

CHALLENGES IN THE IMPLEMENTATION OF LABOUR CODES IN INDIA

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Abstract

The labor laws in India trace back to the British Empire era. However, these laws must be modernized. The government recently repealed 29 labor law statutes and introduced 4 labor codes. This article explains how labor rules ensure a single licensing method for each business, simplifying compliance. It will also examine how technology has formalized labor, a vital step toward social entitlements. Finally, all employees formerly excluded from labor legislation will be shown to be laborers. The author will critically analyze these codes' ability to hamper overall goals. The 2020 Industrial Relations Code gives companies more recruiting and firing power. The minimum number of staff needed to apply standing orders has increased from 100 to 300. These codes also cause central-state tension, which the author will examine. Labor is a concurrent issue; thus, the Center and states must regulate it. The Center alerted states in September 2020, but none have submitted regulations under this legislation. Only 12 states have drafted guidelines. Code implementation requires state consensus. In the concluding section of this article, the author will draw parallels to GST implementation to advocate smooth integration of the new labor regulations in each state.

Keywords: *Labor Codes, Centre, States, Employee Safety, Workplace, Concurrent list.*

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INTRODUCTION

‘Dignity of labour’ must be our patriotic obligation, which should be ingrained in our character.¹ Laborer’s and workers are the segment of our society that aids in the implementation of brilliant ideas conceived by intellectuals. We prefer to elevate such individuals and praise them with wealth and prestige. Those who work in the background are frequently overlooked. Their liberties, integrity, living-standards, and even an improved working environment, all of which are essential for human survival, are frequently disregarded. Since India’s independence, the country’s labour laws have centered on the rights and benefits of workers while ignoring those at the management level. Approximately seventy-six years later, laborers yet continue to get exploited by their employers. Even though, the government throughout the years, has attempted, with good intentions, to meet the majority of individuals’ needs by developing and drafting numerous labour laws, but their inadequate execution on the grassroots continues to be a cause for concern. In the light of these circumstances, the “New Labour Code” has attempted to address many issues, even though the obstacles remain. In addition, it continues to be observed as to how they will be implemented, as both the Centre and the states must collaborate in drafting rules that adhere to the codes and executing them in their real essence. Inside this time term, innovations such as freelancers, platform employees have emerged, among others wherein there is no contractual relationship with the employer, and as such the usual employer-employee relationship is circumvented, thereby making it difficult for employees to seek recourse against the employer in the instance of a

¹ Meenakshi Lekhi, “Dignity of labour important to realise PM Modi’s dream of Make in India”, The Economic Times, Sept. 24, 2014

mistreatment/disagreement. Further, issues such as the gender inequality continue to exist, which is a serious issue because it impacts the economic prosperity and, more crucially, the lives of women who are compelled to live inhumane lifestyles.

In the light of these above circumstances, this article discusses the New Labour Codes and the issues related with it; the associated challenges faced by the poorly organized platform workers and gig; the prevalent invisible labour and, finally, the conclusion and suggestions drawn throughout.

LEGAL BASIS FOR LABOURS IN INDIA

Legislation: The legislature has also taken several steps to enhance workplace conditions and clarify labour regulations. This includes merged sets of four labour codes, as will be observed in the following section.

Constitutional Structure: In accordance with the Indian Constitution; 'Labour' as a subject form a part of the Concurrent List. This implies that both the Centre and State governments have the authority to create laws on the topic, except for matters reserved specifically for the Centre. Judicial Interpretation: In the landmark judgement of *Randhir Singh v. Union of India*², the Honorable Apex Court held, "*While the principle of "Equal Pay for Equal Work for both Men and Women"* is not defined in the Constitution per se, it is however an objective to be attained through Articles 14, 16, and 39(c)³. While article 14 of the supreme law guarantees "*equality before the law and equal protection of the laws*" throughout the territory; Article 16 addresses the "*right of equal opportunity in the matters of public-employment*".

² AIR 1982 SC 879

³ The Constitution of India, art. 14, 16 , 39

Further, Article 39(c) states that the economy must not culminate in the accumulation of “*wealth and means of production to the disadvantage of society*” as a whole.

INTRODUCTION TO THE VARIOUS LABOUR CODES IN INDIA

Many industry experts applauded the Indian state’s policy to consolidate around twenty-nine Central labour laws into four Labour Codes, as the action heralded a very much stride forward into reduced complexity and a simplified labour legal regime that might benefit both employees and employers. In the following months, the execution process led in the emergence of various voids and unresolved issues, with the industry expressing significant worries over specific parts and requesting further clarity.⁴

Characteristics of New Labour Codes

The New Labour Code addresses Social-Security, Labour-Relations, Workplace Safety and Wages. The introduction of the new code is set to change the salaries, P.F., working hours of employees et cetera. Further,

- The legislation has also enacted new payroll regulations. Under the New Wage Code, an employee’s base income must include at least fifty percent of his entire remuneration. Thus, a rise in basic salary will contribute more funds to the Provident Fund of the employees, thereby resulting in a substantial retirement benefit.

⁴ Khaitan & Co., “*Understanding India’s New Labour Codes: Challenges in Implementation*”, available at: <https://www.mondaq.com/india/employee-benefits--compensation/1072672/understanding-indias-new-labour-codes-challenges-in-implementation> (last visited on: March 15, 2023)

- Also, employees with salaries will have the choice of working 4 days per week and take 3 days off⁵. Under the Factories Act, a worker who exceeds the daily limit for nine hours or the maximum of forty-eight hours is entitled to double the standard wage rate. The revised Codes maintain this overtime wage rate for any job that exceeds eight hours per day or forty-eight hours per week.
- By expanding the P.F. and H.R.A. categories of the wage structure, the employees 'take-home payment' will be reduced. Further, there is also a possibility for altering the Basic Pay of the employees.

Code on Wages, 2019

This code that was enacted in 2019 superseded 4 statutes. The statutes that were repealed included the "*Payment of Wages Act, 1936*", "*Minimum Wages Act, 1948*", and the "*Payment of Bonus Act, 1965*", "*Fair Remuneration Act, 1976*". The code was enacted to modify and unify the laws pertaining to wages, bonuses, and related things.

Features:

Wages: A unified definition of 'Wages' is introduced, thereby streamlining, and standardizing numerous wage-related concerns. The term encompasses allowances, salaries, and any other form of monetary compensation, does not cover, Bonuses or Travel Allowances.⁶

Minimum wages: In accordance with the code, the Central government determines the minimum salary for workers based upon their Living-

⁵ Joydeep Bose, "4-day work-week, change in salary: India's new labour codes", Hindustan Times, Dec. 20, 2021

⁶ The Code of Wages, 2019, (No. 29 of 2019), s.2(y).

Standards. The minimum wages may vary based on the different geographical area. These minimum wages set by the respective governments should be higher than the floor wages. If the existing minimum wage is higher than the floor wages, neither the central nor the state governments can cut them. When determining such wages; the central government may consult with respective state and Central Advisory Board.⁷

Deductions: Under the provision, an employee's pay may be deducted for the reasons listed including fines, abstention from duties, and accommodation by the employer et cetera. Furthermore, these deductions must not exceed fifty percent of the employee's salary.

Payment: Remuneration shall be paid Currency notes, Coins, cheques or by crediting Bank Accounts or electronically. The employer will determine whether the pay period is daily, weekly, fortnightly, or monthly.

Code on Social Security, 2020

Social security is a fundamental human right that fulfils the fundamental requirement for protection against social demands and Specific life dangers. Efficient social-security systems ensure Health Protection and Economic Stability, contributing towards the elimination and avoidance of inequality and poverty, in addition to the basic human rights and promotion of social-inclusion. This Code is a law that modifies and integrates the social-security regulations and extends them to all workers and employees within the organised, unorganised, and various other sectors. It aims to meet the longstanding desires and expectations of Gig, Platform,

⁷ The Code of Wages, 2019, (No. 29 of 2019), ss. 5, 6, 8.

and unorganised workers. It incorporates nine prior Central Laws.⁸

Features:

- The objective of the Code is to safeguard as many employees and staff as possible. It provides a broad understanding of the term ‘employee’ that encompasses contract employees and those in administration, management, and supervision roles.
- To evaluate an employee’s eligibility for certain social-security benefits, the Code creates differences based upon the employee’s job schedule and/or wages-cap. The meaning of ‘Interstate Migrant Workers’ as defined in the Code has been augmented to include individuals who resettle through one region for recruitment in an establishment in the desired region and who have the capability to efficiently impact their organization in the desired region pursuant to a configuration by the employee. These migrants, however, must earn at least eighteen thousand per month to qualify as an Interstate Migrant Labourers.
- It further specifies the heightened and graduated consequences for a multitude of infractions, a few of which could be compensating in specific situations. While the maximum fine for a contravention can be as high as one lakhs rupee and three lakhs’ rupees for subsequent violations, the longest term of confinement for a contravention can vary from 2 months for the preliminary unlawful act to 3 years for a

⁸ Minu Dwivedi & Shreya Chowdhury, “India: Evaluating the Code on Social Security”, available at: <https://www.mondaq.com/india/employee-benefits-compensation/1001268/evaluating-the-code-on-social-security-2020>. (last visited on: March 10, 2023)

second or additional violation following a prior conviction. The restrictions limit allowances up to fifty percent, implying that the basic pay would account for up to half of the compensation.

- Moreover, the P.F. contribution is established as a proportion of basic wages, which further includes Basic Pay and Dearness Allowances.⁹

Code on Occupational Safety, Health, and Working Conditions, 2020

This code, gained the approval of the president in 2020, has replaced thirteen outdated central labour law regulations, was enacted to unify and revise the regulations governing the occupational health, safety and workplace circumstances of those who work for various businesses.¹⁰

Features:

- The workspace ought to be void of hazards that have the potential to harm the health and well-being of workers and any such hazards must be properly eliminated. Disabled workers cannot be employed in the construction industry,
- It mandates that workers must conduct yearly medical screening camps,
- In accordance with the Code, centre is required to create a “National Advisory Board”; which stands for the “National Occupational Safety and Health Advisory Board” with the competence to offer suggestions to the Central Government.

⁹ Martine Humblet & Rosinda Silva, “*Standards for the 21st century: Social Security*” (2002).

¹⁰ New Labour Code, Ministry of Labour & Employment.

- Further, the appropriate Government can also appoint “Inspector-cum-Facilitators” who will practise the authority delegated to them throughout their respective domains and additionally to their other responsibilities, may undertake an electronic internet evaluation as well as call of the necessary information required by this Code.
- The Employers must further create and maintain “Employee Welfare Programmes” in accordance with the requirements of the central government.

Code on Industrial Relations, 2020

According to the Industrial Relations and International Labour Organization concerns either with the connection between the ‘employer and the state’ and the ‘worker organizations’, or the interaction among the occupational groups themselves. This code on such relations is an act to unify and revise the laws pertaining to the Trade-Unions, employment-conditions within an undertaking, investigation, and settlement of industrial disputes, as well as for matters connected with or incidental thereto¹¹.

Features:

- *Application of Standing-Orders:* Such orders must be written on issues listed in an appendix to the rules and every facility with three hundred or more workers must use them.
- *Fixed-term contracts:* It intends to allow firms to recruit people for any

¹¹ Rama Priya Gopalakrishnan, “*The Industrial Relations Code, 2020: Implications For Workers’ Rights*”, Live Law, Oct.20, 2020, available at, <https://www.livelaw.in/columns/the-industrial-relations-code-2020-implications-for-workers-rights-164921> (last visited on: March 20, 2023)

length of time. The employees for the fixed term are such individuals that are hired on contractual basis that stipulates their restricted job duration.

- *Timeframe for the disciplinary hearing:* The ‘Industrial-Employment Standing Orders’ Act did not establish a timeframe for the implementation of disciplinary actions. Yet, the Code imposes a “Ninety-Day Limit” on the conclusion of the investigations into misbehavior.
- *Conflict-Resolution:* It proposes for the creation of two tribunals, with a joint ‘Decision-Making’ for significant civil cases and a sole decision-making for less significant civil disputes, resulting in a quick response to cases.
- *Lower Threshold:* Industries with less than three hundred employees are excluded from developing codes of behavior for industrial facility employees. Presently, only businesses with up to one hundred employees are needed to conform.

ADVANTAGES OF LABOUR CODE

The Labour Codes streamline such regulations by collecting twenty-nine essential statutes which have been sitting on the table for at least seventeen years.

They anticipate that these improvements will eliminate internal inconsistencies, increase adaptability, and improve safe working conditions requirements.

It will give a massive benefit to the industries and jobs and minimise the

number of definitions and authorities applicable to firms.

Ease in Doing Business: According to several industry and economic professionals, these measures will increase investment and facilitate doing business.¹²

Faster Resolving Conflicts: The rules streamline antiquated labour regulations and revise adjudication procedures, resulting in quick resolution of disputes.

Gender Equality: All industries must let women to work overnight, but employers must guarantee that adequate security measures are in place, and women must approve to night shifts.

ISSUES ASSOCIATED WITH THE IMPLEMENTATION OF LABOUR CODE

Constitutional Challenge: As ‘Labour’ is a matter of concurrent list; both the central and the state government must establish laws and regulations. Although Parliament approved the 4 Labour Codes in 2020 and the Centre published the draught rules for all such codes in advance; certain individual states still need to finalize the process.¹³

Issues with the different codes as follows¹⁴

Code on Wages:

¹² Remya Nair, “*Ease of doing business?*” *The Print*, July 8. 2020, available at <https://theprint.in/economy/ease-of-doing-business-india-still-has-1536-acts-69233-compliances-for-firms-to-follow/456867/>. (last visited on: March 25. 2023)

¹³ Aseem Muhammed “*Labor Codes Explained*” available at <https://www.clearias.com/labour-code/#conclusion>. (last visited March 25. 2023)

¹⁴ PRS Legislative Research, “Overview of Labour Law Reforms”, *PRS India*, Sept. 17, 2020, available at: <https://prsindia.org/billtrack/overview-of-labour-law-reforms> (last visited on: Apr. 5, 2023)

Individual states are prohibited from establishing the minimum wage below the base price. However, the problem is that all individual states set their minimum wages merely above the mandatory price cap. This means Instead of establishing a ‘mandatory floor pays’ the government should establish a mandatory minimum wage rate to avoid a “dual wage rate”.

According to section 45 of the code, any disagreement will be heard and resolved by an officially designated gazette officer. It is a cause for concern that such officials may hear “complex legal concerns” without any legal knowledge.

Section 52 of the Code contains a new provision stating that the authority to inflict a punishment has been transferred from a judicial magistrate to an officer of at least the rank of secretary. This provision, however, is contrary to Article 50 of the supreme law, which mandates the separation of the executive and judiciary.

Section 56 of the Code absolves employers from criminal penalties if they can show that they exercised reasonable attention (also known as due diligence) in ensuring the implementation of the Code and that the other party perpetrated the infraction without his “knowing, consent, or connivance”.

Social Security Code, 2020

The code excludes a huge number of workers from the program since it only comprises workers from businesses with a specified minimum number of employees (for instance 10/20) and only gives benefits such as medical insurance and pension to them. The other group of workers, who are covered by various discretionary schemes, includes the self-employed

workers and others working in the unorganised sector, where the min. number of employees is less than ten.

This code also demands workers and employees to disclose their Aadhar Card number to obtain the “social security benefits” from the career centre, which may be in violation of the ruling given by the Hon’ble Apex Court in *K. S. Puttaswamy v. Union of India*.¹⁵

In addition, the code stipulates those other advantages, such as P.F., Pension benefits, and Health insurance benefits, are only accessible to employees who make earnings beyond a “government-specified threshold”. As such this provision leaves the remaining employees high and dry.¹⁶

Issues to be addressed:

- Further, this code does not apply to charity or N.P.O. (Non-Profit organisations) and
- It provides that the journalists can’t work more than one hundred and forty-four in four weeks which appears discriminatory to other employees.

Code on Industrial Relations, 2020:

It states that the judgements of an Industrial Tribunal are enforceable within a period of thirty days post issuance. In any event, the public authority may waive the obligation for honour under certain conditions if the social justice or national economy is affected.

¹⁵ (2017) 10 SCC 1

¹⁶ Suresh Nadagoudar and Rajashree Patil, “Social Security Code 2020: An Analysis” 10 *Christ University Law Journal* 19-42 (2021).

Since the Code requires all workers at an organization to provide Fourteen-Day prior notice to a Lock-out or Strike that is effective for a maximum of sixty days, this capacity to strike and lock out employees will be diminished. Its further outlaws' lockouts and strikes in 2 circumstances:

- 1) During and up to 7 days post conciliation and
- 2) During and up to 60 days post a tribunal proceeding.¹⁷

Delayed Implementation of the Code: The 'Ministry of Labour & Employment' approved the revised labour codes, which were scheduled to take force on 1st July 2022. However, since there has not been any consensus among the individual-states, the new code has not yet been implemented.

Further, the trade unions have informed the Centre about their engagement in the protest measures if the administration proceeds with their implementation. Further, the union fear that the codes been touted as "Reforms", will erode employees' rights.

Although expenses such as "payment for overtime" and "gratuities" may increase, industry officials have agreed that acknowledging and safeguarding the employees' rights, especially those who regarded as the 'fixed term' is a great move.

Owing to the concurrent nature of the topic, both the central and the state government are required to pass rules and regulations prior to the implementation of this code. Since many states have pre-published the

¹⁷ Saraswathi Kasturirangan, Atul Mittal "*Labour codes of India: Prepare for the challenges ahead*", available at <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-presentation-23-feb-2021-noexp.pdf> (last visited on: March 25. 2023).

draught rules for at least the Code on Wages and the Social Security, it indicates that the Centre is planning for a delayed implementation with an initial adoption of these regulations. Nonetheless, they were certain that once the execution process begins, further obstacles may emerge. Participants agreed that, to ensure a seamless transition, the criteria's including:

- i. Take-home pay for employees and
- ii. Cost to recruiters; must stay unchanged and unaffected by the transition.

Additional Obstacles

- Absence of a specific provision which indicates the employers' obligations in extreme circumstances.
- Further, worries about engaging with unions and acknowledging them into industries with limited experience in this field such as the Information Technology.
- The social security of employees is not explicitly addressed in small and medium-sized enterprises, and
- No definite steps taken for boosting the career options for them.

It can be indicated that the goal of centralization may/may not be achieved by the codes for the fact that they still include ambiguity. Considering situation, it has become necessary that the government should make every effort and adopt all necessary rules to ensure that the labour codes are applied in the proper spirit.

SOCIAL ECONOMIC FACTORS

India had over five hundred million workers in 2020, which accounts for the 2nd largest labour force after China. The agricultural industry accounts for more than forty-one percent (41.19%) of the entire labour force, while the industrial sector accounts for around twenty-six per cent (26.18%) and the service sector accounts for around thirty-two per cent (32.33). India's labour force can be separated into an organised and unorganised sector. The majority of India's inhabitants strive to make a living, which accounts for the most significant socio-economic issue.

Other factors that create their troubles include:

- The poor work-quality,
- Poor work-conditions irrespective of where they work alongside
- Uncertain and meagre salaries.¹⁸

This thereafter gave rise to various principles of labour law in India, which includes:

Social-Equity

The core element of this idea is the maintenance of labour-friendly social justice laws, given that conditions fluctuate and are not always the same. Hence, laws must be periodically revised. In accordance with this concept, the government intervenes to adjust or modify accordingly so as to

¹⁸ Amarchand & Mangaldas & Suresh A. Shroff & Co; “*Report on Labour Laws in India*” available at:

https://www.jetro.go.jp/ext_images/jfile/report/07000147/Report_on_Labour_Laws_in_India_.pdf (last visited on: March 26. 2023).

reflect the changing circumstances. In an essence, this principle provides for the establishment of an equitable standard for everyone by legal mandates.

Social-Justice

The core premise of this principle indicates that all the social groups, irrespective of the situation, must be fairly treated. It tries to eliminate social inequality because it is evident that certain groups face social disadvantages in terms of labour or work. Its goal is to make certain that all individuals, irrespective of their socio-economic standing, must have equivalent opportunity for employment opportunities.

Social-Security

This principle refers to an individual's entire safety within their family, place of employment, and society. In order to maintain an adequate standard of living, this system provides coverage for both fundamental requirements and unforeseen life occurrences. It anticipates joint action against social dangers, which is central to labour legislations.

National Economy

Based on this principle, the country's general economic position should be taken into consideration when drafting labour laws, as the condition of a country's economy has a substantial impact upon its labour laws.¹⁹

CONCLUSION AND SUGGESTIONS

Although enterprises have the "right to an adequate return" on their

¹⁹ Naveen Talawar, "*Labour Laws in India*" available at https://blog.ipleaders.in/labour-laws-in-india-2/#Principle_of_social_justice. (last visited on: March 26, 2023).

investments, employees too have the “right to acceptable salaries” alongside the “safe workplaces”. It is difficult to create and codify laws that are suitable for all parties, and harmonizing their interests must be the objective of any legislation related to labour. The 4 labour codes have been appropriately put together for this purpose. Notwithstanding the fact that the labour regulations are nearly a century in the making, it is an exaggeration for the Union to regard them as “game-changer” and “Landmark”. The rules have been evolved as per the prevalent commercial and industrial activity, but there is still more work to be done to strike a balance between the interests of the industry and the worker. Focusing on economic expansion without wealth-redistribution contributes towards rising unemployment and socially unaccountable success, which the government must work more to recognise. Further, all legislations must attempt to maintain the finest possible balance between opposing interests and should endeavour to provide as much consolation to the weakest of the opposite wings as feasible in the wider interest of our nation. However, if they are executed with integrity and truthfulness only then the country can achieve the desired aim of boosting “economic growth” and unlocking the unrealized potential of tens of thousands of our businesses and entrepreneurs to propel the state to greater levels. In the light of the modifications that the new labour codes have made to the standard Employment Laws in India, it will be crucial for businesses to evaluate the ramifications and reconsider the regulatory requirements within each law once it is implemented alongside the ultimate regulations and modifications of the state.

The new regulations represent the much-needed changes to the current labour regime of the state. These codes would further ensure the formation

of One India & One Law by lowering “the multiplicity of laws” with frequently contradictory definitions of terminology and clauses to the four codes, thereby facilitating the business-conduct significantly.

The goal of the labour regulations is to level the playing field between “Employer” and “Employee,” thereby reducing the tension between the two groups. Regarding the simplification and modernization of the labour system, the new reforms ultimately surpass the obsolete current “labour law regime”. These reforms are more “employer-friendly”. Though the latest changes have reduced several compliance requirements, they have also generated a number of ambiguities by failing to clarify an essential terminology in the Codes. Though only time will reveal the long-term efficacy of these Codes.

Suggestions for addressing the issues include the following:

1. As a subject upon the concurrent list of the supreme law, it is the duty of both the central and the individual state governments to enact legislations upon the matter. Nonetheless, the Individual States have limited authority to adapt the labour laws for meeting their own needs, thereby encouraging employment creation and investments. It is in everyone’s best interest to transfer the subject in the State list,
2. Standardizing and unifying the labour regulations would be a significant step along the way of implementing existing laws effectively,
3. Enhancing ‘enforcement mechanisms’ is required. Enhanced infrastructure and increased personnel are necessary for the efficient

enforcement of labour regulations,

4. The government must prioritise the critical issue of employment development. Even though the percentage of workers with steady employment has improved, unemployment; however, has risen to its highest level in forty-five years. In such a circumstance, it'd be desirable for the government to create a "broad agreement" on any significant rule instead of pushing them through in the "interest of simplicity",
5. Need to establish an "All India Service for labour administration" that would provide professionals in the field of labour management. Labour reforms are urgently required not only to promote the programmes such as Ease of doing business and make in India, but also to prevent the population from morphing into a nightmare of "unemployment and underemployment", and
6. Contractual labourers should be insured under the "Workmen's Compensation Act" for mishaps, alongside other benefits from the Employee State Insurance Act and the Maternity Benefit Act.