

ASSIGNMENT NO. 3

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LABOUR CODES, 2020

The Lok Sabha had cleared new versions of three labour codes — Industrial Relations Code Bill, 2020, Code on Social Security Bill, 2020 and Occupational Safety, Health and Working Conditions Code Bill, 2020. While the government proposes to increase the ambit of social security by including gig workers and inter-state migrant workers, it has also proposed measures that will provide greater flexibility to employers to hire and fire workers without government permission.

The subject concerning *Labour* is placed in List III of the VII Schedule i.e., in the Concurrent List and therefore both the Parliament and the State Legislatures have the power to make laws on the Labour subjects enumerated in the Concurrent List. There were about 200 state laws and 50 central laws concerning labour but there was still not a complete definition of labour laws in the country.

There are four heads under which the labour laws in India can be divided into:

- **Wages** (The Minimum Wages Act, 1948, The Payment of Wages Act, 1936)
- **Social Security** (Employee's Provident fund Act, 1952, Workers Compensation Act, 1923, Employee's State Insurance Act, 1948)
- **Safety** (Factories Act, 1948, The Contract Labour (Abolition and Regulation) Act, 1970, Shops and Commercial Establishment Act),
- **Industrial Relations** (Industrial Disputes Act, 1947, The Industrial Establishment (Standing Orders) Act, 1946.)

Background

Labour Reforms was one of the promises that PM Narendra Modi had made way back in 2014. During the first six months of PM's first term, the government had brought in the employee's

provident fund portability, enabled self-certifications by firms and altered the Apprenticeship Act to help the train greater numbers on the floor. But during the first term there was resistance from its own trade unions and therefore there was a need for a labour reform in this country. And the other important reason for such reforms was that the private investment had stalled and the corporate sector repeatedly underlined archaic labour laws as a major impediment. It is true that the labour laws in India were very inflexible and therefore there was a need for a labour reform.

Labour Codes, 2020

The government had introduced three labour codes in the Lok Sabha which were:

- Industrial Relations Code Bill, 2020
- Code on Social Security Bill, 2020
- Occupational Safety, Health and Working Conditions Code Bills, 2020

Last year, other code namely the labour Code on Wages, 2019 had been passed by the Parliament. The three bills including the Labour Code on Wages envisaged to replace forty-four archaic labour laws. Therefore, an attempt was made to incorporate and consolidate all the existing labour laws into the above four codes. The three bills which were introduced in the Lok Sabha were passed recently.

1. Highlights of the Industrial Relations Code, 2020

The Industrial Relations Code, 2020 proposed to simplify and amalgamate three central laws mainly, The Trade Unions Act, 1926, Industrial Employment (Standing Orders) Act, 1946 and The Industrial Disputes Act, 1947.

This Code is important not only because it offers some degree of flexibility on the government permissions for retrenchment but also because it provides a legal framework for ushering the concept of ‘**fixed-term employment**’ through contract workers on pan-India basis. Earlier the companies used to hire contract workers through contractors, but with the introduction of this code the companies can directly hire workers on a fixed term contract. This ensures flexibility to tweak

the length of the contract based on seasonality of industry. And moreover, these workers will be treated at par with the regular workers during the tenure of the contract.

The threshold limit for government permission for retrenchment, closure and layoffs has been kept at 300 or more against the firms employing 100 or more earlier. This means that the firms or industry not having more than 300 employees do not require prior governmental permission for retrenchment, closure and layoffs. Moreover, 16 states had already raised the threshold limit to 300 employees previously.

The fixed-term contract provisions provide social security benefits to all the workers, making it easier for the companies to hire and fire. The Code in Chapter VIII section 62 also requires workers/ employees to give a 14-day notice to the government for strikes and lockouts in any industrial establishment and thus dilutes the power of the trade unions. Moreover, a 60-dyas notice has to be provided by the employees/ workers to their employer of such strikes and lockouts. This provision makes it impossible for the workers and the employees to go on strikes. The code also proposed that a union would be recognized as the sole negotiating union only if it has the support of 75% or more of the workers on the muster roll in an establishment, as against 66% threshold earlier.

The advantages for the Employees under the Industrial Relations Code are as follows:

- The code proposes for setting up a two-member tribunal against one member earlier which would help in settling the disputes in a timely manner.
- A few government officers were also given the power to adjudicate into the cases and impose penalties thereby easing the burden of the tribunals.
- It helps the employees to save money from prolonged litigations.

The advantages for the Employers under the Industrial Relations Code are as follows:

- The companies need not to have multiple policies for Contractual and Regular Workers
- Fixed Term Employment has been a major advantage as it helps the companies to hire and fire their employees.
- The code enables the companies to tweak the contract period making it easier for them to hire and fire.

Major Concerns over the Industrial Relations Code are as follows:

- There is uncertainty with respect to the retrenchment provisions and the discretionary power of the firms to hire and fire the employees have raised concerns over the social security of the workers and the employees.
- The provisions of the Code have not been extended to the labour force in the informal sector where 90% of the labour force works in an informal and unorganized sector.
- The right of the workers to strike is almost banned with strict provisions of notice period and harsh penalties for defaulters.

2. Highlights of the Social Security Code, 2020

The Social Security Code, 2020 consolidates nine different central laws which include The Employees Provident Fund and Miscellaneous Provisions Act, 1952 The Employees State Insurance Act, 1948, The Maternity Benefit Act, 1961, The Building and other Construction Workers Cess Act, The Payment of Gratuity Act, 1972, The Employees Exchange (Compulsory Notification of Vacancies) Act, 1959, The Cine Workers Welfare Fund Act, 1981, The Unorganized Workers' Social Security Act, 2008 and the Employees Compensation Act, 1923.

The most notable feature of this Code is that it extends its protection of welfare measure to gig worker, platform workers and unorganized workers. It establishes the National Social Security Board which shall recommend to the central government for formulating suitable schemes for different sections of the unorganized workers such as online delivery boy, web developers, etc.,

The Code provides that the employers employing gig workers have to contribute 1 to 2 percent of their annual turnover for the social security of the gif workers. The code mandates the central government to frame schemes for the welfare of the employees in relation to:

- Life and disability cover,
- Health and maternity benefits,
- Old age protection,
- Education, and
- Any other benefits that may be determines by the central government.

The provides that the state government t frame schemes for the employees in relation to:

- Provident fund,
- Employment Injury benefit,
- Housing,
- Educational Schemes for Children,
- Skill upgradation of workers,
- Funeral assistance, and
- Old age homes

The code also mandates the compulsory registration of the gig workers, unorganized workers and platform workers provided that the person has completed 16 years of age and also there is a provision for mandatory Aadhaar number for such registration. The code states that the schemes for such workers must be funded through a combination of contributors who are listed in Schedule 7 of the Code. The contributors under the code are the combination of central government, state government and the aggregators.

The Code has also revised the definition of the term wages which has been defined under section 2 (88) of the Code and it includes all the remuneration whether by salaries, allowances or otherwise. This code under section 144 also empowers the centra government to defer the application of provisions of the Code for a period of three months in the event of a national disaster, pandemic or endemic. The Code also empowers the central government to exempt any industrial establishment or class of industrial establishments from the provisions of the code.

3. Highlights of the Occupational Safety, Health and Working Conditions Code, 2020

The Occupational Safety, Health and Working Conditions Code, 2020 is a code to consolidate and amend the laws regulating the Occupational safety and health and working conditions of the persons employed in an establishment. The Act replaces 13 old central labour laws.

The bill was passed by the Lok Sabha on 22 September 2020, and the Rajya Sabha on 23 September 2020. The bill received the presidential assent on 28 September 2020, but the date of coming into force is yet to be notified in the official gazette.

The IR Code Bill has also proposed a worker re-skilling fund, though the contributions for the fund are only detailed from the employer of an industrial establishment amounting to fifteen days wages last drawn by the worker immediately before the retrenchment along with the contribution from such other sources. The mention of ‘other sources’ for funding the re-skilling fund, experts said, is vague.

This code aims to consolidate and amend laws regulating the occupational safety, health and working conditions of persons employed in an establishment and related matters

- Women can now work in night shifts,
- Rights and duties for both, employers and employees, have now been laid down,
- Working Hours are now from 8 to 12 hours, and
- Factories can be allowed to work without following safety measures.

The change in the working hours from 8 to 12 has increased the risk of exploitation of the workers and the employees in the industrial establishments. The code also does not contain any provision for the incentives in cases of overtime work. Therefore, the code is less worker friendly and the workers can easily be exploited with several other provisions for hire and fire even without taking the permission from the government where the number is 300 or more. Further, the code also enables the government to allow the factories to work without following the safety measure. This provision is not effective as the right to health of the workers would consequently be affected if safety measures are not followed.

The Occupational Safety, Health and Working Conditions Code has defined inter-state migrant workers as the worker who has come on his own from one state and obtained employment in another state, earning up to Rs 18,000 a month. The proposed definition makes a distinction from the present definition of only contractual employment.

The Code, however, has dropped the earlier provision for temporary accommodation for workers near the worksites. It has though proposed a journey allowance — a lump sum amount of fare to

be paid by the employer for to and fro journey of the worker to his/her native place from the place of his/her employment.

Conclusion

This is a major reform as far as the labour laws are concerned and therefore has focused on the ease of doing business. These Codes have narrowed down the long list of legislations which caused various difficulties. The only important step, now, would be to convince the states to adopt the three codes for its implementation in the states. Labour being a concurrent subject can be legislated by both the center and the state and therefore the code can be made applicable to various states by their legislatures by amending and modifying the code in a manner that it suits the current state of affairs relating to labour in the respective state.