are not able to cover the entire working population and have created considerable confusion.

To overcome these challenges, the Second National Commission on Labour (2002) has recommended the simplification, rationalisation and consolidation of these laws. Responding to this, the government has proposed a new Labour Code on social security by consolidating the 15 social security laws.

This new comprehensive Code will extend the coverage to 45 crore workers (against the existing 4.5 crores) and will not only facilitate ease of doing business by having



Source: Compiled by CBGA from Union Budget for various years

* General Secretary, Bharatiya Mazdoor Sangh

one return, one contribution principle but also simplify the registration process and strengthen the enforcement.

Features of the Draft Social Security Code

One of the main features of the Code is the proposal to integrate different enforcement bodies of social security – Employees State Insurance Corporation (ESIC), Employees Provident Fund Organisation (EPFO), Director General, Labour Welfare (DGLW) – into one autonomous, integrated and decentralised system that can help in reducing compliance cost and confusion for the workers. A plethora of schemes will become available on the same platform.

It has been suggested that a consolidated contribution by the employers and workers should go into the State Social Security (SS) Fund. This contribution received in the State SS Fund will be initially credited to the VIKAS (Vishwakarma Karmik Suraksha Khata) of each individual worker. From here, it will be disbursed as per the schemes subscribed. Workers are provided comprehensive coverage through pension, sickness benefit, maternity benefit, disability benefit, invalidity benefit, dependent's benefit, medical benefit, group insurance benefit, Provident Fund and unemployment benefit. All this is in conformity with ILO Convention 102.

Decentralisation of execution and implementation is a new aspect of this Code. With the coordination of the Centre and the state boards, migrant workers can take advantage of a new feature of portability. State boards will implement this feature. Further, all the boards have been given tripartite representation.

Administrative Structure

The administrative structure is divided into three tiers: National Social Security Council, Central Board of Social Security and State Board of Social Security. This is collectively termed 'Social Security Organization'. State level boards are entrusted with the responsibility of execution and implementation of the schemes, while the Central Board will prescribe the basic national scheme programme applicable

to all. The Central Board will undertake professional investment of the surplus fund on behalf of the state boards. Also, the creation of a National Stabilisation Fund has been proposed for schemes that run into trouble. This fund will be managed by the Central Board. The National Social Security Council will provide support for the overall coordination of all the bodies of the Code. Further, representation is to be given to various ministries so as to obtain their support in fund raising.

Decentralisation is one of the main features of this Code, reflecting the country's federal structure. As India is so large and diverse, to cover 45 crore workers efficiently the administration needs to be extended. Also, labour is a concurrent subject in the Constitution. Managing such a massive working population centrally and technically is very tough. ESI and EPFO are unable to expand their coverage due to their centralised structure but with the support of state governments and Panchayats it would be relatively easy to implement the schemes. So, state governments must be involved and their resources must be utilised to give strength to this structure and for efficient execution of this machinery. The Code has proposed the creation of facilitation centres to reach out to the workers in remote areas and help them register.

Registration of Workers and Entities

To universalise the applicability of the Code it is vital to register all the entities including households and enterprises (self-managed, registered, unregistered, etc.). Workers are divided into four categories as per socio-economic background: SECC I, II, III, IV. The rules for defining the socio-economic category will be listed soon. This division will determine the government's contribution amount. SECC IV workers do not pay any contribution. The government may make contribution on their behalf. SECC III workers, who are self-employed, pay a lump-sum contribution (without reference to their income). The rest (SECC I and II) shall pay contribution as a percentage of wage/income up to a ceiling (max 12.5 per cent).

Role of Trade Unions in Implementation

To cover the entire working population, the Bharatiya Mazdoor Sangh suggests that the government increase the budgetary allocation for social security. Further, the new Public Private Partnership (PPP) model of outsourcing health facilities to private agencies can create problems, so their role and accountability must be clearly delineated in the Code.

In all the central ESI and PF organisations there is adequate trade union representation. That is why these organisations have been able to gain workers' trust. In the proposed Code, at all the levels – national, Central and state boards – trade unions' representation shall be raised, and the vice chairman of each board must be a trade union representative. This will also facilitate the implementation of the Code at the ground level. For smooth implementation, it is better to have two categories of workers instead of four. Basically, among the workers in SECC III and IV, 80 per cent fall into the unorganised sector; they can be merged and the remaining 20 per cent would fall into the organised sector (SECC I, II). We suggest that as employers' liability has been reduced in the proposed Code, they can increase their contributions as per the requirement. For effective implementation, there can be phase-wise implementation, or a pilot can be carried out in some States.

This elaboration of the features of the new Social Security Code demonstrates that it proposes a wholly new structure of social security for India. With this model, it is possible to reach the remotest areas of the country, covering the entire working population and leaving no one behind.

SOCIAL SECURITY CODE: MAKING IT FUNCTIONAL

B P Pant*

A Journey Towards Universal Social Security

Social Security is a guarantee against the vagaries of old age, sickness, invalidity and related contingencies that require protection and support. Directive Principles of State Policy of our Constitution directs the State to provide social security to all its citizens. However, large size of our population and scant resources limits the capacity of the State to extend effective social security to all the citizens. Hence, contributory social security involving the State, employers, and the employees is the most suited form for extending social security. This will also allow the State to use the limited resources at its disposal to provide social security to the most needy. The reforms in social security laws should be placed within this broad perspective.

The Second National Commission on Labour had recommended the codification of labour laws, including social security laws, to overcome the multiplicity of labour laws. Ministry of Labour and Employment has undertaken this task intently and prepared a draft on social security code for comments of all the concerned stakeholders. Though the code is couched with all good intentions and ideas, as expected from a welfare State, yet there are many issues that warrants a differentiated approach.

Is Common Code Across All Sectors Feasible?

A common code may not achieve the desired results as the landscape of employment in India is divided in different sectors, organized and unorganized, own account work, agriculture sector, self – employment etc. creating different service conditions, which will require a customized approach for each type of employment. Further, the two major social security organisations, namely, Employees Provident Fund Organisation and Employees State Insurance Corporation have evolved over 6-7 decades delivering services to the satisfaction of the stakeholders. Hence, it may not be desirable to restructure the basic functions of these organisations. In fact, the benefits extended by these organisations along with certain other benefits like payment of gratuity, maternity benefits etc. provide appropriate social security framework covering 45-50 million employees working in the organised sector. Accordingly, the focus of the code should be to expand social security coverage

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to the employees engaged in informal economy in a gradual and phased manner, taking into consideration the sectoral specificities. Combining the existing social security systems which provide coverage to the organised sector and planning to extend it to the informal sector will not only dilute the services being currently extended to the formal employees but also create overburden on the existing institutions.

The first schedule of the code exempts Central or State Government establishment and public sector undertakings from the operation of the code. Since those in the organized sector establishments also receive social security benefits more or less at par with the Government institutions, all establishments covered under major social security schemes like ESI, EPF, payment of gratuity, maternity benefit, and employee's compensation, should be exempted from the code. If there are gaps in coverage with regard to some categories of employees like contract workers, the existing schemes should be strengthened to cover these operational glitches by providing adequate checks and balances.

Identifying Suitable Criteria for Contribution

The code lays down that contribution to social security scheme will be chargeable from entire 'wages'. Wages has been defined in various labour legislations differently. The issue as to which allowances are to be excluded or included within the domain of wages is a subject of litigations in various High Courts and even before the Supreme Court. In today's context, allowances contribute a major variable component of the 'wages' and is instrumental to attract talented and skilled employees. Charging social security contribution from entire wage will lower disposable income significantly thus constraining effective demand. The contribution should, therefore, be charged only on 'basic salary' and 'dearness allowance'. Where the minimum wages are paid, it should, be chargeable on minimum wages or 'basic wages' and 'dearness allowance' whichever is higher. The definition of 'employee' to be covered by various benefits should have a ceiling limit in 'salary' or 'income', and the scheme should be based on 'defined contribution' and 'defined benefits'. Deducting contribution from workers working for more than one employer, or self-employed persons will present another problem as the wages or incomes are contributed by various employers.

Some Other Operational Challenges

It would require a strong/robust technology platform to integrate all the schemes as well as the operators for availing the benefits by the contributors across the country. No employee or a contributor should be denied social security benefits, even during transition. The proposed manner of levying contribution, assessment appeals and fines are all based on existing practices which have generated multiple litigations. There is a strong need to evolve innovative approaches which can minimize disputes and facilitate the contributors and beneficiaries without penalizing them. The penalty of imprisonment for delay or non-payment of contribution should be removed. A graded pecuniary can be imposed in all such cases. The Central as well as the State Board should have a wider representation of the stake holders representing employers.

In Lieu of Conclusion

It is suggested that the government may consider a separate code on Social Security to cover the unorganized workers, self-employed rather than including those who are already enjoying a well-entrenched and established social security benefits through the government administered institutions. The emphasis of the government should be to ensure that there is no loopholes left in the administration of law on social security in respect of the organized workers in the country, for which the initiatives of the government are on right track.

MATERNITY BENEFIT UNDER THE SOCIAL SECURITY CODE

Ruma Ghosh*

The Social Security Code stipulates that the Maternity benefit scheme will be applied to all employees employed by the establishment whether employed directly or through contractor as well as own-account workers and also to those workers on whose contributions will be made by the government.

As per the provisions of the SS Code, a woman worker cannot be employed in any establishment during the six weeks immediately following the day of her confinement, stillbirth, miscarriage or medical termination of pregnancy and cannot be employed in arduous work during the period of ten weeks before the date of her expected delivery. Moreover, every woman worker who has returned to work after delivering her child and after her confinement period, will be allowed four additional breaks daily in addition to the interval for rest, for nursing the child, until the child attains the age of fifteen months. The employer cannot make any deduction from the normal and usual daily wages of a woman worker for such benefits or make any discrimination with regard to recruitment, promotions, training or transfer, except where the employment of women in such work is prohibited or restricted under any law.

As per the Code, periodical or other payments in the form of maternity assistance is provided to the woman workers in case of pregnancy, confinement, on account of confinement arising out of childbirth (including premature birth), stillbirth, miscarriage or sickness arising out of pregnancy or childbirth, adoption of a child, or receiving a commissioned child through surrogacy and it applies to all entities that are required to pay contribution, all non-employees that are required to pay contribution and such other persons, in respect of whom, the State-contribution to the Social Security Fund and subscription to the Maternity Benefit Scheme is made from the Contribution Augmentation Fund, by the State Board.

The maximum period for which any woman worker shall be entitled to maternity benefit shall be twenty six weeks of which not more than eight weeks shall precede the date of her expected delivery in case she has less than two surviving children at the time of confinement. In case she has two or more surviving children at the time of confinement, the woman worker will be entitled to a benefit of twelve weeks of which not more than six weeks shall precede the date of her expected delivery. In case of adoption of child, the benefit will be for twelve weeks from the date the child is handed over to the mother, only if the child is less than twelve month of age on the date of adoption. If a woman worker dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. In the case where a woman worker dies after delivering a child, during her confinement or during the period immediately following the date of her confinement, leaving behind a child, the maternity benefit shall be paid for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child. If a woman worker entitled to maternity benefit dies before receiving such maternity benefit or amount, the maternity benefit shall be paid to the person nominated by the woman worker and in case there is no such nominee, to her legal representative.

A woman worker in addition to the period of absence allowed to her, is entitled to a maximum period of one month leave with wages in case she is suffering from illness arising out of pregnancy, confinement, premature birth of child, still birth, miscarriage, medical termination of pregnancy or tubectomy operation.

No employer can discharge or dismiss a woman worker for being absent from work in accordance with the maternity benefits provisions. In such a case, the woman worker can make a complaint to the Samajik Suraksha Mitra and the Commissioner has the powers to investigate into the complaints of wrongful dismissals and order corrective measures.

The liability of Maternity Benefits will be taken care of by the Maternity Benefit Fund, in which the subscription amounts will come from the contribution received. The subscription to the Maternity Benefit Scheme will be compulsory for every worker, irrespective of his or her entitlement, gender, ability or intention to avail the benefits. If the employer fails to cover his employee under the maternity benefit scheme, the worker shall be provided with the benefits from the fund, and recoveries shall be made from the employer.

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A UNIVERSAL SOCIAL SECURITY LEGISLATION FOR INDIA

Prashant Baijal*

Social Security

Social Security means a program that requires the Government to create a system, funded through contributions from Employers, workers and Government (where necessary), which can be used to make provision of benefits (both monetary and non-monetary) to workers and their dependents who are in need of assistance due to certain contingencies. Social security is essentially an investment in people that empowers them to adjust to change in circumstances and the social security systems administering the provision of social security act as automatic social and economic stabilizers and help in the transition to a more sustainable economy.

Social Security in India: Constitutional Context

The Constitution of India includes all the elements which cast an obligation on the State to provide and protect the right to Social Security. The Preamble to the constitution provides for the establishment of a socialist state. The principle aim of socialism is to eliminate inequality of income, status and standard of the life and to provide a decent standard of life to the working people. Further, it is designed to secure social, economic and political justice to all its citizens. These objectives are further elaborated in the guiding principles for policy-makers in the Indian Constitution i.e. the Directive Principle of State Policy, enumerated in Part-IV of the Constitution. Article 41 of the constitution impel the State to provide for adequate means of livelihood within the limits of its economic capabilities, secure the right to work, to education and to public assistance in certain cases such as unemployment, old age, sickness and disablement. Article 42 provides for providing just and human conditions of work and maternity relief. Article 43 deals with living wage for workers and Article 43-A intend to secure workers participation in management of industries. Article 47 lists as a primary duty on the part of the State to raise the level of nutrition and the standard of living of its people and improve public health. Besides these, Social Security and Social Insurance and welfare of labour are also included in the concurrent list of the Constitution with an intention to ensure protection of interest of the working class and their families.

Existing Social Security Provisions in India

The existing Social Security legislation in India also derives its strength and spirit from the provisions of the supreme law of the land i.e. the Constitution of India. These provide for mandatory Social Security benefits based on either a system of joint contribution from employers and workers or solely at the cost of the employers i.e. employer provided social security. Besides the legislation backed schemes such as ESI Act, 1948 and EPF & Misc. Provisions Act, 1952, etc., a plethora of central level, state level and local self-government level social security schemes providing direct monetary and non-monetary benefits have been implemented such as RSBY, NOAPS, IGNDPS, IGNWPS etc.

Though the statutory social security provisions contemplate coverage for the entire formal sector (including the informal employment in that sector), in reality they cover only a small segment of the organized work force having a direct regular employer-employee relationship within an organization. Only 6 percent of informal work group had access to any kind of social security (NCEUS, 2006).

The schemes, therefore, have very limited outreach. The other issue is large scale fragmentation. There are multiplicity of laws, policies, schemes and agencies. The existing wage and number thresholds creates perverse incentives for the employers to shy away from joining the system thus resulting in artificial exclusions and distortions in the labour market.

The Rationale for a Universal Approach to Social Security

Access to social security has been considered as a basic right according to the Articles 22 and 25 of the Universal Declaration of Human Rights by the UN. ILO Social Security (Minimum

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Standards) Convention-102 (1952) lists out the most important elements of social security[1] which a State should strive to attain for its workforce. Though India is not a signatory to this convention, the rapid economic growth attained by the country particularly in the last two and a half decades, simultaneous co-existence of large scale economic inequalities and slow pace of improvement in Human Development Indicators manifest into a situation where we should move towards providing the minimum standards of social security to the entire workforce.

The Second National Commission on Labour, which submitted its Report in June 2002, had recommended that the existing set of labour laws relating to social security should be grouped into a single Social Security Code.

Provision of adequate Social Security for the entire workforce regardless of the nature of their employment has also been accepted as a fundamental element towards achievement of Goal 8 (Decent Work and Economic Growth) of the 2030 Sustainable Development Goals Agenda adopted at the UN Summit held in September 2015.

In the initial phases of economic planning, it was presumed that with the process of economic development, more and more workers would join the organized sector and eventually get covered by the existing formal Social Security arrangements. However, what we have experienced has disaffirmed this notion. Economic liberalization through successive reforms has only further aggravated this problem. There is now almost a stagnation of employment in the organized sector with the resultant increase in the inflow of workers into the informal economy. Another challenge comes from newly emerging 'non-standard' forms of employment. A particularly visible example is Uber, but even highly skilled work, such as software programming is also slowly tilting away from standard employment relationships.

It is our endeavour to lift these vulnerable group of workers, presently devoid of any reasonable social security cover, to an equitable level by opening up the social security coverage to all workers, irrespective of the nature of work and employment relationships, level of income, size of the entity or number of employees. Towards this end, casual or informal workers, own-account workers (self-employed) and domestic workers are also to be included in the definition of 'worker'. This, however has to be viewed in the light of the concept of economic capacity of the State and therefore progressive universalization has to be strongly advocated and perused towards realization of our objectives.

It is well understood that for a worker and his family, occurrence of a contingency brings a lot of grief and mostly, where the worker is the sole breadwinner, his death or disability pushes the entire family into scarcity. It is also necessary that loss of income due to illness or temporary disablement, particularly of low-paid workers is protected and also that an appropriate level of medical care is available to the workforce. Under a Social Security System, these risks and eventualities are managed through small contributions by all through a robust universal social security framework. Thus, by making a provision for right-based social security, a nationally defined minimum level of income security can be guaranteed to the worker and his family in times of distress.

Social Security is not only aimed at personal welfare of citizen, but is also linked to national economic prosperity, as it enables the person(s) exposed to these risks to spend the earnings in maintaining a decent standard of living with a life of dignity instead of stashing the earnings somewhere for unforeseen eventualities.

Conclusion

A well designed, robust and universal Social Security system for the workers would resultantly help in improving productivity and fostering amicable labour relations. This would, as a matter of course, aid in the avoidance of social costs and promote the advancement of social and economic development in the country. Increase in the willingness to work on the part of workers would be achieved due to the presence of social security coverage as a legal right to protect them in the times of distress. Overall, a move towards a universal social security legislation at this crucial juncture in the path of our economic development, would not only ensure income security for our workforce, but also lead to a better investment climate thereby greatly enhancing the competitiveness of our economy.

[1] Medical Benefit, Sickness Benefit, Unemployment Benefit, Old-Age Benefit, Employment Injury Benefit, Family Benefit, Invalidity Benefit, Maternity Benefit and Survivor's Benefit.