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IMPLEMENTATION OF NEW LABOUR CODE AND POSSIBLE THREATS TO UNORGANISED SECTOR

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Abstract

The Indian government made a historic achievement by the implementation of new labour codes. Labour force is a decisive factor for economy of a country. For a progressive economy, maintenance of a healthy work force is mandatory. Therefore, timely reformation of labour laws is necessary. Majority of our labour laws took its origin during the pre-independence era. But in current scenario, the need of our society changed there is a gap in labour capacity of our society compared to that of the labour force existed in pre-independent era. The enforcement of new labour is done by amalgamating 29 labour laws into four new labour codes, as the existence of these laws created issues of multiplicity. For the purpose of ease of doing business and for achieving uniformity in labour laws such actions from government are the need of hour. The labour force comprises of both formal and informal workers. In case of formal workers their rights are successfully debated and formulated but the case of informal workers is overlooked. Over 90% of Indian labour force consist of informal workers by overlooking into their problems the government is giving a cold shoulder to them. It is commendable that the government tried to address their concerns and won to an extent. Recognition of informal workforce and extending social security is a positive approach. But still, there exist some lacunas as the informal sector is not tied with enough force to labour laws. The aim of this article is to throw light into such areas which is left without addressing and emerged as serious threats to the informal work sector.

Key words: Labour codes, Informal workers, progressive economy, social security, uniformity.

INTRODUCTION

The Indian Government on 21st November 2025 made a historic achievement by making effective the four labour codes by amalgamating 29 existing labour laws which consist of laws regarding wages, occupational safety, social security. Majority of these labour legislations are pillars of strength of Indian labour sector from the pre-independence era to until the enactment of the new labour codes. The evolution of new labour code can be termed as biggest labour reforms in India. The major reason for this transformative step was most of these labour legislations has achieved their expiry state as there exist a paradox in the labour conditions, living conditions, minimum wages etc., between the pre-independent era and the Gen -z era. Acts like Workmen's Compensation Act, 1923, Payment of Wages Act, 1936 are some of the examples to be quoted. In this context, we need a labour legislation that addresses concerns and grievances of employees and employer from all sectors irrespective of considering the factors like formal or informal sector, gender, fixed term or permanent etc.,

Labour is a subject which falls under the concurrent list in the seventh schedule of our constitution bearing joint responsibility for central and state governments to make, review, rationalise and making amendments from time to time. This resulted in the formation of 200 labour laws over the years as states like Kerala, Tamil Nadu came up with their own acts, for example-Kerala Labour Welfare Fund Act, 1975, Tamil Nadu Manual Workers Act, 1982. The multiplicity of labour codes intended to address the concerns of labourers actually entangled them in a web of confusions. Therefore, in order to identify the needs of workers in various sectors, the central government has taken the captaincy for the reformation of labour laws. This reformation includes codification of labour laws into four major labour codes. These labour code consist of:

- Labour code on Wages
- Labour code on Industrial Relations
- Labour code on Social Security
- Labour code on Occupational Safety and Health.

The major intention of government through the codification of labour laws are:

1. To ease the process of registration, licensing framework through the way of single registration, single license and single return.
2. To update the outdated laws -As we know most of the labour laws were formed during the pre-independence era. From the pre independence era until now our society has undergone a drastic transformation in case of standard of living, economic conditions,

labour conditions etc., In order to cope up with this condition it is necessary to come up with such reforms.

3. The existence of multiple authorities has created a complex position for the enforcement of the labour law remedies. To overcome this position codification is necessary.

Moreover, the recommendation of the Second National Commission¹ on labour for codification of existing labour laws should be broadly grouped into four/five on functional basis also paved the way for the codification.

Reforms on labour laws are an ongoing process. For this purpose, the government has appointed various commissions, committees and ratified ILO conventions from time to time, some of the notable examples are the 7th pay commission, ILO convention 161 etc. Recently, the enactment of new labour codes has stirred up new controversies. Labour unions and workers have already raised their objections as these codes were passed without a sound tripartite consultation between workers, employers and government representatives at the Indian Labour Conference. Labour force is one of the strategic factors of a nation's economy. The term labour force focuses not only on the organized sector it includes unorganized sector which consists of construction workers, domestic workers, gig and platform workers. The new code challenges the hard-won labour rights of people from unorganized sector. It is to be noted that over 90% of India's workforce consist of unorganized workers and they contribute 65% of India's GDP. The implementation of new labour codes raised serious challenges regarding the workplace safety, social security of labourers in the unorganised sector. The paper intends to throw light on the gap between the old and new labour codes regarding occupational safety and social security of unorganized sector, loop holes in the new codes and the threats the new labour code poses. This article provides an impact of new labour codes on unorganised sector.

EVOLUTION OF LABOUR LAWS IN INDIA

Labour laws in pre-independent era: The history of Labour laws in India is firmly rooted in British colonialism. It was the British who came forward with certain legislations related to industry and labour in order to protect the best interest of British employers. During the initial periods of industrialisation, the workers were treated like human robots, they were exposed

¹2nd Nat'l Comm'n on Labour, Ministry of Labour, Gov't of India, Report of the Second National Commission on Labour vol. 1 (2002), <https://www.vvgnli.gov.in/en/commissionsoflabour19292002/report-second-national-commission-labour-vol-i>.

long -shift of 12-16 hours with short meal break, only allowing certain holidays, low wages and hazardous working conditions. The unorganised working group in Britain raised their voice for better working conditions .It was the after effects of humanitarian movement England was witnessing with regard to social ills contributed by industrialisation, religious, philanthropy, moral activism in the 19th century. The cunning British employers supported such movement in India with the ulterior motive of dividing the Indian employers. It is a well-regarded fact that Indian handwoven textile received a warm welcome on foreign markets due to the reasons such as affordability, attractive patterns. This gradually reduced the popularity of British textile industry. Due to the competition, the British textile owners applied for the appointment of a commission but it was not helpful. In order to regain the prominence of the industry the textile business tycoons of Manchester and Lancashire pressurised the British parliament resulting in the enactment of FACTORIES ACT for the first time in 1881. For the first time India got introduced by the legal framework of overtime wages, abolition of child labour, eight hours of work .Though India was offered with its first labour legislation the real agenda was to protect the interest of British employers. This Act was amended several times notably in 1891,1911,1922 and 1934.

Effect Of World War-I: During the period of world war-I the production maximized and the price of goods also hiked .But the hardship of workers remained the same. They received wages in order to meet the ends. This call for an organised action from the part of workers. Hence there is a sudden bloom of trade unions. The industrial unrest and the formation of International Labour Organisation pressurised the Government to implement protective labour legislation such as Employees Compensation Act 1923, New Factories Act, 1922 Indian Mines Act, 1923. At a later stage The Indian Trade Union Act, 1926 was also enacted .This Act provided immunity for registered unions from both Civil and Criminal Liabilities. In 1929 the Trade Dispute Act was the prime Indian statute connecting the employer and workmen relationship .In this statute the centre of focus was to impose certain restrictions on hard earned rights of workmen like strike and lockout but remained silent in addressing the disputes of workmen. During the period of 1930's the world was combating with economic depression and there was a massive dismissal of employees. It is to be noted that countries like America declared unemployment relief² and one can witness line in streets to collect such compensation.

After Independence phase: After the war ,it was the Indian central Government conferred

²U.S. Dept. of Lab., Chapter 5: The Depression Years: 1930-1940, <https://www.dol.gov/general/aboutdol/history/chapter5> (last visited Mar. 9, 2026).

with the administration of labour legislations and worker's rights .This was in association with five-year plans of First, Second and Third. This resulted in the enactment of labour laws like Factories Act 1948, Child Labour (Abolition And Regulation) Act, 1985,Minimum Wages Act,1948.

Constitution and Labour Laws: India put into practice the theory of welfare state after Independence this is evident in preamble of the constitution and in Directive principles of state policy. It is to be noted that there is no special mentioning of labour laws as such, but it comes as part of union list and state list under Article 246. Under Union List Entry No. 55,61 and 65 provides for regulations of labour with regards to the operation of mines and oil fields, Industrial disputes with regard to union employees and vocational training respectively, while in concurrent list Entry No.22 , 23 and 24 provides about trade unions ,social security .This brings labour laws under different umbrellas such as Labour laws enacted by the central government ,Labour law enacted by central government but brought into application by both government i.e. centre and state, Labour laws of various state governments applied in their own states for e.g. Tamil Nadu Manual Workers Act 1982³. The role of judiciary in protecting the rights of labourers is also worth mentioning .The Land mark case of People's Union For Democratic Rights v. Union Of India ⁴serves as the perfect example. In this case the workers hired for the ASIAD -82 project were subjected to exploitations like denial of minimum wages, excessive working hours, also employment of minors. The Hon'ble Supreme Court through its decision expanded the scope of Article 21 making Right To Life include Right To Live With Dignity thereby providing Minimum wages as a fundamental right, It also widened the scope of Article 23 and Article 17 to address situations like where workers are not paid for their standard wages as it threatens human dignity. The court also condemned the practice of forced labour in as they are considered as serious violation of human dignity. The out come of such action from judiciary brought forced labour and bonded labour under the umbrella of Article 21 thereby bringing the rights of employee under constitutional protection. Identifying such ill treatments of labourers the Court held that it is the responsibility of government, private individuals and organizations to regulate the proper implementation of various labour legislations.

³ Tamil Nadu (India), G.O. (Ms) No. 134, Labour and Employment (J1) Department (Nov. 18, 2014), <https://labour.tn.gov.in/pdf/mpdf/Go.No.134%20dt%2018.11.2014.pdf>.

⁴ People's Union for Democratic Rights v. Union of India, (1982) 3 S.C.C. 235 (India).

DEFINITION OF INFORMAL WORKERS

It is a well-known fact that 65% of India's GDP is contributed by the unorganized sector/ Informal Sector which includes the informal/unorganized workers. Here the question arises who are Informal/Unorganized workers. The First Labour Commission on Labour⁵ chaired by Justice Gajendragadkar defines in Chapter 29 as that part of workforce who have not been able to organise in pursuit of a common objective such as:

- a) Casual nature of employment
- b) Ignorance and illiteracy
- c) Small size of establishments with low capital investment per person employed
- d) Scattered nature of establishments and
- e) Superior strength of the employer operating singly or in combination.

The report also states that the unorganized sector is illustrative rather than exhaustive. Some examples are contract labour including construction workers, labour employed in small scale industry and casual and so on. It also covers workers who are protected by some labour legislation and other who are not. According to the Unorganised Workers Social Security Act 2008, the term Unorganised worker defined as a 'home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II of its Act. Schedule II of the Unorganised Workers Social Security Act, 2008 includes 5 basic labour welfare legislations such as Workmen's Compensation Act, 1923, Industrial Dispute Act 1947, Employees Provident Funds And Miscellaneous Provisions Act 1952, Maternity Benefit Act 1961, Employees State Insurance Act 1948. It is to be noted that there is a universally accepted practice of using unorganised and informal interchangeably as both the terms provide the same.

New Labour Codes And The Challenges Faced By The Informal/Unorganized Sector Employees:

The Central Government by introducing the new labour code aims at a revolution at Indian labour market. These labour reforms provide a revival to the Indian labour market. The government made serious efforts to bring the informal sector under the ambit of these labour codes. The central government has been successful in these efforts. This can be evident from a

⁵Nat'l Comm'n on Lab., Ministry of Lab., Emp. & Rehab., Gov't of India, Report of the National Commission on Labour 417 (1969).

comparison of the labour eco system before and after the implementation of the labour codes by analysing certain aspects i.e.

- a) Formalisation of employment-Appointment letters are mandatory even for contractual labourers , before the codes there are no such practices
- b) Social Security Coverage-The coverage was limited before, after the enforcement of Social Security Code 2020, gig and platform workers are brought under the cover.
- c) Preventive Health care-Employees above 40 years are provided with a free annual checkup are mandated but before there existed no legal requirements
- d) The case of women workers is an important aspect prior to the implementation of the new reform women are restricted from night shifts in certain occupations but with the new update women are allowed with adequate safety measures and consent.
- e) Provided Single Registration of employees in e-shram portal to avail benefits.
- f) Another development is in the case of ESI coverage through the codes the coverage is now pan India extended earlier it was limited to fewer than 10 employees.

Also, gig and platform workers are given official definition for the first time. Contract workers are provided with health benefits and Social Security benefits by the principal employer including free health checkups. Women employees are provided with equal remuneration and provisions were added to expand dependant coverage. In the case of beedi and cigar workers, working hours restricted to 8-12 hours per day, 48 hours per week have been capped, minimum wages guaranteed for all, they are made eligible for bonus after completing 30 days of work in a year. Overtime after prescribed work is paid with double the primary wage rate. Plantation workers are also brought under the legal framework of Occupational Safety And Health Conditions Code and the Social Security Code. As we take these progresses into consideration the new labour codes are visualised as a historical reform, but certain gaps left unnoticed make these labour codes safety risk instead of being a safety net. There is no doubt that the legislation well debated, discussed and drafted in case of organised sector employees. But when it comes to informal work sector there exist a legal absurdity. Such legal misplacement can be evident primarily in the code on Social Security. It can be seen the provision for single registration in e-shram portal for shramik card and Universal Identification Number to get access to schemes of employee benefit like Rs 2 lakh accidental insurance and Rs 1 lakh for disability the real problem lies here as most of the informal workers lacks digital literacy they found it difficult for uploading documents it is to be said that digital awareness we are proclaiming still need to far reached but in current status of India, such effort is ineffective . The migrant workers change their numbers often for various reasons. If they have to relink their Aadhar with current

mobile number they need to visit Sub-divisional magistrate office using biometrics stirring up additional challenges. One can avail employee benefit under the e-shram portal if he/she is aged between 16-59 years, it is to be taken note that Sometimes the date of birth provided in Aadhar are wrong or mistakenly entered making most of them ineligible for benefits due to documentation issues. Unorganised workers enrolled under Employee Provident Fund Scheme and Employee State Insurance Scheme are unqualified to come under this. Another aspect is that unorganised sector workers are not only confined to this sector alone they take up several other jobs we can see them in the organised sector also it raises concerns as the portal provides for categorisation. In some cases, exact category was not notified we need hook on workarounds. Example to quote is the helper category, there exist an ambiguity where a helper in construction site actually belongs, the helper category actually intends to include garment workers in textile industry. Majority of unorganised workers take up multiple jobs but the portal doesn't provide option for such jobs hence the workers need to satisfy with what they are provided. As of now the e-shram portal registration is sole responsibility of employee alone which makes the employer to wash off his hands from responsibilities. Regardless of this short coming the popularity of e-shram portal and shramik card remain unscratched. The Code On Social Security provides for a single welfare board for all informal workers making it centralised this needs a rethinking as informal workers consist of wide range by bringing all of them under one umbrella might not be fruitful. Such action through Social Security code endangered the existence of sector specific boards which numbers between 18 to 39 established in the state of Tamil Nadu like Tamil Nadu Fishermen Welfare Board, Haircutters Welfare Board and so on⁶. India shares a dark history of numerous fatal workplace accidents. To overcome from this past the government had come up with various legislations named as Building and Other Construction Workers Act, 1996, Mines Act, 1952, Plantation Labour Act, 1951. With the introduction of Occupational Safety and Working Conditions Code, 2020 all the early mentioned legislations codified to this. This is also a serious concern as in the name of codification the existing sector wise protection is entirely repealed, for instance the Building and Other Construction Workers Act. In the Building and Other Construction Workers Act about 180 rules have been laid down to ensure workers safety but after the issuance of new code they are entirely missing. It is estimated that in the construction sector approximately 38 construction workers die of fatal accidents which can be prevented due to lack of safety

⁶ Priti Narayan & R Geetha, New Labour Codes Rewrite Workers' Rights, but Here's Where They Go Wrong, Times of India (Mar. 17, 2025, 12:17 AM), <https://timesofindia.indiatimes.com/city/chennai/new-labour-codes-rewrite-workers-rights-but-heres-where-they-go-wrong/articleshow/119085685.cms>.

measures⁷. This is a shocking number and it throws light into the hazardous nature of construction sector. The Occupational and Safety, Health and Working Conditions Code 2020 substituted the inspector raj with the new provision of Inspector-Cum-Facilitator. The new system offers web-based assessment to ensure transparency. They play roles of roles of facilitators than obstructors by giving necessary advices to both employer and employees compared to the inspector raj system which is considered to be punitive and traditional. The Inspector -cum -Facilitators are accountable to third party audits making them corruption free. But this cannot be effective for redressing concerns of safety and minimum wages. This breaches the Convention No.81 of International Labour Organization (ILO)⁸ ratified by India. Convention no.81 of provides for labour inspection, in which it is clearly mentioned that the labour inspector needs to inspect the workplace as often as is necessary also to submit the periodical reports of inspection to central Inspection Authority. The Recommendation no .81 of 1947 underline that the inspector should not act as consultatory or arbitrator. Unorganised or Informal workers are prone to occupational diseases. The Occupational Safety, Health and Working Conditions Code (OSHWC) fails to acknowledge this aspect. Asbestosis and silicosis prominent in construction due to in hailing fine mineral dust. People work in salt fields face chronic eye skin and kidney problems⁹. The code remain silent on these harsh realities. This needs to be addressed as it stands in violation of ILO Convention No. 161¹⁰ which calls for a national policy with regard to ensure health services for all workers and mandates identification and rehabilitation of any occupational diseases. The OSHW code allows night shifts to women with their consent along with appropriate safety measures but the employer has to provide mandatory GPS enabled free transport to residence of the women employee, CCTV and the presence of at least women employees on duty. Functionality of CCTV in a power outage and GPS in dense urban clusters arises questions related to safety. Also, a small-scale employer will not be able to handle such costs. In addition, labour codes are said to be pro bono to employer but the reality is just opposite the OSHW Code provides for mandatory free health check-ups for employees above 40 yrs of age but as we discussed earlier the small – scale employer find it difficult due to financial constraints adding his burden. The curtailment of

⁷ Dir. Gen. Factory Advice Serv. & Lab. Insts., Ministry of Lab. & Emp., Gov't of India, DGFASLI Newsletter, July-Sept. 2023, <https://dgfasli.gov.in/public/Admin/Cms/NewsLetter/65dc3491438c64.98454440.pdf>.

⁸ Int'l Labour Org. [ILO], Labour Inspection Convention, 1947 (No. 81), July 11, 1947, <https://file-chittagong.portal.gov.bd/uploads/016f8495-662c-4eb0-832d-59e7e13a7073//639/025/0fb/6390250fbdc68725576020.pdf>.

⁹ Vidhya Venugopal et al., Occupational Heat Stress and Kidney Health in Salt Pan Workers, 8 *Kidney Int'l Reps.* 1363 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10334398/>.

¹⁰Occupational Health Services Convention (adopted 26 June 1985, entered into force 17 February 1988) 161 UNTS 165 (ILO Convention No 161)

cesses as part of Goods and Service Tax reforms with no substitution of cesses collected to provide for workers in beedi and cigar ,salt , mining and other sectors is a serious strike to them . In cases like Uttarpradesh Power Transmission Corporation Ltd v. CG Power and Industrial Solution Ltd ¹¹the Hon'ble supreme Court made its position clear that such laws are formulated to create funds for welfare of the construction workers by mentioning about the allocation. The Court also undermined the illegal practice of improper assessment, collection and ignoring eligible workers by not providing registration. With no implied fund raised or other offers from government in replica of former instituted cess for their welfare the future of these sectors is in dark.

CONCLUSION

Even though the New Labour Codes are praised for its futuristic approach, these codes also contain areas which left unnoticed posing as serious loopholes. These codes are crafted well for organised sector workers but there is a fallacy in case of unorganised workers. It is suggested that government should go for sector wise welfare sector rather than a centralised one to reach out at informal workers .Instead of codifying all occupational safety rules into the OSHWC frame work sector wise rules should be implemented such as Building and Other Construction Workers Act by prioritising their working environment otherwise it will be difficult for enforceability .The women workers should be offered with more option such as hybrid work in practical terms or any other substitutive measures rather than sticking in nightshifts. Lack of these shortcomings the new labour codes need to be hailed for their revolutionary ideas. But the effort to bring unorganised /informal sector to centralised legal frame work will backfire as the informal/unorganised sector is a wide spectrum each spectrum having its own features.

¹¹ U.P. Power Transmission Corp. Ltd. v. CG Power & Indus. Sols. Ltd., 2021 SCC Online SC 383 (India).