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STANDING COMMITTEE ON LABOUR

(2019-20)

(SEVENTEENTH LOK SABHA)

MINISTRY OF LABOUR AND EMPLOYMENT

THE CODE ON SOCIAL SECURITY, 2019

NINTH REPORT



LOK SABHA SECRETARIAT

NEW DELHI

July, 2020/Sravana, 1942 (Saka)

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Presented to Hon'ble Speaker on 31.07.2020



LOK SABHA SECRETARIAT

NEW DELHI

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COMPOSITION OF THE STANDING COMMITTEE ON LABOUR
(2019-20)

Shri Bhartruhari Mahtab - Chairperson

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri John Barla
4. Shri Raju Bista
5. Shri Pallab Lochan Das
6. Shri Pasunoori Dayakar
7. Shri Feroze Varun Gandhi
8. Shri Satish Kumar Gautam
9. Shri B.N. Bache Gowda
10. Dr. Umesh G. Jadhav
11. Shri Dharmendra Kumar Kashyap
12. Dr. Virendra Kumar
13. Adv. Dean Kuriakose
14. Shri Sanjay Sadashivrao Mandlik
15. Shri K. Navaskani
16. Shri Khalilur Rahaman
17. Shri D. Ravikumar
18. Shri Nayab Singh Saini
19. Shri Ganesh Singh
20. Shri Bhola Singh
21. Shri K. Subbarayan

RAJYA SABHA

22. Shri Oscar Fernandes
23. Shri Elamaram Kareem
24. Dr. Raghunath Mohapatra
25. Dr. Banda Prakash
26. Shri Rajaram
27. Ms. Dola Sen
28. Shri M. Shanmugam
29. Shri Dushyant Gautam
30. Shri Vivek Thakur
31. Shri Neeraj Dangi

SECRETARIAT

1. Shri T.G. Chandrasekhar - Joint Secretary
2. Shri P.C. Choulda - Director
3. Shri D.R. Mohanty - Additional Director
4. Ms. Miranda Ingudam - Deputy Secretary

INTRODUCTION

I, the Chairperson, Standing Committee on Labour (2019-20) having been authorized by the Committee do present on their behalf this Ninth Report on 'The Code on Social Security, 2019' relating to the Ministry of Labour and Employment.

2. The Code on Social Security, 2019 was introduced in Lok Sabha on 11.12.2019 and referred to the Committee on 23.12.2019 for examination and report within three months i.e. by 22.03.2020. The Committee obtained extension of time from Hon'ble Speaker upto the first day of the Monsoon Session 2020 to present the Report.

3. In the process of examination of the Code, the Committee invited the views/suggestions from Trade Unions/ Organizations/ Individuals/ Stakeholders through a Press Communiqué and received around 65 views/suggestions. The Committee had briefing by the representatives of the Ministry of Labour and Employment on 9th January, 2020. Further oral evidences on the Code could not be held due to the circumstances arising out of Covid-19 pandemic. The Report has thus been finalised based on the written testimony/clarifications/comments/replies received from the Stakeholders/Trade Unions/Experts/State Governments as well as from the Ministry of Labour & Employment.

4. The Committee considered and adopted this Report during their Sitting held on 29th July, 2020.

5. The Committee wish to express their thanks to the representatives of the Ministry of Labour and Employment for briefing the Committee and placing before them all the requisite information sought for in connection with the examination of the Code. The Committee also express their thanks to all those who had submitted written memoranda containing suggestions on the various provision of the Code.

6. The Committee would like to place on record their deep appreciation for the commitment, dedication and valuable assistance rendered including drafting of the Report by the officials of the Lok Sabha Secretariat attached to the Committee.

7. For ease of reference and convenience, the Observations/Recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
30th July, 2020
8th Shravana, 1942 (Saka)

BHARTRUHARI MAHTAB
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR

REPORT

I. INTRODUCTORY

1.1 India's obligation to provide a comprehensive social security cover for the workers may be traced to several provisions enshrined in the Constitution of India which include *inter-alia* securing equal pay for equal work for both men and women; directions pertaining to the State's responsibility for making effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement; for securing just and humane conditions of work and for maternity relief; to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities etc.

1.2 Similar obligations have been cast by a number of international instruments in place pertaining to labour rights *viz*, The Universal Declaration of Human Rights, 1948; International Covenant on Economic, Social and Cultural Rights, 1976; International Labour Organisation (ILO) Conventions; and Sustainable Development Goals. In line with the recommendations of the Second National Commission on Labour, the Ministry of Labour & Employment proposed four Labour Codes *viz* 'The Code on Wages, 2019'; The Occupational Health, Safety and Working Conditions Code, 2019; The Industrial Relations Code, 2019; and The Code on Social Security, 2019. 'The Code on Social Security, 2019' intends to subsume the following nine Central Labour Acts after simplifying and rationalising the relevant provisions contained therein:

- (i) The Employees' Compensation Act, 1923;
- (ii) The Employees' State Insurance Act, 1948;
- (iii) The Employees Provident Fund and Miscellaneous Provisions Act, 1952;

- (iv) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- (v) The Maternity Benefit Act, 1961;
- (vi) The Payment of Gratuity Act, 1972;
- (vii) The Cine Workers Welfare Fund Act, 1981;
- (viii) The Building and Other Construction Workers Welfare Cess Act, 1996;
and
- (ix) The Unorganised Workers' Social Security Act, 2008.

1.3 The Salient features of the Code on Social Security, 2019, inter alia, are:-

- (i) to extend the coverage of Employees' State Insurance to all establishments employing ten or more employees and to the employees working in establishments with less than ten employees on voluntary basis and also to plantations on option basis. It further seeks to empower the Central Government to notify the applicability of the said coverage to establishments which carries on the hazardous or life threatening occupation irrespective of the number of workers employed therein;
- (ii) to extend the Employees' Provident Fund, Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme to all industries or establishments employing twenty or more employees and thereby expands the existing coverage;
- (iii) to make provision for specifying differential rates of employees' contribution for class of employees for employees' provident fund as the Central Government may notify for a specified period;
- (iv) to provide that the money dues shall be the charge on the assets of the employer and shall be paid on priority basis in accordance with the Insolvency and Bankruptcy Code, 2016;
- (v) to provide that in case of employer's failure to register the employee with Employees' State Insurance Corporation or failure to pay contribution and the Employees' State Insurance Corporation releasing the benefits to the workers, then, such benefits shall be recovered from the employer;
- (vi) to empower the Central Government to frame schemes for providing social security, to the gig workers and platform workers who do not fall under traditional employer-employee relation;
- (vii) to empower the Central Government, by notification, to constitute a Social Security Fund or funds for provision of social security for

the unorganised workers, platform workers or gig workers or any such class of workers;

- (viii) to provide for payment of gratuity in case of Fixed Term Employment on pro-rata basis even if the period of fixed term contract is less than five years;
- (ix) to provide for maternity benefit to the woman employee;
- (x) to provide for compensation to the employees in case of the accidents while commuting from residence to place of work and vice versa;
- (xi) to provide for levying and collecting the cess for the purposes of social security and welfare of building workers;
- (xii) to provide for limitation period of five years for institution of proceedings in respect of assessment and determination of money dues from employer;
- (xiii) to expand the sources of the fund for schemes to include funds from corporate social responsibility or any other source as may be specified in the scheme and also contains enabling provision for constituting the special purpose vehicle for the purpose of implementation of schemes for unorganised workers;
- (xiv) to provide for renaming the designation of Inspector as Inspector-cum Facilitator and to enhance his power to supply information and give advice to employers and workers concerning the most effective means of complying with the provisions of the proposed Code;
- (xv) to provide for filing of a single return electronically or otherwise by the employer;
- (xvi) to provide that the interests charged on delayed payments under the provisions of the proposed Code be specified in the rules;
- (xvii) to provide penalty for the different types of violations commensurate with the gravity of the violations;
- (xviii) to make Aadhaar mandatory for seeding at the time of registration of member or beneficiary or any other person to register or for receiving benefit;
- (xix) to empower the appropriate Government to exempt certain establishments from all or any of the provisions of the proposed Code.

1.4 'The Code on Social Security, 2019' was introduced in Lok Sabha on 11.12.2019 and referred to the Standing Committee on Labour on 24.12.2019 to complete the examination and present a Report thereon within three months *i.e* by 23rd March, 2020. In the process of examination of the Code, the Committee after obtaining Background Note, held an initial briefing meeting with the Ministry of Labour & Employment on 9th January, 2020 to get themselves acquainted with various provisions contained in the Code. Subsequent to that, a press advertisement was issued in the prominent National Dailies inviting views/suggestions of various Stakeholders including the State Governments. In response to that, the Committee received around 50 Memoranda containing views/suggestions of Trade Unions/ Associations/ Organisations/Individuals/ as well as some State Governments. These Memoranda were forwarded to the Ministry seeking their comments which were duly received in tranches. As the examination of the Code could not be completed by the stipulated timeline, the Committee sought and obtained extension of time upto the first day of the Monsoon Session 2020 to present the Report to the House.

1.5 In view of the unprecedented situation arising out of the COVID-19 Pandemic with the whole Country in total lockdown, the oral evidences of the Official/non-official witnesses could not be held and examination of the Code was done mainly through obtaining written clarifications/comments/replies from the Stakeholders as well as the Ministry.

1.6 Thus, based on such written inputs, the Committee have examined the provisions contained in the Code Clause by Clause and have given their considered opinion in the succeeding Chapters/Paragraphs.

II. AMALGAMATION

2.1 As mentioned earlier, nine Central Labour Laws are being amalgamated with the Social Security Code. According to the Ministry, the amalgamation of the said laws will facilitate the implementation and remove the multiplicity of definitions and authorities without compromising the basic concepts of welfare and benefits to workers. The proposed legislation would facilitate the use of technology ensuring transparency and accountability leading to effective enforcement of the provisions of the proposed legislation. The Ministry have clarified that widening the scope of the benefits to the fixed term employees and facilitating ease of compliance of labour laws would be a big step towards equity and promote setting up of more enterprises thus catalysing the creation of employment opportunities.

2.2 The Committee desired to know the rationale for including the Employment Exchange Act, 1959 in the Code when the Act is not in anyway connected with the theme of Social Security. In response, the Ministry submitted as under:

“All the Labour laws are being subsumed in one of the four Labour Codes. The Social Security Code seems to be the appropriate Code for subsuming the existing Employment Exchanges (Compulsory Notification of Vacancies) Act 1959.

1. The thrust of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 is on providing suitable workers to the employers and suitable jobs/employment opportunities to the would be workers(fresh job-seekers) and to the workers(looking for better jobs). The Labour market information collected under the provisions of the said Act and Rules made there under helps to connect employers with workers and those looking for work. The information also helps to ascertain the requirements of skills in the Labour market.

2. Moreover many definitions in the existing Act and the Social Security Code are common, for example, Employer, establishment, employee, wages, etc. Due to these common factors, the existing Employment Exchanges (Compulsory Notification of Vacancies) Act 1959 has been included in the proposed Social Security Code. This also helps

to achieve the objective of having minimum number of Acts/Legislations also”.

2.3 The Committee asked for the justification of subsuming the Cine Workers Welfare Fund Act, 1981, the Building and other Construction Workers (BOCW) Cess Act, 1996 and the Unorganised Workers Social Security Act, 2008 in the Code, when a number of similar Labour Welfare Fund Laws like the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976, the Beedi Workers Welfare Cess Act, 1976, the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 etc. have been left out of the Code. In reply, the Ministry stated as follows:

“At the time of introduction of Code on Social Security, 2019 the Cine Workers Welfare Fund Act, 1981, the BOCW welfare Cess Act, 1986 and the Unorganised Workers’ Social Security Act, 2008 were in force. As such these Acts have been subsumed in the Code on Social Security, 2019.”

2.4 Stakeholders and Experts have submitted that crucial details have been left to delegated legislation. The Code Bill appears to have significantly enlarged the scope of delegated legislation in favour of the Central government and/or appropriate Governments. Crucial matters left to delegated legislation which affect the core of the Code *viz.* a) Powers and functions of all social security organisations listed in Chapter II of the Code, including the Central Board, the Insurance Corporation, the Unorganized Workers National Social Security Board, the State Unorganized Workers Social Security Boards, the State Building Workers’ Welfare Boards, all Subordinate Committees including the Executive Committees, advisory committees, and expert committees; b) Powers to nominate members to all such committees; c) Qualifications to receive benefits under various provisions of the Code; d) Contributions to be made by government, employers and workers; e) Registration of establishments under various provisions and manner of record keeping. f) Powers to grant exemptions to (various classes) of establishments under different provisions of the Act.

2.5 The Stakeholders also pointed out that the Codification exercise is full of stipulations like “as may be specified” / “as may be prescribed”/ “may be framed” in respect of almost all substantive provisions of the Code for any change to be made in future in the provisions of entitlement, contributions and benefits and also on the aspects remaining undefined in the Bill. In response thereto, the Ministry stated that to make legislation dynamic and attuned to the emerging scenario it was necessary to provide for certain powers of modifications. However, there is no intention to give the powers of Parliament to lower authority.

2.6 Asked to state the specific reasons and compelling considerations under which so many substantive provisions have been intended to be made through executive decisions by-passing Parliament and when as many as nine extant and important Central Labour Acts are being subsumed with the Code, the Ministry submitted as under:

“It is a conscious decision of the Government as it provides for dynamism and flexibility to those provisions which are amenable to change as per needs of the time. For example, the word ‘specified’ has been used *inter-alia* in the context of following:

- I. Items which are in Schedule which relate to modification of applicability.
- II. In case of ESIC, the rate of contribution was part of the rule making only.
- III. In case of EPFO, it is proposed that rates of contribution can be changed depending upon the availability of budget and the economic situation. (Sec. 16)
- IV. Authority specified (sec 2(27))
- V. Occupational diseases specified (sec 2 (48))
- VI. Injuries to be specified under employees’ compensation (sec (2(52))
- VII. Dates of operation specified
- VIII. Composition of Committees specified
- IX. Functions specified

Further, as provided under section 159 of the Code; every rule, regulation, notification and scheme made or framed by the Central Government or the Corporation, under the Code shall be laid, as soon as may be after it is made or framed, before each House of Parliament, and if, both Houses agree in making any modification in the rule, regulation, notification or scheme or both Houses agree that the rule, regulation,

notification or scheme should not be made, such rule, regulation, notification or scheme shall thereafter have effect only in such modified form or be of no effect.”

2.7 The Code provides that the threshold for applicability of social security schemes may be amended through a notification without having to amend the Code itself. Asked to state whether it would be prudent that the threshold limits be specifically provided for in the present Act [Clause 152, First Schedule], the Ministry stated as under:

“Various threshold for ESIC, EPF, maternity benefit, gratuity, employees compensation etc have been provided in the Schedule because of their ease of amendability. It will be possible in the Government, whether state or central Government, to extend the benefit depending upon the financial situation in the country which may not be possible to estimate at the time of the enactment of the Code. Even at present, the threshold of ten for coverage under ESI Act, 1948 is for factories only [Section 2(12)] whereas there is no such threshold for coverage of establishments [Section 1(5)] which can be notified with approval of Central Government.”

2.8 The Committee find that the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 is one of the nine Acts proposed to be amalgamated with the Social Security Code, 2019. Justifying the proposed amalgamation, the Ministry have deposed that the labour market information collected under the provisions of the said Act and Rules made thereunder facilitates connecting the employers with the workers and fresh job seekers and moreover such amalgamation would help achieve the objective of having minimum number of Acts/Legislations. The Committee are not impressed with the logic adduced firstly because the said

Act provides for reporting of vacancies to the Employment Exchanges which act as labour market facilitation institutions and do not in any way connect with the theme and thrust of Social Security. Moreover, just to reduce the number of Acts/Legislations, any Act not connected with the subject matter of the Code should not be illogically subsumed in it. The Committee would, therefore, like to urge the Ministry to revisit the proposed amalgamation of the said Act with the Code and rather contemplate examining the compliance aspect to the provisions contained in the Act during more than six decades of its existence.

2.9 The Committee note that while the Cine Workers Welfare Fund Act, 1981; the Building and Other Construction Workers (BOCW) Cess Act, 1996; and the Unorganised Workers Social Security Act, 2008 are being subsumed with the Code, a number of similar Labour Welfare Fund Laws like the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976; the Beedi Workers Welfare Fund Act, 1976; the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972, etc. have been left out of the Code on the contention that the first three Acts were in force at the time of introduction of the Code and hence they are being subsumed. The Committee are not convinced with the Ministry's reasoning as it

appears inconsistent with the primary purpose to facilitate the implementation of various labour laws without compromising the basic concepts of welfare and benefits to workers. The Committee are of the considered opinion that when welfare of workers is the noble intent, it should universally be extended to workers from all social strata. Needless to say, it becomes imperative on the part of the Ministry to have a relook at those Labour Welfare Laws which have been left out of the amalgamation process irrespective of the abolition, so as to ensure that the merited and principled provisions as contained in such laws are duly incorporated in the Code for the overall benefit of the sector specific labour force without discrimination.

2.10 The Committee are apprehensive that the codification exercise is full of stipulations like "as may be specified"; "as may be prescribed"; "as may be framed"; etc. in respect of almost all substantive provisions pertaining to entitlement, contributions, benefits, etc. The Ministry have explained that it is a conscious decision of the Government as it provides for dynamism and flexibility to those provisions which are amenable to change as per the needs of time, without undermining the powers of Parliament. The Ministry have also narrated in detail the effect of the

notification, regulation etc. once they come before Parliament after being made or framed, in terms of Section 159 of the Code. The Committee are well aware of the procedure detailed by the Ministry. The moot point is whether so many substantive provisions ought to be left to the Executive Orders when an important legislation is being framed by subsuming with it as many as nine extant Labour Laws. The Committee take into cognisance the Ministry's submission that to make the legislation dynamic and attuned to the emerging scenario, it is necessary to provide the Executive certain powers of modifications, but they do not agree with the sweeping powers intended to be conferred upon the Central Government on the plea of dynamism and flexibility and at the cost of duplicity and ambiguity in the law making process. The Committee, therefore, exhort the Ministry to review all such equivocal and cryptic provisions and endeavour to have a course correction so as to determine a transparent and inclusive legislation with due regard to the powers and privileges of Parliament.

2.11 The Committee would like to emphasize that while proposing to amalgamate the nine extant Acts by simplifying and rationalising them, the Code ought to assume value addition over the said Acts so as to provide a firm legal and institutional framework for a universal

right based social security with a secure financial commitment and within a definite time frame.

III. PREAMBLE, SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

3.1 The Preamble to the Social Security Code, 2019 provides that the Bill seeks ‘to amend and consolidate the laws relating to social security of the employees and the matters connected therewith or incidental thereto.’

3.2 Various stakeholders have expressed concerns that the Preamble is non-committal in so far as it only states that existing laws are amended and consolidated whereas it was expected that the Code would highlight the importance of Social Security in the lives of workers and emphasise it as a right. The Ministry in their response stated that the suggestion would be accepted and certain changes have been made.

3.3 Clause 1(1) of the Code provides the short title of the Act to be called as ‘The Code on Social Security, 2019’.

3.4 Suggestions have been received from certain quarters that the short title should be ‘The Code on the Labour Welfare and Social Security’. In response, the Ministry clarified as follows:-

“The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:— (a) industrial relations; (b) wages; (c) social security; (d) safety; and (e) welfare and working conditions. In line with the recommendations of the Second National Commission, the Code has been named as Code on Social Security. Further, the word “social security” includes labour welfare.”

3.5 Clause 1(3) provides that ‘It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and

different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision. Sub Clauses (4),(5),(6) and (7) of Clause 1 further provide for differential commencement of different provisions of the Code.

3.6 Concerns were raised at many quarters on the non-provision of a specific time frame within which the provisions of 'The Social Security Code, 2019' would be given effect. Stakeholders suggested that a new provision specifying a timeline by which all workers including unorganised workers would be covered under Social Security benefits needed to be included in the Code itself.

3.7 When the Committee sought clarifications on non-provision of any time limit stipulations for formulation and implementation of Schemes in the Code itself, the Ministry stated as under:-

“Formulation of scheme is a process which requires consultation with stakeholders, such as, representatives of employers, employees and various Departments of the Government and completion of various statutory and administrative requirements.”

3.8 As it is expected that the Preamble to the Code should explicitly express its commitment for provision of social security benefits to all types of workers, the Committee desire that it should highlight the importance of social security in the lives of workers and emphasize it as a right, as also agreed to by the Ministry. Keeping in view the larger socio-economic interests of the Workforce and ensure their dues in terms of Social Security benefits, the Committee also recommend that there is an imperative

need to clearly spell out, either in the Preamble or at any other appropriate place, the principles to be followed for provision of Social Security benefits to all workers in accordance with the provisions stipulated in the Constitution of India, ILO Conventions and other International Instruments which espouse and guarantee various labour rights.

3.9 On a suggestion to rechristen the short title of the Code as 'The Code on the Labour Welfare and Social Security', the Ministry have submitted that the title 'Code on Social Security' has been put in place in line with the classification of labour laws as recommended by the Second National Commission on Labour. Moreover, 'Social Security' includes labour welfare. The Committee find merit in the reasoning advanced by the Ministry and desire that status quo of the title of the Code be maintained, albeit with the expansion in the definition of 'Social Security' which has been highlighted at the appropriate place in this Report.

3.10 The Committee are concerned to note that there is no provision of a specific time frame within which the stipulation of the Code would be given effect. Keeping in view the heightened expectation and aspirations of the labour force on a comprehensive law on Social Security which is being brought in after 73 years of

the Country's Independence, the Committee desire that a clear and specific enforcement date need to be stipulated in the Code itself so as to ensure effective provision of Social Security to all the workers within a definite timeline.

IV. DEFINITIONS (CLAUSE 2)

(i) Appropriate Government

Clause 2(3)

4.1 Clause 2(3) defines 'Appropriate Government' as under:-

"(a) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies or in relation to an establishment having departments or branches in more than one State, as the case may be, the Central Government; and (b) in relation to any other establishment, the State Government".

4.2 Some Stakeholders have suggested that the definition of 'appropriate Government' be given as the 'Union Government' to take up the role of devising all policies and implementation role for plantations across the Country. In response thereto, the Ministry stated that in the proposed Occupational Safety, Health and Working Conditions Code, a separate Chapter for plantations has been provided which specifically mentions the facilities for the workers in plantations which would greatly reduce workers exploitation.

4.3 Various Stakeholders have suggested that Central Government should be the Appropriate Government for those establishments in which Central Government or any of its establishments have fifty percent or more share.

Further, suggestions were made for a new clause containing definition for controlled industry as ‘any industry the control of which has been transferred to the claim by any Central Act in public interest.’

4.4 In response thereto, the Ministry stated that in the revised Industrial Relations Code, the proposed definition of “appropriate government” includes controlled industry as under:-

“appropriate Government” means,—

(i) in relation to an industrial establishment or undertaking carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified in this behalf by the Central Government or the establishment of railways including metro railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking, subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government including establishments of the contractors for the purposes of such establishment, corporation, other authority, public sector undertakings or any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, as the case may be, the Central Government;”

4.5 The Committee appreciate that pursuant to their recommendations in the OSHWC Code and Industrial Relations Code to foster more clarity in the definition of 'Appropriate Government', the Ministry have come up with a new proposed definition of 'Appropriate Government' in the revised Industrial Relations Code, 2019 which includes 'controlled industry' and also contains provisions clearly stipulating that the appropriate authority would be the Central Government where not less than fifty-one percent of the paid up share capital is held by the Central Government in any

establishment, corporation, other authority, public sector undertaking or any company. In view of the fact that clear demarcation of responsibility between the Central Government and the State Governments would remove confusion and facilitate smooth implementation of the enactments, the Committee urge the Ministry to have a uniform and unambiguous definition of 'Appropriate Government' in all the Codes.

**(ii) 'Building or Other Construction Work' and Building Worker'.
Clauses 2(6) and 2(7);**

4.6 Clause 2(6) defines "Building or Other Construction Works" as under:-

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

Further, Clause 2(7) defines 'Building workers' as under:-

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

4.7 The State Governments of Punjab and Telangana have submitted *inter-alia* removal of threshold of 10 workers in the definition in Clause 2(6); exemption of construction of own residential house upto a certain limit; inclusion in the definition of 'Building Workers' in clause 2(7) any such person who is employed mainly in a managerial or supervisory or administrative capacity. In response, the Ministry clarified that the First Schedule has been added specifying the applicability of thresholds on various chapters such as Employees' Provident Fund, ESIC, gratuity, maternity benefit, employees' compensation, building and other welfare cess and social security for unorganized sector. Most of these thresholds required amendment of respective Acts earlier. Now, these thresholds have been made part of the Schedule and can be modified (increased or decreased) through notification.

4.8 The Ministry also stated that most of the definitions have been taken from the Code on Wages or from the Occupational Safety, Health and Working Conditions Code, 2019, to maintain uniformity in definitions, which was one of the main objectives of codification.

4.9 The Committee find that the definition of 'Building and Other Construction Work' and 'Building Workers' have been taken from the Code on wages and the Occupational Safety, Health and Working Conditions Code to maintain uniformity in consonance with the objective of the codification process. On the suggestions made by some State Governments for a provision for removal of threshold applicability in the definition of 'Building Workers' in Clause 2(7) itself, the Ministry have clarified that the First Schedule has been added to the Code specifying the applicability of thresholds which

can be easily increased or decreased through notifications without the requirement of amending the respective Acts. Though Committee find merit in the reasonings adduced by the Ministry, they, however, are of the opinion that instead of leaving things to be taken care of by the notification process, it would be appropriate to lower the threshold limit in the Code itself to address the concerns of the State Governments and for the benefit of the BOCWs.

(iii) Multiple Definitions of Various Types of Workers

4.10 The Code defines various types of workers *viz.* Gig Worker, Home-based Worker, Inter-State Migrant Worker, Platform Worker etc. differently under different Clauses. Various stakeholders/Trade Unions/Experts have expressed reservations on the multiple definitions of various types of Workers which would create confusion, as the definitions are scattered and in order to understand their applicability, one has to refer to a number of places.

4.11 Responding to the above observation, the Ministry stated as under:

“The definition of worker has been deleted as they are sub-set of employee for social security. For the rest, it is a matter of fact that the other form of workers like Building Workers, unorganised workers, unorganised sector workers, home based workers, platform workers have to be defined separately as certain provisions are related to them only.”

4.12 As regards another suggestion to define ‘Domestic Workers’ in the Code, the Ministry submitted as follows:

“Presently domestic workers are not covered in Unorganised Workers Social Security Act (UWSSA), 2008”.

4.13 It has also been highlighted in various quarters that in the unorganised sector, most of the times workers are involved in multiple trades simultaneously and a high percentage of unpaid family labour is involved in

unorganised trades. Moreover, their livelihoods are not sustainable and trades keep on changing. They have suggested that an exhaustive definition of the unorganised sector to cover all the aspects including unpaid family labour be brought about in the present Code.

4.14 The Committee note that the Code defines various types of workers differently under different clauses on the premise that certain provisions are exclusively related to certain types of workers. In this context, the Committee note that while Clause 45 of the Code contemplates bringing the Gig Workers and Platform Workers under the ESI Scheme which is basically meant for the Organised Sector, they are also included under the Chapter on ‘Social Security for the Unorganised Workers’ wherein Clause 114 provides for framing of exclusive Schemes for Gig Workers and Platform Workers. Keeping in view the fact that specific welfare schemes are envisaged in the Code for ‘Unorganised Workers’ as distinguished from the ones available for those in the ‘Organised Sector’, the Committee feel that there is a need for more clarity in the definitions indicating unambiguously whether a particular worker belongs to the Unorganised Sector or Organised Sector or both. While appreciating the desirability of having different definitions for different workers for effecting worker specific provisions, the Committee are, however, of the firm opinion that

adequate safeguards have to be built in to ensure that such multiplicity in definitions do not in anyway impede extension of social security benefits to any type of worker.

(iv) Contract Labour and Contractor

Clause 2(18) and Clause 2(19)

4.15 Clause 2(18) and Clause 2(19) of the Code defines ‘Contract Labour’ and ‘Contractor’ as under:-

Clause 2(18):“contract labour" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the employer and includes inter-State migrant worker but does not include an employee (other than part time employee)who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment(including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;”

Clause 2(19): “contractor", in relation to an establishment means a person, who—

- (i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment through contract labour; or
- (ii) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor.”

4.16 Suggestions have been received from stakeholders that many contractors would evade the provisions of law by saying that they are not the contractors, as they are concessionaires or licensees, the terms largely used in railways and airports and in other infrastructural sectors. They, therefore suggested that a proviso may be added in the definition to include agencies engaged by any establishment in the name of concessionaire/licensee.

4.17 In response to the above suggestion, the Ministry submitted as under:

“The Code has been finalised after consultation with stakeholders and to maintain the uniformity, the definition of “contractor” which has been

provided in the Code on Wages, 2019 (which has been notified in the Gazette of India on 8th August, 2019) has been proposed in the Social Security Code. This definition of “contractor” is as defined in the existing Contract Labour (Regulation & Abolition) Act, 1970 and worked well over the years.”

4.18 Regarding the ambiguity in the definition of Contract Labour which might become a major source of litigation, the Ministry stated as under:

“The Code has been finalised after consultation with stakeholders and to maintain the uniformity, the definition of “contract Labour” which has been provided in the Code on Wages, 2019 (which has been notified in the Gazette of India on 8th August, 2019) has been proposed in the Social Security Code.”

4.19 The Committee note that the definition of ‘contractor’ does not include terms like ‘concessionaire or licensee’ which are largely used in Railways, Airports and other Infrastructural Sectors on the justification that the definition of ‘contractor’ is in line with the existing definition in the Contract Labour (Regulation & Abolition) Act, 1970 which had worked well over the years and retained in ‘The Code of Wages, 2019’ to maintain uniformity and this had been done in consultation with Stakeholders. Notwithstanding the stand taken by the Ministry and keeping in view the need to incorporate new and evolving terms in the labour market, the Committee recommend that a proviso may be added in Clause 2(19) stating that ‘the contractor includes the agencies engaged by any establishment in the name of concessionaire/ Licensee’.

4.20 As regards the definition of 'Contract Labour', though the Ministry have deposed that it has been done as per the Code on Wages, 2019 after consultations with the Stakeholders, the Committee feel that some terms used in the definition viz., 'regularly employed', 'employment governed by mutually accepted standards of conditions of employment'; engagement on permanent basis'; 'periodical increment;' and 'other welfare benefits' seem to be ambiguously worded which are liable to be interpreted differently and may be a major source of litigation detrimental to the interests of contract labour. The Committee, therefore, desire that these terms need a review for appropriate interpretation.

(v) Contribution

Clause 2(20)

4.21 Clause 2(20) defines 'contribution' as under:-

“contribution” means the sum of money payable by the employer, under this Code, to the Central Board and to the Corporation, as the case may be, and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Code;”

4.22 A number of Stakeholders suggested that the Code must accommodate the long standing demand of workers for considering the Government as the employer of a worker when a clear employer-employee relationship cannot be established and therefore the definition should be amended to include contribution by the Central and/or State Government on behalf of workers.

4.23 In terms of the provisions made in Clause 109 of the Code, contributions to the Social Security Fund for provision of Social

Security to the Unorganised Workers, includes contributions from Central Government, State Government, beneficiary workers, Corporate Social Responsibility funds or any other source as may be specified in the Schemes. Keeping in view the various types of contribution envisaged in the Code, the Committee recommend that the definition of ‘contribution’ be modified to make it inclusive of the other types of contribution intended from other sources too. The Committee would also like the Ministry to specifically pay attention towards making contribution by the Appropriate Government in cases where a clear employer-employee relationship does not exist or cannot be established and where the employee is not able to contribute, especially those who do not come under the threshold limit.

(vi) Employee

Clause 2(26)

4.24 Clause 2(26) of the Code defines ‘Employee’ as under:-

“employee” means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semiskilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union:

Provided that for the purposes for Chapter III and Chapter IV, the term "employee" shall mean only such employee drawing wages less than or equal to the wage ceiling notified by the Central Government,

respectively, for said Chapters and such other persons or class of persons as the Central Government may, by notification specify to be employee for the purposes of either of such Chapters, or both:

Provided further that for the purposes of Chapter VII, the term "employee" shall mean only such persons as specified in the Second Schedule and such other persons or class of persons as the Central Government, or as the case may be, the State Government may add to the said Schedule, by notification, for the purposes of that Government”

4.25 Some Stakeholders pointed out that the provisions made in earlier drafts included the suggested definitions which would ensure the effective inclusion of a vast number of workers in these categories such as home-based workers, domestic workers, Anganwadi and ASHA workers, part-time workers, any worker employed or engaged on ‘retainer-ship fee’ basis, a fixed term worker, commission or piece rate worker, apprentice not covered under Apprentice Act, 1961, informal worker etc.

4.26 Domain experts also submitted with respect to the first proviso of the clause that “the wage ceiling for employees for the purpose of applicability of Chapter III and Chapter IV to be notified by the Government”, is restrictive in nature in terms of coverage and hence may be done away with. They also pointed out that the present wage ceiling of Rs. 15,000 for EPF and Rs. 21,000 in case of ESIC is very low and excludes many informal workers in the formal sector from the ambit of the EPF and ESIC benefits. In response thereto, the Ministry clarified that the provisions for determining wage thresholds by Central Government for EPFO/ ESIC through subordinate legislation was as per the existing practice.

4.27 Further suggestions have been received that for purposes of Chapter III and IV – the wage thresholds should be determined by an automatic process of wage indexation with CPI every three or five years or any reasonably determined period so that dependence on notification could be done away with.

4.28 In response to suggestion received from various quarters for entire modification of definition of 'employee', the Ministry stated that the definition of "employee" was based on the definition contained in the Code of Wages, 2019.

4.29 The Committee find that the definition of 'employee' in Clause 2(26) has left out many types of workers from its ambit though the earlier drafts included Anganwadi and ASHA workers etc. Further, the first proviso to the clause stipulating that 'the wage ceiling for employees for the purpose of applicability of Chapters III & IV to be notified by the Government' appears to be restrictive in nature in terms of coverage. Moreover the prescribed low wage ceiling of Rs.15,000/- for EPF and Rs.21,000/- for ESIC, would exclude many informal workers in the formal sector from the ambit of EPF and ESIC benefits. The Committee are not convinced with the Ministry's clarification that provisions for determining wage thresholds by Central Government for EPFO/ ESIC through subordinate legislation is as per the existing practice. Just because a practice has been going on since ages, it does not any way obstruct the Government to initiate improvements in the existing system. The Committee, therefore, impress upon the Ministry to expand the definition of 'employee' so as to encompass all sorts of workers such as Anganwadi and Asha workers as found place in earlier drafts of the

Code. Further efforts ought to be made to determine wage thresholds through an automatic process of wages indexation with Consumer Price Index (CPI) periodically which would obviate dependence on notifications/subordinate legislation.

(vii) Employment Injury

4.30 Clause 2(28) of the Code defines 'Employment Injury' as under:-

“employment injury” means a personal injury to an employee, caused by accident or an occupational disease, as the case may be, arising out of, and in the course of his employment, being an insurable employment only for the purposes of Chapter IV, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;”

4.31 Suggestions have been received from Stakeholders that the definitions and occupational disease as defined for the purposes of Chapter IV may be included in this clause uniformly throughout 'The Code on Social Security, 2019'. It has been stated that currently, these categories of accident and occupational disease have only been defined in relation to insurable employment for the purposes of Chapter IV whereas insurance must be a provision for all workers, including those in contract and/or in the unorganised sector.

4.32 In response to suggestions received from certain quarters for modification of the definition of 'employment injury', the Ministry clarified that the definition was based on the definition contained in the ESI Act, 1948.

4.33 The Committee find that the definition of 'employment injury' in Clause 2(28) is based on the definition contained in the ESI Act, 1948 and it includes only the types of accidents and occupational diseases as defined for the purposes of Chapter IV on 'Employees'

State Insurance Corporation’ (ESIC) in relation to insurable employment. The Committee are of the considered opinion that the definition needs to be standardized and made more inclusive so that the unorganized sector is also given due coverage for availing benefits due to ‘employment injury’.

(viii) Establishment

Clause 2(29):

4.34 Clause 2(29) defines establishment as under:-

“establishment” means—

- (a) a place where any industry, trade, business, manufacture or occupation is carried on; or
- (b) a factory, motor transport undertaking, newspaper establishment, audiovisual production, building and other construction work or plantation;
- (c) a mine or dock work;”

4.35 Domain Experts suggested that the definition should include any industry, trade, business and these must be defined in the Code. It has also been pointed out that the definition does not clarify whether it covers agricultural holdings and households. Some Stakeholders on the other hand had suggested that the definition must be amended to explicitly state that it includes a place where an industry, trade, business, manufacture, occupation or exchange of services is carried on, including with less than ten workers as they have been excluded from the provisions of the Code in the current definitions of establishment and factory.

4.36 On the specific point that the definition of ‘establishment’ does not clarify whether it covers agricultural holdings and households, the Ministry clarified that it did not cover either of the two.

4.37 Some Stakeholders suggested that a common definition of 'establishment' should be arrived at incorporating all the provisions of various other relevant Acts. The Ministry thereupon responded that the definition was based on the one contained in the Occupational Safety, Health and Working Conditions Code. The Ministry further submitted that a common definition across all Codes was being attempted and the existing definition seemed adequate.

4.38 According to the Ministry the definition of 'Establishment' is based on the one contained in the Occupational Safety, Health and Working Conditions Code and does not cover agricultural holdings and households. The Ministry have also submitted that a common definition of 'Establishment' is being attempted across all the Codes. The Committee desire that with a view to extending social security benefits to all the workers without discrimination or differentiation, the definition of Establishment should also include 'exchange of services' with a provision of less than ten workers alongwith trade, business, manufacturer or occupation, etc. is carried on etc. as mentioned in Clause 2(23)(a).

(ix) Fixed Term Employment

Clause 2(34)

4.39 Clause 2(34) defines 'fixed term employment' as under:-

"fixed term employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period:

Provided that—

- (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature; and
- (b) he shall be eligible for all benefits under law available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment;”

4.40 Some Stakeholders suggested that benefit needed to be given regardless of the qualifying period and therefore the words “even if his period of employment does not extend to the required qualifying period of employment should be deleted. It was submitted that the clause would defeat the qualifying period. The Ministry responded that the definition was as per the Industrial Relations Code, 2019.

4.41 On the suggestion received from some Stakeholders that the term ‘fixed term employment’ should be replaced with the term ‘contract worker’, the Ministry clarified that the term was as per the Industrial Relations Code.

4.42 The issue of ‘Fixed Term Employment’ has been extensively dealt with by the Committee in their Report on 'The Industrial Relations Code, 2019'. A critical analysis of the concept of Fixed Term Employment has revealed that its biggest advantage is that it accords all the benefits to a worker which are available to a permanent employee and there is no distinction between a fixed term employee and a regular employee. However, what concerns the Committee is the flexibility envisaged for the employer, without coherence in the definition, which might result in exploitation of the employees and promotion of 'hire and fire' policy by the

employer. The Committee, would therefore, like the Ministry to ensure incorporation of more protective and pre-emptive provisions in the definition, explicitly mentioning the conditions under which and the areas where the employers can secure Fixed Term Employments from a Designated Authority strictly based on an objective situation. The Committee also desire that the other suggestions relating to various issues of fixed term employment, as highlighted in the Report on Industrial Relations Code, 2019, be taken into consideration for appropriate implementation.

(x) Gig Workers; Platform Work; and Platform Workers

Clause 2(35);2(55) and 2(56);

4.43 Clauses 2(35); 2(55) and 2(56) define ‘Gig Worker’; ‘Platform work’ and ‘Platform Workers’ as follows:-

"gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship;"

"platform work" means a form of employment in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment;"

"platform worker" means a person engaged in or undertaking platform work;"

4.44 Various Stakeholders pointed out that the definition of gig worker in terms of all activities outside traditional employer-employee relationship seemed to be very broad and appeared to correspond to the concept of non-standard forms of employment (including temporary work, part-time work, temporary agency work and other multi-party employment arrangements, disguised employment relationships and dependent self-employment) as laid

out by the ILO (2015). They therefore suggested that it would be useful to narrow the definition of ‘gig worker’ to avoid confusion.

4.45 Some experts also suggested that the status of the gig workers and the platform workers must be clearly indicated in the Code and the Law must be clear whether these workers should be included in the organised or in the unorganised sectors.

4.46 It was also suggested that the definition of platform workers should be expanded to include work, employment, service and other activities (important to keep this blanket option to accommodate new forms of labour market activities that will emerge and will conform to the future of work model) – or there should be a facilitating provision in the Code to empower the Government to declare emerging consequences in the labour market.

4.47 In the above context, when the Committee desired to have the comments of the Ministry, they submitted as under:

“At present gig workers do not have a traditional employer-employee relation. Although no specific provision has been made for their social security, but scheme can be made under sections 45 and section 114 of the code. Further a social security fund has also been created.”

4.48 The Committee then asked, in the absence of a formal relationship between the Employer and the Gig/Platform Workers, the safeguards proposed to bring in obligations on the both parties. In reply, the Ministry deposed as under:

“The Gig workers and platform workers are newly emerging classification of workers which may in future are likely to form a separate class and separate nature of work involving characteristics of both organised as well as unorganised workers. ‘Gig worker’ is a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship. However, it is imperative that the company/establishment with whom he is in work arrangement for a continuous period of time, may also contribute

towards his social security. For the same enabling provisions has been provided for in Clause 109 and Clause 114 of the Code”.

4.49 The Ministry further supplemented as under:-

“The Provisions for Gig and Platform Workers are a new concept and have been drafted keeping in view flexibility to frame suitable social security schemes for them in future. The provision in Chapter IV to allow framing of Schemes for such workers through ESIC is an additional measure. Freelancer is also a kind of Gig Worker and is therefore included in the Code.”

4.50 The Committee find that the provisions for Gig and Platform Workers are a new and emerging concept and have been drafted keeping in view flexibility to frame suitable Social Security Schemes for them in future. The Committee also note that Gig workers and platform workers are likely to form a separate class with separate nature of work involving characteristics of both organised as well as unorganised workers. Thus, there is no clarity as to whether Gig and Platform workers belong to the organized sector or the unorganized sector. It, therefore, becomes imperative to clearly mention the status of the Gig workers and platform workers in the Code itself so as to effectively extend the social security provision as per specific categorisation. Further, since the definition of ‘Gig Workers’, given in terms of all activities outside the traditional employer-employee relationship, appears too broad, the Committee desire that the definition of ‘Gig Workers’ needs to be made more specific and

unambiguous to obviate any scope for any confusion and misinterpretation.

4.51 On the definition of ‘Platform work’, the Committee are of the considered opinion that the definition needs to be expanded to include work, employment, service and other activities and an enabling provision should be incorporated in the Code to empower the Government to accommodate new emerging forms of labour market activities that may conform to the future work model.

(xi) Inspector-cum-Facilitator

Clause 2(37)

4.52 Clause 2(37) defines ‘Inspector-cum-Facilitator’ as under:-

“‘Inspector-cum-Facilitator’ means an Inspector-cum-Facilitator appointed under section 122;”

4.53 Suggestions were received from various Stakeholders that in the term ‘Inspector-cum-Facilitator’, the word ‘facilitator’ should be deleted since facilitation work is not part of the work of ‘inspector’. Similar suggestions were received from various Stakeholders that in clause 2(37), Inspector-cum-Facilitator may be divided into Inspector and Facilitator separately. In response thereto, the Ministry stated as under:-

“The word Inspector-cum-Facilitator has been introduced in the Code in place of Enforcement Officer, Inspector, Social Security Officer, etc. Now, in addition to enforcement functions, an Inspector-cum-Facilitator would supply information and impart advice to employers and workers concerning the most effective means of complying with the provisions of this Code.”

4.54 The Committee note that the term ‘Inspector-cum-Facilitator’ as defined in Clause 2 (37) has been introduced to supply information and impart advice to employers and workers concerning the most effective means of complying with the provisions of the Code, in addition to enforcement functions. A number of Stakeholders have suggested that the word ‘Facilitator’ should be deleted since facilitation work is not part of the work of ‘Inspector’ or they should be divided into ‘Inspector’ and ‘Facilitator’ separately. The matter has extensively been dealt with by the Committee while examining the OSHWC Code, 2019 and in that Report, the Committee had agreed to the Ministry's justification that the Inspector should facilitate giving guidance to both the employer and the employee for better working relationship. The Committee reiterate their stance and desire the Government to ensure that the purpose and intent of entrusting the role of facilitator to the inspector are well served in the effective implementation of social security to the workers.

(xii) Social Security

Clause 2(70)

4.55 Clause 2(70) defines ‘Social Security’ as under:-

“Social security means the measures of protection afforded to employees to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work

injury, maternity or loss of a breadwinner by means of rights enshrined and schemes framed under the Code.”

4.56 On being asked whether there was a uniform and all encompassing definition of ‘Social Security’, the Ministry merely reproduced the definition as given in Clause 2(70) above.

4.57 On the suggestion given by Stakeholders that the word ‘employee’ in the definition of ‘Social Security’ be replaced with the words ‘permanent or temporary employee’, the Ministry responded that the definition of employee as provided in clause 2(26) of the Code would be inclusive of any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment and there was no distinction on the basis of permanent or temporary.

4.58 On further being asked whether it would be appropriate to define the term ‘Social Security’ encompassing various Superannuation and Insurance Schemes like Life Insurance, Medical Insurance, Accidental Insurance and Occupational Insurance etc., the Ministry stated that the term ‘Social Security’ as defined in clause 2(70) of the Code on Social Security, 2019 covered the essential elements of social security *viz*, access to health care, income security particularly in case of old age, unemployment schemes, coverage during inability to work due to injury, maternity or loss of breadwinner and thus different aspects of insurance were adequately covered under the existing definition.

4.59 On a specific suggestion given by certain quarter for replacement of the words ‘by means of rights enshrined and schemes framed under the Code’ with ‘by means of rights enshrined and under the relevant provisions of the Code’, the Ministry responded that the words have been proposed to give flexibility to the Government to frame Social Security Schemes.

4.60 The Committee note that ‘Social Security’ as defined in Clause 2(70) covers essential elements of Social Security viz access to health care, Income security particularly in case of old age, unemployment schemes, coverage during inability to work due to injury, maternity or loss of breadwinner. However, the definition does not appear to be all encompassing as Superannuation and Insurance Schemes like Life Insurance, Medical Insurance, Accidental Insurance and Occupational Insurance do not find mention therein. Further, the provisions made for Social Security benefits are proposed to be extended through ‘Schemes’ framed under the Code and not through ‘relevant provisions’ of the Code on the plea of giving flexibility to the Government to frame Social Security Schemes. Keeping in mind the fact that the whole fulcrum of the Social Security Code would lie on the very definition of ‘Social Security’, the Committee are of the firm opinion that the definition be appropriately modified to make it all encompassing with specific mention of all the nine components contained in the International Labour Organisation (ILO) Convention on Social Security (minimum standards) 1952 viz, medical care, sickness benefits, unemployment benefits; old age benefit; employment injury benefit, family benefit, maternity benefit; invalidity benefit

and survivors' benefits. The Committee also desire that requisite housing facility to the workers be added in the components of Social Security.

4.61 Since concrete Schemes for provision of social security benefits to the workers have to be framed as per the flexibility accorded to the Government in line with the provisions under the Code, the Committee feel that it would be appropriate to replace the words 'schemes formed under the Code' with 'under the relevant provisions of the Code'.

(xiii) Unorganised Sector

Clause 2(77)

4.62 Clause 2(77) defines 'Unorganised Sector' as under:-

“unorganised sector” means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten”.

4.63 Various Stakeholders pointed out that no definition of enterprise has been given in the Code. It was also not clear whether other forms of ownership such as cooperatives have been excluded. There has been no clarity on how Self Employed Workers defined in the Code would be classified if their enterprises would employ less than ten workers or if these workers were above the ceiling of prescribed income or land threshold. The general apprehension of the Stakeholders was that if 'unorganised sector' was not identified and defined properly, categories of workers such as domestic workers, home-based workers, workers on a piece-rate or commission basis and other similar categories of workers might be excluded.

4.64 Some experts further pointed out that the concept of enterprise was generally being used in India only in the context of the non-agriculture sector. The use of such a restrictive meaning of enterprise would lead to the exclusion of a large number of workers in the agriculture sector, unless a corresponding unit of enterprise in agriculture was specified and used.

4.65 The Committee asked whether the definition of 'Unorganised Sector' should include an expressed set of parameters for provision of Social Security for the protection of the unorganized workers. In response, the Ministry submitted as under:

“Both the Central and State Governments are empowered to make laws, Schemes, programmes for the welfare of the labourers.

109(1) The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to –

- i) life and disability cover;
- ii) health and maternity benefits;
- iii) old age protection;
- iv) education;
- v) any other benefit as may be determined by Central Government.

109(2) The State Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to –

- i) provident fund;
- ii) employment injury benefit;
- iii) educational schemes for children;
- iv) skill upgradation of workers;
- v) funeral assistance; and
- vi) old age home.

As suggested by the Hon'ble Committee, the set of parameters can be provided while framing suitable welfare schemes for unorganised workers on the matter given in the above table by the appropriate Government.”

4.66 The main contention in the definition of 'Unorganised Sector' as given in Clause 2(77) is the usage of the word 'enterprise' without a clear definition of the term anywhere in the Code making it

unclear as to whether other forms of ownership such as cooperatives have been excluded. The Committee find merit in the general apprehension expressed that if ‘unorganised sector’ is not identified and defined properly, categories of workers such as domestic workers, home-based workers on a piece rate or commission basis and some other categories of workers might get excluded. The Committee further observe that the concept of enterprise is generally being used in India only in the context of the non-agriculture sector and use of such a restrictive meaning of enterprise would lead to exclusion of large number of workers in the agriculture sector. The Committee, therefore, recommend that the word ‘enterprise’ used in the definition of ‘unorganised sector’ be defined specifically within the definition or separately to remove any ambiguity in the interpretation of the provision.

(xiv) Unorganised Worker

Clause 2(78)

4.67 Clause 2(78) defines “Unorganised Worker’ as under:-

“unorganised worker” means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code;”

4.68 Some Stakeholders suggested that:-

“(a) Definition of wage worker in clause 2 (82) includes a domestic worker; but in Clause 2 (78) the reference is to “wage workers in the unorganised sector “which is an enterprise based definition.

(b) The exclusion of workers covered under the Industrial Disputes Act, 1947 and Chapter VII (Employees Compensation) in definition of unorganised workers will make identification and creation of database for such workers impossible and will create unwarranted complexity. Hence, the exclusion for identifying unorganised workers should be restricted to Chapters III (EPF) and IV (ESI) only. All other workers should be treated as unorganised workers. There is robust database for the Chapter III and Chapter IV.

(c) The applicability of the I.D Act, 1947 has been interpreted in various judgments of the Courts and the I.D Act, 1947 is being subsumed in the I.R Code 2019.

(d) It shall not be possible to create a database for unorganised workers as envisaged in Clause 113 of Social Security Code with such complex definition of unorganised worker. Further, such a definition may also lead to unnecessary litigation and prevent access to social security & welfare by the unorganised workers.”

4.69 Some other Stakeholder suggested that the definition of ‘Unorganised Worker’ should be expanded to include gig, platform, economy and freelance workers, Scheme workers, Part-time workers, own account workers, contributory workers, Agricultural Labourers and workers in allied occupations.

4.70 In response to the above suggestions the Ministry stated that the definition of ‘unorganised worker’ was based on the definition of the existing ‘The Unorganised Workers Social Security Act, 2008”.

4.71 The Committee are not convinced with the Ministry's contention that that the definition of ‘Unorganised Worker’ in Clause 2(78) of the Code is as per the definition given in ‘The Unorganized Workers Social Security Act, 2008’. When the UWSS Act, 2008 is being proposed to be subsumed with the Code, it becomes incumbent upon the Ministry to iron out the grey areas existed in the earlier Act and bring in improvement in the new

legislation. The Committee, therefore, impress upon the Ministry to modify the definition of 'Unorganised Worker' and include in it gig workers, platform workers, freelance workers, agricultural workers, self-employed workers etc. so as to ensure access to social security and welfare benefits by every single kind of unorganised worker. The Committee are confident that an unequivocal and conclusive definition of Unorganised Workers would facilitate creation of a national database of such workers as envisaged under Clause 113 of the Code and prevent unnecessary litigations.

(xv) Wage Worker

Clause 2(82)

4.72 Clause 2(82) defines 'Wage Worker' as under:-

“wage worker” means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be;”

4.73 Suggestions have been received from Experts that the words ‘with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be’ should be deleted from the definition as otherwise the implication would be to limit the scope of wage worker in the unorganised sector, which would be anomalous.

4.74 Stakeholders have also suggested that in the definition of ‘Wage Worker’, the agricultural workers and allied workers should also be included. In

response thereto, the Ministry stated that the definition of 'wage worker' was based on the one contained in the Unorganised Workers' Social Security Act, 2008.

4.75 According to the Ministry, the definition of 'Wage Worker' is based on the one contained in 'The Unorganized Workers' Social Security Act, 2008'. The Committee, however, feel that the scope of wage workers may stand limited in the unorganized sector in terms of the extant definition which stipulates that monthly wage amount to be notified by the Central Government or the State Government as the case may be. As it would be impractical for any Government to notify that monthly wage of a domestic worker employed by a single employer, the Committee recommend that the definition of wage worker be appropriately modified so as to remove artificial restrictions in the implementation of the social security provision.

V. REGISTRATION OF ESTABLISHMENT

Clause 3

5.1 Clause 3 provides for registration of establishment as under:-

“Every establishment to which this Code applies shall be registered within such time and in such manner as may be prescribed by the Central Government: Provided that the establishment which is already registered under any other labour law for the time being in force shall not be required to obtain registration again under this Code and such registration shall be deemed to be registration for the purposes of this Code.”

5.2 Domain Experts suggested that it might be preferable to continue the process of giving Social Security Code numbers to all the establishments and the employees and workers as suitably devised and portable. The present

scheme envisaged by the Central Government must be extended to all establishments coming under the coverage of the Code *i.e.* all the establishments in the non-agricultural sector and own account workers too.

5.3 It was also suggested that the database of registered enterprises along with types of employment (permanent, temporary, part-time, contract) and other details should be maintained online and should be made available to the public. The registration procedure and modalities may also be outlined including time frame for completion. It has also been pointed out that it would be important to clarify whether this clause implies that every establishment to which this Code applies would be compelled to formalise or register as a formal enterprise.

5.4 In response thereto, the Ministry stated that Clause 3 of the Bill sought to provide for registration of establishment to which the proposed Code would apply in the manner that would be provided in the rules.

5.5 The Ministry supplemented as under:-

“The exercise of codification is to simplify systems and processes. Towards this end, a common system of registration across all the Codes (wherever registration is required) would be developed.”

5.6 The Committee find that though mandatory registration of establishment has been stipulated in Clause 3, there are some lacunae in the registration process especially with respect to registration of the unorganized sectors since the definition of the word establishment in the Code has been restricted without a clear inclusion of agricultural holdings and households. The Committee are of the considered opinion that a robust registration process of each and every establishment is an integral step towards a real time

database of all Establishment and Workers employed therein including the Unorganised Workers. The Committee, therefore, desire that the registration process be made more comprehensive and inclusive to extend it to all establishments in the agricultural, non-agricultural as well as self-employed or own-account workers so as to create a real-time database of registered enterprises alongwith types of employment viz. permanent, temporary, part-time, contract, etc. which has to be maintained online and updated periodically. In other words, all establishments, without exception, should be required to be registered on mandatory basis with one body, instead of with multiple organisations and that sole body should remain responsible for provision of social security for all types of workers in the Country. Needless to say, the definition of 'Establishment' has to be accordingly revised in a more conceptually clear and definite manner.

VI. SOCIAL SECURITY ORGANISATIONS

Clauses 4 to 13

6.1 Chapter II of the Code, on 'Social Security Organisation' *inter-alia* provides for constitution of Central Board of Trustees; Constitution of Employees' State Insurance Corporation, National Social Security Boards; Constitution of State Building Workers Welfare Boards; Disqualification and Removal of a Member of any Social Security Organisation; Procedure for

transaction of business of Social Security Organisation; Constitution of State Board, Regional Boards, Local Committees etc.

6.2 Clause 6 of the Code provides for constitution of the 'National Social Security Board' as under:-

“(1) The Central Government shall, by notification, constitute a National Social Security Board for unorganised workers (hereinafter referred to as National Social Security Board) to exercise the powers conferred on, and to perform the functions assigned to it under this Code, in such manner as may be prescribed by the Central Government.

(2) The National Social Security Board shall consist of the following members, namely:—

- (a) Union Minister for Labour and Employment as Chairperson;
- (b) Secretary, Ministry of Labour and Employment as Vice Chairperson;
- (c) thirty-five members to be nominated by the Central Government, out of whom—
 - (i) seven members representing unorganised sector workers;
 - (ii) seven members representing employers of unorganised sector;
 - (iii) seven members representing eminent persons from civil society;
 - (iv) two members representing the Lok Sabha and one from the Rajya Sabha;
 - (v) five members representing Central Government Ministries and Departments concerned;
 - (vi) five members representing State Governments; and (vii) one member representing the Union territories;
- (d) Director General Labour Welfare—Member Secretary, ex officio.

(3) The Chairperson and other members of the National Social Security Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(4) The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Social Security Board shall be such as may be prescribed by the Central Government:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.

(5) The term of the National Social Security Board shall be three years.

(6) The National Social Security Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.

(7) The National Social Security Board shall perform the following functions, namely:—

- (a) recommend to the Central Government suitable schemes for different sections of unorganised workers;

- (b) advise the Central Government on such matters arising out of the administration of this Code as may be referred to it;
 - (c) monitor such social welfare schemes for unorganised workers as are administered by the Central Government;
 - (d) review the record keeping functions performed at the State level;
 - (e) review the expenditure from the funds under various schemes; and
 - (f) undertake such other functions as are assigned to it by the Central Government from time to time.
- (8) The Central Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the Central Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the Central Government may refer to it for advice.
- (9) Every State Government shall, by notification, constitute a State Board to be known as (name of the State) Unorganised Workers' Social Security Board (hereinafter referred to as the State Unorganised Workers' Board) to exercise the powers conferred on, and to perform the functions assigned to it under this Code, in such manner as may be prescribed by the State Government.
- (10) Every State Unorganised Workers' Board shall consist of the following members, namely:—
- (a) Minister of Labour and Employment of the concerned State-Chairperson, ex officio;
 - (b) Principal Secretary or Secretary (Labour) as Vice-Chairperson;
 - (c) twenty-eight members to be nominated by the State Government, out of whom—
 - (i) seven representing the unorganised workers;
 - (ii) seven representing employers of unorganised workers;
 - (iii) two members representing the Legislative Assembly of the concerned State;
 - (iv) five members representing eminent persons from civil society;
 - (v) seven members representing State Government Departments concerned; and
 - (d) Member Secretary as notified by the State Government.
- (11) The Chairperson and other members of the State Unorganised Workers' Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.
- (12) The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (10), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Unorganised Workers' Board shall be such as may be prescribed by the State Government:
Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.
- (13) The term of the State Unorganised Workers' Board shall be three years.

(14) The State Unorganised Workers' Board shall meet at least once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed by the State Government.

(15) The State Board shall perform the following functions, namely:—

(a) recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;

(b) advise the State Government on such matters arising out of the administration of this Code as may be referred to it;

(c) monitor such social welfare schemes for unorganised workers as are administered by the State Government;

(d) review the record keeping functions performed at the district level;

(e) review the progress of registration and issue of cards to unorganised sector workers;

(f) review the expenditure from the funds under various schemes; and

(g) undertake such other functions as are assigned to it by the State Government from time to time.

(16) The State Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the State Government may refer to it for advice.”

6.3 Clause 7 of the Code provides for constitution of State Building Workers Welfare Boards as under:-

“(1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the.....(name of the State) Building and Other Construction Workers' Welfare Board (hereinafter referred to as Building Workers' Welfare Board) to exercise the powers conferred on, and perform the functions assigned to, it under this Chapter.

(2) The Building Workers' Welfare Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.(3) The Building Workers' Welfare Board shall consist of a chairperson to be nominated by the State Government, one member to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government: Provided that the Building Workers' Welfare Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Building Workers' Welfare Board, and the manner of filling of casual vacancies of the members of the Building Workers' Welfare Board, shall be such as may be prescribed by the State Government.

(5) (a) The Building Workers' Welfare Board shall appoint a Secretary and such officers and employees as it considers necessary for the efficient

discharge of its functions of the Building Workers' Welfare Board under this Code.

(b) The Secretary of the Building Workers' Welfare Board shall be its chief executive officer.

(c) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Building Workers' Welfare Board shall be such as may be prescribed by the State Government.

(6) The Building Workers' Welfare Board shall perform the following functions, namely:—

(a) provide death and disability benefits to a beneficiary or his dependants;

(b) make payment of pension to the beneficiaries who have completed the age of sixty years;

(c) pay such amount in connection with premium for Group Insurance Scheme of the beneficiaries as may be prescribed by the appropriate Government;

(d) frame educational schemes for the benefit of children of the beneficiaries as may be prescribed by the appropriate Government;

(e) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed by the appropriate Government;

(f) make payment of maternity benefit to the beneficiaries;

(g) frame skill development and awareness schemes for the beneficiaries;

(h) provide transit accommodation or hostel facility to the beneficiaries;

(i) formulation of any other welfare scheme for the building worker beneficiaries by State Government in concurrence with the Central Government; and

(j) make provision and improvement of such other welfare measures and facilities as may be prescribed by the Central Government.

(7) The State Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to building workers and such other matters as the State Government may refer to it for advice.”

6.4 Stakeholders/Experts pointed out that in terms of the provision made in this Chapter, multiple Social Security Organisations have been envisaged whereas no Country in the world including large, populous federal Countries has multiple organisations governing Social Security. They further suggested that a framework of a model composite scheme should be there to bring in greater uniformity and sectional representation like inclusion of SCs, STs, minorities etc. should be there in the National and State Boards apart from maintaining gender balance.

6.5 The Committee desired to hear the views of the Ministry on the proposed composition of various Social Security Organisations. In response, the Ministry submitted as under:-

“The proposed composition of various Social Security Organisations under the Code is as per the existing Acts. The Social Security Organisations are tripartite bodies and a over a period of time balance has been created which helps a lot in their smooth functioning. Therefore, it is not envisaged to disturb the system which is functioning well. However, the Committee may like to take a view in this regard.”

6.6 The Committee asked whether there was a need for widening the sectional representation of SCs, STs etc. to help in bringing them to the discussion tables to know the issues faced by the deprived sections of the workers and thereby extending the outreach of Social Security to them. In response the Ministry stated that there was no restriction on representation of members belonging to any category based on caste.

6.7 The suggestion made by Stakeholders that in the compositions of the National Social Security Board in clause 6(2) and State Social Security Board in clause 6 (10), representation from other Backward Classes should also be there, was not found acceptable by the Ministry on the ground that they were as per the existing provisions in sections 5 and 6 of the Unorganised Workers’ Social Security Act, 2008 which has been found to be working well.

6.8 Some Stakeholders pointed out that the Code has left it to the Central Government which may, by notification, constitute ‘Board of Trustees’ and Executive Committee’ allegedly diluting and undermining the tripartite character of the Standing Committee of ESI by leaving it to the Central Government to decide. On being asked to furnish justification for the provision, the Ministry assured that the Government would not dilute the tripartite structure of the Board of Trustees of EPF or Corporation of ESIC. The Ministry

further clarified that this was done to bring more flexibility so that the composition could be adopted to the changing requirements of time.

6.9 On being asked to state the reasons for alteration/dilution of the definition, composition and responsibility of the tripartite Central Board of Trustees, a Statutory Body under the existing Act, the Ministry submitted that the said provisions were similar to section 5A of the EPF & MP Act, 1952 and the composition of the Committee is laid down in section 4. The Central Government has only been empowered to notify the constitution of Central Board and Executive Committee. The Ministry clarified that as such, there was no departure from the existing definitions and appointment procedures.

6.10 On a specific suggestion of some stakeholders regarding the need to enhance representation of workers from different sectors including women workers, to be represented in the various bodies to be constituted under the Code the Ministry stated as under:-

“The composition of various Social Security Organisations is as per the existing Acts. The Social Security Organisations are tripartite bodies and over a period of time, balance has been created which helps a lot in their smooth functioning. Therefore, it is not envisaged to disturb the system which is functioning well.”

6.11 Clause 6(2)(a), 6 (2)(b) and 6(3) of the Code provide for composition/background of the Board Members. Clause 6(2)(a) provides that the Union Minister for Labour & Employment as Chairperson of the National Social Security Board. Clause 6(3) however, provides that the Chairperson and other Members of the National Social Security Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration. A similar provision exists in clause 6(11) regarding qualification and domain expertise of State Social Security Board.

6.12 Stakeholders have suggested that instead of 7 members representing unorganised sector workers in the Board, it should be 10 members; increase of State Governments representation from 35 members to 40 and inclusion of OBC members in clause 6(4). In response thereto, the Ministry stated that it was as per section 5(2)(c)(i) of the existing unorganised workers' Social Security Act, 2008.

6.13 Asked to state whether the proposed provisions might be difficult to implement especially in the event of Chairperson and other Members not possessing qualification and domain expertise as per the requirement, the Ministry submitted that these provisions were as per the existing section 5 and 6 of the Unorganised Workers' Social Security Act, 2008. The Ministry further clarified that the existing scheme of things or provisions was functioning properly and there did not seem to be any need to make any change.

6.14 Clause 7(6) of the Social Security Code prescribes functions of the Building Workers Welfare Board outlining types of benefits. However, at present, inter-state portability is unfeasible across State Boundaries as benefits differ across States. In this context, the Ministry were asked to clarify as to whether a 'model composite Scheme' to bring greater uniformity among States would be a better alternative which should lay down 'minimum mandatory entitlement' across the States with inter-state portability. In response the Ministry stated as follows:-

“The Occupational Safety, Health and Working Conditions Code, 2019 envisages formulation of a scheme for portability of benefits for Building and other Construction Workers.”

6.15 Some petitioners submitted that clauses 5(1) and 5(3) of the Code seek to deliberately dilute and undermine the tripartite character of the Standing Committee of ESI leaving it to Central Government to decide. In response, the Ministry clarified that there was no change in the constitution of CBT and ESIC and no Committees or Regional/ State Boards have been abolished.

6.16 Some Stakeholders pointed out that the Central Board as provided for in clause 4(1) has not been benefitted by the representation of domain Experts. Though all the members of the Board bring with them varied experience and knowledge, which was very much necessary, the picture remains incomplete without in-house representation and therefore the Central Board need to be benefitted by expert members as well.

6.17 In response to the above suggestion the Ministry were not in agreement to amend the clause to specifically provide for domain experts in the Board of Trustees on the ground that the provision was as per the existing stipulations where CPFC was the ex-officio member Secretary of the CBT. He would be assisted by the Experts in the field who have vast service experience. Suggestions have also been received that for efficient functioning of Social Security Organisations and making it a world class Social Security System, a talented pool of Social Security Officers would be essential. The Ministry responded that the suggestion was not acceptable as the existing structure has been maintained.

6.18 In response to another specific query regarding clear mention of the proportion of women to be inducted in the National Social Security Board, the Ministry stated as under:-

“These provisions are as per the existing section 5 and section 6 of the Unorganised Workers’ Social Security Act, 2008. The existing provisions, of adequate representation to be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women which was there in the Unorganised Workers’ Social Security Act, 2008, have been retained in clause 6(4) and 6(12) of the Code on Social Security, 2019.”

6.19 On the suggestion received from various quarters for the need for enhanced role of Central Government in management of State Building

Workers Welfare Boards, the Ministry clarified that the composition of the State Building Welfare Boards was in line with the composition of the same prescribed in Section 18 of the existing Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

6.20 Clause 4 of the Code provides for constitution of the Central Board of Trustees for Social Security Organisations. Stakeholders have expressed apprehension over the possible dilution and undermining of the tripartite Character of the Standing Committee of ESI when it is left to the Government to decide the constitution of Board of Trustees. The Ministry have assured that there is no change in the constitution of the Central Board of Trustees and ESIC and no Regional/State Boards have been abolished. While taking note of the Ministry's statement, the Committee desire that the tripartite character of the composition of CBT and ESIC should not be diluted or undermined so as to justly address the apprehensions raised at many quarters.

6.21 The Committee's attention has been drawn to the fact that no Country in the World including large and populous federal Countries, has multiple organisations governing social security whereas the provisions of the Code have multiple social security organisations *viz.* National Social Security Board (NSSB), State

Social Security Boards (SSBs), State Building Workers Welfare Boards, EPFO, ESIC etc. The Committee feel that such an arrangement in the new legislation would be a mere continuation of the extant fragmented structure of social security. The Committee would, therefore, like the Ministry to look into the matter and explore the feasibility of putting in place a more compact system of governance of social security, without of course diluting the basic federal character.

6.22 According to the Ministry, the proposed composition of various Social Security Organisations under the Code is as per the existing Acts which are functioning well and therefore it is not envisaged to disturb the system. The Committee are not convinced with the argument because bringing in improvements does not tantamount to disturb the system. Since there is no restriction on representation of members based on caste or gender, as admitted by the Ministry, the Committee desire that a framework of a model composite scheme should be put in place to ensure greater uniformity and sectional representation like inclusion of members belonging to SC/ST/Minority/OBC communities in the organisations/Boards so as to address the labour related issues besetting the deprived sections of the workers. Equal attention

needs to be paid towards representation of women members not only to maintain gender balance but also to effectively extend the intended social security benefits to the women workers. Most importantly, sectoral representation in the Boards should not be lost sight of and accordingly the number of members representing the unorganised sector be suitably enhanced in view of the whopping percentage of workers employed in such sector whose interest and welfare have to be effectively safeguarded.

6.23 The Committee are concerned to note that at present inter-State portability of benefits for Building and Other Construction Workers is infeasible across State Boundaries as benefits differ across States. On the suggestion for a 'Model Composite Scheme' to bring greater uniformity amongst States as a better alternative laying down 'minimum mandatory entitlement' across the States with inter-State portability, the Ministry have submitted that the Occupational Safety, Health and Working Conditions Code, 2019 envisages formulation of a Scheme for portability of benefits for Building and Other Construction Workers. In view of the imperatives involved, the Committee desire that the Scheme as envisaged in the OSHWC Code be appropriately reflected in and synchronized with the Code on Social Security.

VII. EMPLOYEES PROVIDENT FUND (EPF)

Clauses 14-23

7.1 Clause 15 of the Code provides for the EPF Scheme as under:-

- “(1) The Central Government may, by notification:—
- (a) frame a scheme to be called the Employees' Provident Fund Scheme (herein after referred to as the Provident Fund Scheme) for which the provident funds shall be established under this Chapter for employees or for any class of employees and specify the establishments or class of establishments to which the said scheme shall apply;
 - (b) frame a scheme to be called the Employees' Pension Scheme (herein after referred to as the Pension Scheme) for the purpose of providing for—
 - (i) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Chapter applies; and
 - (ii) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees;
 - (c) frame a scheme to be called the Employees' Deposit Linked Insurance Scheme (hereinafter referred to as Insurance Scheme) for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Chapter applies; and
 - (d) modify any scheme referred to in clauses (a), (b) and (c) by adding thereto, amending or varying therein, either prospectively or retrospectively.
- (2) Subject to the provisions of this Chapter, the schemes referred to in clauses (a), (b) and (c) of sub-section (1) may provide for all or any of the matters respectively specified in Part A, Part B and Part C of the Fifth Schedule.
- (3) The schemes may provide that all or any of its provisions shall take effect either prospectively or retrospectively on and from such date as may be specified in that behalf in the scheme.”

7.2 As may be seen from above Clause-15 provides for framing of Employees' Provident Fund Scheme and Employees' Deposit Linked Insurance Scheme for the purpose of providing life Insurance benefits to the employees of any establishment or class of establishment to which Chapter III applies. The Fifth Schedule to the Code provides for 'Matters that may be provided in the Scheme. In this context, the Committee desired to know about the Agencies which would implement the Schemes and whether private Insurance agencies were being included as 'intermediate agencies. In response, the Ministry stated as under:-

“It is informed that the schemes of EPF, EPS and EDLI will be run only by EPF and no option whatsoever is provided to any establishment to become member of private insurance companies as against EDLI (Employees Deposit Linked Insurance Scheme). All existing provisions of EPF&MP Act, 1952 have been kept intact”.

7.3 On a pointed query as to whether an employee was given an option to choose any scheme from a basket of schemes, the Ministry stated that there was no such option of choosing schemes from a basket of schemes. The employees would be covered according to the applicability schedule of different chapters of the Code (First Schedule) which would cover distinct branches/ components of social security. Also, an eligible employee might also get covered under two chapters simultaneously, for instance under both EPFO and ESIC.

7.4 The Committee asked whether any scheme was privately administered and its mode of compliance with the regulatory norms/ guidelines. In reply, the Ministry submitted as under:-

“No private administration of the schemes is proposed in the Code on Social Security, 2019. Social Security Organisations have been proposed to be constituted under Chapter II of the Code of administration of various social security schemes under different chapters of the Code. The administering authorities proposed for different chapters of the Code are officers of the Central/ State Government and not private entities.”

7.5 On being asked to state the specific measures contemplated to strengthen the enforcement mechanism including grievance redressal machinery for the EPF Scheme, the Ministry stated as under:-

“To strengthen enforcement mechanism, the Code provides for generation of a web-based inspection and calling of information relating to the inspection, jurisdiction of randomised selection of inspection to the Inspector-cum-Facilitators, protocols for uploading inspection report electronically, etc. Under section 123 of the Code, the records to be maintained for inspection by employers and period thereof are proposed to be specified to bring in more accountability, transparency and purpose in the Inspection mechanism. As regards, grievance redressal, the CPGRAMS of the Government of India is an electronic grievance redressal forum and organizations like EPFO have their own electronic EPIFGMS. Besides, a large number of services of EPFO are also available on web and UMANG App.”

7.6 Some Stakeholders pointed out that the parent EPF and MP Act has four Schedules. These are all connected with coverage and scheming and scheduling the social security benefits. The present Code, in the name of simplification of labour laws omitted the 'industry' definition itself and abolished all the schedules which might result in unlimited executive power.

7.7 On being asked to state the considerations under which the Code proposes to altogether abolish all State/Regional Boards which were effectively functioning under the extant Act, the Ministry replied as under:-

“It is submitted that although section 5B of the present EPF & MP Act, 1952 provides for constitution of State Boards, such Boards were never constituted and instead there is an advisory body for each Political State known as Regional Committee as per Para 4 of the EPF Scheme, 1952. Such Committee is constituted by the Chairman of the Central Board until a State Board is constituted. That in the Code under section 12, there is provision for appointment of State Board of Trustees by the Central Govt. in consultation with the State Govt. The role and functions of the Regional Committee has been subsumed in the State Board to be constituted under section 12 of the Code.”

7.8 The Committee desired to be apprised of the specific reasons for the removal of the definition of 'Industry' unlike in Schedule-I of the extant Act as well as abolition of all the four Schedules as contained in the EPF and MP Act. In reply, the Ministry stated as under:-

“Removal of schedule is a pro-worker as well as pro-establishment provision. Having a schedule means that an officer in EPFO issues a notice to an establishment that the establishment falls under the purview of EPFO and then it determines whether the workers in that establishment are eligible for joining the scheme or not. Removal of schedule will clear this doubt and all establishments in the country having 20 employees or more will fall under Employees' Provident Fund (EPF) and there would be no issue of dispute whether an establishment is now under the social security coverage of EPF or otherwise. Further, the second, third and fourth schedule of the EPF&MP Act, 1952, provide for matters that may be provided for in the Employees' Provident Fund Scheme, Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme. The same has been provided in Part A, Part B and Part C of the Fifth Schedule of the Code. Also, the Code does not have any empty schedule annexed to it.”

7.9 Stakeholders submitted that there was no clarity on what would happen to the existing corpus and funds of the EPFO and suggested that clause 15(1) must state how the existing Provident Fund and Pension Schemes would be subsumed or integrated into the new Schemes. Moreover, experts submitted that clause 15(1) (a), (1) (b) and (1) (c) gives the power to the Government to further restrict the coverage of EPF to any class of employees/establishments through delegated legislation/notifications post enactment of the Code and not in congruence with Clause 4 and first schedule which states that Chapter III would be applicable to every establishment in which twenty or more employees are employed. Further, EPF has an existing income threshold of Rs.15,000 for applicability which restricts the coverage of EPF even to the informal workers in the organised sector as minimum wages in metro cities (class A area) are above Rs.15,000.

7.10 On being asked whether it was true that there was inordinate delay in voluntary coverage under EPF Scheme under section 1(4) of the existing EPF Act and whether the power to grant EPF could be vested on the Regional Head of each Scheme instead of centralising the power, the Ministry replied as under:-

“As per the procedure in vogue at present, any establishment to which law is not applicable is at liberty to get itself registered online on Shram Suvidha Portal by declaring consent of majority of employees and employer and after online registration, the establishment get ID (Code number) and user ID/password for operating the online filing of returns and online payment of dues on Unified Portal. So there is no delay in start of compliance by any establishment covered voluntarily. As per the present procedure, after such registration, inspection is conducted to ascertain whether the establishment was statutorily coverable or not and based on the finding the notification is issued.

In section 3 of the Code on Social Security, the registration of establishment has been made a statutory requirement which shall remove the ambiguity in so far as Chapter III is concerned and will expedite the process of notification which may be in e-gazette soon after watching compliance for 3 months after registration.

There is some delay in issue of notification u/1(4) of the Act in many cases of voluntary coverage as the Regional Offices conduct inspections to ascertain the statutory applicability of Act to such establishments and the finding with recommendations are sent by the Zonal Addl. CPFC.”

7.11 The Committee asked about the steps taken by the Ministry, while amalgamating the EPF and MP Act, 1952 with the Code, to ensure that all its aptly administered provisions including fund management were retained in the Code. In reply the Ministry stated as under:-

“It is submitted that sub-section (2) of section 16 of the chapter III provides that the Central Government shall set up funds for Provident Fund, Pension and Insurance Schemes and these funds shall vest in, and be administered by, the Central Board in such manner as may be specified in the respective Schemes. So the Central Board as envisaged in section 4 of Chapter II as a tripartite body constituted by the Central Govt. to control, administer and manage the Schemes. Further, no substantive changes have been envisaged vis-à-vis present provisions.”

7.12 On the issue of threshold limit, the Ministry submitted as under:-

“Earlier EPF&MP Act had a schedule in addition to the requirement that an establishment will have 20 employees and employees having salary up to Rs. 15000 per month would become eligible. In the Social Security Code, schedule which was earlier attached to the EPFO has been removed and now applicability has been made universal. This will also facilitate enforcement as the dispute regarding applicability itself will disappear.”

7.13 Asked to state whether it would be appropriate to abolish the threshold limit of 20 workers for EPF so as to enable universal coverage of all workers/employees, the Ministry submitted as under:-

“As already indicated, the applicability of EPF&MP Act on an establishment means additional liability of 13% on employer and 12% on employee which is deposited in the EPF Fund, EPS Fund and the EDLI Fund. However there is a possibility which can be explored that the EPF&MP act can be made applicable on any person or self-employed persons to become the part of EPF. However, in this case the contribution which is about 20% of income or wage limit on account of employer share and employee share and administrative changes will have to be borne by that person individually. The Committee may like to take a view.”

7.14 Regarding the dismantling of the existing functional structure of EPFO, the Ministry clarified as under:-

“There is no proposal to dismantle EPFO.”

7.15 On being asked to state the reasons for exclusion of Cooperative Societies from EPF Schemes, the Ministry stated as under:-

“Cooperative Societies are excluded from Chapter III if they employ less than 50 employees and work without aid of power. In the present scenario since most of the establishment work with aid of power, the exclusion is very rare to support certain establishments with very less disposable income for discharging the liability under EPF & MP Act, 1952. For example- weaver’s cooperative working on non-power looms.”

7.16 On suggestions given by various Stakeholders for inclusion of a provision in Clause 21 for authorising certain employers to maintain provident fund account and in case of plantations, maintenance to be done by EPFO, the Ministry clarified that there has been an enabling provision as per the existing EPF & MP Act, 1952 as provided for in clause 21 of the Code.

7.17 On suggestions received from various quarters on a more inclusive EPF regime, the Ministry responded as under:-

“The Code provides that where it appears to the Central Provident Fund Commissioner whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter III (EPF) should be made applicable to that establishment, the Central Provident Fund Commissioner, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement (section 1(5)). Further, the applicability of Employees’ Provident Fund and Employees’ Pension Scheme and Employees Deposit Linked Insurance Scheme has been extended to all Industries and Establishments employing 20 or more employees as the Schedule of coverage in the existing EPF&MP Act, 1952 has been removed.”

7.18 Stakeholders suggested that the provisions for contribution by employees and contractors, as contained in Clause 17, the deduction of PF contributions

by the principal employer directly from the contractor should only be permitted if the contractor does not have his own independent PF code or ESI code. Once an establishment has its own code, enforcement of social security obligations should be through the regulator, and not through the principal employer. In response thereto, the Ministry stated that it was as per the existing provisions (Section 8A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952. Otherwise, it would dilute rights of the workers.

7.19 The Government has launched PM Gareeb Kalayan Yojana on 26th March 2020 to help the poor fight the lockdown effects arising out of Corona Virus pandemic. PMGKY package is aimed at preventing disruption in the employment of low wage earning EPF members and extending support to the eligible EPF covered establishments. On being asked about the steps taken by the Ministry for timely and targeted relief to the beneficiaries, the Ministry submitted as under:-

“Under PMGKY, there are schemes which have been launched with reference to the benefits of PF. The first is allowing withdrawal from EPF account to the members to the extent of 3 months' salary or 75% of the outstanding balance whichever is less on the ground of Covid-19 pandemic. The scheme has already been rolled out and as on 17.04.2020, online Claims of more than 4.5 lakhs members has been processed and Rs.1416.5 Crore has been disbursed from the EPF accounts into Bank accounts of EPF members. Secondly, the Government has also sanctioned a scheme for payment of 24% of wages (12% each of employers and employees share) to all those employers who pay their salary in time to the workers. Estimated expenditure in the scheme is Rs. 4860 crore and is likely to benefit 72.2 lakh employees covering 3.77 lakh establishments. The employers of eligible establishments have started availing the benefits by filing Electronic Challan cum return (ECR). As on 17.04.2020 evening, contributions amounting to Rs.151.96 Crore has been credited to EPF accounts of 9.97 lakhs low wage earning employees (monthly wage less than Rs.15000/-) employed in 64107 establishments. This package has already incentivized the employers to disburse wages for March 2020 to extent of Rs.799.64 crore to 9.97 lakhs workers and prevented disruption in employment of these low wage earners.”

7.20 Concerns have been raised at many quarters that the threshold limit of 20 or more employees for EPFO registration can be used by

the employers to exclude themselves from EPFO coverage. Further, the Government has been empowered to further restrict the coverage of EPF to any class of employees/establishments through delegated legislation/notification post enactment of the Code and not in congruence with Clause 4 and the First Schedule as per which Chapter III would be applicable to every establishment in which 20 or more employees are employed. The Committee also note that the EFP has an existing threshold limit of Rs. 15,000/- p.m. for applicability which restricts the coverage of EPF even to the informal workers in the organised sector as minimum wages in Class A cities are more than Rs. 15,000/-. The Ministry have clarified that the Schedule which was earlier attached to the EPFO has been removed in the Code which would make applicability universal besides facilitating enforcement as the dispute regarding applicability itself will disappear. While taking note of the self-acclaimed pro-worker and pro-establishment intent of the Government, the Committee feel that certain infirmities and just apprehensions regarding the threshold limit in terms of employees and income are to be appropriately addressed.

7.21 The Committee desire that possibilities be explored to make the EPF&MP Act applicable to all the workers including self-

employed ones to become the part of EPF, notwithstanding the additional liability for deposit in EPF, EPS and EDLI Funds. As economic development takes place, the wage levels increase and therefore both the thresholds and rates of contributions should be hiked proportionately as determined by law. Since the matter affects labour welfare and employers' pay-roll tax burden, it should be determined by Parliament and not through notification route.

7.22 However, provisions be made empowering the Central Government to reduce the contribution rates in exceptional circumstances like areas affected by disasters in terms of the Disaster Management Act including pandemics because this would enable the Government to provide relief to the affected persons in Covid-19 like pandemics.

7.23 The Committee feel that the provisions made under Clause 19 appear to be fully misconceived as Section 36(4) of the Insolvency and Bankruptcy Code itself stipulates that the PF and Pension dues are excluded from liquidation estate of a corporate debtor and therefore outside the prioritization scheme of Section 53. In other words, the provisions of Clause 19 may have the effect of severe deprioritisation of PF dues resulting in recovery of the workers dues. The Committee, therefore, recommend that the first charge of

the PF dues as mentioned in Section 11 of the existing Act be retained to protect the interest of the workers.

7.24 The Committee note that the Central Government shall set up funds for Provident Fund, Pension and Insurance Schemes which shall vest in and be administered by the Central Board in such manner as may be specified in the respective Schemes. The Committee also find that the parent EPF&MP Act has four Schedules which are well connected with the coverage, scheming and scheduling of social security benefits. The Code proposes to remove the Schedules on the reasoning that all establishments in the Country having 20 employees or more will fall under EPF and there would be no dispute whether an establishment is now under the social security coverage of EPF or otherwise. The Committee would like to caution the Ministry that while amalgamating the EPF&MP Act with the Code it should be ensured that the enabling provisions contained in it for effective coverage of workers and prudent administration and management Schemes and Funds are not diluted or compromised.

7.25 On the aspect of inordinate delays taking place in voluntary coverage under the EPF Scheme under section 1(4) of the existing EPF Act, the Ministry here admitted that there are some delays in

the notification in many cases of voluntary coverage and assured that the provision for registration of establishment as provided under Clause 3 of the Code shall remove any ambiguity and will expedite the process of notification. The Committee trust that the new provisions and the assurance of the Ministry would pave way for wider coverage and better fund management of the EPF.

7.26 The Committee appreciate to note that the Government have launched the PM Gareeb Kalyan Yojana (PMGKY) on 26th March, 2020 to help the poor fight the lockdown effects arising out of the Covid-19 Pandemic. Under PMGKY, withdrawal from EPF account has been allowed to the extent of three months' salary and 75 percent of the outstanding balance, whichever is less, on the ground of the pandemic. As a result, online claims of more than 4.5 lakh members have been processed and Rs. 1,416.5 crore has been disbursed from the EPF accounts as on 17th April, 2020. The programme has also incentivised the employers which has prevented disruption in the employment of low wage earners. In view of the stress, duress and hardships that the low wage earners are going through during the ongoing lockdown, the PMKGY appears to be a timely scheme to come to the rescue of both employers and employees. The Committee desire that the monitoring aspect of the

Scheme be given due priority so as to ensure that the twin objectives viz. preventing disruption in the employment of EPF members and extending support to the eligible EPF covered establishments are truly achieved.

7.27 The Committee note that Clause 17 provides for contribution in respect of employers and contractors and recovery of such contributions. The Committee however, find that no stringent penalty for non contribution from the contractor or the Principal employer has been stipulated. The Committee feel that as an effective deterrent and to ensure appropriate and timely contribution by the Principal Employer or by the contractor, requisite penal provisions be incorporated in the clause.

VIII EMPLOYEES STATE INSURANCE CORPORATION (ESIC) **(Clauses 24 to 52)**

8.1 Clauses 29, 31, 32, 44 and 45 provide for 'Contributions'; 'Benefits; 'Scheme for other beneficiaries' and 'Schemes for Unorganised Workers, Gig Workers and Platform Workers etc. under the ESIC Scheme as reproduced below:-

Clause 29: "(1) The contribution payable under this Chapter in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation. (2) The contributions (employer's contribution and the employees' contribution both) shall be paid at such rates as may be prescribed by the Central Government. (3) The wage period in relation to an employee shall be the unit as specified

in the regulation (hereinafter referred to as the wage period) in respect of which all contributions shall be payable under this Chapter. (4) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period the contributions shall fall due on such days as may be prescribed by the Central Government.”

Clause 31: “(1) The employer shall pay in respect of every employee, whether directly employed by him or by or through a contractor, both the employer's contribution and the employee's contribution.(2) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Code and the rules and regulations, if any, made thereunder in this behalf, the employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and not otherwise: Provided that no such deduction shall be made from any wages other than such as relates to the period or part of the period in respect of which the contribution is payable or in excess of the sum representing the employee's contribution for the period.(3) Notwithstanding any contract to the contrary, neither the employer nor the Contractor shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.(4) Any sum deducted by the employer from wages under this Chapter shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.(5) The employer shall bear the expenses of remitting the contributions to the Corporation.(6) An employer, who has paid contribution in respect of an employee employed by or through a contractor, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the contractor, either by deduction from any amount payable to him by the employer under any contract, or as a debt payable by the contractor.(7) The contractor shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the employer before the settlement of any amount payable under sub-section (6).(8) In the case referred to in sub-section (6), the contractor shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to such conditions as may be specified in the regulations.(9) Subject to the provisions of this Code, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Chapter.”

Clause 32: “(1) Subject to the provisions of this Code, the insured persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely:—

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit);

(b) periodical payments to an insured person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained by him as an employee for the purposes of this Chapter and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained by him as an employee for the purposes of this Chapter, as are entitled under this Chapter (hereinafter referred to as dependants' benefit);

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit); and

(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses): Provided that the amount of payment under this clause shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

(2) The Corporation may, subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person.

(3) The qualification of a person to claim sickness benefit, maternity benefit, disablement benefit and dependant benefit and the conditions subject to which such benefit may be given, the rate and period thereof shall be such as may be prescribed by the Central Government.

(4) Subject to the provisions of this Code, the Corporation may make regulations for any matter relating or incidental to the accrual and payment of benefits payable under this Chapter.”

Clause 44: “Notwithstanding anything contained in this Chapter, the Central Government may, in consultation with the Corporation, and by notification, frame scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is under utilised on payment of user charges, and prescribe the terms and conditions subject to which the scheme may be operated.

Explanation.—For the purposes of this section,—

(a) "other beneficiaries" means persons other than employees insured under section 28; (b) "under utilised hospital" means any hospital not fully utilised by the employees insured under section 28; and(c) "user charges" means the amount which is to be charged from other beneficiaries for medical facilities as may be specified in the regulations after prior approval of the Central Government.”

Clause 45: “(1) Notwithstanding anything contained in this Chapter, the Central Government may, in consultation with the Corporation, and by notification, frame scheme for unorganized workers, gig workers and platform workers and the members of their families for providing benefits admissible under this Chapter by the Corporation.

(2) The contribution, user charges, scale of benefits, qualifying and eligibility conditions and other terms and conditions subject to which the scheme may be operated shall be such as may be prescribed in the scheme.”

8.2 Some Stakeholders pointed out that the enforcement of the existing ESI Act continued to remain extremely tardy. Despite the fact that the coverage of ESI starts with all establishments employing 10 or above as compared to 20 in case of EPF, as on date total number of workers/employees covered under the Scheme is almost half or even less than that covered by EPF and that speaks about the precariousness of the situation and accountability of the enforcement machinery. The Stakeholders further opined that the Code has diluted and weakened even the existing provisions in the ESI Act to the advantage of the employers at the cost of sufferings of the workers and employees.

8.3 In response to that, the Ministry stated as under:

“The coverage of ESIC is less due to the fact that the scheme does not operate at an all India level. Through this Act, the ESIC will apply on the entire Country. Coverage of ESIC extended to entire India (threshold of 10) will enhance coverage from existing 3.49 crore families to 10 crore families. Number of beneficiaries would be around 30 crore. Similarly, Applicability of Employees Provident Fund / Employees’ Pension Scheme and EDLI extended to all Industries/Establishments (threshold 20) by removing the schedule. Further ESIC coverage continues only till the employees draws wages within the ceiling, where as in case of EPFO, the employee can continue, even after he exceeds the wage ceiling.”

8.4 The Committee enquired about the specific issues that have been identified and factored in to strengthen the enforcement mechanism for the overall benefit of the employees/workers while amalgamating the existing ESI Act with the Code. In reply, the Ministry submitted as under:-

“By amalgamation of various Acts into the Code on Social Security, the enforcement mechanism is proposed to be strengthened through unified inspection conducted through the centralized Shram Suvidha Portal and use of digital technologies as provided in Clause 122 (2) of the Code. The power of search and seizure which were hitherto available to only few enactments earlier has been uniformly extended to all social security organizations through clause 122(6)(c). In ensuring the cooperation of the employer, the power of enquiry in the court under code of civil procedure 1908 have been extended to the authorized officer under clause 125(3). The above provision shall lead to strengthening of the enforcement mechanism.”

8.5 When asked about the reasons for reduction in the penal interest rate for violation of the provisions of the ESI Scheme, the Ministry stated as under:-

“Under the Code, it is being proposed that the penal interest shall be at such rate as may be prescribed by the Central Government. This is to maintain conformity with the prevailing interest rates.”

8.6 On being asked about the rationale for omission of the extant provision of the Principal Employer's obligation on payment of ESI contribution in the event of default of the contractor, the Ministry submitted as under:-

“The provisions of section 40(1) of the ESI Act, 1948 regarding principal employer’s liability of payment of ESI contribution in respect of every employee whether directly or through contractor has been retained in clause 31(1) of the Code.”

8.7 Some Stakeholders suggested that ESIC contributions should be compulsorily deducted from the salary of worker like EPF contributions, the rationale given being that through this, the ESI Scheme would be strengthened in every district to provide efficient and effective service for the workers. In response thereto, Ministry stated as under:-

“The coverage of ESIC has been extended to pan-India and to all establishments employing 10 or more employees. Earlier, under the ESIC Act, the applicability was based on the concept of notification for each district or part thereof. Under this Code, the applicability of ESIC Act has been extended to the entire country, only subject to the condition that establishments should have minimum 10 employees. However, contribution from employers and employees will be collected only after the benefits are provided. Further, an enabling provision has been added that the Central Government may notify applicability of ESIC Act on those classes of establishment which carries on such hazardous or life threatening occupation as the central Government may notify. In these classes of establishments the threshold would be even one worker. For example, silicosis is an occupational disease which is caught by workers while working in mines. Further, an employer of a plantation may opt for the ESIC by giving willingness to the Corporation (ESIC). An enabling provision has been incorporated for voluntary membership in ESIC in respect of establishment having less than 10 employees, i.e. below the normal threshold for ESIC. In case an employer and employees of an establishment enters into agreement to join ESIC, the Director General of ESIC can allow those employees to avail ESIC benefits. These measures will go a long way in extending social security for medical services, sickness benefits, and maternity benefits, dependent’s pension and employees compensation benefits etc. to all workers.”

8.8 The Committee then desired to be apprised of the considerations under which the power of the ESI Authority under the existing Act to add to the list of occupational diseases affecting the workers for the purpose of ESI benefits has been withdrawn. In response, the Ministry clarified as under:-

“The power to amend the Schedule III has been given to the Central Government in the Code which was earlier available with the Corporation also as per section 52A (2) (ii). The third schedule of the ESI Act, 1948 is similar to the schedule III of Employees’ Compensation Act, 1923 in which the power to amend is already vested with the Central Government.”

8.9 On the desirability of making provisions for ESIC to establish Medical Colleges, Nursing Colleges, Dental Colleges, etc. and to run them by ESIC itself, the Ministry stated as under:-

“Flexibility has been provided that the ESIC medical colleges, nursing colleges, etc may be run by the Corporation itself or on the request of the Corporation by the Central Government, any State Government, any Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government.

Further, the provisions relating to establishing colleges of medical and para-medical education as contained in Clause 39(4) & 39 (5) of the Code are parallel provision to section 59B of the ESI Act under which the existing medical education institutions have already been established. Medical graduate pass outs of these medical institutions are already being posted to the hospitals and dispensaries of the ESI Scheme and are fulfilling the objective of reducing their shortage. Moreover, under the ward of IP quota more than 300 ward of IPs have got admission in ESI Medical colleges to pursue the MBBS courses.”

8.10 The Committee then asked about the mechanism put in place to ensure that ESI Funds were not diverted for non ESI purpose. In response, the Ministry stated that the purposes for which the ESI Fund might be utilised have been incorporated in the Code itself under clause 26. Therefore, there has been no possibility of diversion of ESI Fund to non-ESI purposes.

8.11 In response to a specific query regarding workers/employees opting out of the ESI Scheme, the Ministry clarified that there is no provision in the Code for allowing the workers to opt out of the ESI Scheme.

8.12 Asked to state the reasons for making a proposal to abolish the Regional/State Level tripartite Committees pertaining to ESI, the Ministry stated that the provision of State Board, Regional Board and Local Committees has been made in section 12 of the Code.

8.13 The Committee then desired to know whether there was a need to change the existing Rules pertaining to employees’ compensation for making the calculation on the basis of actual pay of the accident affected worker subject to a minimum payment of Rs. 21,000, whichever is higher. In reply, the Ministry

submitted that in order to provide flexibility, the formula would now be prescribed which would benefit workers as it would be possible to revise the amount of compensation from time to time.

8.14 While the details of conditions subject to which sickness benefit, medical benefit, maternity benefit and disablement benefit under the ESI Scheme have been given in the Code, in terms of Clause 41 of the Code, the rate as well as duration thereof are to be prescribed by the Central Government thereby leaving it unclear whether the benefits would be the same as are presently given under the Employees' State Insurance Act. The Ministry clarified as under:-

“It is to submit that in ESI Act also the quantum/ duration and other conditions for grant of Medical Benefit, Sickness benefit, Disablement benefit, Dependent benefit and Maternity benefit are provided through Rules/ Regulations which are prescribed by the Central Government/ Corporation.”

8.15 In response to a specific query the Ministry stated that the number of beneficiaries would extend to 30 crore from the existing 3.49 crore families to 10 crore families. The Ministry further stated as under:-

“The ESIC in its Vision 2022 has set a target of Pan India coverage by the year 2022 which will result in increase in number of beneficiaries.”

8.16 On the provisions made in Clause 37(2), stakeholders submitted that there should be clarity whether first medical board assessment would always be a provisional assessment and how/when would it be final. The Ministry responded that the existing provision has been continued.

8.17 On the provisions made in Clause 37(5), some stakeholders suggested that MIS system should be such that all records of the Insured Person (IP) are available to all officers at any location like a bank account system. In response, the Ministry stated that the existing provision has been retained.

8.18 On Clause 43(2) some petitioners suggested that there should be a system of health assessment (epidemiological studies) of the region/work environment based on the principle of public health system. In response, the Ministry again repeated that the existing provision has been retained.

8.19 The suggestion by some stakeholders that in cases of accidents at workplace, the IP has the right to judicial remedy, if he wants to and deserves under other relevant laws about criminal or civil breach of such laws by the factories, was not accepted by the Ministry on the plea that employees could only avail of one of the benefits.

8.20 The suggestion by some stakeholders on clause 45 that the word 'Scheme' be substituted with 'such provision that shall be made by State/ Central Government' was also not accepted by the Ministry on the plea that the proposal was provided to give flexibility to the Government to frame Scheme for providing benefits available under ESIC for unorganised workers, gig workers and platform workers.

8.21 On a specific suggestion made by some stakeholders that provision for periodic inspection of exempted factories or other establishments be made in clause 46, the Ministry responded that the clause already provided that the exemption shall be subject to such conditions as might be specified in the notification and could be taken care of in the conditions to be specified.

8.22 On a specific suggestion from Stakeholders that ESIC coverage should be mandatorily made applicable to all plantation workers, the Ministry responded as under:-

“Under the Code, an employer of a plantation may opt for the ESIC by giving willingness to the Corporation (ESIC).where the benefits available to the employees under Chapter IV are better than what the employer is providing to them. An option provides flexibility for meeting the needs as per the requirement.”

8.23 Suggestions were received from various quarters on the provisions made in clause 51 (1) on 'Proceedings of Employees' Insurance Court that the time limit of filing, fees and procedure is left to the discretion of the State Government. While the manner of filing of claims and the fees may be left to the discretion of the State Government, it may be advisable to statutorily mandate the limitation period for filing of claims under the central legislation and not delegate such action to the state governments (which may end up prescribing different limitation periods). In response thereto, the Ministry submitted that the Committee might take a view.

8.24 Some experts submitted that ESIC hospitals should not exist as a separate set and they be expanded to complement the District hospitals of the State Government. The Covid Pandemic has demonstrated that India has to spend a much larger sum of money on health services and therefore the infrastructure available with ESIC could be utilized to enable expansion of health services for the general population. At the same time, care should be taken to ring-fence the ESIC funds accumulated for organized worker facilities.

8.25 The Committee desired to be apprised of the efforts made by ESIC Hospitals for provisioning of medicine to regular OPD Patients, ease out referral system, stocking or procurement of masks, PPE kits, Intensive sanitization of Hospitals and Offsetting regular load of patients with pre-existing health conditions. In response, the Ministry submitted as under:-

“Working in co-ordination with the Ministry of Health & Family welfare, Govt. Of India and respective State/ District health authorities in this demanding time of Covid 19 pandemic, ESIC has taken a number of measures to ease out provision of health services for existing ESIC beneficiaries, as under:-

- Under order date 03.04.2020 regular OPD (Chronic disease) patients have been allowed to purchase medicine from private chemist during lockdown period which shall be reimbursed by ESI.
- Under order dated 08.04.2020 ESIC beneficiaries may directly seek specialty/super specialty medical treatment services, including

consultation, from ESIC empanelled private Hospitals without ESIC referral in catchment locations where an ESIC Hospital has been declared as dedicated Covid Hospital catering only to suspected/confirmed Covid 19 cases.

- Efforts are constantly being made to procure ample Mask, PPE kits and other consumables either directly from local supplier or through Ministry of health & Family welfare /District health logistics supply system.
- ESIC has instructed each ESIC Hospital to follow Intensive Hospital sanitisation practices as recommended by Ministry of Health & Family welfare, Government of India.
- To offset regular load of patients with pre-existing health conditions visiting ESIC Hospitals, ESIC *vide* order dated 20.03.2020 has started issuing medicines for a longer duration so that frequent visit to hospital is minimized.”

8.26 In response to a pointed query on the adequacy of manpower to deal with the Covid pandemic, the Ministry apprised as under:-

“To counter Covid pandemic, Healthcare manpower needs are rapidly evolving in the country, in general. Since, ESIC is collaborating with respective State/District Health authorities, in synchronisation with Ministry of Health & Family welfare, Govt. of India guidelines, all available resources of ESIC/central/State Health authorities, including medical manpower, are being pooled for a common cause to fight the pandemic.

In this regard, an all India dashboard of medical manpower in various categories including Doctors, nurses, paramedical staff, health volunteers etc. is being maintained/augmented and updated by Ministry of Health & Family welfare, Government of India.”

8.27 On a further query on the Bed Occupancy trend since the Pandemic has broken out in the Country, the Ministry stated as under:-

“There has been a downward trend in Bed Occupancy of ESIC Hospitals subsequent to Corona virus outbreak/pandemic possibly due to the broad effect of lockdown itself.

Till now, none of ESIC Hospital has been sealed/locked down due to Covid 19 cases and contamination.”

8.28 The Committee then desired to know the steps taken to mitigate difficulties faced by Insured Persons with disabilities, serious life-threatening diseases and for those whose beneficiary card’s validity have been expired in the interregnum period. In reply, the Ministry submitted as under:-

“ESIC provides Permanent Disablement benefit (PDB) to the Insured persons who are rendered permanently disabled due to employment injury. Monthly payment is paid as PDB to these Insured Persons. The PDB for the month of March amounting to approximately Rs 25 Crore was paid into the bank accounts of these beneficiaries in the first week of April, 2020. Preparations are going on to make payment of PDB to the beneficiaries for the month of April 2020 on time.

Under Rule 60 ESI (Central) Rules, ESIC provides medical benefit to the Insured Persons who cease to be in insurable employment including on account of permanent disablement due to employment injury on lump-sum payment of contribution for one year @ Rs 10/- PM. During the lock down period there may have been cases where the medical benefit cards of these beneficiaries expired as they were unable to deposit the lump-sum contribution due to lock down. To save these beneficiaries from any possible hardship due to lockdown, such beneficiaries have been allowed to continue availing medical benefit under Rule 60 till 30.06.2020 under ESIC order dated 1st April, 2020. These beneficiaries may deposit the contribution once the lockdown ends.”

8.29 On being asked about relaxation given to those persons who could not file their contribution due to lockdown or delayed/curtailed wages during this period, the Ministry stated as under:-

“The last date for depositing ESIC contribution for the month of February and March has been extended to 15.05.2020 from 15.03.2020 & 15.04.2020 respectively.”

8.30 As regards the share of contribution on the part of the employee, the employer and the Government and the basis of fixing such shares, the Ministry apprised as under:-

“The manner of determining share of employer and employee contributions have been carried over from existing legislations. For instance the existing share of employers and employees as contained in Employees Provident Fund and Miscellaneous Provisions Act, 1952 have been retained with a proviso for specifying differential rates of employees’ contribution for class of employees’ for a specified period. This is an enabling provision to bring dynamism to policy making and cater to situations in case of any need. Similarly, the existing concept of determination of rate of contribution by Central Government under Employees State Insurance Act, 1948 has also been retained.”

8.31 Asked to state the utilisation of the funds so collected, the Ministry stated as under:-

“The contribution collected by a particular organisation *viz*, EPFO, ESIC and Cess for Building and Other Construction Workers etc are to be deployed/utilised by that particular organisation for the provisioning of mandated social security benefits to the employees who are covered under the schemes of that organisation.”

8.32 Regarding compulsory deduction of ESI contributions from the salary of workers like in the case of EPF contributions, the Ministry submitted as under:-

“The ESI contribution is already mandatorily deducted from the salary of workers by the employer and both the contribution (employees’ contribution and employers’ contribution) are deposited by the employer only into the ESI Fund. This arrangement has been continued in the Code on Social Security, 2019 in clause 29(2).”

8.33 On being asked to state the reasons for excluding ‘unemployment allowance’ from the Code contrary to the recommendation of the Second National Commission of Labour, the Ministry deposed as follows:-

“Unemployment allowance is already provided for under the ESI Act. For the unorganized workers basic social security has been taken care of in the proposed code.”

8.34 The Committee note that the threshold limit for ESIC coverage starts with all establishments employing 10 or more employees, yet the total number of workers/ employees covered under the Scheme is even less than half of that covered by EPF when actually the threshold limit for EPF is twice than that of ESIC. The Ministry have reasoned that the coverage of ESIC is less due to the fact that the Scheme does not operate at an all India level and through the Social Security Code, the coverage of ESIC will extend to the entire Country which will enhance coverage for the existing 3.49 crore families to 10 crore families with total number of beneficiaries

expected to be around 30 crore. As the hitherto low coverage of ESIC speaks volumes of the lacunae existing earlier, the Committee impress upon the Ministry to ensure that substantial improvements are built in the Code to enhance coverage as envisaged within a stipulated time line. The Committee, simultaneously, desire that the apparent restriction that is being caused due to the 'threshold' stipulations for ESIC coverage be also looked into holistically with a view to ensure universal coverage of ESIC benefits.

8.35 The Committee note that the Ministry are proposing to strengthen the enforcement mechanism through unified inspections conducted through the Centralised inspections conducted through the Centralised Shram Suvidha Portal and use of digital technologies. It is also encouraging to find that the power of search and seizure which was hitherto available to only few enactments earlier has been now uniformly extended to all social security organisations through Clause 122(6)(c). The Committee believe that one of the primary causes for low ESIC coverage has been tardy enforcement mechanism. Now that the Ministry propose to strengthen it, the Committee trust that earlier shortcomings are removed in the right earnest without diluting and weakening the

ESI Act so that the provisions duly safeguard the interest of the workers besides enhancing substantial coverage.

8.36 The Committee find that an enabling provision has been incorporated for voluntary membership in ESIC in respect of establishment having less than 10 employees i.e. below the normal threshold for ESIC. According to the provision, in case an employer and employees of an establishment enters into agreement to join ESIC, the Director General of ESIC can allow those employees to avail ESIC benefits. The Committee feel that the provision seems to be open ended which may not fetch the desired outcome. Therefore, the provision needs to be more enabling to ensure that the employees of such establishments which do engage less than 10 workers and Plantation establishments irrespective of the number of workers are not left at the mercy of the employer when they voluntarily evince interest to join ESIC which would guarantee them social security in terms of medical services, sickness and maternity benefits, dependent's pension, employees compensation etc.

8.37 The Committee note the Ministry's assurance that the formula for compensation to the accident affected would be prescribed which would benefit the workers. The Committee desire that the procedure be prescribed in such a manner so as to calculate the

enhanced compensation amount from time to time depending on the wages of the workers, the prevailing circumstances and imperatives involved.

8.38 Taking note of the existing ambiguity in Clause 41 which prescribes details of conditions for availing sickness benefits, medical benefits etc. without spelling out the rate as well as the duration thereof, the Committee impress upon the Ministry to accordingly modify the Clause to allay apprehensions raised at many quarters as well as to assure that all such benefits as detailed in Clause 41 would remain the same as prescribed and given under the existing provisions of the ESI Act.

8.39 The Committee also recommend that there should be a system of health assessment on the basis of epidemiological studies of the geographical region/work environment in line with the principle of public health system so as to extend appropriate health care and insurance facilities to the persons working in hostile conditions.

8.40 In view of the imperative need for a centralised data maintenance of the Insured Persons (IPs), the Committee recommend that the MIS system should be developed in such a way that all the records of the IPs are made available to all the officials

at any location in line with a Bank Account System so as to facilitate the requisite and timely benefits to the workers in the event of their changing jobs or locations.

8.41 The Committee also desire that it should be made amply clear in Clause 39 that the first medical board assessment of a worker would always be provisional and the time limit and procedure for the final assessment be prescribed in no uncertain terms.

8.42 The Committee note that under the provisions for "proceedings of Employees' Insurance Court", the time limit for filing claims, fee and procedure have been left to the discretion of the State Governments. The Committee feel that while it is prudent to empower the State Governments to prescribe/decide the manner of filing of claims and fees relating thereto, it would be advisable to statutorily mandate the time limit period for filing claims under the Central Legislation without delegating it to the States as the time limit prescription may differ from State to State which would hinder the effective implementation of the intended provisions.

8.43 The Committee note that the provisions of clause 39(4) and (5) provides for ESIC Hospitals which have been in existence since 1952. On the obligation for ESIC to establish medical colleges,

nursing colleges and dental colleges and run them by ESIC itself, flexibility has been provided that these ESIC colleges may be run by the corporation itself or on the request of the corporation by the Central Government and State Government; any Public Sector Undertaking of the Central or State Government or any other body notified by the Central Government. According to the Ministry, the provisions relating to establishing colleges of medical and para-medical education as contained in Clause 39(4) and 39(5) of the Code are parallel provisions to Section 59B of the ESI Act. The Committee are seriously apprehensive of involving ESI Corporation with the responsibility of medical education as that is not the original mandate conferred upon it. In view of the fact that the core activity of the Corporation i.e. to protect the interest of the Insured Persons (IPs) and provide them with all health related and other welfare benefits might be undermined because of the additional responsibility, the Committee desire that the Corporation be absolved of the duty of medical education related aspects.

8.44 The Committee appreciate that working in coordination with the Ministry of Health and Family Welfare and respective State/ District health authorities in the demanding time of Covid-19 pandemic, ESIC has taken a number of measures to ease out

provision of health services for existing ESI beneficiaries. Since the Covid-19 pandemic has demonstrated that India has to spend a much larger sum of money on health services, the Committee recommend that the infrastructure available with ESIC be utilised to enable requisite expansion of health services for the general population too, at the time of natural calamities and unprecedented exigencies. To that end, it is imperative that capacity augmentation of EISC infrastructure be accorded top priority.

8.45 Having said that, the Committee are of the firm opinion that utmost care be taken and robust safeguards put in place to ensure that ESIC funds/corpus accumulated for the provision of facilities/benefits to the workers are not diverted for any other purpose.

IX. GRATUITY

(Clauses 53 to 58)

9.1 Clauses 53 and 56 of the Code provides for 'Payment of Gratuity' and 'Determination of amount of gratuity' as under:-

“Clause 53: (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation; or

(b) on his retirement or resignation; or

(c) on his death or disablement due to accident or disease; or

(d) on termination of his contract period under fixed term employment;

or

(e) on happening any such event as may be notified by the Central Government:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment or happening of any such event as may be notified by the Central Government:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the competent authority as may be notified by the appropriate Government who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed by the appropriate Government, until such minor attains majority.

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

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season:

Provided also that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on *pro rata* basis.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government.

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

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),—

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

(b) the gratuity payable to an employee may be wholly or partially forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Explanation 1.—For the purposes of this Chapter, employee does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Explanation 2.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease, resulting in such disablement.

Explanation 3.—For the purposes of this section, it is clarified that in the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.”

“Clause 56: (1) A person who is eligible for payment of gratuity under this Chapter or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed by the appropriate Government, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the competent authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(4) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the competent authority for the delayed payment on this ground.

(5) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Chapter or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the competent authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the competent authority in the form prescribed by the Central Government for deciding the dispute.

(c) The competent authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the competent authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The competent authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the competent authority shall pay the amount of the deposit—

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case maybe, the guardian of such nominee or heir of the employee if the competent authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(6) For the purpose of conducting an inquiry under sub-section (5), the competent authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(7) Any inquiry under this section shall be a judicial proceeding within the meaning of section 193, section 228, and for the purpose of section 196, of the Indian Penal Code.

(8) Any person aggrieved by an order under sub-section (5) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case maybe, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the competent authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (5), or deposits with the appellate authority such amount.

(9) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable

opportunity of being heard, confirm, modify, or reverse the decision of the competent authority”

9.2 Various Experts and Stakeholders pointed out that keeping in view the nature of India’s Labour market where most employees are employed for a short duration period only, it becomes difficult to avail any gratuity benefits as 5 years of continuous employment is required as per the extant provisions. This has become an incentive to employers to terminate employees before 5 years are over. Gratuity amount should therefore be made payable after completion of one year/two years of service only. Gratuity should also be made payable to an employee including contract labourers, seasonal workers, piece rate workers, daily/monthly wage workers on termination of his employment after rendering of continuous service of not less than one year.

9.3 Suggestions were received from Stakeholders that in clause 53(1) the term ‘Fixed term employment’ be replaced with the term ‘contract worker’. In response thereto, the Ministry stated as follow:-

“Clause 53 relates to payment of gratuity. An employee becomes eligible for gratuity after completion of five years’ continuous service under an employer. However, the concept of gratuity on pro-rata basis has been introduced in the Code in the case of Fixed Term Employment as his contract may be for a period less than five years.”

9.4 The gist of some other suggestions made by various stakeholders on Gratuity Payments is as under:-

(i) In cases where an employee is eligible for gratuity, retrenchment benefit and reskilling benefit, a facility to file a single claim may be created. The employee should not be asked to file separate claims under different codes.

(ii) A proviso should be added to section 53(2) clarifying that if the immediate employer (contractor) fails to pay gratuity to the employees working with the principal employer for more than 5 years, the principal employer will be responsible for payment of gratuity.

(iii) The benefit of the pro-rata gratuity should be extended to the contract labour if they serve for the full period of the contract irrespective of the change of contractors. The principal employer should be liable to

pay pro rata gratuity for the term of the contract and it may be paid along with the last wages.

(iv) The formula for calculation of gratuity payable to different category of workers should be given upfront in the code itself, instead of resorting to notifications at later stage.

(v) 'Person' should be replace with 'Persons' and other changes accordingly should be made. This will enable all similarly situated persons to file cumulative claim for gratuity before the Controlling Authority. It will save them for filing individual claims against same employer and on same disputed issues.

(vi) A new provision to enable transfer of claim from one jurisdiction to another if sufficient cause is shown by the employee claimant and the employer has no objection to transfer be inserted.

(vii) Given the fact that the government has formalised the Fixed Term Employment (FTE) and in general the short duration contracts are becoming the norm, the eligibility period of employment be reduced from five to two years.

(viii) The Gratuity should be calculated at differential rates by employment tenure slabs.

(ix) There should not be any cap on the gratuity.

(x) Ordinarily it should be simple rate of interest but beyond a defined period, it should be progressively increasing rates provided the delay is not attributable to the employees or their legal nominees.”

9.5 The Committee desired to know whether an employee, eligible for gratuity, retrenchment benefit and Re-skilling benefit is supposed to file separate claims under different Codes and whether it would be prudent to enable an employee to file a single claim for a consolidated amount which would be much convenient. In response the Ministry submitted as under:-

“It is submitted that for retrenchment compensation, an employee is not required to submit any claim application. As regards gratuity, as soon as it becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the competent authority specifying the amount of gratuity so determined. As regards re-skilling benefit, the modalities of payment of the same shall be prescribed through Rules. These are implementation issues which will be addressed.”

9.6 The Committee then asked about the provisions contemplated in the Code to make it liable for the principal employer for payment of gratuity due to a contract worker in the event of the contractor not doing it, in consonance with the judgement of Madras High Court verdict in the Case of M/s Madras Limited Vs the Controlling Authority. In reply, the Ministry stated as under:-

“The gratuity is payable to an employee who completes five years continuous service by the employer and in case of non-payment, etc. the employee can approach the competent authority.”

9.7 Regarding the extension of the benefit of pro-rata gratuity to the contract labours in the event of their working with the Principal Employer for more than the eligibility period irrespective of the change in the contractor, the Ministry deposed as under:

“An employee becomes eligible for gratuity after completion of five years continuous service under an employer. However, the concept of gratuity on pro-rata basis has been introduced in the Code in the case of Fixed Term Employment.”

9.8 As regards incorporation of a provision to enable transfer of claim from one jurisdiction to another if sufficient cause is shown by the employee claimant and the employer has no objection to such transfer, the Ministry submitted as under:-

“To have a clear and specific provision to enable transfer of claim from one jurisdiction to another may not be feasible for the following reasons:-

- i. Jurisdiction of the Controlling Authority is notified by the appropriate Government. Therefore, the controlling authority cannot take up cases of establishments which are not located in his jurisdiction.
- ii. Litigation cost will increase.
- iii. It will amount to transfer of records.
- iv. It will be also against the interest of employees.”

9.9 On being asked to state the consideration on which the penalty provision for violation or default by the employer in the gratuity payment was proposed to be reduced, the Ministry submitted as under:-

“In case of economic offences, it is desirable that the offences are decriminalized. We would urge the Committee to allow this Ministry to further review the penalties and imprisonments to see that the fines and imprisonments are decriminalized as far as possible. The Ministry intends that fines to create deterrence, at the same time, intends to reduce imprisonments. The intention is also to reduce the pendency of cases in the court of law.”

9.10 The Committee note that according to the provisions contained in Clause 53, Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. The Committee had dealt with the issue of gratuity payment in their Report on the Industrial Relations Code, 2019 and given their considered opinion. In line with their earlier recommendation and keeping in view the nature of India's Labour Market where most employees are employed for a short duration period only, making them ineligible for gratuity as per extant norms, the Committee desire that the time limit of five years as provided for in the Code for payment of gratuity be reduced to continuous service of one year. Such provision be extended to all kinds of employees including Contract Labours, Seasonal workers, piece rate workers and Fixed Term Employees and daily/monthly wage workers.

9.11 As regards the provision for a single claim application for gratuity, retrenchment, reskilling and other retirement benefits, the Ministry have clarified that for retrenchment compensation, an

employee is not required to submit any claim application and even for gratuity, the employer shall, whether an application has been made or not, determine the amount of gratuity for payment thereof. For re-skilling benefits, the modalities of payment shall be prescribed through rules. While taking note of the Ministry's assurance, the Committee desire that the procedure for making gratuity, retrenchment and reskilling payments should be so streamlined and simplified that the beneficiaries are not inconvenienced and their genuine claims are settled with a reasonable timeline.

9.12 The Committee are not satisfied with the reply of the Ministry that in case of non-payment of gratuity by the contractor/employer, the employee should approach the Competent Authority. The Committee are of the considered opinion that such a provision is against the interest of the affected employees/workers who may have to run from pillar to post to get their legitimate dues. The Committee, therefore, exhort the Ministry to incorporate an enabling provision so as to ensure that the Principal employer is held liable for the payment of gratuity to the employees, should the Contractors fail to do so within a stipulated time frame.

9.13 The Committee note that the concept of gratuity payment on pro-rate basis has been introduced in the Code in the case of Fixed Term Employment. In view of the fact that most of the times the Contract labours etc work under the same Principal Employer for more than the gratuity eligibility period even when contractors go on changing, the Committee, desire that a clear provision extending the benefit of the pro rata gratuity to contract labourers, piece rate and time rate workers alongwith the FTE needs to be specifically provided for in the proviso to clause 53 of the Code.

9.14 The Committee further note that the Code does not contain any provision to enable transfer of claim from one jurisdiction to another. The Ministry have reasoned that clear and specific provision to enable transfer of claim from one jurisdiction to another may not be feasible due to increase in cost of litigation, administrative constraints of the Controlling Authority etc. While taking note of the practical limitations as cited by the Ministry, the Committee are however of the definite opinion that transfer of claim from one jurisdiction to another, especially when sufficient reasons are adduced by the claimant employee and endorsed by the employer concerned, would lead to ease of settlement pertaining to those employees who retire at one place and settle elsewhere. The

Ministry should therefore reexamine the matter and put in place some enabling provisions appropriately in the Code for the benefit of the gratuity claimants.

9.15 The Committee do not agree with the Ministry's general, imprecise and inexact statement that 'in case of economic offences it is desirable that the offences are decriminalised'. However, drawing contextual inferences, the Committee feel that provision of imprisonment in the penalty clause for violation or default by the employer in the gratuity payment has to be judiciously invoked. In other words, such a provision may be made applicable in case of habitual offenders/defaulters. So far as imposition of fines is concerned, the Committee desire that there should not be any leniency as strong deterrent provisions would reduce willful default and delinquent negligence on the part of employers in timely payment of gratuity to the needy and deserving employees.

X. MATERNITY BENEFIT

(Clauses 59 – 72)

10.1 Clauses 59, 60, 67, 68 and 72 of the Social Security Code, 2019 provides for the following provisions pertaining to maternity benefit:-

“Clause 59, (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(3) Without prejudice to the provisions of section 62, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do, during the period specified in sub-section (4), any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be—

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 62.

Clause 60, (1) Subject to the other provisions of this Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.

Explanation.—For the purposes of this sub-section, "the average daily wage" means

the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

Explanation.—For the purposes of calculating the period under this sub-section, the

days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages, during the period of twelve months immediately preceding the expected date of her delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery: Provided that the maximum period entitled to maternity benefit by a woman having two or more surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery: Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving

behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days upto and including the date of the death of the child.

Explanation.—For the purposes of this sub-section, "child" includes a still born child.

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case the work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Clause 67, (1) Every establishment to which this Chapter applies, in which fifty employees or such number of employees as may be prescribed by the Central Government, are employed shall have the facility of crèche within such distance as may be prescribed by the Central Government, either separately or along with common facilities: Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her.

(2) Every establishment to which this Chapter applies shall intimate in writing and electronically to every woman at the time of her initial appointment in such establishment regarding every benefit available under this Chapter

Clause 68, (1) When a woman absents herself from work in accordance with the provisions of this Chapter, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service:

Provided that the discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus under this Chapter, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided further that where the dismissal is for any gross misconduct as may be prescribed by the Central Government, the employer may, by order in writing, communicated to the woman, deprive her of the maternity benefit or medical bonus, or both.

(2) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed under sub-section (1), may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to the competent authority, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both, or discharged or dismissed shall be final.

Clause 72, (1) Any woman claiming that,—
(a) maternity benefit or any other amount to which she is entitled under this Chapter and any person claiming that payment due under this Chapter has been improperly withheld;
(b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Chapter, may make a complaint to the Inspector-cum-Facilitator.
(2) The Inspector-cum-Facilitator may, on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made and if satisfied that—
(a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his order in writing;
(b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Chapter, may pass such orders as he deems just and proper according to the circumstances of the case.
(3) Any person aggrieved by the order of the Inspector-cum-Facilitator under sub-section (2) may, within thirty days from the date on which such order is communicated to such person, appeal to the authority prescribed by the appropriate Government.
(4) The decision of the authority referred to in sub-section (3), where an appeal has been preferred to it under that sub-section or of the Inspector-cum-Facilitator where no such appeal has been preferred shall be final.

10.2 Some stakeholders submitted that women in the informal sector were often forced to go back to work soon after delivery, miscarriage or medical termination of pregnancy. The language of the Code must not be in the nature of penalising such women but to ensure adequate maternity benefit to mitigate adverse circumstances. The words ‘no women shall work’ should be replaced with ‘it is advisable that no women shall work’. Further, unambiguous definition of ‘work of arduous nature’ should be incorporated in clause 59(3).

10.3 Some other petitioners suggested that clause 60(1) should be amended to state that every women shall be entitled to and her employer shall be liable for, the payment of maternity benefit at the rate of the daily wage for the period of her actual absence, Further, clause 60(2) should be amended to state that no women shall be entitled to maternity benefit from an establishment other than her employer immediately preceding the date of her delivery.

10.4 Some other stakeholders suggested that the contractors should be made responsible for provision of maternity benefits just as they would be responsible for paying wages and providing benefits under other labour laws to the contract workers who have an employer-employee relationship and such benefits should be incorporated in the formal employment contract. In response thereto, the Ministry stated that the provision has been retained from the existing Maternity Benefit Act.

10.5 On the provisions made in clause 68 of the Code pertaining to 'Dismissal of a woman on expiry of fixed-term employment', it has been suggested that apparently the provisions place an absolute embargo on discharge/ dismissal of a women during or on account of such absence. However, the said provision does not take into account a situation where the discharge is a consequence of the expiry of a fixed-term employment contract. A specific exception in clause 68 allowing an employer to discharge a women on account of expiry of the term of the contract may be made. The Ministry responded that the fixed-term employment was for a specific period only and in fixed employment, proportionate benefits were allowed. The Ministry, however, submitted that the Committee might take a view. The Ministry supplemented that the different authorities under Clauses 72 and 68 were as per existing provisions under sections 17 and 12 of the Maternity Benefit Act, 1961.

10.6 In response to some stakeholders' observation that provisions made in clause 68 and clause 72 were apparently overlapping, the Ministry clarified that there was no overlapping in the provisions contained in Clause 68 and Clause 72 as the latter deals with powers of Inspector-cum-Facilitator in the enforcement of Maternity Benefits Act.

10.7 On suggestions received from Stakeholders for more clarity in the provisions in clause 72(4) pertaining to appeal and the Appellate Authority for

Maternity Benefits, the Ministry clarified that clause 72(3) provides that any person aggrieved by the order of the Inspector-cum-Facilitator under sub-clause (2) may within thirty days from the date on which such order is communicated to such person, appeal to the authority prescribed by the Appropriate Government.

10.8 On the issue of sharing of crèche with other establishments as provided for in clause 67(1), stakeholders suggested that a proviso be inserted allowing the employer to use a shared crèche with other establishments, whether belonging to the employer or otherwise, where maintaining a separate crèche would not be practicable. Further, this proviso should also define the responsibilities of the employer and the third party providing crèche facility. Additionally, an option should be given to the State Government to share the costs associated with provision of crèche facilities with the employer. The Ministry responded that extant provisions for crèche has been made in clause 67(1) of the Code as a welfare measure for the well being of the mother and the child.

10.9 In response to some other specific observations regarding the right of women to maternity benefits as well as definition of the term 'women', the Ministry assured that no change in the right of women with regard to Maternity Benefit under the Maternity Benefits Act, 1961 (Amended in 2017) has been made and the definition of women is as per the Act.

10.10 The Committee note that Clause 59(1) of the Code provides for prohibition of employment or work by women during six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy; Clause 59(2) provides that no

woman shall work during this period and Clause 59(3) prohibits work of arduous nature to be done by any woman during the period as prescribed before the date of expected delivery. The Committee are in agreement with the suggestions given by a number of Stakeholders that a specific and unambiguous definition of ‘work of arduous nature’ needs to be defined to establish ‘arduousness’ so that employers can be held accountable as women workers especially in the informal sector are often engaged in hazardous and risky forms of work. The Committee, therefore, desire that a specific and unambiguous definition of ‘work of arduous nature’ be given in the Code so as to ensure its proper and uniform interpretation.

10.11 The Committee further note that while Clause 60(1) of the Code provides for Right to payment of maternity benefits at the rate of average daily wage for the period of her actual absence, Clause 60(2) provides for maternity benefits to women if she has actually worked in an establishment of the employer for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery. The Committee find that suggestions for amendment of Clause 60(2) have been given for entitlement of maternity benefits from an establishment other than her employer

immediately preceding the date of her delivery on the grounds that it would be difficult to establish continuity of work for women especially in the informal sector for even a relatively short period of eighty days. The Committee are of the view that unless maternity benefits are universalized by way of appropriate provision in the Code, a majority of women who work in the informal sector would be excluded from its purview. The Committee, therefore, recommend that requisite amendments be made to give universal coverage of maternity benefits to all women workers including those working in the unorganised/informal sector.

10.12 Taking into cognisance the suggestions received from many quarters, the Committee are of the considered opinion that the contractor, being the entity with whom the contract workers have an employer-employee relationship, should be made responsible for provision of maternity benefits just as they are responsible for paying wages and providing benefits under other components of social security. Therefore, it is crucial that specific provision on the lines of those already provided for in the case of EPF and ESIC contribution be incorporated in the Code to make the Principal Employer liable to recover from the contractors the contribution towards maternity benefits.

10.13 The Committee note that Clause 67(1) provides for crèche facility in which fifty employees or such number of employees as may be prescribed are employed. The Committee feel that the requisite cost of providing such facility to the employees may be very high especially in situations wherein only a few employee would intend to avail the services or if the industry/establishment is located in a remote or isolated place. The Committee, therefore, recommend that a proviso to Clause 67(1) be added that an establishment may avail common creche facility established by the Central Government or a State Government or a near-by located private facility. The Committee also desire the incorporation of an enabling provision to encourage a cluster of MSMEs to pool their resources for setting up of common creches for the benefit of the desirous employees.

10.14 The Committee note that for filing a complaint for claiming maternity benefits by a woman worker different authorities have been provided. For example, in Clause 72(1) the Inspector-cum-Facilitator may render a decision on a complaint made to him whereas in Clause 68(2), provision for appeal to a Competent Authority has been given. The Committee feel that such overlapping provisions may lead to jurisdictional issues in settling of claim of

woman workers causing avoidable delays and unwarranted harassments to them. The Committee, therefore, recommend that the competent Authorities to examine complaints on claims for Maternity Benefits by women workers be clearly defined so as to remove the existing ambiguities.

10.15 The Committee also find that while a clear mechanism for appeal and also condition of deposit of the admitted amount before filing of appeal has been provided for 'claim for gratuity' in term of Clauses 56(5) and 56(6) of the Code, no such provision has been made for Maternity Benefits. The Committee are of the opinion that similar provision for Maternity Benefits claim would not only ensure clarity and uniformity in the provision of appeal besides facilitating expeditious disposal of claims. The Committee, therefore, desire that provisions on the lines of Clause 56(5) and 56(6) for filing of appeal be provided for Maternity Benefits claims also so that the adjudication mechanism does comply with the principles of timely natural justice.

XI. EMPLOYEES COMPENSATION

(Clauses 73 to 99)

11.1 Clauses 73 to 99 deal with various aspects of Employees Compensation. Clause 76(5) reads as under:-

“The employee shall be reimbursed, the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment, by his employer.”

11.2 The Committee asked about the mechanism put in place to enable the domestic employer or small entrepreneur to meet such expenses of their employees. In response, the Ministry submitted as under:-

“This is same as per the existing provision, i.e., Section 4 (2A) of the Employees’ Compensation Act, 1923 which reads as under:

“(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.”

Further, it provides for reimbursement of actual medical expenditure which is incurred by employee for treatment of injuries which are caused during the course of employment. As these injuries are caused during the course of employment, it is expected that the same be reimbursed by employer as it would be very difficult for employees to bear this burden.

As regards treatment of employees under ESI institutions, if the establishment is covered under ESIC, the treatment can be done at the ESI institution.”

11.3 A specific suggestion received from various quarters is that the word ‘State Government’ appearing in Clause 73(1) proviso and 73(2), be replaced with ‘Appropriate Government’ as it would reduce the multiplicity of authorities for poor workers who could approach the same Authority as per the provisions in all the other three Codes as well. In response thereto, the Ministry clarified that it was as per the existing provisions of the Employees’ Compensation Act, 1923.

11.4 Another suggestion for replacing the word ‘Competent Authority’ in Clause 73 with ‘a Commission’ has also not been found acceptable by the Ministry. On another suggestion that minimum of Rs.15,000 been prescribed for funeral expenses in Clause 76(7) would not cover funeral cost, the Ministry stated that the amount would be prescribed in the Rules.

11.5 The Committee note that the liability for reimbursement of the actual medical expenditure incurred by an employee for treatment of injuries caused during the course of employment is that of the employer. However, the provision remains vague to the extent that it does not provide a mechanism to enable a domestic employer or small entrepreneur to meet such expenses of their employees. Similarly, there is no clarity on the enforceability aspect. The Committee, therefore, recommend that the plight of both the domestic employers/small entrepreneurs and their employees have to be taken into consideration and addressed appropriately so that such expenses do not become a burden on either party.

11.6 According to the Ministry, if an establishment is covered under ESIC, treatment can be done at the ESI institution. This is precisely why the Committee are insistent that the threshold limit of 10 or more workers to be eligible for ESIC coverage needs serious reconsideration. As it would be very unwieldy to ensure payment of medical compensation to an employee for treatment of injuries caused during the course of employment in the informal/unorganised sector, it becomes imperative on the part of the Ministry to focus on universal coverage of ESI Scheme, the threshold limit notwithstanding, so as to ensure provision of

medical treatments to all kinds of employees during distress and exigencies.

11.7 The Committee agree with the usage of the word 'Competent Authority' in Clause 73(1) as it seems more appropriate than 'Commission', as suggested by some Stakeholders. The Committee, however, desire that the word 'State Government as appears in the proviso to Clause 73(1) and 73(2) be replaced with the word 'Appropriate Government' as it would facilitate the workers approaching the same Authority, instead of multiple Authorities. The Committee further desire that funeral expenses as provided for in Clause 76(7) of the Code be prescribed in terms of a certain percentage of the last drawn salary of the worker or Rs.15,000, whichever is higher, so as to adequately support the employees for funeral expenses.

XII. SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS (BOCW)

(Clauses 100 to 108)

12.1 Clauses 103, 106 and 108 of the Code provides as under:

“Clause 103: (1) The employer shall, within sixty days or such period as may be notified by the appropriate Government of the completion of his each building and other construction work, pay such cess (adjusting the advance cess already paid under section 100) payable under this Chapter on the basis of his self assessment on the cost of construction worked out on the basis of the documents and in the manner prescribed by the Central Government and after such payment of cess, he shall file a return under clause (d) of section 123.

(2) If the officer or the authority to whom or to which the return has been filed under sub-section (1) finds any discrepancy in the payment under the self assessment and the payment required under the return referred to in that sub-section, then, he or it shall, after making or causing to be made such inquiry as he or it thinks fit and after such inquiry make the appropriate assessment order.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer, if any.

Clause 106: Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be registered by the officer authorised by the Board as a beneficiary under this Chapter in such manner as may be prescribed by the Central Government.

Clause 108: (1) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

- (a) the amount of any cess levied under sub-section (1) of section 100;
- (b) any grants and loans made to the Board by the Central Government;
- (c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The Building and other Construction Worker Welfare Fund shall be applied for meeting—

- (a) expenses of the Board in the discharge of its functions under sub-section (6) of section 7; and
- (b) salaries, allowances and other remuneration of the members, officers and other employees for the Board;
- (c) expenses on objects and for purposes authorised by this Code.

(3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent. of its total expenses during that financial year.

12.2 Trade Unions pointed out that the Code remained absolutely silent about the management of the fund collected out of the Cess. While certain social security benefits have been mentioned for Building and Other Construction Workers (BOCW), the details of benefits, entitlement, calculation, mode of delivery etc. have not been specified leaving them totally at the disposal of State Level Boards. Therefore the Code should have more stringent provision for proper enforcement and implementation. In response, the Ministry stated that

any specific suggestion for improving the functioning of BOCW Act would be considered.

12.3 The Trade Unions further suggested that the Building and Other Construction Workers (Regulation and Condition of Service) Act, 1996 and the Building and Other Construction Workers Welfare Cess Act 1996 should be taken out of the Codification exercise and separately examined in consultation with the Trade Unions for its improvement in implementation/enforcement of both the Service Conditions and Welfare and Social Security Measures. In response, the Ministry clarified that removing various Social Security Acts from the Code on Social Security would defeat the purpose of Codification.

12.4 Some experts suggested that the self-assessment as mentioned in Clause 103 be subject to audit by professional accountants/auditors who are familiar with the building/ construction industry. They also suggested that the Code must provide for a mechanism for the creation of a Clearing House between States, so that funds that are due to the beneficiary are transferred back to the State of origin of the migrant worker.

12.5 On Clause 108, stakeholders opined that it is important to clearly specify the items on which the Fund amount can be spent and these should be framed on the basis of the experience on the expenses pattern from various States.

12.6 Further, on provision made in Clause 106, some stakeholders pointed out that there has been a major problem of low registration and renewals of the building workers with the BOCW Boards. Besides, the problem of fake registration has also been rampant. The stakeholders, therefore, suggested that the power for getting the workers registered should be given to the officers authorized by the Appropriate Government. As significant part of the construction workers are inter-state migrants and vulnerable, some experts suggested that a new proviso be added to clause 106 specifically detailing out the process of their continuous registration/ enrolment, issuance of identity

cards, portability and disbursal of benefits. A new proviso should also be added to clause 106 stating that all registration should be done electronically in congregation with JAM architecture with issuance of unique identifiers. This will provide a better data base and address issues of identification and inter-state portability as majority of these workers are migrant and also have many employment relationships at a given point of time.

12.7 A further submission has been made for incorporating new provision in the Code for integrating social security for construction workers with unorganised workers and for providing a framework for co-ordinated implementation by the Central Government.

12.8 The Committee desired to know from the Ministry whether there was an absolute need to spell out in the Code itself the details of the benefits, entitlement, calculation, mode of delivery, etc. of the Social Security benefits intended for the Building and other Construction Workers. In response the Ministry submitted as under:-

“It is the requirement of law to spell out the benefits, entitlements calculation, mode of delivery, etc. in the law. However, flexibility has been provided that this can be changed under the scheme to be formulated in future.

In view of the above, Section 7 (6) prescribes functions of the Building Workers' Welfare Board which are as follows:

- (a) provide death and disability benefits to a beneficiary or his dependants;
- (b) make payment of pension to the beneficiaries who have completed the age of sixty years;
- (c) pay such amount in connection with premium for Group Insurance Scheme of the beneficiaries as may be prescribed by the appropriate Government;
- (d) frame educational schemes for the benefit of children of the beneficiaries as may be prescribed by the appropriate Government;

(e) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed by the appropriate Government;

(f) make payment of maternity benefit to the beneficiaries;

(g) frame skill development and awareness schemes for the beneficiaries;

(h) provide transit accommodation or hostel facility to the beneficiaries;

(i) formulation of any other welfare scheme for the building worker beneficiaries by State Government in concurrence with the Central Government; and

(j) make provision and improvement of such other welfare measures and facilities as may be prescribed by the Central Government.

Further, Section 106 of the Code provides that every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be registered by the officer authorised by the Building & Other Construction Workers' Welfare Board as a beneficiary under Chapter VIII of the Code in such manner as may be prescribed by the Central Government."

12.9 Asked to state the specific measures taken to ensure that there was no evasion of payment of cess adversely affecting the generation of funds meant towards the welfare of the Building and other Construction Workers, the Ministry replied as under:-

"In BOCW cess, the provision relating to self-assessment of cess has been introduced. Assessment of cess on case to case basis is not considered to be in the interest of impartial assessment. The self-assessment would be subject to certain criteria which would be spelt out in the rules. Further, to avoid evasion of payment of cess by the employer, it has been provided under Section 103 (2) of the Code that if the officer or the authority to whom or to which the return has been filed under section 103 (1) finds any discrepancy in the payment under the self assessment and the payment required under the return referred to in that subsection, then, he or it shall, after making or causing to be made such inquiry as he or it thinks fit and after such inquiry make the appropriate assessment order. It has also been provided under Section 103 (3) that the order of assessment made under section 103 (1) and 103 (2) shall

specify the date within which the cess shall be paid by the employer, if any.

Further, Section 104 of the Code seeks to provide penalty for non-payment of cess within the specified time. If any amount of cess payable by any employer is not paid within the date specified in the order of assessment made under sub-section (2) of section 103, it shall be deemed to be in arrears and the authority prescribed by the Central Government in this behalf may, after making such inquiry as it deems fit, impose on such employer a penalty not exceeding the amount of cess.

Furthermore, there is also substantial increase in penalties. Moreover, there is also a liability for imprisonment to act as deterrence.”

12.10 On being asked to state the mechanism put in place to ensure optimal utilization of the funds generated out of the payment of cess, for the benefit of the BOCWs, the Ministry stated as under:-

“It has also been provided under section 108 (2) that the Building and Other Construction Workers’ Welfare Fund shall be applied for meeting:

(a) expenses of the Board in the discharge of its functions under sub-section (6) of section 7; and

(b) salaries, allowances and other remuneration of the members, officers and other employees for the Board; and

(c) expenses on objects and for purposes authorised by this Code.

Further, to ensure that the funds generated out of payment of cess are optimally utilized for the benefit of the construction workers, it has also been provided under section 108 (3) that no Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent. of its total expenses during that financial year.”

12.11 As regards effective implementation and monitoring of utilization of BOCW Welfare Fund and appropriate registration of BOCWs by the Central Government itself, the Ministry *inter-alia* submitted as under:

“i. As regards BOCW Act, cess Fund is being collected by the State Government and respective State Welfare Boards are mandated under the BOCW Act to provide for various welfare schemes including

immediate assistance in case of accident, payment of pension, sanction of loan and advances for construction of houses, premium for group insurance, education of children, medical expenses, maternity benefits, etc.

At present, assessment of cess to be paid by the employer under the Building and Other Construction Workers Welfare Cess Act, 1996 is done by authorized officers. The shortcomings of the present system seems to include lack of common guidelines in rules available to authorized officers for assessment of value, no prescribed qualification for such authorized officer, time consuming case to case basis assessment, huge discretion available with the authorized officer for assessment. The existing system gives the scope for arbitrariness, lack of transparency and accountability. Therefore, it has been proposed that the employer shall, within sixty days or such period as may be notified by the appropriate Government, pay such cess payable under this Chapter on the basis of his self-assessment. The rules regarding the manner of assessment and requirement of documents shall be formulated by Central Government.”

The Committee may take a view to provide for registration of BOCW by Central Government for certain category of employees/workers.”

12.12 As a significant part of the construction Workers are inter – State Migrants and vulnerable, the Committee asked whether the Ministry were contemplating specific provisions for detailing out the process of their continuous registration/ enrollment, issuance of identity cards, portability and disbursal of benefits etc. In response, the Ministry deposed as under:-

“In the wake of Covid-19 pandemic, one of the issues that emerged is conditions of Inter-State Migrant Workers (ISMW), food and ration, retention in job and avoidable large scale movement all over the country. Provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 have been examined and following changes are being proposed in the OSH Code, 2020 in this regard:-

- a. For the purpose of collection of data while seeking registration, license; an establishment would have to necessarily indicate the number of ISMW employed in his establishment.
- b. Wide expansion of the definition of ISMW: to include (a) recruited through contractor (b) directly recruited by the employer (c) ISMW comes of his own for employment in another State.
- c. The ambit of the benefit to ISMW have been replaced to provide (a) lump-sum allowance for undertaking journey by migrant worker to visit his native place in a period to be decided by appropriate Government; and (b) to formulate a scheme for providing portability

of benefits of public distribution system and portability of benefits to a worker who is engaged in building and other construction work in one State and move to another State by appropriate government.

- d. A new provision has been made that appropriate government may prescribe for providing toll free help line.
- e. The Central Government and the State Governments shall maintain the data base or record, for ISMW, electronically or otherwise. In this data base, a migrant who may not necessarily be an ISMW would have a facility to enter his data that he is an inter-State migrant with Aadhaar. There will be no insistence on proof of registration.

The above provisions are yet to reach finality.”

12.13 The specific views of the Ministry in creating a national database for inter-State migrant workers, especially in light of the chaos and confusion witnessed during the nationwide lockdown imposed due to Covid-19 Pandemic was sought. The Ministry merely stated that this has been dealt with under the OSH Code.

12.14 On being asked about punitive measures proposed by the Central Government in tandem with the State Governments to provide timely help and relief to the inter-State migrant labours at the time of distress and emergent situation, the Ministry stated that Aadhar linked database of workers, also capturing the inter-State migrant status, would enable provisions for targeted benefits/ relief to such workers during unforeseen situation.

12.15 Keeping in view the large scale labour distress particularly of Migrant Labours during the current Covid-19 Pandemic, the Committee asked whether there was a need to review the provisions of the Social Security Code, 2019. In reply, the Ministry stated as under:-

“All benefits of workers those are available by virtue of serving in an establishment to ISMW including ESIC, EPF, minimum wages, maternity benefits, gratuity etc. However the provisions of ISMW are being re-examined including taking into account Standing Committee’s recommendations on OSH Code.”

12.16 Reportedly, as per the 2011 Census, 400 million Labour force migrates within India for work. Asked to state the specific provisions made in the Code

on Social Security to safeguard the interests of such migrant labours, the Ministry submitted as under:

“In order to extend the scope of social security like EPF, ESIC, the Code has introduced new provisions:-

(i) for ESIC that on an application made by employer and employees jointly to ESIC, the facilities can be made applicable to them even if the threshold of establishment is less than 10.

(ii) Similar provision is existing in case of application of provisions of EPF where if employer and employee giving joint application, then they can become member of EPF even if the number of employees is less than 20 in an establishment.

(iii) An option has been provided to all plantation owners to either provide facilities through their own resources or by becoming member of ESIC.

(iv) The Central Government through notification can extend the benefit of ESIC to an establishment which carries on such hazardous or life threatening occupation as notified by central Government in which even a single employee is employed.

(v) There are provisions to prepare a scheme for gig workers also.”

12.17 On being asked to comment on restoring the Beedi Workers Cess Collection System and providing them with various social security schemes including pensioners benefits, the Ministry stated as under:-

“The cess for beedi workers was removed with the approval of the Parliament. The idea is to reduce the number of cesses as in certain cases, the cost of cess, administrative cost etc. outweighs the cess amount. Having a cess means creating enforcement machinery. Further all the benefits to the beedi workers are being provided from the budgetary support.”

12.18 Various Stakeholders pointed out that the Code does not provide a framework for integrating the Social Security and welfare provisions for Building and Construction Workers with other unorganized workers. In response, the Ministry stated as under:-

“Clause 108 of the Bill seeks to provide for Building and Other Construction Workers’ Welfare Fund and its application. The fund shall be constituted by the Board to be called the Building and other

Construction Workers' Welfare Fund. It shall be credited with the amount of any cess levied, any grants and loans made to the Board by the Central Government or any sum received by the Board. The fund shall be applied for meeting expenses of the State Building and Other Construction Workers Welfare in discharge of its functions, salaries, allowances and other remuneration of the members, officers and other employees for the Board not exceeding five percent of total expense and on objects and for purposes authorized by the proposed code."

12.19 On a specific suggestion pertaining to need for provisions for submission of annual audit reports of Building and Other Construction Workers (BOCW) Welfare Fund to the Legislative Assembly for more effective implementation, the Ministry stated that appropriate penal provisions have been incorporated in the Code for violations of various provisions thereof.

12.20 The Committee are deeply concerned to note that though certain social security benefits have been mentioned in the Code for the Building and Other Construction Workers (BOCW), the details of benefits, entitlement calculation, mode of delivery, etc. have not been clearly spelt out. What is more worrisome is the fact that no procedure/guidelines have been prescribed for the management of funds collected out of the Cess. The Ministry have clarified that though it is the requirement of law to spell out the benefits, entitlement calculation etc. in the law itself, flexibility has been provided so that this can be changed under the Scheme to be formulated in future. The Committee are not convinced with the Ministry's reasonings in view of the fact that BOCWs are exposed to different and extreme kind of hazards pertaining to their service conditions affecting their health and longevity which necessitates

special kind of treatment in respect of health, occupational diseases, social security benefits including pension and insurance. The Committee, therefore, exhort the Ministry to clearly spell out in the law itself the details of benefits etc. intended to be accorded to the BOCWs including the precise enforcement mechanism to ensure effective deliverance.

12.21 Since there is little recognition in the Code of the real problem underlying the accumulation of Cess Funds leaving the BOCWs at the mercy of the State Level Boards which are generally not constituted or do not function effectively, the Committee urge the Ministry to issue specific guidelines and hold periodical meetings with such Boards at the appropriate level to ensure better monitoring and potent management of funds collected out of Cess. The Committee specifically desire that a representative of the Central Government be associated with the State BOCW Boards for effective functioning of such boards in discharge of their assigned mandates.

12.22 Clause 103 provides for self-assessment of Cess in respect of Building and Other Construction Workers. The Committee are of the view that such self-assessment may be subject to abuse by the building contractors because building workers are usually migrant

labours from rural areas of the same State or other States who often work in one or many States where the Cess contribution is collected, but require benefits in another State. But the States' Unorganised Construction Workers Boards do not provide the benefits to workers who come to the State for a short period. According to the Ministry, self assessment of cess has been introduced which would be subject to certain criteria spelt out in Rules, as assessment of cess on case to case basis is not considered to be in the interest of impartial assessment. The Ministry have further clarified that specific provision has been provided in Clause 103(2) for enquiry into a case where discrepancy creeps up *vis-à-vis* the Self Assessment and in payment required. Moreover, Clause 104 of the Code provides for penalty for non-payment of Cess within the specified time including provision for imprisonment as a deterrence. As the implementation of BOCW Welfare Scheme reflects widespread evasion of payment of Cess adversely affecting generation of funds, the Committee desire that the method of self-assessment as introduced in the Code be revisited so as to ensure that the building contractors do not abuse the provision.

12.23 The Committee further recommend that an enabling mechanism be incorporated in the Code itself for portability of

BOCW funds among States so that funds that are due to the beneficiaries can be paid in any State irrespective of where the Cess is collected.

12.24 The Committee are perturbed to note the latest Audit findings on under utilisation of BOCW funds by as many as 24 States and misutilisation of such funds by one State. It is a matter of serious concern that States are sitting on thousands of crores of rupees collected towards the welfare of construction workers, even as labours have been left to fend for themselves amid the prolonged lockdown period arising out of the Covid-19 Pandemic. It is equally deplorable that the Cess collected is being diverted elsewhere contrary to the purpose, as per the C&AG Report relating to a particular State. It, therefore, becomes imperative on the part of the Government to clearly specify and frame regulations on the items on which the Cess Fund should be spent, the violations of which shall attract stringent penalty and criminal liability. In other words, there must be legislative checks in the law itself on the reported under utilisation and misutilisation of BOCW funds for fixing accountability for poor implementation or non-implementation of the Directives regarding spending of Cess Fund.

12.25 The Committee further recommend that the Code should provide for regular internal audit and periodic CAG audit by the CAG of the BOCW Cess Funds collected by the States so that corrective measures can be initiated, as and when warranted, to prevent under utilisation or misutilisation of such Funds accumulated for the purpose of the Welfare of construction workers.

12.26 The Committee's attention has been drawn to one most pertinent point that the Code does not provide for a framework for integrating the social security and welfare provisions for BOCWs with other unorganised workers. In view of the unquestionable significance of such a coordinated integration, the Committee exhort the Ministry to put in place a clear enabling framework incorporating organisational and institutional principles for a strong and seamless coordinating role by the Central Government so as to ensure the effective implementation of the mobility, portability and welfare schemes for the BOCWs across the Country.

12.27 The Committee learn that there has been a major problem of fake and low registration including few renewals of the BOCWs by the Boards. As significant part of the construction workers are inter-state migrants and vulnerable too, the Committee desire that the power of getting the construction workers registered be given to the

officers authorised by the Appropriate Government which would lead to uniformity of authority for the Central sphere workers, increase in registration and renewals besides eliminating the menace of fake registration. Accordingly, Clause 106 be modified detailing out the process of BOCWs' uninterrupted electronic registration/enrolment/renewals and issuance of workers identification numbers to facilitate portability and disbursal of social security benefits.

12.28 The Committee would like to lay stress on the imperative needs of the creation of a central online portal and database of the registered establishments and migrant workers including the BOCWs which would significantly address the issues of identification and inter-state portability while extending welfare aids, especially at the time of distress and exigencies like Covid-19 pandemic.

12.29 The Committee note that in the wake of the Covid-19 pandemic one of the issues that emerged is the conditions of the Inter-State Migrant Workers (ISMW), their retention in job, food and ration facilities for them etc. The Committee have dealt with the issues pertaining to the migrant workers in great detail and given considered recommendations in their Report on the OSHWC Code, 2019. The Ministry have submitted that the provisions for ISMW are

being re-examined including taking into account this Committee's recommendations as contained in their Report on OSHWC Code. In line with their earlier recommendations the Committee would like to reiterate that the definition of ISMW be expanded to include such workers recruited through contractor, directly recruited by the Employer and self-employed worker coming from another State. The Committee also desire that a national database of the ISMW be maintained through which a migrant who might not have registered as an ISMW at his native State should have a facility to enter his data that he is an ISMW.

12.30 The Committee further recommend that the novel initiatives adopted by some State Governments which *inter-alia* include health insurance scheme, Toll free Shramik Sahayata Helpline, Support Centres, Help Desk etc. in favour of the migrant workers deserve a mention in the Code so as to replicate them in other States where a sizeable migrant workers are deployed/engaged for varied activities.

12.31 The Committee further recommend that in the wake of the Covid-19 experience, the inter-State migrant workers should be mentioned as separate category in the Code with special emphasis on the creation of a Welfare Fund for them which ought to be financed proportionately by six agencies/ entities *viz.* the sending

States, the receiving States, the Contractors, the Principal Employers and the registered migrant workers (with limited and minimal contribution). The Funds so created should exclusively be used for workers/employees not covered under other Welfare Funds.

XIII. SOCIAL SECURITY FOR UNORGANISED WORKERS

(Clauses 109 to 114)

13.1 Clause 109 of the Social Security Code provides for framing of schemes for unorganised workers and constitution of social security fund for Gig workers, Platform workers etc. as under:-

Clause 109.—“(1) The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to:-

- (i) life and disability cover;
- (ii) health and maternity benefits;
- (iii) old age protection;
- (iv) education;
- (v) housing; and
- (vi) any other benefit as may be determined by the Central Government.

(2) The State Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to—

- (i) provident fund;
- (ii) employment injury benefit;
- (iii) housing;
- (iv) educational schemes for children;
- (v) skill upgradation of workers;
- (vi) funeral assistance; and
- (vii) old age homes.

(3) Any scheme notified by the Central Government may be—

- (i) wholly funded by the Central Government; or
- (ii) partly funded by the Central Government and partly funded by the State Government; or
- (iii) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the Central Government; or

- (iv) funded from any source including corporate social responsibility fund within the meaning of Companies Act, 2013 or any other such source as may be specified in the scheme.
- (4) The Central Government may, by notification, constitute a Social Security Fund or funds for provision of social security to the unorganised workers, platform workers or gig workers or any class of such workers comprising of the funding received under sub-section (3) or from any other source as may be notified by the Central Government.
- (5) The Social Security Fund or funds as constituted under sub-section (4) shall be administered by the Central Government in such manner as may be prescribed by the Central Government.
- (6) Every scheme notified by the Central Government under sub-section (1) shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to all or any of the following, namely:—
 - (i) scope of the scheme;
 - (ii) authority to implement the scheme;
 - (iii) beneficiaries of the scheme;
 - (iv) resources of the scheme;
 - (v) agency or agencies that will implement the scheme;
 - (vi) redressal of grievances; and
 - (vii) any other relevant matter,and a special purpose vehicle may also be constituted by the Central Government for the purpose of implementation of such scheme”.

13.2 Various Stakeholders and Domain Experts made a number of submissions on multiple issues pertaining to the provisions made for Unorganised Workers and also in particular reference to the imperative need for Universalisation of Social Security to cover the last worker in tune with spirit of the Social Security Code, 2019. They pointed out that while the Code aims to provide Social Security to Unorganised Workers, no concrete steps have been spelt out, rather provisions have been framed in a recommendatory manner instead of a mandatory way. There has been no clarity on existing Social Security schemes for workers in industries like beedi workers, mining etc. providing for robust health, education and other benefits. Financing of such schemes also becomes complex given that no formal employer-employee relationships exists in the case of Unorganised Workers.

13.3 Some other petitioners also submitted that Section 109 (1) and (2) merely lists the welfare schemes which the Central and State Governments may make

available in future dates through executive notifications. Schemes [as mentioned in Clause 109 (1) and (2)] and other features such as funding pattern [Clause 109 (3)], registration process (Clause 113), workers facilitation center (clause 112) and provision of central and state boards were also outlined in the existing Unorganized Worker Social Security Act (UWSSA) 2008. However, even after 12 years of the enactment of the Act, only six percent of the unorganized workers are covered under one or other form of social security. Hence, retaining usual administrative clauses of the UWSSA 2008 in Chapter IX and Chapter II of the present Bill without any legal framework would not bring any benefit for the unorganized workers in the country and not widen social security coverage in near future. The Stakeholders suggested that a right based universal social protection floor for the unorganized sector should be put in place, which was envisaged in the second draft version of the Social Security Code Bill which the Government withdrew for unknown reasons after soliciting public comments in March 2018.

13.4 In response, the Ministry stated as under:

“The Code on Social Security, 2019 provides for an extension of ESIC coverage to establishments with less than 10 employees on voluntary basis and to hazardous industries with less than 10 employees on mandatory basis. Besides, the proposed code also includes enabling provision to frame schemes through ESIC for unorganized workers, gig workers and platform workers, which is an attempt to extend the outreach of social security to cover unorganized workers as also those who are outside of formal employer-employee relationships.”

13.5 Experts further submitted that the social security schemes enlisted in Clause 109 (1) and (2) are not in congruence with the definition of social security given in Clause 2 (70). It would be important to provide a framework of a model composite scheme (to bring greater uniformity among States) which includes issues and concerns of education, health, social security, old age and disability pension and other benefits that are necessary for living a life of dignity as postulated by the Constitution of India. This model scheme should be made ‘minimum mandatory entitlement’ across the States so as to facilitate

inter-state portability for the benefit of migrant workers. In response, the Ministry stated that Clause 109(1) was as per the existing provisions (Section 3) of Unorganised Workers Social Security Act, 2008.

13.6 On the provisions of Clause 109(3)(iv), a submission has been made that the Companies Act 2013 should be amended to levy extra 1-2% over and above their CSR to contribute to the Fund for the Unorganised Workers directly and/or indirectly. The Government should also consider levying a Cess from the public. Both should finance unemployment assistance to the workers registered under the Social Security Organisation as suitable. In response, the Ministry stated that Amendment of Companies Act, 2013 was out of their purview.

13.7 Some Trade Unions specifically submitted that the Chapter on Social Security for Unorganised Workers only elaborates the intentions without any commitment or concrete provisions for workers in terms of financial commitment, what is outlined is a scheme based mechanism leaving it to Government to notify suitable schemes from time to time. Funding sources have been identified as Government, Employers, beneficiaries, corporate social responsibility etc, but no specific amount has been stipulated in the Code.

13.8 On the provisions made in Clause 109 for setting up workers Facilitation Centre to facilitate the workers of the Unorganised sector, it has been submitted by Stakeholders that the Workers Facilitation Centres should not be Municipal Corporations, Panchayats and ULB as stated in the Code as these functionaries have no knowledge of Labour or Work force and workers. The registration of the unorganized workers should be done through Workers Facilitation Centre, which can be any kind of suitable organization identified by the appropriate authority. Trade Unions, any other organization or agency dealing directly with unorganized workers can be appointed as the Workers Facilitation Centre.

13.9 In response to a specific suggestion received from Stakeholders that unorganised workers of sugarcane plantations must be included in the Social Security Code, the Ministry stated as under:

“Clause 109 of the Bill seeks to provide for framing of schemes and constitution of social security fund for unorganised workers, gig workers, platform workers, etc. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to life and disability cover, health and maternity benefits, old age protection, education, housing, etc. The Clause also provides that the State Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to provident fund, employment injury benefit, housing, educational schemes for children, skill upgradation of workers, funeral assistance and old age homes. A special purpose vehicle may also be constituted by the Central Government for the purpose of implementation of such scheme.”

13.10 Some other Stakeholders submitted that since Housing and Skilling form integral part of workers’ Rights and entitlements, Clause 109(1) should be amended to add suitable welfare schemes for unorganised workers on matters relating to Housing; Skilling and Skill Upgradation; and any other benefit as may be determined by the Central Government.

13.11 On the issue of firm commitments of the Government to notify suitable schemes and specific amount of funding sources, the Ministry responded as under:

“Chapter IX of the Code specifically deals with issues related to Social Security for Unorganised Workers. Adequate provisions have been made in this Chapter for forming of Schemes of Unorganised Workers and constitution of Social Security fund for gig workers, platform workers, etc.”

13.12 Regarding the suggestion on Workers Facilitation Centre, the Ministry clarified as under:

“Facilitation Centre is an office to provide Services. The inclusion of employers/ unions does not seem relevant. It has also been pointed out that there should be a separate cell for grievance redressal for complaints on registration, non availability of Social Security benefit and other

incidental issues. Ministry also stated that clause 109(6) *inter-alia* includes redressal of grievances.”

13.13 The Committee asked the mechanism put in place/ contemplated to extend the benefits of various social security schemes to the Gig workers, Platform workers who do not have any traditional employer-employee relationship. In reply the Ministry stated as under:

“Gig workers do not have traditional employer-employee relations. The aggregator who enters into partnership, name or call the drivers/delivery boys etc, as micro entrepreneur or driver entrepreneur or partners or in various other names. Further this platform economy is emerging in Indian economy. However this Ministry agrees with the view that there is a need under a scheme for the gig/platform workers to extend them the benefits of Employees Compensation Act, medical facilities and other social protection.”

13.14 The Committee then asked whether the retention of the existing threshold limit of employment would adversely affect the unorganised sector in general and migrant workers in particular. In response the Ministry submitted as under:-

“A migrant worker is sub-set of workers. All provisions at par with the worker of that particular establishment in which a migrant worker is employed are also available to a migrant worker. It is agreed that there is a need to extend social security coverage to unorganized sector also. For this purpose, this Ministry has already started a scheme called Pradhan Mantri Shram-Yogi Maandhan (PMSYM) which ensures a minimum pension of Rs. 3000 per month on attaining age of 60 years. The scheme also envisages matching contribution by the Central Government to the premium which is payable by a worker who is in the age bracket of 18-40 years and is expected to contribute between Rs. 55 to 200 per month depending on the age of entry in the scheme.”

13.15 On the possibility of creating an industry – Government funded Social Security System, the Ministry responded as under:

“Various provisions in the Social Security Code envisage assured social security to various types of employees by ensuring regular contribution from employer and employees. The Government, depending upon the

availability of budget and the need to provide extended benefits, have already committed financially on various schemes which are as under:-

(i) Under Pradhan Mantri Shram Yogi Maan Dhan Yojana, a matching contribution is given by the Central Government towards the contribution of the member. The amount of contribution ranges from Rs. 55 to Rs. 200 per worker per month depending upon the age of the worker. Government has also assured minimum pension of Rs. 3000 to the member of the PMSYM on attaining the age of 60 years.

(ii) A similar scheme in respect of self-employed and small traders, i.e., National Pension Scheme for Traders and Self Employed Persons (NPSTRD) has been launched.

(iii) Ministry of Agriculture has also sanctioned a similar pension scheme for farmers.

(iv) In addition, the Central Government has been providing for 1.16% to wages towards the Employees' Pension Scheme (EPS), 1995 under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(v) The Government in the year 2014 had also assured minimum pension of Rs.1000 per month under EPS, 1995 which has been continuing.

Clause 109 of the Social Security Code, 2019 provides for formulating suitable welfare schemes for the unorganized workers. In this regard, Clauses 109(3)(iii) and 109(4) are the enabling provisions.”

13.16 As regards, the Pradhan Mantri Shram Yogi Maandhan (PMSYM) which seeks to provide a minimum pension of Rs.3,000 per month on attaining the age of 60 years as a Social Security measure for the Unorganised Sector, and envisages contribution between Rs.55 to Rs.200 per month by a worker in the age bracket of 18-40 years, the Committee asked about the situation if a worker was unable to pay contributing premium after enrolments. In reply, the Ministry submitted as under:-

“(i) It is submitted that PMSYM is a co-contributory Pension Scheme. Central Government also provides equal and matching contribution for the subscribers enrolled under the Scheme. The maximum monthly contribution of Rs.200 is payable only when the subscriber joins at the age of 40. However, if the subscribers joins early the contribution to be paid will be very less and negligible, i.e. Rs.55/- per month, at the entry age of 18. Further, Government provides the minimum monthly assured

pension of Rs.3,000 per month once the subscriber attains the age of 60 and will be paid life-long

(ii) It is submitted that the monthly subscription is being deducted automatically from the bank accounts of the subscribers. If a subscriber fails to pay his monthly contribution in a particular month, in the Scheme, flexibility has been provided to the subscriber, where he can pay the due amount within three months. In this way, Ministry has tried to address the issue of seasonal workers also.”

13.17 In a briefing meeting, the Committee asked whether the PMSYMY intended to club various pension schemes initiated by different State Governments for the unorganised workers. In response, the Secretary, Ministry of Labour & Employment deposed as under:

“The Pradhan Mantri Shram Yogi Maan-dhan Yojana is in addition to what is being given by the States. So, we are not touching the existing schemes at all. The second thing is this. As you are saying that what is the use of this Scheme, I would like to tell that we have brought this Scheme mainly for the unorganised workers. Mainly, the unorganised workers are the building and other construction workers. As you are saying that the full one per cent amount is coming, which is not being used. We have around Rs. 38,000 crore to 40,000 crore with all these State Welfare Boards. We have 5 crore building and other construction workers. All these 5 crore workers can come into this Scheme. They can pay their 50 per cent contribution from their cess amount, and the rest 50 per cent amount will be contributed by the Government of India. So, when they become old, at the age of 60, they are assured of getting minimum Rs. 3,000 as pension. As of today, many States are not giving more than Rs. 1,000. In some of the States like Bihar and UP, only Rs. 200 is given. So, to have a self-respect for the poor man, and that too a retired person, he will get minimum Rs. 3000 under this Scheme. It is for an individual person. It is not a pension for the family. So, the wife, the husband and even their child can avail benefits under this Scheme. If husband and wife will get minimum Rs. 6,000, they can lead a better life after they retire. So, this Scheme is in addition to whatever is going on right now. We have requested all the Chief Secretaries and all the Chief Ministers for it. We are reviewing it almost every week with all our Principal Secretaries and our Officers so that maximum number of building and other construction workers are benefitted. The contribution can also come from the cess amount already collected by the welfare board. Otherwise, what is happening is that this amount is being misused just for distributing bags, cycles, TVs and something like that. It requires Rs. 100 per month and not more than that. So, it means Rs. 1200 in a year. We have also verified the total contribution. Up to the age of 60, the beneficiary will be contributing only Rs. 36,000, and after that, he will get back Rs. 36,000 in one year itself because Rs. 3,000 is an assured amount. If required, if there is any gap,

the Government of India will give that. So, it means that what they will be contributing in 20 to 25 years, they will get back that amount within one year itself. At the same time, they will have a better and respectful life till they die. That is our intention.”

13.18 Asked to state whether the Government could provide an expressed set of parameters of social security for the unorganised workers and steps taken to lessen the burden of the contribution from unorganised and self-employed workers, the Ministry stated as under:

“Clause 109 of the Code seeks to provide express set of parameters for social security for unorganized workers. The Clause provides for framing of schemes and constitution of social security fund for unorganised workers gig workers’ platform workers, etc. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to:

- (i) life and disability cover,
- (ii) health and maternity benefits,
- (iii) old age protection,
- (iv) education,
- (v) housing, etc.

Further, the Clause also provides that the State Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to :

- (i) provident fund,
- (ii) employment injury benefit,
- (iii) housing,
- (iv) educational schemes for children,
- (v) skill up gradation of workers,
- (vi) funeral assistance and old age homes.

Also, Clause 109 (3) of the Code provides that any scheme for unorganized workers notified by the Central Government may be—

- (i) wholly funded by the Central Government; or
- (ii) partly funded by the Central Government and partly funded by the State Government; or
- (iii) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the Central Government; or

- (iv) funded from any source including corporate social responsibility fund within the meaning of Companies Act, 2013 or any other such source as may be specified in the scheme.

As may be seen above, adequate components for funding the schemes through other sources apart from unorganized and self-employed workers have been provided.”

13.19 The Committee desired to know the specific sources of funding for the schemes for the unorganised sector. In response the Ministry stated as under:-

“Sources of the fund for schemes for unorganised workers have been expanded to include funds from corporate social responsibility or any other such source as may be specified in the scheme. Further, enabling provision introduced to provide for the constituting of a special purpose vehicle for the purpose of implementation of schemes for unorganised workers. A Social Security Fund can also be created to cater social security to all types of workers under this Code.”

13.20 As regards the desirability of entrusting the responsibility to a specialised cadre of All India Service Group 'A' Officers to successfully administer all social security schemes, the Ministry apprised as under:

“Labour is in Concurrent List of the Constitution. Therefore, States can enact laws in their own sphere and can also implement schemes for labour welfare in their States. However, Schemes which are implemented by the Central Government, such as, schemes managed by EPFO and ESIC, are uniformly administered throughout the country by an all-India based cadre. Hence, there is no such need in the Code.”

13.21 On being asked to state the steps taken to have a simple and accessible grievance redressal mechanism which could operate at the lower level, the Ministry stated as under:

“Grievance redressal is an implementation-related issue which requires round the clock action and regular updation of the system. All the organizations of the Ministry which are implementing various Schemes have a very robust grievance redressal mechanism and the same shall be further strengthened in line with the future requirements.”

13.22 As regards clarity in the administration of the Social Security Fund as provided for in Clauses 109(4), the Ministry stated as under:

“As provided under Section 109 (5), the Social Security Fund or funds as constituted under sub-section (4) of section 109 shall be administered by

the Central Government in such manner as may be prescribed by the Central Government.”

13.23 On being asked to state whether more clarity was needed in the funding/ financing of various Welfare Schemes for the unorganized workers in the absence of any formal employer-employee relationship in unorganized sector, the Ministry deposed as under:

“Section 109(6) (iv) provides that every scheme notified by the Central Government shall mention the details regarding the sources of the scheme as well. The detailed funding pattern would be spelt out in the schemes so formulated under the Code on Social Security, 2019.”

13.24 As regards the justification for dividing the Welfare Schemes between the Central Government and the State Governments and the need for demarcating the financing and administration of such schemes between the Central Government and the State Governments, the Ministry stated as under:

“The division of welfare schemes between the Central Government and State Governments has been continued from the existing Unorganised Workers Social Security Act, 2008.”

13.25 Clause 111 of the Social Security Code provides as under:-

“The Government formulating and notifying the scheme under this Chapter shall provide therein the form and manner of keeping the records electronically or otherwise relating to the scheme and the authority by whom such records shall be maintained:

Provided that such record shall, as far as may be possible, bear continuous number for the purpose of proper management of the scheme and for avoiding any duplication and overlapping in records.”

13.26 Some petitioners suggested that the Central Government should upkeep the database at national level for all the workers and the schemes they are registered in and ensure that in case of migration of workers to other States the workers do not lose the benefits. Further, technologically this database should also be linked with the database for the Migrant workers being created under the OSH Code 2019 and database of construction workers in Chapter VIII so

that if any Migrant worker updates his location, his details in this database also gets updated and portability of benefits could be achieved.

13.27 In response to the above suggestions, the Ministry stated as under:

“Clause 111 of the Bill seeks to provide for keeping the records electronically or otherwise relating to the scheme and the authority by whom such records shall be maintained. As regards portability, the same is to be maintained through Aadhaar number which is to be obtained at the time of registration of a member/beneficiary or at the time of availing of benefits. Through the seeding of Aadhaar in the registration database, portability can be achieved.”

13.28 Clause 112 of the Social Security Code provides as under:-

“The Central Government or the State Government may set-up such workers facilitation centres as may be considered necessary from time to time to perform the following functions, namely:—

- (a) disseminate information on available social security schemes for the unorganised workers;
- (b) facilitate filling, processing and forwarding of application forms for registration of unorganised workers;
- (c) assist unorganised worker to obtain registration from the authority specified in the scheme; and
- (d) facilitate the enrolment of the registered unorganised workers in social security schemes.”

13.29 On the provisions made in clause 112, some stakeholders suggested that a provision be added to mandate the Central Government to set-up an online grievance redressal mechanism to receive grievances from the unorganised workers in case they are not getting the benefits meant for them or are unable to register or any other problem being faced by them when they migrate from one State to another. Further, there should also be a central helpline for workers which will take up issues with the concerned State Government and intimate the worker. In response, the Ministry stated that for grievance redressal an electronic redressal portal of Government of India, *i.e.* CPGRAMS was already functional.

13.30 On being asked whether it would be appropriate to make the establishment of Workers Facilitation Centres mandatory instead of doing it in

a recommendatory manner as such centres would be critical to enable registration of the unorganized workers, the Ministry submitted as under:

“The intent of the Government to set up the Workers Facilitation centres has been clearly incorporated in the Code. Clause 112 of the Bill seeks to provide for setting up of workers facilitation centres. The Central Government or the State Government may set-up workers facilitation centres to perform the functions such as disseminate information on available social security schemes, facilitate filing, processing and forwarding of application forms for registration of unorganized worker and facilitate the enrolment of the registered unorganized workers in social security schemes”

13.31 Clause 113 of the Social Security Code provides as under: _

“(1) Every unorganised worker shall be eligible for registration, for the purposes of this Chapter, subject to the fulfilment of the following conditions, namely:—

(a) he has completed sixteen years of age or such age as may be prescribed by the Central Government;

(b) he has submitted a self-declaration electronically or otherwise in such form, in such manner and to such authority containing such information as may be prescribed by the Central Government.

(2) Every eligible unorganised worker under sub-section (1) shall make an application for registration in such form along with such documents, to such registering authority as may be prescribed by the Central Government and such unorganised worker shall be registered by such registering authority by assigning a distinguishable number to his application or by linking the application to the Aadhaar number.

(3) A registered unorganised worker shall be eligible to avail the benefit of a scheme framed under this Chapter on making such contribution, if any, as may be specified in the scheme.

(4) The Central Government, or as the case may be, the State Government shall make such contribution in a scheme as may be specified therein.”

13.32 Some Stakeholders suggested that it would be useful to lay out criteria for eligibility of registration. Also the linking of the application for registration solely with Aadhaar cards may pose challenges. It may be advisable to reconsider mandatory linking with Aadhaar and offer alternatives. The Stakeholders further suggested that it should be the responsibility of the Central Government to provide and maintain the platform/database for the registration of the unorganised workers using the JAM architecture. Further,

portability of the benefits of the unorganised workers in case of their migration to other states and promoting a single Point of Contact for beneficiaries to avail all the entitled social security services as near to their place of work/residence as possible should be ensured by the Central government.

13.33 In response, the Ministry stated as under:

“Clause 113 (2) of the Code provides that every eligible unorganized worker under sub-section (1) shall make an application for registration in such form along with such documents, to such registering authority as may be prescribed by the Central Government and such unorganised worker shall be registered by such registering authority by assigning a distinguishable number to his application or by linking the application to the Aadhaar number. As regard portability, the same is to be maintained through Aadhaar number which is to be obtained at the time of registration of a member/beneficiary or at the time of availing of benefits. Through the seeding of Aadhaar in the registration database, portability can be achieved.”

13.34 Stakeholders also suggested that clause 113(3) must mandate share of contribution of the Central and State Government in different ratios for different Schemes as may be determined at a later date. In case of contractual arrangements where the employer-employee relationships is difficult to establish or where the employer does not have the means to contribute for their own Social Security, the Government must play the role of the employer.

13.35 On being asked whether the Ministry would be able to create a database for such workers as envisaged under Clause 113, and safeguards contemplated to avoid unnecessary litigation, the Ministry submit as under:

“The definition of unorganised worker has been taken from the existing Unorganised Workers Social Security Act, 2008. Clause 113(2) provides that each eligible unorganized worker shall be registered by the registering authority by assigning a distinguishable number to his application or by linking the application of the Aadhaar number. This provision will facilitate in creation of data base of unorganized workers.”

13.36 The Ministry further submitted that implementation of these provisions pertaining to Aadhaar linking would be within the scope of the Supreme Court

Judgment and necessary provision might be incorporated after examining the legality.

13.37 Highlighting the advantages of linkage with the Aadhaar number and other related matters, the Ministry submitted as follows:-

“(i) The linkage of national database for unorganised worker with Aadhaar will enable the Government of India to have a single unified sanitized and robust database. This will act as a robust platform to deliver various social security schemes of the Central and the State Government for the welfare of the unorganised workers. It will also address the de-duplication of the unorganised worker.

(ii) At present, it is expected that the projected population of India is around 1300 Million during 2019-20, and UIDAI has so far generated around 1257 million Aadhaar numbers. Hence, it has coverage of over 90% of Indian population. Further, except in the States of J&K, Assam and Meghalaya, all other States have almost universal coverage of Aadhaar. Aadhaar is the most trusted and widely held identity document in India which can be authenticated or verified online or offline anytime, anywhere. Further, major flagship schemes of the Government of India like, MGNREGA, Ayushman Bharat, etc are already linked with Aadhaar and have been delivering objectives, by coverage of maximum people. As such, there will not be any gap in the registration of all unorganised workers.

(iii) It is submitted that Clause 109 (1) and (2) of the Code also stipulates that the Central Government and the State Governments shall formulate from time to time suitable welfare schemes for the welfare of unorganised workers. As per Clause 109 (3) of the Code, these Schemes may be wholly funded by the Central Government; or partly funded by the Central Government and partly funded by the State Government; or partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the Central Government. In Indian perspective, over 90% of the work-force are engaged in the unorganised sector and in majority of the cases, employee and employer relations is not established, which is a major bottleneck for identifying and extending the social security schemes to them. Hence, contributory system will not be an impediment, but is going to enhance the coverage and scope of the social security schemes, meant for the welfare of the unorganised workers

(iv) In major democratic Countries, especially in the European countries, there exists well established system of social security for all.”

13.38 During the briefing meeting the Committee were informed that as per Clause 113(2) every registered unorganised worker would be assigned a unique number based on Aadhaar. In that context, the Committee asked the need for issuing another unique number in addition to Aadhaar unique number and whether it was desirable to issue multiple unique numbers. In response, the Secretary, Ministry of Labour & Employment submitted:-

“Our hon. Prime Minister is also saying what you are saying. In Aadhaar, the personal details cannot be used and it is covered under privacy. That is why Aadhaar is a number for portability but scheme-wise, we have a unique number so that the scheme can run smoothly. For example, in EPF also we have a Universal Account Number.”

13.39 On being asked to state the specific safeguards taken/contemplated to ensure portability of social security in the event of employees changing their jobs, the Ministry stated as under:

“Portability is to be maintained through Aadhaar number which is to be obtained at the time of registration of a member/beneficiary or at the time of availing of benefits. Through the seeding of Aadhaar in the registration database, portability can be achieved.”

13.40 On a specific suggestion from Stakeholders whether compulsory seeding of Aadhaar may be dropped for the time being, the Ministry responded as under:

“At present, it is expected that the projected population of India is around 1300 Million during 2019-20, and UIDAI has so far generated around 1257 million Aadhaar numbers. Hence, it has coverage of over 90% of Indian population. Further, Aadhaar is the most trusted and widely held identity document in India which can be authenticated or verified online or offline anytime, anywhere. Further, major flagship schemes of the Government of India like, MGNREGA, Ayushman Bharat, etc are already linked with Aadhaar and have been delivering objectives, by coverage of maximum people. As such, there will not be any gap in the registration of all unorganised workers.”

13.41 Clause 114 of the Code provides as under:-

“(1) The Central Government may formulate and notify, from time to time, suitable social security schemes for gig workers and platform worker on matters relating to—
(a) life and disability cover;
(b) health and maternity benefits;
(c) old age protection; and
(d) any other benefit as may be determined by the Central Government.

- (2) Every scheme formulated and notified under sub-section (1) may provide for—
- (a) the manner of administration of the scheme;
 - (b) the agency or agencies for implementing the scheme;
 - (c) the role of aggregators in the scheme;
 - (d) the sources of funding of the scheme; and
 - (e) any other matter as the Central Government may consider necessary for the efficient administration of the scheme.”

13.42 A number of Stakeholders suggested that the unorganised workers must be offered all the benefits that are offered to organised sector. Given that this Code explicitly classifies gig or platform workers, the Stakeholders suggested that it would be a welcome step if the Code could lay out a definition that addresses the issue of misclassification of this group as self-employed. Some petitioners also suggested that the Clause should specify who would contribute funds for the Social Security schemes of gig workers and platform workers, for example in the form of a cess. This Cess may be based on three way contributions in pre-determined differential ratios shared by the gig/ platform owner or aggregator the service consumer and the employee.

13.43 The Committee desired to know the mechanism put in place to enable the Gig workers and Platform workers to have access to PF, medical care, etc. In reply the Ministry apprised as under:

“In the Code, the proposal to cover gig workers and platform workers is a new initiative of the Government. Clause 114 of the Bill seeks to provide for framing of scheme for gig workers and platform workers as a new proposal. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for gig workers and platform workers on the matter relating to life and disability cover, health and maternity benefits, old age protection, etc.”

13.44 Asked to state the relationship between the Company and the Gig Workers so as to bring in obligations on both the parties, the Ministry stated as under:

“Even though "gig worker" is a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship, however, it is imperative that the company/establishment with whom he is in work arrangement for a continuous and long period of time, may also contribute towards his social security.”

13.45 The Committee then asked whether the cost of doing business would increase if employers in the unorganised sectors would foot the bill for EPFO contributions. In response, the Ministry clarified as under:-

“The provisions of Chapter III (Employees’ Provident Fund) are applicable to every establishment in which twenty or more employees are employed whereas as per the definition of “unorganized sector’ in the Code, one of the criteria for being unorganized sector is that the number of workers employed in the enterprise should be less than ten.

As regards sources of the fund for schemes or unorganised workers have been expanded to include funds from corporate social responsibility or any other such source as may be specified in the scheme. Further, enabling provision have been introduced to provide for the constituting of a special purpose vehicle for the purpose of implementation of schemes for unorganised workers. A Social Security Fund can also be created to cater social security to all types of workers under this Code.”

13.46 In response to a specific query regarding constituting a Roadmap towards universalisation of Social Security benefits covering all the workers with adequate provisions for an effective relief delivery mechanism in times of national emergencies or exigencies so as to bring immediate relief to the stranded Migrant Labours/ Daily Wage Labourers, the Ministry submitted as under:

“The data of the ISMW who are stranded in other States is being collected. The State and Central Governments are extending all support to migrants workers including for providing ration, food and arrangement for their stay in the relief camps. The guidelines dated 15.04.2020 of MHA mandates that State should also make arrangements of intra-state movement of migrant workers to their work place by arranging transport etc. Further from BOCW cess, Central Government, in exercise of its power, has authorized various State Governments to provide cash benefits to BOC workers. Already 2.17 crore workers have been identified by the various State Governments/UTs and have decided to transfer the funds amounting to Rs. 3497 crore from BOCW Cess to the workers account.”

13.47 On being asked to state the reasons for prescribing certain basic criteria such as minimum number of employees in an organisation; length of service; etc. for the provision of social security benefits, the Ministry stated as under:

“The social security benefits, such as, provident fund, pension, gratuity, ESI, etc. which are provided to employees by an employer; carry a recurring cost for the employers. Therefore, it is imperative that the employers who provide benefits to their employees are in a position to bear this regular expenditure. As small employers which employ small number of persons may not be able to bear the same. Besides, the intent of gratuity is to extend this benefit to employees who serve for a longer period of time with the same employer, therefore, minimum number of employees in an organization; length of service; etc. are required for availing social security benefits.”

13.48 Asked to state the comparative position of the provisions made in the Social Security Code, 2019 vis-à-vis the Social Security benefits given to workers in other Countries, the Ministry apprised as under:

“India is having a unique distinction of a large democracy where the number of unorganized workers is very high. Apart from the organized workers covered under different private, public/Government employers there are still a large number of self-employed workers, gig & platform workers, other unorganized workers who are not formally covered for social security benefits. The formalization of Indian economy is very low compared to developed countries. As the economy develops it is expected that more number of informal sector workers may gradually move towards formal sector. The Government is aware of this fact and, therefore, it is in the process of including such unorganized workers under different schemes through the proposed Code. For example, the Code has already proposed a separate scheme for gig and platform workers. Besides, for ESIC also, in Chapter IV, has made provision for non-Insured Persons (IPs) to use medical facilities with some basic charges (section 44). It is difficult, therefore, to compare the various social security benefits between India and other developed countries on one-to-one basis because of the difference in socio-economic conditions.”

13.49 In view of the current Covid-19 pandemic with millions of workers losing employment and claiming ‘Unemployment benefits’ in Countries where such provisions exist, the Committee desired to know whether similar provisions could be established in India too. In response, the Ministry submitted as under:-

“Some of the social security benefits which have been provided in the proposed Code for an employee who ceases to be in employment are as follows:

(i) Payment of gratuity to an employee on the termination of his employment after he has rendered continuous service for not less than five years.

(ii) The existing Employees' Provident Funds (EPF) Scheme, 1952 provides for withdrawal of amount standing to employee's credit in his EPF A/c on ceasing to be an employee in an establishment to which the EPF&MP Act, 1952 applies. This provision shall be retained in the EPF Scheme to be framed under the Code.

(iii) Further, as per the Employees' Pension Scheme, 1995, a member of the Scheme is entitled to early pension, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years. This provision shall be retained in the EPF Scheme to be framed under the Code."

13.50 Asked to state whether any Social Security benefit schemes existed without any contribution from beneficiaries, the Ministry submitted as under:-

"In case of many benefits/schemes, such as, EPS, 1995, EDLI, 1976, maternity benefit, gratuity, etc., employee covered under the scheme need not have to make contribution."

13.51 The Committee then desired to know whether the components of the Social Security benefits envisaged in the Code were in sync with various components of social security as contained in the ILO Social Security (Minimum Standards) Convention, 1952 (No.102) viz. Medical Care; Sickness Benefit; Unemployment Benefit; Old Age Benefit; Employment Injury Benefit; Family Benefit; Maternity Benefit; Invalidity Benefit; and Survivors' Benefit. In reply the Ministry apprised as under:-

"The various components as stated to be part of Security (Minimum Standards) Convention, 1952, find place in the Employees' State Insurance Corporation Act, 1948 and Employees' Provident Funds & Miscellaneous Provisions Act, 1952. All benefits which are given by ESIC are part of Chapter IV of the Social Security Code. The ESIC benefits are applicable on establishment which has 10 or more workers. Provisions have been made in the Code on Social Security for voluntarily joining the Scheme if employer and employees jointly request ESIC and also there are provisions for mandatory coverage of ESIC to an establishment, which carries on such hazardous or life threatening occupation. The medical benefits, sickness benefit, maternity benefit, disablement benefit, dependent benefit, funeral expenses are part of ESIC Scheme. Apart from the above benefits ESIC provides unemployment allowance to the Insured Persons under Rajiv Gandhi Shramik Kalyan Yojana and Atal

Beemit Vyakti Kalyan Yojana subject to fulfilling the required eligibility conditions.

Therefore, the Social Security Code, although technically retaining threshold, extends in a massive way coverage of employees on voluntary basis. Further, extension of ESIC has been made to cover the entire country which means extending from existing 566 districts to all the districts in the country. Further, enabling provisions have been made in the Code to empower the Central Government to frame schemes through ESIC for unorganised workers, gig workers and platform workers, which is an attempt to extend the outreach of social security to cover organised workers, unorganised workers as also those who are outside of formal employer-employee relationships.”

13.52 As regards revisiting the threshold limit of various schemes like EPF, ESI etc. so as to progressively cover more number of workers, the Ministry clarified as follows:-

There is a need to create a balance between cost of doing business and rights of workers including providing him benefits of EPF, ESIC Gratuity etc. as small employers which employ small number of persons may not be able to bear the same. Besides, the intent of social security benefits is to extend these benefits to employees who serve for a longer period of time with an employer, therefore, minimum number of employees in an organization; length of service; etc. are required for availing social security benefits. However, for extending ESIC benefits to employees to establishments employing less than 10 workers, an enabling provision has also been incorporated in the Code for voluntary membership in ESIC in respect of establishment having less than 10 employees, i.e. below the normal threshold for ESIC. In case an employer and employees of an establishment enter into agreement to join ESIC, the Director General of ESIC can allow those employees to avail ESIC benefits (section 1(6)). The Code also provides for mandatory coverage of ESIC to an establishment, which carries on such hazardous or life threatening occupation. Also, for providing ESIC benefits to unorganised workers, etc. a provision has been made in the Code that the Central Government may, in consultation with the ESIC frame scheme for unorganised workers, gig workers and platform workers and the members of their families (section 45).As regards EPF, the Code provides that where it appears to the Central Provident Fund Commissioner whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter III (EPF) should be made applicable to that establishment, the Central Provident Fund Commissioner, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement (section 1(5)). Further, the applicability of Employees' Provident Fund

and Employees’ Pension Scheme and Employees Deposit Linked Insurance Scheme has been extended to all Industries and Establishments employing 20 or more employees as the Schedule of coverage in the existing EPF&MP Act, 1952 has been removed. The Code, therefore while retaining the thresholds for mandatory coverage also provides the flexibility of extending the coverage of social security to an establishment on a voluntary basis even where threshold is not met.”

13.53 The Committee were informed that the Second National Commission on Labour (SNCL) recommended “unemployment insurance” (which is contributory by the three parties viz, the employees, employers and the Government in an equitable manner) and tax- financed ‘unemployment allowance’ for the ‘unorganised workers’ or ‘informal workers’. Asked to state whether it was a fact that the Code on Social Security, 2019 had left out ‘unemployment allowance’ which was included in the earlier draft, the Ministry deposed as under:

“As regards ‘unemployment allowance’ ESIC provides unemployment allowance to the Insured persons (IP) through two schemes namely Rajiv Gandhi Shramik Kalyan Yojana and Atal Beemit Vyakti Kalyan Yojana subject to certain eligibility conditions. Under Rajiv Gandhi Shramik Kalyan Yojana, maximum duration, for which an IP shall be eligible to draw the unemployment allowance during his/her entire life time, is twenty-four months. IP/IW(insured woman) would get the benefit as per the following slabs:

0 to 12 months	13 to 24 months
50% of the last Average Daily wages	25% of the last Average Daily wages

IPs and their families will also be entitled for medical care from ESI dispensaries/ hospitals for such periods, the unemployment allowance is payable in the first spell.

Under Atal Beemit Vyakti Kalyan Yojana, maximum duration for which an IP shall be eligible for unemployment allowance under the scheme is 90 days, once in a lifetime after a minimum two years of insurable employment and subject to the above contributory condition. Relief to the extent of 25% of the average per day earning during the previous four contribution periods to be paid up to maximum 90 days of unemployment once in a lifetime.

It is worthy to mention here that the Labour Code on Social Security consolidates the various provisions relating to social security and welfare of 9 Central Labour Acts leading to ease of compliance and effective enforcement. It provides for dynamism by prescribing rules and regulations through enabling provisions in the Code. Also, clause 109(1)(vi) of the Code provides the flexibility to formulate schemes on any benefit as may be determined by the Central Government. The demand of universalization including social security benefits for unorganized sector will be through formulation of schemes in the field of pension, insurance, Provident Fund, housing, medical, other benefits determined by the Central Government from time to time, etc.”

13.54 It was learnt that the earlier two drafts of the Code on Social Security, 2019 firmly reiterated the Government of India’s commitment towards a rights based universal social security system for all workers. However, the present Social Security Code, 2019 as introduced in Lok Sabha has withdrawn the commitment of the Government to provide a legal framework for universal and integrated rights based social security in India. In this context, Committee asked the specific reasons for omitting the aforesaid commitment towards rights based universal social security system. In response the Ministry clarified as under:-

“The exercise of codification of social security legislations has been going on since the beginning of the year 2017. The 1st draft on Social Security was placed on website for inviting comments/suggestions of various stakeholders including of general public on 16th March, 2017. After considering the comments from various stakeholders, a revised draft Code was uploaded on the website of the Ministry on 1st March, 2018 (called 2nd draft). This draft essentially sought to delegate the functions of Employees Provident Fund Organisation (EPFO) and Employees State Insurance Corporation (ESIC) to the State Governments. This was opposed by trade unions as they were not in agreement for dismantling the existing structure of EPFO and ESIC but wanted universalization of social security to all, as proposed in the Code. After opposition of trade unions and revisiting of matter in the Ministry, 3rd draft was circulated on 16th November, 2018 excluding EPFO and ESIC. Representatives of trade unions again objected that with exclusion of EPF and ESIC, the draft Code has no meaning.

Finally the current draft was circulated to all State Governments and Union Territories on 17th September, 2019 and was also placed on the website for seeking comments of all stakeholders, including from public. This Code has different provisions from all the previous codes as it retains Employees Provident Fund Organisation and Employees State Insurance Corporation in central sphere as it exists today. The demand

of universalization of trade union including social security benefits for unorganized sector will be through formulation of schemes in the field of pension, insurance, Provident Fund, housing, medical etc. from time to time. A Tripartite consultation on the draft Social Security Code was held on 5th November, .2019.

After detailed deliberations, the Social Security Code has been prepared and introduced in Lok Sabha on 11th December, 2019.”

13.55 Many stakeholders have been of the view that the applicability criterion of the provisions of the Social Security Code, 2019 do not correlate with the constitutional provisions, international standards, SDG Goals as well as with the recent policy direction of downsizing the threshold limit to expand coverage under the Schemes meant for the organized sector. Asked to furnish comments on the above views of the Stakeholders, the Ministry submitted as follows:-

“The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following nine central labour enactments relating to social security, namely viz. The Employees’ 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 Unorganised Workers’ Social Security Act, 2008. As may be seen, the above Acts are meant for employees/workers; working in different establishments/sectors and by virtue of their enrolment in respective establishments, employees become entitled to get various benefits under the above Acts. The same philosophy has been retained in the Code. Also, as has been mentioned earlier, the social security schemes under EPF and ESIC are not in nature of social assistance and benefits are not paid out of revenue receipt of the Government but from the pool of fund created out of contributions from employers, employees and Central Government. (pension only), the scale of benefits depend upon the quantum of contributions and length of service. Similarly, the cost towards gratuity benefit is borne by the employer. Therefore, there is a need to create a balance between cost of doing business and rights of workers including providing him benefits of EPF, ESIC Gratuity etc. as small employers which employ small number of persons may not be able to bear the same. Besides, the intent of social security benefits is to extend these benefits to employees who serve for a longer period of time with an employer, therefore, minimum number of employees in an organization; length of service; etc. are required for availing social security benefits. As regards unorganised workers, under section 109(1) of the Code the Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual

workers, beedi workers, non-coal workers) on matter relating to life and disability cover; health and maternity benefits; old age protection; education; housing; and any other benefit as may be determined by the Central Government.”

13.56 In response to some specific queries regarding drawing up a Road Map towards a right based social security cushion for all workers, time frame for effective implementation; financial commitment etc., the Ministry deposed as under:

“Various provisions in the Social Security Code envisage assured social security to various types of employees by ensuring regular contribution from employer and employees. The Government depending upon the availability of budget and the need to provide extending benefits, have already committed financially on various schemes which are as under:-

(i) Under Pradhan Mantri Shram Yogi Maan Dhan Yojana, a matching contribution is given by the Central Government towards the contribution of the member. The amount of contribution ranges from Rs. 55 to Rs. 200 per worker per month depending upon the age of the worker. Government has also assured minimum pension of Rs. 3000 to the member of the PMSYM on attaining the age of 60 years.

(ii) A similar scheme in respect of self-employed and small traders, i.e., National Pension Scheme for Traders and Self Employed Persons (NPSTRD) has been launched.

(iii) Ministry of Agriculture has also been sanctioned a similar scheme for farmers.

(iv) In addition, the Central Government has been providing for 1.16% to wages towards the Employees’ Pension Scheme (EPS), 1995 under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

(v) The Government in the year 2014 had also assured minimum pension of Rs.1000 per month under EPS, 1995 which has also been continuing.

(vi) Under Pradhan Mantri Garib Kalyan Yojana, the Government has decided to reimburse 24% of wages to the establishment having upto 100 employees of which 90% draw salary less than Rs.15000 per month. This scheme has been sanctioned for a period of 6 months beginning from the wage month of March, 2020. A budget provision of Rs.4860 crore has also been sanctioned under the Scheme.”

13.57 Asked to state in no uncertain terms the steps taken to put in place a firm legal and institutional framework for a universal right based social

security within a definite time frame, especially in the light of the changes in the production and the labour market, the Ministry deposed as under:-

“The Code on Social Security, 2019 provides for an extension of ESIC coverage to establishments with less than 10 employees on voluntary basis and to hazardous industries with less than 10 employees on mandatory basis. Besides, the proposed code also includes enabling provision to frame schemes through ESIC for unorganized workers, gig workers and platform workers, which is an attempt to extend the outreach of social security to cover unorganized workers as also those who are outside of formal employer-employee relationships.”

13.58 The Committee find that Clause 109 deals with framing of scheme for unorganized workers and constitution of social security fund for gig workers, platform workers etc. Similarly, clause 114 stipulates Schemes for gig workers and platform workers. The Committee feel that there is overlapping of provisions as contained in Clause 109(4) and clause 114 so far as gig workers and platform workers are concerned. The Committee, therefore, recommend that either Clause 114 be appropriately merged with Clause 109 or Sub Clause (4) of Clause 109 be shifted to Clause 114 so that provisions for framing of schemes and constitution of social security fund for gig workers and platform workers coexist at one place. The Committee further desire that the words ‘platform workers or gig workers’ as mentioned in Clause 104(4) should read as ‘platform workers and gig workers’ because they are different from each other and defined separately in the Code.

13.59 Chapter IX of the Code is applicable to the unorganized workers, gig workers and platform workers as per the definitions in Clause 2 and Sub-Clause 78, 35 and 56 respectively. But the Committee are surprised to note that at the beginning of Clause 109, three categories of workers viz. audio visual workers, beedi workers and non-coal workers have been stressed which gives an impression that these three category of workers may get more prominence over other types of unorganized workers. So, in order to avoid any misgivings and in view of the fact that for the first time gig workers and platform workers have been recognized in the Code, the Committee desire that adequate thrust given to category of workers in Clause 109(10) be expanded suitably.

13.60 The Committee note that Clause 109(1) and 109(2) merely lists the Welfare Schemes as also contained in the Unorganised Worker Social Security Act (UWSSA), 2008 which is being amalgamated with the Code. The Central and State Governments may make available such welfare schemes to the unorganized workers. The Committee, however, find that no concrete procedure/measure has been spelt out to extend such schemes to the unorganized workers. Moreover, there are some overlapping of the welfare schemes to be notified between the Central Government

and the State Governments on areas pertaining to old age protection, education and housing. The Ministry's clarification that the provisions have been continued from the existing UWSSA, 2008 does not impress the Committee because merely retaining the usual administrative Clauses of the UWSSA, 2008 in the Social Security Code without any legal framework will not bring the intended benefits for the unorganized workers nor widen the social security coverage in the near future. The Committee, therefore, impress upon the Ministry to make suitable modifications in the appropriate Clauses so as to ensure a legally binding universal social protection for all the workers in the unorganized sector within a definite time frame.

13.61 The Committee are of the considered opinion that clear demarcation of areas for notification of schemes by the Central Government and the State Governments is absolutely required to avoid overlapping and duplication. Therefore, it is imperative to provide for a framework of a model composite scheme, to bring a greater uniformity among States, which should include issues and concerns of education, health, social security, old age, disability pension and other benefits that are necessary for living a life of dignity as postulated by the Constitution of India. This model

Scheme should be made 'minimum mandatory entitlement' across the States so as to facilitate inter-State portability.

13.62 Some Stakeholders have submitted that the provisions contained in Clause 109 appear to have been framed in a recommendatory manner instead of in a mandatory way. The Committee, however, appreciate that in Clause 109(2), the Ministry already incorporated the word 'shall' instead of 'may' so as to make it mandatory when it comes to formulation and notification of suitable welfare schemes for the unorganized workers.

13.63 In view of the Central Government's thrust on large scale programmes to ensure housing for all and skilling of millions of workers both in formal and informal sectors who are dependent on such central schemes for their social security, the Committee recommend that Clause 109(1) be amended to add suitable schemes on matters relating to Housing, skilling and skill upgradation and any other benefits as may be determined by the Central Government since such benefits form an integral part of workers' rights and entitlements.

13.64 The Ministry have admitted that no comparative study of the welfare schemes run by the Central Government on one hand and

various State Governments on the other for the benefit of unorganized workers has been done. The Committee are of the considered opinion that such a study is necessary and should be carried out to find out the best practices followed by different Governments so that they can be centrally codified to facilitate universal social security coverage of every worker in the unorganized sector, irrespective of category or region.

13.65 The Code envisages to empower the Central Government to frame schemes for providing social security to the gig workers and platform workers who do not fall under the traditional employer-employee relation. But the Committee find that the Code is silent on the mechanism contemplated to potently extend the benefits of various social security schemes to the gig workers and platform workers, especially when they are a unique and distinct class of workers. It, therefore, becomes vital on the part of the Ministry to clearly spell out and frame a scheme in the Code itself under which the benefits of Employees Compensation Act, medical facilities and other social protections can be credibly and convincingly extended to the gig workers and platform workers.

13.66 The Committee note that the detailed funding pattern for the Schemes for the unorganised workers would be spelt out in the

schemes so formulated under the Code. Though the Ministry have claimed that sources of funding for schemes have been expanded too include funds from corporate social responsibility or any other such source, the Committee feel that there is a lack of firm commitment on the part of the Government to fund schemes meant for the unorganised sector. The Committee, therefore, recommend that the funding pattern for the schemes meant for the unorganised sector workers be clearly spelt out in the law so as to ensure adequate accrual of funds for potent implementation of various Schemes.

13.67 The Committee further desire that a Social Security Fund for the unorganised sector workers and others be set up and clearly defined in the Code stipulating contributions from the employees, employers (where identifiable), Central Government, State Governments alongwith diversion of funds from CSR, donations and other sources. The Committee specifically desire that the amount collected from compounding of fines for offences committed under the provisions of the Code be made another source of funding the welfare schemes intended for the unorganised sector workers. For better focus and efficiency the Social Security Fund for the unorganised sector be spent on four important categories of social

protection i.e. Hospitalisation, Health Insurance, Life Insurance and Old Age Pension.

13.68 Clause 111 of the Code seeks to provide for keeping the records electronically or otherwise relating to the schemes for the workers in the unorganised sector. The Committee desire that the Central Government should upkeep the database at the national level for all the unorganised sector workers and the schemes they are registered in so as to ensure that in case of migration of such workers from one State to another, the projected benefits are actually extended to them. Further, this data base should be technologically linked with the data base for the migrant workers including construction workers and self-employed people like street vendors so that if any such worker updates his location, his details in this database also gets automatically updated and portability benefits truly achieved. The Committee further desire that promotion of a single point of contact for the beneficiaries to avail all the entitled social security services as near to their place of work/residence should be looked into by the Central Government.

13.69 As regards grievance redressal mechanism put in place for the workers in the unorganised sector, the Ministry have submitted that an electronic grievance redressal portal i.e. CPGRAMS is already

functional by the Government of India. The Committee desire that alongwith this online grievance redressal mechanism, a central helpline number should also be set up to receive grievances from the unorganised sector workers for being taken up with the State Governments concerned for appropriate redressal.

13.70 While appreciating the provision contained in Clause 112 regarding the intent of the Government to set up the Workers Facilitation Centres by the Government or the State Governments, the Committee are of the firm opinion that the provision should be made binding, given the vulnerability of the unorganised sector, so that dissemination of information on available social security schemes, facilitation of filing, processing and forwarding of application forms for registration and enrolment of the registered unorganised workers in the schemes are assured to a greater extent.

13.71 The Committee appreciate that the Pradhan Mantri Shram Yogi Mandhan (PMSYM) seeks to provide a minimum pension of Rs. 3,000/- p.m. on attaining the age of 60 years as a social security measure for the unorganised sector and envisages a contribution between Rs. 55 and Rs. 200 per month by a worker in the age bracket of 18 to 40 years. According to the Ministry, if a subscriber fails to pay his monthly contribution in a particular month,

flexibility has been provided to the subscriber to pay the due amount within three months. The Committee feel that this arrangement does not lessen the burden of the worker who may have defaulted due to situations beyond his control like in the case of nationwide lockdown. In such exigent crisis, the Committee desire that the Central Government should step in and contribute on behalf of the defaulting worker for that limited period of unforeseen circumstances.

13.72 The Committee are deeply concerned to observe that absence of a provision for unemployment insurance for the unorganised sector workers seems to be the biggest gap in the arrangements for social security schemes. It, therefore, becomes imperative on the part of the Government to incorporate 'Unemployment Insurance, in the Code, as also recommended by the Second National Commission on Labour (SNCL), for the unorganised sector workers including BOCWs, Plantation workers and self-employed workers so that unprecedented labour market situations can be well taken care of.

XIV. AUTHORITIES, ASSESSMENT, COMPLIANCE AND RECOVERY (Clause 122 to 134)

14.1 Clauses 122 to 134 deal with Authorities, Assessment, Compliance and Recovery provides as under:-

“1) The Central Government for the purposes of Chapter III and Chapter IV and the provisions in this Code relating to those Chapters, and the

appropriate Government for the purposes of other provisions of this Code, may, by notification, appoint Inspector-cum-Facilitators who shall exercise the powers conferred on them under sub-section (6) in accordance with the inspection scheme referred to in sub-section (2).

(2) The Central Government for the purposes of Chapter III and Chapter IV and the provisions in this Code relating to those Chapters and the appropriate Government in respect of other provisions of this Code, may, by notification, lay down an inspection scheme which may provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically and such scheme shall, inter alia, have provisions to cater to special circumstances for assigning inspections and calling for information from the establishment or any other person.

(3) Without prejudice to the provisions of sub-section (2), the Central Government for the purposes of Chapter III and Chapter IV and the other provisions in this Code relating to those Chapters and the appropriate Government in relation to other provisions of this Code, may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code, to the Inspector-cum-Facilitators as may be specified in such notification.

(4) Without prejudice to the powers of the Central Government or the appropriate Government, as the case may be, under this section, the inspection scheme may be designed taking into account, inter alia, the following factors, namely:—

(a) assignment of unique number to each establishment (which will be same as the registration number allotted to that establishment), each Inspector-cum-Facilitator and each inspection in such manner as may be notified for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government, and in respect of other provisions of this Code as aforesaid, by the appropriate Government; (b) timely uploading of inspection reports in such manner and subject to such conditions as may be notified, for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government and in respect of other provisions of this Code as aforesaid, by the appropriate Government; (c) provisions for special inspections based on such parameters as may be notified, for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government, and in respect of other provisions of this Code as aforesaid, by the appropriate Government; and (d) the characteristics of employment relationships, the nature of work and characteristics of the workplaces based on such parameters as may be notified, for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government, and in respect of other provisions of this Code as aforesaid, by the appropriate Government.

(5) The Inspector-cum-Facilitator may—

(a) advise the employers and employees relating to compliance with the provisions of this Code; and (b) inspect the establishments as assigned to

him under the provisions of this Code, subject to the instructions or guidelines issued by the appropriate Government from time to time.

(6) Subject to the provisions of sub-section (4), the Inspector-cum-Facilitator may,— (a) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is an employee of the establishment; (b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons; (c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer; (d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and (e) exercise such other powers as may be prescribed by the appropriate Government.

(7) Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator for the purposes of sub-section (5) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code. (8) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure for the purposes of sub-section (5), as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.”

14.2 Some stakeholders also submitted that the provisions in Clause 122 (2) pertaining to Inspection Scheme, being a matter of day to day administration, should be under the domain of the Central Board and Corporation and flexibility be given to adapt it according to changing times. The Ministry responded that the power has been vested in the Central Government in order to have uniform Inspection Scheme applicable across the sectors and prevent multiple inspections of the same unit. The Ministry further stated that the provisions were expected to be the broad principles of inspection system to bring transparency and accountability.

14.3 On being asked to state the reason for conferring wide powers of seizure and records on Inspectors as per Clause 122(6), the Ministry submitted as under:

“The word Inspector-cum-Facilitator has been introduced in the Code in place of Enforcement Officer, Inspector, Social Security Officer, etc. Now, in addition to enforcement functions, an Inspector-cum-Facilitator would supply information and impart advice to employers and workers

concerning the most effective means of complying with the provisions of this Code. The appropriate Government will notify an inspection scheme which will be web-based and establishments will be allocated randomly by centralized computer system. The inspection scheme envisages assigning of unique number to inspector cum facilitator, to each Establishment, each Inspection and uploading of report in time bound manner. In the scheme, it should be ensured that the allotment of inspection has some geographical restriction.

The powers delegated to an Inspector-cum-Facilitator under the Code are commensurate to his duties and responsibilities. Further, under the existing ESI Act, 1948 (section 45), Maternity Benefits Act, 1961 (section 15) and Payment of Gratuity Act, 1972 (section 7B), social security officers/inspectors already have such powers.”

14.4 Clause 125 of the Code provides for ‘Assessment and determination of dues for the employer’ as follows:

(1) The Central Government may, by notification, authorise, such officers of the Central Board or the Corporation, as the case may be, not below the rank of Group A officer of that Government, to function as the Authorised Officers for the purposes of Chapter III or Chapter IV, as the case may be, who may, by order—

(a) in a case where a dispute arises regarding the applicability of Chapter III or Chapter IV, as the case may be, to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of Chapter III or Chapter IV, as the case may be, or the schemes made under such Chapter; and

(c) for any of the purposes relating to clause (a) and clause (b), conduct such inquiry, as he may deem necessary for such purposes:

Provided that no proceeding under this sub-section shall be initiated after the expiry of the period of five years from the date on which the dispute referred to in clause (a) is alleged to have been arisen or, as the case may be, the amount referred to in clause (b) is alleged to have been due from an employer.

(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the inquiry under sub-section (1), as far as practicable, shall be held on day-to-day basis and endeavour shall be made to ensure that the inquiry is concluded within a period of two years: Provided that where the inquiry is not concluded within the said period of two years, the Authorised Officer conducting such inquiry shall record the circumstances and reasons for not having concluded so and submit the

circumstances and reasons so recorded to the Central Provident Fund Commissioner or the Director General of the Corporation as the case may be, or such other officer authorised by him in this behalf:

Provided further that the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, after considering the circumstances and the reasons which have been submitted by the Authorised Officer may grant an extension of one year to conclude the said inquiry:

Provided also that the inquiries which are pending immediately before the date of commencement of this Code shall be concluded by the Authorised Officer within a period not exceeding two years from the date of such commencement.

(3) The Authorised Officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

(4) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(5) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so by the Authorised Officer conducting the inquiry, such inquiry officer may decide the applicability of the relevant provisions of this Code or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(6) Where an order under sub-section (1) is passed against an employer *ex parte*, he may, within three months from the date of communication of such order, apply to the Authorised Officer who conducted the inquiry for setting aside such order and if the Authorised Officer is satisfied that the show cause notice was not duly served or that such employer was prevented by any sufficient cause from appearing when the inquiry was held, the Authorised Officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the Authorised Officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the Authorised Officer.

Explanation.—Where an appeal has been preferred under this Code against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(7) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

14.5 Some Stakeholders pointed out that it is not at all the duty of the employee to assert his rights under the Code to be eligible for PF and other beneficiaries. That duty has been cast on the officers of Central Board. Therefore, putting straitjacket limitation period will be a harsh provision as it may extinguish the rights of workers in many genuine cases and will lead to actual financial losses for poor workers. The Ministry responded that the limitation period has been introduced as per lines of existing ESI Act.

14.6 On being asked whether the limit of assessment under Section 125 could be restricted to one year instead of 5 years as technology based assessment was possible on default on a year to year basis, the Ministry clarified as under:

“Under EPF and MP Act, at present, no limitation period exists in commencing inquiry to decide on applicability of the Act and to recover amount due towards EPF, EPS and EDLI. It is proposed to introduce limitation period of 5 years for issuance of an order. This will promote ease of doing business, and promotes predictable policy regime. ESI Act also has a limitation period of 5 years.”

14.7 As per Section 125 (3) powers of a Court of Law have been entrusted on Officers who would be conducting enquiries. Asked to state the specific reasons for the same, the Ministry submitted as under:

“Section 125 deals with assessment and determination of dues from employer. It empowers the Central Government to authorise such

officers of the Central Board or the Corporation, as the case may be, not below the rank of Group A officer of the Government, to function as the Authorised Officers for the purposes of Chapter III (Employees' Provident Fund) or Chapter IV (Employees' State Insurance Corporation). Therefore, section 125 is applicable for Chapter III and IV only.

Further, the powers vested to the Authorised Officers under section 125(3) of the Code are in line with the powers available to the officers conducting the enquiry under Section 7A of the EPF&MP Act, 1952.”

14.8 Clause 127 of the Code provides for ‘Appeal against Order of Authorised Officer’ as under:

“If an employer is not satisfied with the order made under section 125, he may prefer an appeal to an appellate authority as may be prescribed by the Central Government within sixty days of the date of such order on deposit of twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the concerned Social Security Organisation:

Provided that such order made under section 125 shall not be brought into operation for such period as may be notified by the Central Government to provide convenience to the employer to prefer appeal:

Provided further that if the employer finally succeeds in the appeal, the concerned Social Security Organisation shall refund such deposit to the employer together with interest at such rate as may be prescribed by the Central Government within forty-five days of such final order in appeal.”

14.9 Some Stakeholders submitted that as per the extant provisions, only employer has been given opportunity to file appeal. Employees or any other person aggrieved by the Order should also have the locus-standing to prefer appeal. It has further been submitted that conditions of the appeal is also vague and not in conformity with other Laws. Therefore, any person aggrieved by the Order passed by any authority under Section 125 may prefer an appeal to an appellate authority as may be prescribed by the Central Government, within sixty days of the date of such Order, provided that no appeal by the employer shall be entertained by the appellate authority unless he has deposited with it seventy-five percent of the amount due for him as determined by an officer referred to in Section 125; provided further that the appellate

Authority may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section. The Ministry did not accept this suggestion.

14.10 Clause 129 of the Code provides for 'Interest on Amount Due' as under:

“Except where expressly provided otherwise in this Code, the employer shall be liable to pay simple interest at such rate as may be prescribed by the Central Government, from the date on which any amount has become due under this Code till the date of its actual payment.”

14.11 Some petitioners suggested that the rate given in the Section should be minimum and Central Government should not be empowered to reduce it. The Ministry did not agree to the suggestion by stating that the rate of interest at 12% has not been specified in Section 129. Further, the rate can be changed through notification by the Central Government keeping in view the economic condition.

14.12 The Committee find that Clause 122 (6) seems to give sweeping powers to the Inspector-cum-Facilitator in terms of seeking information; search, seizure or taking copies of registers/ records, etc. The Committee feel that the powers endowed upon the Inspector-cum-Facilitator appears to be too wide and intrusive which may create friction and destroy the conducive atmosphere between the employer and employees. The Committee are of the considered opinion that a more robust and establishment friendly inspection with the aid of modern technology and gadgets is desirable rather than such arbitrary provisions bordering on intimidation. It is equally advisable that adequate opportunity of

being heard needs to be given to the employer first before the Inspector-cum-Facilitator impounds, search or seize any establishment in exercise of powers conferred upon him. Needless to say, Clause 122(6) needs to be modified/amended appropriately so as to dispel apprehensions, misinterpretation and abuse of power.

14.13 While appreciating the introduction of a web-based inspection scheme assigning a unique number to Inspector-cum-Facilitator and each Establishment and each Inspection and uploading of report in a time bound manner, the Committee desire that a robust and uniform mechanism be also put in place so as to ensure transparency and accountability in effective implementation of the Inspection Scheme.

14.14 The Committee find that the extant labour laws envisage multiple registrations for various purposes thereby posing challenges not only to Stakeholders involved such as workers and employers but also to the Government. To illustrate, while the workers grapple to deal with multiple authorities to get their due entitled benefits, employers are required to file multiple reports, returns with repeated renewal of registrations. Similarly, for the Governments involved, the cost of enforcement tends to be higher due to the multiplicity of authorities often resulting in delays in

enforcement of compliance due to lack of cohesive data. Keeping in view the difficulties and challenges faced by all the stakeholders involved due to the multiple registration regime, the Committee are of the considered opinion that the Codification process put in for ease of compliance would remain incomplete lest it moves to a single registration and Compliance Platform. It is therefore crucial that requisite amendments be incorporated in the relevant provisions of the Code to herald a new regime of unified registration process.

14.15 The Committee learn that the successful implementation under GST Reform (Goods and Services Tax) has been largely technology driven with interface amongst the Stakeholders through the Common Portal Goods and Services Tax Network (GSTN) which offers simplified and automated procedures for various processes such as registration, returns, refunds, tax payments, etc. The Committee desire that as part of the new labour registration framework, a single application enabling all registrations under a Common Labour Registration Number (CLRN) in line with GSTN be contemplated which would definitely result in a more simplified, convenient, easy and accessible claim of benefits to the workers,

ease of doing business for employers and better enforcement at a lower cost for the Government too.

14.16 The Committee are concerned to note that Clause 125(1) provides that no proceedings shall be initiated after the expiry of the period of five years. The Ministry have clarified that the provision is on the lines of the existing ESI Act and has been retained to promote ease of doing business and a predictable policy regime. In view of the fact that putting a five year limitation period may lead to actual financial losses for the workers and destroy their rights in many genuine cases and moreover since technology based assessments are being envisaged with timely uploading of reports, the Committee call upon the Ministry to consider reducing the five years limitation period to a reasonable extent in the overall interest of the workers.

14.17 The Committee note that Clause 127 provides for an appeal to an Appellate Authority by an employer if he is not satisfied with the order made under Section 125. Thus it implies that under the extant provisions, the employer has been given an opportunity to file appeal. The Committee desire that the conditions of appeal be made more clear ensuring that they are in conformity with other laws.

14.18 Clause 128 *inter-alia* provides that the Authorised Officer may within a period of five years from the date of communication of the order passed under Section 125 or Section 126, reopen the case. The Committee are of the firm opinion that the time limit conferred on the Authorised Officer to reopen the cases seems to be inordinately long and therefore it should be reduced to one year.

14.19 Since no rate of simple interest has been specified in Clause 129 and it would be appropriate to change the rate through notification by the Central Government, the Committee concur with the provisions contained in the said Clause.

XV OFFENCES AND PENALTIES

(Clauses 135 to 140)

15.1 Clauses 135, 136 and 138 provide as under:-

“Clause 135: If any person,—
(a) being an employer, fails to pay any contribution which he is liable to pay under this Code or rules, regulations or schemes made thereunder; or (b) deducts or attempts to deduct from the wages of an employee, the whole or any part of employer's contribution; or (c) in contravention of the provisions of this Code, reduces the wages or any privilege or benefits admissible to an employee; or (d) in contravention of the provisions of Chapter IV or Chapter VI or rules, regulations or schemes made or framed under this Code relating, respectively, to such Chapters, dismisses, discharges, reduces in rank or otherwise penalises a woman employee; or (e) fails or refuses to submit any return, report, statement

or any other information required under this Code or any rules, regulations or schemes made or framed thereunder; or (f) obstructs any Inspector-cum-Facilitator or other officer or staff of the Central Board or the Corporation or other Social Security Organisation or a Competent Authority in the discharge of his duties; or (g) fails to pay any amount of gratuity to which an employee is entitled under this Code; or (h) fails to pay any amount of compensation to which an employee is entitled under this Code; or (i) fails to provide any maternity benefit to which a woman is entitled under this Code; or (j) fails to send to a competent authority a statement which he is required to send under Chapter VII; or (k) fails to produce on demand by the Inspector-cum-Facilitator any register or document in his custody kept in pursuance of this Code or the rules, regulations or schemes made or framed thereunder; (l) fails to pay the cess for building workers which he is liable to pay under this Code; or (m) is guilty of any contravention of or non-compliance with any of the requirements of this Code or the rules or the regulations or schemes made or framed thereunder in respect of which no special penalty is provided in this Chapter; or (n) obstructs executive officer in exercising his functions under Chapter XIII, or (o) dishonestly makes a false return, report, statement or information to be submitted thereunder, he shall be punishable— (i) where he commits an offence under clause (a) with imprisonment for a term which may extend to three years but— (a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of one lakh rupees; (b) which shall not be less than six months, in any other case and shall also be liable to fine of fifty thousand rupees: Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term; (ii) where he commits an offence under any of the clauses (b) to (g) [except clause (e)] , clauses (i) and (k) to (m), with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both; (iii) where he commits an offence under clauses (e), (h), (j) or clause (n) with a fine which may extend to fifty thousand rupees; (iv) where he commits an offence under clause (o), with imprisonment for a term which may extend to six months.”

Clause 136: “Whoever, having been convicted by a court of an offence punishable under this Code, commits the same offence shall, for second, or every subsequent such offence, be punishable with imprisonment for a term which may extend to two years and with fine of two lakh rupees:

Provided that where such second or subsequent offence is for failure by the employer to pay any contribution, charges, cess, maternity benefit, gratuity or compensation which under this Code he is liable to pay, he shall, for such second or subsequent offence, be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of three lakh rupees.”

Clause 138,“(1) No court shall take cognizance of an offence punishable under this Code except on a complaint made by such officer or other person as may be prescribed for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed thereunder, by the appropriate Government. (2) Notwithstanding anything contained in sub-section (1), no prosecution under this Code shall be instituted except by or with the previous sanction of the authority prescribed for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made thereunder, by the appropriate Government. (3) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Chapter.”

15.2 The Committee desired to know whether the fine proposed under Clause 135 could be reduced to a reasonable extent. In reply, the Ministry stated as under:

“Clause 135 of the Bill seeks to provide penalty for failure of pay contribution, etc. The penalties have been rationalized, graded and their amount has been rationalised. Further, the provisions of compounding have also been introduced to encourage compliance. “

15.3 As regards proposed exorbitant fine and stiff penalties under Clause 136, the Ministry clarified as under:

“Section 136 which deals with enhanced punishment in certain cases after previous conviction is as per section 85A of the Employees’ State Insurance Act, 1948. Further, the penalties in the Code have been rationalized, graded and their amount has been rationalized.”

15.4 On being asked to state the reasons for not providing any discretion to Courts even in exceptional circumstances to lessen the sentence of imprisonment, the Ministry stated as under:

“Proviso to section 135(o)(i)(b) provides that:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;”

15.5 Some Stakeholders submitted that clause 138 must be amended to say “No court shall take cognizance of an offence punishable under this Code except on a complaint made by such officer or other person as may be prescribed for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government; and the aggrieved”. In case the aggrieved is not satisfied with the action taken by the appellate authority as per the different chapters of the Code, they must have the option of approaching the Court on their own and not only on the basis of a complaint made by the same appellate authority.

15.6 The Committee find that exorbitant fine and stiff penalties have been proposed in clauses 135 and 136 which may extend to three lakh rupees and imprisonment extending upto five years for violation of the provisions or offences committed. The Ministry have clarified that the penalty provisions in the Code have been rationalized, graded and their amount have also been rationalised. Further, the provisions of compounding have also been introduced to encourage compliance. The Committee though find merits in the Ministry's submissions, however desire that the penalty provisions be reviewed so as to further rationalise them, wherever warranted.

15.7 The Committee opine that the apprehensions raised at some quarters regarding the Court's discretion to lessen the sentence of imprisonment have been duly addressed under Clause 135(o)(i)(b) which stipulates that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term. The Committee, however, recommend that Clause 138 be suitably modified to stipulate that in case the aggrieved is not satisfied with the action/decision taken by the Appellate Authority as per the different chapters of the Code, they should have the option to approach the Court on their own and solely not on the basis of a complaint made by the same Appellate Authority.

XVI. FINANCIAL MEMORANDUM

16.1 Financial Memorandum to the Code on Social Security, 2019 is reproduced as under:

“At present, the provisions of the proposed Code does not involve any expenditure either recurring or non-recurring from the Consolidated Fund of India. However, the financial implications may arise in future for formulating the schemes for unorganised sector and for entrusting the additional work for administration of other enactments or schemes relating to social security under clause 13 of the Bill. Such recurring or non-recurring expenditure cannot be estimated at present.”

16.2 As may be seen from above the 'Financial Memorandum' does not involve any expenditure from the CFI. This appears to contradict provisions made in Clause 113(2) making it mandatory for Aadhaar linkage which as per the Supreme Court verdict on (Puttuswamy Vs Union of India) can be done only for subsidy/ benefits serviced from the CFI. On being asked to state the measures proposed to rectify this lacunae, the Ministry responded as under:

"It has been specified in the Financial Memorandum to the Code that financial implications may arise in future for formulating the Schemes for unorganized sector and for entrusting the additional work for administration of other enactments or schemes relating to social security under Clause 13. It also mentions that such recurring and non-recurring expenditure cannot be estimated at present. Therefore, the Code clearly acknowledges that there will be expenditure from the Consolidated Fund of India (CFI) for undertaking Schemes, however, the same cannot be quantified at present. Further, it is reiterated that implementation of provisions related to application of Aadhaar will be made as per the law of the land and in consultation with UIDAI and within the scope of judgment of the Hon'ble Supreme Court and the necessary provisions may be incorporated in the proposed Code after examining the legality."

16.3 Further, the Financial Memorandum remains vague to the extent that neither estimated expenditure has been quantified nor source of revenue clearly indicated as is done in other Financial Memorandum such as the one pertaining to 'The Industrial Relations Code, 2019'. Asked to explain the matter, the Ministry clarified as under:

"As the recurring and non-recurring expenditure under the Code cannot be estimated at present as the schemes and their other specifics, such as, administrative expenses, Government share of contribution, etc. which will involve expenditure from the CFI are yet to be finalized, expenditure in exact terms has not been estimated in the Financial Memorandum."

16.4 The Committee find that the Financial Memorandum to the Code remains vague to the extent that neither estimated expenditure has been quantified nor source of revenue clearly indicated as was done in other Codes such as the 'Industrial

Relations Code, 2019'. The Ministry have reasoned that the exact terms have not been estimated in the Financial Memorandum as the recurring and non-recurring expenditure of the Schemes and their other specifics such as administrative expenses, Government's share of contribution, etc are yet to be finalized. As regards non-indication of any expenditure from the Consolidated Fund of India (CFI) *vis-à-vis* provisions made in Clause 113(2) making it mandatory for Aadhaar linkage which as per the Supreme Court verdict could be done only for subsidy/ benefits serviced from the CFI, the Ministry have assured that the implementation of provisions related to the application of Aadhaar would be made as per the law of the land and in consultation with UIDAI and within the scope of the Supreme Court Judgment. While taking note of the Ministry's assurance that necessary provisions would be incorporated in the proposed Code after examining the legality, the Committee urge the Ministry to harmonise the relevant provisions in the Code with the Supreme Court Judgment so as to make it legally tenable. The Committee also desire some tentative approximate estimated financial commitments be reflected in the Financial Memorandum which may be modified according to the need of time so as to

demonstrate authenticity and inspire confidence among all the Stakeholders involved.

**New Delhi;
30th July, 2020
8th Shravana, 1942 (Saka)**

**BHARTRUHARI MAHTAB
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR**

M. SHANMUGAM

MEMBER OF PARLIAMENT
(RAJYA SABHA)

MEMBER :

- Committee on Public Undertakings
- Standing Committee on Labour
- Consultative Committee on Heavy Industries & PE
- Committee on MPLAD Scheme

GENERAL SECRETARY :

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NOTE OF DISSENT

The Government says that the Code on Social Security, 2019 intended to subsume nine Central Labour Acts, after simplifying and rationalizing the relevant provisions in those Acts. When it is not simplified and made comprehensive, the purpose of bringing the Code by the Government is not served.

The Code on Social Security, 2019 is the amalgamation of nine Acts relating to labour community. Therefore, the definitions play a vital role in the successful implementation of this Code. Otherwise, there would be unnecessary prolonged litigation disturbing the industrial peace.

Clause 1 (1): The title of the Bill itself should be "The Code on the Labour Welfare and Social Security. Therefore, the words "Labour Welfare" should be inserted.

The Government has not taken into consideration many important suggestions and modifications suggested by the Committee. For example, the definition of "workmen" may be referred to. When the definition of "worker" has narrow definition as in the present Code, it will give loopholes to the employer. Gig worker is not within the purview of Code on Industrial Relations

There should be only one common definition of "workman" consisting of so many nomenclature like, worker, Gig worker, employee, platform worker, worker under Fixed-term employment, commission or piece-rate worker, part-time worker, seasonal worker, wage worker, domestic worker, home based worker, informal worker, unorganized worker, Outsourced worker. inter-country migrant worker, agricultural worker, Anganwadi and Asha worker, etc. These points were also raised in the examination of Code on Occupational Safety and Code on Industrial Relations. There should not be any discrimination between unorganized worker and the organized worker, as far as definition of "workman" is concerned.

Clause 1 (4): The threshold limit column should be deleted to enable the workers of all sectors to get the benefit. The workers coming under the Unorganised Workers including agrarian workers, who come under Agrarian Social Security Act, 2008 should also be incorporated in the purview of this Code. The Code should be made applicable universally.

Clause 2 (1): The clause regarding appointment of "agents" should be deleted. The owners should be made responsible for the compliance of the provisions of this Code.

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M. SHANMUGAM
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(RAJYA SABHA)

MEMBER :

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Clause 2 (14): The definition of “compensation” should be as provided in Section 2 (c) of the Employees’ Compensation Act, 1923.

Clause 2 (16): The definition of “completed year of service” is deviated from the Payment of Gratuity Act, 1972. The provisions of section 2 (b) and (c) of the Payment of Gratuity Act, 1972 should be taken into account.

Clause 2 (20): The State Board alone can give the benefits to the workers. It is a very difficult task to issue benefits directly to the workers by the Central Board.

Clause 2 (24): In the definition of “dependant”, the dependant married daughter should also be included. There is a judgement by the Madras High Court that omitting “married daughter who is a dependant” in getting terminal benefits and compassionate appointment is violation of article 14 of the Constitution of India.

Clause 2 (26): The definition of “employee” should be entirely modified to include the provisions in the following Acts, since the Code covers both the organized and unorganized workers:

- 1) Beedi and Cigar workers (condition of employment) Act 1966 - Section 2 (f).
- 2) Coal mines, Provident Fund and Miscellaneous provisions Act 1948 - Section 2(d).
- 3) Employment exchange compulsory notification of vacancies) Act 1959 - section 2(b)
- 4) Employees Provident Fund and miscellaneous provisions Act 1952 - Section 2 (f).
- 5) Employees State Insurance Act 1948 - Section 2(9).
- 6) Minimum wages Act 1948 - Section 2(i).
- 7) Payment of Bonus Act 1965 - Section 2(13).
- 8) Payment of Gratuity Act 1972 - Section 2(e).
- 9) Delhi Shop and Establishment Act 1954 - Section 2(7).

The draft code on Social Security, 2018 in clause 2 (42) had elaborately codified the definition of “employee”. Under the “Explanation” especially, an employee would include all kinds of contract of employments and includes –

- a) Part-time worker
- b) Any worker employed

... 3

M. SHANMUGAM
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- c) Fixed term worker
- d) Commission or piece rate worker
- e) Apprentice not covered under Apprenticeship Act.

In India, major chunk of the employees are migrant workers and if they are not included, it is construed as violation of equity of social security. The agricultural workers should also be specifically included.

In clause 2 (28), "employment injury", the following Explanation needs to be incorporated:

"Explanation: An accident occurring to a worker while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established."

Clause 2 (29): The following Acts have provided the definition of "Establishment" :

- 1) Apprentice Act 1961 - Section 2(g),
- 2) Beedi and Cigar workers (Conditions of Employment) Act 1966 - Section 2(h)
- 3) Child Labour (Prohibition and Regulation) Act 1986 - Section 2(iv)
- 4) Contract Labour (Regulation abolition) Act 1976 - Section 2(e)
- 5) Employment exchange compulsory notification of vacancies Act 1959 - Section 2(e), (f) and (g).
- 6) Inter State Migrant Workman (Regulation of employment and conditions of Service) Act 1979 - Section 2(d).
- 7) Labour laws exemption from furnishing returns and maintaining and registers by Certain establishments 1988 - Section 2(b)
- 8) Maternity Benefit Act 1961 - Section 3(e)
- 9) Payment of Bonus Act 1965 - Section 2 (15)(16)
- 10) Sales promotion Employees (conditions of service) Act - Section 2(a)
- 11) Delhi Shops and Establishment Act 1954 - Section 2(9)

A common definition should be arrived at incorporating all the provisions mentioned in the above Acts.

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In clause 2 (31), the definition of “exempted employee” should be suitably modified to include the relevant provisions in the Iron Ore Mines, Manganese Ore Mines and Chrome ore Mines Labour Welfare Fund Act, the Limestone and Dolomite Mines Labour Welfare Fund Act and the Mines Act, 1952.

In clause 2 (32), it is stated that the definition of “factory” should be suitably modified after taking into account the definition of “factory” in the various Acts, like Employees Provident Fund and Miscellaneous Provisions Act, ESI Act, Factories Act, Maternity Benefit Act, Payment of Bonus Act, Payment of Gratuity Act, Delhi Shops & Establishment Act, Payment of Wages Act etc.

The definition of “managing agent” should be modified to include the relevant provisions in the Coal Mines PF and Miscellaneous Provisions Act, ESI Act and Workmen’s Compensation Act.

In clause 2 (33), since the Code is supposed to be a comprehensive one, the term “family” should be defined taking into account the relevant provisions in EPF Scheme Act, 1952, ESI Act, 1958 and the Payment of Gratuity Act, 1972.

In clause 2 (37), in the term “Inspector-cum-Facilitator”, the word “Facilitator” be deleted, since facilitator work is not part of the work of Inspector.

In clause 2 (42), in the definition of “medical termination of pregnancy” the following Explanation be added after the definition:

“Explanation: In case of miscarriage or medical termination of pregnancy, a woman shall on production of such proof be entitled to leave with wages at the rate of maternity benefit for a period of 6 months immediately following the date of her miscarriage or her medical termination of pregnancy, as the case may be.”

In clause 2 (43), the definition of “owner” should also be comprehensively provided to include the provisions in the Indian Boilers Act, Collection of Statistics Act, Industries (Development and Regulations) Act, Limestone and Dolomite Mines Labour Welfare Fund Act and the Mines Act, 1952.

Clause 2 (49): In the term “Occupier”, in sub-clause (c), the State Government should be included. Further the definition of “Occupier” be suitably broad-based to incorporate a common definition from the following Acts:

- 1) Environment (Protection Act)1986 - Section 2 (f)
- 2) Child Labour (Prohibition and Regulation) Act 1978 - Section 2 (vi)

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- 3) Employees State Insurance Act 1948 – Section 2 (15)
- 4) Iron ore mines, Manganese ore mines and chrome ore mines labour welfare fund Act 1976 – Section 2(c)
- 5) Limestone and dolomite mines labour welfare fund Act 1972 - Section 2(b)
- 6) Factories Act 1948 – Section 2(n)
- 7) Delhi Shops and Establishment Act 1954 – Section 2(17)

In clause 2 (53), in the “Permanent Partial disablement” and “Permanent total disablement” the concept of definition should be suitably expanded to include provisions in the ESI Act, 1948 and Employees Compensation Act, 1923.

In clause 2 (66), in the definition of “seamen” section 3(42) of the Merchant Shipping Act be taken into consideration for incorporation.

In clause 2 (67), definition of “seasonal factory” needs to be suitably modified, taking into account the case laws in Regional Director, ESIC, Bangalore Vs. Highlands Coffee Works etc. (1977) I LLJ – 178.

In clause 2 (76), the definition of “Tribunal” should be comprehensively expanded to include the provisions in EPF and Miscellaneous Provisions Act, 1952 and the Working Journalist PF and Miscellaneous Provisions Act, 1955.

Clause 2 (81), the provisions of “wage ceiling” needs to be deleted, since it is not in the interest of labour community.

In clause 2 (82), in the definition of “wage worker” the agriculture workers and allied workers should be included.

New Clause Insertion – Clause 2 (82A) - Worker: After sub-clause (82) of clause 2, the following provision Clause 2 (82A) should be inserted:

“The ‘worker’ means a person employed as per the provisions of section 2 (i) of the Factories Act, 1948 or the provisions of section 2 (k) of the Plantation Labour Act, 1951.”

Clause 6 (2) (c) (i): In the Board, instead of 7 members representing unorganized sector workers, it should be 10 members.

Clause 31: The Government frequently fixes ceiling limit of wages and with the result, temporary workers will be in the ESI scheme for some times and again out of the scheme for a period. The ESI

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contributions should be compulsorily deducted from the salary of worker, like EPF contributions. In the EPF, for those employees drawing salary up to Rs.15,000, contribution is compulsory and above Rs.15,000, the management has the option to deduct. In the same and similar manner, those drawing salary up to Rs.21,000, the ESI contribution should be compulsorily deducted. By this, ESI scheme will be strengthened in every district to provide efficient and effective service for the workers.

Clause 46: Certain State Government give exemptions for the management if they provide social security on the condition that similar or more benefits should be provided by the employer. This exemption should be reviewed and reconsidered periodically by the Board.

Clause 49 (1): In the ESI Court, apart from the routine cases, grievances of workers from the exempted units should also be heard.

Clause 53 (1): The labour unions strongly oppose the term "fixed term employment". Instead, it can be replaced with the term "contract workers".

Clause 53 (6): This clause which has harmful effect on the workers should be deleted.

Clause 54 (B) (b) (ii): In the Occupational Safety Code, it was amended as 180 days to get the benefit. Hence it should be replaced with 180 days, instead of 240 days, to get the benefit.

Clause 60: The paternity leave as per the guidelines should also be included in the provision.

Clause 107 (i): The construction workers, once registered, it is very difficult to provide evidence that he worked in construction every 90 days in a year. Therefore, once in five years, they should renew the membership.

Clause 109 (i): As part of the social security, the unorganized workers should also be given EPF and ESI benefits.

Yours sincerely,

(M. SHANMUGAM)

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*** Dissent Note on the Observations/Recommendations in the Report of the Parliamentary Standing Committee on Labour on the 'Code on Social Security, 2019'. Submitted by Elamaram Kareem, MP (Rajya Sabha)**

The Code on Social Security Bill, 2019, claiming to have subsumed nine enactments relating to social security of both organized as well as unorganized workers, and thereby repealing all of them through the enactment of the Code itself, has been tabled in the last winter session of our Parliament. These nine are; 1) the Employees State Insurance Act, 1948, 2) the Employees Provident Fund and Miscellaneous Provisions Act, 1952, 3) the Employees Compensation Act, 1923, 4) the Maternity Benefits Act, 1961 5) the Payment of Gratuity Act, 1972 6) the Unorganised Workers Social Security Act, 2008, 7) the Building and Other Construction Workers Welfare Cess Act, 1996, 8) Cine Workers Welfare Fund Act, 1981 and 9) the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.

While registering my dissent, I would like remind and reiterate my earlier position on Codification of Labour laws in general- the Code on Social Security in particular. I am having a serious objection to this over- all codification exercise, in the name of universalizing social security benefit to all the working people, up to the last person, as being frequently being claimed by the Govt, justifying their so called codification exercise.

In fact, by the Social Security Code, 2019, existing legally prevalent social security rights and provisions for a large sections of workers in the industries like Beedi, Iron-Ore Mines, Mica Mines, Limestone and Dolomite Mines are thrown to total uncertainty, practically to oblivion by the Govt's own act of abolishing all the related provisions of cess collection.

The Beedi Workers Welfare Cess Act, 1971 itself, was repealed by Taxation Laws Amendment Act, 2017, thereby beedi cess was abolished w.e.f. 01.07.2017. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess (three cess), the Mica Mines Labour Welfare Fund Cess, the Limestone and Dolomite Mines Labour Welfare Fund Cess (two cess) and the Cine Workers Welfare Cess- all were abolished through amending the respective legislations w.e.f. 21.05.2016. For the workers of all these sectors, separate sector specific multiple welfare benefits were provided for as per existing statutes to be funded out of the funds generated out of these sector specific cess collections. Neither the Social Security Code 2019 has stipulated anything for these sector specific social security schemes, nor is the dedicated fund

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* The Member has not certified that he has read the Report as required under Direction 87 of the Directions by the Speaker, Lok Sabha

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arrangement there, making the concerned huge workforce totally out of any social security arrangements. And through such exclusion process, can universality be even dreamt of?

Secondly, universality of social security coverage is also severely compromised through retention of the existing threshold limits of employment of establishments for the purpose of coverage. For EPF it is 20 workers and it has not been reduced despite unanimous recommendation of Central Board of Trustees since long back. Even at present threshold of level of employment, the EPF scheme did hardly cover 50 per cent of the entitled workforce owing to extremely tardy enforcement procedure and nominal penalties for violation. Even that nominal provision has been diluted/softened under the Social Security Code. Similarly, for ESI, the threshold level of employment is 10 and even then, the total number enrollment/coverage of workers under ESI is much less than EPF having the threshold size double of that of ESI. This also certifies extremely tardy standard of enforcement with the active patronage of the enforcement machinery both at the centre and the states.

Without prejudice to my basic positions on this Codification exercise, including the Code on Social Security, I would like to submit my point of dissents and suggestions on some specific recommendations contained in the Draft Report of the Committee.

1. Page Nos. 63-68. Para-7.20-6.27 On Employees Provident Fund. Despite my earlier opposition to one of the major areas of dilution in Clause 16(1)(a) which has, unfortunately, not received the due attention and scrutiny of the Hon'ble Committee. Except this clause of reducing the EPF contributions, the Committee addressed all the rest of the matters of EPF. That's why, I again propose the following amendments to be recommended to Parliament as a part of Final Report.

On Contribution to E.P.F. s

Page-22. Chapter-III. Clause-16(1) (a).

a) Line 24. After "... shall be" the words "ten percent of wages" be deleted, instead the words "twelve per cent of basic wages, dearness allowances and retaining allowances, if any" be inserted.

b) Line 28. After "... exceeding" the words "ten per cents of wages" be deleted, instead the words "twelve per cent of basic wages, dearness allowances and retaining allowances, if any" be inserted.

c) Accordingly, the proviso para to Clause 16(1) (a)- line 31 to 35 be deleted.

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d) Another proviso para to Clause 16(1) (a) lines 36-38 be deleted.

e) The following Explanation I & II & III shall be added.

Explanation I. For the purposes of this section “basic wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays wages in either case

Explanation II. For the purposes of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation III. For the purpose of this section “retaining allowance” means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his/her services.

Reasons: My Amendments are nothing new but of my proposals merely to retain the existing provisions of The Employees Provident Funds and Miscellaneous Act, 1952 sans dilutions proposed in the Code against Articles 38 and 41 of our Constitution and sought to save one of our important social security schemes-EPF. The 12% rate of contribution and the clear-cut definition of “wage” and its incidental components to calculate the PF contributions are all the more important to sustain this world largest security system-EPF. The EPF & MP Act, 1952 has well defined the “wage”. Proposed Code seeks to dilute the said definition against the interests of the employees. Any dilution in the rate of contribution and “wages” definition would ultimately adversely affect both EPF contributions (of both employee and employer) and thereby reduce the accruing corpus-the only source of oxygen for EPF fund which exclusively belongs to the worker which would, in other words, pave the way for its gradual dismantling in the long run.

The xxx proviso para (lines 36 to 39) empowers the Central Government to notify at its will, any rate of contribution to any class of employee. This should not be allowed at any cost. Any change in rate of contribution can only be made through amendment of the Code Act and not by executive order and I request the Committee to make such recommendation.

Page-65. Para-7.23 be deleted or, in my considered opinion that instead of endorsing the empowerment of Central Government to reduce the contributions to EPF, it may be reconstructed so as to put the responsibility of paying the contribution in such a rare eventuality like Covid-19 pandemic on the shoulders of the government as they did in the present pandemic case.

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2) Page 163-167. Para-14.12-14.19. On Authorities, Assessment, Compliance and Recovery;

All these recommendations, in my opinion, that are endorsing the attempts that were made in the Code to dismantle the Inspection systems which are supposed to ensure the compliance of the enactment.

HENCE, I am not accepting all these recommendations.

Reasons.

Any law has become meaningful only through its effective enforcement and particularly, in case of labour laws, periodic inspection and/or inspection on receipt of complaint is the life line of enforcement. The system of labour inspection to ensure the effective application of the relevant extant legal provisions has been given a virtual go-bye in this Code. The Chapter XI, by changing of the nomenclature of the 'Inspector' into 'Inspector-cum- Facilitators' itself sets the tune of its dilution. The Inspector-cum- Facilitator so appointed will do inspection according to the "Inspection Scheme" framed by the Central Government. That too web-based inspection in such a manner as may be notified by the appropriate Government. [u/s.122(2)]. It will not be based on complaints received, but randomized inspection (u/s 122(3)). It is basically against the ILO's Labour Inspection Convention (No.81) which mandates the member country to put in place a system of labour inspection whereby, according to Article 16, "workplace shall be inspected as often and as thoroughly to ensure the effective application of the relevant legal provisions".

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The entire approach is to make the law unenforceable to the severe detriment of workers' interests. This needs to be totally changed.

Moreover, in my opinion, consideration should be given to how the operational mandate of the social security organisations can be strengthened to ensure that they have sufficient inspection and enforcement powers to ensure compliance with the Code.

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But I am surprised to see the para 14.12 lamenting about the “sweeping power” of Inspector-cum-Facilitator. As per para 14.13 the Report wholeheartedly welcomed the “web-based Inspection” and lauded its uniqueness. And by para 14.14 the Committee discovered the “Challenges” in the multiple registrations. All these observations are contradicting with recommendations para 8.34 & 8.35 in which the Committee believed “that one of the primary causes of low ESI coverage has been tardy enforcement mechanism”. Again, I am constrained to remind the Committee that does the meaning of establishment and their registration under Building and Other Construction Act upon which the concerned Cess Act rested, are same with the general establishment and its registration. Thus, all these paras seem to have taken the employers’ concerns only and not of the labouring masses.

So, I have no other option than recording my strong dissent to all these recommendations.

3)Page-116-123. Para 12.30- 12.31. Social Security and Cess in respect of Building and Other Construction Workers (BOCW)

The present draft Social Security Code Bill 2019, has ~~xxx~~ tampered with the vital provisions of this Building and Other Construction Workers Cess Act, 1996 which is supposed to provide social security for crores of our construction workers. And it has been virtually torn asunder with contempt by the government to further their policy of ease of doing business at the cost of the most vulnerable section amongst our working population-the building and other construction workers.

The Building and Other Construction Workers Cess Act, 1996 starts as “ an Act to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers’ Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996”. Where is that Act now? Where does it exist in our statue books? In the last monsoon session along with the Code on Wages, had the government been passed the OSHWC Code which has had already been subsumed and repealed the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 as a whole even without bothering to pay the scant respect to its Chapters-IV&V-dealing with the registration of construction workers as beneficiaries, Construction Workers Welfare Board and the welfare Fund, it would have been died. This is nothing but the mad drive for dilution of an important piece of labour welfare legislations.

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association or body of individuals including contractor which or who employs building workers for building and other construction work.

b) Add the following new clauses as 100A & 100B after Clause 100 and before Clause 101.

“**Clause 100A.** Furnishing of returns. — (1) Every employer shall furnish such return to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under clause 100(1), fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice”.

“100B. Assessment of cess.—(1) The officer or authority to whom or to which the return has been furnished under section 100A shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 100A, he/she or it shall, after making or causing to be made such inquiry as he/she or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.”

Reasons;

Given the building and construction works specificity, the definition of ‘establishment’ meant for them basically differs with others normal establishment. Accordingly, its furnishing Return also got different connotation u/s 4 of the existing Cess Act, 1996 which is missing in the Social Security code and on the basis of that Returns alone, the Construction Cess- the only source of fund, would be assessed and levied.

c) Page 62. Chapter VIII. Section 101 be deleted and instead, substituted by the following words culled out from the original Cess Act, to minimize the damage of dilution.

“101. **Interest payable on delay in payment of cess.**—If any employer fails to pay any amount of cess payable under section 100 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per

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cent for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid”.

Reasons; After levying the Cess, payment from the employer must be done within the prescribed time. If it is delayed payment has attracted 2% interest per month u/s Section 3(3) of Cess Act. That means 24% for 12 months. Now the Code on Social Security Bill has omitted and diluted this provision and as usual left the same to be decided by the government. Accordingly, the original one may be restored to body of the Act- Code.

Lastly, no money from Construction Cess be allowed to spend for any purpose other than the welfare of the BOCWs and their Boards. Because Labour Ministry reply has got the indication to meet the expenses of National Social Security Board from this Cess. It is untenable and not acceptable.

4) On ignoring of all Cess Acts;

The Code on Social Security Bill,2019, is the fourth draft/version since 2017, when this government first started their exercise on this subject. On 11th April 2017, labour ministry had uploaded the first version, titled as the “Labour Code on Social Security 2017”, amalgamating 15 labour laws relating to social security. These include 1) the Employees State Insurance Act, 2) the Employees Provident Fund and Miscellaneous Provisions Act, 3) the Employees Compensation Act,4) the Maternity Benefits Act, 5) the Payment of Gratuity Act, 6) the Unorganised Workers Social Security Act,7) the Building and Other Construction Workers Welfare Cess Act, 8) the Beedi Workers Welfare Cess Act, 9) the Beedi Workers Welfare Fund Act,10) the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 11) the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Welfare Fund Act,12) the Mica Mines Labour Welfare Fund Act, 13) the Limestone and Dolomite Mines Labour Welfare Fund Act,14) the Cine Workers Welfare (Cess) Act and 15) the Cine Workers Welfare Fund Act.

Then in March 2018, adding two more Acts-viz., 16) the Personal injuries (Emergency Provision) Act,1962 and 17) the Personal Injuries (Compensation Insurance) Act,1963, they came up with the second version as Labour Code on Social Security 2018.

Now third version as a Code on Social Security 2019, amalgamating eight enactments relating to social security of both organized as well as unorganized workers, has been brought in and circulated for stakeholders’ consultations on 17th Sept.2019. These eight are; 1) the Employees State Insurance Act, 2) the Employees Provident Fund and Miscellaneous Provisions Act, 3) the Employees Compensation Act,4) the Maternity Benefits Act, 5) the Payment of Gratuity Act, 6) the Unorganised Workers Social Security Act,7) the Building

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and Other Construction Workers Welfare Cess Act, 8) Cine Workers Welfare Fund Act. Then in the last winter session they tabled the fourth version adding the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.

Then what happened to the rest of laws- all that relating to the collection of cess for the most vulnerable and precarious workers' welfare funds like beedi etc., that were included in the 2017 and 2018 drafts. All these were washed away in the tsunami of GST. In the run-ups to the rolling -out of GST, all these evil designs were hatched and implemented. The Beedi Workers Welfare Cess Act, 1971 itself, was repealed by Taxation Laws Amendment Act, 2017, thereby beedi cess was abolished w.e.f., 01.07.2017. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess (three cess), the Mica Mines Labour Welfare Fund Cess, the Limestone and Dolomite Mines Labour Welfare Fund Cess (two cess) and the Cine Workers Welfare Cess- all were abolished through amending the respective legislations w.e.f. 21.05.2016. Building and Other Construction Workers' Welfare Cess Act, 1996 has alone withstood the GST tsunami as the said cess does not fall under the category of indirect tax. These atrocious legislative maneuverings rendered all Cess Acts infructuous and all the relevant Fund Acts have been condemned to death/redundant leaving those precarious workers in lurch.

Now it is our bounden duty to address these issues either by accommodating all those provisions in Code with full financial back-up from the government as they promised during the repealing of those enactments or by restoring the original Acts. Accordingly, I suggest making necessary recommendations in this regard in the Final Report.

FINALLY, I STRONGLY OPINES AND SUGGESTS THAT

So far as the EPF&MP Act is concerned, I, while strongly opposing its inclusion in Code on Social Security 2019, firmly suggest that this provenly well functioning and well administered EPF scheme including its EPS section, in almost in all aspects including fund management, should be allowed to function separately, independently and autonomously. Only changes are required in this original Act are 1) abolition of threshold level of employment for the purpose of coverage to make it universal for all employees and workers, 2) strengthening enforcement mechanism by way of empowering as well as making accountable the EPFO for independent inspection and prosecution and penalty for violation by employers without any interference from any corner, 3) Additionally strengthening the grievance redressal machinery both at central and state level, 4) enhancing EPS benefit to ensure minimum pension at not less than Rs

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6000/- per month as at present level of inflation. All Central Govt Scheme workers must be brought under the coverage of EPF&MP Act with Central Govt being the contributor to the EPF as employer.

In case of ESI Act also I suggest to make the ESIC function autonomously and be taken out of Social Security Code. ESI Act should be amended 1) to ensure expansion of the benefits of the workers, 2) to strengthen its enforcement and empower the ESI authority as well as make them autonomous under the supervision of tripartite governing body appropriately for enforcement simultaneously holding them accountable 3) abolition of the threshold limit of employment to make it universal etc. All Central Govt Scheme workers must be brought under the coverage of ESI Act with Central Govt being the contributor to the EPF as employer.

I am having strong opinion that Both the Building & Other Construction Workers (Regulation & Condition of Service) Act 1996 and the Building & Other Construction Workers Welfare Cess Act 1996 should be taken out of the codification exercise and separately examined in consultation with the trade unions for its improvement in implementation/enforcement of both the service conditions and welfare and social security measures. This is required owing to the very fact that the Building & Other Construction workers are exposed to different and extreme kind of hazards in respect of service conditions affecting their health and longevity owing to their exposure to various kinds of hazards, thereby necessitating special kind of treatment in respect of health, social security including pension and also occupational diseases.

Similar separate treatment in respect of social security is needed for the mines workers who are also exposed more widely to typical occupational hazards, further exposing them to occupational diseases. For them the provision of collection of cess should be restored and separate health and social security schemes should be devised to cover the occupational diseases also in a comprehensive manner.

For Beedi workers also the cess collection system should be restored and separate health and social security schemes including pension benefits should be put in place.

Besides, for other sections of unorganized sector workers, fully govt funded social security schemes should be drawn in consultation with trade unions to provide for at least health services, children education, and pension (not less than Rs 6000/- as on date)

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besides providing for other eventualities like accidents, special diseases related to occupation etc.

One important aspect upon which I agree with Draft Report's recommendations. The Codification exercise is full of stipulations like as may be specified / "as may be prescribed/ may be framed" in respect of almost all substantive provisions of the Code on Social Security Bill for any change to be made in future in the provisions of entitlement, contributions and benefits and also on the aspects remaining undefined in the Bill. This means after the Code Bill is passed, any future change in many substantive provisions of the Act can be made through executive decision by-passing the Parliament and also by-passing all the stakeholders, the workers and their unions in particular.

In the Social Security Code, the central Govt usurped such executive power of making change in the Act passed by Parliament in 98 cases (i.e., on 98 issues). Appropriate Govt got empowered to make such unilateral changes on 30 matters. Put together on 128 matters, through executive decisions/orders central government/appropriate govts have usurped the sovereign power of the Parliament.

All such provision for usurping executive power for future changes in any stipulations of the Act, in my considered opinion, if allowed or retained, the whole legislative process will lose its basic democratic content. Hence, I suggest that all such provisions must be scrapped and concretely spelt out in the body of enactment itself.

The recommendations/observations made by the Committee in different paragraphs of the Report viz., 2.8, 2.9, 2.10 and 2.11 in particular and also in other paragraphs are appreciable as they exposed hollowness of the entire legislative exercise of Code on Social Security 2019. In fact the Govt's exercise on Code on Social Security while dealing the number of social security schemes backed by statutes has added no value to them but proposed for their repealing by substantially diluting the beneficial provisions in them; what the Govt precisely ventured is open-ended empowerment of the executives to do and undo anything and everything they want to, unconcerned on workers/employees basic entitlement on social security.

I firmly opine, the recommendations made by the Committee cannot be accommodated unless the entire Code is restructured, overhauled and rewritten to ensure substantive social security benefits scheme, its universal coverage and funding arrangements to be made in the body of main Act (Code) in concrete terms instead of making itself an

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enabling legislation stately on Social Security, but actually open-ended empowerment of the executives and the Govt, dodging the democratic legislative process through Parliament, with the specifics of social security schemes, the benefits, coverage and funding having been left to executives to decide as per their will.

I insist the Committee to make such recommendation of restructuring and overhauling the Code on Social Security, 2019 de novo on the basis of the concrete suggestions in the foregoing paragraphs and reject the present Bill under consideration.

Thank You.

Yours Sincerely,

(Elamaram Kareem)

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*** NOTE OF DISSENT**

The Government says that the Code on Social Security, 2019 intended to subsume nine Central Labour Acts, after simplifying and rationalizing the relevant provisions in those Acts. When it is not simplified and made comprehensive, the purpose of bringing the Code by the Government is not served.

The Code on Social Security, 2019 is the amalgamation of nine Acts relating to labour community. Therefore, the definitions play a vital role in the successful implementation of this Code. Otherwise, there would be unnecessary prolonged litigation disturbing the industrial peace.

Clause 1 (1): The title of the Bill itself should be “The Code on the Labour Welfare and Social Security. Therefore, the words “Labour Welfare” should be inserted.

The Government has not taken into consideration many important suggestions and modifications suggested by the Committee. For example, the definition of “workmen” may be referred to. When the definition of “worker” has narrow definition as in the present Code, it will give loopholes to the employer. Gig worker is not within the purview of Code on Industrial Relations.

There should be only one common definition of “workman” consisting of so many nomenclature like, worker, Gig worker, employee, platform worker, worker under Fixed-term employment, commission or piece-rate worker, part-time worker, seasonal worker, wage worker, domestic worker, home based worker, informal worker, unorganized worker, Outsourced worker. Inter-country migrant worker, agricultural worker, Anganwadi and Asha worker, etc. These points were also raised in the examination of Code on Occupational Safety and Code on Industrial Relations. There should not be any discrimination between unorganized worker and the organized worker, as far as definition of “workman” is concerned.

Clause 1 (4): The threshold limit column should be deleted to enable the workers of all sectors to get the benefit. The workers coming under the Unorganized Workers including agrarian workers, who come under Agrarian Social Security Act, 2008 should also be incorporated in the purview of this Code. The Code should be made applicable universally.

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*** The Member has not certified that he has read the Report as required under Direction 87 of the Directions by the Speaker, Lok Sabha**

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Clause 2 (1): The clause regarding appointment of “agents” should be deleted. The owners should be made responsible for the compliance of the provisions of this Code.

Clause 2 (14): The definition of “compensation” should be as provided in Section 2 (c) of the Employees’ Compensation Act, 1923.

Clause 2 (16): The definition of “completed year of service” is deviated from the Payment of Gratuity Act, 1972. The provisions of section 2 (b) and (c) of the Payment of Gratuity Act, 1972 should be taken into account.

Clause 2 (20): The State Board alone can give the benefits to the workers. It is a very difficult task to issue benefits directly to the workers by the Central Board.

Clause 2 (24): In the definition of “dependent”, the dependent married daughter should also be included. There is a judgement by the Madras High Court that omitting “married daughter who is a dependent” in getting terminal benefits and compassionate appointment is violation of article 14 of the Constitution of India.

Clause 2 (26): The definition of “employee” should be entirely modified to include the provisions in the following Acts, since the Code covers both the organized and unorganized workers:

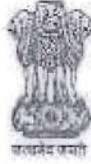
- 1) Beedi and Cigar workers (condition of employment) Act 1966 - Section 2 (f).
- 2) Coal mines, Provident Fund and Miscellaneous provisions Act 1948 - Section 2(d).
- 3) Employment exchange compulsory notification of vacancies Act 1959-section 2(b)
- 4) Employees Provident Fund and miscellaneous provisions Act 1952 - Section 2 (f).
- 5) Employees State Insurance Act 1948 - Section 2(9).
- 6) Minimum wages Act 1948 - Section 2(i).
- 7) Payment of Bonus Act 1965 - Section 2(13).
- 8) Payment of Gratuity Act 1972 - Section 2(e).
- 9) Delhi Shop and Establishment Act 1954 - Section 2(7).

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The draft code on Social Security, 2018 in clause 2 (42) had elaborately codified the definition of “employee”. Under the “Explanation” especially, an employee would include all kinds of contract of employments and includes –

- a) Part-time worker
- b) Any worker employed
- c) Fixed term worker
- d) Commission or piece rate worker
- e) Apprentice not covered under Apprenticeship Act.

In India, major chunk of the employees are migrant workers and if they are not included, it is construed as violation of equity of social security. The agricultural workers should also be specifically included.

In clause 2 (28), “employment injury”, the following Explanation needs to be incorporated:

“Explanation: An accident occurring to a worker while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.”

Clause 2 (29): The following Acts have provided the definition of “Establishment”:

- 1) Apprentice Act 1961 - Section 2(g),
- 2) Beedi and Cigar workers (Conditions of Employment) Act 1966 - Section 2(h)
- 3) Child Labour (Prohibition and Regulation) Act 1986 - Section 2(iv)
- 4) Contract Labour (Regulation abolition) Act 1976 - Section 2(e)
- 5) Employment exchange compulsory notification of vacancies Act 1959 - Section 2(e), (f) and (g).
- 6) Inter State Migrant Workman (Regulation of employment and conditions of Service) Act 1979 - Section 2(d).
- 7) Labour laws exemption from furnishing returns and maintaining and registers by certain establishments 1988 - Section 2(b)
- 8) Maternity Benefit Act 1961 - Section 3(e)
- 9) Payment of Bonus Act 1965 - Section 2 (15)(16)
- 10) Sales promotion Employees (conditions of service) Act - Section 2(a)
- 11) Delhi Shops and Establishment Act 1954 - Section 2(9)

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A common definition should be arrived at incorporating all the provisions mentioned in the above Acts.

In clause 2 (31), the definition of “exempted employee” should be suitably modified to include the relevant provisions in the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, the Limestone and Dolomite Mines Labour Welfare Fund Act and the Mines Act, 1952.

In clause 2 (32), it is stated that the definition of “factory” should be suitably modified after taking into account the definition of “factory” in the various Acts, like Employees Provident Fund and Miscellaneous Provisions Act, ESI Act, Factories Act, Maternity Benefit Act, Payment of Bonus Act, Payment of Gratuity Act, Delhi Shops & Establishment Act, Payment of Wages Act etc.

The definition of “managing agent” should be modified to include the relevant provisions in the Coal Mines PF and Miscellaneous Provisions Act, ESI Act and Workmen’s Compensation Act.

In clause 2 (33), since the Code is supposed to be a comprehensive one, the term “family” should be defined taking into account the relevant provisions in EPF Scheme Act, 1952, ESI Act, 1958 and the Payment of Gratuity Act, 1972.

In clause 2 (37), in the term “Inspector-cum-Facilitator”, the word “Facilitator” be deleted, since facilitator work is not part of the work of Inspector.

In clause 2 (42), in the definition of “medical termination of pregnancy” the following Explanation be added after the definition:

“Explanation: In case of miscarriage or medical termination of pregnancy, a woman shall on production of such proof be entitled to leave with wages at the rate of maternity benefit for a period of 6 months immediately following the date of her miscarriage or her medical termination of pregnancy, as the case may be.”

In clause 2 (43), the definition of “owner” should also be comprehensively provided to include the provisions in the Indian Boilers Act, Collection of Statistics Act, Industries (Development and Regulations) Act, Limestone and Dolomite Mines Labour Welfare Fund Act and the Mines Act, 1952.

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Clause 2 (49): In the term “Occupier”, in sub-clause (c), the State Government should be included. Further the definition of “Occupier” be suitably broad-based to incorporate a common definition from the following Acts:

- 1) Environment (Protection Act) 1986 - Section 2 (f)
- 2) Child Labour (Prohibition and Regulation) Act 1978 - Section 2 (vi)
- 3) Employees State Insurance Act 1948 – Section 2 (15)
- 4) Iron ore mines, Manganese ore mines and chrome ore mines labour welfare fund Act 1976 – Section 2(c)
- 5) Limestone and dolomite mines labour welfare fund Act 1972 - Section 2(b)
- 6) Factories Act 1948 – Section 2(n)
- 7) Delhi Shops and Establishment Act 1954 – Section 2(17)

In clause 2 (53), in the “Permanent Partial disablement” and “Permanent total disablement” the concept of definition should be suitably expanded to include provisions in the ESI Act, 1948 and Employees Compensation Act, 1923.

In clause 2 (66), in the definition of “seamen” section 3(42) of the Merchant Shipping Act be taken into consideration for incorporation.

In clause 2 (67), definition of “seasonal factory” needs to be suitably modified, taking into account the case laws in Regional Director, ESIC, Bangalore Vs. Highlands Coffee Works etc. (1977) I LLJ – 178.

In clause 2 (76), the definition of “Tribunal” should be comprehensively expanded to include the provisions in EPF and Miscellaneous Provisions Act, 1952 and the Working Journalist PF and Miscellaneous Provisions Act, 1955.

Clause 2 (81), the provisions of “wage ceiling” needs to be deleted, since it is not in the interest of labour community.

In clause 2 (82), in the definition of “wage worker” the agriculture workers and allied workers should be included.

New Clause Insertion – Clause 2 (82A) - Worker: After sub-clause (82) of clause 2, the following provision Clause 2 (82A) should be inserted:

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“The ‘worker’ means a person employed as per the provisions of section 2 (i) of the Factories Act, 1948 or the provisions of section 2 (k) of the Plantation Labour Act, 1951.”

Clause 6 (2) (c) (i): In the Board, instead of 7 members representing unorganized sector workers, it should be 10 members.

Clause 31: The Government frequently fixes ceiling limit of wages and with the result, temporary workers will be in the ESI scheme for some times and again out of the scheme for a period. The ESI contributions should be compulsorily deducted from the salary of worker, like EPF contributions. In the EPF, for those employees drawing salary up to Rs.15,000, contribution is compulsory and above Rs.15,000, the management has the option to deduct. In the same and similar manner, those drawing salary up to Rs.21,000, the ESI contribution should be compulsorily deducted. By this, ESI scheme will be strengthened in every district to provide efficient and effective service for the workers.

Clause 46: Certain State Government give exemptions for the management if they provide social security on the condition that similar or more benefits should be provided by the employer. This exemption should be reviewed and reconsidered periodically by the Board.

Clause 49 (1): In the ESI Court, apart from the routine cases, grievances of workers from the exempted units should also be heard.

Clause 53 (1): The labour unions strongly oppose the term “fixed term employment”. Instead, it can be replaced with the term “contract workers”.

Clause 53 (6): This clause which has harmful effect on the workers should be deleted.

Clause 54 (B) (b) (ii): In the Occupational Safety Code, it was amended as 180 days to get the benefit. Hence it should be replaced with 180 days, instead of 240 days, to get the benefit.

Clause 60: The paternity leave as per the guidelines should also be included in the provision.

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Clause 107 (i): The construction workers, once registered, it is very difficult to provide evidence that he worked in construction every 90 days in a year. Therefore, once in five years, they should renew the membership.

Clause 109 (i): As part of the social security, the unorganized workers should also be given EPF and ESI benefits.

With Regards,

Yours Thankfully,

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Date :
30th July 2020

To

The Chairman

Standing Committee on Labour

*** Note of dissent on the Code on Social Security**

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The emergent background of the post lockdown scenario has added more magnitude to my perception of this Code on social security and its detrimental effect on the workforce. At a crucial time when the workers' legal protection needs to be reinforced, when genuinely expanding social security and health benefit is essential, when security of the jobs and wages stands out as imperative to ensure an emotionally stable society the statement and objects of the code on Social Security bill, in one stroke, aims to demolish all at once under a false façade of universal social security.

This Code on Social Security is the next move in a row to ruin the labour law architecture in the country.

I am not opposed to rationalization of the existing labour laws per se. But the reasoning for the rationalization is not only not convincing but is harmful to the interests of the workers. Labour legislations are meant to protect the welfare and well being of the workers. Any amendments to the law can only add to the welfare and betterment of well being. But the proposed codification of labour laws has besmirched the sanctity of such commitments. The SS Code is another nail in the coffin of constitutional protection of security and welfare of the workers.

I, therefore place on record my note of dissent.

"Simplifying and rationalizing" is nothing but making it unavailable – a façade

'The Code on Social Security, 2019' intends to subsume the following nine Central Labour Acts under the garb of 'simplifying and rationalising' the relevant provisions contained therein:

(i) The Employees' Compensation Act, 1923;

* **The Member has not certified that he has read the Report as required under Direction 87 of the Directions by the Speaker, Lok Sabha**

XXX **Expunged in terms of provisions of Direction 91(1) of the Directions by the Speaker, Lok Sabha**

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- (ii)The Employees' State Insurance Act, 1948;
- (iii)The Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- (iv)The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- (v)The Maternity Benefit Act, 1961;
- (vi)The Payment of Gratuity Act, 1972;
- (vii)The Cine Workers Welfare Fund Act, 1981;
- (viii)The Building and Other Construction Workers Welfare Cess Act, 1996; and
- (ix)The Unorganised Workers' Social Security Act, 2008.

The code is simply a pack of promises. It lacks in detailed plan to extend the social security benefit to the 50 crore unorganized sector workers. The government does not have any data on the number of domestic workers, home based workers, hawkers, street vendors, self employed workers, workers in the gig economy, agricultural workers and fisheries workers.

The failure of the government, private employers and all the enforcement machinery has been exposed in the aftermath of Covid lockdown.

The specifications in the code with regard to all the substantive provisions such as entitlements, benefits and contributions are very indicative. Minister clarifies it as intended to be 'dynamic'. But this will give way to supercede the parliamentary process and privilege.

The code seeks to subsume the aforesaid labour laws and promises universal social security to all workers. But it leaves out many acts such as Welfare Fund Laws like the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976; the Beedi Workers Welfare Fund Act, 1976; the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 etc leaving out the workers from these industries. There is no mention of workers from the agricultural sector and fisheries. A vast section of workers are left out from the coverage.

Scheme workers ASHA of the NRHM, Anganwadi of the ICDS and the Midday meal schemes are absolutely left out.

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The code does not provide for any institutional framework. There is no mention of financial commitment. 'Universal social security' cannot translate into realistic dynamism without adding institutional and financial value to the intent.

Way forward – I reiterate my contention that the whole exercise should be shelved at this juncture of post lockdown challenges. This exercise of subsuming nine laws to bring in a code should be dropped. Existing provisions should be amended to provide more benefits and security to workers. The government and ministry should draw the realistic evidences from the crisis inflicted by the corona lockdown to initiate a fresh exercise to amend the existing laws to cover all the 450 million workers in the unorganized sector and the organized sector workers to ensure job security, health benefits and all social security measures. Workers are the wealth producers. Amendments should aim at achieving a real and comprehensive growth of the people and nation.

Preamble XXX

The very title, 'Code of Social Security' defies the said intent of expansion of welfare to the workers. There is neither 'worker' nor 'welfare' in the title. There is no time frame for implementation. It is just a pack of good intentions lacking in providing committed institutional framework or infrastructure.

Way forward – Rename the code as, "Code on labour welfare and social security".

Definitions – Ambiguous and confusing

'Code on Social Security' fails to define social security appropriately.

The definition does not encompass all the elements that should cover under 'social security' as per the definition of International Labour Organisation. ILO, of which India is a founder member, has set ideal standards for the universal application of social security to ameliorate the working conditions of the workers and to ensure social justice to them. The provisions ILO instruments relating to social security establish minimum standards for 9 fundamental branches of social security namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivor's benefit. The principles anchored in Convention No. 102 are: guarantee of defined benefits; participation of employers and workers in the administration of the schemes; general responsibility of the state for the due provision of the benefits and the proper administration of the institutions; collective financing of the benefits by way of insurance contributions or taxation.

The code on social security exposes itself to be just 'name sake'. It hardly ensures delivery of all the nine elements mentioned by the ILO.

XXX Expunged in terms of provisions of Direction 91(1) of the Directions by the Speaker, Lok Sabha

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Way forward- There can be no realization of intent until the objective and coverage is clearly defined. Code should define 'social security' to ensure government's responsibility and commitment to deliver the fundamental fulcrum of the nine elements. Housing should be included in the definition.

Definitions in the code are very confusing and ambiguous.

"Appropriate government" in various places mean either the state government or the central government.

Definition of 'building workers' is intended to be left for the process of notification as per the clarification of the ministry.

The code defines various types of workers in various clauses differently. There is mix up of the organized and the unorganized sector workers in several clauses such as in section 45 and section 114.

'Contract labour' and 'contractor' – Contract work is expanding in many areas such as in export intensive zone like leather and garments. Home Based Workers in these industries work for contractors and sub contractors. Contract work is dynamic and evolving into new arenas. The definition in the code is very unclear and confusing.

Gig workers and platform workers definition is ambiguous. Domestic workers are not defined. The code does not speak of 'home based workers' and therefore not defined.

Way forward- With regard to 'appropriate government', the code should demarcate as specifically as the 'union government' where the central policies are concerned and as 'state governments' where the industry falls under the state chapter. Ambiguity and confusion in definitions result in depriving benefits to the workers. 'Domestic work', 'home based work' etc should be defined and included. Ambiguity of definition gives advantage to the private employer and provides institutions and employers the leverage to leave the worker in the lurch. Ministry should rework to make clear and unambiguous definitions of all the titles.

'Unorganised sector' and 'unorganised worker' not defined clearly.

Around 94% of India's workforce is concentrated in the unorganized sector. To identify all and provide social security the fundamental premise is to define the sector to encompass the last worker in the remotest village making his/ her contribution to the economy. The code has failed in making a clear definition thereby leaving out more than half of the workforce.

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Way forward- Ministry should engage with the unions to identify every sector that engages workers, Casual, daily wage earners, home based, etc to define appropriately to make sure not one worker is left out of the purview of the legislation.

EPF- threshold limit removes millions from coverage

ESI Act 1948 and EPF & MP Act 1952 are presently governed by tripartite committees. Subsuming these laws in the code without making substantive provisions in the code is objectionable and does not intend to deliver better. These tripartite bodies are well functioning. These need to be strengthened instead.

The threshold limit of 20 workers to be eligible for PF virtually leaves out millions of workers from the benefit.

The code empowers the government to restrict the coverage of EPF to any establishment or employees by way of notification is an incongruity. The existing threshold limit of Rs 15000/ per month eligibility for PF as per EPFO is not addressed in the code.

Way forward – EPF & MP Act are well defined and effectively functioning bodies. Subsuming these Acts in the code defeats the intent and spirit of these acts. The Code should remove the threshold limits to make EPF benefit available to all. The code is completely ambiguous in spelling out definitive institutional structures. Threshold limit of Rs15000/pm as per the EPFO should be removed.

ESIC – Threshold limit removes workers from the benefit – strengthen the ESIC Act- do not dilute

ESIC coverage is presently available to less than half of the workers who are covered under EPF despite the lower threshold limit.

The threshold limit of 10 or more workers to get the benefit of ESIC renders millions of workers out of the purview of benefits under ESIC.

Way forward – Like EPF, ESIC is a well defined Act functioning well through the tripartite structures. ESIC is a wide network with hospitals catering to workers. Better sense would be to widen the network coverage with more number of hospitals under ESIC in all districts, provide more number of doctors with state of the art medical facilities. The ESIC Act should be expanded and strengthened instead of amalgamating into the code.

Particularly in the context of the pandemic spread of corona, health benefits of the workers should be enhanced. Health check up, assessment and treatment should be a made a legal obligation of the employer. Total privatization and commercialization of health system has made medical treatment a farfetched one for the workers. Strengthened ESIC should provide the required attention.

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The technical threshold limit of 10 for ESIC and 20 for EPF and EPS makes it virtually unavailable to more than 20 crore workers in the unorganized sector. 'Voluntary Basis' where the threshold limit is not met is not substantiated with modalities and required infrastructure. Therefore it lacks a serious legal commitment. Funding and infrastructure is again an area left out in the code. The government remains non committal. The code should include concrete commitments without which it remains a bare set of promises.

Gratuity – Eligibility criteria deprives benefit

Payment of Gratuity Act 1972 is subsumed in the code. The code is replete with incongruity and ambiguity.

Eligibility for gratuity payment is fixed as 5 years. The code says that employees of the Fixed Term Employment which in most cases is one year are eligible. There are inadequacies in addressing the issue of single claim application for gratuity, reskilling, retrenchment and other terminal benefits; non payment of gratuity to be approached to the competent authority.

Way forward- Any limit fixed for eligibility for gratuity would render millions of workers ineligible for the benefit. Daily wage earners, piece rated workers, contract workers who are hired for a short period of work would not get the benefit. The code should make gratuity eligibility available on pro rata basis to all the workers who work for even less than a year in an establishment.

The code should make it the responsibility of the employer to ensure properly calculated gratuity payment to the worker. Non payment and improper payment should be incorporated as a serious offence with proportionate penalty. The code should make it mandatory for the principal employer to pay gratuity in the event of the contractor failing to pay. Payment of gratuity should be ensured within a short span of time after retirement.

Maternity Benefit – code fails to universalise

Providing maternity benefit to every woman worker is the paramount social responsibility of the government and the employer. But in India, the generous maternity benefit act benefits just 1% of women workers. Ensuring maternity benefit is a universal cry. This is essential to ensure uplift of women and gender equality. Any policy that aims at empowering women by providing their rights is a symbol of progress.

Payment of maternity benefit to every woman worker should be ensured. The existing Maternity Benefit Act is quite a generous one. This may be amended to incorporate all the women workers including the agricultural workers. But subsuming the act in the code, the code does not spell out anything clearly.

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Way forward – Appropriate provision should be incorporated in the code to ensure six months paid leave to every woman worker for child birth. For the women of the unorganized sector where there are multiple employers the government, state or center as the case may be, should make payments equal to six months' wage in the respective industry through the unorganized sector welfare boards. In states where there are no welfare boards, the payment should be made through the Ministry of labour.

Provision of crèche facility in work places where there are more than 5 or more women work should be incorporated in the code.

'Work of arduous nature' should be defined properly. Pregnant women should be mandatorily exempted from the work of arduous nature. In case of construction workers lifting of maximum weight for the pregnant women should be restricted. Provision for intervals to the lactating mothers should be incorporated.

Payment of maternity benefit should be universalized. The code should incorporate infrastructure, institutional mechanism and budgetary allocation to ensure the social commitment.

Employees' Compensation – lack of clarity makes it non committal

Reimbursement of actual medical expenditure caused by an employee injured on duty is the responsibility of the employer. The code is absolutely silent on how the reimbursement would be accessed by workers in the unorganized sector who due to the threshold limit are not eligible for ESI benefit. How the domestic workers, home based workers, agricultural workers etc., get the benefit is not addressed in the code.

Way Forward – Threshold limit of eligibility to access ESIC should be lifted. The code should make it unambiguously clear that the employer should reimburse the cost of treatment in the absence of ESI benefit. In case of unorganized sector workers the government, employer and insurance agencies may form a body to bear the cost through proper infrastructure. The code should be clear on the mode of accessibility which should be simple and hassle free.

Social Security and cess in respect of Building and other construction workers

The Supreme Court in the year 2017 expressed its dismay that only Rs 9500 crores has been utilized 'ostensibly' for the benefit of the construction workers out of the Rs37400 crores collected by way of cess. The center in its affidavit had said its 'helplessness' in the effective implementation. The court said "it is extremely sorry state of affairs that puts a Shakespearean tragedy to shame".

The court gave directions and deadline to ensure registration of the construction workers. But it is not done so far. Number of Construction workers has multiplied manifold. It is a huge task, but never an impossible one. Yet there is no initiative to accomplish.

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In this background the code does not have any promising provision to plug the loopholes and fill the lacunae. All that the Minister enlists are provisions already available in the BOCW Act. The Code lacks in its commitment to implement the existing provisions.

Way forward – While the existing The Building and Other Construction Workers Welfare Cess Act, 1996 is already having welfare measures for the workers of BOCW, the code having subsumed this act is so silent and inadequate to address issues such as the welfare benefits, calculation of benefits, disbursement mechanism, implementation machinery, monitoring machinery etc.,

Payment of cess is evaded. Disbursement of welfare schemes under the act are not carried out. The funds in the boards are being diverted to other spheres as pointed out by the court. The code should address these issues.

The Code should incorporate in clear terms the benefits, enforcement, monitoring etc,. Functioning and accountability of the boards should be determined, monitored and regulated by a committee formed with the tripartite constituents.

Social security for unorganised workers – Code is obviously unclear

More than 94% of India's workforce is in the informal sector and contributes 60% of the GDP. Unorganised labour force has not been officially estimated. This government in the year 2014 promised to make a census of workers in the unorganized sector and issue identity cards to them. The Minister should clarify if the task is initiated.

When the economic activity came to a grinding halt after the lockdown was declared the livelihood of atleast 50 crore workers was lost. No work. No wages. No pay for the days worked. No job security. No certainty of getting job even after the lockdown is lifted. The workers, their families – elders and children- are left in the gloom. A generation faced with a dark and murky future does not augur well to a country.

The government does not have an idea of the extant and dimension of the unorganized labour force. Rag pickers, domestic workers, home based workers, self employed home workers, hawkers, vendors, street vendors, workers engaged in loading and unloading, workers in the gig economy, couriers, small caterers etc., all eke out their living in the most precarious conditions. The Code on Social Security that ostensibly declares to provide social security to all workers does not include these workers.

Social Security to the Unorganised sector worker is the loud cry of the hour. The future of work is concentrated into this sector. There is a compelling need to formalize this sector with legal protection and security.

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But the Code on social security reflects the vagueness of government of India with regard to the numbers and profile of the unorganized sector workers.

The lackadaisical work done on the code with regard to the unorganized sector workers reveals in overlapping, incongruity and inappropriateness. The code misses out a large section of workers from the category of unorganized sector workers.

Way forward – The government should immediately make an assessment of the unorganized sector workers in the country. Proper profiling of sectors with age, geographic area and gender specifications should be made. The code should determine and define the benefits. Decent wage should be fixed as minimum wage to all the workers of unorganized sector including the agricultural workers.

Maternity benefit, ESI, EPF, gratuity, weekly off, annual leave and other working conditions should be made part of the code. State level welfare boards should be mandated through the central legislation. Registering of workers of the unorganized sector should be ensured within a stipulated period with the involvement of Central Trade Unions.

Crisis periods are opportune moments to rectify, reorient and reconstruct. Instead of subsuming laws to create ambiguous, convulsed and confusing codes the government should enact new labour laws with labour rights to the unorganized sector workers as available to the organized sector. This should be discussed in the parliament.

Enforcement, supervision and redressal mechanism should be spelt in the code.

In the immediate aftermath of the pandemic migrant labour needs a special attention.

Migrant Workers – Deprived, deserted, distressed, devastated – Code should include a specific clause

Crisis of the migrant workers is even more a tragedy than the spread of the pandemic. This is likely to intensify in the days to come since their livelihood is lost and the dependent families are in the grip of hunger and starvation. The code on social security should include a specific and exclusive clause to address the issues and rights of migrant workers.

This brings to focus the Interstate Migrant Workmen (Regulation of employment and conditions of work) Act 1979. This act was subsumed into the Occupational Safety Health and Working Conditions Code. The Act mandated that labour contractors who export workers to other states have to register at both the ends and take licences. The employers who employ more than 5 migrant workers are mandated to provide proper wages, housing, medical facilities, pass books, displacement allowance etc,. This crisis has exposed the complete non implementation of the Act. This act is now subsumed into the Occupational Safety Health and Working Conditions Code with big promises of betterment. Promises do not translate to implementation. Non implementation of the law that envisages security of millions of migrant workers who contribute substantially to the GDP is a crime.

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The government cannot pass the blame on the state governments, because as per article 217 of the constitution read together with 'list 1' under the seventh schedule clearly mentions 'item 81', namely the "interstate migration and interstate quarantine" to be a power of the center. Therefore the interstate migrant workers are surely a part of the 'power' and 'responsibility' of the center. The central government alone is responsible to deal with the interstate migrant workers. But the center has miserably failed. Even if the economic activities are restored in future, the question of migrant workers will have to be addressed seriously. The issue of migrant workers should be discussed exclusively in the next session of the parliament and the migrant workers rights as ensured in the 1979 Act be enhanced and ensured in a separate law.

The code on social security, like the three other codes poses a sharp challenge to the democratically participatory content of legislations. Substantive provisions with regard to entitlements, contributions and benefits are qualified with stipulations as, "may be framed", "may be prescribed" etc. This means a strong possibility of bypassing the parliament and proceeding with executive orders. This is dangerous to the concept of participatory democracy.

The Code on Social Security is without a road map for implementation and without a time frame and absolutely without a direction for creating funds and budgetary allocation. These open and blatant lacunae make the code a sham and sheer pack of promises without intent to translate into reality. In sum the code deprives millions of workers their fundamental and legal rights. I therefore register my dissent on the report.

In conclusion, while I reiterate my dissent to the report on the Code on social security, I reiterate my appeal to keep the whole exercise in abeyance since the future of work needs newer areas to be assessed and addressed; expand, enhance and reinforce the existing labour laws. More than 30 crore workers in India including the unorganized sector are affected. Their future hangs in uncertainty. Insecure and uncertain future may doom the future of millions in India. Worker friendly labour laws and strong enforcement mechanism is the need of the hour.

Thank you


(K Subbarayan)

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STANDING COMMITTEE ON LABOUR
(2019-20)

Minutes of the Eighteenth Sitting of the Committee

The Committee sat on Thursday, the 9th January, 2020 from 1100 hrs. to 1445 hrs. in Committee Room 'D', Parliament House Annexe-, New Delhi.

PRESENT

Shri Bhartruhari Mahtab - CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri John Barla
3. Shri Dayakar Pasunoori
4. Shri Satish Kumar Gautam
5. Dr. Umesh G. Jadhav
6. Shri K. Navaskani
7. Shri Nayab Singh Saini

RAJYA SABHA

8. Shri Husain Dalwai
9. Shri Elamaram Kareem
10. Shri Rajaram
11. Ms. Dola Sen
12. Shri M. Shanmugan

SECRETARIAT

1. Shri T.G. Chandrasekhar - Joint Secretary
2. Shri P.C. Choulda - Director
3. Shri D.R. Mohanty - Additional Director
4. Ms. Miranda Ingudam - Deputy Secretary
5. Shri Kulvinder Singh - Deputy Secretary

Witnesses
Representatives of the Ministry of Labour& Employment

Sl. No.	Name	Designation
1.	Shri Heeralal Samariya	Secretary
2.	Ms. Anuradha Prasad	Additional Secretary
3.	Shri Rajan Verma	Chief Labour Commissioner
4.	Shri Sunil Barthwal	Chief PF Commissioner
5.	Shri Raj Kumar	Director General (ESIC)
6.	Shri R.K. Gupta	Joint Secretary
7.	Ms. Kalpna Rajsinghot	Joint Secretary
8.	Ms. Vibha Bhalla	Joint Secretary
9.	Shri Ajay Tewari	Joint Secretary
10.	Shri Devender Singh	Economic Adviser (DGFASLI)
11.	Shri R. Subramanian	DG, DGMS
12.	Dr. R.K. Elangovan	Deputy Director General

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministry of Labour& Employment to the Sitting of the Committee, convened to take their further evidence on 'The Occupational Safety, Health and Working Conditions Code, 2019' followed by briefing on 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019'. Drawing the attention of the representatives to Direction 58 of the 'Directions by the Speaker' regarding the evidence tendered before the Committee liable to be published, the Chairperson asked the Secretary, Labour& Employment to clarify the Ministry's stand on the points and issues pertaining to the various provisions of the 'The Occupational Safety, Health and Working Conditions Code, 2019', raised by the Members at the Sitting of the Committee held earlier on 03 January, 2020 etc.

3. The Secretary, accordingly, gave an overview of the stance of the Ministry on the issues/points raised by the Members at the Sitting of the Committee held earlier. The Joint Secretary, Ministry of Labour and Employment gave a PowerPoint Presentation *inter-alia* highlighting the specific views and suggestions made on various provisions and the Ministry's acceptance or otherwise of such suggestions.

4. The Members then raised certain specific queries, mainly emanating from the written replies furnished by the Ministry and the stance taken on the points/suggestions pertaining to the provisions that were raised. These *inter-alia* included, issues pertaining to protection of the rights of contract workers engaged/employed with the Government, need expressed for recasting the definition of the term 'controlled industry' to specify the jurisdiction of the Central and State Governments, definition of 'worker' and 'employee' as proposed, agreements relating to audio-visual workers, inclusion of the word 'digital' in the definition of working journalists, hours of work and other standards applicable for working journalists, need expressed for having a separate chapter pertaining to migrant workers in the Code, inclusion of inter-state migrant workers in the definition of 'principal employer', need to define the term 'wages' in the Code, nomenclature of 'inspector cum facilitator' as proposed etc.

5. The representatives of the Ministry responded to the queries raised by the Members. As some points required detailed reply/further elaboration, the Chairperson asked the Secretary, Ministry of Labour & Employment to ensure that written replies to the points raised at the Sitting as well as other pending matters may be furnished at the earliest so as to enable the Committee to prepare and finalise their Report on the 'The Occupational Safety, Health and Working Conditions Code, 2019'. The Secretary assured to comply.

6. Thereafter, the Secretary with the permission of the Chairperson give an overview of 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019'. The Joint Secretary, Ministry of Labour & Employment gave a

Power Point presentation on the salient features of the two Codes which have been referred to the Committee by the Speaker for examination and Report thereon. As highlighted during the presentation the Industrial Relations Code, 2019', that proposes to amalgamate 03 Central Labour Acts *inter-alia* seeks to modify the definition of 'industry', 'strike' etc., introduces a new feature of 'recognition of negotiating union' and proposes to set up 02 Members Industrial Tribunal. 'The Code on Social Security, 2019' that seeks to amalgamate relevant provisions of 09 Central Labour Acts *inter-alia* seeks to extend the coverage of ESIC pan-India to all establishments, extend the applicability of Employees Provident Fund and Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme to all industries and establishments employing 20 or more persons, includes new definitions to cater to emerging forms of employment like Aggregator, Gig Worker, Platform Worker etc.

7. The Members then raised certain queries on the provisions of both the Codes. The queries raised in regard to 'The Industrial Relations Code, 2019' *inter-alia* included, issues relating to means for ensuring uniformity in labour standards, protection of interest of labour, regulation for fixed term employment, contract labour, inclusion of 'mass casual leave' under the definition of 'strike', definitions of the terms industry, worker etc. as proposed, provisions pertaining to closure of establishments, retrenchment of labour etc.

8. The queries raised in regard to 'The Code on Social Security, 2019' *inter-alia* included issues pertaining to collection of construction cess amounts, Pradhan Mantri Shram Yogi Man-dhan Yojana, Social Security Board, corpus of social security fund etc.

9. The representatives of the Ministry responded to some of the queries raised by Members. The Chairperson asked the Secretary, Ministry of Labour & Employment to ensure that written replies to the queries raised by Members were furnished at the earliest.

10. The Chairperson thanked the Secretary and other representatives for furnishing valuable information on the 'The Occupational Safety, Health and Working Conditions Code, 2019', 'The Industrial Relations Code, 2019' and 'The Code on Social Security, 2019' and responding to the queries of the Members.

(The witnesses then withdrew)

[A copy of the verbatim record of proceedings has been kept on record]

The Committee then adjourned.

STANDING COMMITTEE ON LABOUR
(2019-20)

Minutes of the Twenty Ninth Sitting of the Committee

The Committee sat on Wednesday, the 29th July, 2020 from 1100 hrs. to 1230 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhartruhari Mahtab, Chairperson

Members

Lok Sabha

2. Shri Subhash Chandra Baheria
3. Shri Raju Bista
4. Shri Dayakar Pasunoori
5. Shri Satish Kumar Gautam
6. Dr. Umesh G Jadhav
7. Shri Dharmendra Kumar Kashyap
8. Dr. Virendra kumar
9. Shri Sanjay Sadashivrao Mandlik
10. Shri Nayab Singh Saini
11. Shri Ganesh Singh
12. Shri Bhola Singh

Rajya Sabha

13. Shri Rajaram
14. Shri Neeraj Dangi
15. Shri Dushyant Gautam

SECRETARIAT

- | | | | |
|----|-------------------------|---|---------------------|
| 1. | Shri T.G. Chandrasekhar | - | Joint Secretary |
| 2. | Shri P.C. Choulda | - | Director |
| 3. | Shri D.R. Mohanty | - | Additional Director |
| 4. | Ms. Miranda Ingudam | - | Deputy Secretary |
| 5. | Shri Kulvinder Singh | - | Deputy Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee, convened for consideration and adoption of the following Draft Reports on:

- i. The Code on Social Security, 2019;
- ii. Action Taken by the Government on the Observations/Recommendations of the Committee contained in their First Report (Seventeenth Lok Sabha) on Demands for Grants (2019-20) of the Ministry of Labour & Employment.
- iii. Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Second Report (Seventeenth Lok Sabha) on Demands for Grants (2019-20) of the Ministry of Textiles.
- iv. Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Third Report (Seventeenth Lok Sabha) on Demands for Grants (2019-20) of the Ministry of Skill Development & Entrepreneurship.

3. The Chairperson apprised that three Members had requested him to postpone the meeting to some other date. Another Member had suggested to hold virtual meetings in view of the Covid-19 pandemic. The Chairperson observed that in view of the urgency to finalise the draft Report on 'Social Security Code, 2019', keeping in mind the extension of time already obtained, the meeting had been convened and any postponement of the Sitting would further delay the matter. As regards holding virtual meetings, the Chairperson apprised that since no decision on holding such meetings had been taken by the Hon'ble Speaker, the physical meeting had been convened to finalise the Report. Members concurred with the views of the Chairperson and unanimously agreed to continue the meeting as scheduled.

4. Giving an overview of the important Observations/Recommendations contained in the Draft report on the Code on Social Security, 2019, the Chairperson then solicited the views/suggestions of the Members. Accordingly,

the Members gave some suggestions/inputs to the draft Report which were suitably incorporated therein. The Committee then adopted the draft report with some modifications on the lines suggested by the Members.

4. The Committee, thereafter, took up the three Draft Action Taken Reports, as mentioned above, one by one for consideration and adopted them without any modification.

5. The Committee authorized the Chairperson to finalise the Action Taken Reports and present them to both the Houses in the ensuing Monsoon Session.

6. However, keeping in view the urgency involved, the Committee authorized the Chairperson to finalise the Report on 'The Code on Social Security, 2019' and present the same to the Hon'ble Speaker on 31st July, 2020.

7. The Committee applauded the dedication and hard work of the officials of the Secretariat in the preparation of the Draft Reports despite the stressful circumstances arising out of the Covid-19 pandemic.

The Committee then adjourned.