

Comparative Analysis of Labour Codes with Existing Legislation

Mrs. Amreen Naz*

Assistant Professor, Dept. of Personnel Management & Industrial Relations, Patna University, Patna

Abstract - The term labour is included in the concurrent list of our Indian Constitution under 7th schedule. Hence, the law regulating labour can be enacted by both the Parliament and the State Legislatures. In India, labour is regulated through almost 40 central labour laws which regulate the various aspects of labour such as social security, working conditions, wages and Industrial disputes. The existing labour legislation is very complex and is very difficult to understand by people for whom this act has been enacted. Hence to ease the complexities and to make uniformity in labour laws, the Second National Commission recommended to merge these labour laws into various categories such as Industrial Relations, Wages, Social Security, Safety, and Welfare & Working Conditions to make Indian Economy more vibrant and competitive. Accordingly, the Central Government had introduced four bills on labour codes to consolidate the 29 major Central labour laws out of 40 central labour laws.

This paper highlights the major changes and its impact on regulation of law as we all know that now 14 Central Acts with almost 1458 sections and 937 compliance's have been consolidated into four codes with just 480 sections. After implementation of these codes, the industries will have an ease over filing multiple returns under various labour laws. It will certainly decrease the working complexities of the Company. Over the years, India has performed poorly in the "Ease of Doing Business Index" report published by the World Bank. Hence, the goal of the Indian Government behind introducing and implementing labour codes is to make India a lucrative market hub for manufacturing industries. The Indian Government has been trying hard in this direction since 2014. Undoubtedly, the business environment in the country is improving rapidly and this happens due to continuous efforts of the present government which has prioritised this matter after 2014. As a result, India's Doing Business ranking has improved from a position of 142 in 2014 to 63 in 2022, as per the World Bank report. And with the completion of long pending labour reforms the government certainly achieved the goal to make India in the top ten nations in the Ease of Doing Business index in the coming years.

But, as we know every coin has two sides. It is true that on one hand, the codes will simplify the existing laws, on the other hand these codes have loopholes too. Hence, the paper generally focuses to deal with the various aspects of labour codes in comparison to existing labour laws for better understanding of labour legislation because without comparison between the two, codes are not possible to understand.

Keywords - Labour Codes, Labour Legislation, Industrial Relations, Wages, Occupational Safety, Social Security

-----X-----

INTRODUCTION

Indian labour laws are so old and outdated and in spite of multiple amendments in various legislations, labour laws still suffer rigidity and complexities which leads to not only low economic development of the country but also it blocks the country from attracting foreign manufacturing companies to establish their sets up here in the country. Due to this reason, India is lagging behind countries like China and Vietnam. Due to flexible labour laws and conducive business environment these countries attract foreign entities and become global manufacturing hubs successfully while India suffers a huge loss in this regard. Hence, to ease the labour laws the Second National Commission on Labour (NCL) recommended consolidation of

central labour laws into four broader categories such as Industrial Relations, Wages, Social Security and Welfare & Working Conditions. In 2014, when the NDA led government came into power, they initiated a series of reforms at the Central level through simplifying various labour laws in 4 labour codes. Accordingly, Central Government introduced four bills in the year 2019 to merge almost 29 central labour laws into just 4 codes which are as follows:

1. **The Code on Wages, 2019:-** The Code on Wages, 2019 was introduced in the Lok Sabha on 23rd July-2019 by the Hon'ble Labour Minister Santosh Kumar Gangwar and got the President assent on 8th August, 2019. The Code on Wages is all about to

regulate wages & bonus payments in all employments where any industry, trade, business, or manufacturing process is carried out. This Code has 9 chapters, 67 sections and 26 definitions. The Code on Wages devoured following four labour laws i.e. the payment of Wages act-1936, The Minimum Wages Act-1948, Payment of Bonus Act-1965 & the Equal Remuneration Act-1976.

2. **The Code on Social Security, 2020:-** The Code on Social Security, 2020 was put up in the Lok Sabha on 22nd September, 2022. It was passed by the Rajya Sabha on 23rd September-2022 and received the President's assent on 28th September-2022. The said code made changes and consolidated the laws relating to social security with the motive to extend the social security to all the employees and workers working in the organised as well as unorganised sector. This Code covers total nine different acts such as The Employees Compensation Act-1923, The Employees Insurance Act-1948, The Employees Provident Fund & Miscellaneous Provision Act-1952, The Employees Exchange (Compulsory Notification of Vacancies) Act-1959, The Maternity Benefit Act-1961, The Payment of Gratuity Act-1972, The Cine Workers Welfare Fund Act-1981, The Building and other Construction Workers Cess Act-1996, The Unorganised Workers' Social Security Act-2008.

3. **The Industrial Relations Code, 2020:-** The Code on Industrial Relations, 2020 was put up in the Lok Sabha on 22nd September, 2022 & it was passed by the Rajya Sabha on 23rd September-2022 and received the President's assent on 28th September-2022. The code amended and consolidated the laws relating to trade unions, condition of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and the matter connected in this regard. The IR Code subsumes and amends the acts such as Industrial Dispute Act-1947, Trade Union Act-1926, and The Industrial Employment (Standing Order) Act-1946.

4. **The Occupational Safety, Health & Working Conditions Code, 2020-**The Code on Occupational Safety, Health & Working Conditions Code, 2020 was tabled in the Lok Sabha on 22nd September, 2022. It was passed by the Rajya Sabha on 23rd September-2022 and received the President's assent on 28th September-2022. The code amend and consolidate the laws relating to laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters related in this regard. The Code subsumes and amends the thirteen acts such as The

Factories Act, 1948, The Mines Act, 1952, The Dock Workers (Safety, Health and Welfare) Act -1986, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act-1996, The Plantations Labour Act- 1951, The Contract Labour (Regulation and Abolition) Act, 1970, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955, The Working Journalist (Fixation of Rates of Wages) Act, 1958, The Motor Transport Workers Act, 1961, The Sales Promotion Employees (Condition of Service) Act, 1976, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Cine Workers and Cinema Theatre Workers Act, 1981.

COMPARISON BETWEEN NEW LABOUR CODES & PRESENT LEGISLATIONS

To understand new labour codes, one needs to understand existing labour laws because without the knowledge of existing legislations understanding code is like walking blind folded.

i. Existing Wage Legislations Vs Codes on Wages 2019.

Sl no	Existing Legislations	Codes on Wages
1	Applicable only on scheduled employment under Minimum Wages Act, 1948	Provisions of Code on Wages shall apply to both organised & unorganised sectors.
2	Claim regarding delay or non- payment of wage could be made within 6 months	Provisions to make non-payment claims can be made within 3 years.
3	Payment of wages Act-1936 Bonus Act, 1965 is applicable to employees getting remuneration less than or equal to Rs.24,000/ per month.	Under Wage Code this ceiling has been removed & shall be fixed by appropriate government which will cover supervisors and managers also.
4	A person shall be disqualified for getting bonus if he/she is dismissed due to misconduct such as fraud, dishonest behaviour, theft & misappropriation under Payment of Bonus Act-1965	Under Wage Code, disqualification on conviction of sexual harassment is also added in this ambit.
5	A dispute regarding bonus can be referred to the Industrial Tribunal.	This provision does not exist as of now under codes
6	Gender discrimination in respect of recruitment, promotion or transfer is mentioned under Equal Remuneration Act-1976.	But under the Wage Code, such discrimination is prohibited.
7	Total ten registers & four returns have to be filled and maintained covering all four acts.	Now under codes, only two registers are required to be maintained & only one return is to be filed.

Now, so far as Code on Wages is concerned, it has some positive and negative implications on the stakeholders. If we look at the positive side of the coin we can say that the Code on Wages overhaul the earlier labour legislation related to wages and it becomes very conducive to the stakeholders to use it. We can summarise the positive implications of Code on Wages as follows:

- In earlier labour laws related to wages, there is disparity in the definition of wages but the Codes on Wages not only simplifies the term

“wages” but brings uniformity in the definition of wages and also, it helps to avoid unnecessary disputes between stakeholders.

- The Code on Wages introduces the concept of Floor Wages that brings uniformity and eliminates the undue disparity in wages all over the country. It will enhance the welfare of low wage earners.
- Code on Wages make the provision to fix the minimum wages by the Central Government giving instructions to the State Government to fix the minimum wages equal to or above the floor wages. This will eliminate the income disparity within and across the state.
- Code on Wages brings uniformity among male and female workers and employees in terms of wage payment and includes the transgender community in its gambit.
- This code eases the filing returns online.
- This code on wages bolster the rights of the contractual employees who can claim the minimum bonus from the Principal Employer in case the contractor fails to do so.
- It provides extension of limitation period up to 3 years, thereby allowing more claims of the workers.
- This Code on Wages increases the penalty manifold that acts as a deterrent to the employer to do anything unpleasant against the workers and employees.

So far as the negative side of the Code on Wages is concerned, we can summarise its negative implications as follows:

- The code makes the provisions to fix the higher wages that discourages the employers to restrict the hiring process.
- It increases the cost of employment due to increase in wages.
- Code on Wages decreases the take home salary.
- Codes on wages may increase the social disparity due to fixation of minimum wages on the basis of geographical locations which may lead to the job outsourcing by the Industries.

Now, after looking at the both sides of the coin we can infer that despite the Code on Wages have some negative aspects, it has serve the motive of its stakeholders very positively by ensuring the uniformity of wages, reducing the burden of compliances, covering vulnerable class of society and restricting the

employer to disobey the provisions of Code on Wages by enhancing the penalties manifold.

ii. Existing Legislations Vs Codes on Social Security.

Sl no	Existing Legislations	Codes on Social Security
1	Cancellation of registration of an Establishment is required under every act.	Required only when there is no registration of Establishment under any labour laws
2	There is no provision of National Social Security Board and State Unorganised Workers' Board.	Provisions of National Social Security Board and State Unorganised Workers' Board are present, comprising 42 members.
3	Appeal against provident fund authority on 75% of excess amount by EPF Authority.	Appeal against provident fund authority entertains on 25% of excess amount by EPF Authority.
5	Provisions regarding liability of owner or occupier of Factories, etc for excessive sickness benefit is not present in earlier labour legislation.	Insured person due to insanitary working conditions. Insanitary conditions of any tenements are occupied by insured persons due to neglect of the owner. Liable for extra expenditure by the Corporation.
6	Funding of State Government Schemes did not exist.	Funding of State Government Schemes is present partly by contributions. (The Central Government may also provide financial assistance.)
7	Helpline, facilitation centre for unorganised workers, GIG Workers and Platform workers did not exist.	Appropriate government provides a Helpline, facilitation centre for unorganised workers, GIG Workers and Platform workers.
8	There are no provisions of registration of unorganised workers, GIG Workers and Platform workers.	Provision of registration of GIG Workers is present on production of Aadhar Card.
9	Schemes of GIG Workers and Platform workers are not present. Also, GIG Workers and Platform workers didn't get ESI benefits.	Central Government is liable to frame rules for GIG Workers and Platform workers relating to- a) life and disability cover; b) health and maternity benefits; c) accident assurance; d) old age protection; e) crèche.
10	GIG and Platform workers didn't get ESI benefits.	Provisions for ESI benefits are available for GIG and Platform workers.
11	Provisions for penalty for failure to pay contributions.	Penalties for noncompliance of any requirement of Code including non-payment of prescribed contributions.

Now, like codes on wages this code has its own pros and cons. looking into the bright side of the code we can summarise the facts as given below:

- This code not only subsumes the labour legislations related to the Social Security but it also enhanced the coverage and extended the benefits of workers of organized and unorganized sector.
- The Social Security Code makes the provision of social security by providing for the registration of all types of workers including gig workers and platform workers. Now, gig workers and platform workers are eligible for life and disability coverage, maternity benefits, pension, etc.
- The code has widened its coverage by including the fixed term employees, workers of new age business like E-Commerce and inter-state migrant workers in addition to the contract employees.
- Uniformity in determining wages for the purpose of social security benefits is another

highlight of the code which eliminates the ambiguity present in the current regulations.

- The code has provided a wide definition of wages. Specific exclusion with ceiling have been provided for discouraging inappropriate structuring of salaries to minimise ambiguity in social security benefits.
- Provisions have been made for Inspector Cum Facilitators to give advice to the stakeholders when it comes to compliance of the provisions of the social security code.
- As per the code, all returns and records are maintained through digital mode.
- The code eases the compliances and deter the non-compliances by enhancing the penal provisions manifold.

So far as the negative side of the Code on Social Security is concerned, we can summarise its negative implications as follows:

- Code on Security neglected the few important recommendations of the National Commission on labour (2002). The NCL has recommended the existing wage ceiling for coverage should be removed. But these recommendations remain unattended in the social security code.
- The code has given the concept of gig worker and platform worker and made compulsory the schemes for all these categories of workers. However, their definition is not so clear in the code that brings ambiguity in implementation of the schemes specific to these categories of workers.
- The Code on Social Security and Industrial Relations Code, 2020 have different provisions on gratuity for fixed term employees and it is not clear whether a fixed term employee with a contract of less than one year would be eligible for gratuity under the Code on Social Security, 2020.
- The code mandates an employee or a worker (including an unorganised worker) to provide his Aadhar number to receive social security benefits. This may violate the Supreme Court's judgement given in the Puttaswamy Case. In this judgement, the court had ruled out that Aadhar Card may only be made mandatory for the expenditure on a subsidy, benefit or service incurred from the Consolidated Fund of India. Since certain entitlements such as gratuity and provident fund (PF) are funded by the employers and employees and not by the Consolidated Fund of India so this move given in the codes on

social security may violate the judgement of the apex court.

Now, after looking at the pros and cons of the code we can infer that despite the Codes on Social Security have some negative aspects, it has clearly taken a step forward in the implementations of the schemes in the right direction making its coverage more universal by covering large population of the country and easing its compliances more user friendly.

iii) Existing Legislations Vs Codes on Industrial Relations.

Sl no	Existing Legislation	Codes on Industrial Relations
1	Definition of Industry excludes domestic services.	Definition of Industry excludes (i) Institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service.
2	There is no provision of fixed term employment in the existing legislation.	Provisions made for Fixed term employment. Employees on fixed term shall be eligible for statutory benefits like gratuity even for serving for one year.
3	As per Industrial Dispute Act, the workman first has to approach a conciliation officer before raising their grievances to the committee.	But under IR Code, Grievance Redressal Committee is mandatory.
4	Negotiating Union" related provisions are not there.	For Negotiating by the Union, recognition is mandatory.
5	Presently only such industries which are defined under the Industrial Employment Standing Order Act needs to form standing orders and is applied to only such industries which employs 100 or more employees	Under codes Industrial Establishment for the purpose of Standing order is same as defined in payment of Wages act. Also, Standing order will apply to those industries where 300 or more workers are ordinarily employed.

6	For initiating disciplinary proceedings ,a time limit is not prescribed.	The disciplinary proceedings enquiry has to be completed within 90 days from the date a worker has been put under suspension.
7	One member of the Tribunal under the ID Act, 1947 is used to resolve member disputes.	Under codes proper redressal machinery is made under the Tribunal which will consist of 2 members out of which one has to be an administrative member and other has to be a judicial member.
8	For going on strike, prior notice is required for industry in public utility services.	Now, advance notice of 14 days is mandatory to be served by all industrial establishment before going on strike
9	Re-skilling fund is a concept which is not there in existing legislation.	As per the provisions of the codes, the employer has to make arrangements of an amount equal to 15 days last drawn wages of retrenched workers for re-skilling purposes.

11	Penalties: For failure to certify standing fine of Rs. 5000/- and in case of continuing offence further fine of Rs. 200/-per day.	Fine enhanced Up to INR 2, 00,000. In case of non-certification of standing orders, an additional fine of INR 2,000 per day during which the contravention continues. In subsequent contravention of the finally certified standing orders, fine up to INR 4,00,000 and imprisonment for a term up to 3 months, or both
----	---	---

The code has many changes to enhance the amity between employee and employer relations that makes a positive impact on the Industrial Democracy. However, the code has its own merits and demerits which needs to be addressed to make the code more user friendly for its stakeholders.

The merits of the Industrial Relations Code can be summarised as given below:

- The Code prohibits strikes or lock-outs in any establishment unless a prior notice of 14 days is provided. Similar provisions existed in the Industrial Disputes Act, 1947 for public utility services (such as, railways and airlines). The Code expands these provisions to apply to all industrial establishments. This may impact the frequency of workers to strike and employers to lock-out.
- The Code introduces the concept of fixed term employment which has certain benefits like elimination of the role of middleman or the contractor. Now, an employer can engage manpower directly in the establishment. Employees engaged in such a manner shall be entitled for the equal pay as permanent employees for executing similar nature of work. They are also eligible for gratuity and other benefits as permanent employees.
- The Code introduces the concept of Workers reskilling funds by the appropriate government which is a welcome step. Contributions in the fund are made by the respective employer which indicates that the worker is free from the contributions.
- The Code introduces the concept of negotiating union or a negotiating council which simplifies the collective bargaining process between the employer and the union. It will certainly enhance the amity and cordial relations of employer and the union.
- The Code expanded the definition of strikes. 50% workers going on casual leave simultaneously come under the purview of strike.
- The Code permits the government to defer, reject or modify awards passed by Industrial Tribunals and the National Industrial Tribunal.

Now, the provisions of IR Code is not clear on some aspect which leads negative implications which is summarised as follows:

- So far as fixed term employment is concerned, it may create the fear that the nature of employment is temporary and it may lead to job insecurity and may deter the employees from raising issues like unfair wage practices, denial of wages or leave and extended work hours. Further, the code does not define the type of work that comes under the purview of fixed term employment.
- The IR Code makes the provision for the central government to defer the enforcement of awards passed by the Industrial Tribunal and the National Industrial Tribunal on the grounds of affecting national economy or

social justice. Now, when the Central government itself is a party to the dispute, then it may arise as a conflict of interest as the Central government may modify an award made by the National Tribunal.

- In the Industrial Relation Code there is a provision of formation of a Negotiation Council when multiple registered unions exist and every union has at least 20% of workers as its members. The Code is silent about the formation of a negotiation union when the existing multiple union has less than 20% workers as its members.

iv) Existing Legislations Vs Codes on the Occupational Safety, Health & Working Conditions Code, 2020.

Sl no	Existing Legislations	Codes on the Occupational Safety, Health & Working Conditions Code, 2020.
1	In existing legislation, registration process is executed separately for different acts.	Employer of an establishment has to apply for registration through digital mode.
2	No provision of appointment letter.	Provision of Appointment letter.
3	Rights of employees with respect to employees' health and safety from the employer is not present.	Rights of employees with respect to employees' health and safety from the employer.
4	Provision of Welfare Officer is on 500 workers in a factory.	Provision of Welfare Officer is on 250 workers in a factory, mine and plantation.

5	There is no provision of the National occupational safety and health advisory board.	There is provision of the National occupational safety and health advisory board.
6	Provisions of Safety Committee and Safety Officer are on or above 1000 workers.	Provisions of Safety Committee and Safety Officer is: i) on 500 workers in a factory. ii) 250 workers in hazardous processes. iii) On 250 workers in building or other construction. iv) On 100 workers in mine.
7	Employers are responsible for maintenance of health, safety and working conditions of employees to some extent.	Employers are responsible for maintenance of health, safety and working conditions of employees to a greater extent.
8	Welfare facility is present.	Employers are responsible to provide and maintain the welfare facility for the employees.
9	There are no provisions for Journalists in terms of daily and weekly hours.	For Journalist, it is maximum 144 hours during period of 4 consecutive weeks and not less than 24 consecutive hours during 7 consecutive days
10	Provisions regarding overtime work are not present.	Consent of the worker is required for overtime work.
11	Multiple registers are required to maintain the record.	Register and records are to be maintained by the employer. However, multiplicity is reduced drastically.

12	Concept of Inspector is present in earlier legislation.	A new concept of Inspector-cum-facilitators comes in the code.
13	Provisions of encashment of leave are not present.	Provisions of encashment of leave are present.
14	Validity of Licence is twelve months	Provisions of obtaining Licence for engaging contract labour working in more than one state, or for the whole of India, and is valid for five years.
15	Welfare facilities to Contract Labour: to be provided by the Contractor primarily.	Welfare facilities to Contract Labour: to be provided by the Principal employer.
16	Contract Labour in core activity existed unless prohibited by the Government.	Contract Labour in core activity is permitted under certain conditions.
17	Provisions regarding employment of Audio-Visual workers are not present.	Provisions regarding employment of Audio-Visual workers are present, however it is with written agreement in prescribed form and registered with competent authority.

18	Penalties: lesser fines and imprisonment period.	Penalties: Fines and imprisonment is enhanced manifold.
----	--	---

Now, so far as the implications of this code is concerned, these are as follows.

- In earlier provisions, the right of employees to get information did not exist but in the new code employees shall have the right to obtain information related to employees' health and safety from the employer and also report to the safety committee from the employer. This move of code brings positive vibes among the workers and employees. But at the same time, employees and workers may use the facility of extracting the information which is unsuitable for the environment of the Industry.
- Initially, the welfare facility to the Contract Labour is to be provided by the Contractor. In case the contractor fails to provide the welfare facility then the Principal Employer is liable to provide the welfare facility. Now, in the code it is mentioned that the Principal Employer is liable to provide welfare facilities. This may create the extra burden on the Principal Employer.

CONCLUSION

The new labour codes have a positive impact on the health of the Indian industries bringing all stakeholders closer, enhancing industrial peace, amity and democracy. The new code not only enhances women empowerment but also it has given social security and social status to the vulnerable sections of the society i.e gig workers, platform workers and workers of unorganized sector. The code has reduced the most prevalent mindset that the industry and labour are always in conflict by simplifying the mechanism of resolution of Industrial disputes where all the stakeholders get a win-win solutions enhancing Industrial democracy and benefiting personal well beings. The new labour codes bring simplicity and increase the accountability and also simplify the process of filing returns, obtaining licences and registrations. However, in spite of some positive impact, labour codes have some drawbacks such as making provisions to fix the higher wages that discourages the employers to restrict the hiring process. The Code also prohibits strikes or lock-outs in any establishment unless a prior notice of 14 days is provided which will make the legal strikes and lock out more difficult to all establishments resulting in weakening the rights of workers. In addition to that, applicability of standing order is required for an establishment where 300 or more workers are employed which is against the interest of workers because initially the threshold of applicability of standing order was 100 workers only. Also, the provision regarding the recruitment of safety and welfare officers is still done by the employer which may encourage favouritism. It needs to be changed

and welfare officers and safety officers should be directly appointed by the government for any establishments. Moreover, trade unions have some objections with respect to some provisions of the codes and also the employer's guild has raised the voice that the financial burden may increase. The new labour codes fail to provide clarity over jurisdiction of the appropriate government. But, these issues are not so serious and can be resolved amicably in the conducive environment.

As India is now one of the fastest growing economy in the world, so to sustain the pace of growing economy, India needs to be a flexible, more resilient, user friendly to all stakeholders, meeting all international standards labour laws and these new codes on labour have potential to meet all the parameters that requires to place the country in the top notch position of Ease of Doing Business Index. Also the new labour codes fails to provide clarity over jurisdiction of the appropriate government.

REFERENCES

1. Ease of Doing Business Report by World Bank.
2. PRS Legislative.
3. <https://labour.gov.in>.

Corresponding Author

Mrs. Amreen Naz*

Assistant Professor, Dept. of Personnel Management & Industrial Relations, Patna University, Patna