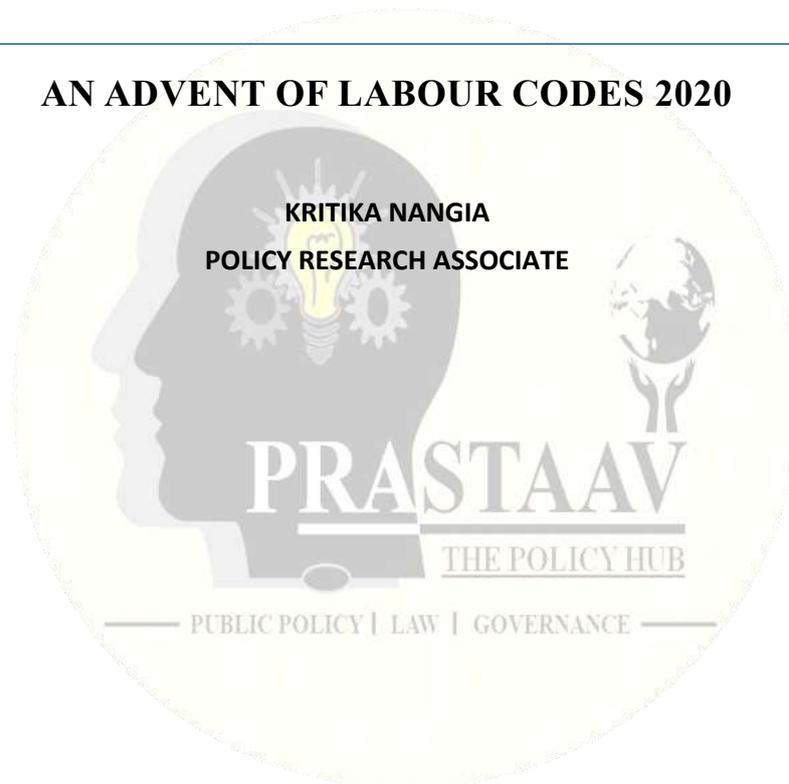


PRASTAAV – THE POLICY HUB

POLICY ANALYSIS REPORT

AN ADVENT OF LABOUR CODES 2020





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By

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INTRODUCTION

Modification in archaic labour laws has been a central theme of labour reforms discourse in India. Archaic laws are the roadblocks in realisation of an industry-friendly labour market in India, due to which India missed an opportunity of being the manufacturing hub of the world. These laws continue to be a protective shield for domestic industry players that guards them from international players, keeping the workers' entitlement intact. It is essential to have labour laws in sync with emerging trends, such as casualization of labour, third party employment etc. to capture the needs of various forms of labour.

Lately, India's call for Atmanirbhar Bharat (self-reliant India), amidst outbreak of COVID-19, is echoed by many countries, looking forward to reduce its dependence on the manufacturing hub of the world. Since India jumped to service dominant economy, giving manufacturing sector a miss, there is a desperate need for reforms. Rather than continuing with an ad hoc approach to amend few provisions of laws to please the industry, labour market demands a fresh framework, accommodating the concerns of all the stakeholders and ensuring sustainability.

Keeping this in view, Government has introduced new labour code by consolidating around 44 central laws and nearly about 100 state laws with an objective to **simplify and modernise labour regulations**. This has been widely welcomed by employers, hoping that they would make production process more competitive. Conversely, it has been criticised by workers, unions and apex national bodies.

LABOUR LAWS

Labour, being an influential element of any production process, is generally termed as the amount of mental, physical and social efforts needed to turn raw materials into finished products and services, expecting benefits in return. Legislations related to labour are **labour**

laws or employment laws. It addresses the legal rights of, and restrictions on working people and their organisation. It mediates many aspects of the relationship between employees, employers and trade unions. Labour laws are broadly categorised into *collective labour laws and individual labour laws*. Collective labour laws deal with the tripartite relationship between employer, employee and unions whereas, individual labour laws are concerned with employee's rights at workplace.

NEED FOR LABOUR LAWS

- ❖ It is crucial for establishing a legitimate system, to facilitate productive individual and collective employment relationships leading to a productive economy.
- ❖ Through a systematic framework that provides an interaction among employers, workers and their representatives with regard to work related issues, harmonious industrial relations can be achieved.
- ❖ Furthermore, it provides clear and constant reminder of fundamental principles and rights at work, which have received wide social acceptance.

BLOOMING OF LABOUR LAWS – HISTORIC BACKGROUND

It is evident that England was the first country to lay down the foundation of industrialisation and first to face alarming repercussions of capitalist exploitation of labour in an unregulated economic framework. The outbreak of serious fever among the labourers, including child labourers in 1784 in cotton mill near Manchester, put a light on the working conditions of labourers and a serious health threat to child labourers. As a result of this, the first ever labour legislation was passed – *Health and Morals of Apprentices Act of 1802* and after that *Factories Act of 1819* which prohibits the use of child labourers who are less than 9 years of age. Later, with the enactment of *Factories Act of 1833*, under which employment of children under the age of 18 years was strictly prohibited, focus was shifted to working conditions and on working hours. The provisions of establishing a factory inspectorate were also mentioned. Then various legislations came into force in the 19th century.

In the context of India, the history of labour legislations is knitted with the British colonisation era. Before the British conquest, India was the 'Industrial workshop of the world' during 17th-18th century. Demand for Indian cotton in England during this time was unprecedented. With time, India become merely an importer of raw material under the supremacy of Britishers. To attain supremacy in India, they started taking care of workers;

otherwise, it would not have been possible for them to capture India under their rule. All labour legislations passed by the British government were intended to protect the interest of British employers. Since Indian textiles were giving a tough competition to British textiles in the export market, Britishers enacted the first ever legislation in India, that is, the **Factories Act of 1833** to make Indian labour costlier. With the enactment of this act, child labour was abolished and fixed working hours along with overtime wage provisions beyond eight-hour working period were established. India got several labour legislations afterwards such as **Workmen Compensation Act of 1923, Mines Act of 1923, Trade Disputes Act of 1929** and **Payment of Wages Act of 1936**.

LEGISLATION IN INDEPENDENCE INDIA

On the eve of independence, condition of labourers was revolting due to the torture and exploitation by the British. Britishers treated them as their property. They were deprived of basic rights that lead to high cost of living. Gradually they started raising their voice by forming trade unions.

Finally, their voice was heard, and in 1950, laws related to labour were embedded in the Constitution of India, providing fundamental rights to protect them. Our Constitution contains number of provisions for the rights of the citizens, and lays down Directive Principles of State Policy (DPSP) to govern the activities of the State. Labour has been kept under the concurrent list so that the state government as well as the central government can make laws on the subject as and when required. Since then, the Union government, as well as the state government has implemented various laws.

The labour legislation put up, can be broadly categorised as follows:-

- Labour laws enacted by the Central Government and the Central Government has the sole responsibility to enforce.
- Labour laws enforced by the Central Government and enacted by both Central as well as the State Government
- Labour laws enacted by Central Government but enforced by State Government.
- Labour laws enacted and enforced by various State Governments in their respective states.

Our law makers made vast efforts for the welfare of the labourers, but with its complex features, it neither benefited labourers at large, nor employers. In the last few years, the

government has tried to bring in sporadic changes in labour laws, but Indian market remains same due to the presence of rigidities and glaring skill deficit.

SCENARIO OF INDIAN LABOUR MARKET

- ▽ If we throw light on the Indian labour market, it is **fragmented** as it has a labour aristocracy of unionised workers who are highly paid and protected along with overwhelming mass of unorganised labour, many of whom are unable to claim their legal rights. Since high protection is given to the organised sector, it leads to labour rigidities, that discourages employment and encourages capital-intensive mode of production.
- ▽ In India, it is evident that firm sizes have remained small due to multiplicity of laws, resulting in multiple inspections, returns and registers, leading to high administrative cost. Labour rigidity has risen from the fear of having to take prior permission for retrenchment or closure of business. **Annual survey of industries 2017-18** shows that *47% of factories employed less than 20 workers, providing only 5% of employment and contributing only 4% of output.* To curb the rigidities, businesses have increasingly used contract labourers. The share of contract labourers has risen from *26% in 2004-05 to 36% in 2017-18.*
- ▽ Categories of **contract labourers is growing much faster** than permanent employment, resulting into decline of quality of jobs. As per *the Indian Labour and Employment Report 2014*, **there has been increasing informalisation of workforce.** *Around 92% of the workforce is in the informal employment.* Even within the organised sector, the employment is being offered in contractual positions.
- ▽ **Labour market in India remain lukewarm when it comes to attracting Foreign Direct Investments**, especially in labour-intensive sectors such as textiles, gems and jewellery, furniture, rubber products, sports goods, leather goods etc.
- ▽ One of the biggest obstacle is- **INSPECTOR RAJ**
Lack of adequate accountability mechanisms have led to arbitrary labour administration, leading to overregulation or supervision, imposition of inadequate penalties and rent seeking behaviours of inspectors or officials, usually termed as INSPECTOR RAJ. Further, this nexus between the management and administrators led to negligence of labour welfare.

Indian labour market is spoiled by over-archaic laws, unmindful bureaucratic control and corrupt inspectors having unlimited abilities to exploit susceptible factory owners at the cost of welfare of the workers.

RECENT TWIST

The Ministry of Labour and Employment introduced four bills on labour codes to consolidate around 29 major central laws. These codes are -

- Code on Wages
- Industrial Relation Code (**IR code**)
- Social Security Code (**SS code**)
- Occupational Safety, Health and Working Conditions Code (**OSH code**)

Among them, Code on Wages Bill was passed in Lok Sabha on 30th July 2019, and in Rajya Sabha on 2nd August 2019 and received the assent of the President on 8th August 2019. However, President gave his assent to remaining three codes i.e. IR code, SS code and OSH code on 28 September 2020. Rules of these labour codes are yet to-be notified. Recently, the government announced its implementation in the month of April 2021.

The codes are as follows:-

Code	Existing acts consolidated by the code	Major Changes
Code on Wages 2019	Consolidates the following Acts <ul style="list-style-type: none"> • Minimum Wages Act 1948 • Payment of Wages Act 1936 • Payment of Bonus Act 1965 • Equal Remuneration Act 1976 	<ul style="list-style-type: none"> ➤ Applies to all employees where any industry, business, trade or manufacture is carried out. ➤ Floor Wages will be fixed by Central Government, considering the worker's standard of living, depending upon the geographical location. ➤ Wages will include salary, allowance or any other monetary component. But does not

		include Bonuses and travelling allowances.
Industrial Relation Code 2020	<p>Consolidates the following Acts:-</p> <ul style="list-style-type: none"> • The Industrial Disputes Act, 1947 • The Trade Unions Act, 1926 • The Industrial Employment (Standing Orders) Act, 1946 	<ul style="list-style-type: none"> ➤ The minimum number of workers employed for an establishment to have Standing Orders has been raised to 300 workers. ➤ Prior permission of Central government is mandatory before closure, lay-offs or retrenchment of employees in companies having more than 300 workers. ➤ Introduce new conditions for conducting legal strikes. ➤ It proposes the setting up of re- skilling fund for training of retrenched employees.
Code on Social Security 2020	<p>Consolidates the following act:-</p> <ul style="list-style-type: none"> • The Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 • The Employees’ State Insurance Act, 1948 • The Employees’ Compensation Act, 1923 	<ul style="list-style-type: none"> ➤ Widens the definition of employees. ➤ Setting up of social security funds for unorganised workers, platform workers and gig workers.

	<ul style="list-style-type: none"> • The Maternity Benefits Act, 1961 • The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 • The Cine Workers Welfare Fund Act, 1981 • The Payment of Gratuity Act, 1972 • The Unorganized Workers' Social Security Act, 2008 • The Building and Other Construction Workers' Welfare Cess Act, 1996 	<ul style="list-style-type: none"> ➤ The gratuity period of working journalist has been reduced to 3 years. ➤ Proposes to set up National Social Security Board for recommendations on schemes for unorganised sections.
<p>Code on Occupational Safety Health and Working Conditions 2020</p>	<p>Consolidates the following Acts:-</p> <ul style="list-style-type: none"> • The Factories Act, 1948 • The Plantations Labour Act, 1951 • The Mines Act, 1952 • The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 • The Working Journalists (Fixation of Rates of Wages) Act, 1958 	<ul style="list-style-type: none"> ➤ The code expands the definition of factory. ➤ Also defines inter-state migrant workers as <i>someone who has come on his own from one state and receives employment in another state, and earns up to Rs.18000 per month.</i> ➤ The code also proposes <i>journey allowances.</i> ➤ The code also removes

	<ul style="list-style-type: none"> • The Motor Transport Workers Act, 1961 • The Beedi and Cigar Workers (Conditions of Employment Act) 1966 • The Contract Labour (Regulation and Abolition) Act, 1970 • The Sales Promotion Employees (Conditions of Service) Act, 1976 • The Inter-state Migrant Workmen (Regulation of Employment) Act, 1981 • The Cine-Workers and Cinema Theatre-Workers (Regulation of Employment) Act, 1981 • The Dock-Workers (Safety, Health and Welfare) Act, 1986 • The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 	<p>manpower limit on hazardous working conditions.</p> <ul style="list-style-type: none"> ➤ The code is also applicable on contractors recruiting 50 or more workers. ➤ However, this code repealed the provision of temporary accommodation near worksites for workers. ➤ Fixes the daily work hour limit (maximum 8 hours). ➤ Code empowers women to be employed in all kinds of establishments, day and nights, subject to their consent and safety. ➤ A nationalised labour license is required for staffing companies to deploy workforce for five years.
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MAJOR OBJECTIVES OF THE CODES

- ❖ The objective is to simplify and modernise labour regulations, along with provisions which can capture the demands of emerging forms of labourers.
- ❖ It includes size based threshold limits, which may help in reducing the compliance burden on firms.
- ❖ The code of social security has taken into consideration GIG WORKERS, PLATFORM WORKERS and UNORGANISED WORKERS including SELF-EMPLOYED PERSONS. *Gig workers refer to workers who are outside the traditional employer-employee relationship such as independent contractors, on call workers etc. Platform workers refer to workers engaged in, or undertaking platform work using online platform or provide services such as Uber, Ola, Zomato etc.* It also creates a provision for different schemes for all these categories of workers.
- ❖ Under OSH code, Cine workers have been designated as Audio-Visual workers to expand the coverage. Earlier, security was provided only to artists working in films.
- ❖ Codes have the provision of free health check-ups once a year by the employers for the workers, who are more than a certain age.
- ❖ Codes also have the provision of helplines to address the problems of migrant workers.
- ❖ It aims to make a database of unorganised sector workers, through registering them on the online portal, through a simple procedure based on self-certification.

MAJOR CONCERNS IN CODES

❖ UNDER WAGE CODE

- There is no clarity given on the formula of fixing of minimum wage and the designated authority.
- The code omits the obligation of the principle employer to pay wages if the labour contractor fails to do so.
- This code takes away the jurisdiction of courts in providing justice to workers who are facing violations with respect to wages. They can only access the quasi-judicial body and appellate authority set up under the provisions of this code.

❖ UNDER INDUSTRIAL RELATION CODE

- Under this code, Employers have been give complete freedom in terms of hiring and firing the services of workers in small establishments, where number of workers is less than 300.
- There is no clarity given on the re-skilling funds, and where the funds would come from.

❖ **UNDER OCCUPATIONAL SAFETY,HEALTH AND WORKING CODE**

- The code makes provisions for women to work before 6 a.m. and beyond 7 p.m. with their consent. The notion ‘**working with consent**’ is ironical in the practical scenario where economic pressure and compulsion are the driving forces, consent and choices hardly matter. Women working as farm labourers and non-farm labourers at construction sites have little bargaining power.
- Opening up all the sectors without putting a constraint of safety measures and guaranteed decent wages creates ambiguity and concern.
- It imposes an obligation of setting up safety committees in establishments having more than 250 workers. This will exclude 90% of the establishments from the ambit of such provisions, since maximum establishments are running on small scale, with minimal number of workers.

❖ **UNDER SOCIAL SECURITY CODE**

- This code seeks to consolidate existing social security and welfare legislations, but leaves out a larger chunk from its purview, including migrant workers, agricultural sector, home-based workers and other vulnerable groups.
- It imposed insignificant penalties for non-compliances, which may leave workers vulnerable without adequate safety nets.

CONCLUSION

Labour laws have always been a concern for foreign investors in India since a long time. Since laws are cumbersome and create regulation barriers, they limit the private participation at large scale. Consolidation of major central laws relating to wages, social security, industrial relations and occupational safety, creates uniformity in compliance and is a welcoming step to boost ease of doing business in India. Further, studies have shown that firm growth and job creation go hand in hand depending upon various factors such as

infrastructural development, easy compliance, access to finance, availability of skilled manpower, boost in skill upgradation and reduction in overall corruption. Presence of heterogeneousness in laws has neither benefited industries, nor labourers, so far. Hence, implementation of labour codes will provide steadiness concerning compliance, and provide dimensions to the changing scenario of the industries.

However, one of the facts is that changes in labour legislations are primarily driven by business fraternity aiming *at improving India's ranking in 'ease of doing business' index and foreign direct investment flows*. Welfare of labour is somehow compromised and major focus shifts to employers. A legal framework must ensure the reasonable balance between the objectives of protecting the legitimate rights of the labourers, and objectives of providing a framework which encourages the efficiency and creates incentives for all.

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