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RECENT LABOUR REFORMS: PROMOTING ECONOMIC GROWTH AND ENSURING DIGNIFIED EMPLOYMENT OPPORTUNITIES

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ABSTRACT

The workers and the citizens understand that industrial development is important, not just for the economy or the country but also for our own individual growth. We just need a system where we are treated as contributors to that growth and not merely the beneficiaries of it.With the passage of the Industrial Relations Code 2020, the Code on Social Security 2020 and the Occupational Safety Bill, Health and Working Conditions Code 2020, the process of simplifying the complicated labour law regime in India has taken a leap forward.These legislations, in addition to the Code on Wages which was passed in the previous session of the Parliament, are poised to reinvent the relationship between monetary capital and human capital in order to develop an economy which nurtures the well-being of both enterprises and workers.

In order to do so, the laws should be implemented with the premise of optimal regulation, whereby the rules created should foster and not hinder the growth of the economy. Our tendency to maximise regulations and practices should be reined in.Furthermore, to fulfil the aim of facilitating job creation while protecting workers, it is crucial that clarity of definitions of different types of workers is ensured. Both these factors are crucial for human dignity.

The limitations and exceptions for certain types of enterprises, on one hand provide them the regulation-free environment to grow but on the other hand, compromises on the basic tenets of dignified work including universal social security and workplace safety. This issue can be dealt with empowerment of authorities at decentralised levels through executive routes, where states can proactively work in alignment with the vision set out by these laws.

India has replaced 29 existing labour laws with four codes. The changes in labour laws should facilitate ease of doing business in the country and make them contemporary in keeping with changes in the labour markets. Flexibility of hiring workers will also increase while ensuring that all sections of the workforce, including the unorganised workers, gig workers and the platform workers, receive social security.

Keywords: Labour Law, Reforms, Economic Growth, Development, Laws, Code

INTRODUCTION-

The Code on Wages was enacted on 8 August 2019 when India replaced 29 existing labour laws with four codes. The Codes on Industrial Relations (IR), Occupational, Safety, Health and

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

Working Conditions (OSH) and Social Security (CSS) were passed by the Indian parliament on 23 September 2020.

The new laws should facilitate the ease of doing business in the country and make labour regulations contemporary given the transformation in India's labour market over the years. Flexibility of hiring workers would also increase while ensuring that all sections of the workforce, including the unorganised, (platform workers and gig workers) get social security. The codification of labour laws was recommended by the Second National Commission on Labour (NCL) in June 2002. The NCL had observed that there were numerous central and state labour laws that needed to be simplified and consolidated. To improve the ease of compliance and ensure uniformity in labour laws, it recommended the consolidation of central government labour laws into broad groups such as i) industrial relations; ii) wages; iii) social security; iv) safety; and v) welfare and working conditions.

Overview of Labour Law Reforms

The objective to replace 29 existing labour laws with four codes was to simplify and modernise labour regulation.The major challenge in labour reforms is to facilitateemployment growth while protecting workers' rights.

Coverage: Most labour laws apply to establishments over a certain size. Size-based thresholds may help firms in reducing compliance burden. However, one could argue that basic protections related to wages, social security, and working conditions should apply to all establishments. Certain Codes retain such size-based thresholds.

Retrenchment: Establishments hiring 100 or more workers need government permission for closure, layoffs or retrenchments. It has been argued that this has created an exit barrier for firms and affected their ability to adjust workforce to production demands.The Industrial Relations Code raises this to 300, and allows the government to further increase this limit by notification.

Labour enforcement: Multiplicity of labour laws has resulted in distinct compliances, increasing the compliance burden on firms. On the other hand, the labour enforcement machinery has been ineffective because of poor enforcement, inadequate penalties and rent-seeking behaviour of inspectors.The Codes address some of these aspects.

Contract labour: Labour compliances and economic considerations have resulted in increased use of contract labour. However, contract labour has been denied basic protections such as assured wages. The Codes do not address these concerns fully. However, the Industrial Relations Code introduces a new form of short-term labour – fixed term employment.

Trade Unions: There are several registered trade unions but no criteria to 'recognise' unions which can formally negotiate with employers. The Industrial Relations Code creates provisions for recognition of unions.

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

Simplification and updation: The Codes simplify labour laws to a large extent but fall short in some respects. Further, the Code on Social Security creates enabling provisions to notify schemes for 'gig' and 'platform' workers; however, there is a lack of clarity in these definitions. Delegated Legislation: The Codes leave several key aspects, such as the applicability of social security schemes, and health and safety standards, to rule-making.

Labour falls under the Concurrent List of the Constitution.Therefore, both Parliament and state legislatures can make laws regulating labour.The central government has stated that there are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages.The Second National Commission on Labour (2002) (NCL) found existing legislation to be complex, with archaic provisions and inconsistent definitions.To improve ease of compliance and ensure uniformity in labour laws, the NCL recommended the consolidation of central labour laws into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.

In 2019, the Ministry of Labour and Employment introduced four Bills on labour codes to consolidate 29 central laws. These Codes regulate: (i) Wages, (ii) Industrial Relations, (iii) Social Security, and (iv) Occupational Safety, Health and Working Conditions. While the Code on Wages, 2019 has been passed by Parliament, Bills on the other three areas were referred to the Standing Committee on Labour. The Standing Committee submitted its reports on all three Bills.The government has replaced these Bills with new ones in September 2020.

Decodifying the Codes

The labour code on wages and industrial relations will apply to all establishments, with limited exceptions. The code on OSH would apply to establishments over a certain size (above 10 employees with power or 20 employees without power) and those where hazardous activities are being carried out, and also in mines and plantations. The threshold for factories will be 20 employees (with power) and 40 employees (without power). The code on social security applies to establishments with 10 or more employees that draw state insurance, and 20 or more employees for those providing provident fund in the organised sector. It makes provisions to notify a separate social security fund for unorganised workers, gig workers and platform workers.

Industrial Relations Code, 2020

One of the important features of the IR Code, 2020, is that the employer has been provided with the flexibility to employ workers on fixed term basis, based on requirement and without restriction on any sector. The fixed-term employment provision would enable employers to engage workers for fixed periods on the basis of written contracts on wages and social security benefits, as provided to permanent workers. Another significant feature of the code has been to

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

raise the employment limits of industrial establishments in mines, factories and plantations, from 100 to 300 workers, to seek permission of the government before lay---off, retrenchment and closure, with flexibility to the government to increase the threshold to higher numbers through a notification. To prohibit strikes and lock---outs in all industrial establishments, a provision has been made on the need to give a notice of fourteen days.

Occupational Safety, Health and Working Conditions Code, 2020

This code will apply to all establishments having 10 or more workers, other than the establishments relating to mines and docks. It introduces the concept of "one registration" for all establishments having 10 or more employees. However, the applicability of all other provisions of the code, in respect of factories, is for thresholds of 20 workers in a factory (with power) and 40 workers (without power). It also provides for the issuance of a mandatory appointment letter by the employer of an establishment to promote formalisation in employment, and provide free annual health check---ups for employees above the specified age in all or certain class of establishments.

An important institutional change brought about by the OSH Code, 2020, is the constitution of national and state Occupational Safety and Health Advisory Boards. Further significant provisions include the constitution of Safety Committees, and permitting women to work during night shifts from 7.00pm to 6.00am, subject to the fulfilment of required conditions relating to safety, holidays and working hours, and the consent of women workers. A concept of "common licence" has been incorporated for factory, contract labour and beedi and cigar establishments, which would be a uniform all---India licence for a period of five years for engaging contract labour.

Code on Social Security, 2020

The CSS, 2020, provides for the constitution of various bodies for social security organisations, namely, a) the Central Board of Trustees of the Employees' Provident Fund; b) the Employees' State Insurance Corporation (ESIC); c) the National Social Security Board for Unorganised Workers; d) the State Unorganised Workers' Social Security Board; and e) the State Building Workers Welfare Board. The code empowers the central government to frame schemes for unorganised workers, gig workers and platform workers – as defined and explained by the legislation – and their families, for the provision of benefits relating to the ESIC. It also empowers the central government to formulate schemes to provide social security benefits to self---employed workers, and register every unorganised worker, gig worker or platform worker on the basis of self---declaration.

The CSS, 2020, also defines 'gig worker' and 'platform worker'. Gig workers refer to workers outside the "traditional employer---employee relationship". Platform workers are those who while being outside the "traditional employer---employee relationship", access organisations or

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

individuals through online platforms and provide services. The code also defines unorganised workers which include self---employed persons. The code provides for different schemes for all these categories of workers and defines the role that aggregators may be expected to play in some of these schemes.

State Governments, Industrial Relations and Institutional Changes

The roles of the state governments will be critical in implementing the labour reforms. The constitutional framework for labour laws in India devolves responsibility for enactment and implementation of the laws on both central and state governments. As a result, subjects related to labour and labour welfare, figure in the Concurrent List (List III) mentioned in the Seventh Schedule of the Constitution of India.

Most central labour laws are implemented by the central and state governments in establishments, where they have the 'appropriate' government, as specified in the laws.

The codes introducing 'one registration---one license' and 'one return' systems would reduce the number of returns to be submitted by industry to government as well as registers to be maintained for inspection. These impacts are in addition to the flexibility in hiring workers according to seasonal requirements, and variations in market demand for fixed---term employment.

Flexibility and procedural simplification of rules and regulations though need to be backed by a conducive atmosphere within the establishment to build trust between employers and workers. In this regard, the IR Code, 2020, provides for the establishment of a Grievance Redressal Committee of up to 10 members in an industrial establishment employing 20 or more workers, with adequate representation of women workers, in proportion of the female workers employed in the industrial establishment. This is expected to contribute significantly to growth of trust among all stakeholders.

The codes have also introduced important institutional changes. As mentioned earlier, the OSH Code, 2020, proposes constituting the National Occupational Safety and Health Advisory Board to make policy recommendations to the central government on matters relating to occupational safety, health and working conditions of workers both at the central and state levels. The Board will advise on health and safety standards, rules, and regulations, to be declared or framed under the OSH Code, 2020, implementation of the provisions of the code, and the issues relating to occupational safety and health referred to it.

Another important institutional change relates to the inspection system. A new concept of an inspector and facilitator has been created to advise employers and workers on issues concerning wages, and on the implementation of the codes. It will also inspect establishments assigned to it by the government based on an inspection scheme. The mechanism includes generating a web---based maintenance of registers, records, filing of returns, assignment of unique numbers to each establishment and timely uploading of inspection reports.

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

New Labour Code: The Core Idea

The new labour code, comprising the labour reforms introduced by the Indian government, aim to introduce legal reforms in the highly regulated labour administration system, with more than 40 laws enacted by the central government at different points of time in pre--- and post--- independent India.

The recent labour reforms, combined with the code on wages (2019), try to ensure flexibility without compromising on labour rights and protection. The reforms also try to ensure that the vast segment of informal and unorganised workers in India benefits from social security.

KEY ISSUES IN LABOUR REFORMS

Simplification of labour laws

The 2nd National Commission on Labour (NCL) recommended consolidation of central labour laws. It observed that there are numerous labour laws, both at the centre and in states. Further, labour laws have been added in a piecemeal manner, which has resulted in these laws being ad-hoc, complicated, mutually inconsistent with varying definitions, and containing outdated clauses.For example, there are multiple laws each on wages, industrial safety, industrial relations, and social security; some of these laws cater to different categories of workers, such as contract labour and migrant workers, and others are focused on protection of workers in specific industries, such as cine workers, construction workers, sales promotion employees, and journalists. Further, several laws have differing definitions of common terms such as "appropriate government", "worker", "employee", "establishment", and "wages", resulting in varied interpretation. Also, some laws contain archaic provisions and detailed instructions (e.g, the Factories Act, 1948 contains provisions for maintaining spittoons and frequency of white-washing walls). The Commission emphasised the need to simplify and consolidate labour laws for the sake of transparency, and uniformity in definitions and approach. Since various labour laws apply to different categories of employees and across various thresholds, their consolidation would also allow for greater coverage of labour. Following the recommendations of NCL, the four Codes on wages, industrial relations, social security, and occupational safety were introduced in Parliament.

Coverage of establishments under labour laws

Most labour laws apply to establishments over a certain size (typically 10 or over). Low numeric thresholds may create adverse incentives for establishments sizes to remain small, in order to avoid complying with labour regulation. Further, these laws only cover the organised sector (around 7% of the workforce).

It has been argued that small firms may be exempted from application of various labour laws in order to reduce the compliance burden on infant industries and to promote their economic growth.For instance, Rajasthan increased the threshold of applicability of the Factories Act,

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

1948, from 10 workers to 20 workers (if power is used), and from 20 workers to 40 workers (if power is not used). The Economic Survey (2018-19) noted that increased thresholds for certain labour laws in Rajasthan resulted in an increase in growth of total output in the state and total output per factory.

The ILO (2005) notes that only 10% of its member states had exempted small enterprises from labour regulation altogether.Most countries adopt a mixed approach to labour regulation.

The labour codes on wages and industrial relations apply to all establishments, with limited exceptions.The codes on social security and occupational safety continue to apply to establishments over a certain size (typically, above 10 or 20 workers). However, the Occupational Safety Code states that the applicability thresholds (of 10 or above) will not apply in those establishments in which hazardous activities are being carried out. Further, it makes provisions to notify a separate social security fund for unorganised workers.

The Code on Social Security enables the government to formulate schemes for the benefit of unorganised workers, and gig and platform workers. The codes on industrial relations and occupational safety allow the government to exempt any new establishment from their provisions in public interest.

Thresholds for lay-off, closure and retrenchment

The Industrial Disputes Act (IDA) 1947, requires factories, mines and plantations employing 100 or more workers to obtain prior permission of the government before closing down, or laying off or retrenching workers.

The Standing Committee on Labour (2009) recommended that the government consider amendments to include provisions of prior notice, adequate compensation, and other benefits for retrenched workers to balance the need for economic efficiency of businesses.Therefore, it recommended that the requirement of prior permission may be retained for closure of establishments which hire 300 or more workers and be made applicable to all types of establishments. However, the requirement for prior permission should be removed for lay off and retrenchment.To balance the interests of workers, adequate notice and compensation must be provided, there must be consultation with the representatives of the workers and judicial recourse must be provided against the closure.It also recommended that the government consider a contribution-based unemployment insurance (in establishments covered by the Employees' Provident Fund Act) to take care of retrenched workers or those whose establishments have been closed. The benefit would be payable for one year or till re-employment, whichever is earlier.

The Industrial Relations Code increases the threshold to 300 workers while retaining the notice and compensation requirements specified under the IDA 1947. It allows the government to further increase the threshold by notification.

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

Labour Administration

All labour laws have distinct compliance requirements for employing units. Multiplicity of labour laws has resulted in multiple inspections, returns and registers.On the other hand, it has been argued that the labour enforcement machinery has been ineffective because of poor enforcement, inadequate penalties and rent-seeking behaviour of inspectors. Further, dispute resolution processes need reform to make them more effective.

Various committees have proposed reforms to tackle three types of issues: compliance burden, enforcement of laws, and resolution of disputes.

NCL recommended moving towards a regime of self-certification with selective inspections based on returns submitted by the employing units (with the exception of routine inspections where conditions of safety are concerned).However, routine inspections may be retained in the unorganised sector to protect worker interests. To make the enforcement machinery accountable, at least 10% check of all inspections should be done by superior officers at all levels.

Various Committees have recommended strengthening the enforcement machinery by increasing manpower and improving labour enforcement infrastructure.The NCL recommended upgradation of the infrastructure, training and facilities available to the enforcement machinery to improve their efficiency.They have recommended that the penalties for various offences may be graded based on the seriousness of offence, the number of times the offence has been committed, and the capacity to pay.

Strengthen peaceful resolution of disputes: The NCL recommended a system of labour courts, lokadalats and Labour Relations Commissions (LRCs) as the integrated adjudicatory system in all labour matters (including wages, social security and welfare). LRCs would act as appellate bodies to hear appeals against the decisions of the labour courts. They will be headed by judges (or lawyers qualified to be judges), and include representatives of employers, workers, economists, as members.

Contract Labour

It has been argued that labour compliances and economic considerations have resulted in increased use of contract labour. The share of contract workers in factories among total workers increased from 26% in 2004-05 to 36% in 2017-18, while the share of directly hired workers fell from 74% to 64% over the same period.This flexibility has come at a cost of increase vulnerability since contract labour have been denied basic protections (such as assured wages) and are not entitled to be regularized in cases where contract labour is prohibited by the government.

The NCL noted that organisations must have the flexibility to adjust their workforce based on economic efficiency. Currently, the Contract Labour (Regulation and Abolition) Act, 1970 empowers the government to prohibit employment of contract labour in some cases including where: (i) the work is of a perennial nature, or (ii) the work performed by contract workers is

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

necessary for the business carried out by the establishment, or (iii) the same work is carried out by regular workmen in the establishment. In 2001, the Supreme Court held that even if the use of contract labour is prohibited in an establishment, contract workers do not have the right to be regularized automatically in the workforce.

The Code on Occupational Safety and Health increases this threshold to 50 workers. Further, it prohibits contract labour in core activities except in certain circumstances (which includes any sudden demand in work). It also specifies a list of non-core activities where the prohibition would not apply. This includes: (i) sanitation works, (ii) security services, and (iii) any activity of an intermittent nature even if that constitutes a core activity of an establishment.

Trade Unions

There are a large number of registered trade unions, including several within an establishment. There are no criteria to determine which unions can formally negotiate with the management. Settlements made with unions are only binding on the participating unions. This has affected collective bargaining rights of workers.

As of 2015, there were420 registered trade unions in India with an average membership of 1,883 persons per union.A large number of unions within an establishment hampers the process of collective bargaining as it is difficult to reach a settlement with all of them. Employers may also seek legitimacy for a favourable settlement by reaching an agreement with a compliant union though it may not have the support of a majority of workers. The NCL recommended giving 'recognition' to a union with the support of 66% members. If no union has 66% support, then unions that have the support of more than 25% should be given proportionate representation on a negotiation college. The vote for recognition may be cast on the basis of a regular subscription to a union through deduction from the wages of a worker – this system of regular payment of subscription would verify relative strength of different unions on a continuing basis. In establishments with less than 300 workers, the mode of identifying the negotiating union may be determined by Labour Relations Commissions (which may include secret ballot) to mitigate any possibility of victimisation by the management of the company. The Standing Committee on Labour (2009) also endorsed compulsory recognition of trade unions.Further, to counter low unionization in the unorganised sector, the recommended that a specific provision may be made to enable workers in the unorganised sector to form trade unions (with any number of workers) and get them registered even where an employer- employee relationship does not exist or is difficult to establish.

The Industrial Relations Code makes provisions for recognition of a negotiation unions with 51% membership. In the absence of such support, a negotiation council may be formed. However, the Code does not clarify how vote will take place. Further, no changes have been made to the extent of participation of outsider (up to 33%, subject to a maximum of five

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

members). Up to 50% may be outsiders in unorganised sector unions. However, the Code weakens collective bargaining rights by requiring a two-week notice for strikes.

Delegated Legislation

Under the Constitution, the legislature has the power to make laws and the government is responsible for implementing them. Often, the legislature enacts a law covering the general principles and policies, and delegates detailed rule-making to the government to allow for expediency and flexibility. However, certain functions and powers should not be delegated to the government. These include framing the legislative policy to determine the principles of the law.The labour Codes delegate various essential aspects of the laws to the government through rule-making. These include: (i) increasing the threshold for lay-offs, retrenchment, and closure, (ii) setting thresholds for applicability of different social security schemes to establishments, (iii) specifying safety standards and working conditions to be provided and maintained by establishments, and (iii) deciding the norms for fixation of minimum wages.

Emerging challenges

In addition to traditional freelance work, independent work would include emerging digital platforms which provide opportunities for task-based "crowd-work" (e.g., freelance work over digital platforms) and "on-demand work" (e.g., taxi and restaurant aggregators). One of the questions the Codes need to address is whether any distinction must be drawn between self-employed persons (e.g., freelancers) who exercise independent control over their work (including terms of service, scheduling and payment terms), and self-employed persons who predominantly work with a single platform which may exert some degree of control over the terms of their work (e.g., aggregators). If so, the Codes will also need to consider the extent to which various provisions that provide rights to employees should be extended to the latter category.

The workers in the gig economy are typically classified as independent contractors and thus are not provided the protection of various labour laws, including social security benefits.Globally, some regions have defined principles by which to identify employer-employee relationships which may be mis-classified as independent contract work.

The Code on Social Security introduces definitions for 'gig worker' and 'platform worker'. Gig workers refer to workers outside the "traditional employer-employee relationship". Platform workers are those who are outside the "traditional employer-employee relationship" and access organisations or individuals through an online platform and provide services.The Code also defines unorganised workers which include self-employed persons.

Innovation and Integrative Research Center Journal
ISSN: 2584-1491 | www.iircj.org
Volume-3 | Issue-4 | April - 2025 | Page 576-586

CONCLUSION

The controversial issues of increasing threshold for hiring and firing and rigidifying the conditions for formation of trade unions should be seen with the prism of the overarching objectives of the entire slew of the proposed reforms. Thus, it is the spirit of these reforms and the responsible governance and implementation of these laws that will be driving force behind this transformation to a 'sustainable economy for all'. To do all this, we will also need to build state capabilities which can work in tandem with the vision laid out by the new labour codes. Otherwise, the reforms will not work.