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Labour Law Reforms 2020- Shikha Singh¹**1. Abstract**

This paper gives a brief about the labour reforms that has been recently passed by the government. Labours are considered as a mainstay of a country. They play a crucial role in industrial work. Numerous laws have been put together to deal with the mechanism that is followed in the industries. There had been a drastic change in the basic of the law earlier the employers were given uncontrolled power to hire and fire the employee due to the codification of the law it has stopped to some extends. As the industrial revolution started in India the condition of the people belonging to the labour class became substandard and ill practices against them started. To stop the aforesaid there were many laws formed so that it could be controlled to some extends. Labour law is an integral part of the constitution as it gets its base from there. Part III² (16, 19, 23 and 24) and part IV (39, 41, 42, 43, 43A and 54), schedule VII (concurrent list)³ deals with the labour that means both the union and the state can make laws for the same and the preamble throw lights on protecting the labours. Recently, three amendments have been made in the labour the existing law relating to it namely (1) the industrial relation code 2020 (2) the occupational safety, health working condition 2020 (3) the code on social security which replaces existing 29 central laws. The code of wages act was passed in 2019

2. Industrial revolution in India

India was famous for handicrafts work and cotton textiles. After the British arrival to India as a trading company slowly and gradually it took over its cotton textiles. India became a cotton exporter when the industrial revolution in Britain started. It is assumed that India has gone

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² Constitution of India fundamental rights

³ Article 246 mentions three list union, state and concurrent,

through four industrial revolutions. From the end of the 18th-century to the beginning of the 19th-century first industrial revolution started in India it was a shift from agriculture to mechanization. Coal was being extracted in heavy amount and steam engine lead to the speed of industrialization and making of railways track for export and import. Then came the second industrial revolution which dealt with the emergence of electricity, oil and gas which led to advancement. Later development of steel, chemical synthesis and mode of communication such as the telephone and telegrams, and finally the invention of plane and automobile made the most important contribution in making the second industrial revolution impactful. The third industrial revolution was about electronics and telecommunications which led to opening use of advance technology in many other sectors. The fourth industrial revolution was about the use of the internet to an extent whose magnitude is still not decided and is still on work. The 1991⁴ new economic policy was introduced in which India's economy or market was opened to the world. Protectionism⁵ that was being followed by India was removed which led to Globalization, Liberalization and Privatization.

3. Introduction to Labour Laws

Law develops according to the need and demand of society. Labour laws developed because of the demand from the labour class against malpractice in opposition to them. The demand was made based on following reasons: to improve the industrial relationship between employers and employees and to solve the disputes arising out of it, to fight against all the forms of exploitation being practiced against employees, to get fair and equal wages for the work, good working environment has recently form part of subject concern, health and environment being as the crow flies. Therefore, clean and hygienic surrounding is being demanded, job security, fixed working hours and days etc as earlier it all depended on the mercy of the employers who has nothing to do with the labours but to make a profit. During the twentieth century industrial jurisprudence developed in India. As it affects, a considerable amount of population of the country. It modified traditional existing laws of master and servant into employer and employees. They are kind of co-sharers in a partnership. The development of the aforesaid helped in removing the imbalance of power that existed earlier. It acts like a tool which helps in working, employment and protection from the existing evil practices. It is an important vehicle

⁴ introduced by Dr. Manmohan singh the then finance minister under the Prime Ministership of P.V. Narasimha Rao

⁵ ideology that was being followed in India to develop domestic industries

as it functions in achieving harmonious industrial relation by creating workplace democracy. India has the ministry of labour and employment which works for the promotion of their welfare and social security. There are 44 central laws and about 100 state laws that regulate the working condition, industrial relation, minimum wages, social security etc.

4. Types of labour laws

Labour law has many types as there are several purposes which are served by these laws. The laws have been passed to be mindful to minimize the ill practices against the labours or the employees and to maximize the good working conditions of employees of both the organized and the unorganized sector. As there are two types of the sector it is difficult to deal with the unorganized sector employees/ labours as they are not registered to the government and there is no contract between the employee and the employer to regulate their industrial relation which would protect them from the discretion the employer.

- (1) Wages laws: These laws regulate the wages of the employee. The government fixes a floor below which worker's pay cannot fall. This is done to safeguard employees from exploitation of employers and for the payment of adequate wages. Some laws relating to it are minimum wages act 1948, payment of wages act 1936, payment of bonus act 1965 etc.
- (2) Working hours: laws have been passed for the employees to limit the working hours. As before due to no restriction on the same human was treated like animals. factories act 1948, minimum wages act 1948, mines act 1952, bead and cigar workers (employment condition) act 1966, contract workers (regulation and abolition) act 1970, plantation labour act 1951 etc are some of the laws which state the fixed working hours.
- (3) Women working hours, maternity leave: special provisions have been made for women who work in industries as they are not supposed to be employed after evening. This has been specified in factories act of 1948. The employee's state insurance act 1948 and the Maternity benefit act 1961 regulates that there should be maternity benefit provided to the women at work.
- (4) Promotion of equity: the employment equity act has been passed to promote fair and equal opportunity for all. It also deals with the process of recruitment.
- (5) Representation of the employees: the employees need to be represented in the industry so that they are heard because the employees and the employers work together to make an industry run. Some laws through which the employees get represented in the industries are

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the trade union act 1926, labour relation act etc which helps in regulating industrial relation between the employees and the employees.

- (6) Termination of the employees: the termination can be made in two ways former is voluntarily it happens when the employee without any undue influence voluntarily applies for termination and the latter is when the employer or unavoidable circumstances one is terminated from the job. The laws regulating the termination are the industrial disputes act 1947, the industrial employment (standing orders) 1946.
- (7) Compensation: the employer should pay to the employee for the injury sustained during employment. The employer is responsible for the injury and should pay him compensation for medical assistance. Workmen's compensation act 1923 deals with the same.

5. Reforms in labour law:

(1) **Industrial relation code 2020:** The act amalgamates and amends matters relating to three major laws of central government namely:

- (a) the trade union act, 1926
- (b) The industrial disputes act, 1947
- (c) Industrial employment (standing order) act 1948

- Workers definition:

Working journalists has been defined under section 2(f) and sales promotion employees defined under section 2(d) the former is defined in working journalist and other newspaper employees (conditions of service) and miscellaneous provisions act 1955 and the latter is defined in Sales Promotion employees (conditions of service) Act 1976 has been added by expanding the ambit of workers definition. Further, the threshold of supervisory category workers has increased the one earning less than INR18,000 a month are added in the definition.

- Scope of the industrial dispute⁶ has expanded:

The industrial dispute act 1948 is subsumed under the industrial relation code but the scope of the dispute has expanded to dispute arising out of retrenchment⁷, discharge, dismissal and termination of the workers.

- Fixed-term employment⁸:

⁶ section 2(q) of the code

⁷ section 2 (zh) of the code

⁸ defined under section 2(o) of the industrial relation code

This concept has been added to the code which state that the employer appoints employees for fixed term duration and provides with all the allowances, benefits, wages, working conditions etc and has gratuity if he has served for one year under contract this will protect the employees from hire and fire situation and to the employers to have greater flexibility in appointing according to the need of the hour.

- Standing Order:

Under industrial dispute act industrial establishment with 100 or more employees were supposed to have standing order made and established but under the industrial relation code, the threshold has raised to 300 employees and “appropriate government” which is defined under section 2(b) has the power to exempt any of the industrial establishment from any or all of the provisions.

- Grievance redressal committees⁹:

Industrial relation code mandates the presence of grievance redressal committee. Under this code the committee first acts as work committee or grievance redressal committee then conciliation officer or voluntary arbitration, then industrial tribunal and then finally to national tribunal whose decision is to be considered final. It is also specified that the committee shall consist maximum of 10 members which shall give an equal presentation to the employees, employers and women employees. The duration for redressal has been raised to 1 year. For any disciplinary action time limit has been prescribed off 90 days for inquiry, investigation or suspension.

- Worker re-skilling fund:

Chapter IX of the industrial code has new concept of workers re-skilling fund for who has been retrenched. The employer of the industrial establishment shall deposit amount which is equal to fifteen days wages of such wages as may be last drawn by the retrenched worker or amount decided by the appropriate authority.

- The Trade Union, Strike and lockout:

The concept of sole negotiating union states that industrial establishment which has more than one registered trade union, the one with 51% or more of the employees as a member will be given the status of negotiating union with the employer. If an industrial establishment does not have anyone trade union with 51% employees as a member then the one having not less than 20% shall be considered.

⁹ section 4 of the code

A uniform procedure of strike is to be followed it is to be done keeping these formalities in mind notice of 60 days before going to the strike, or within 14 days, or before the expiry of the date of the strike as mentioned in the notice. No strike could be done during the pendency of the conciliation proceeding or after seven days of its conclusion. Or during the pen deny or after sixty days of arbitration proceedings, or during when settlement and award is being decided.

The aforesaid situation is also applicable to the employers in case of lock-out.

- Closure, lay-offs and retrenchment:

Industrial establishments such as factories, mines and plantation need prior permission from the appropriate government for closure of the establishment, lay-offs and retrenchment of the workers if the industrial establishment had employed 300 or more employees on an average per working day or as many employees as may be specified by the appropriate government.

(2) **The code on social security 2020:** Social security code focuses on providing social security. Unorganized sector, gig workers, platform workers and plantation worker are to be included to get ESIC (employees state insurance) benefit.

The act subsumes nine existing central government acts namely:

- (a) Employees State insurance act 1948,
- (b) Employees compensation act 1923,
- (c) Maternity benefit act 1961
- (d) Employees provident fund and miscellaneous provision act 1952,
- (e) Payment of gratuity Act, 1972
- (f) Cine workers welfare fund act 1981
- (g) Building and other construction workers CESS act 1996
- (h) Unorganized workers social security act 2008
- (i) Employment exchanges (compulsory notification of vacancies) act 1959.

- Social Security funds:

According to the code, the central government is to set social security fund for workers from the unorganized sector, gig and platform workers and registration for all three categories. It is to be funded by both the central, state government and the aggregators. The list of aggregators is mentioned in schedule 7 of the code. The central government is to decide the rate of contribution from aggregators annual turnover which is not to exceed more than 5%.

- Definition:

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Gig workers are the one who works out from the traditional relation of employees and employers

Platform workers are the one who are indulging or is working. On, an online platform which means they either provide service on that or to solve problems.

Unorganized workers are the one who is wages worker, home-based workers or the self-employed workers.

An Unorganized sector where the workers are engaged in works which is not covered under organized sector that is there is no formal or traditional relation of employer and employees between the two it is said to be unorganized sector. The workers working may be less than 10 in number.

- Registration:

Gig workers, unorganized worker and platform workers are to be registered according to this code. They are eligible if they are more than 16 years¹⁰ of age and has to submit self-declaration with the information that may be prescribed by the central government. Aadhaar card is made mandatory for availing benefits.

- National social security Board:

National social security board will work for the welfare of the aforesaid three categories of workers and is to monitor in making schemes for them. The board which will be formulated to make the policies will consist of five aggregators from the central government, five from the state government, five from gig workers or platforms workers and director-general of ESIC.

- Boards formulated:

There are few boards which has been organized under the social security code which is of five types namely: (a) the national social security board, (b) the employee's state insurance corporation, (c) the central board trustees of the employee's provident fund, (d) the state social security board, (e) the state-building workers welfare board

- Employees state insurance corporation:

The code specifically says the employee's to be voluntarily registered under the employee's state insurance scheme. It schemes now covered gig workers, unorganized sector and platform workers. Regarding the scheme, the central government has the power to extend it to any hazardous occupation regardless of the number of employees and employer. The employer whether employing directly or indirectly that is on contact basis he is supposed to pay to each

¹⁰ legal age to work

employee. The employers are not entitled to deduct money from the wages payable under the aforesaid if done so same will be recovered. Further, the central government is entitled to make laws relating to aforesaid categories and their families under ESIC. If in case the registration of the employee fail because of the employer, the benefit which is given under the scheme is payable by the employer to that particular employee.

- Maternity benefits:

A woman is mandatory entitled to maternity benefit of an industrial establishment or shops where 10 or more workers are employed. She would be entitled to the same if she has worked for 80 days from the 12 months immediately preceding her date of delivery. The maximum number of the week for which she is entitled to holidays is 26 weeks if she doesn't have any living children and if she has the is entitled to 12 weeks. Provisions for a nursing break, crèche facility claims for maternity benefit are there.

- Gratuity:

It is payable to employees from the employer, under the code if any shop or industrial establishment has 10 or more workers working or has worked anytime in 12 months previously. The salary of 15 days or not less than the amount fixed by the central; government shall be payable. There is a different threshold for gratuity payable to permanent and fixed-term employees. In case the employee employed for fixed-term basis or deceased the gratuity shall be paid on pro-rate basis but in normal cases the employer shall pay gratuity for the one who has provided continuous service for 5 years.

- Employees provident fund:

Any establishment or shop having employed 20 workers or more is subject to contribute to the provident fund 10% wages payable to the employee at that particular time being. Whether the employees has been appointed directly or on a contract basis. The contribution of the employees and the employer shall be the same. The central government may increase the threshold to 12%.

(3) Occupational safety, health and working condition code 2020:

The code subsumes 13 existing major law of central government namely:

- (a) The factories act, 1948
- (b) Contract labour (regulation and abolition) act, 1970
- (c) The mines act, 1952
- (d) The dockworkers (health, safety and welfare) act 1986

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- (e) The building and other construction workers (regulation of employment and conditions of service) act,1996
- (f) The plantation labour act, 1951
- (g) The inter-state migrant workmen (regulation of employment and conditions of service) act, 1979
- (h) The working journalist and other newspaper employees (conditions for service and miscellaneous provision) act,1955
- (i) The working journalist (fixation of rates of wages) act, 1958
- (j) The cine workers and cinema theatre worker act,1981
- (k) The motor transport workers act, 1961
- (l) The sales promotion employees (conditions of service) act,1976
- (m) The bidis and cigar workers (condition of employment) act, 1966

- Scope:

The service sector, manufacturing sector or any trading business will be covered under the same. It applies to all the establishment or factories where the manufacturing is being carried out with the aid of power to have 20 employees and 40 if without the aid of power. The code includes all the factories carrying out hazardous activities regardless of number.

- Occupational Safety Board:

It will be an advisory board to look into the working, standard, rules, regulation of the code and suggest new policies to the central and state government. An inspector is to be employed for web-based inspection.

- Registration:

Under this code, the registration of the establishment and factories has been made common and mandatory. There is no need to register at several places. The employer can apply common license for operating a factory or for engaging contract labour.

- Safeguards:

The employer is to provide safety working environment for the working of the employees. The employer is bound is told about any problem or accident that will happen at his establishment and the employees are supposed to cooperate for the same. Appointment letter is mandatory to be given to the employees by the employer to avoid any mishap on the part of employees. Regular health check-up to be conducted by the employer for the employees. For extra time work amount at the rate of twice the wages will be given.

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- Women employment and working hours:

According to this code, Women are allowed to work in any or every establishment even in the night which is time beyond 7 P.M. or before 6 A.M. according to the safety measure taken by the employees for the same. Their consent will be taken for the same. But they can be stopped from working anywhere because of their health safety. The bill clearly states the working hour limit to be eight hours a day

- Contractual labour:

The code is to be applied on the establishment or contractors employing 50 or more worker Work specific license has been introduced under this code where if the contractor will be unable to supply contract labour or for the execution of specific work because of not meeting the criteria prescribed by the government. They can work through this license. The contractor is to provide work orders information from the employer to the government to get license. An Experience certificate is to be given by the contractor or the one employing for the work is done on annual basis with work done information. The code prohibits contract labourers in core activities. It also includes contract labor working in the central or state government offices. The appropriate government has the power to exempt contractors in case of an emergency like epidemic, pandemic etc.

- Inter-state migrant workers:

The code state that any person moving on his own to another state in search of work and earning maximum to INR 18000 or such amount as the central government may specify are to be considered as inter-state migrant workers. They are too eligible to take benefit from the public distribution system at their native place or place of employment, are to be provided with benefits such as insurance and provident funds same as any other worker of the establishment. The state and the central government is to maintain portal carrying important information relating to the inter-state migrant workers. They can also register themselves in this portal by self-declaration and Aadhar card. The journey allowances to go to their native place is suppose too be given to them by the employer yearly.

(4) **Code of wages act 2019:** the main purpose of the code is to ensure uniform proper regulation of the minimum wages uniformly. This code has subsumed four existing labour laws namely:

(a) Payment of wages act, 1936

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- (b) The minimum wages act, 1948
- (c) The payment of bonus Act, 1965
- (d) The equal remuneration act, 1976

- Wages definition:

The code tries to give a uniform definition to the term “wages” as the definition differs everywhere. Section 2(y) of the code define wages which includes all the remuneration such as salary allowances or any expressed in a monetary term that are dearness allowances, basic pay and retaining allowances.

- Applicability:

The code applies to the organized as well as unorganized sector. It is applicable to all the employers and employees. The ceiling which was described in existing laws has been removed by this code, as it is applicable on all across the board irrespective of the threshold.

- Minimum wages:

According to section 9 of this code, the term floor wages has been introduced. According to this, the central government is to decide the minimum wages floor according to the living standard of the worker which may vary according to their geographical area. The appropriate government can decide the floor wages but it should not be less than what has been decided by the central government. It is to be revised within every 5 years.

- Equal remuneration:

This code subsumes the equal remuneration act 1976 which tries to prohibit discrimination based on gender. This code has widened the scope of the term equal remuneration as it prohibits discrimination based on salary, opportunity etc. which has been described in the constitution.

- Payment of bonus:

Section 26 of the code talks about payment of bonus, which is to be fixed by the appropriate government. Employees whose salary is less than the floor set by the government is to receive an annual bonus of a minimum 8% and maximum of 20%.

- Period of payment:

Under section 16 of the code, the employer is to decide the period time of a bonus payment of the code. It is expressly mentioned in the section that the payment can be made daily, weekly, fortnightly or monthly subject too condition. Though the wages period should not exceed more than one month.

- Advisory board:

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Section 42 of the code deals with an advisory board. The central and the state government are to have advisory board. The board shall consist of the following member: (a) employee's representative, (b) employer's representative (representative of the employees and employer should be same), (c) independent member (not exceeding one-third) (d) five members from state nominated by the central government (only in the case of central advisory board). One-third of members are to be women.

6. Benefits from the reforms in labour law

All four codes passed by the government will benefit in many ways:

- (1) The numerous and complex laws which were being practiced have been consolidated and simplified as there existed more than 45 labour laws at central and more than 100 at state.
- (2) The codes have expanded its scope as it covers more workers and establishment than before with limited exceptions. It has now included gig workers and platform workers, sales promotion person, journalist etc.
- (3) Minimum wages have been set uniformly though, add on in this is that the wages will be decided to keep in mind the living standard of the workers which may differ according to the geographical area.
- (4) Ensures timely minimum pay as there has been period time set by the government for the payment of wages though it shall not exceed the period of one month.
- (5) The Job security of the employee's being protected to some extent as fixed-term employment has been introduced, safeguard to contract and migrant labours, making the provision for lockout stringent than before.
- (6) Uniform procedure for licensing, registration and special license for any other work to ease the process for the new entrepreneurs to enter the business.
- (7) Protection has been provided to the contract labour from being exploited and migrants labour have been recognized.
- (8) The labour administration has been improved then before also there has been an increase in the quantum of fines and penalties.
- (9) It eases the ability of the entrepreneurs to start a business which would in a way or the other affect India's ease of doing business (EODB) ranking.
- (10) The threshold earlier was set very low which gave adverse incentive to the establishment to remain slow hindering growth of the formal economy with high

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administrative burden. The increase in the threshold is a good incentive to accelerate the growth of firms and create more job opportunities.

7. Issues and problems

The code has tried simplifying the existing law though there are some flaws in it which the government should go through

- (1) A common problem with all the four codes: Excessive power concentration has been done that is the central and the state governments have been provided with the absolute power to include or exclude any industrial establishment from any or all the provisions of the code. It delegates various essential powers through the law to the government like increasing the threshold, retrenchment, closure etc.
- (2) Some workers have still not been added in the code though it has expanded its scope term establishment could have included enterprises such as agriculturalist and own-account enterprises. The definition of employees does not include ASHA and Anganwadi workers and unorganized workers like an agricultural worker.
- (3) The code of industrial relation applies to the entire establishment irrespective of the size whereas the code of social security and code on occupational, safety applies to the establishment of a certain size which is the again unsettled situation.

The industrial relation code 2020:

- (a) The provision for strike and lockout has been making strict just like the procedure that is there for strike and lockout which in a way restricts way to strike or lockout the government should take some middle approach for the same rather than considering the strict procedure.
- (b) As the re-employment of the employee under fixed-term employment depends on the employer discretion as the employer would favour the one who would follow him blindfolded so there should be an official record made for the fixed-term employee's which would be considered at the time of re-employment.

The social security code 2020:

- (a) The definition of gig workers. Platform workers and aggregator are overlapping the government should specify them with more clarity.
- (b) Social security code does not provide uniform security to all the establishment. All the establishment should at least get some basic uniform provision for decent working conditions, social security, safety at workplace and wages.

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(c) As provision for social security applies to only those establishments whose threshold would reach the required number. This would, therefore work as an adverse incentive to not to increase the size of the establishment.

The occupational, safety and working condition code 2020:

(a) Separate inter-state fund would have been created by the government for migrant workers.

(b) Women will get equal opportunity to work even after 7 P.M. and before 6 A.M. but with their consent and with proper safety measure. But there is no provision which states that if the consent has been taken through undue influence or coercion then what will be the consequence or what is the safety measure that is to be taken.

Code of wages acts 2019:

(a) In the concept of floor wages while fixing the minimum wages according to the living standard need for basic nutrients shall be taken into consideration.

(b) The state with fewer minimum wages will suffer as growth and development would slow down as the labour would prefer going and working to the place with more minimum wages. This would concentrate on development.

(c) Revision of wages after every five years is a too long period span considering the volatility in the market. Therefore, minimum wages should be adjusted to inflation.

8. Conclusion

The aforesaid bills are making the pronounced effort to overcome the flaws, consolidate and simplify the law so that it is easy to apply. As the center have taken a valiant step to deal with the flaws present in central law now the onus of burden comes on the state to overcome the flaws, remove duplicate laws, simplify etc. The laws so that it can be used with ease. That states together with discussion should make changes in their law so that there is a standardized form of law even on the state level. As India is a developing country hit needs to accelerate its growth rate to become a developed country and without making changes in the basic policies it may not be possible to speed up. All the codes have received president assent though they will become applicable only when it is notified by the central government. Making India project that is initiated by the Prime Minister of the country would be benefitted from the same as all the frivolous hinders have been removed. This is a compact start for a beaming future. To achieve desired goals and objective of the aforesaid code it is really important that the authorities should check their integrity and implementation. The codes would be helpful for the one planning to

start a business. The flaws that are there in the code should be considered to make it more effective and add significant value to it.

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