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The New Labour Laws

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Abstract

The Indian Labour Law System is known for its variety of labour legislations. The increasing number of disputes in the industrial sector blew the alarm of need of reform in the existing labour laws. From time to time numerous amendments were done in the labour laws but they failed to resolve the ambiguities of the laws. The most important point to take under consideration is that the labour laws were enacted in India when the concepts like globalization, privatization and liberalization were not well-understood by the global society. Recently, a massive reform has been done in the area of labour laws. The Government of India has consolidated the earlier existing 44 central labour legislations into four codes. These are Wage Code; Social Security Code; Occupational Safety, Health & Working Conditions Code; and the Industrial Relations Code. This purpose of this paper is to deal with the provisions of this reform, its effect on both employee and employer class and the opinions of various experts about it, and will also suggest some changes by analyzing the provisions of the other nations.

Keywords: Workers, rights, ambiguity, reforms, codes.

INTRODUCTION

"*I believe in the dignity of labor, whether with head or hand; that the world owes no man a living but that it owes every man an opportunity to make a living.*" - John D. Rockefeller

"Labour" can be defined as the work which a person does by his or her physical or mental strength in exchange of income which is mostly of monetary nature. In the words of Prof. Marshall "*By labour is meant the economic work of man, whether with hand or head*". It includes various types of works done by the workers including both skilled and unskilled work. Labour is the backbone of the Indian economy. However, it is not given much importance as it deserves.

In the Constitution of India, "Labour" is a part of concurrent list. It means that both the State and the legislature have the power to make new laws on this subject and amend the already existing laws. The Indian Government has been working to give a new shape to the already existing labour laws in order to make them eligible to sustain in the business landscape of the 21st Century and to increase the investments. Recently, Indian Government took a revolutionary step of consolidating the 44 then existing labour laws into 4 main codes which include "Wage Code; Social Security Code; Occupational Safety, Health & Working Conditions Code; and the Industrial Relations Code" [1].

BACKGROUND

After the World War period, the living conditions of the workers were decreasing day by day. During the war, various promises were made to the labour class but when the time came to fulfill those promises, nothing was done. Such miserable condition of the workers after the World War caused social unrest and made the people feel that there is an urgent need of formation of labour laws and that too on the international level. This need led to the

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establishment of the International Labour Organization (ILO). Its aim was to achieve progress and overcome the conflict of interest between employer class and labour class through dialogue or other peaceful method. It was given the authority to develop the international standards of labour. The supervision of their implementation was also to be done by it. Further, it made various provisions to ensure equal decision-making powers to workers and the employers. Slowly, these provisions had been replicated in numerous countries including India [2].

If talking particularly about India, the first Act which was enacted for safeguarding the rights of the employees was the Trade Unions Act of 1926. After the World war, the price of the daily used items showed exponential increase. Not only the workers of the Western nations but the Indian workers also awakened and started demanding for their rights. This awakening was first witnessed in India in 1877 in Bombay when the first strike in this regard was conducted. The employees stood in opposition to the working conditions prevailing in the Bombay Mill Workers. Soon after this, in 1890, Bombay Mill Hands Association was established. This was one of the first Trade Unions which were established in India.

Even after the establishment of various trade unions, the problems continued to exist. The reason was that they were not given the liberty on the ground level to work properly. The representatives of the unions were often put in jail. Due to these reasons, the original objective behind the establishment of trade unions could not achieve.

The Trade Unions Act, 1926 was amended numerous times. In addition, some new Acts were also made as per the standards and development of labour aiming to protect the rights of the employees.

LAWS GOVERNING LABOUR IN INDIA

Due to having a dominant position, the employers many times take for granted the work done by their employees as well as them. The government occasionally passes different legislation to address this issue.As compared to the earlier times, the protection of labourers is given much greater importance today. More emphasis is given to protect the rights of employees along with the employers. The Indian government has also passed many laws to support this.These laws give the employees a voice so that they can raise their concerns and demand their rights from the employers.

The major laws which have been made to protect the interests of the labourers are as follows:

Trade Unions Act, 1926

This Act gave the employees a right to form the trade union. These unions' job is to speak out for the interests of the workers.Therefore, by this Act, the employees got a platform where they could raise their concerns related to their work field like salary, employers, working condition, etc.

Industrial Disputes Act, 1947

This Act also works in consonance with the Trade Unions Act, 1926. The main objective behind enactment of this act was to make sure that the employers cannot terminate the employees from the work without any proper justification.

Minimum Wages Act, 1948

The main aim behind this Act was to ensure that there would be a certain amount of money or minimum wage which the workers would receive. The minimum salary varies from one State to another.Determination of minimum wage is done on the basis of factors like the type of work the person is doing, the amount which is needed to fulfill human needs, etc.

Along with these major laws, there are some other laws like the Factories Act, 1948, Maternity Benefits Act, 1961, Payment of Bonus Act, 1965, etc were also enacted to protect the rights of the employees.

If any right of the employees is violated, they can approach the court for help as mentioned under these laws. As per changing time, these laws were amended keeping in mind the change in society and in labour sector. For example – After the increase in the cases of sexual harassment of employees at workplace, a need was felt to enact legislation on this issue. "The Sexual Harassment of Women employees at Workplace Act, 2013" came as solution of this problem which came into force in December, 2013 [3].

THE CODE ON SOCIAL SECURITY 2020

As the name suggests, this code is particularly related to the security of the employees and workers. This code is basically an amendment and consolidation of numerous already existing labour laws. It strives to offer social security to workers and employees working in a variety of industries, including organised, unorganised, and other sectors, as well as for issues related to or incidental to those sectors. The biggest merit of this code is that various types of workers can avail the benefit of social security provided under this code. They include unorganized, fixed term, inter-state migrant, film Industry, construction, Gig and Platform workers.

Under this code, "State Unorganized Workers Board" and "Building Workers Board" are constituted for framing, monitoring and reviewing the welfare schemes for unorganized and building workers. Further, they will also give advice to the central government on matters related to the administration of this code and incidental thereto.

Further, this code covers inter-state migrant workers under the definition of Contract Labour. Inter-state migrant worker refers to a person who is recruited directly or indirectly in employment in any establishment situated in one state but the person himself/herself belongs to another state.

Further, this code amends the criteria for any establishment to avail the benefit of Employees State Insurance Act. Now, this Act will be applicable to any establishment having ten or more employees except seasonal factory. Additionally, it will also include businesses that, as announced by the Central Government, perform dangerous or life-threatening work [4]. In such type of establishment, even if a single employee is employed, the said Act will be applicable to it.

While dealing with the establishments which have less than 10 employees, this code made available Voluntary ESIC coverage to them. This code also reduced the gratuity period for workers journalists from 5 years to 3 years. However, for fixed term employees, this period is reduced to one year.

The new code led a provision of levying and collecting a minimum of 1% and maximum of 2% cess for the purpose of social security and welfare of building workers [5]. For social security of unorganised workers, gig workers and platform workers, the Corporate Social Responsibility Fund is to be utilised within the meaning of The Companies Act 2013.

The unorganised workers, gig workers and platform workers who have completed the age of sixteen years have to register himself or herself with the Government. A distinguishable number will be assigned to such workers.

This code also states that the Government has to appoint Inspector cum Facilitators and their role is to discharge duties as per the inspection scheme. It simply means that the government officials who, at present, are assigned as inspectors will also perform the role of facilitators. It is a vital step taken in the direction of eliminating Inspector Raj.

Under the digitalisation programme of the Government, it will allow the stakeholders to maintain electronic records. When all of India or a portion of it is affected by a pandemic, endemic disease, or a national calamity, the Central Government has the ability to postpone or reduce the employer's or employee's contribution due under both of these Acts by up to three months.

Further, The government will establish "career centres.". In these centre, the employer of any class of establishment can report about the vacancies in his/her particular establishment. However, it is not must for the employer to recruit any person through these career centres [6].

Various existing Acts have been subsumed by the Code on Social Security. 2020 which includes:

1. The Unorganised Workers Social Security Act, 2008
2. The Employees State Insurance Act, 1948
3. The Employees Provident Fund and Miscellaneous Provisions Act, 1952
4. The Payment of Gratuity Act, 1972
5. The Workmen's Compensation Act, 1923
6. The Maternity Benefit Act, 1961
7. The Building and Other Construction Act, 1996
8. The Employees Exchange (Compulsory Notification of Vacancies) Act, 1959
9. The Cine Workers Welfare Fund Act, 1981

OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

The current laws that govern the occupational safety, health, and working conditions of employees in any establishment, as well as for problems and occurrences relating to those circumstances, are amended by this Code. This Code is applicable to all mines and ports, as well as companies with at least 10 employees.. Within 60 days of this code being applicable, all the eligible establishments need to be registered under this code. The employer is required to disclose migrant employees from other states at the time of registration. The already-registered enterprises, however, shall be considered to be registered in accordance with this law.

This code also widened the scope of definition of Contract labour. Now, inter-state migrant workers will also come under this definition.

A "National Occupational Safety and Health Advisory Board" will be constituted by the Central Government. This board's primary responsibility will be to advise the government on issues pertaining to the Code's policies, schemes, provisions, rules, and regulations [7]. Further, on the State level, a "State advisory Board" will be constituted by the State Government which will perform the same function as performed by National Occupational Safety and Health Advisory Board but for the State government and on state level.

An electronic database of inter-state migrant workers will be maintained by the Government. Such migrant workers will need to register themselves with the Government.

This code also fixes the maximum working hours of the workers which is 8 hours per day. In order to make the workers work overtime, prior consent of them need to be taken. In addition, employers must be granted one day of vacation for every 20 days they work in a year.

This regulation is applicable to all businesses with less than ten workers that do hazardous labour. Further, the Contractors may obtain license for a period of 5 years.

While dealing with the inter-state workers, the code states that every year, they will be provided journey allowance for to and fro journey to their native place. Such workers can also avail the benefit of public distribution system either in their native state from where they belong to or in their destination state where they are employed.

This code specifies that when it comes to women, they should have the right to employment in all workplaces for all jobs.. Further, they can be employed in any work which has to be done before 06.00 AM and beyond 07.00 PM. However, the condition is that their prior consent must be taken to do this work. In addition, the employer must also take care about the safety measures, holidays and working hours.

This code mainly includes three schedules which contain lists of:

i. 29 diseases and if any worker contracts with them, the employer has to notify the same to the authorities,
ii. 78 safety matters that the government may regulate, and
iii. 29 industries involving hazardous processes.

The central government has the authority to amend these lists.

Various existing acts are subsumed by the Occupational Safety, Health and Working Conditions Code, 2020 which include:

1. The Contract Labour (regulation and Abolition) Act, 1970
2. The Mines Act, 1952
3. The Motor Transport Workers Act, 1961
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Dock Workers (Safety, Health and Welfare) Act, 1986
7. The Inter State Migrant Workmen Act, 1979
8. The Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provision Act, 1955
9. The beedi and Cigar Workers (Condition of Employment) Act, 1966

THE INDUSTRIAL RELATIONS CODE, 2020

The principal changes made by this code are to the rules governing trade unions, the terms of employment in industrial establishments or undertakings, the investigation and resolution of labour disputes, and matters or occurrences associated with such conflicts.

A workers committee must be there in every industrial establishment having one hundred (100) or more workers. The committee should consist of representatives of both employer and workers engaged in that industrial establishment.

Every industrial firm with twenty or more employees must have one or more Grievance Redressal Committees. This Committee's primary goal is to settle the disputes.Earlier, enterprises with 100 or more employees were subject to the Standing Orders. However, this code revised this number. Now, these Orders will be applicable to those establishments which have 300 or more employees.

The most important as well as most disputed provision laid by this code is that before going on a strike, the employees have to give 60 days’ notice to the employer. Similarly, the employer has to give 60 days’ notice to the employees before lock-out. Additionally, one month's notice must be given to the employees before they are laid off.

The provisions of layoffs, retrenchments, and closure will not apply to any industrial enterprise with less than 50 employees. If any industrial establishment has 300 or more workers, before the closure, lay-off and retrenchment, it has to mandatorily take prior permission of the government. Earlier this limit was that of 100 employees but this code amended the same.

The threshold for negotiating council of trade unions is also changed by this code. Earlier it was 75% workers as members which is now 51% of workers.

After 45 days of application, in case of dispute, the workers may apply to the Industrial Tribunal.

Various existing laws have been subsumed by the Industrial Relations Code, 2020 which include:
1. The Industrial Disputes Act, 1947
2. The Trade Unions Act, 1926
3. The Industrial Employment (Standing Orders) Act, 1946

THE CODE ON WAGES, 2019

The current laws governing pay and bonuses were amended and consolidated with the passage of this legislation. This code defines key terms such as wages, employer, employee, establishment, worker and contractor.

Section 2(y) of the Code gives the definition of wages which is to fall under the ambit of this code. Wages means "all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes, —
i. basic pay;
ii. dearness allowance; and
iii. retaining allowance, if any".

However, there are certain exclusions specified under the act which do not constitute a wage. These include Statutory Bonus, House Rent Allowance, Gratuity payable on Termination of Employment, Ex-gratia or Retiral Benefits, Remuneration payable under award or settlement etc.

This act has embodied the letter of the Constitution by providing a special clause which states that the Employer cannot discriminate the payment of wages between male and female employees.

The elements of this law that govern how minimum wages are determined are the most crucial ones.. The Central Government is supposed to divide the geographical area into 3, mainly, Metropolitan, Non-Metropolitan and Rural Areas and also categorise the employee occupation as unskilled, semi-skilled, skilled and highly skilled labour. The Central government must then fix a floor wage, which is the base remuneration that the employer must pay to the employees depending on various criteria. Sections 6-9 of the Code pertain to the fixation of this floor rate and the manner in which it is to be fixed. As per these provisions, 6 criteria have to be considered for fixing the minimum wages. The Government must take into consideration the skill of the worker, the nature of the work i.e., whether it is hazardous occupation or not and the time of work (hourly wages/weekly wages/monthly wages). A normal working day includes 8 hours of work and an aggregate of 1 hour of rest period and such must never exceed 12 hours in a day.

The rules under the Code on Wages, formulate the time interval for revision of Dearness Allowance. It specifies that the Cost-of-Living Adjustment (COLA) and Cash Value of Concessions must be computed once before the 1st of April and 1st of October every year. This would directly impact the computation of Dearness Allowance which is payable to the employees.

The act also makes it mandatory for the employers to provide the employees a rest day every week. Sunday is the ideal day for relaxation, however the employer may also choose any other day. . If the employee wishes to work on his rest day, then that day would be substituted with another day of the week as his rest day. The worker must be paid by the employer on the rest day and if the employee is working on the rest day, he must be paid overtime.

The act also provides for the recoveries from the wages of the employee. If the recoveries exceed 50% of the wage, then the excess of the recovery must be deducted from the succeeding wage. The Deputy Chief Labour Commissioner (Central) shall be the authority to impose fines on such deductions. However, the employee must be given a fair opportunity to explain his position with respect to recoveries arising out of damages or losses [8].

In situation where the employee dies, the dues to him must be paid to the person nominated on behalf of him or must be deposited with the Deputy Chief Labour Commissioner (Central). The rule prescribes a maximum limit of seven (7) years for disbursing the dues. The rules have also provided for the formulation of an inspection scheme under the code [9].

The Code also imposes strict measures under Chapter VIII so that the employers adhere to the letter of the Code. It imposes a fine of Rs. 50,000 on the first instance where an employer does not follow the minimum wage to be paid to the employee and further imposes a fine of Rs. 1 Lakh and imprisonment upto 3 months for subsequent commission.

The Code on Wages, 2019 has subsumed the following legislations which existed prior to its enactment:

1. The Payment of Wages Act, 1936
2. The Minimum Wages Act, 1948
3. The Payment of Bonus Act, 1965
4. The Equal Remuneration Act, 1976

ANALYSIS

It is important to know the law, but it is crucial to analyse and understand the law. The 4 Codes of Labour Legislation introduced by the Parliament have had a significant impact upon the working and employing class. A deeper introspection is needed to understand the merits and demerits of these codes upon the Labour Industry.

Analysing the Code on Social Security, 2020:

The Social Security Code has increased the ambit of coverage by including workers involved in hazardous activities under the common blanket of providing a safe working space for employees. Further, it provides a distinction between the organised and unorganised workers so that it is easier to understand the nature of work. This code is framed in a simple manner which reduces the complexity in understanding and following the provisions of this code. It also removes contradicting definitions of the previous legislations it subsumed, provides protection, welfare and security to the workers.

However, there is still confusion about the meanings of phrases like "social security." There is no central fund and the corpus is split into multiple funds creating confusion. Even though the Code has proposed to extend the coverage of Provident Fund to temporary and gig workers such as taxi drivers, Swiggy/Zomato delivery executives, there is not outlined framework pertaining to setting out rules or guidelines for the same. Hence it is not clear how far this approach would be feasible.

Analysing the Occupational Safety, Health and Working Conditions Code, 2020

This code has brought in certain important domains relating to labour welfare. It has stated the number of hours and days workers must work, the necessary work environment which the employer must provide for the workers, the welfare facilities which need to be present at the workplace and appointing inspectors to inspect the workplace. All these measures spell out 'worker-safety'.

However, there are certain lacunes with respect to the Occupational Safety, Health and Working Conditions Code, 2020. One being it becomes difficult and tedious to track all the notification and updates and coordinating the references made to different provision since this Code has subsumed more than 9 existing legislations which are more than 7 decades old.

Analysing the Industrial Relations Code, 2020:

The Industrial Relations Code certainly provides for a streamlined dispute resolution amongst the workers and employers. It puts a restriction on conducting strike when a litigation or Alternative Dispute Resolution process is underway. The National Industrial Tribunal has the final say in matters relating to industrial disputes which puts the case in the hands of a single authority and avoids confusion.

However, one argument which arises *prima facie* is the restriction of strikes. This could be considered as curbing the rights of the workers. This bill could be misused by the Government officials in curbing the rights of the workers and there could also be practical difficulties in implementing the same [10].

Analysing the Code on Wages, 2019:

This code has its merits rooted in the fact that it clearly lays out the provisions regarding the structure of minimum wages, its various components and even provisions for working overtime. It also lays out extensive rules regarding dues which need to be paid to the worker and also provisions regarding Dearness Allowance and Bonus.

However, there is no single reserved dispute body which would hear all the matters but an array of bodies is present which make the entire process confusing and tiresome. Another lacuna is that the punishment provided may not be sufficient and effective in case of a large corporation. An explicit clause is present which states that the employer be absolved of his liability if he proves that he was not aware of such a practice. This clearly encourages a blame-game which would be won by the employer [11].

CONCLUSION

Irrespective of all that has been said, I feel that these amendments are crucial in the recent times. The ambiguity and confusion posed by multiple labour legislations can be brought to an end with these four (4) Labour Codes. In the 21st century it is important to conceptualise and theorise an easy-to-understand and organic Labour Framework. All these four codes conceptualise and prioritise worker rights and safety through the prism of the Constitution. The implementation may be tough at the beginning but once it has taken its course it will prove beneficial not only for the employers and employees but will help in the overall enrichment of the economy and development of the nation. These legislations have already been notified by the Central Government and there has been a positive response from the workers and employers so far. Only time will tell us what would be the future status of these legislations and its impact on the society.

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