

New Labour Code on Social Security
Report of the 2nd Maharashtra Consultation Meeting



30th November 2019

Tata Institute of Social Sciences, Deonar, Mumbai

Organised by

Labour Education and Research Network (LEARN)
in cooperation with HomeNet South Asia (HNSA) Trust
and National Alliance for Social Security (NASS)

Background

- The central government of India, in 2014, began the process of revising and consolidating 44 central labour laws into 4 codes. This was done to simplify the various labour laws in India
- The Labour Code on Social Security is one of the four codes. This code will play an important role in securing social security benefits for the informal workers in India

Purpose

- This workshop was second in series of a Maharashtra state-level joint consultation on the Draft Labour Code on Social Security, organised by LEARN and HNSA
- It was held to mobilise, create awareness and invite discussions on the latest draft of the Code on Social Security among representatives of trade unions and labour NGOs in Maharashtra as well as academicians working on aspects of the informal economy

Objectives

- To raise awareness among local trade unions and member-based organisations about the New Labour Code on Social Security, to communicate the position of NASS on the labour code and to mobilise participants for NASS's larger national campaign on engagement with the government around the new Labour Codes

Participants

The workshop had 47 participants. They were representatives from trade unions that are affiliated to NASS member organisations:

- a. Affiliates of NASS member NASVI
 1. Azad Hawkers Union
Anisfatima Salma Shaikh, Habibunnissa Shaikh and Wasim Siddique (Mumbai)
- b. Affiliates of NASS member BWI
 1. Maharashtra Building, Construction, Forest and Woodworkers Union
Dadarao Dongre, Jija Dongre, Rakesh Dongre, Kushal Badgujar
- c. Affiliates of NASS member SEWA
 1. LEARN Mahila Kamgaar Sanghatana
Fatima Shaikh, Nirmala Bussapnoor, Sheeladevi Paswan
- d. Affiliates of NASS member HNSA
 1. Labour Education And Research Network
Jarina Shaikh, Jijabai More, Surekha Ahire
- e. Nagpur City Municipal Employees Union: Ms. Kiran Thakre
- f. TISS students (MA, MPhil, Phd) from different disciplines as well as academicians, social scientists and researchers participated in this consultation meeting.

Experts

1. Prof. Meena Gopal, Advanced Centre for Women's Studies, TISS Mumbai
2. Prof. Bindhulakshmi, Advanced Centre for Women's Studies, TISS Mumbai
3. Ms. Janhavi Dave, HomeNet South Asia
4. Ms. Sonakshi Agarwal, HomeNet South Asia

Chairperson

Dr. Nandita Mondal, Centre for Labour Studies, TISS Mumbai

Organising Team

Dr. Indira Gartenberg, Ms. Aarohi Damle, Ms. Asiya Shaikh, Mr. Amar Kharate

Maharashtra Consultation Meeting Report

The meeting began with different songs in Marathi and Hindi from the trade union participants, which carried the message of strengthening solidarity among workers and the importance of participating in unions.

This was followed by a welcome address from LEARN. The participants were informed of the purpose of the workshop and requested to actively participate in whichever language they found comfortable to converse. Dr. Nandita Mondal, gave her opening remarks as the chair. She then welcomed NASS member-organisation Home Net South Asia to make a presentation on the key aspects of the latest draft of the new labour code on social security. Social security ensures a safety net for health care, unemployment period, maternity, old age, illness, disability, injury. It tries to cover the rights and the schemes that deal with these aspects of a working person's life.



Dr. Nandita Mondal and Ms. Sonakshi Agarwal (HNSA)

After a brief introduction of HNSA and NASS, Ms. Sonakshi Agarwal talked about the relevant provisions for the unorganised sector in the draft of the new labour code on social security, the changes from the second draft to the third, and analysis of these changes and some key recommendations.

Sonakshi said that the new labour code on social security replaces 8 existing acts¹ and its applicability as stated in the first schedule. After this, the definition of social security was laid out. Then the presentation moved to discussing the key changes in the latest draft from the first two. These are:

- Definitions: some added, others removed and still others changed
- Creation of State and Central board of Unorganised Workers: but the powers of these boards are undefined
- Social Security Institutions: some added, others removed, and still others changed
- Separate Chapter on Unorganised Sector Workers: No mandate for government
- Power of Central government to supersede board: Centralising instead of decentralising
- Role of intermediate agencies: Removed
- Rules for Appointment of Women: Clause removed

¹ The Employees' Compensation Act, 1923; 2. The Employees' State Insurance Act, 1948; 3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; 4. The Maternity Benefit Act, 1961; 5. The Payment of Gratuity Act, 1972; 6. The Cine Workers Welfare Fund Act, 1981; 7. The Building and Other Construction Workers Cess Act, 1996; and 8. The Unorganized Workers' Social Security Act, 2008

Then the discussion turned to the important definitions mentioned in the draft code— social security, worker, self-employed worker, unorganised sector, unorganised worker, wage worker, contribution, platform worker/ gig worker. The question of definition of the term ‘worker’ evoked a lot of interest from the participants. Despite the inclusion of different types of workers, there were still many others that were left out. Workers are not the same across all the 8 Acts. Besides, in doing away with the eight acts which define employees but do not define workers, conflates the entire discussion on inclusion of both categories. How is an employee different from a worker? Even if one were to translate these terms into any Indian language, there are no two different terms for employee and worker in regional languages— everyone is a *kamgaar*. The issue of ‘definition’ was discussed at length.



Key changes in the third draft of social security code. Image courtesy: HNSA

The presentation then moved to the social security organisations mentioned in the draft code:

- National council: Removed
- Central and State board of Trustees: Functions removed
- ESIC corporation: Added
- Building and Construction Workers’ Welfare Board: Added
- Central Board for Unorganised Workers: Added
- State Board for Unorganised Workers: Added

Then we turned to the social security for building and construction workers. Two functions of the BOCW have been removed from the code, and no explanation has been given for this removal. There are also no specific provisions in the draft code for the registration of construction sector establishments and workers.

The final part of the presentation laid out the key recommendations given by NASS to the government:

- Define: Only one comprehensive definition of workers in the informal economy
- Represent: Should have a tripartite mechanism with equal representation to women
- Remove: Socio-economic criteria as a condition for registration
- Link: All unorganized workers to health benefits under the ESI scheme
- Set-up: Trade-wise Welfare Boards on the lines of BOCW
- Register: Not just using Aadhaar, but allow any legally recognised identity card

After this presentation, the participants were asked to make their comments and recommendations, and ask questions in an open discussion moderated by Dr. Mondal.



President of LEARN Mahila Kamgaar Sanghatana Nashik speaks about the challenges of domestic workers and senior citizens in Nashik’s urban informal economy

Key Points that emerged from the Open Discussion:

Mostly definitions, and the constitution of the boards was discussed. The composition of the State and Central Committees is still undefined. There didn't seem to be any specific mandate for the govt. There was a separate chapter but it was weak. Central govt had powers to supervise Boards. One good thing was the role of intermediaries was removed, but the appointment of women was also removed which was not good.

The definition of work is there, but there is also a separate definition of the self-employed worker. The definition of the unorganised sector too is not satisfactory. Beside the wage-worker was there in specific places but also in the unorganised sector discussion. The platform or gig worker gets special mention; presumably to encourage that sector (?)

The ESIC has been added to the Social Security organisations. Many provisions have been added from the Building and Construction Workers Welfare Board Act. But there was no scope for registration.

The group agreed to the key recommendations provided by NASS, i.e.:

- There has to be one definition for the worker
- Representation on Tripartite Boards should be more
- We wanted removal of socio-economic criteria being added to secure any benefits.
- Want addition of Trade wise Welfare Boards
- Aadhar not to be mandatory



Ms. Nirmala Bussapnoor, Organising Secretary of LEARN Mahila Kamgar Sanghatana describes the difficulties faced by Naka-construction workers in accessing BOCW benefits

An additional recommendation was regarding the provision of self-attestation by the worker. In the current times, the option of self-attestation has been provided by Maharashtra government for *Naka* workers (daily-wage street-corner construction workers). But this is not a standalone requirement. In order for the self-attestation to be accepted by the Labour Office, it has to be appended with a ward officer's declaration and approval, without which the worker's registration will not be completed. The issue of workers having to self-attest when employers are

unwilling should not end up adding a loop like getting the ward officer to sign. This systemic unfairness is difficult for poor, illiterate workers to manoeuvre, and it results in the difficulty (impossibility) of access to the funds available in the board.

Trade union activists from the construction sector said that only 2 out of 10 workers get any government benefits, despite the large number of funds available in Maharashtra BOCW. Further, now everything is reduced to just 6 schemes. The Labour office often complains that the workers do not take interest in utilising their rightful entitlements and social security benefits made available through the board, but they do not admit the number of obstacles they create in allowing entry to workers through such meaningless formalities. They also pointed out that mining workers were not included in the code. Social security is seen like a service, a charity, or even social assistance, and not as a right. Maharashtra is the biggest construction-cess generating state with Rs. 8000



Mr. Dadarao Dongre, President, Maharashtra Building, Construction, Forest and Woodworkers Union, provides a nuanced overview of the BOCW implementation, and construction workers struggles in Maharashtra

crores. Now they are attempting to transfer this money from the cess account. The activists said that they protested against this, but it may still happen in the future. The same is being done for the ESI amount, which is now used to fund medical colleges rather than support workers' insurance.

The participants also cautioned that terms like 'CEO' bring in the scope for impending privatisation of social security. The role of the boards role may be affected. Access to existing cess maybe affected. These mean loss of control for workers. There is hardly any role trade unions and workers' organisations and their leaders, and that is cause for concern. Alongside, there is also no clarity on the role of Central and State government. The trade union activists and workers present at the meeting asserted that their representative organisations, i.e. trade unions should be recognised and trusted.

There was also a discussion about gig workers/platform workers. Gig workers find themselves in the vague in-between space of 'not illegal' and 'not fitting into any existing law'. One of the participants also pointed out that gender bias is built into the algorithm, and women get paid less than male workers signed into the apps.

The government of India is not honouring its own recommendation to the ILO. They are not honouring the tripartite settlement and there is no list of workers, only a schedule at the end of injuries and hazards. The agenda seems to be 'uniformity.' In fact, the ILO itself defines 'non-standard' employment so this agenda is worrisome. Reiterating the uniformity, the distinction between formal and informal is sought to be reduced with everyone brought down to the informal level.



Wasim Siddique, Azad Hawkers Union speaks about the plight of food vendors

Most trade unions do not want an exhaustive list of anything, they wish to keep it open-ended so as to leverage inclusion. Neither do they speak of relation of worker (for instance, the wife who goes to work as a helper with her husband is not counted as the worker, only 1 person is counted), which the trade unions think should be changed and included. The Labour Officer should be mandated to do regular inspection work.

The discussion then also turned to the struggle in implementing the Street Vendors Act.



Ms. Salma Shaikh, general secretary of Azad Hawkers Union, speaks about the lack of ground level implementation of the Street Vendors Act, 2013

Street vendors act makes no mention of prepared-food vendors, those who serve eatables, making them targets of authorities. The code should learn from the implementation mistakes of the Street Vendors Act, and eliminate any definitional ambiguities for an inclusive implementation which will benefit a large number of workers.

In the Town Vending Committee (TVCs), unions have 40 percent participation but now the Municipal Commissioner is disallowing it. When vendors have no homes, no address proof, and no documents how do

they fight? The government is harassing street vendors and their unions, and asking them to go to court. The harassment is not limited to the occupations in the informal economy.

In Nagpur, sanitation workers on contract in RBI working for 18 years were seeking regularisation. The big trade unions were disowned them and their struggle, as they were not permanent workers. In such a situation, where should these workers go? Who is looking out for them? Social security code should include all workers, irrespective of their employment arrangements and designations. Needless to say, trade unions also need to start thinking more broadly and including all workers instead of reserving the privileges and benefits for a handful permanent workers. Informality is the reality of our times and trade unions should create inclusive spaces for all workers.



Ms. Kiran Thakre, representing the Nagpur Municipal Employees Union talks about the precarity of informal workers employed in the formal sector

The contextual struggles of each sector are being erased and taken away, and precarity gets reconstructed. Look at the struggles of the street vendors for toilets or against sexual harassment. The uniformity sought by the draft labour code reflects this erasure.

Some of the non-trade union participants also had a discussion on how to protect the rights of domestic workers, when in building societies there is discrimination in use of lifts, toilets within homes etc. Even officials in responding to the Labour Code are opposed to it, and say what we need is just an amendment of existing laws. The draft code is making things feasible for the private sector and businesses. Now a Task Force has been set up but filled with those from the employers' lobby.



Janhavi Dave, HNSA talks about creating equitable spaces in the World of Work

The discussion ended with the suggestion of taking ahead the state level and national level advocacy and awareness work on the drafts of the new labour code for social security.

Janhavi Dave, International Coordinator of HNSA mentioned that the signature campaign initiated by NASS already has 7 lakh supporters.

Dr. Nandita Mondal summarised the key learnings of the workshop, and thanked the participants, HNSA team, LEARN organising team, NASS and the TISS staff for their contribution.

Dr. Indira Gartenberg urged the trade union participants to use this platform at the Maharashtra level to continue this conversation among the state's trade unions, especially those working with informal and unorganised workers. NASS can further take ahead this issue and keep up the discussion.



Mr. Amar Kharate, Board member of LEARN and International Organiser of StreetNet gave the official vote of thanks.