
CHALLENGES IN LABOUR REFORMS IN INDIA DURING THE 21ST CENTURY

Praveen Kumar Pandey, Research Scholar (Law), DDU, Gorakhpur University, GKP

ABSTRACT

Labour laws have been widely studied for a decade and various recommendations to evolve labour laws in the current leg of globalization, the issues pertaining to the welfare of labour and flexibility of the firms to grow in sync with market conditions for better industrial relations, persist even today. For the past six to seven years it has been argued (especially by employers) that labour laws in India are excessively pro-worker in the organized sector and has led to serious rigidities that has resulted in adverse consequences in terms of performance of this sector as well as the operation of the labour markets. There have been recommendations by the government to reform labour laws in India by highlighting the need for flexibility in Indian labour laws that would give the appropriate flexibility to the industry that is essential to compete in international markets. But the attitude has mainly towards the skill enhancement and focus on flexible labour markets rather than assessment of proper enforcement of the laws, assessment of the situation of different categories of employers and coverage of the social protection system.

Keywords: Labour, labour market, Law, Reforms, India, Statutory Enactments.

OBJECTIVE OF THIS STUDY :

The most important objective for introducing these reforms was to simplify and modernize the labour regulations.

- *To curb the overlapping laws at central level as those codes have subsumed 29 central labour laws.*
- *To facilitate employment growth while protecting worker's rights.*
- *To ease the way of doing business in India.*
- *To promote the mechanism of single license.*

RESEARCH METHODOLOGY:

It obtained *primary source of data by conducting an empirical study* and *also relied on secondary sources of data such as books, journals, sources, articles and newspaper* The present paper is conclusive, descriptive and based on empirical design. Qualitative data was generated to test the research hypothesis. It is empirical type of research which is done by the survey method.

INTRODUCTION

Labour Laws are the laws that regulate labours in India. Labour laws fall under the category of **Concurrent List** (7th Schedule), therefore both Center and States frame laws in this subject. There are around 40 central laws and 100 state laws in this regard. "***Labour dignity must be our national duty; it must be a part of our nature.***" Workers and labourers are the members of our society who contribute to the implementation of great ideas born from the minds of geniuses. Their rights, dignity, standard of living, and even a better working environment, all of which are essential for a human being's survival, are frequently ignored from Independence to the present day. Indian labour laws have focused on workers' rights and benefits *while excluding managerial level employees*. Despite this, workers are still exploited by their employers after nearly **75 years**. There have been recommendations by the government to reform labour laws in India by the need for flexibility in Indian labour laws that would give appropriate flexibility to the industry that is essential to compete in international markets.

The main issue has been slow employment growth despite increasing GDP growth termed as 'jobless growth' the arguments for which are that the existing labour laws are less employment friendly and biased towards the organized labour force, they protect employment and do not encourage employment or employability, they give scope for illegitimate demands of the Trade Unions and are a major cause for greater acceptance of capital-intensive methods in the organized sector and affect the sector's long run demand for labour. It has been argued that due inflexibility in the labour laws the opportunity to expand employment in the organized manufacturing sector has been denied since there is a lack of consensus between the employer's side and the worker's side. The government, with good intentions, has tried to meet most of the workers' demands over the years by preparing and drafting numerous labour laws, but their minimal implementation remains a source of concern on the ground.

The new labour codes attempted to cover most aspects, but challenges remain and also to be seen is their implementation, as the Centre and the states must collaborate in framing rules in accordance with the codes and implementing them in their true spirit. New concepts have emerged in this new era, such as the gig economy, platform workers, and so on. In such cases, there is no contract with the employer, and the traditional employer-employee relationship is bypassed, making it impossible for workers to seek redress against the employer in the event of a dispute or exploitation.

On the other hand, invisible labour and gender inequality persist, which is a source of concern because it has an impact on the growth of our economy and, more importantly, the lives of women who suffer and are compelled to endure indecent lives. The need of the hour is to protect the rights of inter-state migrant workers affected by the COVID-19 pandemic. Most of them have lost their jobs and homes, and they are being forced to return to their villages because they have no other choice.

ISSUES IN LABOUR REFORMS

The need to legislate to protect the interest of workers and also to ensure the smooth process of production in enterprises was recognised by the British rulers of India. The colonial government passed the Factories Act in 1880 laying down the minimum conditions of work in terms of `hygiene, safety and hours of work, etc. Several revisions were followed in the pre-Independence period in 1891, 1911, and so on. The Trade Union Act passed in 1926 set out procedures for registration of unions and protection of unions from harassment. The pressure

for protection of workers against risks at work and life mounted in the 1920s. As a result, several legislations were passed regulating work and providing social security before Independence. The provision of compensation to workmen for any injury during the course of employment was made in the Workman's Compensation Act passed in 1923. Payment of Wages Act was passed in 1936, to regulate intervals between successive wage payments, over-time payments and deduction from the wage paid to the worker. In the sphere of industrial relations, the Trade Disputes Act of 1929 aimed to create an institutional framework to settle disputes. In an independent democratic country, it was considered necessary that the rights of employers to hire, dismiss and alter conditions of employment to the workers' detriments were subjected to judicial scrutiny. Accordingly, the Industrial Disputes Act (IDA) enacted in 1947 provided protection to the workmen against layoffs, retrenchment and closure and for creation, maintenance and promotion of industrial peace in industrial enterprises

- *Simplification of labour laws*

The 2nd National Commission on Labour (NCL) recommended consolidation of central labour laws. It observed that there are numerous labour laws, *both at the centre and in states*. Further, labour laws have been added in a piecemeal manner, which has resulted in these laws being ad-hoc, complicated, mutually inconsistent with varying definitions, and containing outdated clauses **For example**, there are multiple laws each on wages, industrial safety, industrial relations, and social security; some of these laws cater to different categories of workers, such as contract labour and migrant workers, and others are focused on protection of workers in specific industries, such as cine workers, construction workers, sales promotion employees, and journalists. Further, several laws have differing definitions of common terms such as *“appropriate government”, “worker”, “employee”, “establishment”, and “wages”, resulting in varied interpretation*. Also, some laws contain archaic provisions and detailed instructions (e.g, the Factories Act, 1948 contains provisions for maintaining spittoons and frequency of white-washing walls).

The Commission emphasized that there is a need to simplify and consolidate labour laws for the sake of transparency, and uniformity in definitions and approach. Since various labour laws apply to different categories of employees and across various thresholds, their consolidation would also allow for greater coverage of labour. Following the recommendations of NCL, the four Codes on wages, industrial relations, social security, and

occupational safety were introduced in Parliament.

While the Codes consolidate and simplify existing laws to some extent, they fall short in some respects. *For example*, the Codes on occupational safety and social security continue to retain distinct provisions of each of the laws that these Codes subsume. *For example*, while the Occupational Safety Code contains provisions on leaves for all employees, it continues to retain additional leave entitlements for sales promotion employees (e.g. earned medical leave for 1/18th of time on duty). Similarly, while the Codes rationalise definitions of different terms to a large extent, they are not uniform in all respect.

- **What are their need for flexibility in labour markets and labour laws ?**

Three basic theories for perceived and need for flexibility in labour markets.

First it emphasizes on the need for labour force to change according to the market fluctuations which happens because of increase in specialized products that requires firms to quickly change the size, composition, and at times the location of the workforce.

Second emphasizes on lowering the labour costs and increasing productivity because of rising competitiveness.

Third is the political economy perspective which advocates free markets where there would be no government intervention and interference of trade unionism.

According to Dr. Rangarajan (2006), in order to achieve faster growth rate emphasis should be laid on labour intensive sectors by skill development of the labour force and flexibility of labour laws. He also stressed on the fact that flexibility is not just related to '*hire and fire strategy*' and that business units will have to function under legitimate restrictions.

There is a lack of consensus amongst the employers and workers which is being an impediment to any proposed changes in the labour laws.

ISSUES WITH THE NEW LABOUR CODE IN INDIA

- **WAGE CODE FOR 2019**

Wage Code, which were passed in 2019, replaced four laws. The following laws were repealed:

the Minimum Wage Act of 1948, the Equal Remuneration Act of 1976, the Payment of Wages Act of 1936, and the Payment of Bonus Act of 1965. This Act was enacted to amend and consolidate the laws governing wages, bonuses, and related matters. Some issues raised by the Wage Code include:-

- State governments are not permitted to set minimum wages lower than the floor price.
- The problem is that all state governments set their minimum wages above the legally binding floor price. Rather than establishing a binding floor wage, the government should establish a binding minimum wage rate to eliminate the dual wage rate.

A Gazetted Officer will hear and decide any disputes that arise, according to Section 45 of the code. It is concerning that the officers will hear complicated legal questions without legal knowledge. Section 52 of the Code adds a new provision stating that the power to impose a penalty will be with an officer not lower than the rank of a secretary, rather than a judicial magistrate. This section is in violation of Article 50 of the constitution, which requires the separation of the judiciary and the executive. Section 56 of the Code further exempts employers from criminal penalties if they can "show that they used due diligence in enforcing the Code and it was the other person who committed the act without his knowledge, permission, or connivance."

THE SOCIAL SECURITY CODE OF 2020

Social security is a human right that addresses the universal desire for protection from particular life dangers and social demands. The effective social security systems provide economic stability and health care, so aiding in the avoidance and elimination of poverty and inequality, as well as the promotion of social inclusion and human dignity. The Code on Social Security is an Act that changes and consolidates social security legislation and extends social security to all employees and workers in organised, unorganised, and other sectors. It makes an attempt to meet the long-standing needs and demands of three types of workers: unorganised workers, gig workers, and platform workers.

The following are some of the issues raised by *the 2020 Social Security Code*: The code excludes a huge number of workers from the scheme because it only covers employees of enterprises with a minimum number of employees (such as 10 or 20 employees) and gives advantages such as pension and medical insurance benefits to such establishments. The other category of workers, which comprises unorganised sector workers with fewer than

ten employees and self-employed workers, is left to be covered by other discretionary programmes as and when the government notifies them.

The code also says that additional benefits, including as provident funds, pension benefits, and medical insurance benefits, are only available to employees who earn more than a particular amount, as determined by the government. This provision effectively hangs the remainder of the staff out to dry.

There has been no improvement in the delivery of social security benefits.

- *The Employees Provident Fund (EPF),*
- *Employees Pension Scheme (EPS), and*
- *Employees Deposit Linked Insurance (EDLI) Schemes will be overseen by a Central Board of Trustees, while the Employee State Insurance (ESI) Scheme will be administered by an Employees State Insurance Corporation.*

Schemes for the unorganised sector will be managed by national and state-level Social Security Boards, and cess-based labour welfare will be administered by cess-based labour welfare boards. The code demands employees and workers to disclose their Aadhaar Card number in order to obtain social security benefits from the career centre, which may be in violation of *the Supreme Court's decision in the Puttaswamy-II case.*

On Occupational Safety, Health And Working Conditions 2020 Code

This legislation was signed by the President in September 2020, and *it replaced 13 outdated central labour regulations.* This code was created to include and revise the laws governing occupational safety, health, and working conditions for those employed in a variety of settings. The following are the two most critical issues that must be addressed in this Code: It only addresses the working circumstances of select specialists, such as stating that working journalists cannot work more than 144 hours in four weeks and mentioning that sales promotion staff receive supplementary leave.

This appears to be discriminating toward other employees.

This code does not apply to charitable or non-profit organisations.

- **Industrial Relations Code 2020**

According to the *International Labour Organization (ILO)* :-

"Industrial Relations deal with either the connection between the state and employers and workers groups or the relationship between occupational organisations themselves," **The Code on Industrial Relations** is an Act to consolidate and revise the laws relating to Trade Unions, working conditions in an industrial establishment or undertaking, the investigation and resolution of industrial disputes, and matters connected with or incidental thereto. The following are some of the concerns addressed by the Industrial Relations Code:

Workers' capacity to strike and employers' ability to lock out workers will be harmed since the Code requires *all persons working in an establishment to give 14 days' notice before a strike or lock-out that is valid for a maximum of 60 days.*

Strikes and lockouts are also prohibited in two situations: during and up to seven days after a conciliation proceeding, and during and up to sixty days following proceedings before a tribunal.

The Code expressly states that honours awarded by an Industrial Tribunal are enforceable after 30 days. In any event, the public authority may grant the honour requirement under particular conditions affecting the national economy or social fairness.

- **Unorganised Workers, Gig Workers And Platform Workers**

"Unorganized workers, gig workers, and platform workers are peas in a pod," not literally, but their difficulties are very similar. Only approximately *8% of total employment* in India is in the organised sector, while more than 90% of employees are employed in the unorganised sector, which is mostly outside the range of any social security benefits such as health benefit schemes, pension schemes, and provident fund benefits, and also faces other hurdles such as restricted access to institutions and other support facilities.

There is a job of uncertainty, they are reliant on a variety of jobs. Such employment is influenced by a variety of factors such as climate change, location, and so on, forcing people to switch jobs every 3-6 months. *Article 23 of the Indian Constitution* forbids employing workers for pay less than the statutory minimum wage, as this results in compelled labour. The Supreme Court supported the right of a poor worker to directly approach the Supreme

Court under Article 32 of the Indian Constitution for the enforcement of rights created under various labour laws in the case *Peoples' Union for Democratic Rights v. Union of India*. The Supreme Court expanded the interpretation of Article 21 of the Indian Constitution (Right to Life) to include *the right to a livelihood as well as the "right to live with fundamental human dignity."*

Despite of certain provisions, workers are not paid the minimum wage required by law, making their lives miserable and insecure. "Gig workers" and "platform workers" are concepts that have emerged in the last few decades. To put it bluntly, the big businesses devised a strategy to circumvent worldwide labour regulations and limit their accountability for such workers' rights.

OVERVIEW OF LABOUR LAW REFORMS:

The central government proposes to replace 29 existing labour laws with four Codes. The objective of this *study is to simplify and modernize the labour regulation*. The major challenge in labour reforms *is to facilitate employment growth while protecting workers' rights*. Key debates relate to the coverage of small firms, deciding thresholds for prior permission for retrenchment, strengthening labour enforcement, allowing flexible forms of labour, and promoting collective bargaining.

Further, with the passage of time, labour laws need an overhaul to ensure simplification and updation, along with provisions which can capture the needs of emerging forms of labour (e.g., gigwork). This note discusses these challenges and the approaches taken by the four Codes.

Coverage: Most labour laws apply to establishments over a certain size (typically 10 or above). Size-based thresholds may help firms in reducing compliance burden. However, one could argue that basic protections related to wages, social security, and working conditions should apply to all establishments. Certain Codes retain such size-based thresholds.

Retrenchment: During the establishments of hiring 100 or more workers need government permission foreclosure, layoffs or retrenchments. It has been argued that this has created an exit barrier for firms and affected their ability to adjust workforce to production demands. The Industrial Relations Code raises this to 300, and allows the government to further increase this limit by notification.

Labour enforcement: Multiplicity of labour laws has resulted in distinct compliances, increasing the compliance burden on firms. On the other hand, the labour enforcement machinery has been ineffective because of poor enforcement, inadequate penalties and rent-seeking behaviour of inspectors. The Codes address some of these aspects.

Contract labour: Labour compliances and economic considerations have resulted in increased use of contract labour. However, contract labour have been denied basic protections such as assured wages. The Codes do not address these concerns fully.

However, the Industrial Relations Code introduces a new form of short-term labour – fixed term employment.

Trade Unions: There are several registered trade unions but no criteria to ‘recognise’ unions which can formally negotiate with employers. The Industrial Relations Code creates provisions for recognition of unions.

Simplification and updation: The Codes simplify labour laws to a large extent but fall short in some respects. Further, the Code on Social Security creates enabling provisions to notify schemes for ‘gig’ and ‘platform’ workers; however, there is a lack of clarity in these definitions.

What will the change under government’s new labour laws regarding Provident fund contributions, take home salary, work hours ?

- The new labour laws, of *one major thing* is likely to be implemented is *change in workdays*. Once new rule comes into effect, companies will be able to make employees work for four days instead of five, and there will be three week offs. Employees will need to work *for 12 hours* a day instead of eight, since work hours will not get reduced.
- The major changes is going to bring in is that the ratio of the take *home salary and the employees and employer’s contribution in provident fund*. As per the provision of the new codes, the basic salary of the employee *will have to be 50 per cent of the gross salary*. While this will mean that PF contributions of the employee and employer will increase, the take home salary will decrease for some employees, especially those working in private firms. The money received after retirement as well as the gratuity amount will also increase under the provisions of the new draft rules.

- “The four labour codes are likely to be implemented in the next financial year of 2022-23 as a large number of states have finalised draft rules on these.
- The Centre has completed the process of finalising the draft rules on these codes in February 2021. But since labour is a concurrent subject, the Centre wants the states to implement these as well in one go,"
- The central government has notified the *four labour codes*, namely, the *Code on Wages, 2019, on August 8, 2019, and the Industrial Relations Code, 2020, the Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020 on September 29, 2020.*

SOCIAL SECURITY REGULATIONS

The provisions of social security, an important regulation is the Employees State Insurance Act (ESIA) providing comprehensive protection against the risk of accidents and injury at work, sickness, maternity, and old age. The ESI covers both workers and their families. There are two types of insurance benefits provided under the scheme.

Job Security and Industrial Relations Regulations

In this respect, the focus has primarily been on two pieces of legislation, namely the IDA and the Contract Labour Act (CLA). Let us first take up the contentious parts of the CLA. The aim of the Act was to provide for the regulation of contract labour in certain economic activities and for abolition in other circumstances

DEBATE ON LABOUR REFORMS

Several economists, industry associations and mainstream media have attributed the deceleration in employment growth in India, particularly in the organized industrial sector, to inflexibility in the labour market, which is believed to have increased the labour costs for enterprises, thereby hindering investment (including foreign investment) and growth. Employment protection laws are also believed to be inefficient and inequitable, leading to slowdown in growth, and dividing workers into protected and unprotected categories. The limited social security in India is enjoyed by only 8 to 9 percent of the workforce. Overprotection of a small section of workers is not only ostensibly inimical to the growth of

employment, but also goes against social justice as more and more workers are faced with deplorable working conditions. A recent study on the pattern of manufacturing growth during 1958-1992 concludes thus: "... States which amended the Industrial Disputes Act in a pro-worker direction experienced lowered output, employment and investment in registered formal manufacturing. In contrast, output in unregistered or informal manufacturing increased. Legislating in a proworker direction was also associated with increase in urban poverty

CONCLUSIONS

Labour laws must be examined by keeping in mind the goal that what we want to achieve, which is to grow India's manufacturing sector and employment in it. Whatever the reforms are to be made in the labour laws must be assessed with this goal in mind and must support the strategy required to reach it. The strategy has to be to build rapid learning enterprises with employees at their heart. The relationship exists between employers and employees must become co-operative, not confrontational. Together, enlightened employers and responsible unions must establish processes that will build trust within enterprises. Together, they can determine what changes in labor laws are required. Industrial relations will be damaged if Government forces any changes in labor laws that are not founded on an understanding between unions and employers about what changes are required to ensure fairness to employees and enable faster learning and improvement of competitiveness in enterprises. It is not politically feasible for Government to change the laws without the support of both unions and employers. The Government was able to make the changes because the unions and employers, following the German example of cooperation, came to an agreement about the changes required which they put to the Government to implement.

REFERENCES :

1. **Garg, K.C., Sareen, V.K., Sharma, Mukesh, Chawla, R.C.,** —*Industrial Law*||, Kalyani Publishers
2. **Sharma, A.M.,** — *Aspects of Labour Welfare & Social Security*|| , Himalaya Publishing House
3. **Srivastava, S.C.,** — *Industrial Relations & Labour Laws*||, Vikash Publishing House
4. **Kapoor, N. D.,** —*Handbook of Industrial Law* , Sultan Chand & SonsT. S (2007), “*Employment in the Development Agenda: Economic and Social Policies,*” Discussion Paper DP/ 170/2007, International Institute for Labour Studies, Geneva.
5. **Papola, T. S. (1994),** “*Structural Adjustment, Labour Market, Flexibility and Employment*”, *The Indian Journal of Labour Economics*, Vol. 37, No. 1, pp. 3- 16.
6. **Papola T. S. and Jesim Pais (2007),** “*Debate On Labour Market Reforms in India: A Case Of Misplaced Focus*” *The Indian Journal of Labour Economics*, Vol. 50, No. 2,
7. **Sodhi.J.S (2014),** “*Labour Law Reform in India*”*The Indian Journal of Industrial Relations: A Review of Economic & Social Development*, Vol. 50, No.1, July 2014
8. **Sharma, Alakh N. (2006),** “*Flexibility, Employment and Labour Market Reforms in India,*” *Economic and Political Weekly*, Vol. XLI, No. 21, May 27, pp. 2078-2085.
9. **Thakur, C.P. (2007),** *Labour Policy and Legal Framework in India: A Review*, Institute for Studies in Industrial Development, New Delhi