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**Social security of Interstate Migrant Building and Other Construction
Workers in India**

Without labour nothing prospers.” – Sophocles

Abstract

This article will majorly focus on the social security for the inter-state migrant workers and building and other construction workers. After revealing the background of India in terms of workforce, the article will move on to highlight the importance of social security. The research will also bring to light the various articles embodied in the Indian Constitution in the interest of labourers. The paper then answers the principle question why provide social security to inter-state, building and construction workers. My research will emphasize over a chronological path of labor legislations and various amendments complimenting the same. The overall genesis of such research will focus over an analysis of labour legislations in Indian legal parlance and its impact on the working class. Such co-relation will clear the aspects of the reader in actually understanding the condition of labours and policies which the government is emphasizing nowadays, with the latest developments which the parliament has passed. Moving forward the article will discuss the key points on the existing laws related to such workers. After the analysis of the above law, the paper will critique upon the reformative code which is proposed by the government and will make a comparative analogy between the old and new law. The scope the paper is limited to social security code, 2020 keeping in mind the topic.

Introduction

Economy of a country is dependent on the production of goods which consists of three components – Raw Material, Capital and Labour. The importance of labourers can be traced back to the French Revolution in 1820. When India was freed from the inhumane rule of Britishers there were two types of law which were carried forward. First, the laws made under the British Rule and second, were the newly formed labour legislations. A number of Directive Principles of State Policy relates to social security for employees. Entry 22 and 24 of Concurrent List in Seventh Schedule of the Indian Constitution deals with Industrial and labour disputes and welfare of labour including conditions of work, employers' liability, and workmen's compensation, respectively. Thus, both centre and state can make laws for the protection and benefit of workers and in wake of which forty-four legislations were implemented.

Labourers form the backbone of India's economy. Most of the workers migrate from the rural area to urban areas in search of better employment opportunities or better pay scale. According to the National Sample Survey Organization (NSSO), 30 million workers in India are migratory workers. Further, according to the data realised by NITI Aayog the unorganized sector comprises of 85% of the total workforce in India. Looking at these data, it has become highly essential that such workers are also considered a part of labour reform and even their rights are recognized and protected.

There is no doubt we live a dynamic world and only the fittest, survive. Globalization has affected the labour paradigm and has changed the economic forefront by impacting various requisites of labour class. Hence, with the changing times, the government of India has decided to reform labour legislations to bring consolidation and flexibility, thus making them more rational and effective. The centre plans to do this, by bringing down the number of labour laws and reducing them to four codes which will cover all the laws which were earlier divided in separate legislations. The four labour codes relate to wages, industrial relations, social security and welfare and occupational safety, health and working conditions of workers. This reformation will entirely change the face of labour and employments laws and therefore, it becomes necessary to analyse how does the government plans to consolidate plethora of labour laws into limited codes without taking away the rationale behind such laws i.e., to protect the rights of the workers, both in organized and unorganized sector.

According to Maslow Need of Hierarchy, if an individual wants to achieve self-Actualization, the second step is to ensure safety and security. Social security is the basic and fundamental

Human Right of a person and the Preamble of Indian Constitution provides legal backing for the same. *Article 38* of the Indian Constitution, puts a responsibility on state to promote the welfare of the people and ensure social, economic and political justice in the country. *Article 41* of the Constitution requires that the State should within the limits of its economic capacity make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement. *Article 42* requires that the State should make provision for securing just and humane conditions of work and for maternity relief. Under *Article 43*, the State shall endeavour to secure by suitable legislation or economic organisation 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. *Article 47* requires that the State should raise the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties. Social security facilitates to plan the future through insurance and assistance. The principal aim of socialism is to eliminate inequality of income and status and to provide a decent standard of living to the working people¹. The necessity to ensure social security to workers has become more significant in the light of the economic integrations and foreign investments in Indian market. Further, the unprecedented era of Covid-19 has made the migrant building and other construction workers most vulnerable. Accordingly, it becomes the responsibility of the state to direct its actions and plans to relieve such workers of their plight.

Building and Other Construction Workers Act, 1996

With the increase in demand of residential housing and development in infrastructure in the country, the demand for construction labourers have also increased in the past few years. The real estate is the most unorganized employment generating sector characterised with casual and migratory employment. In order to protect the interest of construction workers government introduced The Building and Other Construction Workers (regulation of employment and conditions of service) Act, 1996. The act was implemented with the objective of regulating the employment and condition of work of building and other construction workers thereby ensuring their safety and health. The act provides a very wide scope to the term 'building worker' so that it covers all types of skilled, semi- skilled and

¹ Second National Commission on Labour, 2002

unskilled workers. In the case of *Lanco Anpara Power Ltd. v. State of Uttar Pradesh & Others*², the issue before the Hon'ble Supreme Court was whether the BOCW Act was applicable to those premises that are registered under the Factories Act, 1948? The court held that establishments carrying out construction activities even though registered under Factories Act, 1948 will not be excluded under BOCW Act. Such workers will get protection under BOCW Act also.

The key feature of the act as a welfare measure is the establishment of Building and Other Construction Workers Board under Chapter V of the act. According to *section 18*, the board is a body corporate having perpetual succession having common seal and can be sued or sue. The Board shall consist of a Chairperson, who is nominated by Central Government and other members not exceeding fifteen in number. The function to be performed by board are mentioned in *section 22* of the act, such as, immediate assistance to its beneficiaries in case of accidents, pension benefits to beneficiaries more than the age of 60 years, providing loans and advances for construction of house, financial aid for education of children, maternity benefit to females and medical assistance in case of serious ailment to beneficiaries as well as to dependants. *Section 24* clearly provides for the application of the fund collected by the welfare board i.e., firstly, for fulfilling above mentioned functions and secondly, to pay allowance, remunerations and salaries to its members, the amount of which shall not exceed 5% of the total expenses in that financial year. On analysis the above sections it can be concluded that the act aims to provide for the welfare of building and other construction workers. Also, the restriction of 5% shows that the intention of legislature was to make sure that the funds are utilized for the benefit of workers. Further, the mandatory requirement of audit by Controller and Auditor General of India, annually, under *section 27* of the act helps to prevent the chances of fraud and misappropriation of funds.

Since, everything has two sides so does the BOCW act. The statute though effective does have a few drawbacks. Firstly, the registration of beneficiaries under *section 12* of the act states that only workers with the age bracket of 18-60 years and who have been engaged in such work for at least ninety days in the last twelve months can get registered as beneficiary. Thus, at the end the act does not cover all the workers and benefit could be availed only a selected section of construction workers. Second is the effect of non-payment of contribution. If the beneficiary fails to make contribution as mentioned under *section 16* of the act for a

² (2016) 10 SCALE 99

continuous period of one year then such a worker will cease to be a beneficiary. In certain circumstances it might not be possible for a worker to contribute towards the board. Hence, the discontinuation of the worker from being a beneficiary defies the objective of the legislation.

Social Security Code, 2020

The unorganized workforce comprises at of 85% of the total labour population in India including Rickshaw pullers, carpenters, vendors, construction workers etc. Therefore, in order to provide social security to labour class the government came up with Social Security Code, 2019. The new code consolidates nine labour legislations within its ambit. They are as follows- Employees' Compensation Act, 1923, Employees State Insurance Act, 1948, Maternity Benefit Act, 1961, cine workers welfare fund act,1981, Payment of Gratuity Act, 1972, Building and Other Construction Workers Cess Act, 1996, unorganized workers social security act, 2008, employment exchange (compulsory notification of vacancies) act, 1959 and employees provident fund and miscellaneous provisions act, 1952. The social security code is divided into fourteen chapters, comprising of 163 sections, along with six schedules. The main objective behind the code is to amend and consolidate all the laws related to social security of the employees and matters incidental to it within one umbrella.

Important Definitions:

Appropriate government- the code clearly differentiates where the central government will be the appropriate government and where the state government will be the appropriate government. Further, in case of PSUs the central government will be the appropriate government even if the holding of central government is less than 50%. Thus, the code gives better clarity on definition of appropriate government.

Wages- Earlier different laws has different definition of wage and now a uniform definition of wage has been introduced. The idea behind was to remove ambiguity in the components of wages.

Employee- The definition of employee comprises both general and special definition. For the sake of better understanding, the special meaning of employee is mentioned in the proviso. Employee will include contract labourers and all employees irrespective of wage ceiling for application on ESI and EPF chapters. on comparison with the OSH code, one can spot a lacuna i.e., if the contractor fails to contribute under EPF or ESI scheme there is a provision

for recovery under OSH code, but the recovery of gratuity under Social Security code is not mentioned.

Fixed term employment- This is a new concept which has been introduced in the new code. Unlike the Industrial relation code, 2020, the social security code is silent on the minimum days to be completed to have a fixed term employment.

Key Changes:

- *Inter-state migrant workers-* In present regime only where the contractor situated only that was covered, whereas, in new code even self-employed workers employed by employer can be considered as inter-state migrant worker. However, this is subjected to wage ceiling of INR 18,000/-. Consequently, the definition has been widened.
- *Gig worker or platform worker-* these workers are recognised for the first time and lie outside the scope of traditional employer-employee relationship. They are basically intermediaries who deliver service to final customers and are covered under the act subject to their registration as prescribed.
- *Maternity bonus-* The earlier cap on maternity bonus of Rs. 20,000/- has been taken away. Now, even more maternity bonus can be given to female employees. However, the eligibility and period of maternity leave is same as before.
- *Crèche facility-* A provision for availment of crèche facility through third party or through resource pooling has been provided in the code.
- *Limitation on inquiries-* Limitation period of prior five year has been set for collection information related to amount due or inquiries by officials under ESI and EPF chapter.
- *Compounding of offences-* The penalties in the new code has been enhanced. The concept of compounding of offence has been introduced and therefore, it is largely limited to fines. For offences with fine, compounding is allowed for a half of the maximum fine provided for the offence. For offences with imprisonment, compounding is allowed for a sum of three-fourth of the amount.

Impact of social security code, 2020 on inter-state migrant building and other construction workers

The code puts an obligation on the employers to contribute for the social security and welfare of building workers at the rate of 1-2% of the cost of construction. For this purpose the cost

of construction will not include the cost of land or any compensation paid by employer under Chapter VII of the code. Further, in case of non-payment of cess, the employer shall be liable to pay interest as may be prescribed. Section 11 of the 2020 code imposes accountability by the building and other construction welfare board as such a board if delays in carrying out its functions then it can be superseded by the central government and will be reconstituted. Hence this a welcome change and will allow the board to function efficiently and systematically.

The irony of the Social Security code is that it is passed to provide security to workers but in reality it is making them insecure. The code provides for the same criteria as before for the eligibility of the building worker i.e., between age of 18-60 years and worked for minimum of ninety days in the previous year. Therefore, in reality the code does cover building and construction labourers but not all of them.

The code, does not lay a comprehensive outline of the various schemes mentioned in the code. The best option is to wait for the rules to come and then judge its effectiveness. The schemes as of now remain vague to determine the government's dedication towards the scheme. For example: the drafters have included the gig and platform workers under various schemes but how the benefit of such scheme is to be facilitated is not mentioned.

Conclusion

Every life matters. As a responsible and diligent government, it becomes essential to provide security to inter-state migratory and building workers. The code has been introduced with the objective to take the concept of welfare of labourers to another level. There is no doubt the code provides a huge coverage to a variety of workers. There are many welcome changes introduced in the code which was the need of the hour. However, there are still certain loopholes which need to be addressed. Once, the code is completely enforced and rules related to various sections are drafted, the code will be helping in reducing the misery of Indian workforce. The social security is definitely a right move in the right direction to provide social security to labourers in the country.