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New Labour Law Codes Embarking a Precarious Journey

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ABSTRACT

Effective and comprehensive labour law legislations are vital to succinctly define the rights and obligations of both employers and employees to suit the present business environment. In light of the same, Parliament has enacted three new labour codes repealing 25 old archaic labour laws. These laws aim to streamline, organize and consolidate the laws dealing with health conditions, occupational safety and working conditions of workers, industrial regulations, social security etc. The objective of this paper is to discuss the important provisions of these Codes which were not present in the earlier legislations. An attempt has also been made to discuss the positive aspects of the Code especially in relation to the balance drawn between the rights of the workers and demands of a growing economy. Further, the paper will try to point out the apparent shortcomings in the Codes which could have been avoided and which render many rights and benefits given to workers as empty promises. The paper finally suggests that Government needs to reconsider and redraft some of the provisions of the Codes to make them more effective and coherent.

I. INTRODUCTION

In the last two decades, India has witnessed a massive change in its industrial and employment sector. Business environment and market conditions have hugely transformed. India desperately longed for a new set of labour codes to provide greater flexibility to businesses and assured protections to labour. Noticeably, 3 labour codes have seen the light of the day and were passed by Parliament in the month of September, 2020. These laws repeal 25 pre-existing labour laws with an objective to provide a favourable business environment, increase employment opportunities and promote economic activity in the country. These laws are a result of the decade-long Legislature's endeavour to streamline, organize and consolidate labour laws in the country which were previously scattered and insufficient.

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The three laws are Social Security Code 2020, Occupational Safety, Health and Working Conditions Code, 2020 Industrial Relations Code, 2020. Another noteworthy recent legislation passed was the Code on Wages Act, 2019 that has in resemblance to the above three mentioned codes aimed to provide a respite to workers and employees by consolidating major labour beneficial legislations into one.

These new labour codes are progressive as they do away with the pre-existing archaic laws and consolidate them making its compliance easier. But, these new enacted Codes bring forth their own share of inconsistencies and inadequacies in so far as they have failed to provide, comprehensive framework for the regulation of industrial establishments and assurances relating to rights of workers and labourers.

II. DETAILS OF THE CODE

1. Social Security Code, 2020

The code has been enacted with a progressive mindset of providing comprehensive social security measures to all kinds of workers irrespective of the sector of their employment. Interestingly, the Act also extends the benefit to platform workers and gig workers. A ‘gig worker’ has been defined in the Act as a person who is not engaged or involved in a traditional employer-employee type of employment.² Another noteworthy change is in the applicability of Employees Provident Fund as under the new Act it will be applicable to every establishment which keeps at least 20 employees. No material changes were observed with respect to Gratuity and Employees State Insurance benefits.

2. Occupational Safety, Health and Working Conditions Code, 2020

It repeals around 13 central labour laws³ and consolidates them into a single code which includes matters dealing with working conditions of employees, health and safety requirements, employee beneficial provisions etc. This code applies to a variety of establishments including mines, docks, any establishment which performs life-threatening activities etc.⁴ But the same will be notified by the Central Government from time to time. Further, the standards of working conditions of workers will include the regulations and compliances regarding canteens, clean drinking water, hygiene, toilets, etc but they will be also notified by the Central Government. Provisions relating to the use of contract labour were earlier applicable on an establishment with at least 20 workers but now it has been

² Social Security Code, 2020, s.2(35).

³ Occupational Safety, Health and Working Conditions Code, 2020, s.143(1).

⁴ Occupational Safety, Health and Working Conditions Code, 2020, s.2(v).

increased to 50.⁵ The person who will fall under the definition of ‘inter-state migrant’ has been broadened and now income has also been made a criterion for the determination of persons belonging to the category of migrant workers.⁶ Before this Code, firms were required to procure multiple licenses for the purpose of hiring contract workers, but now this requirement is done away with and only a single license would be required.

3. The Industrial Relations Code, 2020

This law repeals three major laws existing in the country i.e. the Industrial Employment (Standing Orders) Act, 1946, Trade Unions Act, 1926, and the Industrial Disputes Act, 1947.⁷ One noticeable feature in this Act is that in order to receive assent from concerned Government for lay off, closure of establishment, retrenchment etc., the establishment would now need minimum of 300 workers.⁸ A concept of deemed certification of standing orders has also been introduced. Although the Code is detailed, a complete picture of the Code could only be given after the Rules are framed and the necessary notifications are released.

III. POSITIVE FEATURES OF THE CODE

Occupational Safety, Health and Working Conditions Code, 2020 has recognized transgender as a working class. It provides for the establishment of lockers, bathing places, washrooms for men, women and transgenders. The benefit given to migrant workers by broadening the definition and attempting to include more such people in it is a step in the positive direction, especially after the horrible treatment met out to them during the COVID pandemic. Rights of contract workers have also been recognized and they have been included within the purview of this Act thereby extending the benefits to them. It is a progressive legislation in so far as it has endeavoured to consolidate and amend the pre-existing old and archaic laws which were decades behind the needs of the modern businesses.

Social Security Code, 2020 has comprehensively covered the contents and matters provided in the nine legislations that have been repealed by this law. This is a positive step because earlier the establishments were in an imbroglio with respect to the particular social security measures that need to be granted to workers as the compliances were fragmented under various statutes and in the garb of this confusion many organizations were used to escape penalty. Some provisions were used to overlap in the three laws concerning industries but now they have been consolidated into the Industrial Relations Code, 2020. This makes it easy

⁵ Occupational Safety, Health and Working Conditions Code, 2020, s.22(2).

⁶ Occupational Safety, Health and Working Conditions Code, 2020, s.2(zf).

⁷ Industrial Relations Code, 2020, s.104(1).

⁸ Industrial Relations Code, 2020, s.77(1).

for industries to understand their compliances and liabilities under law.

IV. SHORTCOMINGS IN THE CODES

Social Security Code, 2020 introduces a new concept of platform and gig workers which is lauded but no substantial benefits have been provided to them as this task is left with the Central Government who in future may notify benefits for them. Benefits regarding life and disability cover, health, maternity, provident fund, employment injury benefit, etc will be provided to them subject to the conditions laid down in government schemes.

It is amply clear that the intent of the Occupational Safety, Health and Working Conditions Code, 2020 (hereinafter referred to as 'OSHWC Code') is to broaden the horizon of the legislation and include all possible categories and types of workers and to provide them with the benefit of various worker-friendly provisions. But, in this attempt, the legislators have made it hugely ambiguous. No clear and definite standard for the working conditions, safety etc has been laid down. All the major benefits and minimum standards of working conditions which were anticipated from the legislation have been left to be notified by Central Government. Although the intent of the Code is commendable but after reading the provision one by one, at one point it is realized that all major protections and guarantees would in reality not be provided by this Code but by the future notifications which are to be made by the Government under the Code.

Another major problem with the OSHWC Code is that even after broadening its scope it excludes many categories of workers and labourers who are a part of the Indian economy. The best example is that of workers employed in the agricultural sector, who find no space or mention in this Act. We are well aware that occupational safety, health and working conditions of agricultural workers are unregulated. This Act could have filled this gap but leaves them disappointed.

Further, the OSHWC Code provides for setting up of a Safety Committee only when the establishment employs more than 250 workers. Here, lies an unfounded presumption as largely the number of people employed in the unorganized sector are less than 250. This move indicates that around 90% of the workforce of India will always be outside the purview of this Act. This number should have been less especially after looking at the figures of suicides of workers of the unorganized sector in India.

V. CONCLUSION

Despite many flaws in the new Labour Law Codes, it is undeniable that these Codes have

systematically consolidated the scattered decade-old labour law legislations into respective heads making it convenient both for the employers and employees. It is a remarkable attempt to bring the Indian Labour Laws in conformity with the prevailing business needs and conditions. It has been speculated that on implementation of these new Labour Codes, India's position in the Ease of Doing Business Index will improve.

The Parliament may have to bring early amendments in these laws as they leave the scope of interpretation broad at various places. The Codes should have contained clear and lucid provisions that reduce the possibility of ambiguity and multiple interpretations. A possible solution could be to redraft these Codes with full awareness of the ground realities which are far from perfect. There is a section of the public that claims that these Codes have been made keeping in mind the interest of the business class while ignoring the rights and interests of the workers. The actual implication of these labour law Codes could only be known once they are brought into force.
