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A Critical Analysis of Amended Labour Codes

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All codes are passed by Parliament and signed by the President and ready for implementation but still not effective as the date of effectiveness has not been notified. They will replace 29 existing labour laws. A new explanation of machinery, workers, etc, has come into force. The Central Government can apply this Code to any establishment subjected to the size threshold as may be notified. The Code also makes how the registration of unorganised workers, gig workers, and platform workers can be done. Changes in the Employees Provident Fund (EPF) and Employees State Insurance Scheme (ESI) for gig and platform workers have come into effect. With a planned maximum of 12 hours of labour per day, the Occupational Safety, Health, and Working Conditions Code will require all enterprises to include restrooms, showers, and locker rooms for both men and women as well as transgender persons. The ideal government has now been fully established for public sector initiatives. The 2019 Code on Wages attempts to control bonus and wage payments across all employments. The Code prohibits discrimination based on gender when it comes to paying and hiring workers for the same or similar jobs. There is no regulatory structure or system of universal social security in SSC. MWC 2020 has once more disregarded and fallen short of defining a process for figuring out an appropriate minimum wage for workers. Additionally, it has eliminated legal recourse for employees and enforcement procedures, as the Supreme Court has previously ruled.

Keywords: *code, employer, worker, industry, social security, welfare, wages, reforms, occupational safety.*

INTRODUCTION

One of the most recent socio-legal reforms underway in India is the simplification of the labour rules and amendment of the law to enable coexistence from the perspectives of constitutional rights and human rights. There are more than forty labour legislation acts in India. This has led to several disputes about the laws' overriding effects, and it appears to be exceedingly difficult to deal with all of these laws at once. The labour law reforms may be beneficial since they will increase the openness of the labour rules, encourage ease of compliance, and reduce their complexity. Several foreign labour laws and practices appear to have been adapted into the new industrial relations legislation. The new provisions of this legislation represent the liberalisation and dynamic transformation of the requirements of labour law. This legislation has incorporated several labour-related measures, including the classification of workers, payday, holidays, and wage rates, among others. If a factory employs more than 300 workers, this regulation will be enforced. Other provisions include those for layoffs, closure, and retrenchments.¹

Additionally, it recognises the requirement for giving notice of a strike before 14 days as well as the ban on strikes in certain circumstances. Additionally, it reduced the proportion of workers that are part of exclusive bargaining units to 51%. The Social Security Code covers retirement, employment, and social security benefits. Both organised and unorganised labourers were a part of it. As a result, it may offer full social security to workers in unorganised industries. This law also provided the government with the authority to create laws for the provident fund, job injury benefits, housing, and kid-focused educational programmes. Interstate migrant workers, platform workers, gig workers, and employees in the film business are all covered within the definition of employees in the Social Security Code, etc.

Moreover, it has clauses that address lowering employee contributions in case of an emergency or natural disaster. Occupational Safety, Health, and Working Conditions Code, 2020. 13 separate labour law legislation are replaced by this act. This act's primary goal is to control employee health, safety, and working conditions in addition to employment law. The meaning

¹ Vineet Chaturvedi, 'Critical Analysis of New Labour Codes' (2022) 5(5) IJLMH
<<https://doi.org/10.1000/IJLMH.113697>> accessed 27 January 2023

of "factory" has been expanded under this law. The manpower restrictions for dangerous situations have been lifted. For contractors with more than 50 employees, this code is now required. Due to this, all employees are now only permitted to work a maximum of 8 hours a day every day. This has included the right of women to work in any setting, with the employer taking responsibility for her protection. This has also acknowledged several rights for migratory employees from other states. Labour has a significant historical significance in India. Indian feudal society was already marked by unequal relationships between the landlord and the indentured labourers, who were required to work on the former's property in exchange for a little wage or a portion of the harvests.²

The official and informal sectors coexist in the Indian labour market at the moment, which is unique. Currently, the informal sector is in desperate need of strong legislation that can protect its stakeholders or the individuals who operate in this sector. 92% of Indians, according to estimates, work in the unorganised sector. This indicates that just 8% of those who are working and earning can truly take advantage of advantages related to job stability. The fact that some entrepreneurs lack the funds and lack access to government institutions to secure government permits to establish firms voluntarily transfer to the informal sector is one of the main causes of the increase in the number of employees in this sector. The business owners in this industry can operate illegally simply because they are not on the government's radar. Additionally, since no unions or contracts are protecting their workers, they can pay them pitiful salaries.

INDIA'S LABOUR REGULATIONS ARE CRITICISED:

Many economists and sociologists have stated that Indian labour regulations have been blatantly biased against companies and business owners in favour of employees and workers. Many of them also contend that the persistence of antiquated laws and labour-related restrictions is to blame for India's declining ease of doing business. This a claim that may be supported by company owners who lack the contacts and resources necessary to obtain the

² Richard Mitchell et al., 'The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development' (2014) 1(2) Asian Journal of Law and Society

necessary bureaucratic permissions to launch their enterprise or who lack the necessary capital to do so³.

Many small-scale business owners with 10 or fewer employees may lack the legal expertise to ensure that their start-up gets the licence or legal clearances needed to open for business. Additionally, it has frequently been seen that business owners or operators will pay off labour inspectors to avoid being held accountable by governments. This leads to a kind of legal stagnation in which the people working in hazardous This results in a type of legal stagnation where individuals who work in dangerous conditions or in the informal sector are denied the opportunities or benefits they are due because they are not recognised. This is the reason why robust labour regulations are necessary. The most intriguing name for labour law is industrial law. It's critical to distinguish clearly between laws about industrial reforms and labour welfare to ensure that labour laws are in workers' favour. This is because several significant features of labour, such as its dignity, wage rates, and time requirements, cannot be covered only by industrial legislation. Consequently, a healthy labour population would want a comprehensive examination of labour legislation.

THE INDUSTRIAL RELATIONS CODE 2020

This law introduced many additional clauses that concentrate on the complaints of workers who have been let go after a quarrel. The legislative change contained in this law is crucial because it encourages additional job opportunities and makes it possible for 300 people to be hired without prior authorization from the government or the administration, which is a step in the right direction in the fight against unemployment⁴. Employers praised this regulation since it increased the maximum number of employees that can be employed by a business to 300 without requiring complicated government authorisation for termination. It is advantageous and the legislation has been simplified, which lessens the employer's administrative burden.

³ 'Overview of Labour Law Reforms' (PRS) <<https://prsindia.org/billtrack/overview-of-labour-law-reforms>> accessed 28 January 2023

⁴ Aishwarya Bhuta, 'Imbalancing Act: India's Industrial Relations Code' (2020) 65(3) *The Indian journal of labour economics : the quarterly journal of the Indian Society of Labour Economics* <<https://doi.org/10.1007/s41027-022-00389-3>> accessed 28 January 2023

Due to the employers' strong ability to silence the voice of the tiny unions in opposition to their viewpoint, this new legislation may not be favourable to small unions. However, it is presumed in the code that the longer waiting period before granting authority to strike is a window of time that will allow for communication and the resolution of the problem in a variety of ways.

Disagreements over the discharge, dismissal, retrenchment, or termination of services of a specific worker constitute an industrial dispute. Within 45 days of applying for conciliation, employees may go to the National Industrial Tribunal for conciliation of an industrial dispute including termination, retrenchment, or dismissal. If an employer suspends an employee pending an investigation or inquiry. Employers of industrial establishments, such as mines, factories, and plantations, employing at least 300 people, are required to obtain prior approval from the federal or state government before laying off, retrenchment, or closing.

The relevant government should create a Worker Reskilling Fund, which shall be supported by employer contributions, payable at 50% of earnings for the first 90 days of suspension and 75% of wages for the duration of the suspension term. The sum must be equivalent to fifteen days' worth of wages that were paid to the employee just before they were laid off. Within forty-five days of the layoff, the fund is credited. Businesses with less than 300 employees aren't allowed to operate without prior government clearance until 2022. The limit was formerly set at a minimum of 100 workers. The maximum number of members allowed for the grievance redressal committee at an industrial firm with 20 or more employees has increased from six under the previous rule to 10. The employee may file a complaint with the National Industrial Tribunal for settlement of an employment dispute involving termination, retrenchment, or dismissal within 45 days of applying for conciliation of the matter.

In cases where more than one registered trade union of workers operates in an establishment, the trade union with more than 51% of the workers as members is recognised as the sole negotiating union. Employers of industrial establishments, such as mines, factories, and plantations employing at least 300 people, are required to obtain advance approval from the state or national government before laying off, retrenchment, or closure. If no qualifying single

negotiating union exists, a council of negotiators made up of at least 20% of the employees shall be established.

Before announcing a strike, trade unions must offer 14 days' notice. Rather than waiting three years, employees now have two years to file a labour dispute against their employer. Through a signed agreement settling the disagreement through arbitration, both employers and workers may voluntarily send workplace conflicts to arbitration. For all central public sector undertakings (PSUs), businesses including railways, mining, telecommunications, and banking, as well as any Controlled Industry judged to be in the public interest, the central government will act as the proper government. Any person engaged by an industrial establishment to carry out physical, operational, supervisory, managerial administrative, technical, or clerical work is now considered an employee under the definition that has been broadened.

Any worker or employee earning up to INR 18,000 will be considered as a worker under the new definition of the term "worker," which is now defined in terms of the wages earned by the worker. "Fixed Term Employees," or workers engaged for a certain length of time under the terms of a contract between the employee and the employer, are introduced.

THE CODE ON SOCIAL SECURITY, 2020

The social security of workers in the unorganised sector, such as migrant workers, platform workers, etc., has never been addressed in the history of labour law development. According to this regulation, the Central Government would establish a "Social Security Fund" for Unorganized Workers⁵. The fund will receive contributions from the enterprises' employers. We refer to them as aggregators. At least 1% to 2% of their annual revenue must be contributed to this fund. Most modifications have been made under this Code. Popularizing social safety is a long-term process that is eagerly anticipated. This code has catered to the millions of self-employed and contract employees for the service sector in businesses like Ola, Uber, Flipkart, Amazon, etc. by adding gig and platform workers. The employees in agriculture were also a

⁵ J. S. Sodhi, 'Labour Law Reform in India' (2014) 50(1) Indian Journal of Industrial Relations
<<http://www.jstor.org/stable/24547025>> accessed 29 January 2023

part of it. In addition, the minimum service requirement for gratuity withdrawal was lowered from five years to one year. Despite the revisions, there may still be several gaps in how the rules are put into practice.

A social security programme can only be effective if employers and employees in the firm or industry are required to make contributions for the workers to access the program's benefits. This condition has not been made required by the code for unorganised companies; it is still optional. It only included those who numbered less than 10, leaving out the vast bulk of employees in the unorganised sectors. This lack of support could not be able to provide enough money for social security. Given that the central government has been given the task, there may be political tensions. It aims to provide social security to everyone who works, regardless of whether they are employed in an organised or unorganised sector or another occupation. The Code on Social Security, 2020, which replaces nine existing statutes, goes by that name. Any institution subject to the size threshold as may be specified may be subject to this Code's application by the Central Government by notice.

THE EMPLOYMENT SAFETY, HEALTH, AND LABOUR CONDITIONS CODE, 2020

The Public Distribution System benefits are now available to interstate migrant employees under this new legislation. Either their home state or the state where they are working can access this⁶. The maximum workday is eight hours, and any more hours need overtime pay that is double the regular rate. Now, this time restriction complies with the ILO Convention. This might be a prohibitive safety and security precaution against potential risks. The state-by-state database set up to maintain the records of migrant workers is based on self-declaration. The Rs. 18,000 monthly income threshold set to classify interstate migrants is insufficient compared to India's per-capita income levels. In India, the 2020 per capita income is expected to be approximately Rs. 11385, which is comparable to the code. The "Fixed-term employment"

⁶ Arpita Ghosh, 'The New Labour Codes: A Critical Analysis' (2021) 63(1) Journal of Labour and Employment Law

regulation mandates that at least 50 people be employed, making fixed-term employment for tiny employees of small businesses uncertain.

THE 2019 WAGES CODE

It tries to control pay rates for all positions in industry, business, commerce, and manufacturing. Four current laws are replaced by the Code on Wages⁷; Paying Wages Act of 1936, the Payment of Bonus Act of 1965, the Minimum Wages Act of 1948, and, The 1976 Equal Remuneration Act. The Code prohibits discrimination based on gender when it comes to paying and hiring workers for the same or similar jobs. Similar Work This category refers to tasks that call for an equivalent level of expertise, diligence, experience, and responsibility. All employees are subject to this Code. For individuals working in mines, railroads, and oil fields, the Central Government will determine remuneration; for all other jobs, the State Governments will determine pay. The operating hours will be determined by the federal or state governments. An employee is entitled to overtime pay for additional hours worked (at least twice the normal wages).

In this Code, 'wages' is the total of a person's pay, allowance, or other monetary components, excluding bonuses and other benefits like travel expenses. By the Code, the Central Government will choose the minimum wage depending on the living conditions of the workforce. It should be kept in mind that floor wages will vary depending on where you live. The floor wage should be greater than the minimum wage set by the federal or state governments. When setting the minimum wage, the government will take into account the skill level of the workers and the complexity of the task. Every five years, the government will update and evaluate these. Employees cannot be paid less than the minimum wage by their employers⁸.

No minimum wage reductions may be made by the federal or state governments if current minimum wages are higher than the floor wage. The employer has the option to set up pay intervals that are daily, weekly, fortnightly, or monthly. Employers have the authority to withhold wages for the following reasons: penalties, absence from duty, employer-provided

⁷ Code on Wages 2019

⁸ 'New Wage Code' (*Press Information Bureau*, 25 July 2022)

<<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1844649>> accessed 29 January 2023

housing, or advance payment offered to the employee. Payment will be made in coins, currency notes, electronic funds transfers, checks, or bank account credit. Employees whose monthly payment does not exceed a defined level are entitled to a yearly bonus equivalent to at least 8.35 percent of their monthly salaries or Rs. 100, whichever is larger. It is vital to note that deductions should not amount to more than 50% of the employee's total remuneration.

Advisory Boards will be created by the Central and State Governments to advise them on several topics, including the introduction of minimum salaries and extension of the opportunities for women in the workforce. The Central Advisory Board will be made up of five representatives from state governments and independent people, as well as an equal number of employees and employers. On the State Advisory Board, there will be independent persons, employers, and employees. The Code specifies sanctions for businesses that violate any of the Code's provisions or underpay employees, with women comprising one-third of the total membership on both Advisory Boards. The maximum punishment for the aforementioned offences, according to the Code, is three months in jail and a fine of Rs. 1 lakh.

FINDINGS

The new labour law has advantages and disadvantages, and only time will be able to determine whether it was a success. India, a developing country, has experienced the necessity for such labour law reform. Following the epidemic, the International Labour Organization issued the following advice for labour policies based on the four pillars of action:⁹

By implementing an active fiscal policy, an accommodating monetary policy, and giving loans and financial support to certain sectors, such as the health sector, Pillar 1 advocates for the stimulation of the economy and the creation of jobs. Pillar 2 promotes promoting businesses, employment, and incomes, providing social protection to everyone, putting in place measures to keep employees, and giving businesses tax and other assistance. By Pillar 3, protecting employees at work entails adapting work arrangements (such as remote work), preventing

⁹ Veena Dubal, 'The Future of Labor and Employment Law: Protecting Workers in the Age of Automation' (2020) 108(5) The California Law Review

discrimination and exclusion of employees, ensuring health security, and increasing access to paid leave. To address the issue of informal settlements and improve the ability and resilience of companies, Pillar 4 recommends employing social dialogue between the government, employees, and employers and workers' organizations, strengthening the capacity of governments, strengthening social dialogue collective bargaining and labour relations institutions and processes that will help to execute it.

Following the Covid Pandemic, different countries adopted a variety of actions and reacted to the workforce. Here are some examples: For employees who were laid off for four months, the UK government gave them 80% of their regular salaries. All employees and self-employed people in Canada who lost their income received \$1400. Additionally, \$2.1 was made available for low-wage workers who are necessary. To prevent layoffs and salary cutbacks, the government will increase its contribution to the employer's wage costs. In Bangladesh, a total of \$89 million was given to workers who lost their employment, and physicians and other health professionals received a bonus package of \$11.77 million.

The new Indian vision and the country's new budget are balanced and in harmony with the legislative amendments to the labour code. It encourages entrepreneurship and offers both immediate and long-term opportunities. The long-term solution throughout the continuing pandemic scenario, however, must strike a balance to reduce the dangers to both groups. As a result, the long-term objectives of the economic recovery are crucial, demanding the constitutionally mandated directive principles.

ANALYSIS OF NEW CODES CRITICALLY

New labour rules have been implemented by the Indian government to facilitate corporate transactions. These rules were one of the primary recommendations of the 2002 report of the Second National Commission on Labour and are largely regarded as the most significant move in labour law reform in three decades¹⁰. On the other hand, labour unions categorically assert that even if there are "constricting labour rules" in India, the labour market is still "flexible" for

¹⁰ S. Ravindra Bhatt, *Labour and Industrial Law: A Comprehensive Guide* (3rd edn, Lexis Nexis India 2019)

employers and that any further changes to the current framework of labour laws will harm the working class. The fundamental justification for the changes was that by eliminating the numerous labour restrictions that made it difficult for individuals to find employment, they would aid in the expansion of the economy and industry. The new labour laws are expected to benefit the Indian economy by making it simpler for companies to establish operations there.

Strikes are prohibited by the Industrial Relations Act of 2020 (IRC), which is expected to make it more difficult for trade unions to organise employees and engage in collective bargaining. According to the Industrial Disputes Act and the new Code, people who work in the formal and informal sectors are more likely to be engaged on a contract basis or for a brief period. This is because the new regulatory framework promotes short-term employment. The State government has been in charge of ensuring that workers who aren't organised receive social security programs.

With the establishment of the Social Security Code, 2020 (SSC), a portion of this authority has been arbitrarily and partially transferred to the Central government. A special component of the SSC 2020 is devoted to platform economies like Uber and gig employment. This regulation is absent from other codes, which is problematic. In the platform economy, it may cause a dispute between employers and workers. Working on a platform entitles you to neither paid time off nor health insurance. These issues and other issues are not addressed by the codes for you. There are also concerns regarding the state of the government's infrastructure and resources for section 113's electronic registration of platform employees, gig workers, and unorganised workers.

However, below the national floor pay of Rs. 178 imposed by the Wage Code, 2019 (WC), states are not permitted to set their minimum salaries. In addition to eliminating enforcement measures and workers' legal rights to file lawsuits, as the Supreme Court has previously ordered, MWC 2020 has once again disregarded and failed to provide a methodology for finding an adequate minimum wage for workers.

People can no longer file lawsuits to demand higher pay. They must instead approach an appeal authority and a quasi-judicial body established by the Wage Code. It is also illegal to hire women

who have just given birth, miscarried, or had a medical abortion within six weeks. Similarly, to qualify for maternity benefits, a worker must have worked for at least eighty days before becoming pregnant. As a result, many pregnant women will be unable to find employment or qualify for social benefits. It would exacerbate their issues and provide them with cover for actions like these, which, if discovered, may result in legal action being taken against their company. The Code also excludes the agricultural and micro-scale industries, thus it doesn't apply to everyone. This is in addition to the elimination of previously designated risky areas that need specific legislative protection.

SUGGESTIONS AND RECOMMENDATIONS

- To secure labour salaries and other payments without interfering with industrial growth and productivity, we must establish an exclusive labour pay commission¹¹.
- We must transform the mindset of the orthodoxy and create social security for women of different cultures and encourage more women to enter the workforce
- We must enact legislation to ensure the safety of women in the workplace.
- Legislation requires migrant workers and foreign workers to use bank facilities so that fraud cannot occur with them.
- Eliminating labour to promote industrial development and output on a global scale.
- We must enact legislation allowing maternity leave in all occupations, for both men and women.
- We must enact legislation to safeguard people's right to employment.
- We must enact a specific law to safeguard women who labour in rural India.
- We must enact specific legislation that will provide migrant workers access to housing assistance.

There has to be a group that gives urban residents jobs in addition to MGNREGA because so many jobless poor people live in cities. a particular program for young workers.

¹¹ *Ibid*

CONCLUSION

With India's population expanding and the majority of labourers working in the country's unorganised sector, the labour reform of 2020 needed to be implemented. This is especially true for migrant workers, whose safety and health are crucial. The labour laws should reform to include protections for migrant workers, in particular, specific regulations for women's safety and security, a new work culture, and a reduction in working hours. These changes are necessary to encourage women to enter the workforce. Protection of rural women at the workplace, a check on timely payment, and equal compensation for equally performing jobs by men and women¹².

We discovered that the new labour code allows businesses freedom in selecting and letting go of staff when we examined the four labour laws that have been approved. This will widen the social safety net for both the formal and unofficial economies and make worker strikes more challenging. Additionally, under the new labour legislation, businesses can close down factories that employ little more than 300 people immediately. This is a result of the new labour code raising the cut-off point from 100 to 300. Previously, corporations had to give 30 to 90 days advance notice before terminating employees and closing down a facility.

Additionally, labour unions must give 60 days' notice before going on strike. With the new labour regulations, unannounced strikes are prohibited. Women are permitted to work in all places of employment, and the daily work maximum is 8 hours. Both organised and unorganised employees are now guaranteed universal social security. If it deems it essential, the government may occasionally suggest assistance programs for the improvement of labourers. How well this labour code will be able to accomplish its primary goal of harmonising India's labour laws and creating a uniform labour code nationwide will be its biggest issue moving forward.

¹² , D. S. Saini, 'Labour Legislation and Social Justice: Rhetoric and Reality' (1999) 34(39)
<<http://www.jstor.org/stable/4408454>> Economic and Political Weekly