

FAQs ON DRAFT OF LABOUR CODE ON SOCIAL SECURITY 2018 (VERSION 2.0)

Q1: What is the lacuna in present day social security system in India?

The biggest lacuna is that it leaves almost 90 % out of the folds of any social security. Unorganized sector workers are largely excluded. The schemes have very limited outreach. The other issue is large scale fragmentation: there are multiplicity of laws, policies, schemes and agencies. The existing wage and number thresholds creates perverse incentives for the employers to shy away from joining the system thus resulting in artificial exclusions and distortions in the labour market.

Q2: How does the proposed code address these issues?

To begin with, the Labour Code on Social Security aims to simplify, rationalize and consolidate the hitherto fragmented laws into one consolidated law which will be easier in terms of comprehension, implementation and enforcement. However, what we are proposing goes much beyond mere amalgamation. We are aiming for universal social security. The code follows a rights based approach which is very much aligned to the spirit of our Constitution. We believe that social security is every worker's right.

Q3: The other codes that are being drafted by the ministry are based on the recommendations of 2nd NCL. What about this code?

The Code also has its inspiration in the Report of the Second National Commission on Labour (2002) and many other studies and reports on social security policies. We have also drawn our inspiration from UN SDGs of the 2030 Sustainable Development Goals Agenda. Expert technical assistance was also obtained from the International Labour Organization also to guide the policy framework in the right direction.

Q4: What is meant by universalization here?

The Code aims at universalization of Social Security and as such the definition of employee covers all kinds of employment including a part time worker, casual worker fixed term worker, piece rate/commission rated worker, informal worker home-based worker, domestic worker and seasonal worker. The Universalization however does not mean that all the workers proposed for coverage under the code would be covered from Day 1, as the code provides the flexibility of progressive extension of coverage. Those categories of workers who are initially not covered would be included in Schedule- I Exclusions and this schedule would be gradually pruned to expand the coverage.

Q5. What is the role of Central Board in Management of Funds?

Under the provisions of the Draft Code, any current surplus in a Fund, if any, is to be transferred by the State Boards to the Central Board for professional management of investment of the Scheme Funds. This is to ensure that economies of scale may be utilized to the maximum possible extent and good return could be fetched on the investment. The Central Board has been provided the responsibility to manage the investment of the Funds mentioned above on behalf of the States in accordance with the investment pattern notified by the Central Government. The amount so transferred to the Central Board continues to vest in the State Board, and The Central Board is also obliged to remit to the State Boards, from time to time, such amounts from the State's Scheme Fund or Gratuity Fund being managed by it, as may be required by the State Board to meet the Scheme obligations.

Q6. What is the system of Registration in the Code?

The code requires all (active) workers to be registered under the Universal Registration system envisaged in the Code. The Registration will be Aadhar based and the Registration protocols will be decided by the Central Board – for universal applicability and portability of registration. However, actual registration in the field will be performed by Local Bodies (i.e. Gram Panchayats / Municipal bodies), under supervision of the State Boards, in order to provide door-step services. In addition, the Code enables the State Boards to have PPP arrangements to provide facilitation centers for registration services. The Code also requires State Boards to conduct proactive surveys of workforce to facilitate registration.

Q7. What is meant by deactivation of workers' registration?

This provision is intended to cover situations wherein a worker has not engaged in any such form of work either as an employee or non-employee wherein he falls within the provisions of this code and as such no contribution is payable by or on behalf of such person for that period. The minimum period for which a person needs to work in a particular year to entitle him to be classified as a worker and avail benefits under this code is to be decided by the National Council. The code does intend to cover all the workers but the intention of this provision is to ensure that only such persons who work for a minimum period as specified would be classified as workers. Any period wherein the worker is out of work on account of employment injury, sickness or maternity is considered as work and the provisions of deactivation do not apply to such cases.

Q8. What happens if the employer fails at their obligation to register the worker?

As such, the obligation to register a worker falls on the employer, except for own-account worker, who needs to register himself. The Draft code prescribes penalties for employing an unregistered worker beyond a specified period. However, if the employer fails to register the worker within the specified time period, the worker has been provided with the facility of registering himself under the provisions of the code.

Q9. Why does the Code specify categorization of workers upon registration?

The funding of social security under the Code is a combination of Employer / employee funded and Taxpayer funded. For workers belonging to poorest socio-economic category, the draft Code envisages the Social Security be taxpayer funded. Therefore, there is a need to scientifically classify and identify such workers who belong to poorest socio-economic category. The Code envisages a system of classification of workers based upon socio-economic parameters that will be scientifically designed and notified in the Rules. Workers, at the time of registration will provide data (about their socio-economic parameters) and based on this, the categorization will be automatically determined.

Q10: Do you think that poor class of workers will be able to afford the contribution for social security?

Under this code, Social Security benefits are a funded by a combined system of State (taxpayer) funding, employer funding and worker funding. The code therefore proposes following structure for contribution:

- If a worker is an employee/non- employee belonging to Socio Economic Category-IV, the rate of contribution would be NIL. The Contribution in respect of such workers would be paid by the Government and routed through the Contribution Augmentation Fund(s).
- If the worker is an employee not belonging to Socio Economic Category-IV, the rate of Contribution would be 12.5 % of wage or wage ceiling whichever is lower.
- If the worker is a non-employee belonging to Socio Economic Category III the rate of contribution would be 20 % of national minimum wage notified by the Central Government.

- If the worker is a non-employee belonging to Socio Economic Category I or Socio Economic Category II, the rate of contribution shall be –
 - 20 % of the higher of
 - (i) monthly income or wage ceiling whichever is lower, or
 - (ii) national minimum wage notified by the Central Government,

Therefore, workers belonging weaker socio-economic status are provided social security through tax-payer funded system. Remaining workers, who themselves (or with their employers) can afford to pay for their social security, shall make contributions, from which, the social security benefits shall be provided.

Q11: What is the rate of employers' contribution? Is the contribution linked to the nature of industry or OSH Standards?

- Employers contribution: - Maximum 17.5 % of wage for Social Security Fund and 2 % of wage for Gratuity Fund.
- Upon Registration, the establishments are classified in four categories based upon OSH standards of the establishments, based upon parameters that will be determined in Rules. This is done to empower the government to collect differential contribution on the basis of OSH standards. This will improve OSH compliance in establishments as there will be a financial incentive for higher OSH standard.
- If cess is levied on any particular industry, the Central Government may reduce or waive the employer's contribution so as to avoid the burden of double taxation.

Q12. Have you ensured adequate representation of vulnerable categories such as unorganized workers, own account workers, pensioners and women in Social Security Organizations?

To ensure that the voice of vulnerable sections is heard, the representatives of organizations of unorganized workers and own account workers has been provided assured representation in the National Council, Central Board and State Board. The representative of Pensioner organizations has also been provided assured representation in both Central as well as State Boards. Reservation for women has been provided in all three bodies i.e. National Council, Central Board and State Board.

Q13: Is it true that the new code proposes decentralization of administrative set up?

We must realize that the code is envisaging an approximately ten times increase in coverage and most of it comes from unorganized sector. Managing such large number of beneficiaries and also ensuring that services can be made available as near to them as possible, decentralized set up has been envisaged. What we have proposed is again very much as per the recommendation of 2nd NCL. Also we are strictly following a tripartite approach. A three tier Social Security Administration Structure proposed with tripartite representation in all these bodies drawing representatives of workers, employers and Government. (a) National Social Security Council headed by the Prime Minister to be the Apex Social Security Organization in the Country for overall regulation and monitoring; (b) Central Board of Social Security at Union level and (c) State Board(s) of Social Security at State/UT level for implementation of the Social Security framework. In addition functions have been prescribed for local bodies (panchayats / urban local bodies) of registrations and facilitation.

Q14: What would become of the present set ups like EPFO, ESIC, DGLW run welfare funds and other mechanisms?

There are presently 15 laws which govern social security for the worker. Once the Code comes into force, these laws will be obsolete. Also the comprehensive social security structure created through this code will replace the entire present setup which means that EPFO and ESIC will cease to exist in the present forms.

However, they would cease in only those states where the new set up has been notified and would continue as such in the remaining areas. The code also proposes how the present staff of these organizations will be absorbed into the new set up.

Q15: How do you propose to ensure that there are no free riders on the taxpayers' money?

The Code proposes a Unique Aadhar Based Registration system for all workers through Local Bodies, compulsory registration for all categories of workers. We propose to have an asset based criteria for classification of the workers, the illustrative parameters of which have been prescribed in the code. A Portable Social Security Account i.e. Vishwakarma Karmik Suraksha Khata (VIKAS) to be opened for all workers on registration which shall be linked to the Aadhar number of the worker. VIKAS will ensure portability i.e. Remittance of the accumulated contribution in case a subscriber moves to another state available to the workers. The code also proposes Compulsory registration of entities and establishments. However, for own account enterprises and households much simpler registration and compliance requirements have been envisaged.

Q16: What are the broad contours of Social security that are covered in this code?

The code derives its understanding of Social Security from the fundamental ILO Convention C102 on social security. (Attached as an appendix to the code). It covers all the 9 types of social security covers described in the Convention. Social Security Fund in each State is to provide for schemes such as Pension, Sickness Benefit, Maternity Benefit, Disablement Benefit, Invalidity Benefit, Dependent's benefit, Medical Benefit, Group Insurance Benefit, Provident Fund, Unemployment Benefit and International worker's pension benefit. However, it may not be taken that code proposes to provide each of these to every worker from the day 1. We will have to work in a phased manner given our budgetary constraints.

Q17: There is a tendency amongst the employers to evade the system when it comes to labour laws. The thresholds in any law create an artificial ceiling. You also talked about the perverse incentives. How does the code address this issue?

We take inspiration from 2nd NCL and the Expert advice from ILO. In the Code, Employer's Liability has been replaced by Fund Liability for Gratuity, Maternity Benefit and death/disablement compensation. Liability of employer arises only where he neglects to pay the contribution in respect of a worker or the worker does not complete the qualifying service for entitlement of dependent or disablement benefit. An employee shall be deemed to have been in continuous service of the Principal Employer for the purpose of Gratuity entitlement so long as he has served continuously for the same Principal Employer, whether or not through same or different contractors. Contribution Augmentation funds are established through which governments can contribute to the social security in respect of workers who are unable to pay contribution. The other perverse incentives come from non-coverage of certain category of workers, employee number threshold and wage ceilings. Employers have been found to be circumventing the provisions by way of wrong categorization, underreporting of number of workers or over-reporting of their wages. Unfortunately, despite the best efforts of enforcement officers such cases keep coming to notice after considerable time has elapsed and social security rights of the workers have been denied. The proposed set up where all categories of workers and all categories of establishments without any reference to the number of workers or their income will be covered adequately addresses the above challenges.

Q18: Are there any exemptions?

There are no exemptions. Schedule-I has been provided to specify class of workers / establishments that are excluded from certain provisions of the Code. This exclusion will be applicable only to such workers who can avail normal / regular security available to government servants (e.g. workers on whom CCS Pension Rules apply).

Further, This Schedule – I can also be used for gradual phase-wise implementation of the Code. For Employers who can provide PF and Gratuity system managed by their own, there are provisions for permission for Alternate Coverage Mechanism. This will be permitted only for establishment employing 100 workers. Audit of Accounts of Social Security Organizations is provided in the code by the AG of India and laying of Annual Report before the appropriate legislature. Provision has also been kept for Social Audits of the schemes once every five years. Even the exempted Establishments can be audited by CAG if it so feels.

Q19: There is this issue of a huge sum of unclaimed amounts in EPFO as on today. When we expand the coverage so much, the problem may become many folds. How does the code propose to tackle this?

First of all, given the kind of Aadhar based universal registration that the Code envisages, we will not be faced with a large number of missing workers. However, the code proposes for confiscation of unclaimed amounts and credit of the same to National Stabilization Fund, if no claimant could be found even after inviting claims and objections in respect of such amounts. It is pertinent to mention that presently there is no such provision for inviting claims and objections in respect of unclaimed amounts and they mostly continue to remain in suspense accounts for unduly long periods of time.

Q20: How does the Code ensure that worker is not denied of his due under any circumstances?

Every worker shall have the right of coverage under the Social Security System provided under this code. Social Security to be the right of each and every worker rather than a goodwill gesture or appeasement. That is why the code proposes a Rights based benefit system, i.e., allowing the payment of benefits from the Fund to a person who becomes disentitled to any benefit due to him on account of Employer's negligence and subsequent recovery of the same from the defaulting employer. There is a provision for complaint by worker/ registered trade union/association of workers to the Samajik Suraksha Mitra in case of denial of coverage/failure by employer to deposit contribution/denial of benefit or compensation/non-provision of any entitled service or benefit. The Code prescribes for awarding Compensation to the worker by the Commissioner out of the Reparation Fund, over and above the benefit he is entitled to, for deficiency in providing the entitled service to the worker. The Code also gives a detailed grievance redresses mechanism as well.

Q21. Why have you proposed such an exhaustive list of definitions in the Code?

Exhaustive definitions leave lesser flexibility of diverse interpretations and therefore uniformity of understanding and implementation across the nation. This may lead to difficulty in enforcement and inadequate coverage as well. Moreover, diverse interpretations also mean ambiguity and grey areas which are cleared only after unnecessary judicial interventions. All these challenges are addressed if definitions are exhaustive and comprehensive.

Q22. How does the code ensure the accountability and transparency in the functioning of the Social Security Organizations?

The Code envisages few innovative and new approaches to ensure a transparent and fair financial set up. These include:

- (i) Accounts of Intermediate Agencies to be subject to CAG Audit on the same lines as that of Social Security Organizations
- (ii) Time bound preparation of Accounts within six months of the end of the financial year.
- (iii) Provision for social audit of social security schemes by State Boards in every five years by agencies empaneled by the Central Board. Since the social security mechanism envisaged in the code operates at various levels including that of local bodies' level, social audit may help in creating sense of ownership amongst the subscribers specially in the lower socio-economic

workers strata whose contribution will be subsidized from the Government fund which will help in identifying the corrective measures right at the ground level.

Q23. What is the difference between the terms Entity, Establishments and Enterprise?

Entity is a much broader term which includes the entire spectrum of units (wherein work is done by persons) irrespective of the nature and quantum of work. Enterprise and households are sub-set of the larger universe i.e. Entity. This differentiation has been provided for in the Draft to distinguish between the enterprises which engage work for any economic activity and households who engage work for domestic requirements. Further 'enterprise' may or may not employ any worker whereas 'Establishments' are the ones that employ at least one worker.

Q24. Why have you defined separately terms such as factory, business, project etc.?

The different terms such as business, factory, project etc. have been specifically defined to ensure that all kinds of employees get coverage under the code and there is no room for the employer to use any possible gap or loophole to avoid coverage under the provisions of the code. The term 'business' has been used to specify the kind of activity the 'enterprise' undertakes – such as manufacturing, agriculture etc. The term enterprise also include the units in which an own account worker works. Households are also included in the term 'entities' and 'employer' and thus, as such (if not specifically excluded through an entry in Schedule-I) the code applies to households and domestic workers as well.

Q25. Why have you used two different terms i.e. wage ceiling and income threshold?

There are two cut-offs (in respect of wage/income) defined. 'Income Threshold' and 'wage ceiling'. The term 'wage ceiling' is for the purpose of determining a maximum limit on contribution payable. On the other hand, the term 'income threshold' (which will be somewhere between minimum wage and income ceiling) is just used once in the code, and that too in an illustration, - is for the purpose of enabling the government to provide for two different kind of schemes (for same purpose) for two different class of workers. One may be subsidised while the other may not. There is another threshold – in terms of Number of employee working under an establishment. It is used to define organized and un-organized sector. Although the Code applies to all sectors (organized or un-organized), this distinction has been kept for the purpose of eligibility of gratuity.

Q26. Would it be possible to achieve the desired co-ordination between different ministries of the central government and also between Centre and States?

The National Council, headed by the Prime Minister and composed of Ministers of Finance, Health and also Chief Ministers/ Administrators of all States/Union Territories apart from workers and employers is envisaged as the apex body to bring out harmonious co-ordination amongst different ministries and also at the Centre-State level. The National Council has been proposed on similar lines to the Goods and Service Tax (GST Council) which has been able to successfully roll out the GST Regime in India.

Q27. Why a need was felt for a separate category of special registered person?

It is understood that in-spite of our best efforts to cover all the workers under Registration fold (and consequently within the scope of social security schemes) there will be persons who are left out. This will specially be true in case of persons who are old and infirm at the time of application of Code and cannot be taken into fold of a contributory system. For such persons, the Code envisages (state government funded) social assistance programme, and for that purpose there is a concept of 'Special Registration' of such persons. Reparation fund would be financed from the penalties/damages recovered in the course of enforcement of the code and the recoveries made from the employers in respect of benefits paid to the employees in pursuance of section 28 of the

Draft Code, as these would be compulsorily credited to the Reparation Fund in accordance with the provisions of the code and can be used for certain declared purposes only, including the payment of compensation to the worker for non-provision of service/deficiency in service.

Q28. How would the Reparation Fund be financed?

Reparation fund would be financed from the penalties/damages recovered in the course of enforcement of the code and the recoveries made from the employers in respect of benefits paid to the employees in pursuance of section 28 of the Draft Code, as these would be compulsorily credited to the Reparation Fund in accordance with the provisions of the code and can be used for certain declared purposes only, including the payment of compensation to the worker for non-provision of service/deficiency in service.

Q29. What is the purpose of Contribution Augmentation Funds?

The code empowers the Central Government or the State Government to establish contribution augmentation fund as deemed necessary by the Central or State Government, as the case may be. The contribution augmentation fund would be administered by the respective State Board. The State Boards are empowered to credit to the state Social Security Fund from the State contributions on behalf of workers by general or special orders. This amount credited to the State Social Security Fund would then be credited to the VIKAS of the beneficiary workers by the State Board in consultation with the State Advisory Committees.

Q30. What is the purpose of creating National Stabilization Fund?

The code provides for establishing a National Stabilization fund which will be used for harmonizing the Scheme Funds across the country. National Stabilization Fund will be managed by the Central Boards. Any actuarial surpluses in any scheme or unclaimed amounts will be credited to the National Stabilization Fund, and it will be used if any state's scheme fund falls in distress. It can use for providing loans or grants to State Boards in case of deficit found in any scheme after actuarial evaluation.

Q31. Most of the Cess Acts have been abolished. Why have you kept the provision of levying cess in the code?

This Part specifically provides for a levy of Building and Construction Cess, on all construction works above a certain threshold. This is for the protection of Building & Construction workers, as generally it is found that these workers are not engaged in formal employment relationship basis. Further, the Code also provides for a general power of Central Government to levy Cess on other products and services. As such, the provision of Cess has been kept only as an alternate mechanism to collect contributions (of employers / employees). The Government does not intend to levy cess on any sector, as the normal Employer's and Employee Contribution levied under Part D should be sufficient to meet the Social Security requirement. However, it is understood that certain sectors are very prone to informality, due to which number of employees are not declared by the employers, leading to their exclusions from social security.

In order to handle such sectors, the powers to levy cess has been kept, so that in sectors where employers are escaping their obligations, the concerned workers can be protected by levy of cess, and providing their contribution from this collection of cess.

Q32. What flexibility has been provided to households/own account workers in registration and in payment of contributions?

An own account enterprise at the time of registration of the own account worker himself, would have to furnish the necessary particulars of his enterprise based on which it would be registered. No separate registration application is required.

As far as households are concerned, the furnishing of the first return cum challan by the Household along with such particulars as may be prescribed would be sufficient evidence that he has complied with the registration requirements. Contributions are to be paid on monthly basis; However, for simpler compliance provision, households (employing domestic workers) can pay consolidated contribution for quarter, semester etc. Own account workers too have to pay contributions on monthly basis, however, they too have option to pay consolidated contributions.

Q33. How would the administrative charges be worked out?

Administrative Charges are to be paid by the employers. The manner of calculation of contribution has been changed slightly as compared to EPF system. Instead of certain %age of wage, the Administrative charges shall be certain %age (less than 4%) of contribution. In case of State (i.e. government) contribution, same administrative charges will be deducted from the government's contribution.

Q34. Would 2 % of wages contributed to Gratuity Fund be sufficient for meeting gratuity liability?

We understand that it may not be possible to meet the Gratuity liability in respect of all employees through the proposed contribution that is 2 % of the wages. However, it has been kept low to avoid hardship to the employers. Monthly contribution of the employer will be collected by the State Board to be credited to the individual account of the employer in the State Gratuity Fund. Thus, the State Gratuity Fund will comprise of accumulation of contribution of individual employer, which would not be a pooled fund. It has been envisaged to make employer compulsorily save for payment of gratuity, whenever required so as to ease burden on employer at the last of moment, when gratuity is to be paid. If funds are available in the Employer's Gratuity Fund, and any employee of the said employer becomes entitled to gratuity, the Commissioner, shall release the said gratuity amount due to the employee from the amount standing in the Credit of the employer in the State Gratuity Fund. If sufficient amount is not available in the gratuity fund account of the employer, the Commissioner shall direct the employer to pay the gratuity to the employee from his own funds within 15 days. Therefore, in the proposed scheme of things, the maximum period for payment of gratuity has been enhanced to 60 days.

Q35. What is the rationale behind a comprehensive chapter on Pension integrating death, disability and retirement benefits?

The rationale behind this is to provide comprehensive coverage to the workers throughout their active service life and a guarantee of old age, disability or dependent pension. Further, this part does not distinguish between death/disablement due to employment injury or otherwise as for a worker and his family, occurrence of such a contingency brings a lot of grief and mostly, where the worker is the sole breadwinner, his death or disability pushes the entire family into scarcity. Thus, by making a provision for pension through the pension schemes as may be instituted, it provides an income security to the worker and his family in times of distress. The benefits to the workers are guaranteed and if any employee becomes disentitled from availing benefits under the Pension Scheme on account of non-coverage by the employer, the benefits are to be paid by the Commissioner in the first instance and subsequent recovery to be made from the employer in accordance with section 28 of the code.

Q36. What happens if the resources of a State Board face a shortfall in meeting the expenditure of sickness benefit?

The State Governments are expected to meet the incidence of Sickness Benefit if it is in excess of subscriptions received. In case of shortfall, the Central Government may step in to cover the deficit on justified/bonafide grounds.

Q37. Is it true that the code promotes large scale privatization of social security system?

What we have done is we have made a provision for licensing of Intermediate Agencies in the fields of Fund Management, Point of Presence, Service delivery, Benefit disbursement, Record keeping and Facilitation for enabling PPP system in administering social security. These agencies are to be agents of the Board to deliver certain services. The ultimate liability and responsibility of providing the services / benefits remains that of the Boards. We have also kept a provision for appointing a nominee director in the governing body of the Intermediate Agency. Adequate safeguards for exercising control over Intermediate Agencies for protecting the interest of subscribers (including the suppression of the Governing Board of the intermediate agency, if necessary). The appointment or otherwise of the Intermediate Agencies depends upon the requirement of the respective State Board and is not compulsory.

Q38. What are the appellate provisions in the Code?

The code prescribes detailed grievance redress mechanisms to make social security a right of each and every worker. Where the beneficiary is aggrieved by the action taken (or non-action) on his complaint made to the Samajik Suraksha Mitra, the first level appeal can be filed to the departmental appellate officer. Similarly, in the cases where the employer is aggrieved by the orders passed by the assessing officer, an appeal lies to the appellate officer. The first appellate officer also hears appeals against other orders of the authorities (under the code) such as orders related to registration (or denial thereof), orders relating to entitlement of gratuity, confiscation of unclaimed amounts etc. He also has been given role of determining certain questions and disputes, such as whether any person will be treated as employee or not, whether any entity is principal employer or not, etc. There is no condition for pre-deposit of (disputed) assessed amount before entertainment of appeal before the (first level) Appellate officers. However, admitted amount has to be paid before entertainment of appeal. This will enable easy resolution of employers' disputes. The Assessing officer / Appellate officer has powers to levy damages for wilful default or delay of payment of contributions and dues. Second Appeal (against the orders of Appellate officer) is to the Tribunal formed under this code. For entertainment of (second) Appeal, the appellant has to deposit such amount as may be determined by the Tribunal. Tribunal also directly hears appeals on the decisions of Medical Boards, and matters relating to Commissioner's actions against the Intermediate Agencies. Subsequent Appeal (on question of law) is to the concerned High Court.

Q39. What was the need of including provision of Community Service Order?

We believe that any person committing an offence with regard to social security legislation, does not commit an offence against an individual, but against the society as a whole thereby putting the entire social security system in jeopardy and as such should be reformed against committing such acts in future.

As such, the code provides for Community service order to undertake unpaid work as directed by the court, in cases where the punishment for the offence committed is not more than two years of imprisonment and the court considers it a fit case for awarding the Community service order.

Q40. What is meant by prescribed, stipulated and by-laws with respect to the Code?

The power of drafting the subordinate legislations under different sections of the code have been bestowed on the Central Government, National Council and the Central Board respectively based on their relative functions. These subordinate legislations have been grouped under three categories i.e. Rules, Regulations and by-laws respectively. The words 'prescribed' and 'stipulated' is used for shortening the phrases as other-wise it would have read "as may be prescribed by the rules made by Central Government" or "as may be prescribed by the Regulations made by the National Council" etc. "Prescribed" means prescribed by rules made by the central government (unless otherwise specified) under this Code.

The Central Government has the power to make rules, after consultation with the National Council and subject to the condition of previous publication for the purpose of giving effect to the provisions of the code. "Stipulated" means specified by the regulations made by the National Council, which may make regulations for any matter relating or incidental to regulating the social security Schemes and their implementation in India. "by-laws" means the by-laws framed by the Central Board under Section 166. These basically relate to procedural matters such as records, returns, proceedings etc. In addition, if rules are to be made by the State Government on any subject, the same has been specifically provided in the respective provisions.

Q41. What is the relation between the medical benefits proposed in the code and medical care provided by the Central/State Governments?

Presently, unorganized sector workers who are not covered through social security legislation and as such the Central/State Government provides them medical facilities through their Healthcare Set-up such as Primary Health Centres, Dispensaries and Hospitals. After the medical benefit/insurance under this code is universalized, this existing health set up may get integrated into the medical benefit scheme proposed under the code and the same would be strengthened due to inflow of funds through contributions and welfare funds where necessary. However, as we are aiming towards progressive implementation of universal social security, the healthcare provided by Central Ministry of health and family welfare and for that matter also by State Governments or local bodies would remain relevant till such time the integration of such facilities with the Code is attained, which again is a gradual process.

Q42. Who would collect the Building and Other Construction workers' cess?

The Cess shall be collected by the local authority or the State Government and proceeds of the Cess shall further be transferred to the State Government after deducting collection charges, if any. The BOCW Welfare Cess Act, 1996 also provides for the levy and collection of BOCW Cess in above mentioned manner. The municipal bodies can collect Cess at the time of passing of Plans.

Q43. It is good practice to ensure that safeguards are in place for the protection of privacy of personal data. Has the same been provided for in the Code?

The Code ensures confidentiality of returns etc. No person can intentionally disclose, transmit, copy or otherwise disseminate any information collected in the course of implementing the provisions of this Code, to any person not authorized under this Code. Similarly Code prohibits unauthorized access, download, stealing, tampering or destroying of the data of any Social Security Organization (SSO). Chapter F of the code classifies as "confidential" the data and information produced during the implementation of this Code and lays down the exceptions where this restriction of confidentiality shall not apply to the Governments, their agencies and the Courts.

Q44. Given that contracted work is currently characterized by low coverage, the institutional arrangement for the coverage of contracted workers needs to be such as to incentivize their affiliation and coverage. The concept of Contribution deduction at source (CDS) has been kept for incentivizing coverage of workers in the course of works contract. The Concept of CDS is to prevent tax avoidance/ evasion. The Idea behind CDS is taken from TDS system in case of income tax. Here, in case of works contract, the Employer is the person executing the works contract, and he, in any-case is liable for covering his employees in the SS system. However, to prevent avoidance, it is proposed that the person awarding the works contract will do a fixed deduction from the payment to be made to the works contractor, deposit it in the SS Fund (it will go into a suspense account) as CDS and give a certificate to the works contractor. This certificate is like a 'credit note' with the Contractor and he can use it when he files his returns. (When the works contractor files return, the amount credited in the suspense account will get settled to the concerned workers' SS Account). The CDS is to be undertaken in all circumstances when a works contract is awarded.

Q45. What would happen to the existing beneficiaries under ESIC/EPFO who have been sanctioned certain benefits under the respective schemes?

The beneficiaries under the ceased schemes shall be entitled to draw the benefits, not less than the benefits that were sanctioned to them under the ceased schemes and the successor boards shall be liable to bear the financial liabilities created by the decisions taken by predecessor organizations.

Q46. Whether the existing exemptions granted under ESIC and EPFO would continue?

Any Exemption granted under section 17 of Employees' Provident Fund Act 1952 or Section 87 or 88 of Employees' State Insurance Corporation Act 1948 shall deemed to be a permission to operate Alternate Coverage Mechanism granted under this Code from the corresponding Scheme(s) under this Code for a period until –

- (a) Validity of the Exemption so granted expires, or
- (b) one year from the commencement of applicability of this Code, whichever is earlier?
