

Preliminary Notes on the Four Labour Codes

The limited purpose of this write up is to cater to a request from friends interested in the reform of labour law that the Centre for Labour Studies at the National Law School of India, Bangalore must bring out an extremely brief hand out regarding the four labour codes introduced by the Government of India.

Out of the four Codes, one Bill namely “The Wage Code, 2019” has already become law having received the assent of the President of India. The other three Bills as originally put into the public domain have been revised quite a few times by the Labour Ministry and introduced in Parliament, following which they have been referred to the Parliamentary Standing Committee on Labour.

We produce herewith a one page note on each of the four codes for ready reference and appropriate use.

Industrial Relations Code, 2019

The proposed IR code brings together the Trade Union Act, 1926, The Industrial Disputes Act, 1947 and the Industrial Employment Standing Orders Act, 1946.

1. Total Ban on strikes:

Strikes and Lock-outs are regulated (and permitted) under Chapter V of the ID Act. The Draft code introduced in the Parliament on November, 2019 erases the possibility of legal strikes in India, joining the likes of Saudi Arabia and Qatar in prohibiting industrial action. It makes strike notice compulsory in both Public and non-Public Utility industries. Once the strike notice is given, conciliation automatically begins (Section 60 of IRC2019). During conciliation there can be no legal strike (Sections 62 and 63 of IRC2019). This in essence destroys the Core Labour Standard of Freedom of Association and Collective bargaining.

2. Recognition of Trade Unions:

No Central law currently deals with recognition of trade unions. Six states grant it through State legislation. The Bill of 2019 introduces compulsory recognition of trade unions (Section 14 of IRC2019). This is a welcome step. Unfortunately, the widely prevalent practice of “Secret Ballot” for recognition is not provided for in the Bill. This means the deeply flawed methods of “Verification” or “Check-off system” may be used. Moreover the Bill proposes an unreasonably high barrier - that a union must have 75% support to be recognised as “Sole Negotiating Agent” (SNA). The prevalent practice is 50% or more - a reasonable requirement. The idea of a negotiating council if no single union has such majority is welcome

3. Adjudication of Disputes

The State’s power to intervene in labour matters through the Labour Department and refer industrial disputes to adjudication, and ban strikes or lock-outs where necessary has been taken away. Instead the new Bill totally prohibits strike since there can be no legal strike in view of Section 62. Industrial Tribunals under the new Code may only be accessed by the parties voluntarily (Section 53(6) of IRC2019). Similarly, adjudication is severely deprioritised and private arbitration between the parties is placed on a higher pedestal than adjudication. This amounts to privatisation of a quasi-judicial function and is against ILO standards. (ILO C.No:---). Fairness of the arbitration process is weakened as Chapter VI of the Code does not specify the appropriate method for determination of a neutral umpire.

The Wage Code, 2019:

This Bill has already become law and has received the assent of the President on 8th August, 2019. The new law brings together four earlier laws namely (Payment of Wages Act, 1936, Minimum Wages Act, 1948, Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976). Much of it is merely a cut and paste job except when it comes to the MWAct of 1948. In this part of the law the idea of scheduled employments under which almost 2000 employments were covered is now dropped. Minimum wage protection is now universalised. Two types of statutorily determined wages are introduced - “Minimum Wage” (Section 6) and the second is “Floor wage” (section 9).

A statutory floor wage is welcome (previously though a National Floor Level Minimum Wage was announced, it was not binding) provided the quantum is not less than the one proposed by the Ministry's own expert committee (i.e., Rs. 375, which is identical to the level proposed by the Rangarajan Committee on Poverty line). The Union Labour Minister spoke about introducing Rs.178 as the Floor wage. This is a mockery of the idea of a floor wage since a Floor wage should at least pull people out of the poverty line and be able to act as an "Upward Pull" (not a "Downward Drag") on market driven wages - especially during the current period when even the CII is agreed that rural purchasing power must be increased in the interest of generating more demand for saving the national economy.

As far as the Minimum Wage is concerned, Scheduled Employments (on the lines of section 2(g) of the MW Act, 1948) must be reintroduced in order to effectively protect existing minimum wage (as superficially provided under section 6 of the new Code) and facilitate further revision for the future. This is essential to prevent market wages from collapsing downwards to the floor level wage. As for the Bonus related provision, the Balance sheet cannot be treated as a privileged document since "Available surplus" and "Allocable surplus" which may range from 8.33 % to 20% (depending upon the profitability of an enterprise- even under the new law) can be determined only if the balance sheet is subject to quasi-judicial scrutiny and cross-examination of relevant witness as required under principles of natural justice. Section 31(3) frustrates the entire exercise of collective bargaining for bonus.

Social Security Code, 2019

This Bill rightly brings on board the existing Employees Provident Fund Act of 1952, the Employees State Insurance Act of 1948, the Employees Compensation Act of 1923, the Maternity Benefit Act of 1961 and the Payment of Gratuity Act of 1972. It also seeks to repeal the Unorganised Workers (Social Security) Act of 2008, and two sectoral legislations - the Building and Other Construction Workers Welfare Cess Act, 1996 and the Cine-Workers Welfare Fund Act, 1981.

While most of these legislations cater to social security needs of various groups, they are not all internally congruent, and the resultant consolidated Act is by no means a

simplification of the law - it contains an artificially large number of 83 definition clauses. This is so since the proposed code does nothing more than a cut and paste job of all existing social security laws. It will therefore become a paradise for lawyers and for endless litigation virtually reopening well settled case law of more than ninety years (The Workmen's Compensation Act was first enacted in 1923 and since then case laws have clarified how this law should be interpreted).

The ILO recognises nine types of social security standards (Convention 102 of 1952) and all nine are provided for between the PF Act and the ESI Act (see table-1 attached). Unfortunately Chapter seven of the new Code excludes 93% of the workforce in India from the benefits of most social security standards. Existing social security schemes for unorganised sector workers provide them limited coverage and a very deficient social security net. It therefore discriminates against and disappoints the majority of workers in India, including self employed workers and workers in informal or stigmatised professions.

This code therefore serves no useful purpose for workers or for labour administrators. It unnecessarily opens the door for revisiting all case laws since new definition clauses attract new meanings when re-enacted in a single code.

Occupational Safety & Health Code:

This Bill seeks to reverse the gains of more than one hundred years. The first ILO convention in 1919 is on eight hours of work. India has also adopted eight hour working day and 48 hour weekly limit through statutory provision, mainly in the Factories Act, 1948. The proposed law reverses statutory uniformity across the country and leaves the fixation of working hours to delegated legislation as a result of which we will now have different working hours in different states (introducing the pernicious practice of "Race to the bottom" across India). In order to be more competitive, all states will be forced to increase working hours further and endanger the health and safety of workers - and any state desiring to protect the same will face pressure from industrial lobbies.

Sadly the opportunity to clarify that if the contract labour system is abolished workers must be absorbed as regular workers is not utilised. This is an indication of anti-

labour attitude since no negative legal interpretation (as in the SAIL judgement) is reversed despite the Supreme Court itself pointing out that it is for the legislature to make clear its intention when perennial forms of contract labour are abolished as per procedure laid down even under the proposed code.

No effective prohibition is provided for even in employments/occupations in which there is already adequate evidence that the level of occupational hazard is so high that death during employment is clearly manifest and can even be taken judicial notice of under the Indian Evidence Act The new Bill proposed to unnecessarily repeal thirteen pieces of existing laws. This is because of gross failure to recognise the historically verified utility of Sectoral legislation. This absurdity is the consequence of ignorance among drafts persons since there has been no effective consultation with affected interests as required under ILO convention No.144.

India has always followed the dual system of “General Laws” along with “Sectoral Laws” in order to address the sectoral specificity of particular occupations like Beedi, Construction, Mines, Agriculture, Plantation, Gig workers, etc. The idea of covering all types of occupations under a general code has now become a “Fetish” and is about to result in absurd labour jurisprudence.

The remedy is simple. Please leave all sectoral laws alone. Are we not already doing that in respect of Child Labour, Sex work, Bonded Labour, etc. then why pick the thirteen sectoral laws and seek to repeal them? It does not bear any rational relation to the objective sought to be achieved and is therefore discriminatory under Article 14 of the Constitution of India.