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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE RAMIFICATIONS OF INDIA'S NEW LABOUR CODES

AUTHORED BY: AASHVI MUGRAI & SANCHIT KUMAR

ABSTRACT

The goal of this research paper is to present a thorough examination of the recent labour code amendments and their effects in India. The main labour regulations in India were developed by the government to make it easier for enterprises to comprehend and abide by labour laws by eliminating ambiguity, simplifying compliance, and lowering administrative barriers. The Occupational Safety, Health and Working Conditions Code (OSH Code), the Code on Wages, the Code on Social Security, and the Code on Industrial Relationships are these codes. Updates to the labour laws are being made to help India adapt to changes in the nature of work and in technology.

Employers, trade unions, employees, and the labour market as a whole are among the stakeholders that the article looks at, as well as the main provisions and modifications brought about by the labour law. It offers information on the justification for the reforms as well as their possible effects on India's labour force, economy, and socioeconomic advancement. It is challenging to implement these changes, though, as stakeholders oppose them for a number of reasons that are discussed in the article.

INTRODUCTION

Clear, unambiguous, and simple labour laws are crucial for ensuring the effective protection of labour rights and fostering rapid economic growth.¹ India presently has 29 central and 120 state statutes pertaining to labour law in place. These laws are often criticised on grounds of ambiguity, complexity and multiplicity; as well as the need to extend the laws to new forms of employment such as gig workers and platform workers. The Indian labour market has long failed to develop efficient solutions to the issues arising from such a rich and diverse range of regulations. Such has led to many problem and difficulties in seeking justice in courts with

¹ Abhijit Anil More & Sangram Jadhav, Implications of the New Labour Codes in India: A Comprehensive Analysis, 4 JUS CORPUS L.J. 298 (2023).

implications on employers and employees equally.

Further, the said laws are often considered to be blatantly biased against companies and business owners and in favour of employees and workers. Simplification and rationalization of labour laws have been a long-standing demand of employers to effectively realize 'ease of doing business'².

To solve these problems, the Indian government has recently embarked on a massive harmonization and deregulation of labour laws in order to promote economic growth and therefore consolidated the existing laws into four new codes namely; Code on Wages, 2019; Code on Social Security, 2020; Occupational Safety, Health and Working Conditions Code, 2020 and; Industrial Relations Code, 2020. These codes have incorporated a total of 44 previously existing labour laws and has included several new International Labour Standards and Practices in India. Labour law reforms in India is one of the significant and dynamic dimensions of socio-legal growth.

The new codes are designed to cover important parameters of labour regulation including, but not limited to classification of workers, wages, rates of pay, working conditions, and social security. However, while these reforms may have potential to enhance the transparency and corporate friendly environment, most of them have faced stiff opposition from labour unions and advocacy groups. Some critics points out that the integration of the labour laws will remove principles that have been first won after long battled by workers and their leaders. Fears emerge that it erodes existing gains on Indian labour rights and welfare, which would decrease the safeguards for workers – most of whom work in the informal sector; there are about 92% of the workers in India.

This research paper seeks to critically review the ongoing labour law reforms in India, based on the emerging issues from various interested parties. In this paper an effort is made to analyse legal reforms with respect to its effects on the structure of the labour market, growth, and protection of workers, as well as the legal system on the context of Indian situation.

² Chaudhary, T. & Remesh, B., Changing Scenario of Indian Labour and New Labour Codes: A Critical Analysis, 10 CHRIST. U.L.J. 1 (2021).

ORIGINS OF THE LABOR LAWS AND THE NECESSITY OF THEIR REFORM

India's labor laws have a long history of protecting the rights of the proletariat class, or workers, who were forced to submit to the capitalists because they were unable to resist them. Inequality, discrimination, and arbitrary actions that separate classes into haves and have-nots have been the foundation of these battles. Instead of fighting against others, one must battle against oneself to see how one might live according to the survival of the fittest theory. Despite the fact that the British legislature is a leader in protecting this segment of society through the implementation of multiple labor regulations, there have been many cases of companies breaking these laws.

Such laws have actually been passed in an attempt to safeguard the rights pertaining to the welfare of the working class, but the end result is a reiteration of the rights that have been repeatedly violated. In India, except for four decades 1950-90, the balance of power has remained with the employers³. However, since the 1990s, the state has been lax in applying the language and spirit of labor laws. Over the past ten years, the relationship between the weaker members of society, the workers, and the haves, the industrialists, has deteriorated, and it has been seen that management's hostility toward the workers touches on the extremes of exploitation.

The circumstances demanded that some labor regulations be changed. According to the Second National Commission on Labour (2002) (NCL), the current legislation is complicated, with outdated provisions and ambiguous definitions. It is suggested that central labor laws be consolidated into more comprehensive categories like (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.

Generally speaking, labor law addresses:

1. Industrial relations, including collective bargaining, labor-management interactions, union certification, and unfair labor practices; or
2. Health and safety in the workplace;

³ DR. JASWINDER SINGH & DR. KAWALJEET KAUR, LABOUR LAW REFORMS IN INDIA: AN OVERVIEW, Public Business Review International, Vol. 9, issue 12, (2017).

3. Requirements for employment, such as minimum wage, layoff procedures, severance pay, annual leave, working hours, and general holidays.

The aforementioned goals are all primarily focused on the workers' financial or non-financial rights. In exchange for their labor, which helps the company earn a profit, these rights are being safeguarded. In order to support the welfare of society and the overall growth of the nation, a portion of the earnings is given to the government as revenue. As a result, it can be claimed that the foundation of complete development in relation to economic development is held by the group of individuals whose participation is essential to everything. Therefore, the legal protection of their rights is essential to ensuring the smooth operation 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 Code⁴.

THE NEW LABOUR CODES

The Code on Wages, 2019

This Code aims to regulate pay and benefits in all work environments, including business, industry, manufacturing, and commerce. Through promoting justice, worker well-being, and environmental sustainability, it hopes to boost economic growth and job development. Wage-related laws such as the Payment of Wage⁵, Minimum Wage⁶, Payment of Bonus⁷ and Equal Remuneration Act⁸ are included in this.

Two major definitional changes were brought about by the codification. The Code, for example, expanded the scope by doing away with the distinction between scheduled and non-scheduled work, whereas the Minimum Wage Act only applied to the "scheduled of employment" that the statute stated. As a result, the definitions of employee and employer now encompass both official and informal enterprises.

⁴ Debnath, D., 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, 12 INDIAN J.L. & JUST. 279 (2021).

⁵ The Payment of Wages Act, 1936 (Act 4 of 1936).

⁶ The Minimum Wages Act 1948 (Act 11 of 1948).

⁷ Payment of Bonus Act, 1965 (Act 21 of 1965).

⁸ Equal Remuneration Act of 1976 (Act 25 of 1976).

The Code also extended the provisions of the Payment of Wages Act and the Minimum Wage Act to all workers and establishments, unless exempted, instead of just those with incomes below a specific threshold.

The term "Wages" is defined universally, standardising and streamlining a number of wage-related issues. Wages encompass compensation, bonuses, and any other monetary element. Among other reasons, this does not include any employee bonuses or travel reimbursement. In contrast to the current practice of basing all benefits on basic income, the new labour regulations require that all benefits be calculated using the new benchmark "wage" set forth by the labour laws. The updated definition is seen to be the most advantageous aspect of the new labour regulations, since it would lead to increased benefits for employees, such as more gratuities, overtime compensation, and leave encashment.

In order to ensure that those who make less than a specific pay cap receive a yearly bonus of at least 8.3% of their compensation or 100 Rupees, whichever is higher, provisions from the previous Payment of Bonus Act were integrated. The 180-day claim filing period has been extended to two or three years to provide employees more time to settle their claims.

Additionally, the ability to select the criteria for establishing the minimum salaries for various worker groups is granted to the relevant authorities. The required amount of experience, the difficulty of the work given, the location of the business, and any other factors thought to be necessary by the relevant government will all be taken into consideration when determining the parameters.

Another progressive step under the Code is that the Equal Remuneration Act's exact definitions of "woman" and "man," which required equal compensation for equivalent labour for men and women, have been eliminated and replaced with the term "gender." It gives transgender people the ability to be protected from discriminatory actions.

In order to handle disputes, the Code also establishes a quasi-judicial appeal authority. Noteworthy is the renaming of the Inspectors-in-Charge of monitoring Compliance as Inspectors-cum-Facilitators. It also established Central and State Advisory Boards to examine the Minimum Wage and other relevant topics and required women to be included.

The Industrial Relations Code, 2020

The IR Code establishes procedures for resolving industrial disputes. It also consolidated and amended laws pertaining to trade unions, industry working conditions, and a broader framework for protecting workers' rights to form workers' unions. It compiles the laws associated with employment, including those concerning industrial employment⁹, trade unions¹⁰, and industrial disputes¹¹. Trade union registration, strikes, and the settlement of labour disputes are all governed by the Code.

The definition of worker has been extended as under the new code, supervisory employees who make less than Rs.18,000 per month or a sum periodically set by the Central Government are now included in the worker categorisation.

In order to form a union, there must be at least 100 employees, or 10% of the workforce in a certain industry. To be recognised as a negotiating union, a trade union must have the support of 51% of its members. Under the code, a union negotiating council must be established in every other situation.

In addition, once-exempt workers are now required to give sixty days' notice before going on strike. Before firing workers, businesses with more than 300 employees need permission from the federal government or the state government in question. Under the previous law, the limits would not have been enforceable unless the company had at least 100 employees. Establishing a labour tribunal to settle disputes is another recommendation made by the code.

Businesses with more than twenty employees are required to have at least one grievance redressal committee in order to handle conflicts resulting from individual complaints. Employers and employees must each have an equal number of members on this committee. It is important to note that the committee needs a sizable percentage of female employees, and the chairperson should be chosen alternately from the company and the employee.¹³

The Occupational Safety, Health and Working Conditions Code (OSHWC Code), 2020

The Code, which was approved by the president on September 20, 2020, aims to revise and

⁹ Industrial Employment (Standing Orders) Act of 1946 (Act. 20 of 1946).

¹⁰ Trade Unions Act of 1926 (Act. 16 of 1926).

¹¹ Industrial Disputes Act, 1947 (Act. 14 of 1947).

consolidate the laws controlling the health, safety, and working conditions of employees in any organisation, as well as other related concerns. It also contains steps to increase the number of women hired for all positions. Factories Act¹², Plantations Labour Act¹³, Mines Act¹⁴, Motor Transport Workers Act¹⁵, Beedi & Cigar Workers Act¹⁶, Contract Labour Abolition Act 21, Sales Promotion Employees Act¹⁷, Inter-State Migrant Workmen Regulation Act¹⁸, Cine Workers Act¹⁹, Dock Workers Safety Act²⁰, and Building & Other Construction Workers Regulation Act²¹, etc. have all been incorporated into the code.

A wide range of topics are covered under occupational health and safety. Promoting a safe and healthy work environment is the goal of an occupational safety and health program. It safeguards the local populace from potential harm caused by the workplaces as well.

The Code aims to lower the administrative burden on employers by replacing several registrations mandated by various regulations with a single licence, one return, and one one-time universal registration. A centralised database to support business operations will eventually result from this.

A factory that employs twenty or more people in manufacturing activities that require electricity or at least forty workers in non-electrical activities is covered by this rule. Although it does not apply to the Central or State Governments, warships, or citizens of foreign nations, its rules do apply to contract workers hired by contractors in establishments where the Central Government or any State is the main employer.

There are provisions for leave encashment that will be used at the conclusion of the year. The Code permits employees who were unable to use all of their allowed leave in a given calendar year to carry over their leaves for a maximum of thirty days.

¹² Factories Act, 1948 (Act 63 of 1948).

¹³ Plantations Labour Act, 1951 (Act 69 of 1951).

¹⁴ Mines Act, 1952 (Act. 35 of 1952).

¹⁵ Motor Transport Workers Act, 1961 (Act. (27 of 1961).

¹⁶ Beedi & Cigar Workers (Conditions of Employment) Act of 1966 (Act. 32 of 1966).

¹⁷ Sales Promotion Employees (Conditions of Service) Act, 1976 (Act. 11 of 1976)

¹⁸ Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979 (Act. 30 of 1979).

¹⁹ The Cine Workers & Cinema Theatre Workers Act, 1981 (Act. 50 of 1981).

²⁰ The Dock Workers (Safety, Health & Welfare) Act, 1986 (Act. 54 of 1986)

²¹ The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Act 27 of 1996).

In addition, it gives the Indian government broad authority to supervise the general safety and welfare of people living in all or a portion of the nation in the event of an epidemic, pandemic, or other disaster. It also entails creating a social security fund for unorganised sector employees.

The Code on Social Security, 2020

By amending and combining the relevant sections of the nine central labour laws—the Employees' Compensation Act²², Employees' State Insurance Act²³, Employees' Provident Funds Act²⁴, Employment Exchanges Act²⁵, Maternity Benefit Act²⁶, Payment of Gratuity Act²⁷, Cine Workers Welfare Fund Act²⁸, Building and Other Construction Workers Welfare Cess Act²⁹ and Unorganised Workers' Social Security Act³⁰,—the Code was enacted with the goal of expanding the benefits of the social security net to all workers and employees in all industries associated with the formal and informal sector. The Code defines platforms, gig workers, independent contractors, and fixed-term as well as home-based workers.

The Code gives the Indian government the authority to create social security programs through the Employees State Insurance Corporation for platform and gig workers, undocumented workers, and their dependents. Further, the Indian government may attempt to give social security benefits to independent contractors and any other group of individuals it deems appropriate. Furthermore, it allows a business to voluntarily provide coverage under the Employees' Provident Fund and the Employees' State Insurance Corporation, even if it employs fewer people than is mandated by law. Instead of establishing the gratuity on the present criteria of at least five years of continuous service, it mandates that it be paid proportionately to fixed-term workers.

The Code also addresses maternity benefits and describes creche services. Following a medically assisted pregnancy termination, miscarriage, or delivery, women are prohibited from going back to work for six weeks. A woman is entitled to Rs. 3,500 in healthcare benefits, or the amount set by the government, if the organisation she works for does not offer free prenatal

²² The Employees' Compensation Act, 1923 (Act. 8 of 1923)

²³ Employees State Insurance Act, 1948 (Act. 34 of 1948).

²⁴ The Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (Act 19 of 1952).

²⁵ The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (Act. 31 of 1959)

²⁶ Maternity Benefit Act 1961 (Act 53 of 1961)

²⁷ Payment of Gratuity Act, 1972 (Act 39 of 1972).

²⁸ The Cine Workers Welfare Fund Act, 1981 (Act. 33 of 1981),

²⁹ The Building and Other Construction Workers Welfare Cess Act, 1996 (Act. 27 of 1996).

³⁰ The Unorganised Workers' Social Security Act, 2008, (Act. 33 of 2008).

and postnatal care. Starting no earlier than eight weeks prior to the anticipated date of delivery, women are also eligible for maternity benefits for a total of 26 weeks.

The list of offences and penalties in the Code has been significantly revised. Employers are given the chance to address noncompliance prior to any legal action being taken. For not submitting employee contributions, there is a penalty of Rupees Ten Lakhs and a prison sentence of one to three years applied. Nevertheless, corporate offences have repercussions that extend beyond the confines of the organisation, and repeat offenders face more severe sanctions.

NEW FORMS OF EMPLOYMENT

"Gig workers, platform workers, and unorganised workers are peas in a pod" isn't quite accurate, but the issues they deal with are rather comparable.

Merely 8% of all workers in India are employed in the organised sector, while over 90% work in the unorganised or informal sector, which is largely exempt from social security benefits like medical benefit plans, pension plans, and provident fund benefits. It also faces numerous obstacles, such as restricted access to institutional and other support facilities.

Because of the instability of employment, they are reliant on a variety of jobs. These jobs are reliant on a variety of variables, including location and temperature change, which forces employees to switch jobs every three to six months.

Article 23 of the Constitution of India prohibits employing workers for wages below the statutory minimum level as it results in forced labour.³¹

In the case of *Union of India v. Peoples' Union for Democratic Rights*³², According to Article 32 of the Indian Constitution, the Supreme Court affirmed a poor worker's ability to petition the court directly to have their rights established by different labour laws enforced. The Supreme Court broadened the definition of Article 21 of the Indian Constitution, which guarantees the right to life, to encompass both the "right to live with basic human dignity" and

³¹ Minimum Wages Act 1948, s 2(h)

³² [1982] AIR 1473

the right to livelihood. Workers' lives are made miserable and unpredictable by the fact that, in spite of certain rules, they do not get the minimum wage as required by the standards.

The concepts of "gig workers" and "platform workers" emerged in the last few decades. To put it bluntly, the large businesses devised a strategy to mitigate their obligation with regard to the rights of these people and to circumvent labour laws worldwide.

Hiring in the gig economy was done using the carrot-and-stick method, which is when the economy gives individuals incentives to do something and then penalises them if they don't. The informal sector employed a carrot-and-stick strategy to entice workers with more incentives, raising their standard of life and encouraging them to take out loans. Last but not least, when companies reduce incentives, they make workers reliant, which breeds resentment among them.

The new codes appear to have overlap in the definitions of the three, which may have an impact on how the codes are implemented going forward. There is no "traditional employer-employee relationship" when an Uber driver works without an employment letter, has unregulated working hours, etc.; this is an example of a gig worker. The "Uber app" is an online platform that helps them be employed and work for Uber, thus he is also a platform worker. It is also unclear how the particular plans for each of them would work. These workers' benefits and rights are not explicitly outlined in the 2020 Code on Social Security. It lacks a platform for compliance and a uniform registration procedure for all employees.

In order to facilitate portability, the Standing Committee suggested that "minimum entitlement" be granted to construction workers and unorganized workers in all states; however, this recommendation was never implemented. We should think about enacting what French businessman Nicolas Colin refers to as "a new social contract" that would protect workers from the new risks of the day, such as the inability to rent housing in cities when your income comes from gig platforms and the availability of loans when and where you need them—not necessarily to buy a car, but to learn new skills when it's time to move on.

Invisible Labour and Gender Inequality

Unpaid labor is typically referred to as invisible labor. Unpaid labor is referred to as invisible labor and includes jobs like childcare, housework, and elder care, to mention a few. Women

make up 90% of this unseen work. Unnoticed, unrecognized, and therefore unregulated labor is known as invisible labor. Following the adoption of the four new codes, invisible labor is not included in any of them. With no weekend breaks, no vacation time, no recognition, thankless tasks, and, of course, no pay, invisible labor has the most boring work profile.

While considering the facts and figures, it must be noted that according to the report of the survey conducted by the National Statistical Office (NSO), which is a wing of the Ministry of Statistics and Programme Implementation in India, from January to December 2019 in its first Time Use Survey (TUS) mentioned that 38.2 percent of persons who were of the age of six years or above were engaged in employment and related activities. As per the study, 57.3 percent of males were engaged in employment and related activities while the proportion was 18.4 percent for females in the country³³.

A total of 53.2% of survey respondents performed unpaid household chores for family members. At 81.2 percent, the group had a higher percentage of females than males (26.1 percent). In rural areas, a greater percentage of women (82.1%) than in urban areas (79.2%) performed unpaid domestic work for household members.

There has already been a great deal of struggle for the invisible labour. As the virus spread over the world, the struggle intensified tenfold. People were spending time with their families and taking advantage of the leisure, they so much needed during the first several months when schools and offices were closed.

This relaxation, nevertheless, was also restricted to those who were paid. As a result of the pandemic, there were no off days, no personal time, and more household tasks. Although there has always been a great deal of work to be done, the fact that they are still not acknowledged adds to their load. It resembles an unending, terrible race.

CONCERNS

Implications of Delayed Implementation

The new labour rules have been implemented with apparent delay, notwithstanding the hurried

³³ NSO's Time Use Survey Report Shows Initialization of Female Labour as Unpaid Caregivers, ECONOMIC TIMES INDUSTRY, <https://economictimes.indiatimes.com/> (accessed Feb. 4, 2025)

passage of the measures pertaining to the codes in Parliament. According to government representatives who responded to the question of why labour rules were not implemented sooner, the sudden onset of COVID-19 and the lockdowns that followed have clearly slowed down the rate of realisation of these new codes.

Despite highlighting the conditions of migrant workers during COVID-19 in its ruling in the case of "In ***RE: Problems and Miseries of Migrant Labourers***³⁴," the Supreme Court of India explicitly stated that, until the new code is implemented, the registration of workers for unorganised workers in order to receive benefits from the social security scheme would be in accordance with the old legislation (Unorganised Workers Social Security Act, 2008 and The Building and Other Construction Workers (Regulations) In terms of protecting the interests of the working class, this circumstance had led to a noticeable slackness on the side of the state apparatus, particularly during the uncertain pandemic time.

In light of this muddled situation, employers may profit from the lack of protective laws and standards until codes are implemented successfully through a justly established process.

State-Centre Conflicts in Indian Federalism

While the 'labour' comes under the concurrent list of the constitution, there are opinions about the new laws appropriating most power in the hand of central government and marginalizing the state government, especially in the matters of labour administration and implementation of codes. While this seems true that the labour codes have shown the tendency of centralization with respect to the organizational structure, which may cause hindrance in the successful implementation of the schemes, the state governments are now given the responsibility of administering a State Social Security Fund as well as of maintaining workers' records.

But the criteria for such decentralization seems ambiguous because there is yet no mention of the implementing authority and institutional structure/organization at the level of state with regards to mandates of the Code, especially in the case of protection of workers migrating from one state to another. ***Steel Authority of India Ltd. vs. National Union Water Front Workers***³⁵ and ***Hindustan Aeronautics Ltd. vs. Workmen***³⁶ were two Supreme Court decisions that

³⁴ In Re: Problems & Miseries of Migrant Labourers, Suo Motu Writ Petition (civil) No(s).6/2020.

³⁵ Steel Authority of India Ltd. v. National Union Water Front Workers, AIR 2001 SC 3527;

³⁶ Hindustan Aeronautics Ltd. v Workmen, AIR 1975 SC 1737.

addressed lawsuits to determine the proper government. Despite this, the new labour regulations failed to explicitly outline the relevant government's jurisdiction, which appears to differ from Code to Code.

In the Indian federal system, this will undoubtedly lead to a hostile competition between states, where the "race to the bottom" in terms of labor standards will determine the state's ability to advance economically and industrially. It will result in a situation where some states have become more investor-friendly and others more labor-friendly if pro-poor and pro-labour states continue to have state-specific enabling legislation or implement relaxations. As a result, there may be a capital flight from one state to another.

Absence of social dialogue

Trade unions claim that this extreme measure was taken without the necessary agreement from all parties involved, particularly the employees and their unions. Ten labour unions have already petitioned the ILO, claiming that it violates fundamental standards guaranteed by ILO Convention No. 144, to which India is a party.

This convention directs to effective tripartite consultations including government, workers and employers to promote social dialogue and industrial harmony³⁷. There was a visible hastiness in the passage of these new labour codes, and there was not `any dialogue, debate or consensus-building among the stakeholders'³⁸.

It is also commonly noted that the new labour laws will have a negative impact on workers' collective bargaining. erosion of many of the advantages guaranteed by the labour welfare-oriented laws that were in place before labour codes were created. The new labour regulations' disregard for trade union concerns shows how tripartism and the social dialogue process are deteriorating.

³⁷ Zia Haq, States' labour law changes under central govt scanner, (Hindustan Times, June 1, 2020), <https://www.hindustantimes.com/india-news/states-labour-lawchanges-under-central-govt-scanner/storyWkLJEyDEF0H44IugZ8wkAK.html>.

³⁸ Akriti Bhatia, New Labour Codes: After Rushing Them Through Parliament, why is the Govt. Delaying Implementation? (The Wire, October 1, 2021), <https://thewire.in/labour/new-labour-codesafter-rushing-them-through-parliament-why-is-the-govt-delayingimplementation>.

Dilution of Protective Legislations, Alteration of Schemes

A noticeable deterioration in labour standards has occurred during COVID-19 as a result of the protective statutory frameworks being eroded. During the pandemic crisis, the Uttar Pradesh government suspended all workers' rights for three years. Gujarat, Rajasthan, and MP were among the numerous state administrations that took the same course and loosened many of the labour rules that were in place. The state governments' decision to increase working hours from eight to twelve hours was their most significant action.

Later on, with the intervention of the Allahabad High Court, the UP government had to restore the 8 hours working time³⁹. Therefore, some states are also known to pass ordinances that have made the situation worse for workers; few state governments have also framed legislation to ensure the dignity of workers at workplaces⁴⁰.

Therefore, codes ought to include a proposed framework for uniformising respectable working conditions throughout the country in order to guarantee the dignity, health, and safety of employees. Although the formal adoption of codes has been delayed, it is believed that many of the rules in the new codes are already being practiced.

Easy layoff is now more common than it was previously in many industries due to labour framework relaxations that made it easier to hire contract workers and apprentices with little long-term impact on companies. Contractualization has grown commonplace in all industries and businesses during this uncertain time, as has been extensively observed. All of these changes, among other things, contributed to the informalization of the labour market and increased precarity and vulnerability in the workplace. All of these factors, which include a record low level of collective bargaining during a particular phase, have left workers powerless and given employers an unprecedented level of hegemony when it comes to issues involving hiring, retaining, and repatriating employees.

³⁹ Somesh Jha, UP govt withdraws order increasing daily working hours to 12 from 8, (Business Standard, May 16, 2020), https://www.business-standard.com/article/economy-policy/upgovt-withdraws-order-increasing-daily-working-hours-to-12-from8-120051600706_1.html.

⁴⁰ Firstpost Staff, Workers Got Right to Sit, (Firstpost, September 7, 2021), <https://www.firstpost.com/india/after-kerala-tamil-nadu-set-to-make-right-to-sit-a-workplace-law-a-look-at-how-kerala-women-won-battle-three-years-back-9943671.html>.

Reduced Employment Quality and Emerging Difficulties

Recent policies that encourage mass hiring and firing, facilitate fixed-term employment, and engage trainees to perform tasks performed by permanent employees have resulted in a fall in labour standards and a worsening in the quality of employment. For example, open market recruitments have been implemented in railways since the Railway Apprentice Act, 1961 was amended, thereby delaying the arrival of trained apprentices. In a sense, these reforms give employers the authority to create employment contracts, and they are also opening the door for the eventual privatisation of public companies like railroads. Increased unemployment, layoffs, and the expanding contractualization and informalization of employment are all indicators of increased labour market uncertainty.

Even initiatives like the National Employability Enhancement Mission (NEEM), according to scholars and trade unions, are contributing to the deterioration of employment quality. Similarly, in the post-pandemic era, new and impending changes in employment types are not covered by the labor code. The new problems brought about by the culture of remote work and work from home are enabling new types of workplace exploitation while also defending the denial of the employer's obligation to provide for the social reproduction of their employees. Even traditional labor market phenomena, including workers constantly switching between farm and non-farm occupations, the prevalence of a high number of agricultural laborers, and indentured labor, are not addressed in the regulations. Being covered by the social protection program is one thing, but being included in the legal safety provision is quite another.

The necessity to extend legal protection to all employment sectors appears dubious based on the laws, even though the government may have previously addressed the need to increase the coverage of individuals under social protection programs. During the pandemic, we have seen poverty and extreme inequality come to the fore. To deal with the problem, the local governments took some haphazard actions, but they lacked the administrative skills and funding to provide comprehensive coverage. These situations necessitate a legal framework that ought to have been explicitly mentioned in the rules in order to provide workers with universal social security. Additionally, the new standards do not include the bare minimum of steps to confront social and health crises, like the COVID-19 pandemic, in the workplace.

Concerns Regarding Marginalised Groups

The fact that migration is a reality for the Indian labor force was brought to light during the

lockdown's reverse migration episode. Although the government has taken steps to track down migrant workers, there hasn't been any effort to comprehend the political economy of migration and address it through legislation. For internal migrants, India's only labor regulation has been the Inter-state Migrant Workers (Regulation of Employment and Conditions of Service) Act, or ISMWA, 1979. The Bonded Labour Act and the Contract Labour (Regulation and Abolition) Act (CLRAA), 1970, both serve the same objective. Despite the fact that these laws guaranteed safe movement, they do not address the problems associated with family migration, where women and children are frequently exploited for unpaid labor and their job and identity are concealed.

Although codes do not address these working conditions, they are comparable to those of bondage. The question that so emerges is what laws would apply to cases that were brought to seek relief in circumstances involving egregious abuses of both labor and human rights. Civil societies are going to court, just as they did in the *Bandhua Mukti Morcha v. Union of India*⁴¹ case. However, they need a clear framework for how to approach the legal system in these situations.³⁵ Similar to how sexual harassment in the workplace and human trafficking have not been addressed in the codes, the intended simplification of legal provisions into codes has not only addressed persistently emphasized issues in the labor market but has also raised new implementation-related questions, as mentioned above.

Additionally, women in the unorganized sector are not eligible for maternity benefits because they are only available to those employed by businesses with ten or more employees. Additional measures are lacking to prevent the trafficking of workers, particularly women and children, for sex work, bondage, and exploitative employment, as well as to facilitate the workers' rehabilitation process. Similarly, the new codes do not address the requirements for increasing the legal protections for domestic workers.

Without the Code's structure, legal requirements, or regulations, local governments or employers should have been in charge of addressing the difficulties surrounding women's migration and providing them with a safe and sanitary living and working environment. The interconnected concerns of labor, migration, employment, and gender are thus ignored by the Code, which may have been considered when creating a new legislative outline.

⁴¹ Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

CONCLUSION

There is a clear risk that the current worker protection system, which is guaranteed by a number of labour welfare-oriented laws, may be diluted with the introduction of labour codes. Even though the codes were designed to make things easier for businesses and to cover the unorganised sector, the analysis above demonstrates that, despite the fact that the codes appear to be a compilation of existing laws, many aspects of worker protection have been left out of the new codes. Additionally, it has disregarded the chance to deepen its focus on employment-related issues, which could have been accomplished with appropriate stakeholder input.

Given India's massive labour pool and reserve army, many workers will be willing to put up with subpar working conditions in the absence of fair labour standards, even with new labour laws and less protective coverage.

On the other hand, a growing number of workers will be compelled to work under appalling labour standards, with less job and income security. Additionally, since the labour code gives employers a great deal of latitude in hiring workers on temporary contracts, this can eventually result in an unprecedented increase in the number of people working as self-employed, casual, temporary, and contractual workers—basically, "unprotected labor"—who contribute to the informalization of the formerly formalised sector.

SUGGESTIONS

- All concerns raised by relevant stakeholders must be taken into consideration by the government before implementation of the codes.
- The Indian government should think about lowering the threshold for allowed layoffs in order to reduce the unemployment problem. Other options include offering incentives to employers who want to keep workers in light of economic difficulties or offering compensation to layoff workers in addition to what employers are already required to pay under the Industrial Dispute Act.
- Employers should be held more accountable by the government to provide workers with sufficient social security coverage, particularly during periods of economic expansion. Healthcare, provident funds, pension schemes, and other welfare benefits may be covered by this.

- In addition to protecting some fundamental labour rights, the new labour regulations are anticipated to increase work prospects for women. However, there are numerous flaws in these standards that prevent many female employees from having legal protection. The new standards must be in line with the realities of women's experiences and working environments in order to address their well-being as employees. The experience of women in the workplace has changed in tandem with the evolving nature of employment and the workplace. These changes should be taken into consideration by the laws, which should also constantly refer to the cases and literature that emphasise the situation of working women.
- There still exists a gap as there is no protection provided against wrongful termination to employees working in supervisory capacity earning a remuneration of more than Rs.18,000. The only inadequate remedy available to such an employee is to file a civil suit for breach of employment contract.



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