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A CODE FOR ALL? ASSESSING THE NEW LABOUR CODES' IMPACT ON INDIA'S UNREGULATED WORKFORCE

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ABSTRACT

Labour law in India comprised of many legislations, most of whose underlying purposes were increasing social welfare and security. 2020 was expected to be a revolution in Indian labour regulations as the previous laws were consolidated into four new Labour Codes. The influence of the Codes on India's unorganised economy and information technology ("IT") industry, where the pink-slip movement is rife, is the exclusive subject of this article. It also investigates how the inapplicability of the Codes to the unorganized sector adversely impacts its stakeholder. This research is extremely necessary, particularly in view of current socioeconomic developments affecting Indian labourers, particularly in emerging industries like information technology, where the pink-slip phenomenon was observed to be pervasive during the COVID-19 outbreak. The analysis on the unorganized sector is particularly crucial as it reveals the lacunae in the existing legislation and also stresses on the insufficient reforms ushered in by the Labour Codes. The data is gathered and analysed for the article using the doctrinal approach of legal research. It also gives a summary of India's labour law system, which culminated in the four labour codes. In the end, it proves that the codes are inadequate in their current form and makes recommendations for future revisions.

KEYWORDS: *Labour law, New codes, Unorganised sector, Wages*

INTRODUCTION

The goal of labour law is to effectively address the conflict between workers' rights and the socioeconomic conditions that now violate those rights. Given that there are roughly 16 laws that regulate labourers in the nation, India's labour law system is quite extensive in this regard. Although it has been almost 76 years since India gained independence, the majority of these laws were mostly implemented during the British colonial era in the country.

According to the Indian Constitution, the State has a responsibility to protect the welfare of labourers and workers. Articles 39, 41, 42, 43, 43A, and 54 of Part IV of the Indian Constitution of 1950, which addresses the Directive Principles of State Policy (or "DPSP"), establish the State's obligation to create these laws. The Constitution allows both the federal government and state governments to enact laws on labour because it lists labour as a concurrent list subject (Entries 22–24). Furthermore, a significant number of these regulations were formulated using international norms of the International Labour Organisation ("ILO").

Though the ILO has had a favourable impact on India's labour policy and has been recognised since 1956, the country has only ratified four of the eight fundamental treaties of the ILO.

(V. K. R. Menon,1956, pp. 551–571). There are a lot of ramifications from this, but the most significant one is the legislature's apparent lack of interest in understanding the dynamics of workers' rights and creating new laws or updating old ones to better reflect the modern social scenarios.

Despite the fact that Indian labour legislation is extensive, some of its inadequacies in terms of its applicability to various sectors compromise the goals of these laws. Notably, especially in recent times, the Indian regime has also failed to address the problems that workers in the Information Technology ("IT") sector face—problems that clearly violate labour law legislation. Even after India's labour laws were recently "reformed" by consolidating them into four "Labour Codes"—the 2020 Code on Social Security, 2020 Code on Industrial Relations, 2019 Code on Wages, and 2020 Code on Occupational Safety, Health, and Working Conditions—these problems still exist. Interestingly, these labour codes have not yet been formally announced, indicating that they are not yet legally binding. This is important because a pre-notification examination of the different sections of the four Codes would increase the likelihood of identifying any gaps and provide suggestions for how to fix them.

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Labour law in India—Differentiating Employees and Workers

Under the Indian labour law regime, the phrases "employee," "workmen," and "worker" are crucial terms that determine whether or not the rules apply. Differentiating between "workman" and "employee" is essential to understanding India's labour law system, particularly when viewed via the Industrial Disputes Act 1947.

Pre-Labour Codes

Prior to the introduction of the Codes, the Courts were mostly responsible for determining what constituted a workman and an employee under the Indian labour law system because the Legislature had not expressly provided for such a distinction in the ID Act. The Employee State Insurance Act of 1948 did, however, define "employee" in a different way. However, even this definition is limited to the Act's purview and cannot be utilised in conjunction with other labor-law laws.

The Act's definition of "workman" excludes some categories of workers, such as those in management or supervisory positions and those making less than Rs. 10,000 per month. Interpreting this definition, Indian courts have over the years determined important considerations to be considered in deciding whether an employee is considered a workman for the purposes of the ID Act. Ciba Geigy of India Pvt. Ltd. v. Arkal Govind Raj Rao(1985 AIR 985.) is a significant ruling in this context. wherein the Supreme Court ruled that any extra obligations should not be considered in favour of the employee's core and primary duties. The observation aligns with Section 1(s) clause (iii), which states that personnel serving in administrative capacities are not considered workers under the Act.

Notably, the courts have also examined whether or not various employee categories fall under the definition of "workman." These categories include supervisory employees, as determined in G.M. Pillai v. A.P. Lakhmikar Judge(1998 LLR 310.), part-time employees, as acknowledged in Bombay Dyeing and Manufacturing Co. Ltd. v. R.A. Bidoo (1989 (2) BomCR 367). technical employees, and so on.

Thus, under the previous system, the Courts, not the Legislature, were ultimately responsible for deciding which employee classifications would be classified as "workmen" for the purposes of the Act. This decision was important because it affected the existence and enforceability of many rights that an employee could have.

It is untrue, though, that the Legislature has done nothing to make the distinction between workers and employees crystal plain. The 2009 Amendment to the Workmen's Compensation Act of 1923, which changed the Act's name to the Employees' Compensation Act, is one example of how the legislature acknowledged this distinction. The Legislature demonstrated its readiness to explicitly distinguish between labour and employees by passing this amendment. Unfortunately, no further action was made to address this differentiation, which was restricted to the aforementioned Amendment Act. Consequently, uncertainties about the application of numerous other labour law laws in the nation still exist.

Post-Labour Codes

It appears that the Legislature has gained more attention than the Courts since the implementation of the Labour Codes. The reason for this is that, with the exception of the Social Security Code, which does not define "worker," all of the Codes have embraced the concepts of "employee" and "worker." According to the Code, an employee is someone who works for pay in a business, excluding apprentices, and is hired to perform a variety of tasks, including skilled, semi-skilled, and unskilled labour, regardless of whether the job has explicit or implicit employment terms. The SS Code distinguishes and defines many categories of workers (gig workers, unorganised workers, etc.) as opposed to providing a single definition for all workers.

It follows that the new labour codes maintain the basis for differentiating between an employee and a workman, with a greater focus on the type of compensation an employee receives as a consideration.

The Codes' concept of "wages" becomes pertinent in this situation. According to the definition, wages include any compensation, such as salary, benefits, etc., that is given to an individual upon meeting the requirements of their job, whether those requirements are stated explicitly or implicitly, and that is expressed in monetary terms or capable of being expressed as such. Basic salary, dearness allowance, and retention allowance are also included in wages; inter alia, bonuses, transport allowance, etc., are not.

While the concept above is not problematic in and of itself, there is misunderstanding regarding the applicability of wages due to its provisos. This is due to the fact that the provisions' clauses pertaining to the subsections' subsections as well as the provisos addressing wage computation, gender-neutral compensation, etc., solely address the salaries that an employer pays an employee. This means that either the distinction between a worker and an employee is no longer necessary, or it is accepted that workers are not entitled to "wages." This may also help to explain why some laws, like those on equal compensation, have not been implemented well enough to minimise the significant salary gap between men and women. (Agarwal, 2014, pp. 329–340).

Therefore, one of the following changes must be done in order to standardise the definition:

- Additionally, the word "wages" needs to be explicitly applied to employees; and

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- To avoid confusion, the word "employee" must be replaced with "worker" in the provisos.

It is also advised to change the present criterion used to differentiate between the two categories to a sectoral one, i.e., the person's employment status in the organised or unorganised sector. The justifications for this claim have been expounded upon in the ensuing portions of this article, specifically in relation to the SS Code rules pertaining to the unorganised sector.
In this sense, distinct definitions of employees and workers might be incorporated using the laws of the United Kingdom as a point of reference. There are four different definitions of who is covered by the UK labour law regime: worker, employee, jobholder, and trainee. (Deakin & Morris, Citation2019)

A different set of rights are covered under the laws' concept of a "employment relation." It is evident from this that several categories of workers and employees are clearly defined by UK law, and each type's rights have been protected and provided for by legislative enactments. As established in Lawrie-Blum v. Land Baden-Württemberg ([1986] ECR 2121)., workers are considered the more vulnerable class under this regime and thus require higher degrees of protection than do employees. As such, provisions pertaining to workers carry greater weight than provisions relating to employees or the other two aforementioned types. Interestingly, the distinction implemented under the UK regime also aligns with the concepts which are accepted by the ILO for comparing various nations' labour laws.

There is little question that changing the current definitions under the Indian labour laws to be more like those under the UK laws would be advantageous to all parties involved, given the similarities between Indian and UK law. By taking this action, the Legislature would also be able to differentiate between workers and employees explicitly, something that has been lacking since the 2009 Amendment Act.

Interplay between labour law, social security and the unorganized sector

The majority of the laws under it were focused on social security prior to India's employment regulations being combined under the employment Codes. These laws, which were replaced by Section 164 of the SS Code, were as follows:
The Act of 1923 concerning Employees' Compensation (formerly called the Workmen's Compensation Act of 1923);
The 1948 Employees' State Insurance Act
Act of 1952 on Employee's Provident Funds and Miscellaneous Provisions;
The Act of 1959 Concerning Employment Exchanges (Compulsory Notification of Vacancies);
The Act of 1961 on Maternity Benefits;
The 1962 Gratuity Payment Act;
The 1981 Cine-Workers Welfare Fund Act
The Welfare Cess Act of 1996 for Building and Other Construction Workers; and
Act of 2008 Concerning Unorganised Workers' Social Security.

The social nature of these laws can be deduced from their titles alone. Put another way, the lengthy titles of these Acts when combined with their individual Preambles make it very evident that these laws are all similar in that their fundamental goals for enactment are social fairness and social welfare. Consequently, social security is a key component of their goals as well. Consequently, it is reasonable to anticipate that the SS Code, which is an amalgamation of all the previously described laws, will address every flaw in those laws in order to facilitate the achievement of their goals.

The main flaw—which the SS Code has sadly done little to address—is that because of the narrow definitions included in these social security laws, the unorganised sector was essentially exempt from application. For example, due to the peculiarities of work in the sector, it is rare for businesses in the unorganised sector to employ people who fit the requirements of the definition of a "employer."

These problems are also present in another piece of legislation, the Unorganised Worker's Social Security Act of 2008 (henceforth referred to as the "2008 Act"), which focuses especially on the unorganised sector. The Act solely defines the unorganised sector in arbitrary and limited terms; it makes no mention of the phrase "worker." All employees in the industry are included under the Act's simple definition of "unorganised worker."

Regretfully, the definitions and provisions included in this legislation have been merely copied into the SS Code without any meaningful changes. This means that the 2008 Act's shortcomings and the shortcomings of the other pertinent legislations have been combined into the SS Code. Therefore, it is required to go into further detail about the concerns in the Code in order to comprehend the issues with the applicability of social-security legislations (currently the aforesaid Code):

- The definition of the unorganised sector is arbitrary and constrictive: Section 1(85) of the Code contains a copy of the definition of the unorganised sector taken from Section 1(l) of the 2008 Act. A "business owned by individuals and self-employed workers

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engaged in production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten," is what the definition of the unorganised sector refers to. As to Section 1(86) of the Code, wage workers, self-employed individuals, and home-based labourers are all considered "unorganised workers." Interestingly, unorganised workers are not mentioned in the definition of the unorganised sector. When the clause is read plainly, it means that the unorganised sector is made up of independent contractors or self-employed individuals who provide goods or services; wage workers are not included in this definition of unorganised workers, as stated in the subsection. (86)

- "Gig worker" is defined as "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship" in Section 1(35) of the Code.
  This provision appears to be the definition of a worker in the unorganised sector at a cursory reading. The SS Code effectively ended the definition of a gig worker's applicability to the unorganised sector by defining the terms "unorganised worker" and "unorganised sector" separately and inadequately. This means that gig workers can benefit from the SS Code's provisions, but unorganised sector workers cannot.

Non-implementation of Section 5: Section 5 of the Code establishes the State Unorganised Workers' Board and the National Social Security Board for Unorganised Workers. It is derived from Chapter-III (which includes Section 4) of the 2008 Act. This National Board has not been established in the fourteen years since the 2008 Act was passed. It is intended that the Board will be quickly created following the Codes' announcement.

The Uttar Pradesh Unorganised Workers Social Security Board (UPSSB), which serves just the Northern State of Uttar Pradesh, is actually one of the ten State Boards established under this Act that is currently in operation. By 2013, five years after the 2008 Act was passed, twenty-three other states still had not created the Board. Thus, the goals of the 2008 Act are undermined by not creating the National Board and by not guaranteeing the creation of State Boards by every State.

- Central Government Programmes under Section 45: The SS Code's Section 45 gives the Central Government the authority to create programmes for platform, gig, and unorganised labourers. But as the phrase "may" qualifies the Central Government's authority to adopt such plans, the SS Code does not mandate their implementation; rather, it leaves it up to the Central Government's judgement.

The SS Code once again jeopardises its primary goals by leaving such a crucial responsibility to the discretion of the Central Government, since the absence of a mandate calls into question the assurance of the creation of such programmes. Therefore, in order to achieve the goals of the Code as well as the relevant sections of the Constitution, it is essential that this position be modified and that the Central Government be given a more robust mandate. Moreover, the execution and financing of the aforementioned programmes are provided under Chapter IX of the Code, specifically Section 109. The Central Government is required under subsection (4) to make provisions for things like the schemes' scope, authority, and other requirements that are needed to carry out their provisions. But when the creation of these programmes is left up to personal judgement, this requirement loses all meaning. As a result, even though this clause is in place, it cannot truly take effect unless and until the aforementioned adjustments are made.

Registration Process: With a few modifications, Section 10 of the 2008 Act served as the model for the registration process envisioned in Section 113 of the SS Code. Essentially, the clause says that unorganised workers must be registered in order to get benefits under the SS Code and the Central Government-created programmes for them. In accordance with subsection (1), the individual must also be older than 16 and have electronically or otherwise submitted a self-declaration. The last step requires the employees to apply for Central Government registration by providing, among other things, their Aadhaar card. This registration process just adds needless bureaucracy and complexity to a law whose successful implementation would be achieved if such difficulties were avoided in the first place, given the state and character of the unorganised sector. Furthermore, by making the provision contingent on meeting a bureaucratic requirement, it ignores the Code's primary goal, which is to provide social security. While it is acknowledged that registration is required to prevent abuse of the benefits of the programmes under the SS Code, there is room for improvement in the process and a great deal of attention needs to be paid to its execution, to avoid the situation that the National Social Security Board found itself in.

Thus, based on the aforementioned analysis of the pertinent provisions of the Social Security Code—which is essentially a replication of the 2008 Act—it can be concluded that there are a number of issues regarding the applicability of social-security legislations in India to the unorganised sector. Of particular concern is the fact that many of these issues stem from the shortcomings inherent in the SS Code, which calls for immediate correction. Other issues include the failure to implement Code provisions, which could actually benefit workers in the unorganised sector.

Labour Codes—Have They Achieved Their Objectives?

The provisions of the SS Code and the IRC are not better than the laws that already exist, according to a review of the provisions. In actuality, the labour codes have merely duplicated the provisions of the earlier laws under the guise of consolidation. This implies that, as previously said, not only have the effective elements from the earlier legislations been integrated into the Codes, but also the ineffective provisions that required change.

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The main goal of the new labour codes, according to a booklet released by the Indian government's Ministry of Labour and Employment, is to free workers from the "web of legislations," which required them to submit numerous forms in order to receive even a single benefit (Kashyap, 2023).

It is accepted that the Codes' goals are admirable. In fact, the main goal of the Codes appears to have been achieved by combining 29 labour law statutes into four Codes. Nonetheless, it is abundantly evident from the lengthy titles of the Codes that they are intended for both law consolidation and revision. The Codes need to be changed because they have proven to be unsuccessful in the area of amendments. More specifically, the Code's definitions require revision, notably with regard to appropriately distinguishing between workers and employees as well as identifying and characterising various labour classes and subclasses.

The Labour Codes have not even achieved their primary goal of consolidation, as all they appear to have done is classify the laws into four groups and then compile them in that order. However, compilation is not the same as consolidation in this case.

Furthermore, it doesn't appear plausible that the Codes will be announced earlier based on prior official communications from the Government of India's Ministry of Labour and Employment (Press Information Bureau, Citation2022). This essentially implies that the Codes' provisions may yet be changed to achieve a radical change in the framework of Indian labour law (Desai Associates, Citation2022). Drawing from the analysis, it is evident that the necessary modifications pertain primarily to the applicability and extent of the Codes. Specifically, the Codes must encompass all industries, regardless of their sector, in order to achieve the primary goals behind their enactment.

Conclusion and Suggestions

As it stands, the Indian labour law system has numerous gaps. A 2021 study that examined 1500 minimum wages discovered that, despite the existence of laws (which were not without flaws), there was a clear discrepancy between the minimum wage regulations that were established de facto and de jure, which resulted from inadequate implementation (Mansoor & O'Neil, 2021). In this situation, the issue of non-execution takes a backseat to the serious worry of inadequate legislation. But it's also important to remember that, according to Deakin et al. (2014), India and the other BRICS nations benefited from more stringent labour rules that protected social rights without compromising employment.

Legislation simplification for the good of the interested parties is nearly always a necessary endeavour. This becomes even more important when labourers themselves, as well as other stakeholders like trade unions, voice concerns about the efficacy of the Codes (Siddaramu, 2021). (Mohan et al.,2021). The Labour Codes appear to be a good first step in this direction, but because of their very ineffective implementation, the whole intent behind them is undermined. It appears that the Codes have overlooked the various gaps in Indian labour law laws, making their continued existence meaningless.

- **Here are some recommendations that are put forth:**
  In order to clearly provide for the members in the relevant sector, define and distinguish between "employee" and "worker" based on the sector in which they work, rather than the type of job they conduct; this can also be done by drawing inspiration from the labour laws of the United Kingdom;
- Change the meanings of terms like "unorganised sector," etc. to make them more precise and inclusive;
- Even if it means straying from earlier laws, streamline the registration process and other Labour Code-mandated processes;
- Conduct additional research on the many gaps in all of India's labour law laws and the potential changes that can be made to them before they are incorporated into the Labour Codes; a Standing Committee akin to the one established in 2009 may be established for this purpose; and
- Present the labour laws to the public and provide them a chance to voice any thoughts, comments, or suggestions regarding the changes after the aforementioned study has been completed and the ensuing revisions have been formulated. This will eventually lead to a more democratic process underlying the Codes.

These recommendations apply to both the IRC and the SS Code generally, as well as to them in particular. It is highly believed that the modifications that would entail benefiting all classes of Indian workers and employees and resulting in a stronger labour law system if they are carried out correctly and effectively. Therefore, it is hoped that changes to this impact would be implemented prior to the Codes being announced.

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