

## **LABOUR CODES AND ITS EFFECT ON EMPLOYEES AND EMPLOYERS**

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### **ABSTRACT**

By way of bringing forth the new labour codes in India, the country marks a noteworthy milestone in the growth of labour laws. The labour codes, which are aiming to consolidate and update several legislations which oversee employment and labour law, involve diverse characteristics such as wages, industrial relations, social security, and occupational safety. These labour codes aim to sync the several legislations and improve the standard of living for workers by amalgamating laws into comprehensible frameworks. The government seeks to streamline the compliance process and further foster ease of doing business in India.

The labour codes collectively address concerns of both ends, the employees and the employers. They amend definitions by broadening the scope of the acts, introduce national standards, and streamline processes. By these changes, the government aims to bridge pay gaps, ensure fair working conditions, and promote ease of doing business.

However, even though there has been seen a positive intent behind these reforms, several of the difficulties and uncertainties remain. The lack of clearness in certain provisions of the different codes comes as a challenge for workers as well as companies. While this step signifies a progressive step towards revolutionizing India's labour model, the effectiveness is still to be seen.

### **INTRODUCTION**

In India, there is always a struggle between what the industry wants and what the trade unions desire. In addition, due to the voices of several political parties, it is often witnessed that the voices of those truly affected gets muffled. This creates a unique hinderance for any draftsman of

employment related legislation. After more than two decades of deliberations finally four codes have been proposed to consolidate and update twenty-nine labour laws, which are:

1. Code on Wages, 2019 (“**Wage Code**<sup>1</sup>”)
  2. Industrial Relations Code, 2020 (“**IR Code**<sup>2</sup>”)
  3. Code on Social Security, 2020 (“**SS Code**<sup>3</sup>”)
  4. Occupational Safety, Health and Working Conditions Code, 2020 (“**OSHWC Code**<sup>4</sup>”)
- (Collective referred to as the “**Labour Codes**”)

This paper will aim to primarily highlight the effect the Labour Codes will have on both employees and employers and the transformations the Labour Codes have capability to make in the labour industry.

### **BRIEF OVERVIEW ON THE LABOUR CODES**

For ensuring workers’ rights, the Central Government has amalgamated 29 (twenty-nine) labour laws in total which are, 4 (four) laws in the Code on Wages, 2019; 3 (three) laws in the Industrial Relations Code, 2020; 9 (nine) laws in the Code on Social Security, 2022; and lastly 13 (thirteen) laws in the Occupational Safety, Health and Working Conditions Code, 2020. The same are as follow:

1. The Wage Code aims to unify the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976.
2. The IR Code aims to unify the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1948 and the Industrial Disputes Act, 1947.
3. The SS Code aims to unify the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, the Unorganised Workers’ Social Security Act,

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<sup>1</sup> Code On Wages, 184 of 2019(India)

<sup>2</sup> Industrial Relations Code,35 of 2020(India)

<sup>3</sup> Code on Social Security, 36 of 2020(India)

<sup>4</sup> The Occupational Safety, Health and Working Conditions Code, 37 of 2020(India)

2008, The Employees' Compensation Act, 1923, Act, 1952, The Employees' State Insurance Act, 1948, The Payment of Gratuity Act, 1972, The Employment Exchanges (Compulsory Notification of Vacancies Act, 1959 and the Building and Other Construction Workers Welfare Cess Act, 1996.

4. The OSHWC Code aims to unify the Factories Act, 1948, the Mines Act, 1952 the Dock Workers (Safety, Health and Welfare) Act, 1986, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Plantations Labour Act, 1951 the Contract Labour (Regulation and Abolition) Act, 1970, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955, the Working Journalist (Fixation of Rates of Wages) Act, 1958, the Motor Transport Workers Act, 1961 the Sales Promotion Employees (Condition of Service) Act, 1976 the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the Cine Workers and Cinema Theatre Workers Act, 1981.

The Central Government's objects through these Labour Codes are to head towards changing the standard of living of workers in a fundamental manner. This hopes to have positive and far-reaching effect on workers and nation building. These Labour Reforms will enhance Ease of Doing Business in the country. Employment creation and output of workers will also get enhanced. The benefits of these four Labour Codes will be available to workers of both organized and unorganized sector. Now, Employees' Provident Fund (EPF), Employees' Pension Scheme (EPS) and coverage of all types of medical benefit under Employees' Insurance will be available to all workers.

### **EFFECT OF THE WAGE CODE ON THE EMPLOYEES AND EMPLOYERS**

The Wage Code aims amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.

Some of the of the effects of the Wage Code are as follows:

1. Change in definitions:

The Wage Code now changes the applicability of some definitions like 'Wages'. The definition will now apply to all the provisions of the Wage Code. This change affects both employees as well as employers as the year-on-year salary taken by the employee will change causing inconsistency and difficulty in the payouts.

#### 2. Applicability of 'Establishments':

The new definition of 'Establishment' now covers any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment. The scope of this definition has been widened to now include all types of establishments. The term 'occupation' as mentioned in the definition is one of the reasons to vastly be more including within this definition. Any establishment where even one employee or worker is employed will now be considered to be an 'Establishment'. This change majorly affects employers of smaller businesses who will now come under the purview of certain compliances that they may have been exempt from before.

#### 3. Widened scope of The Equal Remuneration Act:

The Equal Remuneration Act was previously applicable only to workers and that too only of those that belonged to notified establishments and employments only will now cover all employers and all employees in any establishment. Earlier, many of the state Governments had not issued such notifications. The current scope of Wage Code is now wider than that of the erstwhile Equal Remuneration Act. Several activists have claimed this move majorly better the working conditions of employees by attempting to bridge the pay gap, include transgender employees into mainstream work and lay a foundation to just and fair working conditions.

#### 4. National Floor Wage:

The Wage Code introduces the national floor wage which is to be fixed by the Central Government after which the State Governments shall use the set national floor wage to further fix their respective minimum wage rates. This step makes it easier for State Governments to have a set standard as a reference, to which they may refer to whilst setting their respective minimum wage rates depending on the requirements of employees and abilities of the employer in the state. This also makes it easier to compare the varied minimum wage in comparison to the national floor wage set by the Centre.

5. Payment of wages to be made within two working days of the employee leaving the organization:

Employers will now have to pay wages due to the employee within 2 working days from the last day of employment even in cases of employee resignation. This move sets a set time frame which as earlier missing in the event of employee resignation.

### **EFFECT OF THE IR CODE ON THE EMPLOYEE AND EMPLOYER**

It aims to consolidate and amend the laws relating to Trade Unions, conditions of employment in an industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto.

Some of the effects of the IR Code are as follows:

1. Permission for lay off:

As against the earlier limit of 100 workers, the IR Code now states that prior permission of the government before any closure, lay-off, or retrenchment shall only be when the industrial establishment has at least 300 workers employed on an average per working day in the preceding twelve months. This is one of the major changes in order to enlarge ease of doing business in India for start-ups who will not have to take permission for fluctuation and attrition of their employees keeping in mind their smaller size.

2. Intimation for notice of strike:

The IR Code mandates that no person employed in an industrial establishment shall go on strike, in breach of contract without giving notice within sixty days before striking and within 14 days of giving the notice. This move helps employers prepare and prevents the businesses from being affected.

3. Inclusion of ill health in Retrenchment:

The IR Code states that any termination of the service of a worker on the ground of continued ill health would be considered as retrenchment and subsequently, retrenchment procedures will need to be followed.

4. Expansion of the list of unfair practices:

Any willful go slow by a worker shall be construed to be unfair labour practice on the part of worker. This step too helps make ease of doing business a reality in India.

5. Negotiating Union:

A new provision in the IR Code contends that there shall be a negotiating union or a negotiating council, as the case may be, in an industrial establishment having a registered trade union for negotiating with the employer of the industrial establishment on such matters as may be prescribed. Most states have prepared their draft of their rules for the Labour Codes however they are not in force.

## **EFFECT OF THE SS CODE ON THE EMPLOYEE AND EMPLOYER**

It aims to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized, unorganised or other sectors and for matters connected therewith or incidental thereto.

Some of the effects of the SS Code are as follows:

1. Protections for all types of workers:

The SS Code now provides for social security funds for unorganised workers, gig workers and platform workers. This move greatly protects and ensures social security to workers who were previously not provided the same social funds as permanent workers.

2. Change in definitions:

The definition of employees has been expanded to now include more workers into its ambit. For example - inter-state migrant workers, platform worker, film industry workers and construction

workers. This too majorly works to protect the interests of employees and provide them with the same level of security as that given to permanent workers.

### 3. Relaxations given for contributions:

The central government may defer or reduce the employer's contribution, or employee's contribution, or both (for provident fund or employee state insurance corporation) for a period of up to three months for situations that may arise such as an endemic or a pandemic or national disaster. This helps release the burden of both employees and employers in times of distress and provides them in hand money for more important requirements.

## **EFFECT OF THE OSHWC CODE ON THE EMPLOYEE AND EMPLOYER**

It aims to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.

Some of the effects of the OSHWC Code are as follows:

### 1. Core activity of an establishment:

The OSHWC Code has defined under section 2p<sup>5</sup>, the core activity of an establishment as activities for which an establishment is set up, including any activity essential or necessary to such activity. The OSHWC Code also specifically excludes certain activities from the ambit of core activities. Important for understanding applicability of OSHWC Code provisions. This is important while understanding employment of contract labour, as under section 57, engaging of contract labour in the core activities of an establishment is prohibited with certain exemptions such as if the core activity needs to be accomplished in a specified time or the normal functioning of the establishment is such that the activity is ordinarily done through contractor etc.

The appropriate government may by notification appoint a designated authority to advise on the question whether any activity of an establishment is a core activity or otherwise.

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<sup>5</sup> Occupational Safety, Health and Working Conditions Code, § 2, No. 37, Acts of parliament, 2020.

2. Amendment to the definition of Factory:

The OSHWC Code amends the definition of “Factory” to 20 workers for premises where the process uses power as against the earlier limit of 10 workers, and to 40 workers where the process uses no power as against the earlier limit of 20 workers. This changes the scope of the definition of ‘Factory’ absolving smaller factories from having to comply with the sections of the OSHWC Code.

3. Overtime wages:

The OSHWC Code mandates that an employer will have to pay for overtime work done by any worker at twice the rate of wages, which may be calculated on a weekly or daily basis, as may be favourable to the worker. The employer is now required to take consent of the employee for performing overtime work, including information technology (IT) establishments. This change is a new step.

4. Revision of working hours:

The daily work hour limit has been fixed at a maximum of 8 hours per day for all states as against the erstwhile 8-9 hours. Further, the spread over and maximum overtime permissibility was different in different states.

Every establishment is required to display a notice of periods of work, during which workers may be required to work. This also includes IT establishments which had previously been given exemptions in certain states.

## **CONCLUSION**

The introduction of the Labour Codes has been a landmark decision and a positive step towards the change in trajectory of working conditions and the labour industry at large. With changing times, it has become immensely important to change our laws that were drafted in pre historic times to suit a very orthodox requirement. Moreover, understanding the importance of labour and business compatibility is the need of the hour. One of the main purposes of the labour codes is to facilitate ‘make in India’ and ‘ease of doing business’. However, on the cursory review the Labour



Codes drafted, reflects several shortcomings creating a convolution in the mind of the interpreter who often are persons not having studied the curriculum of Law.

It will thus have to be seen how each of the codes pan out especially as they authorize the appropriate government to make rules on certain subject matters specified in the codes. This could be either the State or the Central Government depending on the setting. It is seen that the Central Government and some of the State Governments such as Maharashtra, Gujarat, Karnataka, Haryana etc. have notified draft rules under the Codes, the final rules are yet to be notified.

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