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**ANALYZING THE NEED FOR IMPLEMENTATION OF THE NEW
LABOUR CODE**

Abstract

The Union Government is set to implement the new labour code which has comprehensively clubbed 29 Union labour legislations into 4 labour Codes. Attempts to rationalize the labour laws have been made based on the recommendations of the Second Labour Commission submitted in 2002.¹ The four labour codes are Code on Wages, 2019, Occupational Safety and health, 2020, Industrial Relations, 2020 and Social Security, 2020. This paper aims to understand the long standing need to undertake labour reforms and impact it will have on the work force in particular and economy in general.

Keywords: labour, labour code, reforms, wage, social security, occupational safety and health, industrial relation.

¹ : Report on The Second National Commission on labour with emphasis on rationalization of labour laws and unorganized labour

Introduction

Labour is a continuously evolving subject. It is subject to reforms in the market economy. We are at the doors of the 4th Industrial Revolution where the role of labour market is also changing at a considerable pace. Keeping in mind these changes a long due labour reforms has been initiated by consolidating the legislations and making them up to the market standards. The paper aims to discuss some of the major changes in the new age code with emphasis on the need to implement the new code.

Brief History of labour legislations in India

The labour movement forms a significant part of India's struggle for independence. The labour legislation can be traced back to British Colonialism. The British setup an enquiry Committee during the tenure of Lord Rippon to look into the matters of condition of workers working in factories. The First Factories Act, 1881 was followed by another act - the factories Act, 1891. The working hours were reduced, the permissible age for children raised, etc. Although the aim of these labour legislation was welfare of the working class, it was alleged that the British undertook these reforms to increase the cost on labour, thereby increasing the cost of finished goods and making them less attractive in the market over the ones manufactured in their home country. Factors such as the Russian Revolution of 1917, the establishment of ILO by the Treaty of Versailles in 1919 led to surge of labour movement across the world. India to saw formation of various trade unions giving rise to labour movements.

Post-independence, efforts were taken by the government to better the condition of laborers by introduction and stricter implementation of labour reforms. They introduced various legislations such as the Industrial Disputes Act, 1947, the Factories Act, 1948. The Compensation Act, 1923 etc. In order to undertake reforms the First National Commission under Justice P.B. Gajendrakumar was set up in 1969 for analyzing industrial relations in organized and unorganized sector. The Second National Commission was set up under the chairmanship of Ravindra Verma for analyzing the issue of labour by taking into consideration the impact of globalization. The report was submitted in 2002 suggesting the need for the new labour code.

Why has the implementation of the labour code been deferred?

The new labour code is said to have caused anger amongst the working class as they fear it to be against their interest largely favoring the capitalist class. Labour is a concurrent subject. Hence, implementation of the code requires rules to be notified by the state. The draft rules notified by some states like Uttar Pradesh, Madhya Pradesh, Haryana and Uttarakhand have received backlashes. Hence, there has been delay in implementing the new code.

Reasons for Reforms and changes made in the new labour code

1. Defining the employee employer relationship:

Establishing Employee Employer Relationship has always been subject to ample litigations. This causes delay in settling industrial disputes even though the complainant might have genuine grievance and therefore, needs speedy redressed mechanisms. Employer use agents of the Company as a contractor to avoid any sought of responsibility like occupational safety, compensation or social; security. The litigation whether maintainable or not is subject to whether the complainant is able to establish an employer employee relationship with the respondent. This is result of varied and vague definitions of an employer in the statue. The status thus is largely determined through a tests determined and developed by the judiciary though various cases.² The prima facie test for determination of the relationship between master and servant is the existence of the right of the master to supervise and control the work done by the servant both by directing what work and also the manner in which the work has to be done.³

The new labour code thus provides a comprehensive definition of employer. Each labour code define the employer which will make the term less subject to litigation. It extends the

² In Dharandadhara Chemical works Limited versus state of Saurashtra 1957 AIR(SC) 264, 1956 DGLS (SC) 97s

³ Ibid., Para 14

responsibility to persons indirectly employed⁴. For e.g.: the code of social security includes the person indirectly employed by the employer.

2. Adopting the trends of the new market economy: The Indian Economy is service based and the Covid-19 has acted as a catalyst to shift the work online. The revolution in food delivery system, e-commerce, freelancing allows employee to work part time accelerating gig economy. This phenomenon has given rise to gig and platform works.

The labour code provides formalization of these workers into the regular work force. It defines the gig and the platform workers.⁵ This will help the economy to best adapt to the changing nature of the workforce. This will provide them an umbrella for social security benefits. It allows for establishment of National Commission for Unorganized Sectors. This will ensure implementation of reforms measures and recommendation of such changes for the unorganized Sector.

3. Need for periodic revision of minimum wages with consensus among all stake holders : The Code on wages provides representation to all stakeholders in the Central Advisory Board for Code on Wages⁶. Earlier the board constituted of representatives of employee, employers and independent workers. The new Code on wages includes representatives from state and central government. This allows for representation from all stakeholders. It aims to delay the revision of wages from time to time, provides a platform for the employees and the employer to voice the concern directly to the government and also expert opinion on the same.

4. Welfare of Interstate migrant workers- The mass exodus of migrant workers during the pandemic highlights the need for providing a legal identity to migrant workers. India under A. 19(d) and A. 19(e) of the Constitution allows for free movement and place of residence for better living, etc. However, we still lack portability of government services such as the ration card linked to the food security, social security etc. The Code on Occupational Safety and Health (OSH) allows the interstate migrant workers to register themselves on the national portal. This earlier could be done only if they were appointed by the contractor. This will provide them much independence and required mobility to work interstate.

⁴ Sec 2(27) of Code on Social Security, 2020 , Sec 2(u) of THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

⁵ Sec 2(35) and Sec 2(61) of the code on Social Security , 2020

⁶ Sec 2(b) of the Code on Wages, 2019.

5. Empowering Women to actively engage in the workforce- Women make up to 48% of the India population even then less than one third of women aged 15 or above are part of the work force.

According to an IMF report, 'Raising women's participation in the labour force to the same level as men can boost India's GDP by 27 per cent'

-Christine Lagarde (IMF chief)

The wage code focuses on prohibition of gender discrimination for providing equal opportunity to both men and women. While the earlier code only focused on providing equal remuneration, the new code on matters related to condition of employment and during the process of recruitment. This will allow women to avoid entry level bottlenecks, open opportunities in sectors dominated by men.

6. Facilitating the employee- The Code of Social Security, 2020 replaces the term 'Inspector' with that of 'Inspector cum facilitator'. The change in nomenclature is seen as an important in the approach of the government to view the Social Security System. The term inspector has never been seen in positive light due to the colonial past and the Inspector Raj prior to LPG Reforms. The changes will allow more workers to approach the facilitator with the view of being people friendly and aiding the poor. Although the reform might look favoring the capitalist class, it is initiated to incentivize companies to hire fixed term employment under the new code and to change the exploitative nature in market.

7. In order to adjust with the changing scenarios of supply chain management and allow firms to better adjust their work force the new code increasing the limit for retrenchment from 100 to 300. This provides greater flexibility to firms improving ease of doing business in India.

8. Reducing the compliance burden by improving the threshold - In case of code on social security and occupational safety the size of workers for the application of the code continues to remain the same (10 and 20 respectively). It establishes a separate fund on social security for unorganized workers. The code on occupational safety increases the threshold for factory from 10 to 20 (with power) and 20 to 40 (without power).

9. Penalties- To provide deterrence for employers from violating law, the new wage code has substantially raised the penalties for employers for not complying with the new code.

Conclusion:

The larger purpose of the reform must be the providing quality life to the labour class. This will be achieved by providing for their social wellbeing. Implementation of the labour code will provide a must needed thrust for speedy disposal of justice and speedy grievance redressal if any. It will allow unorganized sector to reap benefit of the organized sector such as the social security. Consolidation of this labour code will provides better understanding of the legislature keeping in terms with the objective of the act.



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