THE EMPLOYEES' STATE INSURANCE ACT, 1948 (AS AMENDED): A CRITICAL ANALYSIS BEFORE AND AFTER THE CODE ON SOCIAL SECURITY, 2020

Roonam Gautam, Ph.D. Scholar, Department of Laws, Punjabi University, Patiala, Punjab

ABSTRACT

This article presents a comprehensive critical analysis of India's Employees' State Insurance Act, 1948 (ESI Act), its institutional embodiment in the Employees' State Insurance Corporation (ESIC), and the transformative recasting of statutory social insurance within the Code on Social Security, 2020 (CSS 2020). It traces the evolution of the ESI scheme's coverage, finance, benefits, administration, and adjudication; unpacks conceptual tensions in the definition of "employee" and "wages"; and examines operational issues such as contribution liability, compliance, and enforcement. Against that backdrop, it assesses how CSS 2020 consolidates the ESI Act within a unified framework, expands scheme reach, recognizes new work arrangements, and reorganizes governance. The article also synthesizes leading Supreme Court jurisprudence on ESI coverage, wage components, and constitutional dimensions of social insurance. It argues that while CSS 2020 promises better coherence, portability, and coverage—particularly for unorganized and platform-based workers—effective realization hinges on calibrated rulemaking, digital infrastructure, interstate coordination, actuarial prudence, and principled adjudication. The conclusion proposes a reform agenda centered on clarity of wage definitions, evidence-based exemptions, contributory justice, provider quality, and worker-centric portability, situating ESIC as a backbone of India's universal social protection architecture.

Keywords: Employees' State Insurance, ESIC, social insurance, Code on Social Security 2020, employee definition, wages, compliance, Supreme Court of India, contributory schemes, labour law reform.

1. Introduction:

The Employees' State Insurance Act, 1948 (the "ESI Act") was India's first comprehensive social insurance statute for industrial and commercial workers, enacted in the immediate post-independence period amid modest fiscal space but urgent social protection needs.[1] As a contributory scheme administered by the Employees' State Insurance Corporation (ESIC), it offers integrated benefits—medical care, sickness, maternity, disablement, dependants', funeral, and related supports—financed by payroll contributions, with shared fiscal responsibility for medical care between the Union and States.[2]

Over seven decades, the ESI scheme has undergone iterative expansion in establishment coverage, worker categories, benefit design, and administration, while generating persistent interpretive disputes over "wages", "employee", contribution liability for contractors and principal employers, and the reach of ESI to diverse industries and occupations. Judicial scrutiny—particularly by the Supreme Court—has shaped the contours of coverage and compliance, often emphasizing the statute's protective purpose.

The Code on Social Security, 2020 ("CSS 2020"), notified by Parliament as part of four labour codes consolidating 29 central labour laws, integrates the ESI Act's framework into a unified code, with the Government announcing that the codes are effective from 21 November 2025.[3] CSS 2020 rationalizes definitions, extends the social security umbrella to new categories including gig and platform workers at a scheme-design stage, and reorganizes governance. Yet, the transition raises doctrinal and operational questions: continuity of existing case law, wage-definition harmonization across schemes, contribution base stability, portability across fragmented labour markets, and the calibration of fiscal federalism for medical care financing.

This article offers a critical analysis of the ESI Act "before" and "after" CSS 2020, weaving in the Supreme Court's latest jurisprudence relevant to ESIC coverage, wage elements, and scheme administration. It aims to inform scholars, practitioners, and policymakers on how to interpret and implement ESI within the Code era, without diluting the foundational

[1] *Historical overview of ESIC's formation and purpose; see ESIC statutory background materials and standard references.*

[2] *Governance and scheme scope; see ESIC official overview and statutory scheme materials.*

[3] *Government announcement making the four Labour Codes effective from 21 Nov 2025. Press Information Bureau.*

principles of social insurance.

Part 2 outlines the ESI Act's design—coverage, benefits, contribution mechanics, administration, and adjudication. Part 3 addresses pre-Code doctrinal disputes: "wages", "employee", principal–contractor liability, exemptions, and jurisdiction. Part 4 analyzes CSS 2020's integration of ESI—definitions, coverage extensions, governance changes, and transitions. Part 5 synthesizes leading Supreme Court case law touching ESIC applicability and wage components, and comments on their continued relevance under CSS 2020. Part 6 evaluates implementation challenges and proposes reforms. Part 7 concludes.

2. The ESI Act: design, Coverage, Finance, and Administration

2.1 Objectives and Scheme Architecture

The ESI Act seeks to ensure social insurance against contingencies—sickness, maternity, disablement, and death—via pooled risk-sharing among employers, employees, and the State for medical care.[4] ESIC, a statutory corporation under the Ministry of Labour and Employment, administers the fund, contracts medical services (often through state-run ESI hospitals and dispensaries), and disburses cash benefits.[5]

2.2 Coverage of Establishments and Persons

Historically, the Act first applied to non-seasonal, power-using factories of a specified employment threshold, then expanded via notifications to shops, hotels, restaurants, road transport, cinema, newspaper establishments, and later to educational and medical institutions in certain states.[6] Coverage of employees hinged on wage ceilings notified by the government, ensuring the scheme targeted low- to middle-income wage earners.

The "employee" definition—broadly including persons employed for wages in or in connection with the work of a factory or establishment, whether directly employed or through an immediate employer (contractor)—was pivotal in extending coverage to

---

4 *ESI Act statement of objects and benefits; standard ESIC materials.*

5 *ESIC as statutory body under Ministry of Labour and Employment; organizational description. Employees' State Insurance — Wikipedia.*

6 *Progressive extension to shops and other establishments through notifications; sectoral history references.*

outsourced labour and peripheral operations "in connection with" the main work.[7]

2.3 Benefits

- **Medical benefit:** Comprehensive healthcare for insured persons and dependants, financed jointly with States as per statutory shares and administrative arrangements.[8]
- **Sickness benefit:** Cash compensation during certified sickness periods, subject to contributory conditions and rates.
- **Maternity benefit:** Paid leave for insured women, aligned over time with maternity protections in cognate legislation.
- **Disablement benefit:** Temporary and permanent disablement payments following employment injury; dependants' benefit upon death due to employment injury.
- **Other supports:** Funeral expenses, confinement expenses (where maternity facilities unavailable), and vocational rehabilitation in certain cases.

2.4 Contributions and Wage Base

Contribution rates—split between employer and employee—are applied to "wages" as defined under Section 2(22) of the ESI Act, historically excluding certain allowances (e.g., employer's contribution to PF, gratuity), while controversies persisted over the status of conveyance, incentives, overtime, and production bonuses.[9] Rate calibrations over time aimed to balance actuarial soundness with affordability; for instance, the composite rate was reduced to 4% (3.25% employer, 0.75% employee) effective 1 July 2019 to reduce compliance costs and broaden participation.[10]

2.5 Administration and Adjudication

ESIC operates via zonal, regional, and local units, with medical institutions under its umbrella. Compliance is enforced through inspections, contribution assessments, interest and

[7] *Employee definition and contractor inclusion under the ESI Act; established in statute and case law.*
[8] *Medical benefit financing shares and institutional arrangements; ESIC/State arrangements.*
[9] *Wage definition controversies under Section 2(22); comparative case law.*
[10] *Composite contribution rate reduced to 4% (3.25% employer; 0.75% employee) effective 1 July 2019. Employees' State Insurance — Wikipedia.*

damages for delay, and recovery proceedings. Adjudication traditionally involved ESI Courts for specific disputes, with appellate and writ oversight, and eventual Supreme Court review on substantial questions of law.

3. Pre-Code Doctrinal and Operational Issues

3.1 The "Employee" and Contracting Chains

The inclusion of persons employed "through an immediate employer" (contractor) and those engaged "in connection with the work" of the establishment created a wide coverage ambit, supporting social insurance across modern supply chains. Litigation often centered on whether peripheral activities—security, canteen, cleaning, loading, field work—were sufficiently connected to the principal establishment. Courts have generally favored purposive interpretation to protect workers, placing ultimate contribution liability on the principal employer when contractors default, consistent with the Act's risk-pooling purpose.[11]

3.2 What Counts as "Wages"?

The ESI definition of "wages" historically included all remuneration paid or payable in cash if the terms of the contract of employment, express or implied, so provided.[12] *Disputes arose over:*

- Production bonuses and incentive allowances—often held includible when linked to service conditions or productivity and forming part of regular remuneration.
- Overtime—generally includible for contribution calculations, subject to specific rulings and administrative guidance.
- Conveyance/transport allowances—treated diversely across forums; later case law (e.g., Texmo Industries at High Court level) excluded pure conveyance/travel allowance from wages under Section 2(22), though Supreme Court alignment has varied by context.[13]

---

[11] *Principal employer liability for contractor workers; Supreme Court's purposive approach in social welfare statutes.*

[12] *Core wage definition under ESI Act, Section 2(22).*

[13] *Treatment of conveyance/travel allowance; see Texmo Industries line (noting jurisdictional posture), with caution that Supreme Court alignment depends on context. Discussion informed by sectoral analyses such as*

- Ex gratia payments and leave encashment—outcomes turned on regularity, contractual basis, and whether payments were contingent and non-uniform.

3.3 Coverage Thresholds, Exemptions, and Notifications

Applicability relied on central and state notifications extending the Act to new sectors and areas. Disputes over "construction activity" and site-based workers triggered litigation on whether establishments were workplaces in the statutory sense or transient worksites. Courts have sometimes stayed blanket application to construction workers, reflecting sectoral specificities and overlapping welfare boards.[14]

3.4 Compliance, Interest, and Damages

Upon default, employers could face interest (compensatory) and damages (penal) under statutory provisions. Courts generally upheld strict compliance to sustain the insurance pool, while tempering damages where bona fide disputes existed.

3.5 Forum and Jurisdiction

Questions of maintainability before ESI Courts, civil courts' exclusion, and writ jurisdiction persisted, with the Supreme Court emphasizing specialized fora and statutory remedies, while leaving writ oversight open for jurisdictional errors or violations of natural justice.

4. The Code on Social Security, 2020: Integration and Change

4.1 Consolidation and Objectives

CSS 2020 consolidates nine central social security laws, integrating the ESI Act into a broader framework that also covers provident fund, gratuity, maternity benefit, and other schemes.[15] The central goals include definitional harmonization, digital modernization, wider coverage (including unorganized, gig, and platform workers via scheme design), and governance rationalization.

Khurana & Khurana's overview. Khurana & Khurana.

[14] *Litigation over ESI applicability to construction workers and sectoral stays. General reference to controversy; for sectoral posture, see ESIC v. Builders' Association of India note as reflected in secondary compilations.*

[15] *CSS 2020 consolidates nine social security laws and reorganizes governance; see comparative explainers. Complinity.*

4.2 Commencement and Transitional Provisions

The Government has announced the four Labour Codes, including CSS 2020, are effective from 21 November 2025, with staggered implementation and state rulemaking to operationalize provisions.[16] Transitional clauses preserve existing rights and liabilities, ensuring continuity of insurance coverage and adjudicatory processes until rules and schemes under CSS 2020 fully replace predecessor provisions.

4.3 Definitions and Wage Harmonization

CSS 2020 introduces a harmonized "wages" definition across codes, focusing on basic pay and dearness allowance, capping exclusions (e.g., bonuses, HRA, overtime, commissions, and allowances) within a 50% threshold rule: if excluded components exceed 50% of total remuneration, the excess is added back to "wages".[17] This materially affects the ESI contribution base by curbing aggressive structuring of allowances to minimize contributions, enhancing actuarial stability and equity. It also promises to reduce inter-scheme inconsistencies.

4.4 Coverage Expansion: Establishments and Workers

- Broader establishment coverage through notifications, with potential extension to all establishments above minimal thresholds, and mandatory ESI for hazardous industries regardless of size—closing historical gaps for micro-units engaged in high-risk activities.[18]

- Inclusion of gig and platform workers within the Code's social security architecture through dedicated schemes. While these segments are not folded directly into ESI's traditional contributory inpatient/outpatient care design, CSS 2020 authorizes central/state scheme creation with aggregator contributions, making ESIC's networks relevant for service delivery partnerships.[19]

---

[16] *Code commencement. Press Information Bureau.*

[17] *Harmonized wage definition and 50% cap on exclusions under the Codes; general labour code architecture and practice notes.*

[18] *Extension of ESI to hazardous industries regardless of size under CSS 2020 framework; policy explainers. See ADP India explainer. ADP India.*

[19] *CSS 2020 provisions for gig/platform workers via schemes; general overviews. Complinity; ADP India.*

- Improved portability and digital registration to track worker histories across employers and states, addressing fragmentation in India's labour market.

4.5 Governance and Administration

CSS 2020 reorganizes authorities into centralized social security organizations, strengthening cross-scheme coordination, grievance redress, and digital compliance. ESIC retains its statutory role within this unified architecture, with scope for inter-operability with PF, gratuity, and other benefits platforms.

4.6 Compliance, Enforcement, and Adjudication Under the Code

- Unified registration and returns, digital inspections, and risk-based enforcement reduce manual friction and improve traceability.

- Harmonized penalty structures and compounding options aim to promote compliance while reserving deterrence for willful evasion.

- Adjudication pathways are streamlined, with specialized authorities and appellate mechanisms designed for timely resolution; writ oversight remains as constitutional safety valve.

5. Supreme Court of India: Key Case Law Touchpoints and Continuing Relevance

This synthesis focuses on Supreme Court principles with direct or close relevance to ESIC coverage, contribution base, and applicability. While some sector-specific rulings have evolved, the purposive, worker-protective lens generally prevails and is likely to inform CSS 2020-era interpretation.

5.1 Purposive Interpretation and Beneficial Legislation

The Supreme Court has repeatedly construed social insurance statutes beneficially, emphasizing coverage over exclusion where texts are reasonably capable of including vulnerable workers. This principle supports:

- Reading "in connection with the work" broadly to include contract labour integral to operations.

- Discouraging artificial fragmentation of establishments to evade thresholds.
- Treating regular, remuneration-like payments as "wages" for contribution purposes, despite nomenclature.[20]

CSS 2020's harmonized definitions reduce scope for evasion; the Court's beneficial approach will likely continue to police substance over form.

5.2 "Wages" Components

Supreme Court guidance on wage components under cognate statutes (and ESI where addressed) typically asks whether a payment is:

- Contractually mandated and uniformly payable (includible);
- Contingent, ex gratia, or expense reimbursement without wage character (excludible);
- An allowance whose systematic use to depress base pay may invite anti-avoidance treatment.

Under CSS 2020, the 50% cap on exclusions codifies an anti-avoidance principle; Supreme Court reasoning aligns with enforcing this ceiling against allowance-heavy structures that undermine social insurance financing.[21]

5.3 Contractor Chains and Principal Employer Liability

The Court has upheld principal employer responsibility to ensure contributions for workers engaged through contractors in or in connection with establishment work, reflecting the scheme's protective logic. Under CSS 2020, this remains salient, with digital contractor registration and returns improving traceability; judicial emphasis on ultimate responsibility will likely persist.[22]

5.4 Sector-Specific Controversies

[20] *Beneficial interpretation principles in social welfare statutes; Supreme Court jurisprudence generally consistent.*
[21] *Anti-avoidance stance toward allowance-heavy structures; alignment with the Codes' 50% cap.*
[22] *Principal employer liability in contractor chains; Supreme Court line of cases across welfare statutes.*

Construction and site-based works have raised recurring questions on coverage, with litigation contesting ESI applicability. At times, the Supreme Court has stayed blanket application to construction workers during pendency of challenges, reflecting the need for tailored approaches and coordination with Building and Other Construction Workers' (BOCW) welfare regimes. In the Code era, careful scheme design and clear notifications are essential to avoid overlap and uncertainty.[23]

5.5 Procedure, Natural Justice, and Penalties

On interest and damages, the Supreme Court tends to uphold compensatory interest while requiring reasoned application of penal damages, considering mens rea and bona fide disputes. Under CSS 2020's harmonized penalties and compounding, these principles will continue to guide proportionality and due process in enforcement.[24]

6. Critical Evaluation: Opportunities and Risks Post-CSS 2020

6.1 Strengths and Opportunities

- **Coherence and harmonization:** A unified "wages" definition with the 50% cap should improve actuarial stability, fairness across employers, and predictability for adjudication.
- **Wider reach:** Potential extension to smaller establishments, mandatory coverage for hazardous sectors regardless of size, and scheme-based inclusion of unorganized, gig, and platform workers.
- **Portability and digitization:** Centralized registration (one ID), digital payroll interfaces, and inter-state data sharing can finally knit together fragmented employment histories—vital for mobile and informalized labour markets.
- **Governance integration:** Cross-scheme coordination should reduce duplication, smooth benefit portability (e.g., medical + PF + gratuity records), and enable integrated compliance analytics.

---

[23] *Construction sector coverage disputes; Supreme Court procedural stays noted in secondary references.*

[24] *Interest and damages proportionality; Supreme Court guidance on mens rea and bona fide disputes in penalty imposition.*

6.2 Risks and Implementation Challenges

- **State capacity and fiscal federalism:** ESIC's medical benefit depends on robust state systems; underfunded facilities and uneven quality undermine scheme legitimacy. CSS 2020's promise requires predictable cost-sharing, clinical governance, and provider accreditation.

- **Transition complexity:** Shifting to harmonized wage definitions and digital returns demands payroll restructuring, contractor education, and grievance handling to avoid contribution shocks.

- **Gig/platform scheme design:** The Code enables schemes but does not, by itself, ensure depth of coverage; funding shares among aggregators, governments, and workers must be actuarially grounded and enforceable, with ESIC networks leveraged where appropriate without cross-subsidization that jeopardizes the core pool.

- **Adjudication backlog:** Even with streamlined authorities, disputes on wage composition, thresholds, and historical liabilities will persist during transition; resourcing quasi-judicial bodies is essential.

- **Compliance externalities for MSMEs:** While long-run benefits are clear, short-run payroll cost increases for allowance-heavy structures could compress take-home pay or employment in sensitive sectors if not phased carefully.

6.3 Equity and Contributory Justice

The social insurance ethic requires fair burden-sharing:

- Employers benefit from healthier, more stable workforces; contributions are part of the social cost of production.

- Workers accept contributory deductions in exchange for risk coverage and medical access; protections must be visible and reliable.

- The State's role in co-financing medical care and regulating provider quality is pivotal; under-contribution by States erodes trust.

6.4 Data, Quality, and Accountability

Digitization should not stop at compliance:

- Clinical quality metrics at ESIC hospitals and empanelled providers;
- Patient-reported outcome and experience measures;
- Grievance dashboards and ombuds structures;
- Interoperable health records with privacy-by-design.

7. Reform Agenda: Making CSS 2020 Work for ESI

- **Clarify wage rules with practical illustrations:** Publish binding FAQs showing treatment of allowances, bonuses, overtime, leave encashment, and reimbursements under the 50% cap. Align ESIC circulars with Code definitions to prevent forum shopping.
- **Calibrate transitions:** Time-boxed grace periods for allowance-heavy payrolls to rebalance fixed pay; safe-harbour computations for MSMEs; and phased enforcement with technical assistance.
- **Strengthen provider networks:** Invest in ESIC hospital upgradation, public–private partnerships with transparent pricing, accreditation standards, and e-claims—especially in districts with low ESIC facility density.
- **Hardwire portability:** Universal social security accounts seeded to verified IDs; auto-carriage of contribution histories across employers and states; mobile-first claim filing and telemedicine access.
- **Contractor compliance by design:** Mandatory e-registration of contractors on employer dashboards; real-time reconciliation of contributions; and joint-and-several liability triggers with fair dispute mechanisms.
- **Gig/platform schemes:** Finalize aggregator contribution frameworks, benefit baskets (catastrophic cover + OPD), and service delivery via ESIC networks where possible;

prevent cross-subsidy leakage from ESI's contributory pool without explicit fiscal backstops.

- **Adjudication capacity:** Staff specialized authorities with labour, actuarial, and accounting expertise; publish anonymized decisions to build a predictable body of precedent.
- **Federal financing compact:** Update Union–State cost-sharing for medical care to reflect caseloads, inflation, and quality benchmarks; performance-linked transfers for states meeting service and data standards.

8. Conclusion

The ESI Act inaugurated India's social insurance tradition by recognizing that industrial growth without risk pooling leaves workers and families exposed to health and income shocks. Its journey has not been linear: expansions in coverage, advances in benefits, and improvements in administration coexisted with definitional disputes, compliance gaps, and uneven service quality.

CSS 2020 offers a once-in-a-generation opportunity to consolidate and modernize this legacy. By harmonizing wage definitions, expanding reach to hazardous micro-units and potentially to workers in emerging labour forms, and reengineering governance and compliance through digital systems, the Code can deliver a more equitable, portable, and dependable social insurance regime. Judicial principles—purposive interpretation, substance-over-form wage analysis, and accountability in enforcement—remain vital guardrails.

Realizing the Code's promise will require disciplined rulemaking, actuarial prudence, sustained investment in provider quality, and empathetic transition management for employers and workers. If implemented with rigor and fairness, ESIC within the CSS 2020 framework can anchor India's aspiration for universal, resilient social protection.