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Role and Comparison of Amended Labour Laws to Resolve the Problems of Labourers in Present Socio Legal Scenario: Issues and Challenges

ORIGINAL ARTICLE



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Abstract

Labour is the job done by a person to the best of their capacity using their physical, mental, and analytical capacities. Inadequate access to healthy food, sanitation, cleanliness, housing, and education, and prejudice based on cultural, financial, or social considerations are among the many obstacles workers must overcome to enable their capacity to live with dignity. Different guidelines and policies developed by the International Labour Organization advance workers' well-being. Along with Articles 39, 41, 42, 43, 43A, and 54 of Chapter IV of the Indian Constitution, Articles 16, 19, 23, and 24 of Chapter III underline the dignity of human labor and stress the need to preserve labourers' interests in line with Fundamental Rights and the Directive Principles of State Policy. Within the Concurrent List of the

Indian Constitution, labour comes within both Union and State Governments' legislative and administrative purview. 2020 saw the repeal of earlier laws, including the Minimum Wages Act, 1948; Industrial Employment (Standing Orders) Act, 1946; Payment of Wages Act, 1936; Workmen's Compensation Act, 1923; Industrial Disputes Act, 1947; Employees' Provident Fund and Miscellaneous Provisions Act, 1952; Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972; and Maternity Benefit Act, 1961. Complete codes have been passed to reflect modern socio-legal reality, namely the Occupational Safety, Health, and Working Conditions Code, 2020; Social Security Code; Industrial Relations Code; and Wages Code. Transforming society's perceptions of labour and guaranteeing the efficient application of labour regulations is absolutely necessary.

Key Words

Labour, Social Security, Labour Laws.

Introduction

Labour refers to a work which is done by anyone's physical, mental or both strengths. Labour can be done to perform any task and may range from household work to factories labour work etc. The person who performs labour are known as labourer. Labourer are those main strata of people who need special care and attention to live in a dignified way. They belong to lower strata of a society, which do not have access to basic needs of life; to get it with dignity. They are forced to do work more; with in less amount of money. Sometime

they may work as forced labour because they are not paid as much as it should be; according to rules and regulations. They are ill-treated and do not get the respect from master of work place.

Meaning and Definitions of Labour Laws

“Work is part of everyone’s daily life and is crucial to one’s dignity, well-being and development as a human being. Economic development comprises not only the creation of employment opportunities but also the establishment of working conditions that guarantee an individual’s independence, security, and dignity in the workplace.. Due to low living standards of people and socio-economic conditions people are forced to live on marginalised scale. Labour class may be divided into two class one is found in organized sector and second is found in unorganised sector. The classes of labour can be classified in following ways”¹:

- **First Class is of Organized Sector:** It is an Organised sector class in which licensed are provided to formal organizations. And these are registered with goods and service tax. These may include publicly traded companies, registered or formally registered entities and companies or factories.²
- **Second Class is of Unorganised sector,** it is known as own **account enterprises**, includes all **unlicensed**, self-employed or unregistered economic activity. For example- owner manned general stores labourer, handicrafts and **handloom labourers**, rural areas labourer, farmers, etc.³

“Labour laws is the branch of law in which issues and challenges faced by labour are treated such as employment conditions and its terms, salaries of labour, working conditions, trade unions matters and relations of industry or employer to labour or employee. Labour law has concept of social justice and it sort out the challenges of disabilities faced by labour during the employment or working hours and premises of employer. Labour laws deals with contractual relationship with the employment situations and statutory requirement with the social justice towards society. It also sorts out the issues and challenges raised by economic interest between the state and labour.”⁴

Need of Labour Law

In the initial stage of growth and development of labour laws was limited to only most some industries only. It was gradually increased to all industries and organized and unorganized sectors such as handicrafts, rural industries, agriculture labourer, small scale entrepreneurship, office workers, public employees, household workers, factories labour etc. Therefore, labour laws gradually increased its dimensions from legal protection of workers as a weaker section and industry as the main governing party. The rights and interest of worker with the industries are secure through labour laws.”⁵ “The cost of worker’s salary are increased due to conditions and safety measures provided by the employer to employer such as healthy and safe environment. Trade labour are also affect the industrial disputes and harmony between employer and employee. The labour laws plays a role of regulator to employer and employee and secure the interest of social justice.”⁶

International Perspectives on Labour Laws and International Organizations

International Labour Organizations (ILO) was originated to sort out the labour laws challenges faced by them with the master or principal or industry or employers. ILO was established with an agency of League of Nations Following the Treaty of Versailles which was ended in World War I. After the World War I the protections and reconstruction of labour was came into noticed. In

In Great Britain, the Whitley 4 Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that industrial councils be established throughout the world. The British Labour Party had issued its own reconstruction programmed in the document titled Labour and the New Social Order.”⁷

“Starting on 29th October 1919 in Washington, D.C., the first annual conference, known as the International Labour Conference (ILC), approved the first six International Labour Conventions. These conventions covered important labour concerns, including control of working hours in industry, unemployment,

protection of maternity, night work by women, minimum age for employment, and night work by young people in industrial ventures. The first Director-General of the International Labour Organization (ILO) was renowned French socialist Albert Thomas. After the League of Nations broke apart in 1946, the UN system included the ILO as a specialized agency.”⁸

Constitutional Aspects on Labour

“The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Indian Constitution.”⁹ It is not defined directly but defined in fundamental rights and directive principles of state policies. The different provisions of Indian Constitution for protection of labour rights are as follows:

1. **Fundamental Rights:** Chapter-III of Indian Constitution under Articles 14, 16, 19, 23 & 24.¹⁰
2. **Directive Principles of State Policy:** Chapter IV of Indian Constitution under Articles 39, 41, 42, 43, 43A & 54.¹¹
3. Labour is a concurrent subject in the Constitution of India implying that both the Union and the state Governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.¹²
4. Article 246 of Constitution of India gives power to Parliament and State legislature to legislate on any subject matter enumerated in Lists of Schedule VII of Constitution of India.¹³
5. Schedule VII contains 3 lists namely,
 - Union list,
 - State list and
 - Concurrent List.”¹⁴

“The Constitution of India provides detailed provisions for the protection of rights of the citizens and also lays down the Directive Principles of State Policy which set an aim to which the activities of the state are to be guided. These Directive Principles provide also protects the rights of labour by State’s policies in following ways”¹⁵:

- a. For securing the health and strength of employees, men and women.¹⁶
- b. That the tender age of children is not abused.¹⁷
- c. That citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.¹⁸
- d. just and humane conditions of work and maternity relief are provided.¹⁹
- e. That the Government shall take steps, by suitable legislation or in any other way, to secure the participation of employee in the management of undertakings, establishments or other organizations engaged in any industry.²⁰

Legislative Aspects on Labour

“To boost commerce and improve the simplicity of conducting business within the nation, an attempt was made to streamline and codify the current labor regulations into one standard legal framework. The Second National Commission on Labour recommended in 2002 an amalgamation of 29 key labor regulations. Following this advice, the Ministry of Labour and Employment presented four legislative proposals to the Lok Sabha in 2019. Many facets of employment, industrial relations, social security, occupational safety, and working conditions are governed and controlled by these labor codes taken together.”²¹:

- Wages,
- Industrial Relations,
- Social Security and
- Occupational Safety, Health and Working Conditions.²²

Only the Code on Wages, 2019, was passed in the first phase out of the four proposed labour codes; the other three measures were sent to the Parliamentary Standing Committee for further review and discussion. The Standing Committee sent in its report on September 19, 2020, and based on it, the original three pieces of legislation were replaced with updated forms. The Lok Sabha then voted on all three updated labour codes on September 22, 2020.²³ The Bills were;

- The Industrial Relations Code Bill, 2020;
- Code on Social Security Bill, 2020 and
- Occupational Safety, Health and Working Conditions Code Bill, 2020.²⁴

On 23rd September 2020 all the three bills were passed by Rajya Sabha, on 28th September, 2020 bills got assented by President and on 29th September, 2020 it was published in e- Gazette and became enactments.²⁵ “The new set of regulations consolidates 44 labour laws under 4 categories of Codes namely, Wage Code; Social Security Code; Occupational Safety, Health & Working Conditions Code; and the Industrial Relations Code.²⁶

The four codes for labour law are as follows:

1. **The Code on Wages, 2019:** It applying to all the employees in organized as well as unorganized sector, aims to regulate wage and bonus payments in all employments and aims at providing equal remuneration to employees performing work of a similar nature in every industry, trade, business, or manufacture.²⁷ “The Code on Wages, 2019 was the first code that was enacted by the Labour Ministry and this marked the emergence of the modern-day labour reforms in India.²⁸
2. **The Code on Occupational Safety, Health and Working Conditions, 2020:** The code controls all mines and docks as well as the health and safety conditions of workers hired in companies with ten or more employees. With the aim of guaranteeing workers’ health and safety in all spheres, including industry, commerce, and business, it combines 633 clauses from 13 main labor laws into a unified code including 143 sections. It stresses especially the protection of employees involved in dangerous jobs. For several types of businesses, including mines, factories, dock work, and construction operations, the Code specifies separate rules on licensing criteria, safety standards, and employer responsibilities. The laws that are subsumed are²⁹:- The following legislations have been consolidated under the new Labour Code framework, specifically dealing with occupational safety, health, and working conditions:
 - Factories Act, 1948
 - Plantations Labour Act, 1951
 - Mines Act, 1952
 - Working Journalist and Other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955
 - Working Journalist (Fixation of Rates of Wages) Act, 1958
 - Motor Transport Workers Act, 1961
 - Beedi and Cigar Workers (Conditions of Employment) Act, 1966
 - Contract Labour (Regulation and Abolition) Act, 1970
 - Sales Promotion Employees (Conditions of Service) Act, 1976
 - Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
 - Cine Workers and Cinema Theatre Workers Act, 1981
 - Dock Workers (Safety, Health and Welfare) Act, 1986
 - Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.³⁰

3. The Code on Social Security, 2020: It consolidates nine laws related to social security and maternity benefits.³¹ “The code on Social Security was introduced to provide social security to all employees & workers either in organized, unorganized, or any other sector by simplifying and consolidating various enactments of labour laws such as³²:

- Employees’ Compensation Act, 1923
- Employees’ State Insurance Act, 1948
- Employees’ Provident Funds and Miscellaneous Provisions Act, 1952
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- Maternity Benefit Act, 1961
- Cine Workers Welfare Fund Act, 1961
- Payment of Gratuity Act, 1972
- Building and Other Construction Workers Welfare Cess Act, 1996
- Unorganized Workers’ Social Security Act, 2008.³³

4. The Code on Industrial Relations, 2020: It seeks to consolidate three labour laws namely³⁴:

- The Industrial Disputes Act, 1947
- The Trade Unions Act, 1926
- The Industrial Employment (Standing Orders) Act, 1946.³⁵

The Code aims to improve the business environment in the country largely by reducing the labour compliance burden of industries.³⁶

Need of Labour Laws Amendements; Done in Year 2019 and 2020

Need of labor laws are as follows:

- The codes were introduced to codify and simply various labour laws which was creating a complex environment for employers as well as workers.³⁷
- These codes were introduced to safeguard the rights of employers and workers by providing simplified labour reforms to facilitate ease of doing business and trade.³⁸
- The codes also been made with an object not only to solve industrial dispute and bring industrial peace and harmony but also to ensure social security to all types of workers which were missed out on the previous labour laws.³⁹
- These codes also bring with them consolidated procedures and data collection such as Single Registrations, Licenses, Consolidated Returns lessening the burdens of employers.⁴⁰
- Various Boards and Committees have been set up under the codes to supervise the safety and welfare of workers.⁴¹
- Stringent penalties with the comparatively high monetary amount and imprisonment period have been made under the code for following the provisions strictly.⁴²
- A statutory right for minimum wages and timely payment of wages has been made available to all workers to support sustainable growth and inclusive development.⁴³
- To avoid multiple interpretations and litigations, uniform definition of ‘wages’ across all the four Labour Codes has been provided that is simple, coherent and easy to enforce.⁴⁴
- Provision for annual health check-up and medical facilities has also been made which enhances labour productivity and increases life expectancy.⁴⁵
- Statutory provision has been made for the first time to issue appointment letter to every employee of the establishment which leads to formalized contract of employment that increases job security and enables a worker to claim statutory benefits such as minimum wages, social security etc.⁴⁶

- Provision of Re-skilling Fund for skill development of workers.⁴⁷
- The gig worker and the platform worker have been defined for the purpose of formulating schemes to provide social security benefits. Social security schemes can be formulated from the contribution of aggregators and the other sources can include funds from the Central and State Governments.⁴⁸
- The Central Government may extend benefits to unorganized workers, gig workers and platform workers and the members of their families through Employee's State Insurance Corporation or Employee's Provident Fund Organization.⁴⁹
- A worker engaged under Fixed Term Employment (FTE) is entitled for all the benefits which are available to permanent employees and has also been made eligible for gratuity if he renders service for a period of one year.⁵⁰
- Every worker is entitled to annual leave with wages after working for 180 days in comparison to 240 days at present. Provision for encashment of leave on demand by a worker while in service at the end of calendar year.⁵¹
- Applicability of Employee's Provident Fund has been extended to all industries as against scheduled industries at present.⁵²

Important Case Laws for Labour Laws

- **Indian Hume Pipe Co. Ltd. v. their Workmen AIR 1960 SC 251:** The Court stated that Gratuity should be considered as an amount paid as an embracement towards the employer. It should not be connected to any contract or given as a consideration or compensation that is paid in unusual circumstances. It should be paid to praise the worker for being a part of the trade of his owner for such a long time. One gives all his hard work and efforts towards his master for which he should be respected at the end for his loyalty to the service. Whenever a worker spends a long span in a work field, he expects appreciation from his employer and gracious financial assistance to cope with the post-retiral difficulties.⁵³
- **Bombay Gas Public Ltd. Co. v. Papa Akbar and Anr 1990:** Gratuity is provided at the termination of service. The employer had to provide gratuity to his workers even though his company suffered a loss because the workers went on strike. The workers cannot be denied the gratuity they deserve.⁵⁴

Issues and Challenges in Labour Laws

Common issues in the four labour codes are as follows:

1. Definition of Appropriate Government⁵⁵

- The recently passed labour codes lack clear homogeneity on the authority of the appropriate Government. Different codes define "appropriate Government" in different ways. In several codes, it is stipulated that the central Government would be regarded as the appropriate Government in respect to public sector enterprises (PSUs) only if it owns 50% or more of the equity shares. Moreover, the codes allow Government action by enabling the relevant Government to exclude certain institutions from the execution of particular provisions.⁵⁶
- "Whether state or central, the Industrial Relations Code empowers the appropriate Government to exempt newly formed industrial undertakings or any designated class of establishment from the application of any or all of its provisions, should such exemption be regarded necessary in the public interest. Giving the Government such wide discretionary authority might result in major administrative intrusion in the internal operations of industrial companies, therefore influencing their work environment and output capacity."⁵⁷

2. **Labour Code does not Cover all types of Workers**⁵⁸

- “The way the new labor codes are applied differs from that of the old labor laws. The revised codes exclude certain groups of employers from their coverage. Specifically, the Occupational Safety, Health, and Working Conditions Code covers businesses employing between 10 and 20 people; the Industrial Relations Code relates to enterprises based on different criteria for layoff, retrenchment, and the development of standing orders. Furthermore, both codes enable the Government to exclude certain businesses, therefore posing issues about the exact breadth of coverage and the degree of control over such institutions under these codes.”⁵⁹

3. **Key issues under the Code on Wages**⁶⁰

- The Code on Wages empowers the Central Government to divide the workforce into three different categories, i.e., metropolitan, semi- metropolitan, and rural. This will result in confusion and will complicate the process of classification as previously available data is categorized in two parts only, i.e., urban and rural areas.⁶¹
- **Unwanted Technical Committee**⁶²: The Code on Wages empowers the Central Government to categories employees into 4 categories, i.e., unskilled, semi-skilled, skilled, and highly skilled. Thus, the role of the technical committee in ascertaining something that is pre-determined can be termed as unsound and illogical.⁶³
- **Increase in Work Hours**⁶⁴: The Code on Wages has significantly increased the allowed daily working hours—from eight to twelve hours. Under the Hours of Work (Industry) Convention, 1919, which limits working hours to 8 hours per day and 48 hours per week, this clause runs against the accepted norm of 8-hour workdays and breaches the rules set out by the International Labour Organization. Such a clause enables companies to stretch labour hours and shifts outside of globally accepted standards, therefore facilitating possible abuse by them.⁶⁵

3. **Key issues under the Industrial Relations Code, 2020**⁶⁶

- **Process of strike and lock-outs**⁶⁷: Starting a strike or lockout requires a minimum of 60 days’ advance notice according to the Industrial Relations Code, 2020. A shorter notice time of fourteen days is needed if conciliation processes with respect to the conflict are continuous. Being complicated and time-consuming, this procedural need may compromise the effectiveness and impact of strikes or lockouts, as the initial cause of industrial action may vanish or become secondary by the time such action is carried out. Employers may also exploit this delay to carry out policies intended to neutralize or stop the success of the strike or lockout.⁶⁸
- **Award of the Tribunal**⁶⁹: Under the terms of public interest, influence on the national economy, or social justice, the Industrial Relations Code, 2020, gives the central Government the power to delay or postpone the execution of a tribunal’s decision. This clause has the danger of being abused, especially in circumstances where the Government is a party to the conflict. Furthermore, it begs serious questions about the separation of powers between the court and the Government, therefore compromising court independence.⁷⁰
- **Restricting the Formation of Negotiation Council**⁷¹: Introduced the Sole Negotiating Union, which limits negotiating rights with the employer to a trade union representing more than 51% of the workers in the business, the Industrial Relations Code, 2020 Where no registered trade union satisfies this criterion, a trade union representing at least 20% of the workforce must establish a negotiating council. But the Code forbids staff members from forming their own negotiating committees unless they are members of a trade union. Moreover, it ignores situations wherein many trade unions, each representing 20% or more of the workers in the same company, might legitimately claim authority to create negotiating councils.⁷²

- **The exploitation of Fixed-term Employment⁷³**: Provisions for fixed-term employment, thereby creating contractual agreements between the employer and the employee for a certain period, are introduced by the Industrial Relations Code, 2020. This clause raises important issues about the inherent employment uncertainty experienced by non-permanent workers as the employer has exclusive power to extend or revoke the contract. As a result, such workers could be hesitant to bring complaints about unfair labor practices or working conditions out of worry for negative repercussions endangering their ongoing employment.⁷⁴
- 4. **Key issues with the Code on Social Security, 2020⁷⁵**
 - **Recommendations of the 2nd National Commission on Labour, 2002⁷⁶**: The National Commission on Labour's proposals called for the implementation of social security clauses to all kinds of institutions independent of their size. To ascertain the relevance of social security plans, the new code does, however, provide criteria depending on the size of enterprises. It requires pension and gratuity benefits only for businesses with ten to twenty employees. Consequently, businesses with less than ten employees as well as people in the unorganized sector continue to be left without these rights. The Periodic Labour Force Survey Report (2018–19) shows that 52% of non-agricultural sector regular pay or salaried workers lacked any social security benefits, and over 70% lacked a formal employment contract.⁷⁷
 - There is a Schemes for Gig Workers and Platform Workers⁷⁸**
 - **Gratuity for Fixed-term Employees⁷⁹**: The Code provides for the payment of gratuity to the employees who have been employed for a continuous period of five years or more. Therefore, gratuity for a fixed-term worker is not clear and there is a need for uniform rules to be in place.⁸⁰
- 5. **Issues with the Code on Occupational Safety, Health and Working Conditions, 2020⁸¹**
 - **Special Provisions for Specific Establishments⁸²**: The Code does not include clear clauses pertaining to the management and upkeep of certain designated institutions. Although the Code does not cover certain types of hazardous businesses, health and safety policies should apply everywhere to all companies. Incorporating additional clauses covering the particular risks and needs of such hazardous businesses would help to improve the effectiveness and general application of the Code.⁸³
 - **Bar on the Jurisdiction of Civil Courts⁸⁴**: The Code does not include clear clauses pertaining to the management and upkeep of certain designated institutions. While the Code excludes specific types of hazardous businesses, health and safety policies should be applicable to all companies without exception. Incorporating additional clauses covering the particular risks and needs of such hazardous businesses would improve the effectiveness and general application of the code.⁸⁵

Suggestions to Update the Labourer

1. **Vocational Training**: Establish recognising/accrediting agencies for vocational training institutes is necessary to optimise and empower India's labour workforce. There is a need to develop a framework to interlink vocational training and academic education in order to facilitate inter-stream movement of students and vocational trainees.⁸⁶
2. **Social Security**: Legislation aimed at the welfare of unorganized workers must be passed by state Governments clearly defining the sources of finance, the advantages to be given, and the institutional structure for execution. Furthermore, urgently needed are welfare programs under a risk coverage framework for unorganized workers, including compensation for occupational accidents, death benefits, and old-age pensions.⁸⁷
3. **Employment Information Service**: Employment information services have to be provided via e-governance systems to help the new projects aiming at assuring employment in underdeveloped areas. Employment possibilities from the public and commercial sectors should be properly shared and easily available at the grassroots level.⁸⁸

4. **Integrating Problem Solving with Forward Looking Approach:** Most of the provisions of the Codes address the past demands and discrepancies, acting as restorative justice for the past harms. It is also essential that we adopt a futuristic approach when it comes to protecting workers and handling disputes regarding Automation and Robotics, AI-powered workforces, and bioengineering, which may hamper worker's rights in the future.⁸⁹

CONCLUSION

The labour codes where, need of the hour and much awaited labour codes because of the complexities faced by various establishments due to the bulkiness of various enactments made by far, which caused multiplicity of definitions, overlapping of authorities, various compliances and thus, the codification and consolidation of such laws has not only removed such *lacunas* but also let to expansion of the ambit and applicability of the laws, ease of compliance etc. Various threshold limits have been reduced to increase the benefits given to the workers, and not only that but the Government has now focused on the workers of Unorganized sectors as well including Home based worker, Self-employed worker, Gig Worker & Platform Workers which were left out in previous labour laws.⁹⁰

The codes will empower the relationship between the employers and the workers and due to its Stringent penalties and imprisonment will be strictly adhered by both bring a long-term positive impact on industries.⁹¹ It is pertinent to note that these labour reforms are more employer-friendly. It lays down certain provisions by which an employer can exploit the rights of the workers. Only time will tell how effective these Codes will be in the long run.⁹² Labour laws should make a balance between worker and industry. There is a need to focus on rights of migrant, unorganized sector's, household, jobless workers etc. Women migrant workers, girls, child labour should be protected from harassment, torture and bonded/forced labour. Laws should be implemented in proper manner. Government should make necessary changes in policies for the protection of rights of labour from time to time. People should be sensitized for the integrity, dignity and protection of rights of labour.

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