

NOTES AND COMMENTS

Labour Rights under the Indian Labour Legislations: A Bird's Eye View on the Protection of Rights of Labourers under the Recently Introduced Labour Code of India*Dr. Dipankar Debnath¹***Abstract**

India, one of the most labour-intensive countries of the world, has finally taken a leap of faith and codified 44 of its national-level labour laws into four broad codes on 'wages', 'industrial relations', 'social security' and 'occupational safety and health'. This has triggered a longstanding controversy between the stakeholder and the government as, according to the government the existing labour laws have created hindrances to the Indian manufacturing sectors as well as it discourages foreign companies to set up their respective wings within the country. This in turn amounted to huge loss to the country's income and revenue. The Code has received criticism from trade unions and activists however, it has been welcome on the ground that the Code would help in reviving India's economy involving two-fold benefits providing to the workers as well as to the industrialists. It has been argued that India's existing labour laws as remnants of an archaic past considering them as ineffective for workers and burdensome on the employer and should be dismantled.

In the above backdrop, the pertinent questions that remain to be examined are whether the recent drastic changes in the various labour laws are going to fulfil the purpose fostering the economic development of the country at the cost of various rights of the labours? Whether such steps on the part of the governments are in consonance with the constitutional provisions? Whether the reformations in labour laws would help the government's initiative to implement the liberalisations concept attracting the foreign investors? Do we need a sustainable strong manufacturing sector? This paper has focused on the pros and cons of the recently introduced Labour Code in the light of above questions and made an attempt to dig out whether the Code would be successful in protecting the rights of the labourers?

Key Words: *Labourers Right, Labour Laws, Labour Code, Reforms, Legal vacuum*

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I. Introduction

In 2019, the Central government proposed to replace 29 existing labour laws with four Labour Codes on wages, social security, occupational safety and industrial relations². Since the issue of labour came under the Concurrent List of the Constitution, there were over 100 state and more than 40 central laws regulating the various aspects to it³. It is said that such initiatives on the part of the government is the second largest initiatives undertaken after independence with a view to make effective changes in the field of industry after the liberalisation policies since 1991. Such initiatives are based on the platform that the effect of liberalisation would be futile without improving the industrial relations to a larger extent and the same is possible only by bringing widespread changes in the existing labour legislations. It is claimed that such reformations in the labour legislations would help in raising the economic standard of the country in the world front, an apt decision and also contemporary at par with the very need and demand of the world economy. There have been hue and cry from all corners after the Central government and some of the State governments have stepped into bringing, as never before, a revolutionary change in various labour laws replacing all of them. The introduction of the Labour Code by the Central Government or Ordinances by few States (special mention should be made of Uttar Pradesh, Gujarat, Madhya Pradesh etc.) as it has been alleged, affected various rights of the workers/employees. The urge for reformation of existing labour legislations were based on the recommendation made by the Second National Commission on Labour established in 2002.

Reforms are based on demand for change and such demand can be either evolutionary or revolutionary. Reforms in any sector demands affirmative substantive change in that sector. The ultimate purpose for the change in law is the betterment providing, identifying and protecting various rights under the law. The demand for the reformations of the archaic labour laws bringing almost all of them under the umbrella of the Code, it has been argued that it would benefit all the stakeholders including labours and industrialists who have been

²Explained: Here's Why Workers, Opposition Parties Are Protesting Against the 3 New Labour Laws, The Wires available at <https://thewire.in/labour/labour-code-explainer-unions-strike-workers-opposition-parties> (Last visited on August, 15, 2021).

³List of Central Labour Laws under Ministry of Labour and Employment, Ministry of Labour and Employment.

directly affected by such laws. Labourers are afraid of the taking away of various rights guaranteed under the Constitution and industrialist/employers fear that the Code might have provided clean cheat providing protection to the rights of the labourers thereby making it difficult for them in the smooth functioning of the business activities which in turn would hinder the development as a whole. Our former Prime Minister Dr. Manmohan Singh was the staunch supporter in favour of reformation of labour laws. Attending the Indian Law Commission's 40th Session, he emphasized that "the process of doing business with India has to become less intimidating, less cumbersome and less bureaucratic to attract more investment. Many of the legacies of the past have not much relevance today. Indeed, some of them have become counterproductive today and may well be hurting the very people they are meant to benefit"⁴

II. Genesis of the Labour Laws and the Need for its Reform

The origin and evolution of the labour laws in India can be traced back in terms of providing protection and safeguarding the various rights of the labourers-the proletariat class, who due to its inability to fight against the capitalists had/has to surrender before the one having power over them. Such fights have been based on inequality, discriminatory, arbitrary action dividing the class into haves and haves not. It is not the fight against haves but actually a fight against oneself as to how it would be possible to survive based on the concept of survival of the fittest. Although the British legislature is the trend setter in providing protection to this section of the society by enacting various labour laws,⁵ however, there have been numerous instances of violations of such laws at the hand of the employers. In fact, such laws that have been enacted with view to protect the rights involving wellbeing of the labour class, however, the outcome being recapulation of the rights infringed time and again.

⁴ J. S. SODHI, LABOUR LAW REFORM IN INDIA, The Indian Journal of Industrial Relations, Vol.50, No. 1, July 2014, at p. 102, available at <http://www.wiego.org/sites/default/files/publications/files/IJIR%20July%202014.pdf> (Last visited on June 22, 2020).

⁵ Such as: The Factories Acts, 1883 and 1893 latest being the Act of 1948, The Workmen's Compensation Act, 1923 now The Employees Compensation Act, Trade Union Act, 1926, The Trade Disputes Act, 1929, etc.

In India, except for four decades 1950-90, the balance of power has remained with the employers⁶. Since the 1990s, however, the state has been soft in implementing labor laws in its letter and spirit.⁷ Due to the worsening of the industrial relations during the past decade between the haves-the industrialists and the weaker sections of the society-the labourers, it has been seen that management aggressiveness towards the labourer touch the extremity of exploitations. The situation necessitated to the need to reform various labour laws. The Second National Commission on Labour (2002) (NCL) also found existing legislation to be complex, with archaic provisions and inconsistent definitions recommended the consolidation of central labour laws into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions⁸.

Generally, labour law covers:

1. Industrial relations – certification of unions, labour-management relations, collective bargaining and unfair labour practices;
2. Workplace health and safety;
3. Employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures, and severance pay.

All of the above objectives mainly deals either with the monetary or non-monetary rights of the labourers. These rights are being protected in return the labour they provide to the employer which in turn help them in making profit. A part of profit goes to the government as revenue which are being used for the welfare of the society contributing to the wholesome development of the country. Therefore, it can be said that the root of wholesome development vis-à-vis economic development lies in the hands of that section of the people without whose contribution nothing

⁶DR. JASWINDER SINGH & DR. KAWALJEET KAUR, LABOUR LAW REFORMS IN INDIA: AN OVERVIEW, *Public Business Review International*, Vol. 9, issue 12, (2017).

⁷ Available at <http://www.wiego.org/sites/default/files/publications/files/IJIR%20July%202014.pdf> (Last visited on June 22, 2020).

⁸Report of the National Commission on Labour, Ministry of Labour and Employment, 2002, available at <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf> (Last visited on August 11, 2021).

could be possible. Therefore, it is necessary and important that their rights must get protected under the laws for the smooth running of the economic cycle. Unfortunately, since last few decades the stakeholders showed their dissatisfaction towards such archaic existing laws as according to them, such laws are creating hindrances in the economic development of the country and hence forth the time has ripe up to remould it opening and fostering new vistas that would fulfil what has been lacking under the existing laws and the outcome is the introduction of the Labour Code.

III. Identifying Legislative Vacuum

The issues pertaining to the welfare of the labour protecting their rights, so called protected and safeguarded has been considered as a growing cause of concern during the past and there was a need to enact laws in favour of the labourers ensuring strictly that such rights should be maintained in accordance with the laws. However, since last decade it has been the issues at the hand of the industrialists that labour laws in India are excessively labour friendly, particularly in the organised sector resulted in adverse consequences in terms of the performance of this sector.

It can be said without raising any doubts that some of the laws are too old to suit with the changing dimension in the field of industrial relations that demanded for drastic amendments and are needed to be replaced. With the liberalisation and globalisation during 1991 which had totally changed the economic paradigm in the country, need was felt to have new and updated laws so that the country would be opened to the outer world for their ventures to be established here. In fact, the object of having such laws is to suit with the changing economic environment the country has intended for. This is with a view to create a conducive environment for investors and liberate the entrepreneurs from the tyranny of myriad labour laws. This will also help in opening and expanding the horizon of employment.

Out of the many factors that are considered as the constraints in the growth of India's manufacturing sector, surveys made during the past revealed that it is the quality of the business regulatory environment that is hindered on the path of economic progress of the country. Implementations of such regulations are cumbersome being complicated, confusing and tardy and above all the same is under corrupted hands.

To remove all the difficulties referred above the efforts to codify our labour laws had made in early 2000 and finally have seen the light of the day. The Code on Wages, 2019 was notified by the government in 2019. The remaining 3 codes, being the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, were enacted on September 29, 2020. The effective date of the codes is yet to be notified in order for them to come into force⁹.

While the codification exercise was primarily focused on consolidation of the labour laws relating to employment conditions, social security, wages and occupational health and safety and working conditions the exercise has, in this process, also led to:

1. expansion of the ambit and applicability of some laws
2. removal of multiple definitions and authorities
3. transformation of obsolete laws
4. ease of compliance
5. rationalization of penalties and increased focus on implementation of the law.

A closer look at the codes reveals that while consolidating the national level laws, several new changes have been introduced which are likely to have an impact on employers in India¹⁰.

III. The Quest for the Protection of the Rights of the Labourer under the existing Labour Laws

As labour is in the concurrent list, both the Central and States are empowered to enact laws. However, it has been subject to many complexities ever since. Multiplicity, rigidity and overlapping nature of laws leading to the exploitations of the labourer, neglecting the unorganised sector which constitutes more than 90% of labours, are mostly contract labours and the need to introduce fixed-term employment has been the demand of the hours.

⁹AJAY SINGH SOLANKI, ARCHITA MAHAPATRA, SAYANTANI SAHA AND VIKRAM SHROFF, INDIA CONSOLIDATES AND CODIFIES ITS NATIONAL-LEVEL LABOUR LAWS, *The National Law Review*, Jan. 15, 2021 available at atlawreview.com/article/india-consolidates-and-codifies-its-national-level-labour-laws(Last visited on August 18, 2021).

¹⁰*ibid.*

In addition to this, the female labour force participation is very low and they are mostly engaged in informal sectors, the collective bargaining of the labourer was weak and there is a need to strengthen the same. All the above grounds are mainly concerned with various rights of the labourers that have been neglected under the laws in force in our country creating a huge vacuum in the existing labour legislations and hence the need to have a consolidated and comprehensive law has been felt. Moreover, the existing labour laws on sound industrial relations based on effective social dialogue leading towards promoting better wages and working conditions as well as peace and social justice have failed leave its impressions over such relations created a huge gap between the labours and employers.

Most significant among all disputes is the wage, most important right of the labourers, a major subject of collective bargaining. Wages in the organised sector is generally determined through negotiations and settlements between the employer and the employees. The minimum rates of wages are fixed both by Central and State Governments in the scheduled employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The existing laws on minimum wages have failed to provide economic safety to the labourer creating confusions and complications regarding such wages. Therefore, for a uniform minimum and time bound laws on wages have been considered as an emerging necessity.

The social security legislations in India that derives its strength and spirit from the Directive Principles of the State Policy contained in the Constitution of India is another important factor for which need was felt to review the existing laws. These laws provide for mandatory social security benefits either solely at the cost of the employers or on the basis of joint contribution of the employers and the employees. While protective entitlements accrue to the employees, the responsibilities for compliance largely rest with the employers. Here also the existing laws such as The Employees' State Insurance Act, 1948, The Employees' Provident Funds & Miscellaneous Provisions Act, 1952, The Employee's Compensation Act, 1923, The Maternity Benefit Act, 1961, The Payment of Gratuity Act, 1972 etc. have failed to satisfy the working class.

Finally, in pursuance of the recommendations of the Second National Commission on Labour, it has become necessary to enact a Central Legislation in the form of a Code, namely the Occupational Safety, Health

and Working Conditions Code, 2019 which incorporates the essential features of the thirteen enactments relating to factories, mines, dock workers, building and other construction workers, plantations labour, contract labour, Inter-State migrant workmen, working Journalist and other newspaper employees, motor transport workers, sales promotion employees, beedi and cigar workers, cine workers and cinema theatre workers and to repeal the respective enactments.

Safety, health, welfare and improved working conditions are pre-requisite for well-being of the workers and also for economic growth of the country as healthy workforce of the country would be more productive and occurrence of less accidents and unforeseen incidents would be economically beneficial to the employers also.

IV. The New Labour Codes: A Bird's Eye View

The Four Codes: The Code on Wages, 2020, the Industrial Relation Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020 and the Code on Social Security, 2020 aimed at broadening the scope and coverage, protection of rights, reducing multiplicity in definitions, embraces more on digitisation. However, they are the consolidations of existing laws with some significant changes protecting the rights of labourers in unorganised sectors also.

1. The Code on Wages, 2020:
 - a. Applies to all establishments, employees and employers as defined.
 - b. Covers all employees including managerial cadre.
 - c. Wage definition standardized. Revised definition of wages leading to higher minimum wages, statutory bonus, provident fund, retrenchment compensation and gratuity.
 - d. State government minimum wage rates to be aligned to national floor wages.
 - e. Need to meet wages payment dates as prescribed.
 - f. Recoveries from wages specified with monthly recovery capped at 50%.
2. The Code on Social Security, 2020:

- a. Coverage broadened to include gig/platform workers, fixed term employees and those in the unorganized sectors with the organized sector.
 - b. It makes provisions to notify a separate social security fund for unorganised workers.
 - c. It also contains provisions on social security for gig and platform workers, wider definition of migrant workers, etc.
 - d. It enables the government to formulate schemes for the benefit of unorganised workers, and gig and platform workers. Therefore, the provisions for Provident Funds, Employee State Insurance, Gratuity has been extended to these sectors also.
 - e. It increases the threshold to 300 workers while retaining the notice and compensation requirements specified under the Industrial Disputes Act, 1947. It allows the government to further increase the threshold by notification.
 - f. The Codes are now extended to fixed term employees, worker re-skilling fund, social security for gig workers and platform workers
3. The Occupational, Safety, Health and Working Condition Code, 2020 covers:
- a. Occupational safety continues to apply to establishments over a certain size (typically, above 10 or 20 workers). Currently, contract labour provisions apply to establishments/contractors hiring at least 20 workers. The Code on Occupational Safety and Health increases this threshold to 50 workers.
 - b. The Code has reduced in daily working hour limit in certain cases.
 - c. Prohibition of engagement of contract labour in core activities.
 - d. Mandatory free health check-up for those attained the age of 45 years engaged in prescribed industries and in hazardous process.
 - e. A major step has been the grant of general permission for engaging women with employee consent between 7 pm - 6 am. need for consent for overtime work. The Code on Social Security introduces definitions for 'gig worker' and 'platform worker'. The Code also defines unorganised workers which include self-employed persons. The Code creates provisions for different schemes for all these categories of workers.
4. The Industrial Relations Code, 2020 covers:

- a. Limit of worker enhanced from 100 to 300 for applicability of standing order.
- b. Grievance redressal committee to complete its proceedings within 30 days of receipt of application.
- c. Increase in retrenchment cost-additional compensation towards re-skilling fund, retrenchment compensation etc.
- d. Preference to retrenched worker for re-employment within one year.
- e. Additional ground for strike-mass leave.
- f. Prior approval of government for lay-off, retrenchment and closure where 300 or more workers are engaged.
- g. Introduced the concept of negotiating union.

V. Conclusion

The Codes are formulated with the main motive to energise the industry and economic activity and free employees from the constraints of earlier labour laws protecting their rights. The areas that are critical for establishments transition smoothly from the existing laws to the new legislation with optimal efficiency is the need of the hour. The Codes must be examined keeping in view the goal aimed to achieve. Whatever reforms are to be made in the labour laws must be assessed with this goal in mind and must support the strategy required to reach it. Industrial relations will be damaged if Government forces any changes in labour laws that are not founded on an understanding between unions and employers. The government seems to have made a conscious effort towards balancing the rights of employees' vis a vis those of employers. If implemented pragmatically, it can have scope to immensely benefit India's working-class demographic. It ensures fairness to the employees and enable faster learning and improvement of competitiveness in enterprises. The Codes afforded considerable flexibility to employers and contractors by exempting more establishments from regulations concerning standing orders, retrenchment and closure, safety and health, contract labour welfare, etc.¹¹

¹¹K. R. SHYAM SUNDER, MAY DAY 2021: WHAT HAS (NOT) CHANGED SINCE THE PANDEMIC RAVAGED LIVELIHOODS OF WORKERS, *The Wire*, available at <https://thewire.in/labour/may-day-2021-india-migrant-construction-workers-covid-19-labour-codes> (Last visited on August 13, 2021).