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Labour Law Reforms a Critical Analysis

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Abstract: ***On 28th September 2020, the Hon'ble President of India gave assent to three Labour Codes viz The Code on Social Security 2020, The Industrial Relations Code 2020 and The Occupational Safety, Health and Working Conditions Code, 2020 which subsumes the existing 29 central laws. The present labour laws have become somewhat obsolete and there was an utmost need of the labour reforms to bring uniformity among labour laws and halt the oppression and exploitation working sector and also by removing Inspector Raj to enable employers to focus on the business activity rather than to get entangled in cumbersome compliance of legal formalities. This paper is based on labour law reforms related to the compression of 44 labour laws into four codes. Government recently tabled the bill "The code of wages, 2020, Occupational safety and Health and working conditions code 2020 with an objective to simplify and labour regulation. It contains few important highlights of the three new labour codes and it gives a gist about how the new labour codes will redecorate the existing labour laws and its benefits to the workmen of the country.***

Keyword: Labour Law, Retrenchment, Enforcement, Social Security.

1. INTRODUCTION

The Constitution of India gives a series of fundamental rights particularly Equality at work and decent working conditions. The main aim of the labour reforms is for employment generation and protection of worker rights. It is a challenging job in country like India where the power rest in the hands of employer and the country is governed by numerous Central and state laws. Labour Laws is a subject of concurrent list thus both Central and States Government can frame laws. We have 40 central labour laws and more than hundred state laws. There are numerous labour laws which were enacted during the British period and are still in operation. British rule had different philosophy, aims and motives while framing these acts. After independence the scenario and situation changed and also the approach to the labour legislation. The idea of societal righteousness and welfare state as preserved in the Constitution of India became the leading ideology for the framing of labour legislation (Thakur 2007). Constitution directed to the states legislation that it is the duty to make effective provisions for safeguarding public support in the matter of unemployment, old age sickness, disablement and other cases of underserved want (Patola et al., 2007). With the pace of time the objectives and methods of earning livelihood changes but rules remains either static or adhoc incremental and slowly became obsolete outdated and irrelevant. After liberalization of 1991 the situation become more grim, management became more aggressive and powerful towards the workers and trade unions. There was many fold growth in economy but the good quality of jobs, better working condition and social security hardly found any place in industries resulting exploitation of workers, low-paid jobs, contract jobs without social security. So, Labour laws reforms is the at most demand of the economy.

2. OBJECTIVES OF LABOUR REFORMS

Without compromising the interest of the labours steps are required for increasing production and employment opportunities in the economy India's labour laws are obsolete outdated and too many also contradictory and adversely administered. Removal of multiplicity of definitions and authorities leading to compliance without compromising social security and wage unity of the workmen. To make the laws easily accessible by the stakeholders and focus on women participation in labour force and address gender biases in wages.

3. ISSUES BEFORE THE COMMISSION

It is observed by the second national Law commission on labour reforms that the present laws regarding labour are obsolete, complicated and inconsistent bearing number of definitions of the same subject at different situations.The Commission was of the opinion that simplification and codification in labour laws will bring transparency and uniformity. In certain areas like occupational safety social security and definition of contractor could not be codified. With great efforts to commission the 40 central laws regarding labour laws has been comprehended, The four codes has replaced 29 existing laws.

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TABLE 1: The following existing Acts related to Safety, Health and Working condition are comprehended under Occupational Safety, Health and Working conditions Code 2020

Labour Codes	Comprehended Acts
"Code on Wages, 2020"	• Payment of Wages Act, 1936; • Minimum Wages Act, 1948; • Payment of Bonus Act, 1965; and • Equal Remuneration Act, 1976
"Occupational Safety, Health and Working Conditions Code, 2020"	• Factories Act, 1948; • Mines Act, 1952; • Dock Workers (Safety, Health and Welfare) Act, 1986; • Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; • Plantations Labour Act, 1951; • Contract Labour (Regulation and Abolition) Act, 1970; • Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; • Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; • Working Journalist (Fixation of Rates of Wages) Act, 1958; • Motor Transport Workers Act, 1961; • Sales Promotion Employees (Condition of Service) Act, 1976; • Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and • Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
Industrial Relations Code, 2020	• Trade Unions Act, 1926; • Industrial Employment (Standing Orders) Act, 1946, and • Industrial Disputes Act, 1947
Code on Social Security, 2020	• Employees' Provident Funds and Miscellaneous Provisions Act, 1952; • Employees' State Insurance Act, 1948; • Employees' Compensation Act, 1923; • Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; • Maternity Benefit Act, 1961; • Payment of Gratuity Act, 1972; • Cine-workers Welfare Fund Act, 1981; • Building and Other Construction Workers' Welfare Cess Act, 1996; and • Unorganised Workers Social Security Act, 2008

Sources: Existing Labour Acts; Labour Codes;

TABLE 2: These are certain Central Labour laws which could not embraced under new labour codes:

Name	Coverage
Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988	Allows establishments with up to 19 workers and up to 40 workers to submit combined annual returns and unified registers under 16 central laws (covering wages, factories and contract labour)
Apprentices Act, 1961	Provides for the regulation of training of apprentices.
Bonded Labour System (Abolition) Act, 1976	Provides for the abolition of the bonded labour system.
Child and Adolescent Labour (Prohibition and Regulation) Act 1986	Prohibits employment of children (below 14 years) in all occupations and of adolescents (14-17 years) in hazardous occupations and processes.
Public Liability Insurance Act 1991	Makes provisions for public liability insurance to provide relief to persons affected by accidents which

Name	Coverage
	occurred while handling any hazardous substance.
Dock Workers (Regulation of Employment) Act 1948	Makes provisions for framing a scheme for regulating the employment of dock workers. Sets up a Board to administer the scheme.
Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act 1997	Provides for inapplicability of the Dock Workers (Regulation of Employment) Act, 1948 to dock workers of major ports in India.
Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948	Makes provisions for framing provident fund, pension, deposit linked-Insurance and bonus schemes for persons employed in coal mines.
Provident Funds Act, 1925	Deals with provident funds primarily relating to the government, local authorities, Railways and certain other institutions.
Seamen's Provident Fund Act, 1966	Makes provisions for framing a provident fund scheme for seamen.
Sexual Harassment at Workplace Act, 2013	Creates a process to redress complaints of sexual harassment at the workplace.
Boilers Act, 1923	Regulates the manufacture and use of steam boilers.
Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993	Prohibits employment of manual scavengers for certain activities. Regulates construction and maintenance of water seal latrines.
Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013	Prohibits employment of manual scavengers, manual cleaning of sewers and septic tanks without protective equipment, and construction of insanitary latrines.

Sources: Existing Central Acts

4. JOB CREATION WHILE SAFEGUARDING THE WORKERS INTEREST

National statistics commission government of India conducted 6th Economic Survey in 2013–2014, according to which there are 5.9 crore industries in India which is giving employment to more than 13.1 people. Out of this 5.9 crore establishment the 28% hired only at least one worker. The priority to labour regulation is to safeguard the workers interest while creating job facilities and also to safeguard the employer interest for better quality of product and growth of the establishment. The main cause of establishment being in a small size in India is because of difficult exit process, high administrative and, labour laws compliance. An annual survey of industries conducted in 2017-18 indicated that 47% industries are employing less than 20 workers and contribute to economy only 5% of total employment and 4% of production [4][5][6][8].

TABLE 3: Attributes of registered factories by workers size Annual Survey of Industries 2017–2018

Attributes/Workers Employed	0-19	20-99	100-499	500-4999	At least 5000
Number of establishments %	47.1%	33.8%	14.3%	4.4%	0.3%
Capital Employed %	3.5%	8.2%	19.6%	44.7%	24.1%
Employment %	5.0%	18.4%	32.1%	35.9%	8.6%
Production %	4.1%	15.3%	25.8%	40.1%	14.6%
Net Contribution %	2.2%	11.7%	25.0%	47.5%	13.6%

Sources: Annual Survey of Industries (2017-18); PRS

It is evident from this table3 that because of rigid exit policy the business houses have comprehensively employ contract labourers. The percentage of of contract labour has augmented from 10% whereas the percentage of regular or directly hired worker has reduced 10% over the same timeframe (2004 -05 to 2017-18) according to annual survey of industries report The meachnism of enforcement of labour laws is toothless in India and enabled to protect exploitation. The basic reason is "inspector Raj"unethical practice adopted by establishment and meager quantum for violators and defaulters. The mechanism of collective bargaining is very poor and ineffective. Trade unions are ineffective because recognition rests in the hands of employer.[5][6][8]

The growth of economy and job creation depends upon several key factors like infrastructure development, availability of skilled manpower and technology. The current labour laws could not serve the purpose of their stakeholders so the committee has made certain recommendations.

5. REFORMED MADE BY COMMISSION

Threshold-based coverage: The limit is 10 or more workers in most of the labour laws will apply to the organisation with a view to reduce compliance burden. The minimum basic support related to wages, working condition and social security

should apply to all organisation or establishment irrespective of threshold-based coverage.

Enforceability of labour laws: Enforceability was ineffective because of poor enforcement machinery meager penalties and "inspector raj mechanism" and multiplicity of labour laws, the code has address some of these aspects but not all.

Adoc/ casual /contract labour: Contract and casual labourers have been deprived of basic shields and minimum wages. The code is not able to tackle these problems.

Collective bargaining mechanism: In an organisation there are several trade unions which are registered under registered trade union act but the recognition is given by the management.It is discretionary for management. The industrial relations code has not made any provisions for recognition of trade unions.[7]

Grey areas: The reforma re silent on social security schemes, health and safety standards.

TABLE 4: Comparative study of IDA provisions and New Provisions under code

Feature	Existing Provisions	New Provisions under code
Prior Approval from Authority	• Required for lay-offs, closure and retrenchment in establishments employing 100 or more workers.	• Not required for lay-offs and retrenchment. • Required for closure in establishments employing 300 or more workers
No Due Certificate	• Not required	• Mandatory
Notice Period	• Thirty days notice period	• Sixty days notice period
Awards Settlement	• Compensation15daysWages/Salary(for closure and retrenchment) puposes. • 50% of wages for lay offs	• whether enterprise is profitable or loss making: • Closure for establishments employing more than 100 workers: 30 days (for sick enterprises with three years' losses and filed for bankruptcy/winding up) and 45 days (for profit making enterprises) • Retrenchment for establishments employing more than 100 workers: 45 days (for sick enterprises looking to become viable by retrenching) and 60 days (for profit making one enterprises) • 50% of above to be paid for enterprises employing 100 or less workers. • 50% of wages for lay-offs. Government approval to be obtained in establishments employing 300 or more workers if lay-off exceeds one month.

Sources: Industrial Disputes Act, 1947; 2nd NCL Report;

From the table4; One can easily conclude that the reforms are more favorable for employers than workmen. Reforms has raised the minimum threshold limit of workers employed in an organization. It means more and more establishments will be out of the grip of the labour codes and are free to take their own decisions resulting exploitation of the workers. The compensation provisions are further categorized under profit and loss making organizations. The compensation for layoff, retrenchment and closure are different for different types of organizations. This kind of categorization is favoring the employer rather than workmen and it will leads to unemployment and the motives of the reforms are defeated

6. WHAT MORE COULD HAVE BEEN DONE

The standing committee on labour recommended that the code on social security must expand to the various other establishments such as agriculture and create a separate fund for interstate migrant workers, unemployment insurance for unorganised worker.Also suggest that peaceful resolution of disputes must be promoted through labour courts and appellate bodies. In respect of protection of rights of fixed term and adoc, contract workers and to prevent their over exploitation

the committee suggest that there should be certain maximum limit to use adhoc workers, contract workers to the total regular workers in core activities .To counter the bargaining process in unorganized sector the committee recommended that specific provisions may be made for the unorganised sector workers to form trade unions without having ceiling of employed workers.

7. WAY FORWARD

The commission has made an excellent work of labour reforms and try to remove all the anomalies which he think can be remove. Now it is on the states how they implement the recommendations and reduce the regulatory burden. further state needs to have dialogue with various stakeholders for the implementation of new rules. it is also expected from the authorities that they ensure implementation with honesty and integrity then only country will be able to achieve the desired results of economic growth in true sense.

REFERENCES

[1] List of Central Labour Laws under Ministry of Labour and Employment Ministry of Labour and Employment.

[2] Report of the National Commission on Labour, Ministry of Labour and Employment, 2002, http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf.

[3] Report No. 4: Occupational Safety, Health and Working Conditions Code, 2019", Standing Committee on Labour, Lok Sabha, February 11, 2020; Report No. 8: "Industrial Relations Code, 2019", Standing Committee on Labour, Lok Sabha, April 23, 2020; Report No. 9: "Code on Social Security, 2019", Standing Committee on Labour, Lok Sabha, July 31, 2020.

[4] Highlights of the Sixth Economic Census, 2013-14, National Statistics Commission, Government of India.

[5] "Structural Changes in India's labour markets", Chapter 10, Economic Survey 2015-16.

[6] "Summary of results for factory sector", Annual Survey of Industries (2017-18), Ministry of Statistics and Programme Implementation.

[7] Annual Survey of Industries (2004-05), Ministry of Statistics and Programme Implementation.

[8] Volume I, Annual Survey of Industries (2017-18), Ministry of Statistics and Programme Implementation.

[9] "Reorienting policies for MSME growth", Economic Survey 2018-19.

[10] Periodic Labour Force Survey Report (2018-19), Ministry of Statistics and Programme Implementation, June 2020.

[11] India Country Profile 2014, Enterprise Survey, World Bank.

[12] Papola, T. S (2007), "Employment in the Development Agenda: Economic and Social Policies, " Discussion Paper DP/ 170/2007, International Institute for Labour Studies, Geneva.

[13] Thakur, C.P. (2007), Labour Policy and Legal Framework in India: A Review, Institute for Studies in Industrial Development, NewDelhi.