Note on the draft Labour Code submitted to the Secretaries of State Governments for their consideration before they attend the meeting convened by the Secretary, Ministry of Labour & Employment, Government of India on 02.05.2017 at 03.00 PM in New Delhi.

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1. The Ministry of Labour & Employment of the Government of India has proposed "to have a consultation Meeting" with the Secretaries of all the State Governments and Union Territories on 02.05.2017 in New Delhi. It has been mentioned in the letter No. Z -20023/13/2015-LRC dated 24.04.2017 of the MOL&E that this is a "consultation process for deliberations on the Code on Social Security & Welfare". Every State Government has been invited to depute the Secretaries in charge of the four departments, viz., Labour, Health, Social Welfare and Woman & Child Development.

2. It becomes clear from the Ministry's letter dated 24.04.2017 that this is the first time the draft Labour Code is officially taken to the knowledge of all the State Governments by the MOL&E. They have not been given time to consult the employers, employees, workers, legal experts, political leaders of their States. It is, practically, difficult for these Secretaries to go through the entire draft Labour Code personally and understand the 'system' that is proposed to be put in place. It is only fair that the States must be given time adequate enough to study, understand and arrive at their opinion about the issues involved. But, the issue is hurried through by the MOL&E for inexplicable reasons. Speed and surprise are anti-thesis to democracy when discussing the welfare measures of the people of the nation.

3. In the USA, when the Obamacare was introduced in 2009 and made law on 23.03.2010, through the Patient Protection and Affordable Care Act (ACA), there had been extensive public debate over it for more than three years (from 2009 to 2012) before it was, actually, enforced after the Supreme Court upheld it on June 28, 2012.

4. And, the Secretaries have been invited to attend the meeting en masse on 02.05.2007 at 3.00 PM. Hopefully, the meeting may last a few hours. And then the MOL&E can claim that they have completed the "process" of consultation, with one of the stakeholders, the State Governments.

5. But, is this a/the stage for consultation? Is this the manner of consultation? The reply is a definite 'No'.

6. When the proposed Code is intended to replace the existing Acts, the draft Code must, necessarily, contain the 'Statement of Objects and Reasons', although the 'Financial Memorandum' is not required at this stage. But, this 'preliminary draft of the Code' does not fulfil even that preliminary requirement of having the 'Statement of Objects and Reasons'.

7. The Secretaries who attend the meeting on 02.05.2017 would not be in a position to understand, **first of all**, the purpose and the proposed destination of the so-called 'preliminary draft' Code. The statement in the Ministry's letter dated 24.04.2017 that the draft Code has been prepared "in line with the recommendations of the 2nd National Commission on Labour" for "simplification, amalgamation and rationalization of Central Labour Laws" cannot be the substitute for the formal and essential "Statement of Objects and Reasons".

8. The MOL&E cannot say that the formal "Statement of Objects and Reasons" will be prepared and placed before the Parliament when the formal Bill is placed before it. The stakeholders who are involved in the consultation process cannot be kept ignorant of the intent of the draftsmen of the present draft Code.

9. The issue is to make the stakeholders know what the goal of the Government is and whether the draft Code will enable the Government to achieve that goal.

10. But, the Government of India is **keeping its goal secret** but is indulging in the make-believe arrangement of fulfilling the process of consultation with the stakeholders, without enlightening them of the purpose of such consultation.

11. The persons who drafted the present "preliminary draft" had not been and could not have been unaware of the ultimate shape in which the Social Security Schemes would be in force in the nation, if their draft was managed to be made law. If they say so, their statement would only be an outright lie and their intention in having prepared such a truncated draft had been nothing but mala fide.

12. In the circumstances, more responsibility devolves on the shoulders of the State Governments to go deeper into the issue to save the nation from chaos in the social security front. The truncated draft Code cannot be placed by the MOL&E before the Secretaries on 02.05.2017 and they asked to play only a role in rectifying

the grammar mistakes in the draft Code, prepared by people who were, apparently, not competent, in law, to prepare it and did not, evidently, have the knowledge and competence to comprehend the issues involved.

Rescuing the MOL&E authorities held as hostages

13. The Secretaries are requested to play an active role in the meeting scheduled to be held on 02.05.2017 and ask the Secretary, MOL&E, the Chairman of the meeting, the following questions and ensure that their questions and the answers, if any, given by the Chairman, are recorded, verbatim, in the Minutes so that the entire nation is benefitted from the said meeting and saved from many uncertainties **intended** to be created through the draft Labour Code.

14. These questions, when put to the authorities in the meeting on 02.05.2017, will not only help rescuing the working population but also rescue the authorities of the MOL&E, who are held as hostages by some middlemen powerbrokers. These brokers who were loitering in the corridors of power from 2015, had caused an unauthorized, false and unsubstantiated allegation levelled against the ESIC and EPFO in an improper manner, through Para 61 and 62 of the Budget Speech of the Hon'ble Minister of Finance on 28.02.2015, that these organisations had been holding the working population as "hostages, rather than clients".

The Relevant Questions

15. There is, always, room for improvement. It is nobody's stand that the status quo is the best one and that there must be no change. But, changes should never be only for the sake of changes but only for the better. A duty is, therefore, cast on the Drafting Team or on the people who caused that Team to prepare this draft Labour Code to convince the stakeholders that the changes proposed would be only for the better and that those changes are proposed with honest intentions.

16. The answers given by them to the following questions would show whether their intentions are, really, bona fide or, simply, mala fide:

a. What is the difficulty in enclosing a 'draft Statement of Objects and Reasons' to the draft Labour Code?

b. If it is claimed that no such 'Statement of Objects and Reasons' has been prepared, how, then, were the people who prepared the draft Labour Code,

given the line of direction in which they should prepare it, the way they have prepared it?

c. When the ESI Act provides about 90% of the wages of an employee to his dependant family as "Dependants Benefit" in the event of **death of that employee due to employment injury**, how did the draft Labour Code reduce it to 50%? Who was the person in the Drafting Team, who took such a liberty with the benefit given to the workforce, while working for the so-called "amalgamation" and "rationalization" of the labour laws? Did the Secretary, MOL&E, accept this proposition? Is he empowered to do so, anyway?

d. When the ESI Act provides about 80% of the wages to the insured person for about 730 days, if he suffers from 34 long term sickness. He and his family members can get medical benefit for 3 years, in such cases. How did the Drafting Team of the MOL&E decide to do away with the provisions of the **Extended Sickness Benefit** altogether? Who authorized them to do so? Did they make such intentions public on any occasion, before coming up with the draft Labour Code? If so, when? If not, did the Drafting Team remain under the belief that it was left to the people to pore through the draft Labour Code and find out for themselves, if they could?

e. Has the Drafting Team recorded any reason, anywhere, for having totally omitted the benefits provided to the employees under **Sections 51-B, 51-C, 51-D and 51-E** of the ESI Act, 1948 dealing with disablement benefit? Or, has that Team chosen to drop these benefit provisions, in an imperiously arbitrary manner, on its own?

f. How did the Drafting Team decide to drop the very important word "**substantially**" in Part L of the draft Labour Code dealing with Exemptions, without recording anywhere the reason why that Team chose to delete it? Was it a mala fide mischief or bona fide and reasoned decision? Why did they not discuss such propositions anywhere else in any public fora? Is it left to the people to pore through the draft Code and find out for themselves all these commissions and omissions which act against the working population? *(Please refer to MOL&E reply dated 25.04.2017 under the RTI Act).*

g. There is no provision analogous to Sec. 89 of the ESI Act in the proposed Labour Code, necessitating consultation with the S.S. Organisation before

granting exemption. It means, the proposed Social Security Organisation is not the monitoring agency of the Social Security net stated to be provided to the working population. So, the Social Security Organisation created by the Code will have **no say in the matter of exemption** sought by the employers. At whose instance, has the Code been worded thus?

h. Sec. 89 ensures that the ESIC carries out the Constitutional mandate as per Art. 41. Reasonable opportunity was there for the ESIC to represent its case. But, the present Code makes the S S Organisation a helpless spectator. Sec. 17 (2) of the EPF Act was also similar to it and it uses the phrase "not less favourable" instead of "substantial" in the ESI Act. **Why were these provisions diluted and dispensed with in the Code**? Who was the brainchild behind such a proposition?

i. The present Labour Code is an attempt to amalgamate 15 labour laws. There have been various representative bodies to enforce those laws. The supreme bodies of these organizations do have in all not less than 59 employers' representatives and 59 employees' representatives. When all of them are brought together under a single umbrella body, the National Council under the Labour Code, there must, at least, be **15 representatives each for employers and employees**. But, the draft Labour Code shows that there would be only 3 representatives each.

Sl. No.	Name of the Organisation	Supreme Body	No. of employers' and employees' representatives.
1	ESI Act, 1948	ESI Corporation	10 + 10
2	EPF Act, 1952	Central Board	10 + 10
3	UWSS Act, 2008	National Board	7 + 7
4	Gratuity Act, 1972	Trust	
5	Cine Workers Act, 1981 (Rule 3)	Central Advisory Committee	7 + 7

6	Mica Mines Labour Welfare Fund Act, 1946	Central Advisory Committee	6 + 6
7	Limestone and Dolomite Mines Labour Welfare Fund Act, 1972	Central Advisory Committee	6 + 6
8	Iron Ore Mines, Manganese Ore Mines, Chrome Ore Mines Labour Welfare Fund Act, 1976	Central Advisory Committee	6 + 6
9	Beedi Workers Welfare Fund Act, 1976	Central Advisory Committee	7 + 7
	Total Members representing all these categories of employees		**59 + 59**
	No. of representatives proposed for the National Council under the **Labour Code** (Sec. 3.3)		**3 + 3**

Democracy means more noise and less problems. But, who advised the Drafting Team to prepare the Labour Code in such a manner that it would throttle and choke the voice of the stakeholders in this manner?

Whose idea was it to have only 3 representatives each for employers and employees in the Supreme Body? And, what was the reason recorded by him anywhere in the official record justifying such a decision?

What were the **difficulties felt by the Central Government** when there were ten representatives each for employers and employees, both in the ESIC and in the EPFO?

j. Why has the **Permanent Disablement Benefit reduced** to 60% and Temporary Disablement Benefit reduced to 50% in the Code, when the ESIC provides about 90% in all?

k. When the ESIC provides about 70% of the wages as Sickness Benefit for 91 days in two consequent contribution periods, the present Sec. 63 (1) (a) and (b) of the Labour Code maintains **total silence about the period and quantum of Sickness benefits** and left it for the decision through Subordinate Legislation. How can the people know whether this Code is meant to improve the benefit or reduce the benefit already available to the insured persons covered under the ESI Act?

l. What is the intention of the Drafting Team behind Sec. 78.1 of the Labour Code? At present, Sickness Benefit is given to the insured persons covered under the ESI Act, on the basis of certificates issued by the Insurance Medical Officers. But, the Code permits acceptance of certificates issued by the Recognised medical practitioner, Registered medical practitioner or Authorised medical practitioner. Does it not imply that the **ESI dispensaries would have to close down**? What about the monitoring arrangement of the certification process? How did the Drafting Team examine the issues involved in it? Has it arrived at any findings on the issue on the basis of any study? Or, has the Drafting Team been advised to go about it, without caring for the consequences? And, if so, who advised the Team thus? If not, can the Team go about it in such a manner on its own?

m. Why has the Enhanced Sickness Benefit for 7 / 14 days (For **Family Welfare** operations) equivalent to the total wages of the employee, been dropped from the Code in toto? When the ESIC assumes social responsibility through it, why does the **Code abdicate that responsibility**?

n. When the ESIC provides **medical benefit to an insured person and his family right from the day of his entry** into insurable employment, why does the Code not assure any such benefit?

o. Why does the Code ignore Reg. 103-B (1) of the ESI Act, that enables the Permanently Disabled Persons to get **medical benefit until his superannuation** for him and his wife?

p. Why does the Code not have any provision similar to Reg. 103 (B) (2) to enable a **retired insured person and his spouse to have medical cover** forever on payment of Rs. 120 pm?

q. When ESIC provides attractive **unemployment allowance** of about 50% of wages for 12 months, why does Sec. 24 (5) (i) of the **Code does not give any such assurance**?

r. Sec. 22.6 of the Code paves way for an enabling provision for providing "**subsidy**" to "**the employer**" under Sec. 22.6 (b) **from** the Welfare Funds, by the State Board and to provide for "**defraying the cost**" of "**provision of cost of transportation to and from work**" for the employees under Sec. 22.6 (d) (vi). What are the circumstances under which payment of "subsidy" is contemplated in these cases when it is totally contrary to Sec. ***51-C. which provides benefits for Accidents happening while travelling in employer's transport***? Who mooted the idea of subsidy in these cases? This is the moot question the Drafting Team is duty-bound to reply. This provision clearly proves that the Drafting Team does, actually, have some working paper hidden from public access, to enable it to prepare the Code in the direction mentioned in that working paper. The reply given by the MOL&E under the RTI Act, on 25.04.2017 also pleads ignorance of any document, other than the Code made public. It becomes evident that either the Drafting Team is conspiring against the entire nation by colluding with some power-brokers or is held hostage by those power brokers who use the Team to achieve their nefarious ends, through the Code. Kindly ask the Secretary, MOL&E on 02.05.2017 about the

circumstances under which payment of subsidy was contemplated by the Drafting Team and a provision was inserted slyly.

s. Why is Sec. 165.3 left incomplete? Are the Secretaries of the State Governments going to specify the areas in which they need power and are going to fill up the gap? Is that the proper mode of legislative drafting, when the Secretaries have not been given any information except the one called draft Labour Code?

t. Sec. 88.2 of the Code says, that "the intermediate agency, for grant of license, shall satisfy the eligibility norms as may be stipulated, including minimum capital requirement, past track record, ability to provide guaranteed returns, cost and fees, geographical reach, customer base, information technology capability, human resources and such other matters as may be stipulated." Is it not clear from this provision that the intention is to allow private players to have a field day in the matter of social security? Will the MOL&E, inform the country in which such action has been taken earlier and found to be successful? Will the MOL&E reveal the **model documents and the Master Plan on the method of functioning of these Agencies,** at least to the Secretaries, especially when the Code envisages a lot of interaction with the Intermediate Agencies by the State Boards?

u. The Public must be informed of the concept and intricacies of these Agencies-system, and the contents of the Schemes proposed on all the Social Security benefits. Because, that alone would provide a holistic view of the 'reforms' proposed. That alone would make the people know about the real and consequential effect of the proposed Code. Sec. 88.1 of the Code says that the "Director General may, by granting a License under this Code, permit any organization or person to act as an intermediate agency for all or any of the purposes" mentioned against each of the six agencies enumerated therein. Sec, 88.3 of the Code says that "an intermediate agency shall function in accordance with the terms of its License and the Regulations". Sec. 88.4 implies that the terms and conditions of such a license will be "in accordance with the provisions of this Code and the Regulations". Sec. 88. 5 says that the application for such a license will be in a specified form. But, the MOL&E, in its reply dated 25.04.2017 under the RTI Act, says that it does not have any format of license. How can the Drafting Team ensure proper functioning

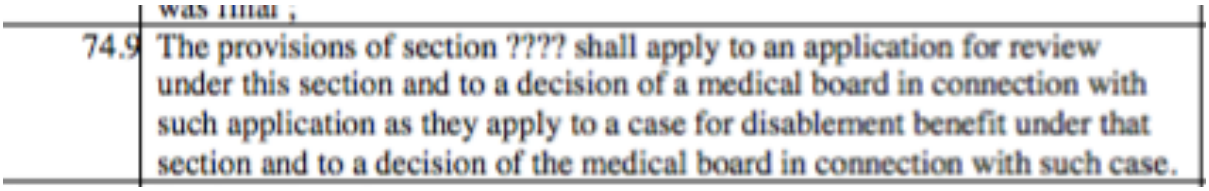
of the Intermediate Agencies unless and until they visualize all the pros and cons and remedial measure at the time of preparing initial Code itself? Do they have any **model License format** used in any other nation, for study and guidance?

v. Will the Drafting Team explain **whether these Intermediate Agencies will be public authorities amenable to the provisions of the Right to Information Act**, 2005, the way the authorities under all the 15 enactments have become answerable under the RTI Act?

w. Will the Drafting Team explain whether its action is in consonance with **Art. 41 of the Constitution**? Does the Drafting Team know the fundamental difference between social insurance, social assistance and commercial insurance?

x. The draft Code **does not contain the definitions** of various terms like, Commission and piece rare worker (Sec. 2.21), Monthly income (Sec. 2.84), Part-time worker (Sec. 2.96) *(Definition is not clear. Some words are, obviously, missing between the word 'government' and the phrase 'of work').* Are the Secretaries of States required to be called at this incomplete stage for discussion, in such circumstances?

y. Moreover, Sec. 74.9 contains four question marks, indicating incomplete spade work, before posting in public domain calling for the opinion of the public.


was final ;

74.9	The provisions of section ???? shall apply to an application for review under this section and to a decision of a medical board in connection with such application as they apply to a case for disablement benefit under that section and to a decision of the medical board in connection with such case.

What are the Secretaries of States required to do in this case? What is the hurry, at all?

z. Hon'ble High Court of Madras has observed, "Public Interest means an act beneficial to the general public. Means of concern or advantage to the public, should be the test. Public interest in relation to public administration, includes **honest discharge of services of those engaged in public duty**. To ensure proper discharge of public functions and the duties, and for the

purpose of maintaining transparency, it is always **open to a person interested to seek for information** under the Right to Information Act, 2005" (*The Registrar, Thiyagarajar College of Engineering, Madurai Vs. The Registrar, Tamilnadu Information Commission – 30.04.2013*). Has the Drafting Team prepared the draft Labour Code keeping in view public interest? Why does it not reveal the forces behind the terminology and phraseology in the Code **allegedly** prepared by it?

aa. In regard to the penalties for breach or violation of rules, Sec. 165.2 (liv) & Sec. 166.2 (xxxv) of the Code provide for excessive delegation to the Executive, and are, therefore, unconstitutional. The upper limit of penalties must be provided for, beforehand in the proposed Act / Code itself. These two sections traverse, clearly, beyond Sec. 156 and the Sixth Schedule. The government has not yet visualised what sorts of duties are going to be imposed on the employers and employees through the yet-to-be-born subordinate legislations. The Drafting Team does not know what procedures are to be put in place to make the new machinery work. But, it wants to have penal powers for breach or violation of Rules as well as Regulations which are also going to be prepared only later. In essence, the government has made am attempt, through the Draft Code, to get excessive delegation to it by the Parliament, in the matter of penalties, without making the Parliament know the intricacies and the consequences of such a legislation. **A legislation cannot leave it to the Executive to correct the situation which produces unexpected consequences**. Hon'ble Supreme Court has said, "Unlike Parliamentary legislation which is publicly made, **delegated legislation or subordinate legislation is often made unobtrusively in the chambers of a minister, a secretary to the Governor or other official dignitary.**" (*ITC Bhadrachalam Paperboards Vs. Mandal Revenue Officer 1996 (6) SCC 634 and Harla Vs. State of Rajasthan AIR 1951 SC 467 and B.K. Srinivasan Vs. State of Karnataka AIR 1987 SC 1059*). But, does the Drafting Team care?

bb. It is possible to bring in, at the initial stage itself, a comprehensive Code covering all aspects of Social Security, as this is not a legislation in a field where there is no other law in force. The proposed Labour Code, is intended to replace the existing Social Security enactments and dismantle the established structure of those social security organisations. It is, therefore, essential for the Executive to place a comprehensive Bill covering all aspects

of the subject-matter, including the **manner in which the delivery machinery would function,** so that the area of defaults and the quantum of penalty can be identified and the approval of Parliament obtained beforehand, without any need for imposing new penalties in new areas not covered by the Code / Act.

Meeting, a make-believe arrangement

17. There is reason to believe that the "consultation process" on the basis of an incomplete Labour Code (with spelling mistakes, grammar mistakes, bizarre and unsubstantiated provisions), scheduled to be held on 02.05.2017, without giving adequate time to the State Governments to examine it, is only a make-believe arrangement by some forces who hold the MOL&E as a hostage to further their private business interests. It is the Secretaries of State Governments who can, in the interests of their respective States, rise up to the occasion and make the Drafting Team see reason.

18. If the Secretaries allow the meeting on 02.05.2017 to go on without raising questions of various substantial issues, a few – **only a few** - of which have been enumerated *supra*, it is likely that similar make-believe arrangements will be rushed through to fulfil the formality / process of consulting the workers and employers also soon. Thereafter, the formal Bill will be placed before the Parliament and declared to have been passed in a jiffy. Subordinate legislations as desired by the ravenously-greedy ultra-rich businessmen will, then, be prepared at political level and projected as the 'Rules', 'Regulations', 'Bye-laws', 'Schemes' and 'Licenses'. And, all the time-tested social security legislations, bequeathed to the nation by Sir William Beveridge and Prof. B.P. Adharkar would go with the wind. What is more, there will be no scope for retracing the steps, when the Intermediate Agencies established through the Labour Code demonstrate, later, the predatory propensity inherent in them.

It is only the Secretaries of the States who can rescue the authorities of the MOL&E held as hostages, now, by the greedy power-brokers!
The nation deserves only real Social Security!

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