Journal of Advances and Scholarly Researches in Allied Education
Vol. 18, Issue No. 6, October-2021, ISSN 2230-7540

New Labour Codes in India: A Beginning

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Abstract - The empowerment of workers is necessary for an empowered, prosperous and Aatmanirbhar India. Even after 73 years of Independence, approximately 90 percent of workers work in the unorganised sectors that do not have access to all the social securities. The total number of workers, comprising of organised and unorganised sectors, is more than 50 crores. It is for the first time that any Government has cared for the workers in both organised and unorganised sectors and their families. Workers may approach the National Industrial Tribunal for settlement of an industrial dispute related to dismissal, retrenchment or termination within 45 days after the after the application for the conciliation of the dispute was made. The Ministry of Labour and Employment introduced four Bills in 2019 to amalgamate 29 central laws related to labour laws thereby simplifying and modernising the labour regulations in a labour intensive country, like India. These bills regulate: I Wages, (ii) Industrial Relations, (iii) Social Security, and (iv) Occupational Safety, Health and Working Conditions

Keywords - New Labour, Codes, Beginning

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OBJECTIVES OF THE STUDY

1. To study on Labour Reforms undertaken since 2014

2. To study on New categories of worker has been introduced in this code

RESEARCH METHODOLOGY

DATA ANALYSIS

The revised Industrial Relations Code Bill, 2020, was introduced in Parliament on 19 September, following revisions in response to the Parliamentary Standing Committee on the IRC Bill's recommendations for 2019. The IRC Bill of 2020 aims to rationalise and amalgamate three labour laws: the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947, in order to facilitate business operations "without jeopardising" worker welfare and benefits. We must evaluate the latest version of the bill in light of these considerations.

INTRODUCTION

Empowering workers is critical for a prosperous, empowered, and Aatmanirbhar India. Even after 73 years of independence, approximately 90% of workers are employed in the informal sector, which lacks access to all social benefits. The total number of workers, organised and unorganised, exceeds 50 crores. For the first time in history, a government has shown concern for workers in organised and unorganised sectors, as well as their families.

Previously, the working class was entangled in a web of numerous labour laws. The Central Government has taken a revolutionary step toward providing them with true liberty. To accomplish this, the Central Government took the historic step of codifying 29 laws into four Codes, ensuring that workers have access to security, respect, health, and other welfare measures.

The country's organised and unorganised sectors employ more than 50 crore people. The vast majority of these workers, approximately 90%, work in the unorganised sector. These four Labour Codes have ensured that all of these workers are protected by labour laws. All workers in the organised and unorganised sectors will now receive minimum wages, and a sizable portion of the unorganised sector's workforce will also receive social security.

The Code on Wages, 2019;

The Industrial Relations Code, 2020;

The Occupational Safety, Health and Working Conditions Code, 2020; and

The Code on Social Security, 2020

CODE ON WAGES, 2019

The Code on Wages, 2019 was enacted to amend and consolidate the laws relating to wages, bonus

and matters incidental to the same. The code repeals 4 major labour law enactments -

The Payment of Wages Act, 1936

The Minimum Wages Act, 1948

The Payment of Bonus Act, 1965

The Equal Remuneration Act,1976

HIGHLIGHTS:

CHANGES MADE IN THE CODE ON WAGES, 2019

Earlier provisionLatest Provision

1. In an interval of 5 years, the state or the central government must revise the minimum wages. The state or central government shall not exceed a period of five years for revision of minimum wages.
2. The definition of the term 'employer' includes any person who employs one or more persons at an establishment. The definition of 'employers' includes any person who directly or indirectly employs one or more persons at an establishment.
3. The Code provides for a Central Advisory Board consisting of: (i) employers, (ii) employees in equal number as employers, and (iii) independent persons (not exceeding one-third of the total members). The Code provides for a Central Advisory Board consisting of: (i) employers, (ii) employees in equal number as employers, (iii) independent persons (not exceeding one-third of the total members), and (iv) five representatives of state governments to be nominated by the central government.
4. The Payment of Wages Act was applicable only to employees under wages below Rs. 24,000 per month. There has been removal of such threshold limit for applicability under Code on Wages. Hence, the Code shall be applicable to all employees irrespective of monthly wages.

CODE ON SOCIAL SECURITY, 2020

The code was introduced to provide social security benefits by extending its goals to employers and employees.1 The code seeks to simplify labour laws by amalgamating various enactments such as:

The Employees' Compensation Act, 1923

The Employees' State Insurance Act, 1948

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

The Maternity Benefit Act, 1961

The Payment of Gratuity Act, 1972

The Cine Workers Welfare Fund Act, 1961

The Building and Other Construction Workers Welfare Cess Act, 1996

The Unorganized Workers' Social Security Act, 2008

HANGES MADE IN THE CODE ON SOCIAL SECURITY, 2020:

Earlier provisions New Provisions

1. No definitions were given for:

Fixed term employment

Home based worker

Self-employed worker

Platform worker

In various acts like Maternity Act, Unorganized Workers' Social Security Act, and Welfare fund Act, the definition of the word 'employee' was not provided.

All specified definitions are included under the Code on Social Security, 2020.

Definition of 'employee' was introduced and applicable across all provisions under the Code on Social Security, 2020.

2. Under all previous regime of labour laws, the cancellation of an industry establishment and its registration was required across all previous employment laws. As per Section 3 of the Code on Social Security, 2020, it is not mandatory to obtain registration if the industry establishment is already registered under any other central labour law.

THE INDUSTRIAL RELATIONS CODE, 2020

The Code introduces provisions for simplifying compliance burdens and promoting ease of doing business in an establishment. The code seeks to simplify labour laws by amalgamating various enactments such as:

The Industrial Disputes Act, 1947

The Trade Unions Act, 1926; and

The Industrial Employment (Standing Orders) Act, 1946.

Highlights:

The Code has introduced a 'sole negotiating union' in establishments where there are more than one trade union. Such sole negotiating union is required to have 51% or more workers as members per Section 14 of the Code. Only sole negotiating union shall be permitted to negotiate terms with the employer.The code provides provisions for workers to secure their employment after being laid off. A fund shall be initiated consisting contribution from the employer and the appropriate government.

CCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

The code was introduced in the Parliament to regulate and manage safety and health conditions in industries and establishment.5 The code seeks to simplify labour laws by amalgamating various enactments such as:

The Factories Act, 1948;

The Plantations Labour Act, 1951;

The Mines Act, 1952;

The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955;

The Working Journalists (Fixation of Rates of Wages) Act, 1958;

The Motor Transport Workers Act, 1961;

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;

The Contract Labour (Regulation and Abolition) Act, 1970;

The Sales Promotion Employees (Condition of Service) Act, 1976;

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;

The Cine Workers and Cinema Theatre Workers Act, 1981;

The Dock Workers (Safety, Health and Welfare) Act, 1986; and

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

CHANGES MADE IN OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

Earlier Provisions New Provisions

1. Lack of any particular provisions for workers who were employed in sectors like transport, journalism, sales. Special provisions are specified with leave requirements and working hours for workers employed under transport, journalism, sales.
2. Lack of provisions stating leave encashment policy. Provisions relating to leave encashment are laid out as well for availing at the end of calendar year. Leave encashment at the time of discharge/dismissal, death or superannuation during the course of employment are also laid out under Section-32 of the Code. Most notably, it also provides for carry forward of leaves in case a worker does not avail the whole of the leave allowed to him in any one calendar year. However, the total number of leave days that may be carried forward cannot exceed 30 days and any leave with wages that have been refused can be carried forward without limit.

New categories of worker has been introduced in this code

- "gig worker" refers to an individual who performs work or participates in a work arrangement and earns money from such activities outside of a traditional employer-employee relationship;
- "platform worker" refers to an individual who is engaged in or undertaking platform work, i.e. a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to connect with other organisations or individuals to solve specific problems or provide specific services.
- For the first time in India, workers' application-based assignments are recognised as an employee-employer relationship.
- Establishment of a National Social Security Board for self-employed workers.
- Increase funding sources from corporate social responsibility and establish a "special

purpose vehicle" for the purpose of implementing unorganised worker schemes..

The Second National Commission on Labour submitted its report in 2002, stating that India had a multiplicity of labour laws and thus recommending that multiple labour laws be codified at the central level in four or five labour codes. While discussions were held, no serious initiative was taken in this direction between 2004 and 2014. Labour reforms also remained unaffected by the 1991 economic reforms. The labour code brainstorming was expedited when the GST, as One Nation One Tax, was implemented in the country with consensus and the strong will of the Hon'ble Prime Minister Modi Ji to take difficult decisions for "Sabka Sath Sabka Vikas aur Sabka Vishwas." By advancing this progressive thinking, labour law reforms were also expedited.

Prior to the Ministry of Labour and Employment initiating labour reforms, extensive discussions were held. Initially, the Ministry uploaded all draught Labour Codes to its website for stakeholder and public consultation as part of the Government's pre-legislative consultative policy. Between 2015 and 2019, the Ministry hosted nine tripartite discussions at which all Central Trade Unions, Employers' Associations, and representatives of State Governments were invited to share their perspectives/suggestions on labour reforms. The Parliamentary Standing Committee on Legislation also examined all four Bills and made recommendations to the Government.

Labour Reforms undertaken since 2014

- To ensure transparency and accountability, the use of an IT-enabled inspection system has been mandated.
- On 29.03.2018, the gratuity ceiling was increased from Rs 10 lakhs to Rs 20 lakhs.
- On 16.02.2017, the Payment of Wages Act made it possible for employees to receive their wages via check or credit to their bank account.
- The Maternity Benefit Amendment Act of 2017, which took effect on April 1, 2017, increased the duration of paid maternity leave from 12 to 26 weeks..

Changes Made In the Industrial Relations Code, 2020

Earlier Provisions	New Provisions
1. No definitions were given for: • Fixed term employment • Employee The definition of workmen was provided in The Industrial Dispute Act, 1947[3].	Definitions of both, employee and fixed term employment were introduced. The term 'workmen' got replaced and renamed as 'worker' in the **Industrial Relations Code, 2020.** Definition of the term 'strike' is now denoted as mass casual leave by more than 50% of workers on a given day.
2. A workman is not required to bring grievances to the grievance redressal committee and can directly move to conciliation officer under Section 9C of the Industrial Dispute Act, 1947	It is now mandatory under the **Industrial Relations Code, 2020 to approach the grievance redressal committee.**
3. Lack of time limitation provided for completion of a disciplinary proceeding against a particular worker.	It is introduced that an inquiry along with its investigation needs to be completed within a time period of 90 days. The time limitation starts from the date of worker's suspension.
4. The standing orders were only applicable to threshold above 100 or more workmen as per the Industrial Establishment Standing Order Act, 1946[4].	The threshold of standing order has now been increased and shall be applicable to 300 workers.

The bill lowers the criteria for "sole negotiating agent" from a previously more stringent 75% to 51%, as in Kerala and West Bengal. It increased the membership criteria for the Negotiating Council from 10% to 20%, theoretically limiting each negotiating council to five unions. The latter is a more severe provision. However, this is a historic legislative measure due to the fact that it has defied numerous governments since 1947! In other words, everything that is good begins and ends here.

As if by magic, the 2020 bill increased the threshold for standing orders applicability from 100 in 2019 (as defined in the industrial employment act) to 300 workers. According to the 2017-18 Annual Survey of Industries, approximately 90% of operating factories and 44% of their workforce will be completely exempt from the new standing orders.

To appreciate the potential harm this provision could cause to both workers and employers, it's necessary to first understand the purpose of the Industrial Employment (Standing Orders) Act, or IE Act. A Standing Order is a type of collective contract that standardises terms and conditions of service for various types of employment contracts and their nature (for example, probationary tenure and conditions of confirmation), conditions governing termination of employment (by employers or employees), definitions of "misconduct," "disciplinary procedure," and the types and conditions of punishment, and so on.

Prior to this act, employers and employees had unequal bargaining power, as the majority of businesses lacked standing orders. They resorted to unilateral, capricious, and discriminatory practises, as well as similar-positioned workers. These factors contributed to labour disputes and inefficient and inequitable outcomes for employers and employees alike. As a result, the law was enacted to rein in labour market opportunism and foster cooperative labour relations.

It is well established that the probability of unionisation increases with the size of a firm's

workforce. As a result, union membership is less likely in the 90% of establishments with fewer than 300 employees. The Bill then de-formalizes previously formal enterprises and workers. In other words, workers in small businesses are unlikely to be protected by unions or by law. They will transition to being ad hoc and precarious workforce. The employer's obligation to provide a written contract under the Occupational Safety and Health Code (OSHC) will be ineffective, as it contains no specific penalties for non-compliance similar to those in China.

Union coverage in India's nongovernmental sector, even by the most generous estimates, will not exceed 10%. In 1997, the ILO estimated that collective bargaining coverage in India was less than 3%, a figure that would not have increased significantly in light of the growing prevalence of contract workers and subsequent anti-union human resource policies. The Industrial Disputes Act limited the application of the less stringent conditions to public utility services that the government could notify for a limited period. The 2020 bill strengthened the conditions for legal strikes and expanded their application to all establishments.

Workers are not permitted to strike without giving 14 days notice during conciliation proceedings and seven days after they conclude, or during adjudication proceedings and three months after they conclude. Assuming that all industrial relations agencies operate at peak efficiency, workers will be unable to strike legally for at least 150 days (14 days' notice+45 days of conciliation+90 days of adjudication).

Since early 2001, industrial conflicts have revealed the darker side of unionbusting and the abuse of contract labour flexibility. They may occur more frequently now. Contract labour employment was already higher (around 35% according to ASI estimates; see below) and will continue to grow exponentially as a result of the OSHC's liberal clauses. It exempted contractors and principal employers employing fewer than fifty workers (instead of the current twenty) from contract labour regulations, effectively allowing contract labour in core activities (as a combined reading of S.57 (a) (b) (c) demonstrates) and free employment in non-core activities. The bill authorises employers to hire workers on fixed-term contracts without regard for their legitimacy (i.e. objective reasons such as business growth or replacement of workers on maternity leave), minimum or maximum tenures, or number of extensions. Taken together, these changes will significantly increase the share of non-permanent workers. To top it off, the government increased the retrenchment and closure threshold from 100 to 300, legalising what approximately ten states have done since 2014, following Rajasthan's lead. The bill retained the current low severance pay for retrenchment and closure, fifteen days of pay for each completed year of service. This pitiful sum is the central government's deadliest blow to workers, even though state governments that liberalised the thresholds increased severance pay to at least 45 days of pay. Additionally, the Social Security Code does not include unemployment insurance in its definition of "social security." Such is the drafting ability of legislators that visionary, even competent, legislators' bodies will turn in their graves.

The OSHWC significantly increased the employment threshold for contract labour, allowing contract labour to be used in non-core activities and, under certain conditions, core activities, and reading the conditions literally means that any principal employer can legitimately employ contract workers in regular activities. Additionally, the Code provides that if contractors are unable to meet the normal licensing criteria, they may obtain "work-specific licences" to employ contract labour for a defined tenure as determined by the officials [see S.47(2)].

It's worth noting the dynamics within flexible employment categories. Employers now have a bewildering array of options: casual, temporary, fixed-term, trainees (all of whom are directly employed by the principal employers), and contract workers, with the exception of earn-while-you-learn workers, who are illegally converted from learners to workers. Employers will have little incentive to hire workers directly employed by their principal employers, given the widespread availability of relatively inexpensive and highly dispensable contract work. The primary advantage of this type of third-party employment is that monitoring costs, social security maintenance costs, legal compliance costs, and litigation costs are all transferred to the contractor. Fixed-term employment is also significantly more expensive than contact labour, as the new law requires pro-rata wages and benefits, as well as social security, including gratuity. Then there are transaction costs associated with recruitment and termination, among other things. Employers who are pragmatic will either outsource or use a contract labour system.

These are multiple blows to job security and a significant eroding of labour rights. Together, the OSHWC and IRC will exacerbate informality in the non-agricultural sector (see Table 2 below).

Then it serves neither Labour nor Capital. Finally, we must ask the following question: Can the government insert new clauses into the bill, such as increasing the threshold for application of regulations concerning standing orders from 100 to 300, which was not mentioned in the 2019 bill, or introducing "core versus non-core" operations for contract labour regulation application, which was also not mentioned in the earlier bill and thus not discussed before the Parliamentary Standing Committee? While it is understandable if the government errs on the side of social welfare promotion, it may not be so understandable when the government does the opposite, as the two Industrial Relations Codes and OSHWC demonstrate.

CONCLUSION

The new labour code contains numerous provisions and special provisions aimed at improving regulation of industries and establishments while still allowing industries some degree of flexibility. Additionally, the codification and consolidation of such laws has resulted in an expansion of the laws' scope and applicability, increased compliance ease, and the elimination of multiple definitions and overlapping authorities. The new set of rules will strengthen the relationship between employer and employee, as well as the government, and will have a long-term positive effect on the industry, contributing to the concept of ease of doing business. Finally, we must ask the following question: Can the government insert new clauses into the bill, such as increasing the threshold for application of regulations concerning standing orders from 100 to 300, which was not mentioned in the 2019 bill, or introducing "core versus non-core" operations for contract labour regulation application, which was also not mentioned in the earlier bill and thus not discussed before the Parliamentary Standing Committee? While it is understandable if the government errs on the side of social welfare promotion, it may not be so understandable when the government does the opposite, as the two Industrial Relations Codes and OSHWC demonstrate.

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