

Code on Social Security, 2020

The Indian Parliament, in a bid to rationalise the 44 labour codes in India, consolidated them into four labour codes and enacted them by 2020. The four labour codes are the [Code on Wages, 2019](#); Industrial Relations Code, 2020; Code on Social Security, 2020; and Code on Occupational Safety, Health and Working Conditions, 2020. This is an important topic for the [IAS exam](#) from multiple perspectives including polity & governance, social issues, labour issues, etc.

Code on Social Security

The Code on Social Security, 2020 is a code to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors.

- **Social security refers to protection measures provided to workers to ensure healthcare and income security in case of certain contingencies such as old age, maternity, or accidents.**
- The act amalgamates nine central labour enactments relating to social security.
 - It consolidated 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, Unorganised Workers' Social Security Act 2008.

Key Provisions of the Social Security Code, 2020

The definition of employees has been widened to include inter-state migrant workers, construction workers, film industry workers and platform workers. It has provisions for the registration of all three categories of workers - unorganised workers, gig workers and platform workers.

- Gig workers refer to workers outside the “traditional employer-employee relationship”.
 - Platform workers are those who are outside the “traditional employer-employee relationship” and access organisations or individuals through an online platform and provide services for payment. Read more on [gig and platform workers](#).
 - An unorganised worker is defined as one who works in the unorganised sector, and includes workers not covered by the Industrial Disputes Act, 1947, or other provisions of the Bill (such as provident fund or gratuity). It also includes self-employed workers.
 - A social security fund will be created for paying these benefits to workers and it will be funded by central and state governments and also through CSR funding. Aggregators who are digital intermediaries employing gig workers will have to set aside at least

around 1-2 per cent of their annual turnover (amount not exceeding 5 per cent of the amount payable to the workers) for the purpose of this social security fund.

- The government could notify schemes for unorganised sector workers (such as home-based and self-employed workers), gig workers, and platform workers.
- The Code also provides for the setting up of a 'National Social Security Board'. The functions of the Board include recommending schemes to the central government and also monitoring the schemes for the different types of workers, advising the Government on matters relating to the administration of the Code amongst others.

Social Security Code Significance

This Code is far from being a mere consolidation of previous legislations. It has enhanced the coverage, extended the benefit to all workers in the organised/unorganised sectors, introduced concepts of providing maximum benefits under minimum governance and reflects uniformity in approach across the four labour codes.

Enhanced coverage:

- New-age businesses that thrive on e-commerce have created new types of jobs. Some of the workers in these new businesses were not covered under any of the existing laws. The new Social Security Code expands the scope of social security by providing for the registration of all types of workers including gig workers and platform workers. Its recognition of non-conventional forms of work outside the scope of the traditional employer-employee arrangement is encouraging as there is a global shift towards self-employment, gig, and platform work.
 - Gig workers will now become eligible for life and disability coverage, maternity benefits, pension, etc.
- The Code has widened coverage by including the unorganised sector, fixed-term employees, inter-state migrant workers, etc., in addition to contract employees.
- Therefore, in terms of coverage, the scope has been expanded.
- The Social Security Code, 2020 brings these workers under the ambit of social security schemes, including life insurance and disability insurance, health and maternity benefits, provident fund and skill up-gradation, etc.

Taking care of the fixed-term employees:

- The code expands the scope to cover fixed-term contract workers who will now be eligible for gratuity; whereas earlier only employees that were permanent were covered.
- The events giving rise to gratuity are superannuation, retirement, resignation, death or disablement due to accident or disease or termination of a contract under fixed-term employment or on the happening of any event notified by the central government.

- With the inclusion of 'expiration of fixed-term employment', fixed-term contract workers will become eligible for gratuity and this is a welcome move.

Penal provisions:

- The strength of implementing a legislation lies in the ease of compliances as well as in the penalties that deter non-compliance. The Code captures it all.
- The Code contains penal provisions in the case of failure to pay gratuity to employees or a failure to pay the contributions.

Digitisation:

- As per the Act, all records and returns have to be maintained electronically. Digitisation of data will help in the exchange of information among various stakeholders/funds set up by the Government, will ensure compliance and also facilitate governance.

Uniform definitions:

- Uniformity in determining wages for the purpose of social security benefits is another highlight of the code given the ambiguity in the current regulations.
- This has provided a wide definition for wage. Specific exclusions with ceilings have been provided for discouraging inappropriate structuring of salaries to minimise social security benefits.

Consultative approach:

- The Code has brought in a facilitating approach by the authorities. Unlike the existing role of inspectors, the Code provides for an enhanced role of inspector-cum-facilitator whereby employers can look for support and advice to enhance compliances.

Code on Social Security, 2020 Key Issues

Important recommendations of the NCL neglected:

National Commission on Labour recommendations

- The National Commission on Labour (2002) (NCL) had emphasised the need for universal and comprehensive social security coverage to avoid deprivation of basic needs of workers, and recommended the simplification and consolidation of existing laws towards this end.
- The NCL recommended that: (i) the social security system should apply to all establishments, (ii) the existing wage ceilings for coverage should be removed, and (iii) there should be a functional

integration of the administration of existing schemes. Further, every employer and employee may make a single contribution for the provision of all the benefits, with a ceiling prescribed for such contributions.

- The code largely retains the existing setup and does not fully implement the NCL recommendations.
 - The code continues to retain thresholds based on the size of the establishment for making certain benefits mandatory. Benefits, such as pension and medical insurance, continue to be mandatory only for establishments with a minimum number of employees (such as 10 or 20 employees). All other categories of workers (i.e., unorganised workers), such as those working in establishments with less than 10 employees and self-employed workers may be covered by discretionary schemes notified by the government. Thus, a large number of workers may continue to be excluded.
 - The code continues to treat employees within the same establishment differently based on the amount of wages earned. For instance, provident fund, pension and medical insurance benefits are only mandatory to employees earning above a certain threshold (as may be notified by the government) in eligible establishments.
 - The code continues to retain the existing fragmented set up for the delivery of social security benefits. These include: (i) a Central Board of Trustees to administer the EPF, EPS and EDLI Schemes, (ii) an Employees State Insurance Corporation to administer the ESI Scheme, (iii) national and state-level Social Security Boards to administer schemes for unorganised workers, and (iv) cess-based labour welfare boards for construction workers.

Know more about the [Labour Sector in India](#) at the inked article and also know the classification of the labour force in the country.

Provisions on gig workers and platform workers are unclear:

- The code introduces definitions for gig worker, platform worker and mandates different schemes for all these categories of workers. However, there may be some overlap between their definitions. With such overlap across definitions, it is unclear how schemes specific to these categories of workers will apply.

Provisions on gratuity for fixed-term workers unclear:

- The code on social security and the Industrial Relations code, 2020 have different provisions on gratuity for fixed-term workers and it is not clear whether a fixed-term employee with a contract of lesser than one year will be entitled to gratuity under the Code on Social Security, 2020.

Mandatory linking with Aadhaar may violate Supreme Court judgement:

- The code mandates an employee or a worker (including an unorganised worker) to provide his Aadhaar number to receive social security benefits. This may violate the Supreme Court's judgement in the [Puttaswamy case](#).
- In its judgement, the Court had ruled that the Aadhaar card/number may only be made mandatory for expenditure on a subsidy, benefit or service incurred from the Consolidated Fund of India. Since certain entitlements such as gratuity and provident fund (PF) are funded by employers and employees and not by the Consolidated Fund of India, making Aadhaar mandatory for availing such entitlements may violate the judgement.

Conclusion

The Code on Social Security, 2020 is clearly a step in the right direction from an ease of compliance and universality perspective as it covers a large portion of our working population. A regulatory authority to separately administer the code would be beneficial to monitor the welfare of workers and it can better track the efficacy of schemes.
