

Comments to the Code on Social Security, 2019

October 25, 2019

By **Aayush Rathi, Amruta Mahuli** and **Ambika Tandon**

The Centre for Internet and Society, India

This submission presents a response by researchers at the Centre for Internet & Society, India (CIS) to the draft Code on Social Security, 2019 (hereinafter “**Draft Code**”) prepared by the Government of India’s Ministry of Labour and Employment.¹

CIS is an 11-year old non-profit organisation that undertakes interdisciplinary research on internet and digital technologies from policy and academic perspectives. Through its diverse initiatives, CIS explores, intervenes in, and advances contemporary discourse and regulatory practices around internet, technology, and society in India, and elsewhere. Current focus areas include cybersecurity, privacy, freedom of speech and artificial intelligence. CIS is also producing research at the intersection of labour, gender and technology.

CIS is grateful for the opportunity to put forth its views and comments. Our comments are captured in the prescribed format in the table below:

S. No.	Section/Sub Section	Issue	Proposed change	Reason for change
1.	2(ia)	<p>The definition of ‘aggregators’ is insufficient.</p> <p>The term ‘aggregators’ is also not used at any other point in the Draft Code.</p>	In addition to the existing definition of an aggregator, other categories of digital intermediaries and platforms be created basis the extent and nature of control that they exercise over the workers that	<p>Assuming that the definition of ‘aggregator’ seeks to subsume the so-called “on-demand” or “sharing” economy companies that are providing <i>inter alia</i> ride-hailing, logistics, delivery services and domestic work, equating these companies to a marketplace disguises the nature of the relationship between digital platforms and workers (who are referred to as ‘sellers’ in Section 2(ia).</p> <p>Marketplaces are typically understood to be <i>neutral</i> arbitrators</p>

¹ The Code on Social Security, 2019. Retrieved from https://labour.gov.in/sites/default/files/THE_CODE_ON_SOCIAL_SECURITY%2C2019.pdf

				between buyers and sellers - akin to a yellow pages directory in many ways. On the other hand, several of these companies in the “on-demand” or “sharing” economy often exercise control over workers in ways similar to traditional working arrangements. ²
2.	2(xiii)	The amount of minimum incremental pay not defined, no definition for the terms “other welfare benefits”		
3.	2(xxvii)	The definition of ‘gig workers’ is ambiguous.	The Draft Code should define the traditional employer-employee relationship within the organised and unorganised sectors, and also how gig work deviates from such a relationship.	While the intent behind drafting this can be assumed to be to recognise the popular taxonomy of ‘gig workers’, legislatively the definition needs to be substantiated further. The manner in which the definition is framed, it is overbroad and could overlap with how (a) contract workers, (b) home-based workers, (c) self-employed workers, and (d) unorganised workers are defined. This is a function of using the ambiguous phrasing used i.e. “traditional employer-employee relationship”. At the

² Saha, P. (2019). The Gig Economy’s Tyranny of Targets. *The Morning Context*. New Delhi. Retrieved from <https://themorningcontext.com/the-gig-economy-tyranny-of-targets/>

				same time, treating gig workers i.e. workers seeking jobs through digital intermediaries as being outside the traditional employer-employee relationship may fall foul of the various tests such as of 'control and supervision' and 'integration' jurisprudentially laid down over the years. ³
4.	2 (xxxiii) and 2 (xxxvii)	It is unclear what the term 'enterprise' means.	We recommend that either the term 'enterprise' be defined separately or the already defined term 'establishment' be used uniformly.	The lack of clarity over the term 'enterprise' will pose interpretation and thereby, implementation challenges over what comprises the organised and unorganised sectors.
5.	2 (xxxvii)	It is unclear how the Draft Code attempts to differentiate platforms from aggregators.	We recommend that the understanding of platforms and aggregators be harmonised. This should form a part of the broader framework we recommend as part of our recommendation in Serial No. 1 above.	
6.	2 (xxxviii)	It is unclear how the Draft Code attempts to differentiate platform workers and gig workers.	We recommend that the understanding of platform workers and gig workers be	

³ Workmen of Nilgiri Cooperative Society Ltd. v. State of Tamil Nadu (2004) 3 SCC 514; Hussainbhai, Calicut v. The Alath Factory (1978) 4 SCC 257; Management of DC Dewan Mohideen Sahib v. Janab S. Ahmed Hussain & Sons (AIR 1966 SC 370)

			harmonised. This should form a part of the broader framework we recommend as part of our recommendation in Serial No. 1 above.	
7.	2 (xxxxxxi)	This is restrictive only to workers getting monthly wages as may be notified by the Central Government and State Government.	This definition should also include weekly and daily wage workers.	This definition excludes a large portion of wage workers who receive wages on a weekly or daily basis.
8.	Section 3	The function of the Central Board is ambiguous. It does not specify which funds will be administered by this Board. Further, it is unclear whether the Central Board referred to in Section 14 is the same as Central Board referred to Section 3.		
9.	4(5)	The Draft Code does not specify the composition of the Medical Benefit Committee.	The composition of the Medical Benefit Committee should be specified.	
10	5	The functions to be performed by the National Social Security Board and State Social Security Board are not specified.	These have been specified in the Unorganized Workers Social Security Act, 2008 and we recommend that those be retained.	
11.	2.2., 11.12, 14	No mention of digital aggregators/intermediaries as entities that enable placement, or that should be required to register under this code.	We recommend that aggregators be defined and included in the list of entities that can enable placement of	The exclusion of aggregators leads to several categories of unorganised sector workers being excluded from social security

			workers. We further recommend that the onus of registration be placed on the aggregator/intermediary, as they exercise a certain level of control over the terms of placement.	protection.
12.	11	This section does not elaborate on the mechanism for home-based workers and self-employed workers to register themselves under the code. It only mentions part-time workers, who then have to choose an employer to register themselves through.	We recommend that a registration mechanism be specified for home-based workers, gig workers and self-employed workers. This mechanism should allow workers to register themselves without needing to be verified by employers.	The requirement of identifying a primary employer/seeking verification from employers hinders workers who perform short-term tasks for multiple employers from registering.
13.	68 (a) (1)	The creche facility is made mandatory only for those establishments having more than 50 employees.	Maternity support measures such as a creche should be accorded to women and trans-people engaged in any establishment.	By having a requirement of more than 50 employees, several sections of the unorganised sector - where a major portion of the female labour force participates - will not have any support if they wished to balance childcare and employment.
14.	110	This section suggests that the Central Government may notify schemes for gig workers, without recommending a time-frame for such legislation. It also does not bring gig workers under existing social security protections,	We recommend that the Draft Code should recommend a time-frame for the introduction of legislation around gig work. It should, in the meantime, accord similar protections to gig	In the absence of a time-frame for legislation or any protection in the interim, gig workers are left in a precarious position without any benefits. An important point to

		even though precarity in gig work is similar to that in other parts of the unorganised sector.	workers as provided to wage workers, such as pension, accidental and health insurance, and maternity benefits.	be made here is that not all gig workers are necessarily engaged in identical forms of labour and the benefits that they should be accorded will accordingly vary. It may also be required to envision a flexible social protection framework that allows for pro-rated contributions from several employers while also allowing certain categories of gig workers (such as freelance writers, for example) to opt-out.
--	--	--	--	---