



NTUI

New Trade Union Initiative

B-137 Dayanand Colony, First Floor,
Lajpatnagar Part IV,
New Delhi 110024
Tel: 91-11-26214538 /26486931
Fax: 91-11- 26486931
E-Mail: secretariat@ntui.org.in

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To,
The Government of India
Ministry of Labour and Employment

Attn: Mr. S. K. Tripathi
Under Secretary (LRC)
Ministry of Labour and Employment
New Delhi
(sushil.tripathi@nic.in / labourlaws109@gmail.com)

Objections to the Draft Labour Code on Social Security and Welfare

The Ministry of Labour and Employment (MoLE) acknowledges on its website, in every one of its Annual Reports and several other of its averments that social security legislation “derives its strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India”. The present government has also repeatedly asserted that it will ensure “Social Security for All”. Unfortunately the Draft Labour Code on Social Security and Welfare (hereinafter DLCSSW) falls significantly short of the obligations of the constitution in so far as government has failed to recognise social security as a fundamental right and clearly set out the benefits that must flow to people from such a right. Nowhere in the DLCSSW does it spell out what is social security and what clear and specific benefits will accrue to workers from it.

Under these circumstances we call upon government to take note of our views although they are not in format prescribed in the public notice since we seek to address not specific clauses of the DLCSSW but the spirit of the proposal which falls short of both provisions of constitution and the averments of the present government.

DLCSSW in consonance with the recommendations of the 2nd National Commission on Labour

Government states that its effort is in consonance with the recommendation of the 2nd National Labour Commission (SNCL). This is an extremely selective interpretation of the SNCL’s recommendations. The SNCL is clear and specific that social security must be recognised as a fundamental right. The Commission had also recommended specific social security provision for workers in the unorganised sector which find no reflection in the DLCSSW.

Government is also duty bound to respond to other recommendations that are before it. Government has entirely negated the recommendations made by the National Commission for Enterprise in the Unorganised Sector (NCEUS) that had made reference to the right to social security for all, not just workers, as a universal right of all citizens. The NCEUS also recommended a Minimum Social Security Benefit that must be non-contributory. The fact is the DLCSSW does not define what rights to social security working people will derive from it making it difficult to make any comment on the specific clauses of the draft.

Simplification of Law

The notion, advanced by the present government, that a law becomes simple by bringing in several statutes into one law is a mere assertion. Across the democratic world there are separate statutes that deal with healthcare, maternity benefits, retirement and other rights to social security including unemployment benefit. This historical separation has occurred, and remained, since the nature of the right varies during a working life and in retirement as it does for women during pregnancy and for workers during an economic downturn. It is to deal with the complexity of each of these issues, and develop capabilities to respond to the needs of workers that arise in specific situations, that countries have not combined these laws. This is despite the fact that in most democracies the relevant statutes have been amended repeatedly.

Delegation of Powers with no definition of Social Security and what benefits accrue to workers

The provisions of social security under DLCSSW are at best opaque. The legislation places extraordinary reliance on delegated power to the executive including for critical social security rights that are already protected by legislation. The entire DLCSSW (1) leaves the quantum of benefit to the executive taking away from the legislature existing powers to determine the extent of the social security right. The DLCSSW (2) takes away powers of legislature to determine the wage ceiling that covers workers under social security statute. The DLCSSW (3) also takes away the power of the legislature to set thresholds for gaining various forms of social security. The (4) power to decide on exiting regulatory bodies, commissions and boards that are currently created by law have also been passed on to the executive. These four changes taken together effectively take away the power of legislature to determine social security coverage and most of all take away from workers the right through legislative protection that they currently enjoy.

The DLCSSW undermines, removes and repeals existing protection under law for the present right to provident fund and social security benefits derived from various sector specific welfare boards including state boards. The DLCSSW does not offer a comparable or stronger right but it leaves these decisions entirely to the executive to be decided on the extent of social security at a later date. This proposal amounts to an extensive assumption of authority and decision making power by the executive without any legislative safeguards or protection.

Definition's used by the DLCSSW

The DLCSSW suffers from the infirmity created by multiple and overlapping definitions that will result in denying workers their social security right. There are various definitions of worker including apprentice, casual worker, contract worker, employee, fixed-term, home-based worker, informal worker, out-worker, owner-cum-worker, part-time worker, seasonal worker, self-employed worker and unorganised worker. Correspondingly, the DLSSW has multiple definitions for the employer and establishment namely: business, contractor, employer, entity, factory, household, landlord, placement agency, producer, self-employed unit, shop, sub-contractor, undertaking and venture. It also must be noted that these multiple and overlapping definitions do not make any reference to definitions for the same terms as they currently exist in law. The implication of this is that, apart from opening up litigation on definition, it will also open up a parallel litigation on overlapping jurisdiction. Clear and transparent social security legislation calls upon government to put in place a comprehensive definition of 'worker' including a self-employed worker, 'employer' and 'establishment'. Unless this is done it will deny workers in irregular employment their social security.

Social Security Entirely Contributory

In so far as the DLCSSW is not accompanied with a Financial Memorandum it is clear that it presupposes that all social security benefit will be contributory. It also sets a cap on employer contribution at not exceeding 17.5% apart from an additional 2% for such establishments that are required to pay gratuity. It is important to note that a proposed legislation that seeks to delegate

virtually all power of social security rights to the executive is seeking to through the very same legislation reassure employers that their contribution to social security will be capped by statute.

The total contribution of employers and employees along with administrative charges under the DLCSSW works out to 0.6% lower than the present level of contribution for both Provident Fund and Employee State Insurance taken together. In view of the fact that the DLCSSW does not make clear what rights to social security workers will enjoy it does not find it necessary to state how this reduction in funds will be met. Further, in view of the fact that the coverage of social security is aimed at reaching a much wider section of the working population while the exchequer will make no contribution to the social security fund, it is reasonable to conclude that there will be a mere redistribution of workers contributions between different sections of workers. This will leave workers who today enjoy a right to social security worse off.

The contribution of self-employed workers inclusive of administrative charges has been fixed at 21% of wages. In the case of owner-cum-worker the contribution has been fixed at 12.5% which would in turn involve the 'employer contribution' taking the total contribution to 31% of wages. Apart from the definitional confusion these are astronomical amounts for the self-employed to pay. This is particularly so when it is a recognised fact that 'self-employment' is the largest source of employment in the country. Crores of workers are self-employed, not by choice but, since they do not have access to any kind of wage employment. Government data shows clearly that the largest number of self-employed are at bare –sustenance income with a majority in debt and destitution. In fact this component of the DCLSSW leaves no doubt that government expects the entire workforce to contribute in order to earn social security.

Registration, Identification and Filing Returns

The process of workers registering themselves to gain a social security is vague and shadowed by the unstated rules that the executive will put in place.

The mechanism for identification of employers is not clearly laid out.

The self-employed and worker owners are also required to file returns of their contributions.

This implies that at best a tiny section of the 40 crore workers in irregular employment, including self-employment, will possibly gain from

Rights of Women Workers

The DLCSSW undermines the rights of women workers. By placing a two child norm for receiving maternity benefit the DLCSSW presupposes that there is a countrywide consensus on a population policy. This is an undemocratic method of enforcing a two child population policy. It is well acknowledged that women in most situations do not, in their families and in society, enjoy the freedoms to take decisions on child bearing.

Federalism and Concentration of Power

The DLCSSW vests all power in deciding matters of social security with the central government and leave only the powers of implementation to state governments. This is in violation of the federal character of the country's constitution. It also undermines the basic structure of the constitution that envisaged matters concerning workers, and therefore their social security, amongst other matters as being powers to be shared concurrently between the centre and the states.

While severely impinging on the powers of states, the DLCSSW also does not address how existing social security benefits granted by several states will be reconciled under it.

Management of Social Security Funds and Privatisation

In so far as the DLCSSW does not spell out a clear mechanism of managing the vast social security funds, which are workers earned wages, and implementation and at the same time grants the executive extensive powers to appoint private agencies. Placing workers earned wages that government collects and holds in trust cannot be left to market forces. This critical fiduciary function of government cannot be passed on to the private sector. The implementation of social security rights is part of the sovereign function of the state and cannot be left to the for-profit private sector.

Democratic Representation by Appointment

The DLCSSW undermines the widely accepted principle of tripartism. The nomination by central government of 'persons representing employees' seeks to negate the existence of trade unions the acknowledged collective representatives of workers. The representation of workers through their trade unions must be done through a democratic process of arriving at the membership strength of trade unions.

Similarly the nomination of representatives of parliament is arbitrary and is entirely left to the executive of the day. The same holds for the representation of state governments. There is a well-established practice of inviting the leader of opposition where parliamentary representation is called for. There already exists a system of representation for state governments who chosen amongst themselves through the rotational system and is currently employed in all existing federal bodies.

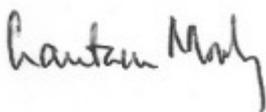
Our Demand of Government

We are of the view that the DLCWSS, in its present form, does not address the stated commitment of government to ensure "Social Security for All". Under these circumstances we urge government to set it aside and circulate for debate a White Paper on Social Security that addresses the concerns and needs of all sections of the working population. This document must address the recommendations of both the SNCL and the NCEUS. In particular, it is the responsibility of government, in a democratic country, to spell out reasons for rejecting recommendations of commissions appointed by parliament. This document must also be entirely financially viable with the government's contribution protected by legislation.

We demand government recognise social security as a fundamental right and move legislation in that direction. Further we demand that government defines a minimum social security benefit that is for all workers irrespective of nature of employment that is non-contributory up to the extent of the minimum wage as defined by the Pay Commission to include (a) pension for all at no less than 50% of the minimum wage, (b) comprehensive family health benefit including disability benefit (c) six months wages for maternity leave at no less than the minimum wage.

We trust that government will take these views into consideration, circulate a White Paper on the Right to Social Security and place it in the public domain for the widest possible discussion.

Sincerely,



Gautam Mody
General Secretary
New Trade Union Initiative