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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

"THE (DRAFT) CODE ON SOCIAL SECURITY, 2018-A BOON OR BANE FOR WOMEN WORKERS"

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ABSTRACT

To the Ancient time about which Indian Literature “Manusmriti” mentioned, when the world “Joint Family” was the substitute to security, to the time where we need legislative provisions to secure our rights, we have indeed come along a long way. And on the top of everything, the status of women has been deteriorating. The (Draft) Code on Social Security, 2018, poses a critical examination of its potential impact on women workers, contemplating whether it serves as a boon or a bane for their welfare. The proposed code, aimed at overhauling India's social security framework, introduces significant changes that warrant a gender-specific analysis.

On the positive side, the code seeks to enhance the social security net for women by broadening the scope of benefits, including maternity benefits, medical coverage, and provident fund contributions. These provisions acknowledge the unique challenges faced by women in the workforce, aiming to provide a more inclusive and supportive environment.

However, concerns arise regarding potential drawbacks. The draft code's implementation may inadvertently perpetuate gender disparities, particularly if not accompanied by robust enforcement mechanisms to ensure equal access and opportunities. Critics argue that certain provisions may fall short in addressing nuanced issues faced by women workers, such as wage gaps, workplace harassment, and discrimination.

The draft code's effectiveness for women workers hinges on meticulous implementation, clear enforcement mechanisms, and a comprehensive understanding of the multifaceted challenges they encounter. Striking a balance between providing necessary social security measures and addressing

gender-specific concerns is imperative for ensuring that the (Draft) Code on Social Security, 2018, indeed becomes a boon rather than a bane for women in the workforce.

Keywords: Maternity benefits, enforcement mechanisms, wage gaps, provident fund, gender disparities.

INTRODUCTION

The respective terms “Social Security” and “Workers” is such a broad area that it brings discrepancies along with it and something not to be expressed in definite terms. Before going further, we need to get a basic idea about what these terms stand for and what is their significance.

What is social security?

Social security in its narrower sense is taken as the security of the whole society, but it has its broader dimension. Sometimes it can be taken as “freedom from want”, sometimes it can be mere security or can be taken as a needed weapon for the advancement and proper functioning of society. According to Sir Beverage “Social Security means an attack on want, disease, ignorance, squalor and idleness.”¹ In a way, we can also define social security as that it is a system which is aimed at bringing all round well-being of society by providing various amenities and facilities to maintain the conditions of labour to remove the unjust conditions of labour as it imperils the peace and harmony.²

Why there was a need for social security?

With the era of Industrialization, there was the rise in use of machines which eventually turned out to be a threat to the workers along with the risks of frequent accidents and injuries now and then as this transformation into Industrial era was something new to them and they were not well versed with the technologies and functioning of machines. This turned out to be difficult working conditions for them, affecting their health eventually and there were many factors behind, like maternity, old age, physical and mental health, sociological and individual factors of the workers and altogether these factors were

¹ Devadasan Pradeep, Kalicharan, M, “Social Security Measures For Indian Workforce - A Legal Intervention” (2016/01/01)[https://www.researchgate.net/publication/309573528_Social_Security_Measures_For_Indian_Workfor](https://www.researchgate.net/publication/309573528_Social_Security_Measures_For_Indian_Workforce_-_A_Legal_Intervention) ce_-_A_Legal_Intervention ,(accessed 22nd February;2024,09:50 a.m.)

²Chapter 2, Conceptual Frame Work of Social Security https://sg.inflibnet.ac.in/bitstream/10603/105639/7/07_chapter%202.pdf,(accessed 22nd February;2024,09:50 a.m.)

depriving workers of their earnings and it was the necessity to provide them with the basic amenities, giving security to them and concept of employee liability also came in the picture. With this, the concept of social security came as a rescue to them and played an important factor in the protection of workers from different hazardous factors and minimizing and the negative impacts of growing industrialization social security, provide them with the much-needed assurance and workers realized that they have the right to protection and provision for safety, welfare and health. Going with the words of Human Development Report 1993, "Human security is a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced, Human security is not a concern with weapons, it is a concern with human life and dignity"³. And with this, we can comprehend that social security was needed to give status and rights to the individuals which they were deprived of, as Social Security, as currently understood, is one of the dynamic concepts of the modern age which is influencing social as well as economic policy⁴

What is the aim of Social Security?

Concept of social security targets people; Social Security is required for meeting certain needs which are rooted in lack, loss or inadequacy of income or assets due to unemployment, sickness, accidents, maternity, disability, old age or death⁵ It focuses on three security measures - prevention, restoration and compensation.

Social Security and Human Right Social

security is not just the mere demand of people but the right embodied in our Indian Constitution, Social Security and labour welfare falls under the Concurrent List. Part IV: DPSP deals with the same under Article 41 and 42 of the Indian Constitution.

"Everyone as a member of the society has the right to social security and is entitled to realization through national efforts and international cooperation and following the organization and resources of each state of economic, social and cultural rights indispensable for his dignity and the development

³ UNDP. 1993. Human Development Report 1993. <http://www.hdr.undp.org/en/reports/global/hdr1993>." Last accessed 22nd February 2024, 07:20 A.M.

⁴ Giri (V.V.), "Labour problems in Indian IndustryJ', (Bombay: Asia Publishing House), 1972 edition, P-269.

⁵ Supra note 2.

of his personality.⁶

Why there is a need for social security for women?

By various studies and research conducted till date, the picture of status and conditions of women in our Indian society is very clear and the primary reason behind their subordination is their economic dependence on others. So, to be improving their condition they have to be economically sound. Education of Indian women has risen; fertility rates have fallen; and access to electricity, cooking gas, and water has improved. However, women's labour force participation rate (LFPR) has fallen from 42.7 per cent in 2004–05 to 23.3 per cent in 2017–18.⁷ With this, we know either women don't opt for work or if they do and voluntarily opt out of work it's because of structural constraints or socio-cultural factors, and in this case, the government has to intervene, and with this need of social security for women comes in place, providing them with appropriate security assurance.

Social Security in India as compared to social security in other countries

Only 20 per cent of the world's population has adequate social security coverage, while more than half lacks any kind of social security protection at all and only one in five people in the world has adequate social security coverage.⁸ Germany was the first country who introduced social security scheme in 1883 and social security act came into existence in 1935 in the USA. Apart from everything else, we don't stand at the same footing with other developed nations when it comes to social security. 92% of the workforce is in the informal sector which is largely unrecorded.⁹ In India the coverage gap i.e. workers who do not have access to any formal scheme for old-age income provisioning constitute about 92% of the estimated workforce of 400 million people¹⁰.

Now, by understanding concepts of social security and how Social Security is an indispensable component of labour welfare, we will see some about The (Draft) Code on Social Security, 2018 and what it has to offer.

⁶ Article 22 of the Universal Declaration of Human Rights.

⁷ Deepa Krishnan, WORLD VIEW, As India advances, women's workforce participation plummets, (May 15, 2020) <https://www.strategy-business.com/blog/As-India-advances-womens-workforce-participation-plummets?gko=762f7>, last accessed on 24th February 2024, 08:55 P.M.

⁸ Facts on Social Security International Labour Organization, https://www.ilo.org/wcmsp5/groups/public/--dgreports/---dcomm/documents/publication/wcms_067588.pdf. accessed on 24th February 2024, 09:15 P.M.

⁹ 9(Economy) Social Security : Maning and Laws in India, <https://mrunal.org/2012/07/economy-social-security-epfo.html>. Last accessed on 24th February 2024, 09:20 P.M.

¹⁰ Id.

PURPOSE AND SCOPES OF THE (DRAFT) CODE ON SOCIAL SECURITY, 2018.

This being the initiative of the central government is taken with some purposes. It was the need of the hour, as 90% of the population were not covered any social security.¹¹ Apart from this, workers under unorganized sector were excluded, there were not so many schemes and the schemes were prevalent was not within the reach of everyone. current thresholds for wage and number of workers employed for a labour law to become applicable creates tenacious incentives for the employers to avoid joining the system which results in exclusions and distortions in the labour market. ¹²And as there was the multiplicity of applicable laws, policies, schemes and governmental instrumentalities, so to tackle this issue, code aimed to rationalize, simplify and consolidate multiple statutes into one consolidated law, with which understanding, implementation and enforcement will be easier. This code draws its understanding of Social Security from the fundamental ILO Convention on Social Security (C102) and nine types of social security covers are included as described in the said Convention. schemes such as Pension, Sickness Benefit, Maternity Benefit, Disablement Benefit, Invalidity Benefit, Dependent's benefit, Medical Benefit, Group Insurance Benefit, Provident Fund, Unemployment Benefit and International worker's pension benefit has to be provided by the social security fund of each state. The Labour Code also aims to streamline and centralize the investments for maximizing returns.

“EMPLOYEES” Under the (Draft) Code on Social Security,2018.

The purpose of the code is the universalization of Social Security, and with this purpose under the code, the definition of employee covers all kinds of employment including part-time workers, casual workers, fixed-term workers, piece rate/ commission rated workers, informal workers, home-based workers, domestic workers and seasonal workers. However, this universalization has certain exceptions to it, and there is a requirement under the code that all the current workers have to get them registered under the universal registration system, i.e. Aadhar based.

¹¹ Harsimran Singh,Singh & Associates; India: The (Draft) Labour Code On Social Security 2018 (21 May 2018), <https://www.mondaq.com/india/employee-benefits-compensation/702902/the-draft-labour-code-on-social-security> 2018, accessed 25th February 2024,05:55 P.M.

¹² Id

Scope under the (Draft) Code on Social Security, 2018.

Differentiation of Entity, Establishments, Enterprise and Business: Under this code term Entity, Establishments, Enterprise and Business have been distinguished. Where the entity being a broader term includes the entire spectrum of units where the work is being done by the persons without considering the factor of quantum and nature of work. Enterprise is a larger subset of an entity, and under Enterprise, workers may or may not be employed, unlike Establishments where there is a mandate to employ at least one worker. On a broader connotation, Entities and Employer also includes households. So, until and unless it is specifically mentioned under the code through an entry in Schedule-I, that it is not excluded, the Labour Code applies to households and domestic workers as well.

- Deactivation of workers registration

Intending to pass the benefits of the code to that only who are covered under the definition of workers, and to fall under that criterion of workers, there is the minimum period (which is to be decided by the National council) prescribed in a year for which a person has to work so that he/she will be entitled of the benefits under the Labour code. But under any period where the employer is unable to contribute to work because of sickness, maternity or injury, under that circumstances provisions of deactivation won't apply and that period will be considered as work. And this is the obligation of the employer to get his workers registered, except for own-account worker, who needs to register himself; also, when an employer employ an unregistered worker beyond a specific period, there is the penalty for that but in the case where employees fail to register within that specific period given, the worker has an option to self-register.

- Future of other social security laws

with this Labour Code, these laws will be obsolete & replaced as the Labor Code provides for comprehensive social security structure, subject to states adapting the new Labour Code and notification respectively.

- Accountability and Transparency of the Social Security Organizations¹³

The Labor Code introduces new approaches to ensure a transparent and fair financial setup, such as:

¹³ Supra note 7.

- i) Time-bound preparation of Accounts within six months of the end of the financial year;
 - ii) Provision for social audit of social security schemes by State Boards after every five years by agencies empanelled by the Central Board. Since the social security mechanism envisaged in the Labour Code operates at various levels including that of local bodies' level, a social audit may help in creating a sense of ownership amongst the subscribers especially in the lower socio-economic workers strata whose contribution will be subsidized from the Government fund which will help in identifying the corrective measures right at the ground level;
 - iii) Accounts of Intermediate Agencies to be subject to CAG Audit on the same lines as that of Social Security Organizations.
- o Protection of Privacy of Personal Data

The Labor Code envisages provisions whereby no person can intentionally disclose transmit copy or otherwise disseminate any information collected in the course of implementing the provisions of the Labour Code, to any person not authorized under the Labour Code. Similarly, the Labour Code prohibits unauthorized access, download, stealing, tampering or destroying of the data of any Social Security Organization (SSO).

HISTORY OF THE CODE

The Code finds its genesis in the Report of the Second National Commission on Labour (2002) and many other subsequent studies and reports on social security policies including UN SDGs of the 2030 Sustainable Development Goals Agenda along with expert technical assistance from the International Labour Organization on the policy framework. India has the earlier concept of a joint family with which the need of social security was catered but with the rise in migration, urbanization, nuclear families and demographic changes, Joint family system has declined and we felt the need for a formal system of social security. History of social security movement in India is divide into 2 Phases namely during colonial India and Independent India. After the establishment of Cotton Mills in 1851 and Jute Mills in 1855, the government felt the need for social security to the working class due to the prevalence of inhuman working environment in factories due to more working hours, neglect of welfare, lack of holidays and absence of medical care. The lack of safety provisions at the workplace, increased accidents to result in labour unrest. The Fatal Accidents Act, 1855 enacted by the British Government was inadequate restricting dependents like a brother, sisters from claiming compensation

and awarding inadequate rate of compensation.¹⁴ And from the phase after World War I, till the phase of after the 1950s when India became independent, there have been many reforms, and the (Draft) Code on Social Security, 2018 was the result of such reforms having different factors behind.

BRIEF ACCOUNT OF AREAS COVERED UNDER THE CODE

The labor code has derived its understanding from the fundamental International Labor Organization Convention on Social Security. It includes around nine social security covers such as pension, maternity benefits, disablement benefit, sickness benefit, invalidity benefit, medical benefit, insurance benefit, provident fund, unemployment benefit etc.¹⁵

- Gratuity: The payment of gratuity under this code pertain to the provisions laid down in the Payment of Gratuity Act, 1972. The important aspect of gratuity under this code is to count qualifying continuous services rendered for a principal employer, person who will be liable to pay gratuity. The code does not mention the minimum number of workers to be employed for the gratuity scheme to apply on any establishment
- Maternity Benefits: The code stipulates that the scheme shall be applicable to all the female workers, employed directly or through a contractor. The liability of the scheme shall be take care from the Maternity benefit fund. The scheme bounds the employer from terminating a female worker's job on the grounds of pregnancy, absence due to miscarriage, medical termination of pregnancy etc.
- Pension- Retirement, Disablement and Dependent benefits: The code covers the pension scheme for the old retired workers, disabled workers and dependents of the deceased workers. The code focuses to provide comprehensive coverage to workers throughout their active service lives as well as after their service lives. It guarantees income security to the worker and his family at the time of distress.
- Sickness benefits: The code guarantees sickness benefits to all the categories of workers as per prescribed contributory conditions. Sickness benefits covers the loss of wage during the abstention of the worker from work on medical grounds but is only available for low-income workers. The code has laid down certain modalities of certification of sickness and abstention

¹⁴ Supra note 1.

¹⁵ Ministry of Labor and Employment, Labor Code on Social Security, 2018, (25th February, 2024, 20:30), https://www.prsindia.org/sites/default/files/bill_files/Draft%20Labour%20Code%20on%20Social%20Security%20%202018.pdf

- required from work by any authorized medical practitioner from claiming sickness benefits
- Medical Benefits: The code has laid down certain limitations for the applicability of medical benefits scheme. Medical benefits will be applicable only in notified areas and will provide appropriate medical care required by the workers. The code also guarantees medical care to the workers and their spouse, when the workers cease to be in insurable employment on account of permanent disablement or who has retired. The persons under voluntary retirement scheme are also included.
 - The (draft) labor code on social security, 2018, has also envisaged the privatization of social security systems, protection of personal data, registration of establishments and workers, it has also dealt with offences and penalties, funds and schemes, finance and accounts etc.

PROVISIONS FOR WOMEN UNDER THE CODE

The (Draft) Labor Code on Social Security, 2018, was enacted with the aim to tackle the existing lacunae in the field of labor laws such as exclusion of the unorganized sector workers, around 90% of the workers do not come under the ambit of any social security, schemes that have limited outreach etc. Part H of the labor code on social security, 2018 deals with the provisions regarding Maternity Benefits. Article 53 to Article 60 deals with the provisions regarding maternity benefits, including some of the provisions that have already been mentioned in the Maternity Benefits Act, 1961 and Employee State Insurance Act, 1948. Article 55 and 56 have been deleted from the (draft) labor code on social security, 2018.

Clause 53:¹⁶

The clause deals with the obligations of employers and rights of woman in case of maternity.

Clause 53.1, 53.2, 53.3, 53.4 and 53.5 are the maternity benefits provided under the Maternity Benefits Act, 1961 under sections 4(1), 4(2), 4(3), 11 and 13.

- Clause 53.1- no employer should knowingly employ a woman within 6 weeks from the date of her confinement, miscarriage, or medical termination of pregnancy.
- Clause 53.2- a woman should not be forced to work by any other person during the 6 weeks

¹⁶ Ministry of Labor and Employment, Labor Code on Social Security, 2018, https://www.prsindia.org/sites/default/files/bill_files/Draft%20Labour%20Code%20on%20Social%20Security%20%202018.pdf

- from the date of her confinement, miscarriage, stillbirth or medical termination of pregnancy.
- Clause 53.3- after a request has been made by the pregnant woman, an employer shall not assign any work of hazardous nature or long hours of standing to the woman during 10 weeks before the expected date of delivery. Any work that can affect the foetus or the woman's health adversely.
 - Clause 53.4- a woman worker should be allowed four breaks of stipulated break for the nursing of the child until the child attains 15 months.
 - Clause 53.5- no deduction should be made from the wages on the grounds of nursing breaks and the nature of the work assigned of arduous nature or long hours of standing
 - Clause 53.6- while making any recruitment of similar nature, promotion, training or transfer, there should be no discrimination with women except for in the cases where such work is prohibited under any law.
- Clause 54:¹⁷ The clause deals with the maternity benefit scheme. This clause of maternity benefit scheme has been provided under the rules and regulations of the Employee States Insurance Corporation under section 50.
- Clause 54.1-The clause state that there should be a maternity benefit scheme under section 24(1) of the code. This scheme should provide payments in the form of maternity assistance to the woman in case of pregnancy, medical termination of pregnancy, miscarriage, adoption, surrogacy etc
 - Clause 54.2-The clause states that the qualification for claiming the maternity benefit should be given according to the section 24 sub-section 2.
 - Clause 54.3-The clause states that the scheme of maternity benefit applies to
 - All entities are required to contributes under sec.20(1),
 - All non-employees that are required to contribute under sec.20(3),
 - Other persons that are required to contribute under sec.22(5)
 - Clause 54.4- persons to be covered under maternity benefit scheme
 - All employees of the establishment, whether employed directly or through any contractor
 - All non-employees to whom the scheme applies.

¹⁷ Supra note 16.

- Clause 54.5- subscription to the scheme is compulsory for every worker covered under this code.

EFFECT OF SOCIAL SECURITY CODE ON WOMEN WORKERS

In India women have faced domination from the patriarchal society. They are exploited at work, they do not receive equal wage as men, they do not receive special benefits such as maternity benefits. Women are also economically dependent. Such conditions of women in our society increased the need of social security. Economic dependence is the foundation on which equality of men and women can be built. Thus, for the improvisation of these conditions and for promoting gender neutrality several labor law legislations were passed including several social security codes such as Equal Remuneration Act, 1976, Maternity Benefits Act, 1961. The introduction of the social security codes can be considered as boon for women but only in organized sector. Not all the workers have been covered under the social security codes introduced before 2018. In India, 94%¹⁸ of the women workers are employed in the unorganized sector. The works that lack dignity and social security. As per census of 2011, 87%¹⁹ of these women are laborers and cultivators. The (draft) labor code on social security, 2018, has aimed at the universalization of the social security. Thus, the term 'employee' covers all kind of employment including the informal workers, part-time workers, domestic workers, home-based workers etc. Thus, the code covers the women workers in the unorganized sectors too. Part H of the code has dealt with the maternity benefits that is to be provided to the women workers. The provisions under clause 53 to 60 deals with maternity benefit schemes, period, applicability, amount etc. It has also been mentioned as to who are eligible for maternity benefits. The code under these provisions has bound the employer. The employer cannot terminate the female worker on grounds of pregnancy, abstention on the grounds of pregnancy, medical termination of pregnancy, miscarriage etc. The code guarantees maternity leave in case of first-born as well as other children born. It also guarantees wages during maternity leave to women. The code also, guarantees that employer shall not assign any work of straining nature at the time he knows that the woman is pregnant. The code has provided the maternity benefits, pension schemes, medical care, sickness benefits etc. to all the

¹⁸ Harsimran Singh, The (draft) labor code on social security, 2018, (25th February, 2024, 20:45), <https://www.mondaq.com/india/employee-benefits-compensation/702902/the-draft-labour-code-on-social-security2018#:~:text=%20India%3A%20The%20%28Draft%29%20Labour%20Code%20On%20Social,Code%20Intends%20to%20pass%20on%20its...%20More%20;>

¹⁹ Id.

workers including the female workers. The code is a ray of hope for the female workers. It has initiated the change in the condition of female workers. Women can now expect equal remuneration from the employers, equal treatment, no exploitation, pension after their death, retirement or disablement etc. Thus, the code has affected the lives of female workers at their homes and at the establishment where they are employed in a positive manner.

CRITICISM OF THE CODE

- The labor code has widened the ambit of the categorization of workers and has also included the workers from unorganized sector. Though it includes all categories of workers, it refers to workers in undifferentiated way in the main sections
- The reform brought by the code lacks the participation of workers. The ministry adheres to the public views while making legislations, but under this code the method and medium of soliciting comments excludes the majority of workers from expressing their views. The council formed lacks proper representation on behalf of the employees and there is no gender-balance in the council.
- The code has been based on certain underlying presumptions which can be seriously contested specially in the context of categorization of workers. The undifferentiation of the workers in the main sections shows that it has been presumed that all workers have regular remunerative work. Secondly, the presumption is that all workers are homogenous and there is no recognizable differentiation among the workers in different sectors.
- There is a suspicion on the privatization of the social security systems. The Labor Code prohibits unauthorized access, download, stealing, tampering or destroying of the data of any Social Security Organization. The code requires every employer, employee and each employer-employee relationship to be registered. The process of registration is vague and fraught with confusion. In case of unorganized sector there is no provision for self-declaration by workers. Also, there is no clarity on eligibility and identity of the registering authority.
- The vagueness and complexity of the registration process is contrary to the propaganda of the code. The complex registration process indicates that it will leave out the majority workers from the informal or unorganized sectors.²⁰

²⁰ E. Pinto, Proposed Labour Code Aims to provide Social Security to all, (24th February, 2024, 23:35), <https://thewire.in/economy/labour-code-social-security-to-all-but-at-the-cost-of-workers-voices>.

CONCLUSION AND SUGGESTION

The study of the (draft) labor code on social security, 2018 shows that it is an attempt by the Government to simplify, rationalize and consolidate the fragmented laws and to make them less complex for easier comprehension, implementation and enforcement of the code. The code has focused on certain core principles such as universalization of the workforce, decentralization of the administrative powers and integration of fragmented laws and schemes.

The study of the code proves the first hypothesis of the study that the code focuses on the universalization of the social security. This is because the code has widened the ambit of the workforce and has included the workers from unorganized sectors also. The code has been made applicable to all the workers employed directly or through a contractor under nine different social security covers namely gratuity, pension schemes, sickness benefits, medical benefits, maternity benefits etc.

Secondly, the other notion that women still have the poor condition as workers in the unorganized sector and this code has initiated the change in their condition. The researcher has proved the hypothesis. This code is a ray of hope for female workers. The introduction of maternity benefits is a boon for women under this code. The code has initiated a change in the positive aspect in the lives of female workers. The code has its own drawbacks. Though it aims to make the fragmented laws less complex, yet the complexity in the process of registration, suspicion in the privatization of social security systems, lack of participation on behalf of workers etc. have made the path for the code to achieve its goal more complex.

Suggestions:

- The term 'worker' should be more widely expressed even in the main sections in order to keep the workers differentiated and to provide them with facilities under this act on the basis of such differentiation
- The composition of the national council should be changed and there should be more.

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