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Code of Social Security, 2020: A Giant Leap Forward in Strengthening Fixed Term Employment and Social Security

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ABSTRACT

Multiplicity of social security laws in our country has made their compliance a complete nightmare for organizations. Consolidation of all such laws regulating wages, social security benefits, occupational safety and labour-industrial relations has been done through enactment of The Code of Social Security, 2020. Among all others, the code specifically recognizes gig and platform workers along with highlighting the concept of fixed term employment.

The introduction of concept of 'fixed term employment' has settled the long-driven debate and insecurities of the labour class along with improving industrial relations. The same has been extended from apparel sector to all other sectors through amendment in Industrial Employment (Standing Orders) Central Rules, 1946 in March 2018. The 2020 Code has widened the scope of the fixed term employment and related benefits which has proven to be a significant step towards strengthening equity and social security. Companies are now authorised to hire fixed term employees for any duration.

This legal intervention in the light of fixed term employment has ensured flexibility and transparency by enabling organizations to hire employees directly rather than through contractors. Apart for pro-rata gratuity, the employees are entitled to statutory benefits and conditions equivalent to regular employees. Therefore, the 2020 Code has provided clarity and recognition in the areas of unorganised sector and fixed term employment along with setting uniform standards in the arena of social security.

The said article reflects the same along with dealing with other such salient features of the 2020 Code. Moreover, the article envisages to analyse the 2020 Code in the light of its prospective application and attempts to make critical and systematic examination of the impact along with pros and cons with respect to implementation of 2020 Code. Furthermore, the article also highlights the key differences in the 2020 Code in relation to previous social security code in 2019 (2019 Code). The study is doctrinal, analytical, explanatory and comparative in nature.

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I. INTRODUCTION

India, being a labour-intensive country, has taken a significantly progressive step through consolidation of 29 national labour laws into four codes, i.e., Code of Wages, 2019 (2019 Code), Industrial Relations Code, 2020 (2020 Industrial Code), the Code on Social Security (2020 Code), 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 (2020 Occupational Safety Code), which are awaited to be enforced by the government. The employers and employees will be having a significant potential effect owing to the said consolidation. Moreover, the consolidation has resulted in conversion of outdated laws, removed multiplicity of provisions and authorities, widening the scope of certain labour laws in terms of applicability, smooth compliance, effective implementation and rational penalties. Apart for consolidation of labour laws, the government has taken numerous steps towards simplification and smooth functioning of various social security and employment legislations in India, thereby, promoting ease of doing business in the country.

The impactful developments of consolidated labour codes have coupled with court interpretations with respect to legal regime in existence owing to which the objective behind setting this milestone has seen light of the day. The apex court in *Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir and Others*² (2019 Judgement) reiterated the position stated in landmark judgement of *Bridge and Roof Co. (India) Limited v. Union of India*³ and held 'basic wages' under the Employees Provident Fund Act are inclusive of allowances paid to employees universally, necessarily and ordinarily across the board. Basic wages provide the base on which the contribution in terms of Provident Fund is calculated and the 2019 judgement clarified the components to be considered while calculating contributions with respect to Provident Fund.

The 2019 judgement bound the employers to revisit calculation mechanism of contributions related to Provident Fund and made the authorities vigilant enough to conduct suo-motu inspections on employers. Moreover, in present times, the employees are also becoming vigilant of nuances regarding such contributions, therefore, to avoid non-regulation disputes employer needs to streamline the manner of calculations of contributions regarding Provident Fund.

The said article specifically focuses on novel law relating to social security and its impact thereof. In common parlance, social security is understood as monetary assistance to persons

² *Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir and Others*, 2019 SCC Online SC 291.

³ *Bridge and Roof Co. (India) Limited v. Union of India*, (1963) 3 SCR 978.

who are incapable of being employed or employed inadequately provided by the government. The same is concerned with provisions regarding wages and employee' benefits along with regulating industrial relations among various stakeholders.

II. SALIENT FEATURES OF THE 2020 CODE

The 2020 Code extends its ambit to: cover the workers working in both organised and unorganized sector including platform and gig workers in terms of employees and consider the size of establishment and income generated in terms of employers. The said code consolidates nine social security legislations, namely, The Employee's Compensation Act, 1923; The Employees' State Insurance Act, 1948; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Cine-Workers Welfare Fund Act, 1981; The Building and Other Construction Workers' Welfare Cess Act, 1996; and The Unrecognised Workers Social Security Act, 2008.⁴

(A) Definition of Wages

The 2020 Code provides for parallel definition in consonance with the 2019 Code. The definition of 'wages' can be divided in following parts as:

- Means: all remuneration including salaries, allowances or otherwise which, after fulfilment of express or implied terms of employment, are paid to the employee with respect to one's employment.
- Includes: Basic pay, dearness allowance and retaining allowance.
- Not include: Amongst all, Bonus not forming part of remuneration, value concerning any house accommodation, light and water supply, medical attendance, conveyance or overtime allowance, etc.

Proviso to the said definition states that when excluded components exceeds fifty percent of entire remuneration, then the exceeding amount be construed as deemed wages in order to balance fifty percent proportion.

(B) Schemes related to Social Security

For the benefitting workers and strengthening the concept of social security, various schemes have been introduced by the government, namely, Employees' Provident Fund Scheme (EPFS) wherein for specified establishments or class of establishments where the applicability of the said scheme extends, provident funds will be established for employees or class of employees; Employees' Pension Scheme (EPS) which provides

⁴ India consolidates and codifies its national-level labour laws, Nishith Desai Associates (December 14, 2020).

for payment of children or orphan pension, widow or widower's pension, superannuation pension, retiring pension, pension on permanent total disablement to employees, to nominee person and beneficiary; and Employee Deposit Linked Insurance Scheme (EDLIS) which extends life insurance benefits to employees of specified establishments or class of establishments. More such schemes can be framed by the central government on the similar lines of providing social security benefits to self-employed or other workers including gig and platform workers from unorganized sector along with their family dependents. Such similar instances could be:

- Employees' State Insurance Scheme (ESIS) providing medical benefits to insured and his/her family.
- Provision for Gratuity to workers on completion of five years of employment or, in certain cases, less than five years like journalists or the one under fixed term employment.
- Maternity benefit to female workers and employees.
- Imposition of Cess for welfare of building and construction workers.
- Compensation regarding occupational disease or injury to employees or their dependents.

(C) Medical Bonus

The 2020 Code has removed the upper limit of Rs. 20,000 as the maximum amount to which the bonus can be increased as provided by the Maternity Benefit Act, 1961. Hitherto, the quantum of medical bonus can be up to Rs. 3,500 which can be increased by the Central Government after stipulation.

(D) Authorities and organizations

With the purpose of administration of aforementioned schemes and effective implementation of code, the 2020 Code provides for a list of organizations and authorities, namely, Board of Trustees headed by the Central Provident Fund Commissioner to administer EPFS, EPS and EDLIS Schemes; Employees State Insurance Corporation (ESIC), headed by a chairperson appointed by the Central Government to administer ESI Scheme; National and State Social Security Boards (NSSB/SSSB), headed by the Central and State ministers for Labour and Employment, respectively, to administer schemes for unorganised workers, gig workers and platform workers; and State-level Building Workers' Welfare Boards (SBWWB), headed by a chairperson nominated by the State Government to administer schemes for building workers.

(E) Scope and Application

All the establishment to which the applicability of 2020 Code extends are conferred with a mandate of compulsorily Aadhaar-based registration unless they are already been registered under any national-level labour legislations enforced for the time being. The extent of application differs with various schemes and other social benefits:

- For applicability of EPFS, EPS and EDILS, at least twenty or more employees must be employed in the particular establishment.
- For applicability of ESIS, the particular establishment must employ ten or more persons or every establishment indulged in hazardous or life-threatening activities as the central government notifies.
- Mandatory payment of gratuity to employees employed currently or earlier, on any day prior to completion of twelve months in every factory, oilfield, mine, plantation, railway company, port and establishment employing ten or more employees, or shops and establishments timely being notified by the appropriate government.

(F) Contribution towards social security

In order to finance various aforesaid schemes, the 2020 Code provides for cumulative contribution towards efficacious social security from both the employers and employees, such as:

- Equivalent contribution of ten percent of wages or other such rate as central government notifies by the employer and employee in EPFS Scheme.
- Contribution by the employer not exceeding eight and one third percent of EPFS contribution in EPS Scheme.
- Contribution by the employer not exceeding one percent of wages or other such as central government notifies in EDLIS Scheme.

Contributions with respect to maternity benefit, gratuity, employee compensation and cess for workers at construction site shall be solely borne of the employer. Moreover, contributions listed under schemes applicable to platform and gig workers in unorganized sectors shall be financed, wholly or in aggregate by the central government, or partially or in combination thereof by the central and state government.

(G) Offences under the code

The 2020 Code provides for list of penalties, depending on the nature of offence, on account of non-compliance of all or any of the provisions under the code, namely, failure in payment of contribution, gratuity or other obligations. The 2020 Code,

moreover, prescribes stringent penalties for contravention of any kind of provisions of legislations the code seeks to amend, repeal and consolidate. Furthermore, in case of subsequent non-compliance in payment of contribution, gratuity, cess, charges, maternity benefits, compensation etc., the 2020 code sought to punish employer with minimum imprisonment of two years which is extendable to 5 years along with fine of Rs. 3,00,000.

(H) Option of compounding of offences

The 2020 Code provides with an alternative to compound any offence punishable with fine only or with mere imprisonment of not exceeding one year along with fine. The application for the same can be sought before or after prosecution has been initiated with respect to commission of offence. Moreover, it's a one-time opportunity in every three years and cannot be exercised by an employer subsequently within a period of three years from the date of commission of a similar offence which was either compounded earlier or for which the person has been convicted earlier.

III. SIGNIFICANT DIFFERENCES WITH THE SOCIAL SECURITY CODE OF 2019

1. The Social Security Code of 2019 (2019 SS Code) provides for mandatory social security provisions regarding platform and gig workers for betterment of workers employed in unorganised sector. Moreover, it had framed various schemes mandated establishment of Social Security fund for platform, gig and unorganised workers. However, the 2020 Code has extended the applicability of social security provisions to cover platform, gig and unorganised workers along with migrant workers. Along with compulsory Aadhar-based registration, it has specified regarding contributions of such workers to be financed through central government, state government, aggregators etc. and combination thereof
2. The definition of 'wages' in the 2020 Code has paved the way for through reassessment and restructuring of contributions with respect to Provident Fund considering the amended inclusions and exclusions under the said definition of the 2020 Code.
3. Apart from definition of wages, the 2020 Code seeks to amend and expand the definition of 'employee' be inclusive of workers employed through contractors, 'interstate migrant workers' to take within its ambit self-employed workers from another state, 'platform workers' to extends its scope to additional categories of activities and services, such as online e-commerce etc., as central government mat notifies time to time.

4. The 2019 SS Code prescribed the employee to complete five years of employment service in an organisation to become eligible for gratuity. However, the 2020 Code reduced the said period from five to three years for payment of gratuity in cases of working journalists and those employed in fixed term employment.
5. The 2020 Code, with the emergence of new-age business and e-commerce, promotes digital records and electronic database for returns for efficient exchange of information among various stakeholders under the code and scheme established by the central government.
6. The 2020 Code, furthermore, incorporate provision that favours hiring of fixed term employees for any required duration. The same would be entitled for the benefits of permanent workers in terms of working hours, allowances and other benefits on proportionate basis depending on their period of service. This is how the 2020 Code statutorily recognized the concept of fixed term employment along with strengthening social security concept through wide application of the 2020 Code.

IV. ANALYSIS

Although the 2020 code prima facie depicts consolidative approach rather than a reformative one, but various changes have been introduced that bound the implementation by all employers in industries or establishments where the applicability of the code extends inter alia depending upon location, size and number of persons employed.⁵ Some of the changes of employer-centric nature having long term positive impact and certainly promote ease of doing business includes single registration and licensing provision, legality of engaging contract workers in core activities in certain cases, increasing threshold for applicability of certain laws for factories and for engaging contract workers, increasing worker threshold for applicability of standing orders and government approval for retrenchment (termination) of workers, disqualification for receiving statutory bonus in case of dismissal from service for conviction for sexual harassment, allowing maintenance of registers in electronic form etc., removal of imprisonment (decriminalization) as penalty in certain offences, providing limitation period for provident fund non-compliances, transferring labour courts into industrial tribunals and introducing inspector-cum-facilitator concept.

Flipping the coin, some of the major changes which are employee centric in nature which highlights the rights balancing approach of the government with respect to employers and

⁵ Jhingan Seema, Ray Swasti and Sahoo Ankit, India: Part II - Labour Laws: The Code of Social Security, 2020, Mondaq (22 October 2020).

employees' rights are inclusive of revised definition of wages leading to higher minimum wages, statutory bonus, provident fund, retrenchment compensation and gratuity, reduction in daily working hour limit in certain cases, grant of general permission for engaging women with employee consent between 7 pm - 6 am, need for consent for overtime work, provision for leave encashment on an annual basis, mandatory provision of same employee benefits and pro-rata gratuity payments to fixed-term employees and payment of wages by the end of the next day in case of employee resignation.

Apart from strengthening and introduction of the concept of fixed term employment, the 2020 code sets several milestones with respect to assurance of social security to platform and gig workers in unorganised sectors, workers' reskilling fund, recognition of trade unions, notice period in case of strikes, option of compounding of certain offences and extending the scope of core activity and certain other definitions in code in order to include contract labour.⁶ Such social welfare measures are innovatively commendable in the light of strengthening social security and when effectively implemented, the same will certainly and immensely benefit India's working-class demographic.

Pragmatic and functional implementation of social security provisions which are meant for welfare of the beneficiaries such as helpline toll-free number, digital database for migrant workers and subsequent compliance of the same will properly channel the information resulting in better avenues, subject to proactive and efficacious policy makers.

V. CONCEPT OF FIXED TERM EMPLOYMENT

Fixed term employment is an employment wherein workers are employed on a flexible contract basis, which may not be work of permanent nature, with fixed duration. The introduction of concept of fixed term employment has its own merits and disadvantages. Such fixed term contracts evade the requirement of middlemen or contractor being direct in nature. Moreover, the 2020 code extends the same benefits as permanent workers in terms of pension, condition of labour etc. to fixed term employment. The same, on efficacious implementation, has the potential to improvise the status of fixed term workers as compared to contract labour who are devoid of such benefits.

However, the flexibility of employer to hire the workers on fixed term employment and renew the contract may result in unequal bargaining powers which may further sour the relations and affect social security and rights of workers. Also, in terms of social security benefits, the

⁶ Pradeep Rashmi, Ray Ankita and Madhavan Kaushalya, Recap of Key Labour Law Developments of 2019 & Looking Forward to 2020, India Corporate Law, Cyril Amarchand Blog (January 14, 2020).

payment of gratuity is still uncertain with respect to fixed term workers employed for less than one year. Another major darts in such nature of employment are job insecurity and unheard, unresolved unfair work practices like unreasonable overtime, denial of rightful wages and leaves, etc. The 2020 Code, furthermore, does not specify kind of work for fixed term employment, hence, such workers may encroach into the jobs of permanent workers, thereby, affecting their working and social security rights.

Herein, it is pertinent to note the recommendation given by the Second National Commission on Labour⁷ that no worker should be kept continuously for more than 2 years as a temporary worker for permanent job or post. Also, the Contract Labour (Regulation and Abolition) Act, 1970 empowers the government to prohibit contract labour employment in certain areas such as perennial nature work and wherein the work to be performed by contract workers is performed by the regular workmen and is necessary for business carried out by particular establishment. Along with working area, the tenure and terms of renewal of fixed term employment must also be specified in the code. It has been noted by the International Labour Organization in 2016 that several countries regulate and allow limited terms of renewal and tenure of fixed employment contracts along with restricting the number and proportion of fixed term workers in overall workforce in a particular establishment.

VI. CONCLUSION

It can be concluded that the 2020 Code has indeed strengthened the concept of fixed term employment and social security by extending its benefits to the workers under unorganized sector in consonance with their rights specified in the constitution of India. However, certain issues require restructuring and reassessment along with their impacts once the code is in force. The mandate of Aadhar-based registration is in sheer violation of recognition of right to privacy by the apex court as a part of right to life under Article 21 in the 2016 judgement. Moreover, the code bars jurisdiction of civil courts without specifying the legal jurisdiction of labour courts and industrial tribunals. The same needs to be addressed and reviewed along with provisions of compensation and benefits, human resources, policies and compliance requirements, workforce management, redressal mechanism etc., and accordingly required revisions must be made for pragmatic and effective implementation of the 2020 Code to achieve the objective of assuring constitutional right of social security to all.

⁷ Report of the National Commission on Labour, Ministry of Labour and Employment, 2002, <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.