



ISSUE BRIEF

# REIMAGINING SOCIAL PROTECTION IN THE 21<sup>st</sup> CENTURY: Operationalising the Code on Social Security 2020

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## Abstract

*The introduction of the Code on Social Security (CoSS) 2020 leads the labour regulatory regime away from centuries-old restrictive worker classification that creates two types of labour- those that are protected with secure jobs and futures and those that are not. The time has come for all workers to be entitled to social and financial protection and this requires a complete overhaul of the systems that disenfranchise workers who do not commit all their working time to one employer. CoSS 2020 is the first step in this direction as it extends social protection to all workers, making India the first country to recognise new types of workers and mandate protection for them. Operationalising CoSS 2020 will require vision, cooperation and commitment to worker rights, that will include radical new ways as outlined in this brief.*

## Introduction

India is the first country globally to mandate social protection for all workers including the new-age gig and platform workers<sup>[1]</sup>. The recently passed Code on Social Security (CoSS) 2020 in India, is one of the more progressive legislative reforms around the world that has put labour rights back on the governance agenda in the digital era. The previous decade witnessed many disruptions courtesy the digital revolution; however the challenges these changes raise in a pandemic-stricken world reflect long-standing concerns. Specifically, this pertains to the issue of linking workers' benefits to their employment and as a consequence, conflating the debates on access to social security and issues of worker classification.

Under the umbrella of employment-linked statutory schemes in India, social security is articulated as family healthcare, disablement benefits, learning & upskilling and retirement plans. This is only assured subject to the worker's earning ceiling, crossing which employers are free to offer the access or not. The salary ceiling is as low as INR 21,000 per month, while the fact remains that wage growth in the organised sector vis-a-vis unorganised has slowed down in the recent years<sup>[2]</sup>. Therefore, an increasing number of workers have been left out of statutory coverage. This trend is evidenced throughout the world and is reflected in the concerns being taken to courts or the legislatures. These facts bring to question the utility of worker classification regimes and the pitfalls of conflating social security with worker status. We have to move closer to ensuring universalised coverage regardless of status.

This brief shows what India gets right in its latest legislative attempt: the status of workers should not be tied to the benefits offered by the job, and workers should be able to commit suitable time to the job without fear of losing their social security. India has thus prioritised worker productivity and has adopted a universalised social security approach. As India prepares to implement its social security law and countries around the world debate social protection for platform workers, this brief presents a set of guiding principles for the governments to consider.

## Law, Labour and Capital: Ushering in a new regime

CoSS 2020 has replaced multitudinous, archaic and overlapping legislation regarding the social security provisions for workers and their families. Traditionally, social security has been tied to employment, as seen in the case of formal employees enjoying pay and retirement and healthcare benefits, among others. Such a regime has rendered over 92% of the Indian workforce (i.e. those in the unorganised, informal sectors)<sup>[3]</sup> unprotected. The current pandemic has also exacerbated the precarious nature of their jobs. The labour

legislation of the past also focuses on deciding exclusionary criteria, rather than attempt to bring the maximum number of workers within its fold. This has had disastrous ripple effects through the economy for decades, through mandating maximum earning ceilings, collecting salary deductions languishing as unspent funds and not creating institutional incentives to dole out social security gains.

The newly minted law, on the other hand, puts the debate on worker classifications to rest and mandates social protection for all workers including the new age gig and platform workers.

CoSS 2020 makes an important distinction among 21st century workers; it defines gig workers as “those earning from and participating in work arrangements outside of traditional employer-employee relationships” and platform workers as those gig workers engaged with digital platforms<sup>[4]</sup>. Further, CoSS 2020 reflects the dynamism of the labour market and decrees tripartite roles for the worker, job-creator and the State in ensuring secured futures for labour. Both these initiatives are absent in other global efforts to govern labour, leading to unintended consequences in large digital economies like California, Spain, France, etc.<sup>[5]</sup>. In these jurisdictions, laws mandating gig and platform workers be treated as employees have cost workers their jobs<sup>[6]</sup>.

Remarkably, gig and platform workers have secured visibility through CoSS 2020. This law recognises platform workers as a step up from unorganised workers. For, they enjoy independence, agency, and guaranteed payments by the clients upon completion of service<sup>[4]</sup>. Thus, CoSS 2020 responds to calls for “effective ways to blunt self-exploitation”<sup>[7]</sup> in India by making self-employment lucrative, and by fully harnessing the power of digital platforms. An important rebound strategy post-Covid is the recognition that “India has a wages problem, rather than a jobs problem”<sup>[8]</sup>. India can achieve economic recovery and growth by leveraging platforms to address this gap. Platforms enable market access to hundreds of millions of individuals who have the drive to maximise the utilisation of the assets they own or invest in new assets, making them successful self-employed actors with secure futures.

## Labour Governance: Delinking social protection from employment

Linking social security to employment has led to the simultaneous existence of two classes of workers within the low income group (i.e. those earning less than INR 1.8 lakhs per annum). The first segment has access to family health benefits and retirement plans through Employee State Insurance & Employee Provident Fund, whereas the other does not have such statutory protections. The statutory protections are a combination of the contributions made by the worker, employer, and central and state governments.

The deductions made from the salaries of the formal, organised employees in the low income group fund massive public corpuses such as the Employee Provident Fund Organisation (EPFO) and the Employee State Insurance Corporation (ESIC). In other words, the current system takes a portion of the earnings away from the lowest paid workers to fund socialised programmes like infrastructure under ESI, while also creating designated time slots and other barriers for treatment<sup>[9]</sup>. Although ESI is popular with those who can access it, the overall efficacy of the ESI infrastructure is unclear; a recent study in Bengaluru shows how painfully difficult it is to avail medical care in a timely and cashless fashion at the facility which is almost always too far for the eligible patient<sup>[9]</sup>. Owing to operational issues- both structural and functional- the EPFO and ESIC harbour massive unutilised amounts- at INR 26,497 crores and INR 68,292 crores respectively<sup>[10, 11]</sup>.

This necessitates an overhaul of India’s prevailing social security system, a feat initiated by CoSS 2020. It takes the first step towards universalising access and making social protection inclusive, i.e., expanding the coverage

of the schemes to include all kinds of workers regardless of the nature of their relationship with the job-creator. To strengthen infrastructure, it can build a more robust and dynamic network of service providers. The law also leaves room for imagining a portable format of social security- one that a worker can carry across jobs, industries and geographies<sup>[12]</sup>. By passing CoSS 2020, the Government of India has decisively begun to upend the dual system that has led to the exclusion of over 92% of workers from basic protections.

## Labour Reform: Implementation Strategies

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The Code on Social Security 2020 is an effective reimagination and reinvention of social protection in the 21st century. This epochal legislation- benefiting half a billion workers- has catapulted India's social security regime from the centuries' old manufacturing era to the contemporary platforms era . CoSS 2020 delinks social protection from employment, creating an inflection point in the evolution of platform-work and its ability to unlock livelihood opportunities in the billions<sup>[13]</sup>. Thus, India is on the right path to balance worker rights with the need for job creation.

The manner in which India- with one of the world's largest and youngest working populations- implements the envisaged social security system will be the ultimate litmus test to determine what approaches work for the entire world<sup>[14]</sup>. India must adopt guiding principles while designing social protection that is progressively universal<sup>[14]</sup>, portable, and most importantly inclusive.

A five-pronged **RAISE approach** is recommended to ensure realisation of full access to social security for all gig and platform workers.

### 1. *Recognise the varied nature of platform work to design equitable schemes:*

Platform businesses within and across industries are inherently different in their nature of work. A rideshare platform is different from an urban logistics platform, for instance. While a rideshare platform like Ola facilitates passenger movement from point A to point B, an urban freight platform such as Dunzo handles hyperlocal deliveries from a *kirana* store, a restaurant or a centralised storage hub to one's doorstep. These platform businesses within the mobility industry vary in their nature of work, scale of operations and the potential of earnings afforded to workers.

Similarly, these platforms differ from those in the sectors of hospitality, professional home services & other forms of e-commerce. For example, the platform Urban Company provides at-home professional services, another platform Swiggy fulfils hyperlocal on-demand food delivery. Urban Company operates through a network of over 25,000 professionals<sup>[15]</sup> whereas Swiggy engages over 200,000 delivery partners<sup>[16]</sup>.

Further, platform workers can be associated with multiple platforms simultaneously or in different time periods through the year and through their lifetime. Additionally, an individual could be both a platform worker and employed in the organised or unorganised sectors simultaneously.

A McKinsey Global Institute<sup>[17]</sup> study in 2016 found that up to 162 million people in Europe and the United States, i.e. 20 to 30% of the working-age population engage in some form of gig and platform work. Likewise, a 2018 Gallup survey, estimated that 29% of all workers in the U.S have extra jobs supplementing the income from their primary jobs. At the national level, such workers with more than one job constitute a quarter of all full-time workers (24%) and half of all part-time workers (49%). The survey estimated that 36% of US workers

(including part-time workers and multiple job holders) have a gig and platform work arrangement in some capacity<sup>[18]</sup>. In India too, such flexibility and choice exercised by new-age workers in performing multiple jobs simultaneously or sequentially is recognised in a forthcoming study on the Platform Economy by the Ola Mobility Institute. Overall, India's digital platform economy across passenger mobility, logistics, retail, agriculture etc. is expected to create a potential value of half a trillion dollars (i.e. USD 500 billion) by 2025<sup>[19]</sup>.

Therefore, the government must recognise the inherent difference amongst platforms and design the rules in a manner that benefits both the platforms and workers equitably. The government must also consider that workers can have multiple jobs and accordingly design social protection schemes that are inclusive and afford maximum coverage. This would ensure flexibility of the worker to engage with multiple kinds of work and achieve greater income security.

## *2. Allow augmentation of social security through innovative financing mechanisms:*

Social security schemes must be designed in a way that allows platform workers the choice to avail additional social protection cover such as health or life insurance through financial institutions like insurance companies, banks, NBFCs, new-age fintech businesses, etc.

Despite India having the world's largest healthcare programme, viz. Ayushman Bharat targeting over 540 million Indians, 60% of the population incurs out of pocket (OOP) expenditure<sup>[20]</sup>. Studies<sup>[21]</sup> by the Brookings Institute and Tata Institute of Social Sciences as well as data from the National Sample Survey Office and others show that the OOP expenditure incurred by India's middle class and those at the bottom of the pyramid is high<sup>[22]</sup> and on the rise. Between 2004 and 2014, the OOP expenditure grew by 77%. Surprisingly, those who are insured spend at least 33% more than those who aren't. This is because most of the current health insurance programmes focus on secondary and tertiary care, while neglecting the need to make primary care accessible and affordable for all<sup>[23]</sup>. Furthermore, most of the schemes target only the poorer sections of the society.

Thus, to adequately address the healthcare needs of India's burgeoning middle class population, public and private healthcare providers and insurance companies must come together to provide quality healthcare for all<sup>[24]</sup>. Today, fintech companies such as Avail Finance<sup>[25]</sup> are making insurance accessible and affordable to platform workers and blue-collared workers across industries. By adding millions of youngsters to the pool of those insured, such micro-insurance, tech-powered initiatives are lowering the risk and the insurance premium by extension.

For platform workers who shall be protected under the Code on Social Security, the option of choosing top-ups empowers the worker to secure cover for other beneficiaries apart from the ones covered in the scheme, and also cater to healthcare expenses not covered by the government schemes. Therefore, platform workers should be allowed to top up insurance limits through voluntary additional premiums in the public or the private sectors.

Additionally, the government can leverage the power of UPI, IndiaStack and JAM to combine products like the National Pension Scheme, Atal Pension Yojana with insurance and a liquid mutual fund. This provides workers an opportunity to redirect their earnings towards savings. This form of nurturing of higher savings habits through creative means prevents debt traps while meeting emergency expenses.

Lastly, the government must articulate necessary legal language to ensure that any sort of additional covers that platforms provide their workers are not construed as evidence of (traditional) employment.

### *3. Institutionalise a scientific approach while designing schemes, factoring the impact on job creation, platform businesses and workers:*

As seen earlier, platform businesses and workers alike vary in their nature of work, earnings, capacity and scale of operations. Therefore, it is necessary to determine contributions to be made to the Social Security Fund in an equitable fashion that factors the impact on job creation and the incomes and earnings of platform businesses and workers. The very nature of platform work has ensured the creation of millions of livelihood opportunities, giving workers the flexibility to increase their incomes from multiple jobs. For example, a Zomato delivery partner has the option to work anytime with hyperlocal delivery firms like Swiggy or Dunzo. Similarly, today, platforms may not be limited to only one business and could have multiple businesses that may or may not engage platform workers; a cab driver can double up as a delivery agent on the same platform.

In the past, the implementation of government schemes such as the ESI collecting contributions from the worker and the employer has resulted in a corpus fund far exceeding the corporation's expenses<sup>[26]</sup>. As on March 31, 2019, the ESI reserve funds stood at a massive INR 91,447 crore<sup>[11]</sup>, 75% of which is untied. Ergo, it is imperative that the government adopts a scientific approach to determine contributions to the social security fund. While the Code on Social Security 2020 mandates 1-2% of the platform's turnover as the contribution from the business, the scientific rationale for this amount must be detailed by the government.

Therefore, to avoid such inefficiency and ensure that social security schemes are scaled up and implemented to the best of their promise and potential, a scientific approach must be adopted. Such an approach may promote job creation and ensure minimum burden on both workers and platform businesses.

### *4. Support workers to subscribe to government schemes and welfare programmes through widespread awareness campaigns:*

Research suggests that a lack of awareness of social protection schemes contributes to the poor efficacy (uptake and utilisation) of large-scale programmes such as those designed in India. A 2019 United Nations study carried out by the Agewell Foundation found that, of the 10,000 men and women eligible for government schemes and interviewed across rural and urban India, over 65% were unaware of or dissatisfied with the financial security measures taken by the government and over 52% were unaware of or dissatisfied with the social security schemes<sup>[27]</sup>.

In April 2020, in response to the dual health-cum-economic crisis of Covid-19, the ESIC introduced three new schemes allowing beneficiaries to access non-ESI hospitals for secondary care and private chemists for medicines, and affording an extension to the employer for filing ESI contributions. A May 2020 survey by Safe in India Foundation revealed that over 75% of the ~100 fee-paying beneficiaries interviewed were unaware of these schemes launched to assist them<sup>[28]</sup>.

Therefore, Information, Education and Communication are key to increasing the awareness and utilisation of social security schemes<sup>[29]</sup>. As the Code on Social Security 2020 is operationalised, gig and platform workers too need to be updated with all relevant social security benefits they can avail. The schemes must detail strong awareness programmes in a manner that government information reaches each and every worker. Effective and widespread communication is essential to raise awareness and ensure every worker in India is truly protected.

### 5. *Ensure benefits are readily accessible to workers:*

Platform workers are mobile i.e. they can simultaneously work on multiple platforms or in different states at different time periods. They can also work in the organised or unorganised sectors on the side. Such mobility makes workers vulnerable to local-level policy differences in accessing complete social security benefits. Therefore to ensure that benefits are easily accessed by workers, the government must design universal and portable social security.

Portability gains credence because of the current inaccessible social security infrastructure. Implementation challenges such as long approval-trail, complicated paperwork, statutory income ceiling in accessing social security schemes like ESI are well-documented. Furthermore, workers enrolled with ESI are often unable to avail benefits due restrictions related to transfer when the worker moves from one job to another. This inefficiency has led to large dormant corpuses as already highlighted.<sup>[11, 30]</sup>

Thus, to ensure benefits are readily accessible to platform workers, India should leverage technology. India is a global trailblazer in fostering digital financial inclusion through the unique IndiaStack platform for financial transactions and Direct Benefit Transfers. Likewise, while operationalising CoSS 2020, layering technology through all the stages of accessing a scheme would streamline distribution of funds. Harnessing the power of technology, disbursement of funds and grievance redressal can be achieved for the digitally-proficient platform workers across India. The government-envisaged registry of workers can be used to create a 'Unique Identity (UID) for Work', which when combined with technology can streamline benefit distribution. This shall build on the successful, universal, robust and transformational foundation laid by India's Jan Dhan - Aadhaar - Mobile (JAM) Trinity.

*Overall, RAISE is a forward-looking agenda which seeks to build worker welfare and increase incomes across the board. With a progressive view towards platform work, such as suggested by RAISE, it is possible to collectively lift the fortunes of many low-income workers as it involves a longstanding demand for wider social security coverage. Lastly, platform work in economies like India can act as the first data impressions of an otherwise dispersed workforce; so sensitively regulating platform work is essential to induct millions of workers into the formal fore, and to achieve universal social security coverage.*

## Conclusion: An India-first attempt & lessons for the world

CoSS 2020 sets India apart from the rest of the world as it achieves two goals that many others have overlooked: to recognise and distinguish between new categories of workers such as gig and platform workers, and to extend social security plans regardless of worker status. This achieves the principles of progressive universalism and portability of social protection, allowing millions of workers to access social security bypassing their employer.

This charts a unique course to an inclusive future for India. The previously excluded workers of an unorganised nature shall enormously gain from the operationalisation of this law. By conferring legal status and instituting social security minimums to each type of worker, CoSS 2020 expands the mandate of good job creation in the economy. This would promote economic activity and further create an India that is jobs-rich. The benefits are many- workers stand to gain from increased access and association with recognised businesses, while the businesses receive associates who have a sense of belonging and ownership over their work. The assets created

and managed by the enlarged marketplace have multiplying effects such as supporting other sectors in the economy and increasing financial access to first-time asset buyers to further self-employment.

The recommendations included in this Brief suggest a thinking framework (“RAISE”) to formulate social security schemes in the context of regulating platform work. Priority has to be placed on raising incomes and ensuring dignified livelihoods through sensitive, scientific, financially-sound and worker-friendly programmes. This is necessary to assure dignified livelihoods in the future of work. The path to gainful self-employment in the digital era is paved with platforms. Together with new forms of work and digital platforms, this landmark code is well poised to steer the Indian economy in the right direction.

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Ayushman Bharat has two interrelated components: health and wellness centres and Pradhan Mantri Jan Arogya Yojana (PM-JAY).

While the centres are work in progress, PM-JAY aims to provide free healthcare access to 40% of India's population, those at the bottom of the pyramid. As of December 20, 2020, a total of 128+ million e-cards were issued under PM-JAY and state government-sponsored health insurance programmes, with PM-JAY constituting 70% of the enrollment. <https://pmjay.gov.in/>

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