

Comments submitted to the Ministry of Labour and Employment on the Draft Labour Code on Social Security, 2019 (24 October 2019)

Dvara Research¹ is a not-for-profit policy research and advocacy institute whose primary mission is to ensure access to financial services for all individuals and enterprises. One of our core areas of interest is the provision of social services, including insurance, pensions and access to basic services provided by the government.

We welcome the decision to consolidate India’s social security legislation into a consolidated Draft Labour Code on Social Security, 2019 [hereinafter, “the present Draft”]. As noted by the Second National Labour Reforms Commission (2002), there is a grave need to consolidate and simplify India’s labour laws. Moreover, simplifying labour laws to improve implementation is key to achieving the Sustainable Development Goal 8: Decent Work and Economic Growth for all. (United Nations Development Programme, 2019). We further welcome the decision to make an express provision for social security of workers in the unorganised sector. (Statement of Objects and Reasons to the Draft Labour Code on Social Security (2018)) [hereinafter “2018 Draft”]

We have provided our constructive comments on the Draft in response to the call for responses from stakeholders dated 17.09.2019. (Ministry of Labour and Employment , 2019) We have commented on the following aspects of the Draft, namely:

1. The need for greater clarity on institutions set up under the Draft, particularly the Central Board of Trustees and the National Social Security Board for Unorganised Workers.
2. The definition of “worker” and “employee” under the present draft.
3. The need for greater protections for workers in the unorganised sector
4. The absence of clear provisions for inter-state migrant workers
5. The need to consider and account for workers’ capacity to pay contributions for social security

¹ Dvara Research (formerly the IFMR Finance Foundation) has made several contributions to the Indian financial system and participated in engagements with key regulators and the Government of India. We were the technical secretariat to the RBI’s Committee on Comprehensive Financial Services for Small Businesses and Low Income Households chaired by Dr. Nachiket Mor. We acted as peer reviewers for the customer protection recommendations made by the Financial Sector Legislative Reforms Committee. Our recent research has given us the opportunity to consult on and extend discrete research inputs to various Committees set up by the RBI and the Government of India, including the Committee of Experts (on data protection) under the Chairmanship of Justice B.N. Srikrishna, RBI’s Committee of Fintech & Digital Banking, the RBI’s Expert Committee on Micro, Small & Medium Enterprises and the RBI’s Committee on Deepening of Digital Payments.

6. The absence of a comprehensive grievance redressal mechanism for workers

We also set out our comments on individual sections of the Draft in Para 7 below. We hope that these will be addressed in future drafts of the Social Security Code and other subordinate legislation in related fields.

1 The Draft should set out the functions of the Central Board and National Social Security Board in detail.

We welcome the decision to create a Central Board under s. 3 for the administration of social security under the present Draft. The Central Board comprises representatives from the government, employers and employees, and is to discharge such functions as the Central Government may prescribe. Likewise, the Central Government is to constitute a National Board for Social Security of Workers in the Unorganised Sector under s. 5. This will also exercise those functions assigned to it by the Central Government. S. 5 further provides for a State level board, which will exercise functions assigned to it by the State government. Finally, S. 9 provides for the establishment of a Central Advisory Committee to advise the Central Government on schemes for unorganised sector workers. Further, the present Draft provides for the appointment of an inspector-cum-facilitator under S. 118 by the Central Board to act under an inspection scheme to be framed by the central government. Under S. 121, an officer authorized by the Central Government may conduct enquiries into alleged irregularities at establishments. This officer may be a member of the Central Board.

We submit that, while the introduction of Boards for social security and for unorganised workers is a positive step, the present Draft does not set the functions of either body. Consequently, it is submitted that Sections 3 and 5 suffer from the vice of excessive delegation. (In re Delhi Laws Act, 1951) By contrast, the Unorganised Workers Social Security Act, 2008 designated clear functions for the National and State Boards. We submit that the Draft should set out the functions of the Central Board and National Social Security Board expressly. We suggest that an expert body such as the Central Board of Trustees may be well placed to collect information on the administration of social welfare in India and to advise the government on how to improve it. The Central Board of Trustees may also be able to supervise the functioning of other bodies in the Draft, including the ESI Corporation and the Provident Fund corporation.

2 The definition of “worker” and “employee” are ambiguous under the present Draft.

The Statement of Objects and Reasons to the 2018 Draft expressly provided that the Social Security Code was intended to “*cover all kinds of employment including part-time workers,*

casual workers, fixed term workers, piece rate, commission rated workers, home-based workers, domestic workers, own account workers etc.” To this end, the definition of “employees” under the 2018 draft was widely worded and covered “all categories of workers” including part-time workers, seasonal workers, commission workers and home-based workers.

Under the present Draft, however, the term “employee” is defined as a person “*employed on wages by such establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.*” (S. 2(xx)) The Draft also includes a definition of “worker” in S. 2(lxiii). Other classes of workers – such as contract workers and those in the informal sector - are covered under the definition of “wage worker” in s. 2(lxi). In addition, the present Draft contains definitions for “unorganised sector” as “*enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.*”(S. 2(lvii)).

It is submitted that two concerns arise with respect to the definition of “employee” and “worker” here. *First*, it is unclear whether workers in the unorganised sector are to be treated as employees for the purpose of the present Draft. The definition of “unorganised sector” in S. 2(lvii) appears to envisage the possibility that some enterprises may employ workers. However, Chapter IX of the present Draft appears to make express provision for schemes framed by the Central and State governments for the benefit of workers in the unorganised sector in important areas such as health benefits and life insurance. This indicates that workers in the unorganised sector are not to be treated as “employees” for benefits outside Chapter IX. This conclusion is supported by the separate definition for “wage worker” under the present Draft. We submit that such distinction between workers in the organised and unorganised sector would be deeply problematic. More than three-quarters of Indian workers are in the informal sector. (Periodic Labour Force Survey, 2017-18, 2019)Such workers would be left out of the formal social security net, as the provisions relating to employees’ compensation, employees’ state insurance, maternity benefit and gratuity are limited to “employees.” *Second*, while administrative and supervising staff may be treated as “employees” under the present Draft, they are excluded from the definition of “workers.” We submit that while this distinction may be relevant in the context of Industrial Relations, it would have no application to the present case. (Gupta, 2019)

We submit that there are other concerns which arise with respect to the scope of the present Draft. For instance, S. 44(7) of the present Draft provides that maternity benefits and employee's compensation cannot be granted where the employee has made a claim under the Employees State Insurance scheme. This provision is *in pari materia* with S. 2(2) of the Maternity Benefits Act, 1961 and S. 53 of the Employees State Insurance Act, 1948, and provides that no compensation under the chapters on maternity benefits or employees' compensation shall be paid to workers claiming employees' state insurance. The present draft does not, however, specify which establishments might fall outside the coverage of the employees' state insurance scheme. Moreover, no express provision is made for workers in the unorganised sector with respect to employee's compensation² or maternity benefits.

We therefore suggest that the present Draft be amended to clarify its application to workers in the organised and unorganised sector, as was set out in the 2018 Draft. We submit that the definition of "employee" should cover workers in the organised and unorganised sectors. This is set out in greater detail below.

We further suggest that the present Draft clearly state the applicability of different chapters on employees' compensation, gratuity, maternity benefits and employees' state insurance. We submit that these chapters should apply to workers in all sectors and categories of employment. The Ministry may consider including clear guidelines for establishments to which employees' state insurance schemes will apply, while also enabling other classes of workers to enroll for similar insurance schemes.

3 The Draft should provide for greater protection for workers in the unorganised sector.

The ILO Recommendation No. 204 on the Transition from Informal to Formal Employment (2015) requires members to take steps to promote the regularization of employment and to ensure an adequate social protection net for those in informal employment. We note that one of the primary objectives of the 2018 Draft was to provide social security to those in the unorganised sector. To this end, the 2018 Draft did not make a distinction between those employed in the formal and informal sectors. The definition of "employee" in s. 2.42 of the 2018 Draft, for instance, included casual and seasonal labourers and commission-based workers.

² S. 76 of the present Draft is an *exception* to this as it provides for employer's liability to plantation workers in limited circumstances.

We submit that this treatment of workers in the unorganised sector is problematic. The Periodic Labour Force Survey, 2017-18 (Government of India, 2019) found that fewer than one quarter of Indians are in regular employment. This means that the vast majority of Indian workers are employed informally. Consequently, we submit that there is a need for more robust provisions for workers in the informal sector. However, we note that the schemes framed under Chapter IX may not provide benefits to workers at par with those under the EPF, ESI or maternity benefit schemes. Chapter IX does not provide a minimum standard of benefits for workers in the unorganised sector. In fact, s. 106(4), which relates to the framing of schemes by States for the benefit of workers in the informal sector is framed in *directory* and not mandatory terms. Additionally, we submit that the inclusion of gig workers and platform workers within the ambit of the present Draft is a positive step. Many gig workers are treated as independent contractors by the aggregator and receive few of the benefits available to employees. (Kumar, 2019) However, here too, the government *may* frame schemes for the benefit of gig workers under S. 110A of the present Draft. (Union of India v A.K. Pandey, 2009) It is pertinent to note that the provisions of Chapter IX of the present Draft are *in pari materia* with those of the Unorganised Workers Social Security Act, 2008. This Act provided statutory backing for many schemes introduced for the welfare of unorganised sector workers, including the National Social Assistance Programmes and Pradhan Mantri Shram Yogi Maandhan.

We submit that the benefits to workers from this Act have been limited. *First*, there is little guidance on the minimum floor benefits to be provided under these programmes. Thus, programmes such as National Old Age Pension Scheme provide benefits far below the minimum per capita consumption expenditure in many states. (Singh & Kumar, The State of Social Pensions in India, 2019)

Second, schemes are not subject to the protections in S. 6 of the General Clauses Act, 1897. Thus, schemes may be subject to change by the executive, with no protection for rights already vested under a previous scheme. (Kolhapur Cane Sugar Works v Union of India, 2000) In other words, there is little certainty regarding the rights available to citizens under these schemes. For instance, we note that the National Pension Scheme (Swavalamban) (Swavalamban Scheme, 2019) has now been subsumed within the Atal Pension Yojana. (Atal Pension Yojana Scheme Details, 2015) However, while government contributions were paid under the NPS scheme, they are unavailable under the Atal Pension Yojana. This in turn means that the rights available to citizens have changed after the commencement of the scheme. We submit that

there is a need for greater certainty in the rights accorded to workers and to ensure that workers' rights are not adversely affected by repeated changes in schemes.

Third, there has been little action by states with respect to forming the Social Security Boards and in implementing provisions of the scheme. Even five years after the passing of the Act, only 11 states had set up Social Security Boards. (Press Information Bureau, 2013) We therefore submit that the structure proposed in the Unorganised Workers Act, 2008 requires reconsideration.

We submit that providing different benefits to workers in the organised and unorganised sectors would violate the right to equality under Article 14 of the Constitution. As the present Draft stands, it is unclear whether benefits under Chapters III to VII will apply to those in the informal sector. We therefore suggest that the Draft provide for a right to a minimum standard of social security (as defined in s. 2(ix)) for all workers in the unorganised sector. Further, as discussed below, we submit that there is a need for the government to fund schemes for social protection for workers who are unable to make contributions to voluntary schemes.

We therefore submit that greater protections need to be put in place for workers in the unorganised sector. We agree with the suggestion of the National Commission for Enterprises in the Unorganised Sector (National Commission for Enterprises in the Unorganised Sector, 2007) that there is a need for a comprehensive social security scheme for informal workers, to be formulated at the national level.

Finally, we submit that greater steps be taken for the proactive identification of beneficiaries and their enrollment into schemes. For instance, the Ayushman Bharat identifies beneficiaries based on the Socio-Economic Caste Census, while also allowing for self-enrollment. This policy could reduce the incidence of exclusion errors. (National Health Agency, 2019)

4 The Draft needs to incorporate provisions for interstate migrant workers.

All citizens of India are guaranteed the fundamental right to freedom of movement under Article 19(1)(d) of the Constitution. India has an interstate migrant population of around 60 million. (Ministry of Finance, 2018) A significant proportion of migrant workers are seasonal or short-term migrants. (Ministry of Housing and Urban Poverty Alleviation, 2017) These migrants suffer from crucial disadvantages, including language barriers and potential exclusion from the Public Distribution System. (Ministry of Housing and Urban Poverty Alleviation, 2017) (Lok Sabha Unstarred Question No. 20, 2017)

It is noted that S. 4 of the Inter State Migrant Workmen Act, (1979) provides for only for the registration of establishments employing inter-state migrant workers, and not for the registration of the workers themselves. Instead, s. 16 of the Inter State Migrant Workmen Act imposes obligations on the contractor employing such migrants to ensure basic labour rights. In a press release from December 2015, the Government observed that only 4 prosecutions had been launched under the Inter State Migrant Workers Act for establishments in the Central sphere. (Lok Sabha Unstarred Question No. 4350, 2016)

We note that the present Draft is silent on whether special protections apply to migrant workers. Many migrant workers are employed informally, in sectors such as mining and construction. (Second Indian National Labour Commission, 2002) The United Nations has, however, recognized that general schemes for migrant workers may not be adequate, and has recommended specific provisions for portability of benefits for migrant workers and greater coordination across states. (United Nations in India, 2019) Under the present Draft, we note that important subject areas, such as employment injury benefit and provident fund benefits for workers in the unorganised sector are left to the discretion of States. (S. 106(4)). While Kerala has proactively taken steps to protect the rights of migrant workers, (Anil, 2018) it is unclear whether other states have also made efforts to expressly include migrant workers within these schemes.

We submit that any legislation or scheme on social security for unorganised workers must necessarily take the realities of labour migration in India into account. This would include *first*, an express recognition that migrant workers shall be treated at par with other workers in the destination state; and *second*, the provision of full portability of benefits across States. This would encompass not only contributions to and withdrawals from contributory schemes, but also access to healthcare and other allied benefits. In this respect, we note that the 2018 Draft provided for integration of schemes and benefits across the country and recognized the rights of workers to access benefits throughout the country. (S.11 read with S. 31, 2018 Draft) This structure should be retained here.

5 The Draft and Schemes framed thereunder must take the capacity of workers to pay contributions into account.

We note that many of the schemes mentioned under the Seventh Schedule require regular contributions from workers. These include the Pradhan Mantri Shram Yogi Maandhan and the Atal Pension Yojana. We further note that many workers earn less than the minimum per capita

consumption expenditure of each state. The guideline National Floor Level Minimum Wage is presently fixed at Rs. 178, (Sivaraman, 2019) well below the figure of Rs. 375 per day fixed by a Ministry of Labour Expert Committee on Determining the Methodology for Fixing the National Minimum Wage. This was based on the Minimum Per Capita Consumption Expenditure (MPCE) of households. (2019) The Periodic Labour Force Survey, 2017-18 reports, however, that even the average daily wage among some classes of workers in rural India is even below this – the average daily wage is between Rs. 138 to Rs. 158 for men and Rs. 119 to Rs. 144 for workers engaged in public works. We submit that this indicates that many workers in India are earning below even the MPCE and may well be unable to pay contributions to voluntary schemes. Further, at present, social pensions provided by the government also fall below the MPCE in many states. (Singh & Kumar, The State of Social Pensions in India, 2019)

We recognise that India's population is aging rapidly. A fifth of India's population will be over the age of 60 by 2050. There is an urgent need to provide for pensions and savings to provide for this elderly population. (Singh, 2019) We submit that in the long term, this must be addressed by reforms to wage legislation, which will allow Indians to save for their future. In the short term, however, it is important for the government to provide a social security floor for those whose incomes fall below MPCE.

We submit that it is crucial to ensure a stable social security net for workers in the informal sector, in light of the findings in the Periodic Labour Force Survey 2017-18. This would include a greater component of government funding for schemes framed under s. 106 of the present Draft. We also suggest that the present Draft include an express right to social security (as defined in S. 2(1x) of the present Draft) for workers in the informal sector.

6 The Draft should provide a simple and accessible grievance redressal mechanism for all classes of workers.

We submit that the procedure for dispute resolution under the present Draft is complex and does not account for conciliation or other methods of alternative dispute resolution. No specific provision is made for grievance redressal for unorganised sector workers. It is further noted that there is no unified dispute resolution process. Instead, the Draft provides for authorities to be appointed by the government to adjudicate different types of disputes that may arise, as set out below:

- Under S. 25, any person aggrieved by orders of the Central Government with respect to matters in Ss. 1(5), 121, 123, 124 and 125 may appeal to the Industrial Tribunal under s. 7A of the Industrial Disputes Act, 1947. (S. 2(lvi))
- Ss. 50 and 51 provide for the creation of an Employees' State Insurance Court to deal with a limited set of matters pertaining to employees' state insurance in Chapter IV. Appeals thereon on substantial questions of law will lie before the High Court (S. 54).
- S. 58(5) requires workers to approach the competent authority established by the appropriate government for disputes relating to the payment of gratuity in Chapter V.
- S. 69(2) permits appeals by women deprived of maternity benefits to a competent authority established under the Chapter VI of the Draft by the Central Government. However, under S. 73, these complaints are required to be made to the Inspector-cum-facilitator constituted under Chapter XI of the Draft. An appeal from the order of the inspector-cum-facilitator under s. 73 will lie before the competent authority to be established by the government.
- S. 74 requires employers to report any injuries occurring in the course of employment to the competent authority to be appointed under Chapter VII.
- S. 82 of the present Draft provides for the adjudication of employees' compensation claims by a competent authority to be appointed under Chapter VII.
- S. 118(5) of the Draft empowers the Inspector-cum-facilitator to provide advice to employers and workers on compliance with the Draft.
- The jurisdiction of the civil court is excluded under the following sections:
 - S. 51(3): Matters to be decided by the ESI Court.
 - S. 91(2): Claims for employee's compensation to be decided by the competent authority

For all other grievances, employees would be required to approach the civil courts.
(*Dhulabhai v State of Madhya Pradesh*, 1969)

We submit that workers ought to be provided with a simple and easily accessible grievance redressal system in order to enforce their rights, in line with the recommendations of the First National Commission on Labour. (1966). Such a system must give adequate scope for alternative dispute resolution and speedy redressal of disputes before being referred for adjudication to the relevant authority. (National Commission for Enterprises in the Unorganised Sector , 2007) (NCEUS) This system must also keep in mind the unequal bargaining position between workers and their employers. In this regard, an inspector-cum-

facilitator, who is also charged with assisting employers with compliance under the present Draft may not be best placed to assist workers with their grievances. Instead, we submit that the Ministry may consider introducing a Dispute Resolution Council in line with the recommendations of NCEUS, 2007. Such a dispute resolution council would comprise representatives of the state, workers' organisations and employers' organisations. It would analyse the complaint and carry out a prima facie investigation into the matter and make recommendations thereon, as well as being empowered to record conciliated settlements. The Dispute Resolution Council could also have the powers to recommend adjudication by the relevant authority if no conclusion is reached on a prima facie level. The NCEUS proposed that this body have the powers to take *suo motu* cognizance of potential disputes; we suggest that this power be retained. We also submit that any grievance redressal or adjudicatory body also have jurisdiction over those employees in the unorganised sector

7 Comments by Section:

Section	Issue	Proposed Change	Reason for Proposed Change	Remarks
S. 2(xx); S. 2(lxiii)	The definition of the terms “employee” and “worker” do not include seasonal, casual or contract labour, nor does it cover home-based or commission workers.	We submit that the definition of employees in the 2018 Draft should be retained here. We also suggest that the distinction between “employee” and “worker” be done away with.	As noted above, more than 90% of India’s workers are in the informal sector. (Second Indian National Labour Commission, 2002) One of the key objectives of a Draft Social Security Code is to include those in the informal sector within the formal social security net. This can only be done if the definition of employees and workers also includes those in the informal sector. We further note that the distinction between the definitions of “employee” and “worker” is that the term “worker” excludes managerial or administrative staff. While this may be of some	We note that the 2018 Draft of the Social Security Code provided an inclusive definition of employees, which included those in the unorganised and informal sector. The objective here was to provide a “decent standard of work” in accordance with Sustainable Development Goal No. 8.

			application in the context of Industrial Relations, we submit that this has no application here. (Gupta, 2019)	
S. 3	The powers of the Central Board of Trustees are not defined in the present Draft.	The powers of the Central Board of Trustees must be defined clearly.	S. 3 provides for the formation of a Central Board of Trustees, but states that this Board will have such powers as the Central Government may specify. As stated above, we submit that this provision is framed very broadly and may suffer from the vice of excessive delegation. (<i>In re Delhi Laws Act, 1951</i>)	We suggest that an expert body such as the Central Board of Trustees may be well placed to collect information on the administration of social welfare in India and to advise the government on how to improve it. The Central Board of Trustees may also be able to supervise the functioning of other bodies in the Draft, including the ESI Corporation and the Provident Fund corporation.
S. 5	The powers of the Social Security Board for Unorganised	The powers of this Board need to be set out clearly.	We note S. 5 provides that the Social Security Board shall have such powers as the Central Government may notify. We submit that this provision is framed very	The NCEUS draft legislation for unorganised sector workers suggested an even greater role for the Board.

	Workers are not defined		broadly and may suffer from the vice of excessive delegation. The Unorganised Workers Social Security Act, 2008 contained an <i>in pari materia</i> provision for the formation of a board, which was empowered to recommend suitable schemes and to advise the government on their implementation (S. 5)..	Under this draft, the National Board would also conduct surveys of employment in the unorganised sector, and to implement welfare schemes. We submit that this may provide guidance on the role of the National Board under the present Draft
S. 18	It is unclear why workers would need to exit the Employees Provident Fund Scheme in order to avail of National Pension System savings.	We suggest that the provision be amended to state that voluntary enrollment for personal savings in the National Pension System will not affect contributions to the Employees Provident Fund.	We submit that the rationale for this provision is unclear. The National Pension System has been set up under the aegis of the Pension Funds Regulatory and Development Authority as a voluntary contributory pension scheme. The government has, however, permitted the use of the National Pension System for government and private undertakings. (About National Pension System, 2017) It is not clear why this distinction has been	We note that, as per the decision of the Supreme Court in (<i>Workmen v Management of Raptakos Brett</i> , 1992) workers have a right to set aside funds for contingencies or for their own retirement. A provision which discourages workers from enrolling with the NPS for personal investments may fall foul of this judgment.

			<p>made between employers' enrollment in the NPS and PF schemes has been made. Moreover, NPS also provides for voluntary enrollment by citizens to provide for their own retirements. We submit that voluntary savings by citizens, without involvement of the employer, ought not to be affected by this section.</p>	
S.48	<p>This provision permits the government to exempt any establishment belonging to the government or any local authority from the chapter on Employees State Insurance.</p>	<p>This provision must be removed.</p>	<p>We submit that the reasons for including this provision within the text of the present draft. Further, we submit that treating employees of establishments belonging to the government or a local authority differently from those employed in any other establishment would amount to a violation of the right to equality under Article 14 of the constitution.</p>	

S. 62(3)	The provision provides for 12 weeks maternity leave to women with for their first or second child, but only six weeks for any subsequent delivery.	We submit that the same period of maternity leave ought to be provided for all deliveries, irrespective of the order of birth.	We submit that this provision is arbitrary and would violate the right to equality under Article 14 of the Constitution as it would unfairly penalise mothers who have had a third child. (<i>Maneka Gandhi v Union of India</i> , 1978) We note that the Maternity Benefits Act, 1961 did not provide for shorter maternity leave for deliveries beyond the second child.	
Chapter VII	The present chapter does not contain any reference to workers in the unorganised sector.	We suggest that the chapter on employee's compensation include a wide definition of workers, such as that in the 2018 Draft.	We note that workers in the informal sector are left out of the employee's state insurance schemes. In the absence of this, we submit that a formal process be put in place to provide for compensation in case of employment injuries for workers in the informal sector.	
S. 74	This places the onus only on employers to report injuries in	An additional provision should be put in place for complaints and claims by employees.	We submit that a formal process for workers to submit claims for employment injuries will make this process more	Here, the competent authority is to be appointed by the Central government.

	the course of employment.		robust. It will also provide a means to check errors in reporting by employers.	
S. 82(7)	This classifies women as persons with a legal disability and requires compensation to be invested on her behalf.	The references to “woman” in this sub-section should be removed.	Classifying women along with others who are under a legal disability violates the right to equality in Article 14 and the right against discrimination in Article 15 of the Constitution.	
S. 90(2)	This subsection provides that a lumpsum agreement entered into for the compensation and registered under s. 90(1) shall be enforceable notwithstanding the provisions of	We suggest that this sub-section be deleted.	The Indian Contract Act, 1872 contains protections against the use of fraud, coercion or misrepresentation while entering into a contract. It also provides for situations in which a contract may be void. These are valuable protections to an employee, who is in a much poorer bargaining position than an employer. Retaining S. 90(2) could lead to employees or their vulnerable dependents being trapped in unfair contracts. We	

	the Indian Contract Act.		further note that labour laws are social welfare laws and must be interpreted with a view to promoting the welfare of the worker. (<i>Bandhua Mukti Morcha v Union of India</i> , 1983) In the absence of a more favourable provision on the interpretation of contracts in the present Draft, this provision should be deleted.	
S. 106(1) and (4)	While S. 106(1) uses the phrase “shall formulate”, the phrase “may formulate” is used in S. 106(4).	Both sections should read “shall formulate.”	It is submitted that the use of the word “shall” in S. 106(2) implies that it is <i>mandatory</i> , while S. 106(4) is merely <i>directory</i> . (<i>Union of India v AK Pandey</i> , 2009) We suggest that the provisions for workers in the unorganised sector be made stronger. This can be done by a positive direction to the state to frame schemes for the benefit of workers in S. 106(4).	See Para 3 and Para 5 above
S.106(2), Seventh Schedule	Many of these schemes are ad hoc and	Schemes should be structured to provide a guaranteed set of rights for workers.	It is noted that many of the Schemes referred to in the Seventh Schedule are contributory schemes, including the Pradhan Mantri Shram Yogi Maandhan	See Para 3 and Para 5 above.

	contribution based.		and the Atal Pension Yojana. As stated above, it is noted that many workers may be unable to pay contributions to these schemes under the current Minimum Wages Legislation. We therefore suggest that the schemes provide for a greater share of government contribution where workers are unable to make contributions on their own behalf.	
S. 109	This is framed in directory rather than mandatory terms.	We suggest that S. 109 provide that the government <i>shall</i> set up worker facilitation centres. We suggest that the workers facilitation centre assist workers with seeking redressal for grievances against employers.	We submit that S. 109 is a positive development for the workers. The presence of a workers facilitation centre will make the process of registration smoother. We suggest that the powers of the centre be extended to assisting workers with navigating the process for seeking grievance redressal against employers.	See response to S. 106(1) above.
S. 110, S.138	S. 110(3) and S. 138 provide for mandatory linking with Aadhaar for	We submit that Aadhaar linkage should be made optional rather than mandatory.	We submit that the requirement of mandatory linkage with Aadhaar for purely contributory schemes may fall foul of <i>Puttaswamy's case</i> . (<i>Justice K S</i>	

	the registration and access to benefits		<p><i>Puttaswamy v. Union of India</i>, 2019)</p> <p>Moreover, we submit that in some instances, faulty Aadhaar linkage or difficulties in documentation have impacted delivery of social security benefits under programmes such as NSAP. This has meant that many vulnerable citizens may be left without social protection owing to Aadhaar linkage related issues. (Ministry of Rural Development, 2019) (Malhotra & Somanchi, 2018) We therefore suggest that the government reconsider mandatory Aadhaar linkage for all social benefits.</p>	
S. 110A	In contrast to S. 106(2), the present section uses the phrases “may formulate schemes” in Ss. 110(1). Further,	We suggest that S. 110A(1) be framed as a positive direction to the government to frame schemes for gig workers.	As noted above with respect to s. 106, this ought to be framed in a <i>mandatory</i> rather than <i>directory</i> manner for greater protections to gig workers.	See response to S. 106(1) and S. 106(4) as well as response to S. 109 above.

	gig workers are treated separately from others in the unorganised sector			
S. 132; S. 133; S. 134	These provisions impose criminal liability for failing to comply with certain provisions of the present Draft. They also impose personal liability on individuals responsible for the violations mentioned.	This will need to be reconsidered for smaller employers. We submit that the provision be amended to apply only to very large employers, or to include an element of <i>mens rea</i> .	We note that the present Draft is ambiguous on whether this section will apply only to establishments in the organised sector, or to those in the organised and unorganised sectors. (S. 2(vxi)). It is submitted that the imposition of criminal penalties for non-compliance may provide a perverse incentive to employers to employ fewer than ten workers, or to treat them as self-employed workers on a commission basis. This in turn would limit coverage under the formal social security net.	We note that, while the Seventh Schedule to the 2018 Draft provided for criminal penalties even for workers, the present Draft only provides for criminal penalties to employers who fail to comply with the provisions hereunder. This is a positive development, as it avoids penalizing vulnerable workers.

8 References

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