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Critical Analysis of New Labour Codes

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ABSTRACT

All code are passed by Parliament and signed by the President and ready for implementation but still not effective as date of effectiveness not notified. They will replace 29 existing labour laws. A new definition of machinery, worker, etc, has been introduced. The Central Government can apply this Code to any establishment subjected to the size threshold as may be notified. The Code also makes provisions for the registration of unorganised workers, gig workers, and platform workers. Changes in the Employees Provident Fund (EPF) and Employees State Insurance Scheme (ESI) for gig and platform workers have come into effect. The Occupational Safety, Health, and Working Conditions Code will require all businesses to have bathrooms, showers, and locker rooms for both men and women as well as transgender people with proposed maximum of 12 hours working in a day. The right government is now defined completely for public sector undertaking. The Code on Wages, 2019 aims to regulate wage and bonus payments in all employments. The Code forbids discrimination on the basis of gender in matters relating to remuneration and recruitment of employees for the same or similar work. SSC lacks a regulatory framework and mechanism for universal social security. MWC 2020 has once again ignored and failed to define a methodology for determining an acceptable minimum wage for workers. It has also dismantled enforcement mechanisms and workers' rights to bring claims in court, as the Supreme Court has already directed.

Keywords: *Code, Employer, Worker, Gig worker, Platform worker, Machine, Industry, Right government, Grievance, Social Security, welfare, Wages, Reforms, Occupational Safety, Migrant*

I. INTRODUCTION

Central Government agreed to replace 29 existing labor laws with four codes. This was based on the recommendations of the Second National Commission on Labor. These are the Labour Codes passed by both Houses of Parliament and already signed by the President on 28 Sept. 2020 except IRC on 8 Aug. 2019. All codes are ready for implementation but still not effective as the date of effectiveness has not been notified.

- Industrial Relations Code, 2020 (IRC)

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- Social Security Code, 2020 (SSC)
- Code on Occupational Safety and Working Conditions Code, 2020 (OSHWCC)
- Code on Wages, 2019 (WC)

II. THE INDUSTRIAL RELATIONS CODE, 2020

It aims to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

The Industrial Relations Code of 2020 superseded three previous laws:

- The Trade Unions Act, 1926
- The Industrial Employment (Standing Orders) Act, 1946
- The Industrial Disputes Act, 1947.

Some of the definitions as mentioned under the Code:

The definition of "Employer" has been amended to include the following: the head of the department, the occupier of the factory, the manager of the factory, the person who or the authority that has ultimate control over the establishment affairs, manager or managing director, Contractor, the legal representative of a deceased employer.

- The term "**industry**" refers to any systematic activity carried out in collaboration between an employer and his employees (whether such workers are employed by such employer directly or by or through any agency including a contractor). Additionally, the new regulation expressly excluded from this definition institutions owned or managed by organisations engaged entirely or substantially in charitable, social, or philanthropic services; sovereign functions; or domestic services.

- The term "**Industrial Dispute**" refers to any disagreement between employers and employees / employers and workers / workers and employees regarding employment, working conditions, discharge, dismissal, retrenchment, or termination of such employee.

- Defining "The term "**railways**" encompasses the Metro railway.

- Definition of "Negotiating union or negotiating council" has been added. Recognising the role of such council in an industrial establishment having registered Trade Union for negotiating with the employer of the industrial establishment.

- A definition of "**Trade Union dispute**" has been added, which refers to a disagreement over a Trade Union that occurs between two or more Trade Unions or between Trade Union members.
- **Layoff**: When an employer is unable to continue employing a worker due to adverse business conditions.
- **Retrenchment**: The process by which an employee's services are terminated for any reason other than disciplinary action.
- **Exemption**: In the public interest, the Government may exempt any new industrial establishment or class of establishments from the Code's provisions.
- **Standing Orders**: Industrial establishments with at least 300 employees must develop Standing Orders addressing (i) worker classification, (ii) employee communication regarding work hours, holidays, paydays, and wage rates, (iii) employee termination, and (iv) worker grievance redress mechanisms.

Silent features of Industrial Relations Code 2020

- Discharge, dismissal, retrenchment, or termination of services: Disagreements over the discharge, dismissal, retrenchment, or termination of services of an individual worker constitute an industrial dispute. Workers may approach the National Industrial Tribunal for conciliation of an industrial dispute involving dismissal, retrenchment, or termination within 45 days of filing an application for conciliation.
- Employers of industrial establishments such as mines, factories, and plantations employing at least 300 people are required to obtain prior approval from the federal or state government prior to laying off, retrenchment, or closure.
- In the event that an employer suspends an employee pending an investigation or inquiry. Subsistence allowance payable at 50% of wages for the first 90 days of suspension and at 75% of wages for the remainder of the suspension period.
- The appropriate government shall establish a Worker Reskilling Fund, which shall be funded by employer contributions. The amount shall be equal to fifteen days' wage paid to the employee immediately preceding his or her retrenchment. The fund is credited within forty five days of the retrenchment. Without prior government approval, businesses with fewer than 300

employees may now lay off, retrench, or close. Previously, the cap was set at at least 100 employees.

- The Grievance Redressal Committee in an industrial establishment employing 20 or more workers will now have a maximum of ten members, up from six under the previous law.
- Within 45 days of filing an application for conciliation of the dispute, the worker may approach the National Industrial Tribunal for resolution of an industrial dispute involving dismissal retrenchment, or termination.
- Employers of industrial establishments such as mines, factories, and plantations employing at least 300 people are required to obtain prior approval from the state or national government prior to laying off, retrenchment, or closure.
- In cases where more than one registered trade union of workers operates in an establishment, the trade union with more than 51% of the workers as members is recognised as the sole negotiating union. If there is no eligible sole negotiating union, a negotiating council comprised of at least 20% of the workforce will be formed.
- Trade unions must give 14 days notice before declaring a strike.
- Employees may bring a labour dispute against their employer within two years, rather than three years. Employers may also refer industrial disputes to arbitration voluntarily as well as the employees, through a written agreement resolving the dispute through arbitration.
- The central government will serve as the "**appropriate government**" for all central public sector undertakings (PSUs), industries such as railways, mining, telecommunications, and banking, as well as any "Controlled Industry" deemed to be in the public interest.
- The term "**employee**" has been expanded to include any individual employed by an industrial establishment to perform manual, operational, supervisory, managerial administrative, technical, or clerical work.
- The term "**worker**" is now defined in terms of the wages earned by the worker-any worker /employee earning up to INR 18,000 will be classified as a worker.
- Introduction of "**Fixed Term Employees**," i.e. employees hired for a specified period of time pursuant to a contract between the employee and the employer. Fixed Term Employees

are entitled to the same salary, benefits as regular employees performing similar or identical work.

III. THE CODE ON SOCIAL SECURITY, 2020

It wants to make social security available to everyone who works, whether they work in an organised or unorganised sector or in any other. It's called the Code on Social Security, 2020, and it replaces 9 other laws. The Central Government by notification can apply this Code to any establishment subjected to the size-threshold as may be notified.

- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- Payment of Gratuity Act, 1972
- Employees' Compensation Act, 1923
- Maternity Benefit Act, 1961
- Employees' State Insurance Act, 1948
- Workers Cess Act, 1996
- Cine Workers Welfare Fund Act, 1981
- Building and Other Construction and Unorganised Workers' Social Security Act, 2008
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

Silent Features of The Code on Social Security, 2020

- Section 109 (1) states: "The Central Government shall frame and notify, from time to time, suitable welfare schemes for unorganized workers on matters relating to—(i) life and disability cover; (ii) health and maternity benefits; (iii) old age protection; (iv) education; and (v) any other benefit as may be determined by the Central Government." While Section 109 (2) states, "The State Government shall frame and notify, from time to time, suitable welfare schemes for unorganized workers, including schemes relating to— (i) provident fund; (ii) employment injury benefit; (iii) housing; (iv) educational schemes for children; (v) skill up-gradation of workers; (vi) funeral assistance; and (vii) old age homes".

- The term "**gig worker**" refers to an individual who performs labour or participates in a work arrangement and receives money from such activities outside of the usual employer-employee relationship.

The term "**platform worker**" refers to someone who is engaged in or carrying out platform work, which is a work arrangement distinct from the traditional employer-employee

relationship in which organisations or individuals use an online platform to connect with other organisations or individuals to solve specific problems or provide specific services, or to engage in any other activities as specified by the Central Constitution of a National Social Security Board for unorganised workers. Government. This is first time in India that application based assignments performed by workers are recognised as employee-employer relationship.

The **Social security funds** for unorganised workers, gig workers and platform workers will be set up by the Central Government. The State Governments will also set up and administer separate social security funds for unorganised workers. The Code also makes provisions for the registration of unorganised workers, gig workers and platform workers.

National Social Security Board in addition to the unorganised workers, it will also administer schemes for the welfare of gig workers and platform workers. The Board will comprise of five representatives of aggregators appointed by the Central Government, five representatives of gig workers and platform workers appointed by the Central Government, Director General of the ESIC and five State Governments representatives. The number of representatives of Central Government officials in the Board from 5 to 10 members and in the State Boards from 7 to 10 members for unorganised workers.

The welfare schemes for the gig and platform workers will be funded through a combination of contributions from the Central Government, State Governments, and Aggregators. It mentions nine categories including ride-sharing services, food and grocery delivery services, content and media services, and e-marketplaces. It is to be noted that any contribution from the aggregator may be at a rate notified by the Government between 1-2% of the annual turnover of the aggregators and must not exceed 5% of the amount paid or payable by an aggregator to gig workers and platform workers.

- It simplified the process of provision of social security and assistance to the workers, by the proliferation of organizational structure with the constitution of social security boards at the centre and state level along with a separate board for gig/platform workers
- Expand sources for funds from corporate social responsibility and constitute a “special purpose vehicle” for the purpose of implementation of schemes for unorganised workers.
- Significant reforms in the **Employees Provident Fund**
 - All establishments having 20 or more workers come under the purview of EPF.
 - Mandatory Aadhaar based registration.
 - The central government may defer or reduce the employer’s or employee’s

contributions (under PF and ESI) for a period of up to three months in the case of a pandemic, endemic, or national disaster.

- Increase penalty amount from INR 10,000 to INR 100,000 and imprisonment of one to three years on deduction of employee contribution from salary and non-depositing of EPF. Subsequent failure to pay contributions will attract imprisonment of two to five years and fine of INR 300,000.
- Changes in **Employees State Insurance Scheme (ESI)**
 - Gig workers, plantation workers, unorganised sectors will come under ESI.
 - ESI to be extended to any hazardous occupation and even when a single employee is employed.
- Changes in **Gratuity**
 - Permanent employees will be eligible for gratuity after five years of continuous service,
 - Working journalists will be eligible for gratuity after three years, down from five years.
 - fixed-term employees will be paid on the basis of their tenure of employment with one organisation.
- Changes in **Maternity Benefit**
 - Every woman is entitled to medical bonus of up to INR 3,500 where pre-natal confinement and post-natal care is not provided by employer or such amount as may be notified by the Central Government, with no threshold on the upper limit on this amount.

IV. THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

The goal of the code is to make sure that all of the laws that deal with occupational safety, health, and working conditions for people who work at a place of business are in one place, and to make changes to them. It will replace 13 other laws.

- The Factories Act, 1948
- The Mines Act, 1952
- The Dock Workers (Safety, Health and Welfare) Act, 1986

- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- The Plantations Labour Act, 1951
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Working Journalist and other News Paper Employees (Conditions of Service) and
- Miscellaneous Provisions Act, 1955
- The Working Journalists (Fixation of rates of wages) Act, 1958
- The Motor Transport Workers Act, 1961
- The Sales Promotion Employees (Condition of Service) Act, 1976
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Cine-Workers and Cinema Theatre Workers Act, 1981.

Silent features of The Occupational Safety, Health and Working Conditions Code, 2020

- **Gender Discrimination:** Among other things, the Code doesn't let people be discriminated against because of their gender.
- **Women Employment:** Women who work in all the businesses will be able to work before 6 a.m. and after 7 p.m. if they want to, but only if they agree to safety, holidays, and work hours. If women are needed to do dangerous jobs, the employer will make sure they have enough protection before they start working for them.
- **Rights of Transgenders:** It is required for all businesses to have bathrooms, showers, and locker rooms for both men and women, as well as transgender people who work there.
- **Rights of Contractual Workers:** The Code prohibits contract labour in core activities except (i) the normal functioning of the establishment is such that the activity is ordinarily done through a contractor, (ii) the activities are such that they do not require full-time workers for the major portion of the day, or (iii) there is a sudden increase in the volume work in the core activity which needs to be completed in a specified time. This Code will be applicable to contract labour engaged through a contractor in the offices of the Central and State Governments. Liability of "Principal Employers," which includes, among other things:

- To make sure that the contract workers have things like canteens, bathrooms, and drinking water when they work there.
- The person who hires the contract labour or the person who hires the contract labour for him will have to pay them. The manager has been left out of the definition.

- **Social Security Fund:** In order to make sure that unorganised workers are safe, the Government will set up a Social Security Fund. The money that comes in from the composition of offences under the Code will go into the Fund. Other sources of money may also be used to pay for it.

- **Spread over time:** On 19 November 2020, the Ministry of Labour and Employment proposed maximum 12 hours working in a day inclusive of intervals under the Occupational Safety, Health And Working Conditions Code, 2020. It also said that no worker should be required or allowed to work in an establishment for more than 48 hours in any week. 'Spread over time' refers to working hours plus the time for lunch and other breaks.

- Features and non-feature films will also be covered by this code. This code also covers television shows and web-based serials like "Serials," "Talk Shows," and "Reality Shows."

- "**Audio-Visual Worker**" is going to be defined, and it will be used to describe people like singers, newscasters, dancers, and more! It is against the law to hire an audio-visual worker without their permission.

- Central or state government rules will be used to set the hours of work for different types of businesses and employees.

- Employees can't work more than six days a week, except for people who drive motor transport.

- In order to change the definition of "**factory**," the number of employees has to be at least 20 if there is power, and at least 40 if there is no power. The law says that hotels, restaurants, eating places, and other places where people go to eat are not included in this definition.

- A "**hazardous substance**" is any substance that comes from industrial activity and has the potential to cause physical or health problems for people and the environment.

- A new term called "**industrial premises**" will be used to describe any place or building where any part of industrial, trade, business, occupation, or manufacturing activity is done. It will not be a private dwelling house.

- "**Inter State Migrant worker**" has been changed to include people who make less than INR 18,000. Any person who moves from one state to another and finds work there will be called an inter-state migrant worker. As long as they make more than the maximum wage set by the Central Government, only those people will be considered inter-state migrants. The inter-state migrant workers are entitled to certain benefits such as:

- Option to avail the benefits of the public distribution system either in the native state or the state of employment.
- Availability of benefits available under the building and other construction cess fund in the state of employment.
- Insurance and provident fund benefits available to other workers in the same establishment.
- People who move from one state to another will also be kept in a portal by the Central and state governments.

- A new definition of "**machinery**" says that it includes any item or combination of items that is made, used, or planned to be used to convert any form of energy to do work.

- **Appropriate Government:** For the purposes of this clause, the Central Government will still be the right government for the central public sector undertakings even if the Central Government owns less than 50% of that public sector undertaking after the start of this code.

- Employees who get money instead of wages from their employers can get money in kind from their employers. The value of that money doesn't have to be more than 15% of the total wages that the employee is getting, so it can be part of the money that the employee is getting paid.

- **Wages:** "Wages" means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.; and includes,

- (a) Basic pay;

- (b) Dearness allowance; and

(c) Retaining allowance.

V. THE CODE ON WAGES, 2019

It aims to regulate wage and bonus payments in all employments (industry, business, trade and manufacture. The Code on Wages replaces 4 existing Laws:

- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Payment of Bonus Act, 1965
- Equal Remuneration Act, 1976

Silent Features of The Code on Wages, 2019:

- The Code forbids discrimination on the basis of gender in matters relating to remuneration and recruitment of employees for the same or similar work.
- Similar Work here stands the work that requires the same level of skill, effort, experience, and responsibility.
- This Code will apply to all employees. The Central Government will make pay determinations for those employed in mines, railways, and oil fields, while the State Governments will make such determinations for all other employment.
- The Central or State Governments will establish the hours of operation. When an employee works extra, he or she is entitled to overtime compensation (at least twice the normal wages).
- The term "**wages**" in this Code refers to the sum of a person's pay, allowance, or other monetary component, excluding bonuses and travel allowance, among others. According to the Code, the Central Government will determine the floor pay based on the workers' living standards. It should be remembered that floor wages will vary by geographic area.
- The Central or State Governments' **minimum wages** should be higher than the floor wages. The Government will take into account the workers' skill level and the difficulty of the work when determining the minimum pay. These will be changed and reviewed by the government every five years. Employers are not permitted to pay employees less than the minimum wage.

- If existing minimum wages exceed the floor wage, neither the federal nor state governments may cut minimum wages.
- The employer may establish wage periods on a daily, weekly, fortnightly, or monthly basis. Payment will be paid in coins, currency notes, electronic funds transfer, check, or bank account credit.
- Employers have the right to withdraw earnings for the following reasons: fines, absence from duty, employer-provided housing, or advance payment made to the employee. It is important to highlight that deductions should not exceed 50% of the employee's total compensation.
- Employees whose monthly pay do not exceed a specified level are entitled to an annual bonus equal to at least 8.35 percent of their monthly wages or Rs. 100, whichever is greater. According to the Code, an employee may get a bonus of up to 20% of his yearly salary.
- **Advisory Boards** will be established by the Central and State Governments to advise them on a variety of subjects, including the establishment of minimum wages and expanding work possibilities for women. The Central Advisory Board will be composed of an equal number of employees and employers, as well as five representatives from state governments and independent individuals. Employees, employers, and independent individuals will serve on the State Advisory Board. Women will make up one-third of the overall membership on both Advisory Boards.
- The Code establishes penalties for employers who violate any provision of the Code or pay employees less than the minimum wage. According to the Code, the maximum penalty for the aforementioned offences is three months in prison and a fine of Rs. 1 lakh.

VI. CRITICAL ANALYSIS OF NEW CODES

In order to make it easier for businesses to do business, the Indian government has enacted new labour codes. These codes are widely seen as the most important step in labour law reform in three decades, and they were one of the main recommendations of the Second National Commission on Labour's 2002 report. Labour unions, on the other hand, say unequivocally that the Indian labour market is still "flexible" for employers, even though there are supposed to be "constricting labour laws," and that any more changes to the existing labour law framework will hurt the working class.

The main argument in favour of the reforms was that they would help the economy and industry

grow by getting rid of the many labour laws that make it hard for people to work. It is thought that the new labour codes will help the Indian economy because they will make it easier for businesses to set up shop in the country.

- The Industrial Relations Act 2020 (IRC) doesn't allow strikes, which is thought to make it more difficult for trade unions to organise workers and make collective bargaining more difficult.
- People who work in the formal and informal sectors are more likely to be hired on a contract or be hired on a short-term basis because of this new regulatory framework that encourages short-term employment, according to the Industrial Disputes Act and the new Code.
- A dataset by Kapoor shows that out of 24 percent of regular wage salaried workers (RWS), 68.8 percent of them didn't have a written job contract.
- When it comes to social security programmes for workers who aren't organised, the State government has been in charge of making sure they get them. With the introduction of the Social Security Code, 2020 (SSC), some of this responsibility has been given to the Central government in a partly and arbitrary way.
- In the SSC 2020, there is a separate section about gig work and platform economies, like Uber. Other codes do not include this rule, which is a problem. It could lead to a conflict between employers and employees in the platform economy.
- If you work on a platform, you don't have health insurance or paid time off. The codes don't cover these things or other problems for you. There are also questions about how well the government has resources and infrastructure for the electronic registration of unorganised workers, gig workers, and platform employees (section 113) in place.
- Mehrotra and Sarkar also point out that the current Code does not take into account the high proportion of unregistered establishments (67.7 percent) in the unorganised sector, instead stating that 'every establishment to which the code applies' must be registered (*Mehrotra, Sarkar (2021) supra note 9*).
- However, the Wage Code, 2019 (WC) establishes a national floor wage of Rs. 178, below which states are prohibited from setting their own minimum wages. MWC 2020 has once again ignored and failed to define a methodology for determining an acceptable minimum wage for workers, in addition to dismantling enforcement mechanisms and workers' rights to bring claims in court, as the Supreme Court has already directed.

- People can no longer go to court to fight for higher wages. Instead, they must go to a quasi-judicial body and an appellate authority set up by the Wage Code.
- Employing women who have given birth, miscarried, or had a medical abortion within six weeks is also against the law. Similarly, maternity benefits can only be claimed if the worker has worked for at least eighty days before giving birth, which means that many pregnant women will not be able to work or get social benefits. It would make their problems even worse and give them cover for things like this, which could lead to a lawsuit against their employer if they were found out.
- In addition, the Code doesn't recognise the microscale and agricultural sectors, which means it doesn't cover everyone. This is in addition to removing previously identified sectors that needed special legal protection because they were dangerous.

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