



**EMPLOYEES' PROVIDENT FUND OFFICERS' ASSOCIATION**  
**EMPLOYEES' PROVIDENT FUND ORGANISATION**

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Dated : 16.05.2017

To

Sh. S. K. Tripathi,  
Under Secretary (LRC),  
Ministry of Labour & Employment  
Room No. 17, Shram Shakti Bhavan,  
Rafi Marg, New Delhi -110001

**Subject: Suggestion/Comment on Draft Code on Social Security & Welfare**

Sir,

This is in reference to Draft Code on Social Security & Welfare issued vide No. Z-13025/13/2015- LRC dated 16.03.2017 wherein comments/suggestions were solicited from involved stakeholders and public at large.

The ensued draft has been prepared by amalgamating all existing labour laws on Social Security including EPF Act, ESI Act, Payment of Gratuity Act, Maternity Benefit Act, Employees Compensation Act etc with stated objective as simplification, amalgamation and rationalization of Central Labour Laws.

The draft code has noble objective of simplification and rationalization to bring ease for involved stakeholders, and

accordingly it has envisaged fundamental changes into existing institutional structures and processes. Under draft code, existing social security organizations are to be dismantled and a new framework is to be established with pre-eminent role of the State Governments. The new framework would bring fundamental changes in the way social security is to be managed in India in time to come and have long term repercussions. Accordingly, it would be apt to analyze strength, weaknesses, experiences of existing social security organizations (EPFO, ESIC) and State Governments to shape a better future framework of social security administration in India.

## Glance at the Performance of EPFO

- No of Establishments Covered under EPFO – 9,26,000
- Total No of EPF Member Accounts (as on 31.03.2016) – 17.14 Crores
- UAN generated: 12.7 crores
- No of Monthly Pensioners in EPFO – 51 Lakhs
- Total No of PF Claims settled in a Year – 76 Lakhs
- Total Amount of benefit paid to PF members in a Year – Rs. 50,000 crores (including Pension, Provident fund and Insurance )
- Total Corpus In EPFO – Rs.8,75,000 Crores ( Rs. 6,20,900 crores in Provident Fund, Rs. 2,38,500 in Pension Fund and Rs. 15,600 crores in Insurance Fund – As per Annual Accounts of EPFO for FY 2014-15)
- On an average day of EPFO, 494.64 crores is received as contribution, Rs. 200.22 crores is disbursed to beneficiaries, 263 establishments are registered, 78471 members are enrolled and 47857 claims are settled.

It is a matter of achievement that EPFO disburses monthly pension to 51 Lakhs Pensioners directly in to their Bank Accounts through CBS on the 1<sup>st</sup> day of every month. Also almost all the PF claims are settled within 20 days and around 75 lakhs PF claims are paid in a Year.

These milestones has been achieved despite the fact that EPF Act is an exclusionary legislation in which employees earning more than a wage ceiling are exempted. Before revision of EPF wage ceiling from Rs. 6,500 to Rs. 15,000 situation was so worse that at multiple point of time even Minimum Wage was higher than wage ceiling fixed for EPF &MP Act. Though EPF & MP Act was inclusionary in starting days, for example during 1952-57, EPF wage ceiling was Rs. 300, which was more than five times of minimum wage (Rs. 55) applicable to government employees. Similarly for period 1957-62, wage ceiling was six times of minimum wage applicable to government employees. In today's context, though minimum wage for government employees is Rs. 18000/- (As per 7<sup>th</sup> pay commission), EPF wage ceiling is even below the minimum wage for government employees. This exclusionary policy issues hampers EPFO functioning and keep organization functioning at tenterhook always, striving for survival. It is indeed an achievement that amidst such policy uncertainty, EPFO has such a huge member base. Certainly EPFO can't be faulted for non-extension of social security benefit arising out of policy constraints.

Apart from policy uncertainty in the form of wage ceiling, other big challenges for EPFO has been short tenure of Executive Heads from wholly unrelated field. It is an established management principle that fixed term of higher period for Executive Head of organizations allows him to lead effectively, make concrete decisions, set goals and achieve those goals in given tenure to raise efficiency of organization. Short tenure of officers result that as soon as an officer starts learning about organization, set its goals, make strategy for achieving those goals, and put energy towards it, a new Executive Head comes. As each person have his own perception, perspective, goals and strategy, organizational goals shifts according to goals set by the new Executive Head. In such cases, all goals remain half completed which ultimately affect the organization. One key example is IT infrastructure in EPFO. For a financial organization such as EPFO, which mandate is to collect the contributions, make accounts and then return the contributions along with interest, a robust IT infrastructure is sine-qua-non for efficient functioning. Though EPFO has started a program to give each member a Social Security Number in first decade of 21<sup>st</sup> century, and had put organizational efforts for several months, it flopped as same was discontinued with change in leadership. Apart from Executive Head, slow decision making in Central Board of Trustees also play a major role in denting the productivity of EPFO. At a time, when most of even government organizations have moved towards vendor based IT system and have availed services of big companies like TCS, Infosys etc in building of IT systems, EPFO is still trying to swim the river with archaic tools and machinery. This is despite the fact that it has significant financial resources to hire any world class vendor for designing of its IT system. Apart from above two constraints, irregular recruitment of officers, another extraneous factor, also hamper and negatively affect its productivity.

Clearly, EPFO has many achievements to its credit despite many constraints beyond its control.

## Glance at the performance of ESIC

- No of Establishments/ Factories covered under ESIC – 7,85,000
- No of Employees Covered in ESIC – 1.89 Crores
- No of Insured Persons – 2.13 Crores
- Total No of ESI Beneficiaries (including dependant family) – 8.29 Crores
- Total Amount of Cash Benefits Paid in a Year – Rs. 704 Crores
- Total Amount Spend on Medical Benefits in a Year – Rs. 6113 Crores
- Total Amount Spend for ESI Benefits in a Year (Cash and Medical ) - Rs 6816 Crores
- Total No of ESI Hospitals established in the country – 151
- Total No of ESI Dispensaries in the country – 1626
- Total No of ESI Branch Offices – 628
- Total No of Cash Benefit Claims Paid in an Year – 32 Lakhs
- Total Fund Corpus in ESIC – Rs 50,000 Crores
- Funds Ear Marked As Specific Reserve Funds – Rs. 17,500 Crores (For Pension and other long term liabilities)

Another point needs attention is that ESIC handles disbursement of cash benefits while the medical scheme is managed by the State Governments. Despite the timely disbursement of funds by the ESIC to the respective state governments, the medical scheme remains poorly managed in many states.

Both these central social security organizations are functioning under the direct control of Ministry of Labour and Employment, Government of India. These organizations have central fund management system and are prompt and efficient in the settlement of claims.

Comparison of performances of State Boards constituted for the purpose of Welfare & Social Security and Central Social Security Organizations (EPFO, ESIC) would serve as a good beginning point about direction of any future restructuring and realignment of organizations and mandates.

State Boards were to be constituted for the welfare of **Building and Other Construction Workers** under the central legislation, **Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996**. As per the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, the Government has notified levy of 1% cess on all commercial constructions and the cess is to be paid to the respective **Building and Other Construction Workers Welfare Boards** constituted by each State. The boards also receive grants from Government, contribution from members and from other sources. It is the responsibility of the state Welfare board to register building workers, collect contribution and provide various benefits to the construction workers as provided in the Act. However, in reality, even after lapse of more than 20 years, no State Boards have been created in several states and even in those states where State Boards have been created, no consequent benefit to workers has been provided, compelling many judicial forums to give adverse comment on the functioning of the State Boards. State Boards have miserably failed the poor workers.

**It is pertinent to note that the functioning of the State Boards and the Administration of the Building and Other Construction Workers Welfare Board is exactly the same as what is proposed in the draft Labor Code for Social Security.** And therefore, this raises serious question about capacity, capability and approach of State Governments towards dealing with Social Security and exposes the underlying threat in giving pre-eminence role to State Boards in managing social security. Some expected issues emanating from giving pre-eminent role to State Boards are being mentioned below:

- **Delivery of services:** With the draft code the entire gamut of services provided by the central service organizations is proposed to be handed over to the respective state boards, the effective delivery of these essential services remains suspect.
- **Sustainability of Fund and consequent impact on Return on Fund to members:** Another issue is the breakup of investment funds amongst the respective state boards. Financial wisdom suggests that the bigger the corpus of an investing body higher the chances of achieving higher returns on investment. Also, operating expenses tend to be higher for smaller funds because of the lower opportunity to take advantage of economies of scale. It assumes a special significance in light of

the fact that our central social security organizations cater to around 51 lakhs pensioners a month and maintain around 17 crore subscriber accounts. For many of these members these returns are the only safety net in light of fast disappearing joint families and increasing price levels.

- **Complication in compliance rather than ease of companies:** Dismantling the current structure without putting in a more effective centralized body would create a situation wherein businesses operating in more than one states would have to interact with multiple state boards with different standards of compliance and operating procedures, thereby affecting the ease of doing business and escalating the compliance and opportunity costs. It would seriously hamper the ability of labour intensive businesses from growing. This would not only impact the Make in India and growth of employment but also generation of employment and quality jobs in the country.
- **Complication due to separate State Boards:** Separate state boards will also prove an impediment in terms of labour mobility with tying up social security benefits to local agencies and State Boards. Myriad bureaucratic coordination relating to the State Boards would seriously hamper the goal of creating a unified national market. Future labour supply chains would require provision of a lot of services to be online, which is another area where not all states are at the same pedestal and most of these are not comparable to the central government and its agencies.

In view of forgoing analysis, it seems evident that policy issues relating to social security structure needs to be scrutinized deeply before any concrete move is made towards creation of State Boards of Social Security. In conclusion, following can be a suitable approach in this regard:

- Removing policy hurdles such as wage ceiling and threshold of 20 workers for extension of social security benefits to enlarge the coverage. Having world class central IT system designed through professional IT vendors such as TCS, Infosys etc. for ease in operation for each stakeholder and annual recruitment of Central Social Security Organizations through annual Civil Services Exam conducted by UPSC.
- For purpose of unified Code on Social Security, exploring options of a Central Board and Central Authority, without any or minimum intervention of states or without creation of State Boards
- In any case, in the eventuality of formation of State Boards, appropriate mechanisms needs to be established to ensure efficient functioning of State Boards. Such mechanism may include appointment of Executive Head (Principal Chief Commissioner) of State Board through a Search & Evaluation Committee with majority members appointed by Central Government; constitution of Indian Social Security Services for ensuring efficiency in the State Boards, applying uniform service conditions as prevalent to Central Government employees to all employees of all Social Security Organisations;
- In any case, under any circumstances, no role is given to district administration or local bodies which are devoid of functionaries and funds and lack any infrastructure or wherewithal to support any activity of social security. Such role given to district

agencies or local bodies might have some utility to any of merged Acts earlier, however, with merger of 3 Central Social Security Organizations (predecessor organizations), no such need is left and Central Social Security Organizations shall be able to complete the task and fill vacuum in a better way than any assistance of district administration.

We earnestly believe that through a rationale analysis and genuine motives, a robust framework can be created for social security and welfare system in India so that not only it ensure extension of benefits to large section of workforce, but also it would place India among leading countries, worthwhile to be emulated for other countries. Such a scenario would be a real reflection of Hon'ble PM initiative of "Shramev Jayate" and would contribute in inching towards India's role as "Vihwagruru", as our leadership has aspired for.

In the eventuality that if Central Government opines and decides to go with the proposed framework of State Boards, a tentative suggestions and comments on issued draft Code is also attached herewith as Annexure. However, this is done as a measure of lost resort and with hope that before finalizing any draft, further opportunity would be provided to stakeholders, including employees and associations, unions of affected organizations to provide inputs before finalizing draft and forwarding it to the Cabinet or the Government

Thanking You.

Yours Sincerely,



**(Abhaya Nand Tiwari)**  
**Secretary General**

## Suggestions/Comments on Draft Code on Social Security & Welfare

Section/ Sub-section/ Clause/ Proviso of the code	Issue/ Problem identified in the Clause	Proposed Change/ Correction that should be made	Reason for proposed change
2.22 & other such places	Appropriate hierarchy of officers of the State Board for efficient functioning	"Commissioner" to replaced with "Principal Chief Commissioner" in this Clause and at such places where "Commissioner" was to exercise function	It would achieve three objectives: <ul style="list-style-type: none"> <li>• As per draft code, State Board has Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner etc. which supposedly indicate that Additional Commissioner have grade pay of 8700 (pre-revised). If Additional Commissioner is at 8700 GP and Commissioner is at Apex Scale, it would create a vacuum.</li> <li>• As per code, Executive Head of the State Board is to chair many committees with members of high official position such as Director General of Health Services, or get the work done from Local Authorities who are also very higher in rank. Therefore, Apex grade seems essential for efficient functioning of State Board.</li> <li>• Officers of erstwhile organizations and that of Indian/Central Social Security Services would be allocated in all Social Security Organizations (National council, Central Board and State Boards) and therefore State Board shall also have avenues for smooth career progression of officers of erstwhile organizations and ISSS officers for ensuring good morale of officers and as per needs of modern efficient organizations to ensure productivity.</li> </ul>
New Proviso	New Definition of Commissioner	Commissioner means any Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner and Additional Commissioner	<ul style="list-style-type: none"> <li>• For the purpose of workers registration, employer registration, benefit extension, Registration, Survey, etc &amp; for those places where Commissioner word has been used as a separate entity from Executive Head of State Board.</li> <li>• For example, "Commissioner" is defined under Para 2(d) of EPF Scheme and Authorized Officer is also defined under section 2 (aa) of EPF&amp;MP Act. These authorities are separate from Executive Head of Organization (EPFO &amp; CPFC)</li> <li>• For clauses such as (For purpose of Section 13, 14, 15, 16, 17, 21, 27,</li> </ul>



## Suggestions/Comments on Draft Code on Social Security & Welfare

			<p>28, 37, 40, 41, 42, 49, 51, 56, 59, 60, 61, 63, 64, 66, 67, 70, 71, 73, 74, 75, 77, 82, 91, 96, 117, 119, 121, 154, 159 etc where “Commissioner” doesn’t mean Executive Head of State Board or Principal Chief Commissioner.</p> <ul style="list-style-type: none"> <li>Wherever, Executive Head of State Board is desired, Principal Chief Commissioner can be mentioned and at other places wherever is question of executive authority “Commissioner” as defined here shall mean.</li> </ul>
2.7	Definition of “Assessing Officer”	“Assessing Officer” means any, any Commissioner, any Additional Commissioner, any Deputy Commissioner, and Assistant Commissioner and as such other officers of State Board to whom powers are delegated by the Commissioner under sub-section (10) of section 116.	<ul style="list-style-type: none"> <li>This is a quasi-judicial nature of activity and therefore it would be appropriate to make such officer authorized by statute rather any departmental circular which could act as detriment to required independence for assessee officer.</li> <li>Hence, they need to be clearly defined in the Act itself as provided in the Section 7A of EPF Act or IT Act. The jurisdiction may be notified in Gazette by the Commissioner.</li> </ul>
2.4	Definition of Appellate Officer	“Appellate Officer” means any <b>Chief Commissioner</b> as may be authorized by the <b>Principal Chief Commissioner</b> under sub-section (11) of section 116;”	<ul style="list-style-type: none"> <li>Appellate Officer needs to be higher in rank than “Assessee Officer”.</li> <li>As Assessee Officer could be officers from Assistant Commissioner to Commissioner, logically, it would be appropriate to keep appellate function at the level of Chief Commissioner</li> </ul>
2.53	Role and place of “Facilitator” in the Code	To be omitted	<ul style="list-style-type: none"> <li>Entire role of “Social Security Facilitator” needs to put to hard scrutiny and deliberations.</li> <li>Social Security Facilitators envisaged to be appointed by Municipal Bodies needs to be looked with ground reality.</li> <li>In reality, very few municipal bodies have any wherewithal to support any work of social security. Even in some Municipal Corporations, few employees are permanent employees and other employees are either on Deputation or on contract.</li> <li>Most of Municipal Bodies facing huge scarcity of human power and fund are in no position to support any activity.</li> <li>It would create a situation where strengthening of social security is left to a body which is notorious and grappling with its own issues.</li> <li>If at all, such a need is required in any area and support can be extracted, Principal Chief Commissioner can enter into MoU for stipulated activities with clear deliverables from each side.</li> </ul>



## Suggestions/Comments on Draft Code on Social Security & Welfare

2.64 & 2.144	Definition of "income ceiling"	"income ceiling" means such amount as notified by Central Government from time to time but would not be less than 5 times of "minimum wages" prevalent at any point of time.	<ul style="list-style-type: none"> <li>• Not fixing any objective criteria for "income ceiling" or "wage ceiling" is to virtually defeat the very purpose of social security goals – ease, predictability, and social security benefit extension.</li> <li>• For example, when EPF&amp;MP Act was legislated in 1952, for period 1952-57, EPF wage ceiling was Rs. 300/- which was more than 5.5 times of minimum wage applicable for even government employees (Rs. 55). Similarly during 1957-62, EPF wage ceiling was 6 times of minimum wage for government employees then. Then wage ceiling was inclusionary and would have been including any private sector employee getting wage equivalent to a joint secretary rank officer to Government.</li> <li>• Adhocism and laxity adopted in revision of wage ceiling has resulted in a situation wherein EPF wage ceiling was even lower than minimum wage in 2013-14 and therefore making Social Security legislation, e.g. EPF Act redundant and superfluous.</li> <li>• As there is uniform social security for government employees, irrespective of wages, same shall exist for organized private sector employees getting wages above minimum wage.</li> <li>• For uniform and universal social security to achieve, any objective criterion wherein "income ceiling" and "wage ceiling" is linked to Minimum Wages is required.</li> </ul>
2.67	Definition of "Inspector"	"Inspector" means the inspector appointed under section 113 <b>and includes any Principal Chief Commissioner, any Chief Commissioner, any Commissioner, any Additional Commissioners, any Joint Commissioners, any Deputy Commissioners or any Assistant Commissioners.</b>	<ul style="list-style-type: none"> <li>• The authorities under the State Board need to be specified herein so that they are able to exercise the powers to call for information/details/records from an entity/establishment.</li> </ul>
New Proviso to be added	Definition of <b>Search &amp; Evaluation Committee</b>	Search & Evaluation Committee would recommend the name of 3 candidates to the Central Government & State Government for appointment of Director General & Principal Chief Commissioner of the State Board. Members of Search & Evaluation Committee for selection of Director General would be as under: <ul style="list-style-type: none"> <li>• Cabinet Secretary as head of committee</li> <li>• Outgoing Director General of Central Board,</li> </ul>	<ul style="list-style-type: none"> <li>• The biggest challenge for success and performance of an organization is appointment of key functionaries.</li> <li>• The biggest challenge of the success of the code and extension of social security or universalization of social security would be performance of State Boards. And</li> <li>• Though, complete uniformity is not possible. It shall be endeavour to have uniformity in performance of State Boards. Biggest bottlenecks are politicization of posting by the State Governments and tenure of</li> </ul>

## Suggestions/Comments on Draft Code on Social Security & Welfare

		<p>Convener</p> <ul style="list-style-type: none"> <li>• 3 Members appointed by the Central Government having expertise in the affairs of Social Security, Medical Sciences &amp; Public Health, Banking or Finance</li> </ul> <p>Search &amp; Evaluation Committee for Principal Chief Commissioner would be as below:</p> <ul style="list-style-type: none"> <li>• Chief Secretary of concerned State, Ex-officio &amp; Convener</li> <li>• Director General of Central Board</li> <li>• 3 Members appointed by the Central Government having expertise in the affairs of Social Security, Medical Sciences &amp; Public Health, Banking or Finance</li> </ul>	<p>the Principal Chief Commissioner. Short tenures and politicized postings are sure shot for degeneration of organization. For example, EPFO has yet not been able to have a robust IT system &amp; Infrastructure. One of the key reason is short tenure of Executive Head i.e. CPFC. Each person has his own perception, goals and strategy. Though EPFO launched programme for unique Social Security Numbers in 2003-05, due to frequent changes in Executive Heads, each had his own priority. EPFO is not a one-of case but success and failure of organizations are replete with tenure and suitability of Executive Heads. Be it Jack Welch, Ratan Tata, E. Shreedharan or any other Executive Head. Only with fixed and long tenures of suitable heads that organizations grows.</p> <ul style="list-style-type: none"> <li>• In view of above, in line with Banking Board Bureau which appoints Heads of Nationalized Banks, there shall be a committee to recommend on the appointment of State Boards, if noble objective of ease in governance, doing business and universalisation of social security is to be achieved.</li> </ul>
2.102	Definition of “predecessor organizations”	“predecessor organizations” means the <b>Central Board of Trustees, Employees’ Provident Fund</b> , the Employees’ State Insurance Organisation and the Directorate General Labour Welfare under the Ministry of Labour and Employment of the Central Government.	<ul style="list-style-type: none"> <li>• The EPF Act doesn’t define a legal entity named Employees’ Provident Fund Organization. The legal body under the EPF Act is the Central Board of Trustees, Employees’ Provident Fund.</li> </ul>
3.9	Principal Chief Commissioner	(I) Principal Chief Commissioner of the State board, ex-officio:	<ul style="list-style-type: none"> <li>• Principal Chief Commissioner as the “executive head” of the State Board</li> </ul>
4.1	Procedures and processes of the National Council, the Central Board and the State Boards (hereinafter referred to as ‘the Social Security Organisations’)	<b>The Social Security Organizations shall be body corporates by the names-National Social Security Council of India, Central Board of Social Security and State Board Social Security, ..... &lt;name of the State&gt; respectively, having perpetual succession and common seals, with power subject to the provisions of this Code and the Scheme/regulations framed thereunder, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.</b>	<ul style="list-style-type: none"> <li>• Modified to specify or define the Names of the Social Security Organizations in clear legal terms.</li> </ul>

## Suggestions/Comments on Draft Code on Social Security & Welfare

5.4	Committee member	(h) The Principal Chief Commissioner, ex-officio	<ul style="list-style-type: none"> <li>As executive head of the State Board</li> </ul>
5.5	Council chairman	(a) The Principal Chief Commissioner, ex-officio	<ul style="list-style-type: none"> <li>As executive head of the State Board</li> </ul>
6.4	State Advisory Committee	(d) One officer of the State Board to be nominated by the Principal Chief Commissioner	
7.3	Executive Head of State Board	There shall be a <b>Principal Chief Commissioner</b> of Social Security in each State who shall be appointed by the State Government on the recommendations of " <b>Search &amp; Evaluation Committee</b> " and shall work under the general superintendence and control of the State Board and shall be the Chief Executive and member secretary of the State Board.	
7.4/ New Proviso	Method of Recruitment of Regulator General, Director General and Principal Chief Commissioner is to be separately specified in separate clauses.	Director General of Central Board & Principal Chief Commissioner State Board would be appointed by Central Government and State Government respectively on the recommendation of Search & Evaluation Committee. Eligibility criteria, salary and allowances and conditions of service of the Director-General and the Commissioner shall be such as may be prescribed.	<ul style="list-style-type: none"> <li>Method of Recruitment of Regulator General, Director General and Principal Chief Commissioner is to be specified in separate clauses because position of Regulator General is of regulatory in nature whereas that of Director General &amp; Principal Chief Commissioner is of executive in nature.</li> <li>The efficiency of organization especially Central Board and State Board would depend upon Executive Head, his specialization, experience or orientation towards Social Security and tenure. To prevent arbitrariness and bring uniformity in functioning, Search &amp; Evaluation Committee is to be specified in Code itself.</li> </ul>
11	Registration of workers, removing anomaly in case of International Worker (non-resident)	The State Board..... (c) In case of non-resident International Workers, having no Aadhar Number, or for any other category of workers who cannot apply for Aadhar under provisions of Aadhar Act, a separate methodology would be adopted for issuing VIKAS.	<ul style="list-style-type: none"> <li>There may be category of workers, working in India on whom Code would apply however; they cannot enrol for Aadhar Card. For such workers, a provision need to exist for issuance of VIKAS without Aadhar Card.</li> </ul>
11.1	Bottleneck & constraints in local Bodies to act as registration authority	Such officer of the local body of the area concerned from where the worker performs work, or any such officer of State Board, as may be notified by the State Board, shall be the Registering Authority for the said worker.	<ul style="list-style-type: none"> <li>Local Bodies have several constraints including functionaries and infrastructure.</li> <li>Any person shall not be devoid of benefits because of constraints of registration authority either because of functionary, fund of Local Bodies or because of coordination. Therefore, an alternate route shall exist for registration under direct control of State Boards. State Boards can open registration centres also at few locations to remove the bottleneck.</li> </ul>

## Suggestions/Comments on Draft Code on Social Security & Welfare

11.10	Issue with VIKAS/ association with employer	Phrase is indicating as if VIKAS is to be attached with any employer and this need scrutiny and re-phrasing.	<ul style="list-style-type: none"> <li>• VIKAS number shall be employee independent of employer. A person VIKAS number should have no attachment with employer or its code, as is the case with EPF Account Numbers which are attached to a particular employer and thus create bottleneck.</li> <li>• VIKAS Number shall be such as it may exist independently from employer and with which several employer code can get associated simultaneously, if so required.</li> <li>• For example, if a person is working in three places for 3-3 hours, his contributions from all three employers can get attached, associated and accounted accordingly.</li> </ul>
20.3	Reduction or waiver in contribution	<b>Provided further that, if the State Government is of the opinion that it is necessary or expedient in public interest so to do, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, with prior approval of National Council, reduce or waive the contribution payable by such workers for such period as may be specified in the notification:</b>	<ul style="list-style-type: none"> <li>• Reduction or waiver of contribution is a step which shall be used in rarity as the prime goal is to extension of social security.</li> <li>• Keeping the interest of business expansion of any industry or class of establishment, if it is required so to do, it would be appropriate to divest such power between two authorities.</li> <li>• If State Government alone can do so, it would go against principal of checks &amp; balances and reasonableness.</li> <li>• It would be conflicting and unreasonable to make National Council as Regulator and not even consult in case of reduction or waiver of contributions.</li> <li>• As National Council has wide representation, including those of experts, it would be highly illogical if consultation with National Council is not done before reduction/waiver of contributions.</li> <li>• If left to state governments, situation may lead to a competitive regime of waiver/reduction of contributions for many industries. Each state may try to outdo other states for pleasing industries for attracting investments or emerging as favourite investment destinations. If one state would reduce/waive for one industry, it would become essential for other states to do so to remain competitive.</li> <li>• If issue left unaddressed, would lead to gradual disappearance of social security and act against the objective of this very code.</li> <li>• If at all, competitiveness of any industry is to be evaluated as per international standards, best body would be National Council which can see things in holistic manner.</li> </ul>

## Suggestions/Comments on Draft Code on Social Security & Welfare

29.2	<p>Priority of payment of contributions etc. over other debts.</p> <p>Deletion of “for the time being in force”</p>	<p>Without prejudice to the provisions of sub-section (1), any amount due from an employer, whether in respect of the employee’s contribution deducted from the wages of the employees or the employer’s contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law, be paid in priority to all other debts.</p>	<p>It is pertinent here to point out that the Social Security payments shall have the most priority against any debts secured or otherwise.</p> <p>The phrase, “<b>for the time being in force</b>” can be construed to mean that any law passed after this Code, if has a priority clause, would negate the very essence of this Section. Hence the same is proposed to be deleted.</p>
44.1	<p>Proviso to the Section 44(1)</p>	<p>Provided further that in case of transfer of the establishment as a result of public auction by the Central Government or the State Government or the local authorities or other authorities constituted by the Central Government or the State Government or public financial institution, the liability shall not be transferred, <b>should the authorities or public financial institutions remit the dues contribution and other sums due from the employer on the date of transfer from the proceeds of the auction.</b></p>	<p>If the provisions come to play without, Section 29 would lose its essence. Majority debts of any establishment are presently sold to the Asset reconstruction companies by the banks. Since these ARCs are PFIs under section 4A of the Companies Act, 1956, an employer can technically run up huge dues under the Act and have banks sell their bad debts to ARCs. Since the liabilities cannot be transferred, the Fund shall lose the contributions.</p> <p>By including following proviso, the ARCs would need to remit to the State Board/Central Board, the dues assessed before liquidating the debts.</p>
90.1	<p>Investigation into affairs of Intermediate Agency</p>	<p>Where the <b>Central Board</b> has a reasonable ground to believe that any intermediate agency -</p> <p>(a) has violated any of the provisions of this Code or the rules or the regulations or the by-laws; or</p> <p>(b) Carried out any activity in a manner detrimental to the interest of the members;</p> <p>it may, at any time, by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediate agency and to report thereon to the <b>Central Board</b>.</p> <p><b>Provided further that if the request for investigation was received from the State Board, the Investigating Authority shall submit a copy of the report to the State Board too, which shall provide their comments on the matter to the</b></p>	<ul style="list-style-type: none"> <li>• It is assumed that the Intermediate agencies shall mostly have pan India presence and in such a situation, it is not feasible for any single State Board to undertake investigation which may span across many states.</li> <li>• The license for functioning of intermediate agencies is granted by the Central Board. Further, the primary responsibility of redressal of grievance of members and the safety and security of the funds are also vested in the Central Board. Accordingly, it could be the Central Board which needs to investigate into functioning of intermediaries.</li> <li>• If the matter remains within a State, the Central Board may appoint Investigating Authority from Central Board or any officer that State Board or any other State Board.</li> </ul>

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		<b>Central Board within 30 days of receipt of the report.</b>	
91	Search & Seizure	<b>Where Director General or Commissioner,</b> inconsequence of information in its possession, has reasons to believe that... ..... they may authorize an officer of Central Board or State Board	<ul style="list-style-type: none"> <li>As indicated in the above paragraphs, if the investigating authorities are appointed by the Central Board, they also need powers to carry out search and seizure. Also, the reasons include violations by intermediaries like Fund managers, which are primarily regulated by the Central Board.</li> <li>The word “respectively” is not used after the name of the Boards, to show that the Boards may authorize any officer-either of Central board or of State board to be an “Authorized Officer”.</li> </ul>
109.4	Appointment in National council	(b) if the person to be appointed is at the time of his appointment- (i) a member of the Indian Administrative Service, or <b>(ii) a member of Indian Social Security Service</b> (iii) in the service of the Central Government or a State Government or the National Council in a Group ‘A’ or Group ‘B’ post.	<ul style="list-style-type: none"> <li>A regulator would also need specialized and experienced human resource who have good understanding in the field of social security and therefore, officers belonging to Indian Social Security Service, who have also worked in Central and/or State Boards, would be eligible for appointment under National Council</li> <li>For any efficient organization, regular recruitment is sine-qua-non. And this would become possible in an institutionalized way with creation of Indian Social Security Services Group “A” as organized service so that to ensure regular recruitment to keep efficiency of organization. One of the major drawbacks of predecessor organizations was pool of officers. Erratic and irregular recruitment often lead to no energy in field, unmanageable workload and various anomalies leading to demotivation, inefficiency in organization. For example, in EPFO recruitment of Group A took place in years 1994, 1997, 1999, 2003, 2006 and 2014. It would be a surprise that in 2013, not a single DR Group 'A' officer remained in entry grade 5400 GP (APFC which is also most executive grade) without any administrative reason. This kind of situation leads to unavoidable default, low recovery, poor assessment orders, striking down of cases.</li> <li>If India is to make a world class social security system, and actually desire to be inching towards “world guru” as our leadership has aspired for, it won’t be possible without a world class and dedicated pool of social security experts and professionals.</li> </ul>

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110.4	Appointment in Central Board	<p>(a) if the person to be appointed is at the time of his appointment-</p> <p>(i) a member of the Indian Administrative Service, or</p> <p><b>(ii) a member of Indian Social Security Service</b></p> <p>(iii) in the service of the Central Government or a State Government or the Central Board or a State <b>Board</b> in a Group 'A' or Group 'B' post.</p> <p>Provided further that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the rules for promotion to next higher grade.</p>	<ul style="list-style-type: none"> <li>• Officers of Indian Social Security Service (ISSS) to be eligible</li> <li>• In 3<sup>rd</sup> clause, spell mistake in Board is to be removed.</li> </ul>
110.6	Scale of Pay	<p>The method of recruitment..... and such other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of Organized Group A Services of the Central Government and other such employees of the Central Government drawing corresponding scales of pay:</p>	<ul style="list-style-type: none"> <li>• There are more than 58 Organised Group 'A' Central Services. Many of such services impact very less population and cater to very less people than Social Security organizations do. For example, Indian Trade Service, Indian Company Law Service, Indian Ordinance Factory service, CPWD service etc. impact very less citizens. It would be the biggest irony if those Cadres of Social Security Organizations, who are expected to provide services to crores of employees, and in some estimates more than 40 crores, don't get benefit of Organized Group 'A' Central Services.</li> <li>• Any denial would demotivate employees of these Social Security Organizations and would adversely affect productivity.</li> </ul>
111.1	Executive Head of State Board	<p>The State Government shall appoint a Principal Chief Commissioner of the State Board who shall function subject to the general control and superintendence of that Board.</p>	<ul style="list-style-type: none"> <li>• As explained earlier, to provide a separate post for Chief Commissioner (Appeals) and ensuring smooth career progression of officers.</li> <li>• The Principal Chief Commissioner shall be of Apex scale as he would head many meeting with Director General of Health Services and liaison with many civic bodies having heads in Joint Secretary or HAG grade.</li> <li>• Further, this would enable smooth career progression of employees and officers under State Board to keep efficiency, morale and</li> </ul>



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			productivity of officers high.
111.2		....to assist the Principal Chief Commissioner	•
111.3	Appointment of other officers	<p>The State Board may appoint, <b>as many chief Commissioners, as many Commissioners</b>, as many Additional Commissioner, Joint Commissioners, Medical Commissioners, Scheme Commissioners, Investment Commissioners, Deputy Commissioners, Assistant Commissioners, and such other officers and employees as it may consider necessary for the efficient functioning of the Board:</p> <p>Provided that the maximum scale of pay of officers appointed under this sub-section shall be such, as may be specified by an order of the <b>Central Government</b>:</p> <p>Provided further that sanction of the State Government shall be obtained for the creation of any post the maximum monthly salary of which exceeds such amount or pay scale as may be prescribed</p>	<ul style="list-style-type: none"> <li>• There are various Social Security Organizations and many State Boards. Each state Government has different terms conditions of services for state government employees. As the employees of predecessor organizations would go into State Board and constitute a significant portion, it would be illogical to have separate conditions of service for each state.</li> <li>• Instead, all State board employees shall be governed by conditions of Service as applicable for Central Government. All Social Security Organizations employees need to have uniform service conditions. This would enable minimum disturbance and HR issues for employees of predecessor organizations, who are already governed by Central Government service conditions. For employees of the State government, who are already serving in functions related to social security in State, may have the option to either continue with conditions of service of State government or they may choose to adopt service Conditions as per Central Government which is applicable to employees of predecessor organizations, Central Board employees and Central Government employees.</li> <li>• As the salaries and other benefits of State board employees are to be paid from State Administrative Fund, which would also be devolved from predecessor organizations, state Government shall have no issue with the provision that employees of all Social Security Organizations including Central Board and State Board shall have uniform service conditions.</li> <li>• Opposite would be detrimental and prone to many legal issues and challenges. Because officers and employees appointed by predecessor organizations with different conditions of service may resort legal remedies in case of disadvantaged. Many such disadvantages may not be visible immediately but may crop up in time to come. In such case, organizational efficiency would be impacted as employees would remain entangled with their terms &amp; conditions of service.</li> </ul>
111.4	Appointment	No appointment to the post of the Principal Chief Commissioner, Financial Commissioner, Chief Accounts Officer, and Chief Vigilance Officer or any	

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		<p>other post under the State Board...</p> <p>(b)if the person to be appointed is at the time of his appointment-</p> <p>(i). a member of the Indian Administrative Service, or</p> <p><b>(ii). a member of Indian Social Security Service</b></p> <p>(iii) in the service of the Central Government or a State Government or the Central Board or the State Board in a Group 'A' or Group 'B' post.</p>	
111.5		Principal Chief Commissioner in place of Commissioner	
111.6	Recruitment & Salary	<p>The method of recruitment, salary and allowances, discipline and other conditions of service of the chief Commissioner, Commissioner, Additional Commissioner, Joint Commissioners, Medical Commissioners, Scheme Commissioners, Investment Commissioners, Deputy Commissioners, Assistant Commissioners and such other officers and employees of the State Board shall be such as may be specified by the State Board in accordance with the rules and orders applicable to the officers and employees of the <b>Central Government</b> drawing corresponding scales of pay:</p> <p>Provided further that where the State Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the <b>Central Government</b>.</p> <p>Provided further that this sub-section shall not apply to appointment of medical consultants and specialists in various fields appointed on contract basis</p>	<ul style="list-style-type: none"> <li>• Uniform Service Conditions for all Social Security Organizations.</li> <li>• Erstwhile employees of State Government may choose whether they wish to continue under existing salary and service conditions or wish to adopt Uniform Service Conditions of Social Security Organizations. In case of any doubt, therefore, Central Government shall be the authority.</li> </ul>
111.7		In determining the corresponding scales of pay of	<ul style="list-style-type: none"> <li>• For erstwhile employees of State government, in case of any doubt,</li> </ul>

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		<p>officers and employees under sub-section (6), the State Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government &amp; State Government and in case of any doubt, the State Board shall refer the matter to the Central Government or State Government, as the case may be, whose decision thereon shall be final.</p> <p>Explanation: For Employees of predecessor organizations and officers belonging to Indian Social Security Service, Central Government and for erstwhile employees of State Government, State Government.</p>	<p>matter shall go to State Government. For any matter related to employees of predecessor organizations, officers of Indian Social Security Service, matter shall go to Central government.</p>
111.9	Tenure	The Principal Chief Commissioner instead of Commissioner	
112	Constitution of Indian Social Security Service	<p><b>With effect from date of notification of this code, there shall be constituted a service known as <u>Indian Social Security Service Group 'A'</u></b></p> <p><b>(Entire Section needs to be properly defined for efficient functioning of Social Security Organizations. This would lead to robust recruitment system, clear functional delineation, and talented pool of officers for managing the affairs of Social Security Organizations.)</b></p>	<ul style="list-style-type: none"> <li>• It could be Indian Social Security Service rather than Central Social Security Service. First, because officer of such service would not be placed only in center but also in states. Further, service belongs to Indian Social Security system and not some other nation, so Indianness shall reflect from the name.</li> <li>• Good organizations can't be built without a quality human resource and pool. If India is to attain and inch towards position of "world guru", it shall inch in every field and be as example 10-15 years down the line.</li> <li>• One of the reasons of less spread of Social Security is absence of Organized service in Ministry of Labour equivalent to Ministry of Finance. The absence of organized service and annual recruitment lead to irregular recruitment and thus systematic inefficiencies in the organization.</li> <li>• Uniformity of expertise and specialty is not possible unless an organized service is framed.</li> <li>• Officers of DGLW already pertain to Central Labour Service, an Organized Group 'A' Service. Further Officers in predecessor organizations have been recruited by UPSC only.</li> <li>• Social Security Organizations – National Council, Central Board and State Board would require quality manpower in regular basis and any</li> </ul>

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			irregular recruitment or appointment would adversely affect productivity and efficiency of such organizations. Regular recruitment is not possible on continuous basis if such services exist in isolation and therefore Indian Social Security Service shall be formed as Organized Group 'A' Service attached with Ministry of Labour, Government of India and eligible for posting in any Social Security Organizations, as per Scheme laid down by National Council.
112.1		Indian Social Security Service Group "A" would be an Organized Group A Service under Ministry of Labour, Government of India. All the posts included in the Service shall be Group 'A' posts. <b>Ministry of Labour and Employment, Government of India shall be the Cadre Controlling authority of the Service.</b>	<ul style="list-style-type: none"> <li>• This would also bring in uniformity in efficiency and performance of State Boards</li> <li>• Further, Ministry of Labour &amp; Employment would be in a position to extend social security through State Board and bring in efficiency, productivity and uniformity in State Boards. In absence of such service, it would become difficult to bring uniformity.</li> </ul>
112.2		<b>The service shall, on the date of issue of notification under sub-section (1), consist of officers who have already been appointed in Group 'A' services of the predecessor organizations in various grades, on regular basis.</b>	<ul style="list-style-type: none"> <li>• There would be already cadre strength of 1800 plus officers. This would be multiple times than many existing Organized Group 'A' service.</li> </ul>
112.3		<b>Subject to such conditions as may be notified, officers of Indian Social Security Service would be eligible to be appointed in the National Council under sub-section (3) of Section 109.</b>	<ul style="list-style-type: none"> <li>• National Council prime role is regulation and addressing many policy issues. And therefore specialized officers with relevant experience would be of immense value. This would ensure synergy of field reality and policy issues.</li> </ul>
112.4		<b>Subject to such conditions as may be notified, all officers appointed by the Central Board under sub-section (3) of section 110 of this Code shall be from this Service.</b>	<ul style="list-style-type: none"> <li>• Predecessor organizations are already manned by officers who would constitute ISSS.</li> </ul>
112.5		<b>In accordance with Scheme notified in this regard, officers of this Service (ISSS) would serve in State Board on deputation. Central Government, in consultation with National Council, may notify minimum percentage of officers belonging to ISSS who would be appointed under any State Board for maintain smooth functioning, uniformity and efficiency of the State Board.</b>	
113.1	Inspectors	The <b>Central Board or the State Board</b> may, by notification in the Official Gazette.....	<ul style="list-style-type: none"> <li>• The power of appointment of Inspectors has been provided to the Central Board as well.</li> </ul>

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114	Social Security Facilitators	<b>Section to be omitted</b>	<ul style="list-style-type: none"> <li>• There needs to be deep scrutiny about feasibility, appropriateness and utility of appointing local body officers as Social Security Facilitators.</li> <li>• Infrastructure and readiness of Local bodies pose a big question mark.</li> <li>• It won't be appropriate to leave implementation of provisions of this Act or extension of Social Security upon many a time non-existent machinery of local bodies.</li> <li>• This section suggests that Social Security Facilitators can enter at any time, even the premises of Chief Commissioner, Additional commissioner or any officer of State Board even. This would create an unhealthy situation of friction.</li> <li>• If at all, need is felt to keep the role of Social Security Facilitators 114.4 (a) needs to be appropriately modified.</li> </ul>
114.4	Social Security Facilitators	<b>(a) Either omitted or suitably modified</b> with such assistance, if any, as he thinks fit, enter at any reasonable time any place, <b>but not pertaining to Social Security Organizations</b> , which he considers it necessary to enter for the purpose of supervising or carrying out the activities financed from the Social Security Fund, or Scheme Fund and	
116.3	Delegation by State Board/ Removal of District Administration	The State Board may, by general or special order in writing, delegate to the Standing Committee, Commissioner, any other officer of the State Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Code as it may deem necessary. Provided that the State Board may delegate certain record keeping functions to local bodies under the overall supervision and financing of the State Board	<ul style="list-style-type: none"> <li>• Delegation to District Administration may open a pandora's box for delegating any function. As 16 legislations are being merged, may be in some legislation, because of considering the weak infrastructure and human resource, it would have been mentioned to delegate some work to District Administration. However, with merger of predecessor organizations, State Board would have sufficient infrastructure and if further any need arise, assistance may be taken on MOU basis.</li> <li>• It doesn't seem appropriate to keep any generalized clause in the Act which is prone to misuse. Therefore it needs to be deleted.</li> </ul>
116.4, 116.5, 116.8, 116.9, 116.10, 116.11, 116.12	Designation change	<b>Principal Chief Commissioner instead of Commissioner</b>	

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121.3	Mentions Customs & Excise/ Need a relook	<b>Probably Customs &amp; Excise are typed inadvertently. If any contribution...</b>	Need to be relooked and sentence be framed afresh
129.5	Social Security Appellate Tribunal	A person shall not be qualified for appointment as a Member (Judicial) of the Tribunal, unless he is, - (a) is a sitting or retired Judge of the Supreme Court or Chief Justice of High Court; or (b) is a sitting or retired Judge of High Court (c) is, or has been, a District Judge for at least fifteen years	<ul style="list-style-type: none"> <li>• Strong Appellate mechanism needs to exist for universalisation of social security. Member shall reflect the judicial acumen and experience desired for this.</li> <li>• Tribunal has to have cases from Assessing Officers and Appellate Officers with even 20 years of experience and therefore, keeping a district judge with 5 years of experience would be less experience to decide on many questions of law.</li> </ul>
134.1	Inspection System	<b>The Director General may, by order, notify a model system for inspection of entities. State Boards may adopt such model system or modify it appropriately and by order notify its system of inspection, and the inspections shall be conducted in such manner as may be specified in the said order.</b>	<ul style="list-style-type: none"> <li>• For having uniformity in inspection regime, it would be reasonable to have a model inspection system and criteria notified from Central Board. In absence of any uniformity, there may be huge variations in inspection criteria to the extent of impacting industries and many labour intensive industries, establishment's location. An establishment must not choose A or B location only on the consideration for different system of inspections.</li> </ul>
135.2	Right to Coverage & Complaint	Any worker.. ..... May make a complaint to <b>the Commissioner</b> in such a manner as may be specified in bye-laws: Provided that any registered trade union or Registered organization or association of workers may also file a complaint on behalf of a worker or group of workers	<ul style="list-style-type: none"> <li>• All the complaints are made to Commissioner under EPF Act and there is no need of a Social Security Facilitator as such from deficient Municipal/Local Bodies.</li> <li>• If at all role of Social Security Facilitator is to be kept, that has to be alternative and in addition to role of the Commissioner.</li> </ul>
135.4	Right to coverage	On receipt of a complaint, or suo-motu on receipt of any information, any officer authorized by the Commissioner, or the Social Security Facilitator shall conduct an inquiry within a period of fifteen days to determine prima-facie whether the right of a worker to participate in the Schemes or availing the benefits under the schemes or the Code have been curtailed or denied.	<ul style="list-style-type: none"> <li>• As infrastructure of local bodies is in shambles, it would be appropriate that complainant may complain to Commissioner and he can authorize any officer, to be notified through order in this regard. Such Officer shall conduct inquiry.</li> </ul>
135.5	Right to Coverage	For the purpose of conduct of inquiry under sub-section (4) the Authorized Officer by Commissioner or social security facilitator shall have the following	

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		powers: .....	
135.6	Right to Coverage	The Authorized Officer.....	
136	Actions on the Report of Authorized Officer or Facilitator	Apart from Facilitator, Authorized Officer by the Commissioner to be included who would furnish report	
154.5	Reorganization of Employees	(a) All employees of predecessor organization equivalent to Central Service "Group A", shall be deemed to be the constituent of Indian Social Security Service	<ul style="list-style-type: none"> <li>As a logical corollary of creation of Indian Social Security Service</li> </ul>
155.1	Provision relating to service Conditions	Employees of all Social Security Organizations would be governed by Uniform Service Conditions as applicable to Central Government employees from time to time. State Government employees coming under State Board or any other Social Security Organization would have the option to choose either to adopt Uniform Service Conditions of Social Security Organizations or to continue with State Government and such option shall be exercised within 6 months of their joining in State Board.	<ul style="list-style-type: none"> <li>This section need to be modified and provision to be made for Uniform service Conditions for all employees of all Social Security Organizations.</li> <li>Each state has different set of service condition and if that is to be adopted for employees of predecessor organization joining State Board that would demotivate them and an unending series of legal cases would arise. For example, states have different child care leave rule, similarly different LTC facility, different grades and different pay perks, including applicability of different pay commissions.</li> <li>To ensure the clause that no one is adversely affected, uniform service conditions for all employees of all Social Security Organizations shall be applicable. It is logical as well. Employees from State Government can either opt for these uniform service conditions or may choose to be governed by the service conditions of the State Government.</li> </ul>