

Recent Labour Reforms in India: How will they Facilitate Investments?

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Summary

India has replaced 29 existing labour laws with four codes. The changes in labour laws should facilitate ease of doing business in the country and make them contemporary in keeping with changes in the labour markets. Flexibility of hiring workers will also increase while ensuring that all sections of the workforce, including the unorganised workers, gig workers and the platform workers, receive social security. The arguments for implementing labour reforms are to enable companies to adjust their labour requirements in line with changes in market demand, ensure better compliance of labour laws through online modes and shift of the labour inspection regime from a negative regulatory regime based on ‘dos’ and ‘don’ts’ to a more positive inspector and facilitator approach. The amalgamation of the laws brought about through codification will also remove the multiplicity of definitions and authorities without compromising the basic concepts of welfare and benefits to workers. Further, the use of technology for the effective enforcement of the provisions is intended to ensure transparency and accountability.

India has replaced 29 existing labour laws with four codes. The Code on Wages was enacted on 8 August 2019. The Codes on Industrial Relations (IR), Occupational, Safety, Health and Working Conditions (OSH) and Social Security (CSS) were passed by the Indian parliament on 23 September 2020.

The new laws should facilitate the ease of doing business in the country and make labour regulations contemporary given the transformation in India’s labour market over the years. Flexibility of hiring workers would also increase while ensuring that all sections of the workforce, including the unorganised, (platform workers and gig workers)¹ get social security. The underlying arguments behind labour reforms are to enable companies to adjust their labour requirements along with changes in market demand, ensure better compliance of labour laws through online modes, and shift of the labour inspection regime from a negative emphasis on ‘dos’ and ‘don’ts’ to a positive ‘inspector and facilitator’ approach.

The codification of labour laws was recommended by the Second National Commission on Labour (NCL) in June 2002. The NCL had observed that there were numerous central and state labour laws that needed to be simplified and consolidated. To improve the ease of compliance and ensure uniformity in labour laws, it recommended the consolidation of

¹ Platform workers are those who while being outside the “traditional employer-employee relationship”, access organisations or individuals through online platforms and provide services. Gig workers refer to workers outside the “traditional employer-employee relationship”.

central government labour laws into broad groups such as i) industrial relations; ii) wages; iii) social security; iv) safety; and v) welfare and working conditions.²

The NCL's recommendations, which formed the basis of the idea of the current codifications, triggered extensive discussions and debate both within and outside the parliament, and among employers' organisations, government and workers' representatives for a long time. The discussions eventually culminated in the recent passage of the three codes by the parliament.

Decodifying the Codes

The labour code on wages and industrial relations will apply to all establishments, with limited exceptions. The code on OSH would apply to establishments over a certain size (above 10 employees with power or 20 employees without power) and those where hazardous activities are being carried out, and also in mines and plantations. The threshold for factories will be 20 employees (with power) and 40 employees (without power). The code on social security applies to establishments with 10 or more employees that draw state insurance, and 20 or more employees for those providing provident fund in the organised sector. It makes provisions to notify a separate social security fund for unorganised workers, gig workers and platform workers.

Industrial Relations Code, 2020

One of the important features of the IR Code, 2020, is that the employer has been provided with the flexibility to employ workers on fixed term basis, based on requirement and without restriction on any sector. The fixed-term employment provision would enable employers to engage workers for fixed periods on the basis of written contracts on wages and social security benefits, as provided to permanent workers. Another significant feature of the code has been to raise the employment limits of industrial establishments in mines, factories and plantations, from 100 to 300 workers, to seek permission of the government before lay-off, retrenchment and closure, with flexibility to the government to increase the threshold to higher numbers through a notification. To prohibit strikes and lock-outs in all industrial establishments, a provision has been made on the need to give a notice of fourteen days.³

Occupational Safety, Health and Working Conditions Code, 2020

This code will apply to all establishments having 10 or more workers, other than the establishments relating to mines and docks. It introduces the concept of "one registration" for all establishments having 10 or more employees. However, the applicability of all other provisions of the code, in respect of factories, is for thresholds of 20 workers in a factory (with power) and 40 workers (without power). It also provides for the issuance of a

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 The Industrial Relations Code, (2020) Bill No. 120 of 2020, as introduced in Lok Sabha on 17 September 2020. https://www.prsindia.org/sites/default/files/bill_files/Industrial%20Relations%20Code%2C%202020.pdf.

mandatory appointment letter by the employer of an establishment to promote formalisation in employment, and provide free annual health check-ups for employees above the specified age in all or certain class of establishments. This will significantly improve health prospects of workers by detecting diseases early.

An important institutional change brought about by the OSH Code, 2020, is the constitution of national and state Occupational Safety and Health Advisory Boards. Further significant provisions include the constitution of Safety Committees, and permitting women to work during night shifts from 7.00pm to 6.00am, subject to the fulfillment of required conditions relating to safety, holidays and working hours, and the consent of women workers. The provision is expected to positively influence the participation of more women in the organised sector. A concept of “common licence” has been incorporated for factory, contract labour and *beedi* and cigar establishments, which would be a uniform all-India licence for a period of five years for engaging contract labour.⁴

Code on Social Security, 2020

The CSS, 2020, provides for the constitution of various bodies for social security organisations, namely, a) the Central Board of Trustees of the Employees’ Provident Fund; b) the Employees’ State Insurance Corporation (ESIC); c) the National Social Security Board for Unorganised Workers; d) the State Unorganised Workers’ Social Security Board; and e) the State Building Workers Welfare Board. The code empowers the central government to frame schemes for unorganised workers, gig workers and platform workers – as defined and explained by the legislation – and their families, for the provision of benefits relating to the ESIC. It also empowers the central government to formulate schemes to provide social security benefits to self-employed workers, and register every unorganised worker, gig worker or platform worker on the basis of self-declaration.⁵ These enabling provisions underline the efforts of labour codes to recognise the new categories among the workforce, and new work organisations emerging in the Indian labour market.

The CSS, 2020, also defines ‘gig worker’ and ‘platform worker’. Gig workers refer to workers outside the “traditional employer-employee relationship”. Platform workers are those who while being outside the “traditional employer-employee relationship”, access organisations or individuals through online platforms and provide services. The code also defines unorganised workers which include self-employed persons. The code provides for different schemes for all these categories of workers and defines the role that aggregators may be expected to play in some of these schemes. The schemes for gig and platform workers might be funded through a combination of contributions from the central government, state governments, and aggregators. For this purpose, the code specifies aggregators, which include ride sharing services, food and grocery delivery services, content and media services and e-marketplaces.

⁴ The Occupational Safety, Health and Working Conditions Code, (2020) Bill No 122 of 2020, as introduced in Lok Sabha on September 18 2020. https://www.prsindia.org/sites/default/files/bill_files/Occupational%20Safety%2C%20Health%20And%20Working%20Conditions%20.

⁵ The Code on Social Security, (2020), Bill No 121 of 2020 as introduced in Lok Sabha on 15 September 2020. https://www.prsindia.org/sites/default/files/bill_files/Code%20On%20Social%20Security%2C%202020.pdf.

State Governments, Industrial Relations and Institutional Changes

The roles of the state governments will be critical in implementing the labour reforms. The constitutional framework for labour laws in India devolves responsibility for enactment and implementation of the laws on both central and state governments. As a result, subjects related to labour and labour welfare, figure in the Concurrent List (List III) mentioned in the Seventh Schedule of the Constitution of India.⁶ Article 246 of the Constitution provides for the distribution of powers between the central and state governments.

Most central labour laws are implemented by the central and state governments in establishments, where they have the 'appropriate' government, as specified in the laws. An important implication of this is that even if the codes – such as those discussed in this paper – have been enacted by the central government, provisions have been made for appropriate governments (that is, states) to take the necessary steps to implement them, either by framing their own rules, or adopting the central laws and applying them to states.

Notwithstanding the concurrent jurisdiction over the laws, the new codes are expected to attract new industrial investments and create jobs. They should also result in simpler compliance on the part of industry and, therefore, reduce operational or 'doing business' costs. The codes introducing 'one registration-one license' and 'one return' systems would reduce the number of returns to be submitted by industry to government as well as registers to be maintained for inspection. These impacts are in addition to the flexibility in hiring workers according to seasonal requirements, and variations in market demand for fixed-term employment.

Flexibility and procedural simplification of rules and regulations though need to be backed by a conducive atmosphere within the establishment to build trust between employers and workers. In this regard, the IR Code, 2020, provides for the establishment of a Grievance Redressal Committee of up to 10 members in an industrial establishment employing 20 or more workers, with adequate representation of women workers, in proportion of the female workers employed in the industrial establishment. This is expected to contribute significantly to growth of trust among all stakeholders.

More trust between employers and workers can be obtained by creating harmonious industrial relations. The multiplicity of trade unions and the absence of a statutory sole negotiating agent and a negotiating council obstructed harmony in industrial relations. The IR Code, 2020, stipulates that if there are multiple registered trade unions of workers, the union with more than 51 per cent of the workers as members according to the muster roll of that industrial establishment would be recognised as the sole negotiating union. If no trade union meets the criteria, a negotiating council will be formed with representatives of unions with at least 20 per cent of workers as members. Each trade union with such support will get one seat in the negotiating council. Furthermore, to reduce multiplicity of unions, the IR Code, 2020, proposes that trade unions must have memberships of at least 10 per cent of the total workers or 100 workers, whichever is less, to be registered. These

⁶ Durgadas Basu, 2008, Constitution of India, New Delhi, LexisNexis Butterworths Wadhwa Nagpur, p. 812.

provisions should go a long way in creating conducive industrial relations by building trust between employers and workers.

The codes have also introduced important institutional changes. As mentioned earlier, the OSH Code, 2020, proposes constituting the National Occupational Safety and Health Advisory Board to make policy recommendations to the central government on matters relating to occupational safety, health and working conditions of workers both at the central and state levels. The Board will advise on health and safety standards, rules, and regulations, to be declared or framed under the OSH Code, 2020, implementation of the provisions of the code, and the issues relating to occupational safety and health referred to it. The Board brings in a wider statutory consultative process within policy formulation enabling matters related to health and safety of workers to be contemporary and aligned to larger technological changes.

Another important institutional change relates to the inspection system. A new concept of an inspector and facilitator has been created to advise employers and workers on issues concerning wages, and on the implementation of the codes. It will also inspect establishments assigned to it by the government based on an inspection scheme. The mechanism includes generating a web-based maintenance of registers, records, filing of returns, assignment of unique numbers to each establishment and timely uploading of inspection reports.

New Labour Code: The Core Idea

The new labour code, comprising the labour reforms introduced by the Indian government, aim to introduce legal reforms in the highly regulated labour administration system, with more than 40 laws enacted by the central government at different points of time in pre- and post-independent India.

Opinion has been sharply polarised on the question of labour regulations. A growing debate after India's extensive economic reforms in 1991 gathered shape around the view that the labour administration system in India was too rigid due to numerous laws and complex compliance procedures preventing faster and wider industrial expansion and trade by discouraging scale and investments. This influential view urged reform of the labour market by adopting flexibility for streamlining legislation and compliance procedures. The codification of labour laws into a few thematic codes was considered the way forward on the above objective.

Critics of flexibility have been concerned over the loss of rights and protection for labour that flowed from existing statutes. The recent labour reforms, combined with the code on wages (2019), try to ensure flexibility without compromising on labour rights and protection. The reforms also try to ensure that the vast segment of informal and unorganised workers in India benefits from social security.

An effective and sincere implementation by agencies should result in flexibilities and institutional changes that will attract large investments, create new jobs, build trust between employers and workers and make the weaker workers socially secure. However,

the results might take time to manifest, given the current conditions surrounding COVID-19 and its management challenges in India.

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