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LABOUR LAW CODES, 2019: A STEP FORWARD OR BACKWARD?

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INTRODUCTION:

Trade and industries have existed in the world since the advent of earliest of civilizations. Agriculture, textile and foreign trade demanded a lot of manpower, and as the world progressed into modern civilizations and nations, this demand increased by leaps and bounds. Labour sector as we know it today in India is a direct result of British Colonization. The British came here with a view of establishing trade monopolies, and as their political power in the subcontinent grew, so did their influence on the workforce of the country. They brought with themselves machines and other articles of technology which required skilled operation. The way these new industries functioned was alien to the Indian workman. Since India was not under a unified rule, there were almost no universal laws which governed its people, most specifically the labour force. The average Indian labourer was uneducated, unskilled in modern technology, and unaware of his rights. The colonizers took benefits in this system, and by way of exploitation and underpayment, ensured that the labourers stay impoverished and downtrodden. There was widespread mistreatment, fraud and instability in employment. Slowly and gradually, educated Indian minds took inspiration from the struggles of fellow labourers scattered across the globe, which gave rise to a common consciousness in the workforce. The concept of trade unions and representation emerged, which ultimately forced the British government and the Royal Commission on Law to acknowledge the rights of these people.

Since colonial times, India has seen a plethora of labour-centric laws. But the major shortcoming of these was the lack of cohesiveness and lots of loopholes. The laws were troublesome for employers and workmen alike. They were caught up in procedural delays and chaos, whereas various statues were found to be overlapping, and in some cases, contrary to each other, which

caused much confusion. Although some of these laws have been amended, yet these fallacies could not be effectively done away with.

Consequently, the Parliament in 2019 decided to attempt to remedy this problem by enacting various codes on labour laws. These codes are more specific, and have unified a lot of pre-existing statues, which will prove to be immensely helpful in doing away with arbitrariness. The aim of these codes is to individually improve each aspect of labour law, and collectively provide for a comprehensive and reformed law system for the labour force in both organized and unorganized sectors. This article is an attempt to study the new codes, and critically analyze the benefits and shortcomings of them, individually as well as collectively.

I. CODE ON WAGES ACT, 2019

Labour laws in India have traditionally been governed by multifarious and fragmented legislations, both at the central and state level. With a view to harmonize and consolidate the various legislations pertaining to wages, the Ministry of Labour and Employment first introduced the Code on Wages Act in the Lok Sabha on August 10, 2017, which lapsed. The Code on Wages Act, 2019 was reintroduced in the Lok Sabha on July 23, 2019 and gained presidential assent on August 08, 2019 after getting passed in both houses of the Parliament.

The Code on Wages Act, 2019 has unified and subsumed four different acts, namely:

i. The Payment of Wages Act, 1936;
ii. The Minimum Wages Act, 1948;
iii. The Payment of Bonus Act, 1965;
iv. The Equal Remuneration Act, 1976.

The implementation of the Code is expected to have wide ranging implications for a majority of industries, and it is therefore crucial to understand the key aspects of the Code and how they differ from the previous regulations.

BACKGROUND

The complexity and rigidity of Indian labor laws are a major impediment to investments and growth of business in India. Under the Constitution of India, certain labor and labor welfare matters are matters within the concurrent list, meaning that both the central and state government can legislate on the same. As a result, there are more than 50 Central and over 200 State labor laws governing various aspects of labor and employment matters in India, many of which are outdated. Consequently, there is much uncertainty on the applicability of labor laws, which depends on various factors including workforce threshold, wage ceiling, type of establishment, and varying definitions of employees, wages, etc. in each statute. This often leads to difficulties in the implementation of the statutes resulting in protracted litigation and also employers having to grapple with various procedural requirements while also ensuring substantive compliance.

Given this background, the consolidation of labor laws is seen as a key step towards promoting inclusive growth, investments, and business in India.

SALIENT FEATUERS OF THE WAGE CODE

1. The Code has modified the definition of "employee" from the extant definition as contained under the Minimum Wages Act, 1948. Under the Minimum Wages Act, 1948; "employees" were restricted to workers in certain specified categories of scheduled employment which under the Code has been extended to all types of establishment, irrespective of whether it falls under the organized or the unorganized sector. This implies that the benefits under the Code with respect to payment of wages and minimum wages extend to all employees, including those engaged in skilled, semi-skilled or unskilled, manual, operational, administrative, technical or clerical work, and irrespective of whether the terms of employment have been expressly conveyed or merely implied,[1] therefore widening the ambit considerably. This development is especially beneficial to the large number of workers in India's unorganized sector, who often do not have written contracts to rely on.

2. Furthermore, "wages" have also now been given a unified structure as opposed to the varying definitions stipulated under the Minimum Wages Act, 1948, the Payment of

[1]Section 2(k), Code on Wages Act, 2019.

Wages Act, 1936 and the Payment of Bonus Act, 1965. The definition of "wages" under the Code encompass

(i) basic pay;

(ii) dearness allowance; and

(iii) retaining allowance and categorically excludes components such as statutory bonus, value of house accommodation, overtime, gratuity, etc.[2]unless such exclusions exceed more than 50% of all remuneration, in which case the amount which exceeds 50% shall be considered as remuneration and be added to the wages thereof.[3]This concretization of the concept of wages under the Code also correspondingly impacts equal remuneration. Under the Equal Remuneration Act, 1976, the definition of "remuneration" left room for ambiguity and included basic wage and any additional emoluments whatsoever payable to a person employed in respect of employments or work done.[4]This is in contrast to the clarity brought about under the Code, which has specified the components that will constitute wages under its new harmonized definition for the purpose of determining equal remuneration to all genders.

3. The Code has also introduced the concept of "floor wages" which will be fixed on the basis of the minimum living standards of a worker within the relevant geographical area,[5] and where the minimum rate of wages fixed by the respective State Government is higher than the floor wage, then the former shall be retained.[6]
4. Furthermore, the Code has also prescribed the appointment of a single authority namely the Inspector-cum-Facilitator for the effective implementation of this Code. The Inspector-cum-Facilitator shall be assigned by the State Government for the establishments in a given geographical area and has been granted the power to *inter alia* advice employers and workers on various compliances under the Code, inspect the

[2]Section 2(y), Code on Wages Act, 2019.
[3]Section 2(y), Code on Wages Act, 2019.
[4] Section 2(g), Equal Remuneration Act, 2019.
[5]Section 9(1), Code on Wages Act, 2019.
[6]Section 9(2), Code on Wages Act, 2019.

establishments to ensure conformity with the provisions of the Code and examine any person found in the premises of the establishment.[7]

CRITICAL ANALYSIS

The Wage Code is being hailed as a historic step towards labor reforms and ease of doing business in India without diluting any basic rights of employees. The Wage Code aims for enforcement of labor laws with transparency and accountability, and it is expected to reduce the cost of compliance for employers significantly. However, the Wage Code is still more of an amalgamation of existing statutes and does not address new-age forms of employment and engagement such as flexi-time, work from home, dual hatting, aggregator models, multiple employers/freelancing, etc. The efforts of the central government could also be undone with the state governments promulgating multiple state amendments and varying state rules, which would again result in employers having to comply with multiple statutory requirements across states.

II. OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE BILL, 2019

The Code proposes various amendments to the workplace laws that regulate the occupational safety, health and working conditions of people employed in various sectors and industries. It also focuses on ensuring the safety, health, as well as the welfare of every worker. This is essential for the economic growth of the entity, and more importantly, the country. After all, only a healthy workforce will be able to deliver the desired level of productivity in the workplace.

The Code simplifies, subsumes and transforms the provisions of 13 existing central labour legislations, including:

i. The Factories Act, 1948.
ii. The Mines Act, 1952.
iii. The Dock workers (Safety, Health and Welfare) Act, 1986.

[7]Section 51(5), Code on Wages Act, 2019.

iv. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
v. The Plantations Labour Act, 1951.
vi. The Contract Labour (Regulation and Abolition) Act, 1970.
vii. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
viii. The Working Journalist and other News Paper Employees (Condition of Service and Misc. Provision) Act, 1955.
ix. The Working Journalist (Fixation of rates of wages) Act, 1958.
x. The Motor Transport Workers Act, 1961.
xi. Sales Promotion Employees (Condition of Service) Act, 1976.
xii. The Beedi and Cigar Workers (Condition of Employment) Act, 1966.
xiii. The Cine Workers and Cinema Theater Workers Act, 1981.

SALIENT FEATURES

1. Applicability of the Code:

a. All establishments where any industry, trade, business, manufacture or occupation is carried on in which 10 or more workers are employed; or
b. a factory, motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation in which ten or more workers are employed; or
c. a mine or dock work.

Therefore, services sector, manufacturing and any other business or trading activity will all be regulated under one common Code.

2. Common & Mandatory Registration/ Notice of closure:

- The Code provides for a common registration for an establishment instead of separate registrations under the existinglaws.

- An employer is not permitted to engage employees if his establishment is unregistered, or its registration has been cancelled.
- An employer can apply for a common license for operating a factory and for engaging contract labour.
- Employer should notify the registering officers of closure of their establishment and certify payment of dues to all employed workers.[8]

3. Authorities / Advisory Boards:

- In addition to registering officers with whom the establishments need to register, the Code also provides for appointment of Inspector-cum-Facilitators, Medical Officers, safety committee etc., for effective enforcement of the Code.[9] In addition to the powers relating to inspection, search, inquiry, seizure etc., Inspectors are also empowered to supply information and sensitize employers and workers on provisions of the Code.
- The Code has empowered the Inspectors to conduct web-based inspections. [10]
- The Code has also allowed the Central and the State Government to constitute the National and State Occupational Safety and Health Advisory Boards at their respective levels.

4. Duties of Employers/Employees:

- The Code has imposed certain responsibilities on employers, for instance, providing a safe and healthy working environment free from hazards, compliance with health and safety standards, provision of free annual health examinations, disposal of e-waste, compulsory reporting of accidents and diseases, etc.[11]
- Employees are also required to cooperate with their employers in meeting the provisions of the Code and to report any unhealthy or unsafe working situation to the employer.

[8] Section 3(5), Occupational Safety, Health and Working Conditions Code, 2019.
[9] Section 34(1), Occupational Safety, Health and Working Conditions Code, 2019.
[10] Section 34(10), Occupational Safety, Health and Working Conditions Code, 2019.
[11] Section 6, Occupational Safety, Health and Working Conditions Code, 2019.

- Certain additional requirements have been prescribed specifically for persons engaged in manufacturing, import or installation of articles used in establishments. No untested articles are permitted to be deployed in establishments, whether imported or manufactured in India. Providers can rely on importing country standards, if available, prior to providing articles for use and deployment in establishments.
- The Code makes it mandatory for all employees to be given appointment letters.[12]

5. Special Provisions for Factories:

- Government can declare any place wherein manufacturing process is being carried out as a factory, and for any persons working at such premises to be classified as workers.
- The Code allows maintenance of registers and the filing of returns in an electronic form.[13]
- As opposed to the earlier threshold of 30 women workers prescribed under the Factories Act, a creche facility is now required to be provided by all establishments (including factories) where more than 50 workers are ordinarily employed.

6. Provisions for Women Employees:

- The Code enables consenting women to work beyond 7 PM and before 6 AM subject to the employer's compliance with the conditions relating to safety, holidays and working hours to be prescribed by the Government.[14]
- Government can prohibit employment of women in some operations that are dangerous for their health and safety.

7. Special Provisions for Contract Labour:

- The Code has introduced the concept of 'work specific license' for contractors, if they do not meet the criteria to be prescribed by the Government for grant of license for

[12] Section 6(f), Occupational Safety, Health and Working Conditions Code, 2019.
[13] Section 33(d), Occupational Safety, Health and Working Conditions Code, 2019.
[14] Third Schedule, Occupational Safety, Health and Working Conditions Code, 2019.

supply of contract labour or for execution of work through contract labour. This work specific license will serve the needs of project – specific contract labour deployment.

- Contractors will be required to submit work order information to the Government, prior to supplying contract labour or executing contract labour arrangements with principal employers.
- The contractor or principal employer has to submit an experience certificate to each contract labour on annual basis, specifying details of work done.[15]
- If a principal employer engages any contract labour through an unlicensed contractor, then such contract labour shall be deemed employee of the principal employer.
- The Government is entitled to notify certain operations for which contract labour cannot be deployed.

8. Penalties | Remedies:

- To act as a deterrent against non-compliance, more stringent penal provisions have been introduced. For instance, monetary penalty of up to INR 20 lacs is applicable if an employer breaches any provisions of the Code, which is not otherwise subject to a specific penalty.[16]
- Specific penalties for varied offences have been given under the Code. For example, if a person fails to comply with the Code and such failure results in an accident causing death or serious bodily injury to a person, the offender is punishable with imprisonment up to 2 years, along with monetary fine.[17]
- In case of any accident or serious bodily injury, courts have been empowered to grant a portion of fine (not less than 50%) to the victim or his/her legal heirs.
- Further, other offences such as an attempt to willfully prevent an Inspector from discharging his duties or failure to produce documents or failure to comply with any requisition or order issued, is punishable with imprisonment which may extend up to 3 months, fine of INR 1 lac, or both. Similarly, failure to prepare registers or to

[15] Section 56, Occupational Safety, Health and Working Conditions Code, 2019.
[16] Section 87, Occupational Safety, Health and Working Conditions Code, 2019.
[17] Section 96, Occupational Safety, Health and Working Conditions Code, 2019.

submit them is punishable with fine up to INR 1 lac for the first offence and up to INR 2 lacs for the second offence.

- Exemption from liability is available for persons in-charge if they are able to prove that due diligence was exercised by them, or that the offence was committed without their knowledge, consent or connivance.
- Compounding option is available to employers for offences that are punishable only with fine, for a sum of up to 50% of the maximum fine so prescribed.

CRITICAL ANALYSIS

The Code specifically reserves authority of the Central and State Government to frame rules on areas within their respective domain, as given under the Code. Therefore, while some of the aforesaid incremental compliances for commercial establishments have been outlined above, others will be introduced through rules and health & safety standards to be notified separately by the government. Besides factories and other specific Establishments discussed in the Code, the Code has incremental compliance requirements for commercial establishments (having 10 or more employees) which are presently governed under local shops and establishment legislations, as the Code does not replace such laws. Therefore, entities operating commercial establishments other than factories will particularly need to take cognizance of the health and occupational safety related requirements specified in the Code.

III. THE CODE ON SOCIAL SECURITY BILL, 2019

On 11 December 2019, the Government of India introduced the Code on Social Security Bill, 2019 in the Lok Sabha. The Code proposes to consolidate the law on social security in India and replace the following extant statutes:

i. Employee's Compensation Act, 1923;
ii. Employees' State Insurance Act, 1948;
iii. Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
iv. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
v. Maternity Benefit Act, 1961;
vi. Payment of Gratuity Act, 1972;

vii. Cine-Workers Welfare Fund Act, 1981;

viii. Building and Other Construction Workers' Welfare Cess Act, 1996;

ix. Unorganized Workers Social Security Act, 2008.

The Code has had its own long journey – from its inception as the draft Labour Code on Social Security and Welfare 2017 to the present day. The Code met with criticism from several quarters – while some thought that the proposed law did not do enough to overhaul the existing regime in favour of the workers, others criticized it for being too onerous to comply with.

SALIENT FEATURES:

1. Definition of 'wages'

- The Code aligns the definition of 'wages' with the one under the Code on Wages, 2019. As per the Code, 'wages' shall mean all remuneration whether by way of salaries, allowances or otherwise, which would, if the terms of employment (express or implied) were fulfilled, be payable to a person employed in respect of his / her employment, and includes basic pay, dearness allowance and retaining allowance.[18]
- A significant change in the definition of 'wages' is the inclusion of a proviso which essentially provides that if the excluded components (other than retirement benefits such as gratuity) exceed 50% of all remuneration paid, then the amount in excess of this 50% will be deemed to be 'wages' so that the wage portion remains at the 50% level.

2. Explanation to the definition of 'factory'

- The definition of 'factory' clarifies that the mere fact that an electronic data processing unit or a computer unit is installed in any premises or part thereof shall not make the establishment a factory. This clarification probably comes in the wake of the judgment of the Bombay High Court in ***Assistant Director, ESIC v Western Outdoor***

[18] Section 2(80), Code on Social Security, 2019.

Interactive Private Limited[19], wherein it was held that development, programming and application of software would amount to a 'manufacturing process' within the meaning of the ESI Act, 1948.

3. Express provisions for fixed-term employment contract

- Previously, fixed-term employment arrangements were largely contractually governed. However, the Code provides that fixed-term employees shall be entitled to the same benefits as the permanent employees, albeit proportionately. This is important from payment of gratuity standpoint as the fixed-term employee would be eligible to such defined benefit proportionately notwithstanding that he/she has not completed the requisite qualifying period of continuous service.

4. 'Employee' to not include apprentices

- Unlike the draft Code released by the Ministry of Labour and Employment earlier which included 'apprentices engaged under the Apprentices Act, 1961' within the ambit of 'employee', the Code clarifies such apprentices will not be considered as employees. This change could be the result of several representations made by stakeholders which argued that inclusion of apprentices would not only increase the financial burden of employers but would also digress from the intent and object of the Apprentices Act, 1961. As provided in Section 18 of the Apprentices Act, 1961 read with the recently amended Apprenticeship Rules, 1992, apprentices ought to be regarded as trainees and not workers, and the provisions of any law with respect to employees would not apply to apprentices.

5. Voluntary coverage under employees' state insurance framework

- At present, the ESI Act does not provide for a voluntary coverage of employers and employees who are otherwise not covered therein. However, the Code provides that where the employer and the majority of employees have agreed that the chapter on employees' state insurance should be made applicable to the establishment, the Director

[19]First Appeal Number 143 of 2012.

General of the Corporation may apply the relevant provisions to such establishment by way of a notification to this effect.

6. Provident fund contribution on 'wages'

- The EPF Act provides that the employees' provident fund contribution will be calculated on basic wages, dearness allowance and retaining allowance. However, the Supreme Court in ***Regional Provident Fund Commissioner (II) West Bengal v Vivekananda Vidyamandir and Ors***[20]held that the allowances which are uniformly, necessarily and ordinarily payable to all employees in a particular category will also be included as part of 'basic wages'.
- The Code goes a step further and provides that the employees' provident fund contribution will be calculated on the 'wages' of the employees. However, the impact of the change is likely to be limited to the employees drawing wages less than or equal to the wage ceiling to be notified by the Central Government under the Code.

7. Payment of medical bonus

- The Maternity Benefit Act, while providing for payment of medical bonus of up to INR 3,500, also stipulates that the Central Government may increase the amount of medical bonus subject to the maximum of INR 20,000. The Code, while mandating payment of medical bonus of INR 3,500, removes the upper limit of INR 20,000.

8. Career centers and compulsory notification of vacancies

- As opposed to 'employment exchanges' set up under the Employment Exchanges Act, 1959,the Code envisages setting up of career centers which would collect and furnish information relating not only to persons who seek to employ employees or persons who seek employment, but also to persons who seek vocational guidance or guidance to start their own ventures. Further, unlike the Employment Exchanges Act, 1959 which applies to only such establishments in the private sector which employ 25 or more

[20]Civil Appeal Number 6221 of 2011.

persons, the Code requires notification of vacancies to career centers by every establishment.

9. Limitation period for inquiry and determination of dues in matters of contribution

- In a relief to employers, the Code introduces a limitation period for determination of amounts due and initiation of inquiries of 5 years from the date the alleged amount is due as regards the chapters on employees' provident fund and employees' state insurance fund. Under the current framework, there is no such limitation, allowing authorities to initiate inquiries for any duration retrospectively.

10. Recovery of employees' insurance fund contribution

- The Code inserts a new provision whereby if any employer fails or neglects to
  (a) insure an employee; or
  (b) pay any contribution in respect of an employee,

The authority may pay the benefit to such employee and recover the benefit from the employer to the extent of the 'capitalized value of the benefit' net of any payment of principal amount, interest and damages paid by the employer.[21]

11. Provisions for 'gig workers' and 'platform workers'

- The Code has introduced the terms 'aggregator'[22], 'gig worker'[23] and 'platform worker'[24]. An aggregator has been explained as a digital intermediary or a marketplace for a buyer or user of a service to connect with the seller or the service provider. The term 'gig worker' has been defined to mean a person who performs work and earns from such activities outside of the traditional employer-employee relationship. The Code does not, in this regard, clarify the expression 'outside of traditional employer-employee relationship'. The term 'platform worker' has been defined as a person

[21] Section 42(1), Code on Social Security, 2019.
[22] Section 2(2), Code on Social Security, 2019.
[23] Section 2(35), Code on Social Security, 2019.
[24] Section 2(56), Code on Social Security, 2019.

engaged in an employment form where the organization uses an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for payment.

- Without going further into the above-mentioned work arrangements, the Code provides that the Central Government may formulate a scheme for the benefit of such workers and provide for the role of the aggregators in this regard.

12. Enhanced penalties for violations

- The existing legislations proposed to be repealed by the Code prescribe varied penalties for violations. While most of the legislations provide for fine as well as imprisonment, some (such as the Employee's Compensation Act) only prescribe fines. Further, the range of fines that may be imposed also varies, ranging from maximum of INR 5,000 under the Maternity Benefit Act to a maximum of INR 1,00,000 under the Employee's Compensation Act.
- The Code imposes stringent penalties in case of a contravention of any provision thereof. Further, in respect of a subsequent offence of failure to pay contributions, charges, cess, maternity benefit, gratuity or compensation committed by an employer, the employer is punishable with a minimum imprisonment of 2 years which may extend to 5 years and also a fine of INR 3,00,000.

13. Provisions for compounding of offences

- None of the existing legislations sought to be repealed by the Code provide for an option of compounding of offences. Although few state-specific amendments have introduced compounding of offences under some of the said legislations (for instance, Gujarat allows for compounding of certain offences under the Gratuity Act), an option for compounding that is applicable across states does not exist in the provisions of the Central legislations.
- The Code has introduced an option of compounding of any offence which is not punishable with imprisonment only / imprisonment and fine. Further, it may be noted that an application for compounding can be made before or after the initiation of

prosecution in relation to the offence committed. Such compounding may be allowed by the officer authorized by the government in this regard, and it can be made before or after the initiation of prosecution in relation to the offence committed. However, such an opportunity for compounding is not available to an employer for the second time or thereafter within a period of 5 years from the date of either (i) commission of a similar offence which was earlier compounded; or (ii) commission of a similar offence for which such person was earlier convicted.

IV. THE INDUSTRIAL RELATIONS CODE BILL, 2019

The Code on Industrial Relations Bill, 2019, which aims to streamline industrial relations and help India improve its ease of doing business index, was introduced in the Lok Sabhaon November 28, 2019. The Union Cabinet chaired by the Prime Minister, Mr. Narendra Modi, has given its approval for the introduction of the IR Code in the Parliament. The IR Code is the third of four labour codes to receive the approval from the Cabinet. It was subsequently referred to the Standing Committee on December 23, 2019.

The IR Code seeks to amalgamate, simplify and rationalize the provisions of 3 central enactments relating to industrial relations:

(i) The Trade Union Act, 1926;
(ii) The Industrial Disputes Act, 1947; and
(iii) The Industrial Employment (Standing Orders) Act, 1946

The Statement of objects and reasons of the Code states that amalgamation of the three Enactments would "*facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers*".

SALIENT FEATURES:

1. Under the Code, a trade union can be registered if 7 or more members of a trade union apply for registration. Trade unions having a membership of at least 10% of

the workers or 100 workers, whichever is less, will be registered. The central or state governments are accorded the discretion to recognize a trade union or a federation of trade unions as Central or State Trade Unions, respectively.

2. The Code also provides for a negotiation union in an industrial establishment, for carrying out negotiations with the employer. In the event an industrial establishment has only one trade union, the employer is mandated to recognize such trade union as the sole negotiating union of the workers. Where multiple trade unions exist, the trade union with the support of at least 75% of the workers will be recognized as the negotiating union.
3. The Code prohibits employers, workers and trade unions from committing any unfair labour practices, as more particularly set out in Schedule 2 of the Code. This Schedule 2, *inter alia*, includes:
   (a) restricting workers from forming trade unions,
   (b) establishing employer sponsored trade union of workers,
   (c) coercing workers to join trade unions, etc.
4. The Code mandates every industrial establishment with a minimum of 100 workers to prepare standing orders on certain matters, as more particularly set out in Schedule 1 of the Code. The central government is given the onus to prepare model standing orders on such matters basis which, every industrial establishment is required to prepare standing orders for their respective establishment. These matters, *inter alia*, relate to:
   (a) classification of workers
   (b) manner of providing information to the workers regarding working hours, holidays, pay days, etc
   (c) termination of employment
   (d) suspension for misconduct
   (e) grievance redressal mechanism for workers, etc.
5. The Code defines lay-off as the inability of an employer, due to shortage of coal, power, or breakdown of machinery, from giving employment to a worker.[25] It also provides for the employers to terminate the services of a worker i.e., retrenchment.

[25] Section 2(q), TheIndustrial Relations Code, 2019.

Employers of industrial establishments such as mines, factories and plantations with at least 100 workers are mandatorily required to take prior permission of the central or state government before lay-off, retrenchment or closure. A fine of INR 1,00,000, which may extend up to INR 10,00,000, can be levied on any person who contravenes this provision.[26]

6. It has been further clarified that termination of services of a workman on completion of his tenure, in a fixed-term employment, will not be considered as retrenchment. Fixed-term employment is defined to mean engagement of a worker on the basis of a written contract for a fixed period.[27] Such fixed-term employees are entitled to receive all statutory benefits like social security, wages, etc., at par with the regular employees.
7. Mandatory compensation provisions have also been inserted upon lay-off and/or retrenchment of workers. Every industrial establishment employing 50 to 100 workers is required to:

   (a) pay 50% of the basic wages and dearness allowance to a worker who has been laid-off; and

   (b) give one months' notice and wages for such period to a worker who has been retrenched.

   Any person who contravenes this provision is punishable with a fine of INR 50,000, which may extend up to INR 2,00,000.[28]

8. Additionally, an employer is required to set up a re-skilling fund for training of retrenched employees. Every employer is required to contribute 15 days of wages, or such other days that may be notified by the central government, to the fund. Further, the retrenched employee is entitled to be paid 15 days' wages from the fund within 45 days of his retrenchment.

[26] Section 86 (1), The Industrial Relations Code, 2019.
[27] Section 2 (l), The Industrial Relations Code, 2019.
[28] Section 86 (3), The Industrial Relations Code, 2019.

9. The Code paves a path for industrial disputes to be voluntarily referred to arbitration by the employer as well as the workers. The parties to the dispute are required to execute a written agreement referring the dispute to an arbitrator.
10. Over and above the provisions on referring an industrial dispute for voluntary arbitration, the central or state governments, at their sole discretion, may also appoint conciliation officers to mediate and promote amicable settlement of industrial disputes.
11. The Code provides for the constitution of Industrial Tribunals for the settlement of industrial disputes. The Industrial Tribunal will comprise of two members:

    (a) a Judicial Member, who is a High Court Judge or has served as a District Judge or an Additional District Judge for a minimum of 3 years;[29] and

    (b) an Administrative Member, who has over 20 years of experience in the fields of economics, business, law, and labour relations.[30]
12. The central government is also empowered to constitute National Industrial Tribunals for settlement of industrial disputes[31]. These National Industrial Tribunals are specifically set up for investigating industrial disputes which:

    (a) involve questions of national importance; and/or

    (b) could impact industrial establishments situated in more than one state.

    Members of the National Industrial Tribunal will include:

    (a) a Judicial Member, who has been a High Court Judge; and

    (b) an Administrative Member, who has been a Secretary in the central government.

CRITICAL ANALYSIS

While the IR Code addresses industry concerns and has been widely welcomed by corporate India, there has also been strong opposition of the Code from trade unions and economists cutting across ideological lines. Trade Unions believe that the codes are part of the government's

[29] Section 44 (4), The Industrial Relations Code, 2019.
[30] Section 44 (5), The Industrial Relations Code, 2019.
[31] Section 46 (1), The Industrial Relations Code, 2019.

move towards massive privatization and flawed economic policies that have already resulted in severe slowdown in the economy.

The trade unions nationwide have opposed and are still opposing the Code primarily because even though the Code provides for employers of industrial establishments with at least 100 workers to mandatorily take the prior permission of the central or state government before lay-off, retrenchment or closure, the central or state government have the power to modify the abovementioned threshold of 100 workers by issuing a notification.

The government had earlier proposed to increase the threshold from 100 workers to 300 workers. This was shot down vehemently as a result of which, the proposed Code includes the provision of amendment of the threshold via a notification. The trade unions fear that the governments can very easily issue a notification reducing the threshold, thereby taking away the rights of workers by disguising it as simplification of labour laws.

The trade unions further say that the bill is 'anti-worker' as it allows employers to hire and fire workers easily, has no safeguards for workers, makes it harder for workers to negotiate better terms with employers, and makes strike actions more difficult.[32]

The ease of compliance of labour laws is anticipated to promote setting up of more enterprises, thus acting as a catalyst for creating further employment opportunities in the country.

CONCLUDING REMARKS:

Whether these codes are a success or failure is hard to say, since the opinions on their utility are divided. While some welcome them as a revolutionary step towards empowering the workforce, others are apprehensive about how fruitful these reforms might be. There is a school of thought that contends that these codes bring nothing new to the table, and are mere amalgamations of pre-existing laws. The problem areas have not been remedied, and there are still procedural fallacies. Various trade unions have come together to condemn these codes as well; they view is as a political move by the government which creates an illusion of empowerment while cleverly

[32]. IndustriALL Global Union, "*Indian unions hold nationwide protest against anti-worker labour law reforms,*" (April 20, 2020, 4:15 P.M), http://www.industriall-union.org/indian-unions-hold-nationwide-protest-against-anti-worker-labour-law-reforms.

maintaining the status quo of the labourers' conditions. While some codes are upheld as reformative, others have been said to increase the powers in the hands of employers and the appropriate government. This puts the worker at the mercy of the administering forces and further threatens his rights. The views of economists are also divided as to how beneficial these codes will be for the country's economy.

While a lot of these are mere speculations, certain reservations against the codes can be understood. Given their shortcomings, the codes are still a major step towards labour reform. They have most certainly contained the problem due to multiplicity of statutes, and have created common provisions and definitions, which will make litigation way simpler and the procedure less complicated. As far as the practical success of these codes is concerned, one cannot truly say much as long as they are not brought into force. In case they prove to be insufficient on any front, the legislation should be quick to do away with the same, and ultimately provide to the nation's workmen a body of statutes which empowers them and protects their rights