

**INDIA'S NEW LABOUR CODES: A CRITICAL LEGAL ANALYSIS**- Vishad Srivastava & Vishal Pandey<sup>1</sup>*Consolidation, Simplification, or Erosion of Worker Rights?*

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**Abstract**

*Between 2019 and 2020, the Indian Parliament enacted four Labour Codes—the Code on Wages, the Industrial Relations Code, the Code on Social Security, and the Occupational Safety, Health and Working Conditions Code—consolidating twenty-nine central labour statutes. Proponents describe this as a long-overdue rationalisation of a fragmented legal landscape; critics contend that it represents a systematic weakening of constitutional and statutory protections that workers spent decades winning. This paper offers a critical legal analysis of all four Codes, examining their constitutional foundations, their fidelity to ILO conventions ratified by India, the practical consequences for collective bargaining and social security, and the implications of leaving implementation almost entirely to delegated legislation. The analysis concludes that while consolidation carries genuine administrative merit, the deliberate raising of thresholds for trade-union recognition, the dilution of standing obligations on fixed-term employment, and the near-complete displacement of justiciable rights by executive rule-making pose serious risks to the fundamental rights guaranteed under Articles 19(1)(c) and 21 of the Constitution of India.*

Keywords: Labour Codes 2020, Industrial Relations Code, Code on Wages, collective bargaining, constitutional labour rights, delegated legislation, social security, ILO conventions, fixed-term employment, India.

**I. Introduction**

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Indian labour law has long been described, even by its admirers, as a labyrinthine accumulation of statutes. By the time the first Labour Code was passed in 2019, Parliament had enacted well over forty central labour laws, many of which overlapped in scope, contradicted one another in definition, and imposed compliance burdens that small and medium enterprises found genuinely crippling. The aspiration to streamline this architecture was neither new nor partisan; successive Law Commission reports and the Second National Commission on Labour (2002) had recommended consolidation for decades. What makes the four Codes enacted between 2019 and 2020 worth examining critically is not the goal of simplification itself but the particular legislative choices made in its pursuit.

The Code on Wages, 2019, was the first to receive presidential assent. The Industrial Relations Code, the Code on Social Security, and the Occupational Safety, Health and Working Conditions Code followed in September 2020. Together, they collapse twenty-nine central statutes—among them the Trade Unions Act 1926, the Industrial Disputes Act 1947, the Minimum Wages Act 1948, the Employees' Provident Funds and Miscellaneous Provisions Act 1952, the Maternity Benefit Act 1961, and the Contract Labour (Regulation and Abolition) Act 1970—into four omnibus instruments. The legislation has not yet been brought uniformly into force, partly because it requires state governments to frame complementary rules and partly because multiple constitutional challenges remain pending before the Supreme Court and various High Courts.

This paper approaches the Codes through three interconnected legal lenses. First, it asks whether the consolidated framework is constitutionally sound—whether it respects the fundamental right to form associations guaranteed by Article 19(1)(c) and the right to life and dignity protected under Article 21. Second, it examines India's treaty obligations under key ILO Conventions and assesses whether the Codes honour or erode them. Third, it evaluates the structural choice to delegate an extraordinary volume of substantive rule-making power to the executive, raising questions about accountability, legal certainty, and access to justice. The discussion proceeds code by code before offering a synthetic assessment.

## **II. Constitutional Framework and the Right to Labour**

Labour law in India draws its legitimacy from multiple constitutional sources. The Directive Principles of State Policy, though non-justiciable in themselves, have been interpreted by the

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Supreme Court as mandatory considerations in the interpretation of fundamental rights. Article 43 directs the State to secure living wages and humane conditions of work; Article 43A envisages workers' participation in management. The Seventh Schedule places 'labour' on the Concurrent List (Entry 22), meaning both Parliament and state legislatures may legislate on the subject, subject to Parliamentary supremacy in the event of repugnancy under Article 254.

The most consequential constitutional right for the purposes of this analysis is Article 19(1)(c), which guarantees to every citizen the right to form associations or unions. The Supreme Court in *Rangaiah v. State of Karnataka* (1983) and, later, in *Balmer Lawrie Workers' Union v. Balmer Lawrie & Co.* (1985) held that this right encompasses not merely the act of forming a union but the meaningful exercise of collective bargaining as its functional corollary. The Industrial Relations Code, 2020, raises the threshold for union recognition from what was effectively a plurality-based system under the Trade Unions Act 1926 to a requirement that a trade union represent at least fifty-one percent of workers in an establishment before it can seek negotiating status. The constitutional question is stark: does a statutory threshold that denies bargaining status to a majority of workplaces—given the practical fragmentation of the Indian workforce—amount to a disproportionate restriction on Article 19(1)(c)?

A compelling argument can be made that it does. The proportionality standard, now firmly embedded in Indian constitutional jurisprudence through *K.S. Puttaswamy v. Union of India* (2017) and *Modern Dental College v. State of Madhya Pradesh* (2016), requires that any restriction on a fundamental right pursue a legitimate aim, be rationally connected to that aim, be the least restrictive means of achieving it, and strike a fair balance between individual rights and the public interest. The stated aim of the fifty-one percent threshold is to reduce inter-union rivalry and promote stable bargaining. That aim is legitimate. But the least-restrictive-means inquiry is more troubling: the same objective could be achieved through mandatory secret-ballot elections administered by an independent authority—a mechanism that already exists in some state industrial relations frameworks—without extinguishing bargaining rights for unions that cannot immediately cross the majority threshold.

### **III. The Code on Wages, 2019: Universal Floor or Illusory Promise?**

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The Code on Wages deserves credit for its most ambitious feature: the extension of minimum wage protection to all workers irrespective of whether their employment falls within a scheduled employment category. Under the pre-existing Minimum Wages Act 1948, wages could only be fixed for employments listed in a schedule, leaving vast categories of informal workers beyond its reach. The Code dissolves that distinction in principle, creating what the Statement of Objects and Reasons describes as a 'universal floor wage.'

In practice, however, the universality is qualified in ways that matter enormously. The Code vests the central government with the power to fix a national floor-level minimum wage, but this power is discretionary—the language uses 'may' rather than 'shall.' State governments retain the power to notify their own minimum wages provided they do not fall below the central floor, but the Code does not specify a timeline within which either government must act. The result is that the critical substantive content of the right—the actual wage figure—is deferred entirely to executive action, a point that bears on both constitutional and rule-of-law concerns that will be addressed more fully in Section VI.

The Code also introduces a unified definition of 'wages' that excludes bonuses, gratuity, house rent allowance, overtime, and a number of other components provided they collectively do not exceed fifty percent of total remuneration. Labour economists and trade union advocates have pointed out that employers can and will use this provision to restructure pay packages so that non-wage allowances account for just over half of total pay, thereby suppressing the base on which provident fund contributions, gratuity, and overtime calculations are made. This is not a hypothetical concern; it replicates a pattern already observed in practice under the Employees' Provident Funds and Miscellaneous Provisions Act 1952 before its amendment. The Code on Wages, by embedding this definitional structure across all four Codes, risks institutionalising wage suppression at the very moment it claims to universalise protection.

## **IV. The Industrial Relations Code, 2020: Collective Bargaining Under Pressure**

### ***4.1 The Recognition Threshold***

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As noted above, the Industrial Relations Code requires a trade union to represent fifty-one percent of the workforce before it qualifies as the sole negotiating agent. Where no single union commands this majority, a negotiating council composed of unions each holding at least twenty percent of the workforce may be constituted. The practical arithmetic is daunting: in India's predominantly informal, fragmented, and casualised labour market, most establishments of any size contain workers affiliated with multiple competing unions, none of which readily reaches a majority. The threshold may function, in effect, as a collective bargaining exclusion clause for a large proportion of the organised workforce.

#### ***4.2 Fixed-Term Employment***

The Code formally regularises fixed-term employment contracts across all sectors, extending to fixed-term workers the same wages, hours, and working conditions as permanent workers engaged in comparable roles. This represents a statutory improvement over the earlier position. However, the Code does not restrict the number of times a fixed-term contract may be renewed, nor does it specify any maximum aggregate duration after which a worker must be offered permanent employment. The absence of a conversion right after repeated renewals is legally significant: it creates a category of perennial precarious worker who is formally equal to permanent workers in terms of current terms but categorically unequal in terms of employment security, access to redundancy compensation thresholds, and the ability to engage in collective action without fear of non-renewal.

#### ***4.3 Retrenchment and Closure Thresholds***

Perhaps the most contested provision is the Code's threshold for prior governmental approval before retrenchment or closure. The Industrial Disputes Act 1947, as amended in 1976 and 1982, required establishments employing one hundred or more workers to obtain government permission before effecting layoffs, retrenchments, or closure. The Code raises this threshold to three hundred workers for all purposes and further permits state governments to raise it even higher. Critics argue that this exposes the large majority of Indian manufacturing establishments—which employ between one hundred and three hundred workers—to unilateral retrenchment with minimal procedural safeguard. Defenders respond that the old threshold had

become effectively inoperable because government permission was routinely denied on political grounds regardless of economic justification, leaving capital locked in unviable enterprises.

Both accounts contain truth, but the appropriate legal response to administrative dysfunction is to reform the permission-granting process, not to eliminate the safeguard itself. Article 21's guarantee of a dignified livelihood, as expounded in *Olga Tellis v. Bombay Municipal Corporation* (1985), has been read by the Supreme Court to encompass protection against arbitrary deprivation of one's means of earning. Whether an unfettered retrenchment power in the hands of an employer satisfies the test of non-arbitrariness under Article 14 is a question the courts will eventually have to decide.

## **V. Social Security and Occupational Safety: Extension Without Enforcement**

The Code on Social Security, 2020, performs an important aggregative function by bringing together the Employees' Provident Funds Act, the Employees' State Insurance Act, the Gratuity Act, the Maternity Benefit Act, and related legislation. It also makes a significant conceptual move by extending the framework of social security to gig workers and platform workers—a category entirely invisible to pre-existing law. This is a genuine and long-overdue legislative step, one that positions India ahead of most developing economies in acknowledging the labour-law personhood of platform workers.

The difficulty, once again, lies in the architecture of implementation. The Code's provisions relating to gig and platform workers are stated to apply 'as the central government may, by notification, specify.' The central government has not yet issued any such notification. Meanwhile, platform companies continue to characterise their workers as independent contractors, resist collective bargaining claims, and set unilateral working conditions. The legislative acknowledgment of platform workers without concurrent enforcement machinery or defined timelines is symbolically important but substantively hollow for the millions of workers who depend on this emerging sector.

The Occupational Safety, Health and Working Conditions Code consolidates thirteen statutes governing safety in factories, mines, construction sites, plantations, and other workplaces. It introduces a unified definition of 'worker' that is broader than most of the predecessor statutes. However, it retains the threshold-based approach to applicability—most provisions apply to

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factories employing ten or more workers with power, or twenty or more without—thereby continuing to exclude from the protective framework the overwhelming majority of India's micro and small enterprises where occupational injury and death rates are highest. A genuinely reformed occupational safety regime would move toward a risk-based rather than size-based regulatory model, as recommended by the International Labour Organization and adopted in post-industrial economies.

## **VI. Delegated Legislation and the Rule of Law**

The most structurally significant characteristic of the four Labour Codes is the degree to which substantive entitlements are displaced into delegated legislation. A careful reading reveals that the central government is granted rule-making power on approximately two hundred and seventy-five separate subjects across the four Codes. State governments are similarly empowered. Provisions that were previously in the body of Acts—specifying the minimum number of paid leaves, the conditions for overtime compensation, the criteria for ESI applicability—are now to be found, if they are found at all, in rules that have not yet been framed.

This is not merely a technical observation. The rule of law, in its formal sense as articulated by Dicey and subsequently given substantive content by Indian constitutional jurisprudence, requires that law be accessible, clear, and stable enough to guide conduct. When a worker seeks to know what minimum wage she is entitled to, or whether her employer is obligated to register her under the Employees' State Insurance scheme, she must now navigate not just the Code but an indeterminate number of rules, notifications, and circulars issued by central and state governments, many of which may not yet exist. The Supreme Court, in *S.P. Sampath Kumar v. Union of India* (1987) and in subsequent decisions on delegated legislation, has insisted that Parliament cannot abdicate essential legislative functions to the executive. Whether the breadth of delegation in these Codes crosses that constitutional line is a question that is actively being litigated.

There is also a democratic accountability concern. Parliamentary scrutiny of rules made under delegated authority is, in the Indian system, significantly weaker than scrutiny of primary legislation. Rules are typically laid before Parliament for a limited period and may be annulled

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by a negative resolution, but in practice, they receive little attention. When substantive worker entitlements are determined by executive rule rather than parliamentary statute, the political cost of eroding those entitlements is correspondingly lower, and the risk of quiet regulatory capture—by industry lobbies that have access to the rule-drafting process—is correspondingly higher.

## VII. India's ILO Obligations

India has ratified forty-seven ILO Conventions, though it has notably not ratified the two foundational conventions on freedom of association (Convention No. 87) or the right to organise and collective bargaining (Convention No. 98). It has, however, ratified Convention No. 144 on tripartite consultation and Convention No. 26 on minimum wage fixing machinery. The Codes' procedural record on tripartite consultation is mixed at best. The standing committees and advisory boards established under the new Codes replicate the consultative mechanisms of the predecessor statutes, but there is significant criticism from both trade union federations and employer organisations that the Codes were finalised without adequate tripartite deliberation, particularly given the context of the COVID-19 pandemic during which parliamentary scrutiny was compressed.

More broadly, India's aspiration to ratify Convention No. 87 and Convention No. 98 is periodically stated in official communications to the ILO but has not been acted upon. The Industrial Relations Code's fifty-one percent recognition threshold and its restrictions on the right to strike—which require a fourteen-day notice period and prohibit strike action during conciliation and adjudication proceedings—are inconsistent with the standards of ILO Convention No. 87 as interpreted by the Committee on Freedom of Association, even if India is not formally bound by that Convention. The reputational dimension matters: as Indian companies increasingly operate in global supply chains subject to buyer codes of conduct based on ILO core standards, domestic law that does not meet those standards creates both legal uncertainty and commercial risk.

## VIII. Gender, Informality, and Structural Exclusion

Any critical legal analysis of the Labour Codes that does not engage with gender and informality is incomplete. Approximately ninety percent of India's workforce is employed in the informal

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sector, and women are disproportionately concentrated in the most precarious segments of that sector. The Codes' extension of coverage is genuine—the definition of 'worker' is broader than in several predecessor statutes—but coverage without enforcement is of limited practical value.

The Maternity Benefit Act 1961, absorbed into the Code on Social Security, provides twenty-six weeks of paid maternity leave for women in establishments employing ten or more workers. The Code preserves this entitlement but does not extend it to the vast category of home-based, domestic, or agricultural workers who are de facto excluded by the threshold. The Unorganised Workers' Social Security Act 2008 is subsumed into the Code on Social Security but its successor provisions for welfare board schemes—which were the primary vehicle for extending benefits to informal workers—are weakened by the shift to discretionary rather than mandatory implementation.

The Code on Wages' definition of wages applies equally to men and women, and section 3 of the Code re-states the equal remuneration principle. However, the Code drops the Equal Remuneration Act 1976's requirement that employers maintain registers showing the wages of male and female employees doing comparable work. This seemingly minor administrative change has significant practical consequences: without a documentation obligation, enforcement of the equal pay principle becomes almost entirely dependent on individual complaints, and the structural pay gaps that pervade Indian industry are rendered invisible to regulatory scrutiny.

## **IX. Comparative Reflections**

India's consolidation exercise invites comparison with analogous reform efforts in other jurisdictions. Malaysia's Employment (Amendment) Act 2022, which extended statutory protections to contract workers and introduced minimum employment conditions for gig workers, achieved meaningful extension without dismantling existing collective bargaining architecture. Singapore's labour law framework, though operating in a very different industrial relations context, demonstrates that high flexibility for employers and meaningful social security coverage for workers are not mutually exclusive legislative goals. The United Kingdom's Good Work Plan (2019), implemented following the Taylor Review, moved toward employment status reform by broadening the category of worker entitled to minimum wage and holiday pay—again without weakening existing trade union rights.

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The common thread in these comparative examples is that legislative simplification, where it occurred, was accompanied by substantive rights maintenance or extension, not substitution of administrative discretion for legal entitlement. India's Codes, in contrast, use the mechanism of consolidation to introduce what might be described as a double movement: formal extension of coverage upward and outward, combined with substantive dilution of the rights that coverage is supposed to confer.

## **X. Conclusion**

The four Labour Codes represent the most significant restructuring of Indian labour law since Independence. The aspiration behind them—a coherent, accessible, and uniformly enforceable framework capable of addressing the realities of contemporary Indian industry—is entirely legitimate. Measured against that aspiration, the Codes achieve partial success. They simplify definitions, reduce multiplicity, and extend nominal coverage to previously excluded categories of workers including gig workers and fixed-term employees.

Against these achievements must be set a series of structural choices that, from a legal standpoint, raise serious concerns. The fifty-one percent trade union recognition threshold imposes a constraint on collective bargaining that is constitutionally questionable and inconsistent with the developing jurisprudence of fundamental rights. The expansion of standing retrenchment thresholds shifts economic risk downward without adequate compensating protection. The pervasive delegation of substantive rule-making to the executive hollows out parliamentary accountability and creates legal uncertainty that is antithetical to the rule of law. The extension of social security to informal and gig workers—the most progressive feature of the Codes—is rendered largely symbolic by the absence of mandatory implementation timelines and enforcement mechanisms.

What Indian workers, employers, and the courts ultimately need is not more consolidation but more clarity: clear, mandatory entitlements stated in primary legislation, backed by adequately resourced enforcement machinery, and subjected to meaningful parliamentary and judicial oversight. The four Codes have consolidated the text of Indian labour law; they have not yet consolidated its legitimacy. Whether that legitimacy will be earned through conscientious rule-

framing, sustained constitutional litigation, or future legislative revision remains an open—and urgent—question.

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