

Labour Code on Social Security and Women's Economic Empowerment

Round Table discussion held on May 2nd, 2018.

Summary Note

Background

The Ministry of Labour and Employment, Government of India, has drafted a new Labour Code on Social Security as an attempt to simplify, rationalise and consolidate the existing fragmented laws linked to it into one law. It comes with a realisation that the current social security system in India caters to only a very small segment of workforce employed in the organized sector, while nearly 93 % of the entire workforce, who have access to only informal employment, remain vulnerable and excluded. Thus the fundamental objective of the code is to universalise social security to the entire workforce, organised as well as unorganised, through a rights-based approach. Through progressive extension of coverage, the code aims to cover all kinds of employment including, part time workers, casual workers for fixed term, piece rate/ commission rated workers, informal home-based workers, domestic workers as well as seasonal workers. While the code is taken as a positive step towards recognising the contribution of informal workers in the economy, the complexities that may be involved in its actual implementation, specifically in terms of universal coverage, needs to be given necessary heed.

The Institute of Social Studies Trust (ISST), through its research work over the years, has been focussing on issues linked to women's work, well-being and empowerment. Since the said code, aiming towards universal coverage, will also have a likely impact on women's work participation and well-being, it was felt that a gendered understanding of the code is required to understand the likely impact that this new social security code may have in terms of women's economic empowerment. As an attempt to initiate discussion and debate on these lines, ISST organised a round table discussion with civil society experts, academicians, and representative from the Ministry of Labour and Employment on May 2nd 2018. This summary note makes an attempt to highlight some of the concerns and gaps that were highlighted by the group and suggestions made, in terms of coverage of women workers under the proposed social security system.

Structure of Discussion

In order to channelize the discussion around issues specifically linked to coverage of informal sector women workers, the agenda for the round table, proposed discussion around two specific areas. One, coverage of informal women workers, including those who are relatively invisible and unpaid such as home-based workers; and two, coverage of all women workers irrespective of the nature of employment under the maternity benefits act. The discussion was initiated through a comprehensive presentation on the key features of the Labour Code on Social Security by Shri Gautam Kumar, Deputy Director/OSD, Ministry of Labour and Employment. The presentation was followed by an enriching discussion on the identified areas and the queries and concerns that emerged through the discussion were put forth to Shri Gautam Kumar for explanation.

Informal Sector and the Social Security Code – Emerging Concerns

The need for extending social security benefit to workers employed in the informal sector was voiced unanimously by all participants. It was highlighted that social security to workers in the informal sector was imperative to bring in recognition to the contribution that they make to the Gross Domestic Product of the country. It was acknowledged that access to social security will not only enhance productivity of the workers, but will also have positive impact on their work participation rate as well as on the overall well-being of future generations. However, the group held concerns in terms of making income and contribution as the very basis of providing social security and were of the view that the code in its present form will not be able to meet the needs of the workers employed in the informal sector. Some of the concerns that the participants highlighted are listed below:

Emphasis on categorisation of workers and contribution– All workers are required to be registered with a local facilitation centre in order to come under social security coverage. The code proposes that on basis of information provided during registration, workers will be divided into four categories of SEC I, SEC II, SEC III and SEC IV. These categories become important to determine the contribution of the worker to the state social security fund. While SEC I and II are expected to pay contribution upto 12.5 % of the wage/income; SEC III who are taken as self-employed will pay a lump-sum contribution (upto 20% of wage), while workers belonging to SEC IV are taken as most marginalised and therefore they don't have to pay anything and their

social security contribution comes from tax payer fund. The parameters for categorisation are however not explained within the code and will be decided in Rules. Shri Gautam Kumar explained that these categories are important for those sections of people whose employment and income are not consistent. He stated that the categories are to be defined in the Rules because there was an understanding that the categories will be dynamic in nature and may need changes from time to time. If they are part of the code, any change will be difficult to make as the process is longer. The code would only have directing principles. The other participants however felt that this ambiguity in relation to categories may create problem in actual implementation. Also, there may be several overlaps in terms of SEC III and SEC IV as many who may fall under SEC III due to nature of their work, may not be earning as much as minimum wages. Finally, it was pointed out that women workers are engaged in many different types of work at any given time and these may not fall into these discreet categories. The group was of the opinion that the Ministry needs to provide more clarity regarding the factors which would define these categories.

In addition to this, some participants stressed that the lumpsum contribution of 20% of wage, expected to be made by SEC III category workers was quite high and would not leave the workers with any savings. In terms of state specific issues, it was pointed out that as per the code, contribution to augmentation funds can be made by different classes of employees or workers as may be specified such as building workers, beedi workers, domestic workers, agriculture workers, audio visual workers etc. However, in case of Bihar, Agricultural workers are very poor and most of them are marginal workers (91.1% Agriculture Census 2010-11) . According to Agriculture Census 2010-11, marginal workers have 0.25 hectares of land as operational holdings. So agricultural workers in Bihar may not be in a position to contribute to Contribution Augmentation Fund (CAF). Also, since the benefits to be received by the worker depend on the contributions made and can be assessed only through actuarial evaluation of the contributions received; the workers would not get to know how much social security benefit they were likely to receive. Shri Gautam Kumar however, emphasised on the need for a contribution based social security fund and stated that it was highly debated during drafting of the code and it was agreed that some minimal contribution must be kept as a criteria for all workers as this makes the workers feel that they are part of the scheme. Also tax funded social security system would mean increase in the taxes that we are already paying. It was also suggested that

parameters for formulating category SEC IV should be state specific and not universal to take into consideration state specific situation of informal workers.

Onus of registration of workers on employers – The code puts onus for registering the workers on their employers. In case the employer fails to do so, there is also provision for the worker to register themselves on their own. The code also prescribes penalties on employer for employing an unregistered worker beyond a specified time. The participants of the round table highlighted that in the unorganised sector, a worker may be employed by more than one employer and thus it may be difficult to understand which employer is responsible for registering. Also it is seen that employer tend to under report the number of employees they have. It will be difficult to monitor this in the unorganised sector. The participants were of the view that if the employers could be incentivised for registering and contributing for their workers it may help in bringing in more workers under registration.

Facilitation and monitoring – the code proposes a three tier social security administrative structure with tripartite representation. At the local level, the local rural and urban bodies have been given responsibility for facilitation of registration. There will also be a facilitator, Samajik Suraksha Mitra employed at the local level facilitation centres to help workers register as well as make changes in their registration as and when required. This facilitator will also be responsible for taking in complaints and conducting enquiry. The participants were of the view that it may be difficult for informal sector workers to miss on a days work in order to be able to register themselves at the social security facilitation centre. Also, workers in the informal sector keep changing work and therefore there may be a need to change their information in the social security register from time to time. It was felt that for the informal sector workers, this may be a challenging task. Shri Gautam Kumar explained that change of employment for a worker would not mean fresh registration, but only some changes in the existing information and this would not take much time. Also since the onus for registration is with the employer, the employee may not get hassled due to these issues. The participants however felt that monitoring and facilitation of social security registration should involve worker organisations, unions etc. as they are close to the workers and know how to reach out to them. One facilitator at local level may not be able to ensure universal coverage.

Portability – The code proposes to open a portable social security account for each worker – Vishwakarma Karmik Suraksha Khata (VIKAS) and it will be linked to the Aadhar number of the worker. The code suggests that this account will ensure portability i.e., remittance of the accumulated contribution to each worker will be possible even if the worker moves to another state. The participants of the round table however were of the opinion that though in principle, portability is welcomed, practical problems linked to portability have been viewed in the past, in relation to other schemes too. Thus, portability needs to be taken into consideration in view of past experiences of other schemes.

Labour Code on Social Security and Informal Women Workers

In relation to women workers it was voiced that there has been a shift in the way women and their work is perceived and understood, not just conceptually but also legally. Women's work need to be seen in continuity and cannot be debated only in terms of organised and unorganised as then it limits the discussion to only those women who are in paid employment. Women do different kind of work mainly due to the very gendered nature of the roles and responsibilities that they hold within and outside the household. It was felt that the code in its present form will exclude majority of the women workers from any social security coverage. This was reasoned on basis of several factors.

Absence of focus on women workers within the Code – The group very strongly felt that the very language of the code does not take cognizance of the contribution that women workers make to the entire production economy of the country. The document considers only men as workers and employers which clearly indicates a gender bias. Apart from this, the very definition of worker or employee within the code, which takes income/wages as an important aspect for determining social security, also excludes several women who perform unpaid economic work. It was stressed that for universal coverage of women workers it was important to perceive women's work as a continuous process with multiple entry and exit points and work in itself should become the basis of social security and not income.

In terms of categories too, it was highlighted that since the proposed categories for determining contribution to social security are based on income/wages, they will exclude all women workers involved in home-based economic work. Shri Gautam Kumar explained that home based workers were covered as part of family and not as a separate worker. He stated that the onus of registering the women home based workers would lie with the “bread winner” of the family and, if they do so, they would have to pay separate contribution for the woman worker as well. The group however stressed that the code itself should identify and view women as an important part of the labour workforce and not just part of a family.

In terms of contribution too, several participants were of the view that many women workers will not be in a position to pay and therefore will get excluded from social security coverage. They stressed that from a right-based approach all women workers must be covered under social security irrespective of the fact that they are involved in paid or unpaid work.

Maternity benefits for women workers in the informal sector – several participants of the round table stressed that the maternity benefit as given in the code was a mere copy paste of the already existing Act and had not been restructured to bring in the limitations of the women working in the informal sector. The code proposes to provide 26 weeks of paid leave to pregnant women provided they have been in the job for atleast 80 working days and should have been making contribution to the social security fund. It was explained that in order to ensure that employers do not get dissuaded from hiring female workers due to the increased liability in terms of maternity benefits, the code has proposed that the contribution to maternity benefit will have to be made in case of both male as well as female employees. If the wife of the male employee is given maternity benefit, the male employee will get sickness benefit if required but in lesser proportion to those men whose wife has not asked for maternity benefit or where both husband and wife are in paid employment and are contributing to social security fund. The participants of the round table however were of the view that maternity benefit for 26 weeks paid leave will not be possible for women employed in the informal sector due to irregular nature of their work. Also most of them will not be able to show 80 days of employment. Thus, it was stressed that all women should be given maternity benefits in terms of cash transfer and this should be wage

linked. For those women who are involved in unpaid work, maternity benefits in cash should be given linked to minimum wages.

It was also emphasised that due to the nature of the work that most informal sector women workers are involved in, it would be necessary to give 3 months of maternity benefit even during the course of pregnancy. It was stressed that this was also important as most Indian women do not gain required amount of weight during pregnancy leading to birth of malnourished children. Thus, keeping the well-being of the child as also an important reference point (and not just loss of wages) while deciding on maternity benefits, it was stressed that women are given maternity benefits for period of 9 months, 3 months during pregnancy and 6 months after delivery and they should also be entitled to regular breast feeding breaks even when they get back to work.

The code also proposes maternity benefits only upto two children. This was considered a discriminatory practise and it was stressed that any kind of restriction on number of children and birth order must be removed. The participants emphasised that the entire maternity benefit section needs to be re-visited and re-worked in order to make it more inclusive of the needs of the women employed in the informal sector. It was also suggested that the government may start by implementing the provisions given within the National Food Security Act where all pregnant women were to be given Rs 6000 for a period of six months, or Rs 1000 per month, and with no conditions or restrictions.

Child-care facility – the code does not take into consideration provisioning of child-care facility for women working in the informal sector. It was highlighted that most women find it difficult to get back to work due to lack of facilities for leaving their children in safe environment. The participants stressed on the need for thinking of providing creche facility for women in informal sector. However, the facility has to be provided keeping in mind the specific needs of the different group of workers and the nature of work that they are employed in. It was suggested that the creche facility may be built using the infrastructure of already existing ICDS centres or Aanganwadis. It was also highlighted that the Occupation code drafted by the Ministry proposes creche facility in premises where more than 50 workers are employed. This clearly indicates exclusion of informal sector women workers from any provisioning of creche facilities.

Follow up and suggestions

Participants of the round table were of the view that while the formulation of the code in itself is to be recognised as an achievement on part of the ministry, its actual implementation specifically in terms of ensuring universal coverage requires in-depth thinking and research. It was suggested that -

- Innovative ways of informing and educating workers about their social security rights and entitlements is given required emphasis.
- Implementation issues should be thought out in advance, taking the experiences of unions, cooperatives and others working with workers. These must include adequate funding for education and awareness, workers' facilitation centres (priority to unions, cooperatives and other workers' collectives), community-based (decentralised) monitoring by workers and their organizations (Ministry of Health has developed good models with civil society groups), and portability issues.
- Workers welfare funds should not be merged with the proposed Social Security Fund, and should be an augmentation to the basic social security offered to all workers. The gains for workers, after long years of struggle should not be subsumed into one Fund.
- System of inter-ministry convergence should be put in place so as to avoid any chances of duplication of work as there are number of social security schemes run by other ministerial departments such as the Health and Women and Child.
- Financing and budgetary aspect of the policy could be looked into in greater detail, specifically since some states would have a larger share of informal sector workers.
- Certain incentivising mechanisms need to be taken on board to ensure that employers do what they are supposed to do.
- More research is required to understand the very nature of social protection and social security.
- It was also proposed that all four codes are read together as there were number of discrepancies in terms of definitions and norms in different codes.
- Lastly, since the government is thinking of implementing the code in a phased manner, a good place to start would be by covering all women workers as secured women will be able to provide benefits to their families as well.

List of Participants:

S.No.	Name	Organisation
1	Anushree Sinha	NCAER
2	Aya Matsuura	ILO
3	Barna Ganguli	ADRI
4	Chandan Kumar	Working People's Charter
5	Dipa Sinha	Ambedkar University
6	Dr.Pravin Sinha	National Labour Law Association
7	Jashodhara Dasgupta	National Foundation for India
8	Julie Thekkudan	Gender Justice, Oxfam India
9	Mirai Chatterjee	SEWA
10	Neelakshi Mann	IFMR
11	Prof.Saraswati Raju	CSRD, JNU
12	Santosh Mehrotra	JNU, Professor
13	Shri B.N.Som	Former Secretary General, Social Security Association of India
14	Subhalakshmi Nandi	ICRW
15	Sudeshna Sengupta	Independent Consultant and Researcher
16	Suneetha Elluri	Formerly with ILO
17	Yamini Atmavilas	Bill and Melinda Gates Foundation
18	Ratna M. Sudarshan	ISST
19	Gautam Kumar	Ministry of Labour & Employment
20	Prabhleen	ICRW
21	Sharmishtha	ICRW
22	Sneha	ICRW
23	Saachi Bhalla	BMGF
24	Divya Verma	ILO
25	Siddharth Singhla	Advocate, MHRD
26	Bint Abbas	BMGF
27	Mubashira Zaidi	ISST
28	Anweshaa Ghosh	ISST
29	Ayesha Datta	ISST
30	Gurpreet Kaur	ISST
31	Monika Banerjee	ISST

