



UNDERSTANDING INDIA'S NEW LABOUR CODES: CHALLENGES IN IMPLEMENTATION

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Abstract

First, the article would start with the concept of the four codified labour codes and the growing difficulties in our labour law system. Second, we would talk about how employees' lives have been severely impacted by remote and flexible work arrangements since the COVID-19 pandemic. Thirdly, the paper would discuss the "Right to Disconnect" and how its inclusion in Indian labour laws is more than just a question of policy development; rather, it is an indication of our commitment to promoting a more equitable, balanced, and peaceful workplace, which is the legislatures' only goal. Additionally, it will discuss how trade union power can lead to changes in the nation and how unions can demand the

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Introduction

Industrial Relations Code, 2020 consolidates and amends the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes. The code combines and simplifies Central Labour Laws. The Indian labour law system has been identified as one of the most complex labour systems in the world because it is over flooded with numerous regulations and compliances. This complex system includes more than 100 state laws and 40 central laws which have several additional regulations and compliances annexed to it.

To tackle this issue and form a uniform labour law regime, the Central Government enacted four new labour codes in 2019 and 2020. The enactment of these labour codes will thereby simplify and modernise the existing labour law regime in the country. These labour codes intend to consolidate 29 existing labour law legislations in India and regulate four main areas of the labour law regime, i.e., wages, industrial relations, social security and occupational health, safety and working conditions.

Numerous industry representatives have praised the Indian government's decision to combine 29 Central labour laws into four labour codes, arguing that it represents a much-needed step towards a simpler and less complicated labour law system that could be advantageous to both employers and employees. Although the action was applauded and the intention was commendable, the implementation process in the months that followed led to some gaps and unresolved issues emerging, with the industry expressing some reservations about specific parts and waiting for more clarification.

Between 2019 and 2020, the President signed into law the four labour codes: the Occupational Safety, Health, and Working Conditions Code 2020, the Code on Wages 2019, the Code on Social Security 2020, and the Industrial Relations Code 2020. However, the Central Government has not yet implemented the labour regulations, with the exception of the clauses pertaining to the Central Advisory Board on minimum salaries and the identification of

workers for social security benefits using Aadhaar. Because states have not finalised their regulations under these codes, which many private sector employers would find relevant, the implementation process is postponed.

The most significant modifications to the proposed codes in contrast to the current regime.

- i. A uniform definition of "wages" was established, and "wages" were maintained at a minimum of 50% of total compensation for the purposes of calculating payments and benefits;
- ii. The application of the wage payment chapter to all businesses and workers, regardless of their remuneration; • The compounding of specific violations (subject to specific requirements);
- iii. Establishing a five-year statute of limitations for determining the amounts owed and initiating enquiries (EPF, ESI);
- iv. Introducing "fixed term employment" with prorated statutory benefits;
- v. Establishing a negotiating union and negotiating council to negotiate any issues with the employer as may be required;
- vi. Applying standing orders to all businesses with 300 or more employees;
- vii. contributing to a worker reskilling fund in the event of a worker's layoff;
- viii. introducing the idea of "core activity of establishment" with reference to hiring contract labour; and including directly hired workers from other states under the purview of interstate migrant workers.

Problem of the Study

The industry and employers' associations have been pushing for labour reforms that would increase labour market flexibility and spur job creation and growth since India's economic reforms were implemented in the 1990s to promote growth. In light of this, the Indian Parliament passed three labour reform measures on September 23, 2020: the Social Security Code (SSC), 2020; the Occupational Safety, Health, and Working Conditions Code (OSHWCC), 2020; and the Industrial Relations Code (IRC), 2020. Together with the Code on Wages, which was unveiled by the Indian government's Ministry of Labour in 2019, these four legislation make up the labour laws reform that investors and business associations have long called for.

The goal of these employment reforms is to streamline and simplify India's labour laws, which now have a complicated and multifaceted structure. In general, the Code on Wages, 2019 updates and unifies the current fundamental laws that govern minimum wages, wage payments, bonuses, dues, claims, and other matters (GOI 2019). With the goal of expanding social security benefits to all employees and workers across all economic sectors, the SSC, 2020, changes and unifies the current central laws on social security (GOI 2020a). The current central legislation pertaining to occupational safety, health, working conditions, and related issues of employees working in various establishments are amended and consolidated by the OSHWCC, 2020 (GOI 2020b). Lastly, the current central laws governing job conditions, trade unions, and the settlement of industrial disputes are amended and consolidated by the IRC, 2020 (GOI 2020c).

Objectives of the study

- i. It has an effect on a comprehensive collection of regulations that collaborate with associations and bring together business ties to create a beneficial economy;
- ii. It provides a mechanism for firms, workers, and their representatives to interact on matters pertaining to business. It serves as a means of developing amicable contemporary relationships between the partners;

Review of Literature

When the New Labour Code is finally put into effect, its efficacy will be evaluated. The code was originally scheduled to be implemented this year but was postponed by a year because of the COVID-19 pandemic. The Indian Constitution's Concurrent List includes labour, which is listed in entries 24 and 25. As a result, state legislatures and Parliament can both pass labor-related legislation. According to the Union Government, there are

approximately 100 state and 40 federal laws that govern many facets of labour, including pay, social security, working conditions, and the settlement of labour disputes.

The Occupational Safety, Health and Working Conditions Code, 2020 (henceforth referred to as the "Code") was passed by the union legislature in response to the Second National Commission on Labour's recommendations, which were included in its report that was submitted in June 2002. On September 19, 2020, Union Minister of Labour and Employment Mr. Santosh Kumar Gangwar reintroduced it to the Lok Sabha with the new amendments that resulted in the repeal of the Occupational Safety, Health and Working Conditions Code, 2019 (henceforth referred to as the "OSH Code, 2019"). In light of the COVID-19 pandemic, the Union Government also advised several revisions to the 2019 OSH Code after it was referred to the Department-related Parliamentary Standing Committee on Labour, which made numerous recommendations for adjustments to the code. The Factories Act of 1948, the Mines Act of 1952, and the Contract Labour (Regulation and Abolition) Act of 1970 are among the 13 existing Acts that govern health, safety, and working conditions that are consolidated in the Code. The OSH Code aims to combine, streamline, integrate, and rationalise about 600 provisions from the 13 statutes listed into a single code with about 143 provisions.

Constitution of Safety Committees

In some businesses and for a particular class of workers, the relevant government may mandate the creation of safety committees. These committees must be composed of both employer and worker representatives, but the number of employer representatives cannot be greater than the number of employee representatives. These committees' role will be to serve as a mediator between employers and workers. The employer will designate safety officers based on the qualifications set by the relevant government in any establishment that employs 500 workers or more, a factory that engages in hazardous work that employs 250 workers or more, a building or construction project that employs 250 workers or more, or a mine where more than 100 workers are employed in the regular course of business.

Need for Flexibility In Labour Markets and Labour Laws

Three fundamental perspectives about the perceived requirement for flexibility in employment markets are presented by Eyck (2003). The first one highlights the necessity of adapting the workforce to market fluctuations, which arise due to the rise of specialised products and necessitate that businesses swiftly alter the workforce's size, makeup, and occasionally location. The second focusses on reducing labour costs and raising productivity as a result of increased competition. The third viewpoint is political economy, which supports free markets free from trade union involvement and government action.

Research Methodology

In the current industrial environment, industrial relations have developed into a difficult-to-understand system. In the post-globalization period, industrial relations dynamics have evolved. Today's industrial relations must be viewed through a new lens, and the concepts that define them are constantly evolving. Industrial relations' distinct cultural climate is gradually disappearing, and a multicultural environment is being ushered in everywhere in the world. Nonetheless, it is appropriate to describe industrial relations in order to fully comprehend the idea.

Invisible Labour and Gender Inequality

In general, unpaid labour is referred to as invisible labour. Examples of unpaid labour that is considered invisible labour include childcare, housework, and elder care, to mention a few. Ninety percent of this invisible labour is performed by women. The portion of labour that is unrecognised, unrecognised, and therefore unregulated is known as invisible labour. Since the four new codes were introduced, invisible labour has not been mentioned in any of them. The most boring work profile is that of invisible labour, which includes unappreciated duties, no weekend breaks, no holidays, no recognition, and, of course, no pay.

When taking into account the data, it is important to remember that the National Statistical Office (NSO), a division of the Ministry of Statistics and Program Implementation in India, conducted its first Time Use Survey (TUS) from January to December 2019 and found that 38.2 percent of people aged six and up were employed or involved in

related activities. According to the report, 57.3 percent of men and 18.4 percent of women in the nation were employed or involved in related activities. One Unpaid domestic services for household members were performed by 53.2% of survey respondents overall.

In the category, the percentage of females was larger at 81.2 percent than that of males (26.1 percent). In rural areas, 82.1 percent of women performed unpaid domestic work for family members, compared to 79.2 percent in urban areas.

The invisible workforce has already faced a tremendous amount of strife. The struggle increased tenfold as the virus spread over the world. During the first few months, when schools and offices were closed, individuals spent time with their families and relished the relaxation they had long desired. However, only those who were compensated were able to enjoy this relaxation. Increased family tasks, no personal time, no rest periods, and no days off were all consequences of the pandemic. The invisible labour has always been heavily burdened, but the fact that they are still not acknowledged adds to their load. It resembles a cruel race without a finish line.

Results and Discussion

"Dignity of labour has to be our national duty, it has to be a part of our nature." One The members of our society who assist in putting the brilliant ideas that come from the brains of geniuses into action are the workers and labourers. We have a tendency to elevate these geniuses and give them money and prestige. Behind-the-scenes employees are frequently overlooked. The basic necessities for human survival—their rights, dignity, standard of living, and even a better working environment—are frequently disregarded. Since independence, India's labour laws have focused on the rights and benefits of workers, excluding those at the managerial level.

Although the government has made a sincere effort to address the majority of worker requests over the years and has prepared and draughted numerous labour laws, their poor implementation on the ground remains a cause for concern. Although most issues have been attempted to be covered by the new labour rules, problems still exist. Since the federal government and the states must cooperate in order to create regulations that are compliant and carry out the codes in its authentic essence, their implementation is also up for debate. New ideas like the gig economy, platform workers, freelancers, etc. have emerged in this new era. In these situations, the usual employer-

Current Relevance of Employment Protection and Future Reform Directions

It was demonstrated in the last part that, in terms of the different regulations pertaining to layoffs, retrenchments, etc., the IRC 2020 affects a comparatively small percentage of factories and workers. However, given the global disruption of economic activity caused by the COVID-19 epidemic, India's job situation is probably going to get worse as well. By eliminating the safety net in the industrial sector, easing employment protections during a pandemic and an approaching recession may result in the loss of more jobs than they create. To prevent mass layoffs, retrenchments, and closures, it is crucial to closely monitor the labour markets and organised sector businesses. If necessary, this can be done by temporarily expanding the coverage of the IRC's employment protection laws.

Some states' IDA amendments specifically mention a clause for a discrete and temporary recall of the chapter VB restricting provision. For example, the 2016 amendments from Haryana and Jharkhand relaxed the threshold to include businesses with 300 or more employees to which the provisions applied. Employees and unions would find it appropriate and reassuring if the IRC had a clear clause on the subject. The simplification and improvement of dispute resolution procedures is a critical component of industrial relations that is overlooked in the IRC, 2020. Both employers and investors want a calm environment for labour relations and an effective system to maintain harmony in the workplace.

They discovered that, in comparison to employment protection laws, policies that raise the cost of dispute resolution have a more substantial negative impact on India's manufacturing production. According to Amirapu (2020), the future growth of businesses in India's organised manufacturing sector is positively correlated with the efficiency of state-level courts. He goes on to say that effective formal judicial systems contribute to economic expansion. When it comes to industrial relations and dispute resolution procedures, the IRC 2020 appears to fall short of the IDA in

this regard. Future IRC reforms should concentrate on enhancing the effectiveness of dispute resolution procedures, including making sure that cases are handled promptly and conflicts are settled.

Excessive Delegation of Powers & Regressive Approach towards Defining Key Terms

Under the Constitution, the legislature is the law making organ and the executive is responsible for their implementation. It is often observed that the legislature enacts a law on a specific entry/subject within its domain covering the general principles and policies, and further, delegates detailed rule-making to the government thereby, allowing expediency and flexibility. However, time and again the courts have reiterated that certain essential functions and powers should not be delegated to the government which include, framing the legislative policy on a particular subject matter to determine the principles of the law. Also, it is the general principle that any rule made as a delegated legislation should also remain within the scope of the parent legislation.

The Code in section 127, also gives the appropriate government the power to exempt any establishment for a period to be specified in the notification providing exemption. Further, it also enables the state governments to exempt any new factory from any or a group of provisions of the Code in the interest of creating more economic activity and employment. Therefore, the appropriate government has wide discretion in providing exemptions under the Code. Every factory generates employment, and public interest could be interpreted broadly. Also the exemptions could cover a wide range of provisions including those related to hours of work, safety standards, retrenchment process, collective bargaining rights, and contract labour.

The low numeric thresholds with respect to the number of workers would create adverse incentives for establishment sizes to remain small, in order to avoid complying with labour regulation and therefore the real intention of the legislature will remain unfulfilled as the laws will not be applicable to them. It is worth noting that the Factories Act, 1948 only permitted exemptions from its provisions during the cases of public emergency, and such exemptions were limited to three months.

The Code under its scheme also envisages similar provision but however, the life of such exemptions is that of one year at a time. But the drawback here is the regressive approach of the legislature when it defines the phrase 'Public Emergency', in explanation to section 128 of the Code, as a state of a grave exigency, whereby, the security of the union or any part of territory is threatened due to war, or external aggression, or internal disturbance. Implications of this could be that in near future the government may invoke the internal disturbance condition to suspend the application of the code and this will be a severe blow to the rights of the workers across India.

Also, this situation could be done for indefinite time as the maximum life for a notification issued after invoking this provision is one year, but this would be circumvented by re-issuing the notifications.

Implications or Changes in the Labour Jurisprudence

The Code aims at reducing the burden of the employers as it replaces multiple registrations under various enactments to a single common registration, one licence and one return, ultimately creating a centrally consolidated database which will be helpful under ease of doing business policies of the Governments. The Code places an obligation on employers to conduct free annual health check-ups for their employees, to ensure the disposal of hazardous and toxic waste including e-waste, to issue an appointment letter to every employee on their appointment in the establishment.

Constitution of Advisory Boards At Both National & State Level

The Code states that the Central Government shall constitute a National Occupational Safety and Health Advisory Board which will discharge the functions conferred on it by or under the Code and to advise to the Central Government on the matters relating to standards, rules and regulation to be framed under the Code. The State Government shall constitute a similar type of board to be called the State Occupational Safety and Health Advisory Board which will advise on the matters arising out of the administration of the Code as may be referred to it by the State Government.

Conclusion

All parties appear to benefit from these new employment laws, which have been approved by Parliament and announced by the administration but have not yet gone into effect. They provide a variety of opportunities and prospective enhancements.

However, it is still unclear how this significant change will impact the dynamic between employers and frontline employees; only time and tangible outcomes will be able to provide a decisive response. Although the legislation's effective date has not yet been disclosed, we believe that the codes and laws represent one of the biggest economic reforms the government has ever carried out.

Most of the provisions of the Codes address the past demands and discrepancies, acting as restorative justice for the past harms. The Code should have been futuristic in approach while giving protection to the workers and addressing the disputes related to Automation and Robotics, Artificial Intelligence-powered workforce, and Bio-engineering, which could hinder the rights of the workers in the coming decades.

The overwhelming majority of involved workers would say that they would like to support the "Right to Disconnect" law.³¹ As important policy measures, the International Labour Organisation (ILO) claims that this right restricts working hours and guarantees that boundaries between work and personal life be upheld.

A report titled "Working from Home: From Invisibility to Decent Work" was also published in response. Upholding international labour standards is essential for enhancing India's reputation outside and fostering friendly working relationships. Since workers' contributions are intimately tied to the production and distribution of an industry, the legislature must take action to grant them the same rights. Trade unions ought to effectively advance the concept among their members and fight for the welfare of their employees.

The Bill seeks to address the growing rate of employee burnout and enhance work-life balance for employees. It is important to stress that employment contracts that do not outline the agreed-upon working hours must be modified through the establishment's internal regulations as soon as the bill is passed. Finally, we must overcome the industrial age mindset that unnecessarily restricts employee liberty in the contemporary industrial era if we are to successfully execute this right.

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