

# THE CODE ON SOCIAL SECURITY, 2020



*Ensuring universal and comprehensive social security coverage to all workers, with a decentralized administration to deliver the benefits to them and their families.*

## INTRODUCTION

Code on Social Security (CoSS), 2020 was introduced by withdrawing the earlier Code of 2019, it has amended and consolidated the laws relating to employee's social security with the goal to extend social security to all employees & workers either in organized, unorganized, or any other sector.

CoSS also amalgamates, simplifies & rationalizes the relevant provisions of the following central labour enactments relating to social security:

- i. The Employees' Compensation Act, 1923
- ii. The Employees' State Insurance Act, 1948
- iii. The Employees' Provident Funds 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
- ix. The Unorganised Workers' Social Security Act, 2008.

## APPLICABILITY AND SCOPE

In the First Schedule of the CoSS 2020, applicability thresholds are defined for each scheme. Some examples being :-

- CoSS 2020 is applicable to any establishment (subject to size-threshold as may be notified) for making certain benefits mandatory. All eligible establishments are required to be registered under the Code, unless they are already registered under any other labour law.

- EPF shall be applicable to establishments with 20 or more employees.
- ESI shall be applicable to certain establishments with 10 or more employees; to all establishments which carry out hazardous or life-threatening work as notified by the central government
- CoSS 2020 not only recommends or administers schemes for unorganised sector workers but also dwells into the welfare of gig and platform workers, where such schemes were not applicable till now and these schemes shall be funded by central government, state governments, and aggregators (as mentioned in Seventh Schedule)

## KEY DEFINITIONS

- **Employee** means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, 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.
- **Employer:** A person who employs any persons and specifically includes certain categories of workers:
  - i. in the case of a factory, employer means the occupier of a factory, i.e., the person with ultimate control over the affairs of the company;
  - ii. the Code creates special provisions for certain classes of establishments such as factories, mines, dock workers and constructions workers. These include separate provisions on licenses, safety regulations, and duties of employers.

- iii. in relation to mine, the owner of the mine or agent or manager having requisite qualification under the law for the time being in force and appointed by the owner or agent of the mine;
  - iv. in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
  - v. contractor; and
  - vi. legal representative of a deceased employer.
- **Self-employed Workers** who are not employed by an employer, but engage in any occupation in the unorganized sector subject to monthly earning or hold cultivable land.
  - **Home based Workers** means a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.
  - **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. e.g., the freelancers etc.
  - **Platform Worker** means a person engaged in or undertaking platform work. For the exchange in payment such workers work outside traditional employer-employee relationship “organizations or individuals to use an online platform to access other organizations or individuals to solve specific problems or services or any such other activities which may be notified by the Central Government, in exchange for payment.
  - **Aggregator** means a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider.
- Formation of national and state-level Social Security Boards to administer and monitor the social welfare schemes, review the record keeping functions performed at the State level and also review the expenditure from the fund and account for unorganized workers, gig workers and platform workers.
  - The EPF, EPS, EDLI and ESI schemes will be financed through contributions from the employer and the employee. In case of EPF, the employer and the employee each will make contributions of 10% of wages. Other contributions towards gratuity, maternity benefit, cess for workers will be given by an employer. Under other schemes, contributions will be notified by Government from time to time.
  - Formation of state-level Building Workers’ Welfare Boards, headed by a Chairperson nominated by the state government, to administer schemes for building workers to provide them with death and disability benefits, make payment of pension to the beneficiaries, frame educational schemes for the benefit of children, meet medical expenses for treatment of major ailments, maternity benefit, frame skill development & awareness schemes, provide transit accommodation or hostel facility and provision and improvement of such other welfare measures and facilities.
  - Section 39, provisions for establishment of medical education institutions (colleges, dental colleges, nursing colleges and the training institutes) for its officers and staff with a view to improve the quality of their services which are to be run by the Corporation or on the request of the Corporation, by the Central Government, any State Government, Public Sector Undertaking of the Central Government or the State Government or any other body notified by the relevant government.
  - Section 53 reduces term for the payment of gratuity to 3 years (from 5 years) for working journalists.
  - Recognition to gig workers, platform workers and unorganised workers to provide them with schemes relating to life and disability cover, accident insurance, health and maternity benefits, old age protection, creche, and other benefits as the government may determine.
  - Such schemes are to be fully or partially funded by the combination of central or state government and also by aggregators (Seventh Schedule specifies the list of aggregators). Aggregators in this case will have to contribute between 1-2% of their annual turnover but shall not exceed 5% of the amount payable to gig workers and platform workers as the case maybe, excluding taxes or cess payable to the central government, as contribution to social security funds for gig and platform workers.

## KEY HIGHLIGHTS

- Section 3, lays down the procedure of Registration for every establishment to which the CoSS 2020 applies, to be performed electronically, or otherwise. Also, the provision for cancellation of registration is also provided, if the establishment’s business activities are in the process of closure.
- Formation of several bodies called Social Security Organisations for administering the provident fund schemes, pension fund schemes and insurance schemes for gig workers, platform workers and unorganized workers.

- The provision to establish social security funds to be established for gig, platform and unorganised workers. As stated in the CoSS 2020, “Social Security” means “the measures of protection afforded to employees, unorganized workers, gig workers and platform workers 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 bread winner by means of rights conferred on them and schemes framed, under this Code”.
- The Code also lays down how various schemes would be administered, the role of aggregators, and the agencies for implementing the particular scheme, and so on. It also empowers government to notify when aggregators have to start contributing. The government also has the power to exempt an aggregator or a class of aggregators from contributing funds to social security subject to certain conditions.
- Setup of Toll free call centre or helpline or such facilitation centers has also been contemplated to perform any or more of the following functions:
  - i. to disseminate information on available social security schemes for the unorganized workers, gig workers and platform workers
  - ii. to facilitate filing, processing and forwarding of application forms for registration of unorganized workers, gig workers and platform workers
  - iii. to assist unorganized workers, gig workers and platform workers to obtain registration; and to facilitate the enrolment of the registered unorganized workers, gig workers and platform workers in the social security schemes.
  - iv. to facilitate the enrolment of the registered unorganized workers, gig workers and platform workers in the social security schemes.
- Registration of building workers who has completed 18 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, as a beneficiary.
- Registration of unorganized workers, gig workers and platform workers for availing the benefits under the schemes. The conditions to register are to be of sixteen years of age and to submit self-declaration electronically or otherwise in such form and in such manner containing such information as may be prescribed by the Central Government.
- Provision to report vacancies to career centers (including employment exchange, place or portal). The employer though will not be obligated to hire any person through the career centre. Such provisions will not apply to vacancies in certain employments,

including agriculture, domestic service, staff of Parliament or any State Legislature, any employment where the total duration of which is less than ninety days, any establishment (other than Government establishment) with less than twenty or such number of employees as may be notified by the Central Government.

## SOCIAL SECURITY ORGANISATIONS

For administration of social security schemes, Code provides for the establishment of several bodies called Social Security Organization inter-alia provides for:

- i. Central Board of Trustees of Employees' Provident Fund. The Central Board is for the administration of funds, constituting one or more committees of same composition in order to assist it in the discharge of its functions.
- ii. Employees' State Insurance Corporation. The Corporation has two committees. Standing Committee to administer the affairs of the Corporation and exercise any of the powers and perform any of the functions of the Corporation, to submit for the consideration and decision of the Corporation all cases and matters as specified in the regulations made in this behalf and submit any other case or matter for the decision of the Corporation. Medical benefit committee is to assist the Corporation and the Standing Committee in performance of its functions relating to administration of medical benefits.
- iii. National Social Security Board for Unorganised Workers. The Board performs functions like: recommend to the Central Government for framing suitable schemes for different sections of unorganized workers, gig workers and platform workers, advise the Central Government on matters arising out of the administration of this Code, monitor social welfare schemes for unorganized workers, gig workers and platform workers as are administered by the Central Government, review the record keeping functions performed at the State level and review the expenditure from the fund and account.  
The term of Board is three years, and meet thrice in a year to observe rules of procedure relating to the transaction of business at its meetings.
- iv. State Unorganised Workers' Social Security Board. The Board performs functions like: recommend the State Government for framing suitable schemes for different sections of the unorganized sector workers, advise the State Government on such matters arising out of the administration of this Code, monitor social welfare schemes for unorganized workers as are administered by the State Government, review the

record keeping functions performed at the district level. review the progress of registration and issue of cards to unorganized sector workers and review the expenditure from funds under various schemes.

The term of Board is three years, and meet once in a quarter to observe rules of procedure relating to the transaction of business at its meetings.

- v. State Building and other Construction Workers' Welfare Boards. The Board perform functions like to provide death and disability benefits to a beneficiary or his dependents, to make payment of pension to beneficiaries who have completed the age of 60 years, to pay amount in connection with premium for Group Insurance Scheme of the beneficiaries, frame educational schemes for the benefit of children of the beneficiaries), meet medical expenses for treatment of major ailments of a beneficiary or, such dependent, make payment of maternity benefit to the beneficiaries, frame skill development and awareness schemes for the beneficiaries, provide transit accommodation or hostel facility to the beneficiaries, formulation of any other welfare scheme for the building worker beneficiaries by State Govt in concurrence with the Central Government, make provision and improvement of such other welfare measures and facilities as may be prescribed by the Central Government.

#### FINANCE AND ACCOUNTS OF SSO's

- The role of Social security Organization is to maintain proper accounts of its income and expenditure in form and manner prescribed, after consultation with the Comptroller and Auditor-General of India and also to get such accounts audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him is to be payable by the respective Social Security Organization.
- Where such Comptroller and Auditor-General of India will have the right to demand the production of books, accounts, connected vouchers, documents and papers and to inspect any of the offices of the Social Security Organization. The accounts of a Social Security Organization as certified by the Comptroller and Auditor-General of India or any other person appointed by him, together with the audit report shall be forwarded to the Social Security Organization which shall along with its comments on the audit report of the Comptroller and Auditor-General of India forward the same to the appropriate Government.
- SSO would frame a budget each year showing the probable receipts and the expenditure which it proposes to incur and submit a copy of the budget for the approval of the appropriate Government.
- SSO would also submit its annual report of its work, activities & budget adopted by them to the appropriate Government. The copy of the annual report, budget and the audited accounts together with the report of CAG of India & comments of respective Social Security Organization to be laid before each House of Parliament or State legislature by the government.

#### OFFENCES AND PENALTIES

- Where employer fails contribute after deducting the employee's share attracts imprisonment between one and three years, and fine of INR 1,00,000.
- Where the employer fails to pay any amount of gratuity to which an employee is entitled attracts imprisonment for a term which may extend to one year or with fine which may extend to INR 50,000, or with both.
- Where the employer commits an offence in contravention of the provisions of Employees State Insurance Corporation or Maternity Benefit rules, regulations or schemes made or framed under the Code respectively, where he dismisses, discharges, reduces in rank or otherwise penalizes a woman employee; or obstructs any Inspector-cum-Facilitator or other Social Security Organization or a competent authority in the discharge of his duties, or fails to provide any maternity benefit to which a woman is entitled, or fails to produce on demand by the Inspector-cum-Facilitator any register or document in his custody; or fails to pay the cess for building workers which he is liable to pay; or dishonestly makes a false return, report, statement or information to be submitted shall be imprisoned for a term which may extend to six months or with a fine which may extend to INR 50,000, or with both.
- Where the employer commits an offence under any of the clauses deducts or attempts to deduct from the wages of an employee, the whole or any part of employer's contribution; or reduces the wages or any privilege or benefits admissible to an employee; or fails or refuses to submit any return, report, statement or any other information required under this Code or any rules, regulations or schemes; or fails to pay any amount of compensation to which an employee is entitled; or fails to send to a competent authority a statement which he is required to send regarding Employees Compensation; or 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 in respect of which no special penalty is provided; or obstructs executive officer in exercising his functions in respect of employment monitoring; or fails to pay any administrative or inspection charges payable under any of the scheme, shall be punishable with fine which may extend to INR 50,000.



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## COMPARATIVE CHART - EARLIER VS NEW PROVISIONS

S.No	Earlier Provisions	New Provisions
1	<p>Definitions</p> <ul style="list-style-type: none"> <li>• <i>Not Defined:</i> Self-employed Worker, Fixed-term employment, Aggregator, Career Centre, Home-Based Worker, Unorganised Workers, Gig Worker &amp; Platform Workers.</li> <li>• An “<i>Employee</i>” was not defined in Maternity Act, Cine Workers Act, Welfare Fund Act, Building and Other Construction Workers Welfare Cess Act &amp; Unorganized Workers’ Social Security Act</li> </ul>	<ul style="list-style-type: none"> <li>• New Definitions introduced under the Code of Social Security</li> <li>• New Definition of employee introduced, applicable on all the Laws covered under the Code of Social Security</li> </ul>
2	Registration/ Cancellation of an Establishment was required under all the previous labour laws.	If Establishment is registered under any existing Central Labour Laws, it is not required to obtain registration under Section 3 of the Code of Social Security.
3	No provisions existed for the formation of Social Security Organisations under all the previous labour laws.	<i>Section 4</i> , The provisions enforce Constitution of Social Security Organizations for the administration of funds for the type of workers which have been added in the Code of Social Security.
4	No provisions were made for National Social Security Board and State Unorganized Workers’ Board under all the labour laws.	<i>Section 6</i> , The provision enforces National Social Security Board and (State) Unorganized Workers’ Board to be formed by persons of eminence in the fields of labour welfare, management, finance, law and administration. It will also administer schemes for the welfare of gig workers and platform workers.
5	<i>Rule-7 of EPF Appellate Tribunal (Procedure) Rules</i> , no appeal by employer shall be entertained by the Tribunal unless it has deposited a Demand Draft payable in the Fund and bearing 75% of the amount due from him.	<i>Section 24</i> , No appeal by the employer shall be entertained by the Tribunal unless it has deposited 25% of the amount due with Social Security Organization concerned.
6	No provision for Excessive Sickness Benefit existed in previous labour laws.	<i>Section 43</i> , provides extra expenditure as sickness benefit for insanitary working conditions in the factory or in the accommodations due to the neglect of the owner.
7	No provisions for Schemes for unorganized workers, gig workers and platform workers in previous labour laws.	<i>Section 45</i> , provides Employees State Insurance benefits to unorganized workers, gig workers and platform workers and their families.
8	<i>Payment of Gratuity Act</i> , the payment of gratuity term for a working journalist was for 5 years	<i>Section 53</i> , the term for payment of gratuity has been reduced to three years for working journalists.
9	Funded Schemes for unorganized workers, gig workers and platform workers never occurred in labour laws.	<i>Section 109 &amp; Section 114</i> framed welfare schemes for these workers at Central and State level on matters related to the protection of life, health, accident, education, skill upgradation, provision of old age home etc.

S.No	Earlier Provisions	New Provisions
10.	Helpline, facilitation centre for unorganized workers, gig workers and platform workers never occurred in labour laws.	<i>Section 112</i> , provides for set up a toll free call centre or helpline to promulgate information on available social security schemes, process to file application for registration, to assist unorganized workers, gig workers and platform workers to obtain registration etc.
11.	Only Inspectors were appointed to Inspect the Establishment.	<i>Section 122</i> , states appointment of <i>Inspector-cum-Facilitators</i> for the inspection. This section also advises the employees and employers to be in compliance of this Code.
12.	The provisions for maintaining registers, records and returns was not so extensive.	<i>Section 123</i> provides to maintain registers, records for the number of days/hours of work performed by employees; wage paid; leave, leave wages, wages for overtime work and attendance; employees identification number, number of dangerous occurrences, accidents, injuries in respect of which compensation; statutory deductions made by an employer from the wages of an employee; details as to cess paid in respect of building and other construction work; the total number of employees (regular, contractual or fixed-term employment) on the day specified; persons recruited during a particular period; occupational details of the employees; and vacancies for which suitable candidates were not available; display notices at the workplaces,
13	No limitation period was mentioned for determination of moneys due from an employer, under the EPF Act	<i>Section 125</i> , In case of any dispute or proceedings for determination of dues from the employer, fixed the limitation period of proceedings and inquiry to be five years.
14	Inclusion of Enhanced punishment did not exist in previous labour laws.	<ul style="list-style-type: none"> <li>• <i>Section 134</i> provides for enhanced punishment for every subsequent offence.</li> <li>• <i>Section 137</i> allows employer an opportunity to correct non-compliance for any offence under the Code prior to the initiation of the prosecution or proceedings.</li> <li>• Compounding of Offence- any offence committed for 1st time which is punishable with: Fine &amp; Imprisonment up to 1 year or both.</li> <li>• Person can be compounded on payment of an amount In case of fine – half of the maximum fine,</li> <li>• In case of imprisonment – 3/4th of maximum fine Repeat offender to get enhanced punishment (imprisonment up to 2 years and with fine of INR 2 Lakhs)</li> </ul>
15	No provision for Defer or Reduction of Contribution existed.	<i>Section 144</i> , provides that the Central Government <b>may</b> by order, defer or reduce employer's contribution, or employee's contribution, or both for a period up to three months at a time, in the event of a pandemic, endemic or national disaster
16	Misuse of benefits did not have any separate provisions under the labour laws.	<i>Section 148</i> , if any person has misused any benefit then the person will be deprived of such benefit where manner to ascertain misuse of any benefit will be specified in the Provident Fund Scheme or the Pension Scheme or the Insurance Scheme.

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