

Labour Reforms and Sustainability



■ *Dr. V. K. Agnihotri, IAS (Retd.)

Preamble

The ultimate goal of the four labour codes passed by the Parliament is to see India figure among top 10 nations in ease of doing business index of the World Bank. According to the 'Doing Business 2020', India is currently placed at 63rd position. The codes attempt to provide 'one return, one license and one registration' regime in order to smoothen compliance to labour laws. The Government proposes to enforce these codes with effect from 1 April 2021.

On 23 September 2020, initiating the discussion in the Rajya Sabha on three of these codes, namely Occupational Safety, Health and Working Condition; Industrial Relations; and Social Security, Santosh Gangwar, the Minister of State (Independent Charge) for Labour and Employment, said that the Government has sought to bring all labour laws within the ambit of four labour codes. The work on these codes began in 2014 and out of 44 existing labour laws, 12 have been already repealed and 29 laws have been incorporated in these four codes. The minister further added that while giving final shape to the Bills, 74% of the 233 recommendations of the Parliamentary Standing Committee have been accepted. The three codes were earlier passed by the Lok Sabha on 22 September. The Code on Wages was passed by the Parliament in the Monsoon Session, 2019.

Elaborating on the codes, the Minister said that the Code on Wages enshrines the right to minimum and timely payment of wages to 50 crore labourers. The OSH Code seeks to provide safe work environment and health care. The IR Code ensures an effective dispute resolution system and the Social Security Code sets up a social security fund, a move in the direction of Universal Social Security. Later, replying to the debate, the Minister assured the house that these four labour codes not only ensure labour welfare but simplify compliance of laws by the entrepreneurs in order to promote industrial development and thereby create new opportunities for employment.

The Codes

The root of the idea of consolidated labour codes goes back to

the report of the Second National Commission on Labour (June 2002). The Commission had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:-

- (a) Industrial relations
- (b) Wages
- (c) Social security
- (d) Safety, and
- (e) Welfare and working conditions

In pursuance of the recommendations of the Commission and the deliberations made in the tripartite meeting comprising the Government, employees and industry representatives, it was decided to bring these four legislations, which intend to amalgamate, simplify and rationalise the relevant provisions of the concerned laws.

The amalgamation of the said laws will not only facilitate implementation but also remove the multiplicity of definitions and authorities, without compromising on the basic concepts of welfare and benefits to workers. The proposed legislations would induce the use of technology in their enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement. Widening the scope of minimum wages to all workers would be a big step for equity. The facilitation for ease of compliance of labour laws will promote setting up of more enterprises thus catalysing the creation of employment opportunities.

Coverage under Labour Codes:

The labour codes on wages and industrial relations apply to all establishments, with limited exceptions. The codes on social security and occupational safety continue to apply to establishments over a certain size (typically, above 10 or 20 workers). However, the OSH Code states that the applicability thresholds (of 10 or above) will not apply in those



Your Instant Office

Connect from Anywhere, Anytime!



Cisco Webex Desk Pro

The most advanced, AI-powered collaboration device for the desk. Designed to support the way you work.

- All-in-one premium collaboration and productivity device
- 27-inch 4K display
- HD camera with wide-angle coverage
- Superior sound system and advanced noise-cancelling microphone array



Video conferencing



Digital whiteboarding



Cognitive collaboration



Productivity champion

Avail special offer*

 **000-800-040-2263**

Exclusive offer only for existing Cisco Webex customers.
Offer valid till 31st December 2020.

[Scan QR Code for more information](#) >



Buy 4

Get 1 Free

establishments in which hazardous activities are being carried out. Further, it makes provisions to notify a separate social security fund for unorganised workers. That said, the code increases the thresholds for factories from 10 to 20 (with power) and 20 to 40 (without power). The Code on Social Security enables the government to formulate schemes for the benefit of unorganised workers, and gig and platform workers. The codes on industrial relations and occupational safety allow the government to exempt any new establishment from their provisions in public interest.

Thresholds for Lay-off, Closure and Retrenchment:

The Industrial Relations Code increases the threshold from 100 to 300 workers while retaining the notice and compensation requirements specified under the Industrial Development Act, 1947. It allows the government to further increase the threshold by notification.

Labour Administration:

The Codes create enabling provisions for web-based inspections (which may be accompanied by randomized inspections) in some cases, third-party certification (for notified classes of establishments in some cases) and create some provisions for common registers and returns. However, details have been left to delegated legislation. Further, in certain cases, such as Code on Social Security, compliance reporting on different aspects (such as provident fund and insurance) may continue to be made to different authorities. The Codes also increase the quantum of fines and imprisonment in several cases and allow for compounding of offences in certain cases. With regard to dispute resolution, the Industrial Relations Code removes the requirement for reference to the government and publication of award in the gazette and replaces industrial courts / tribunals with two-member labour tribunals (with one judicial and one administrative member).

Contract Labour:

Currently, contract labour provisions apply to establishments /contractors hiring at least 20 workers. The Code on Occupational Safety and Health increases this threshold to 50 workers. Further, it prohibits contract labour in core activities except in certain circumstances (which includes any sudden demand in work). It also specifies a list of non-core activities where the prohibition would not apply. These include:

- (i) Sanitation works
- (ii) Security services, and
- (iii) Any activity of an intermittent nature even if that constitutes a core activity of an establishment.

As regards liability of the contractor, the Code leaves the conditions for grant of contractor license to rules. Further, it shifts the primary responsibility of providing welfare facilities from the contractor to the principal employer. It also provides for automatic absorption of contract workers into the establishment

of the principal employer where they are engaged through an unlicensed contractor. The Industrial Relations Code introduces provisions to employ fixed term labour.

Trade Unions:

The Industrial Relations Code makes provisions for recognition of a negotiation union with 51% membership. In the absence of such an association, a negotiation council may be formed. No changes have been made with regard to participation of outsider (up to 33%, subject to a maximum of five members). Up to 50% could be outsiders in unorganised sector unions. However, the Code mandates a two-week notice for strikes.

Delegated Legislation:

The labour Codes delegate various essential aspects of the laws to the government through rule-making. These include:

- (i) Increasing the threshold for lay-offs, retrenchment, and closure
- (ii) Setting thresholds for applicability of different social security schemes to establishments
- (iii) Specifying safety standards and working conditions to be provided and maintained by establishments, and
- (iv) Deciding the norms for fixation of minimum wages

Emerging challenges:

The Code on Social Security introduces definitions for 'gig worker' and 'platform worker'. Gig workers refer to workers outside the "traditional employer-employee relationship". Platform workers are those who are outside the "traditional employer-employee relationship" and access organisations or individuals through an online platform and provide services. The Code also defines unorganised workers which include self-employed persons. The Code creates provisions 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). However, there may be some overlap between these three definitions, which may result in lack of clarity on the applicability of social security schemes to these different categories of workers.

Sustainability Concerns

In the wake of the pandemic several state governments, in a somewhat knee jerk reaction, undertook various policy measures, such as streamlining the mechanism for more effective business operations through easier permit grants and clearances. As the subject of labour falls under concurrent list of the constitution, many states, such as Uttar Pradesh, Madhya Pradesh, Maharashtra, Rajasthan, Uttarakhand, Punjab, Haryana and Gujarat, utilised this opportunity to amend their labour laws by either suspending or relaxing many of them. The UP government altogether omitted the portion that regulates conditions of work. In order to fast-track business operations, MP did away with laws that dealt with provisions of settling

पर्यावरण की सुरक्षा का संकल्प

इस संकल्प ने हमारे मन-मानस
में गहरी जड़ पकड़ ली है।



कोल इण्डिया लिमिटेड

विश्व की बृहत्तम कोयला उत्पादक संस्था
A Maharatna Company

प्रकृति के अस्तित्व में ही हमारा अस्तित्व है

disputes through labour courts and tribunals. It also relaxed the definition of industrial establishments, allowing the employers to lay off workers without prior permission of the government. To increase industrial productivity, states such as Gujarat, Madhya Pradesh and Himachal Pradesh extended the working hours of factory workers from eight to 12 hours a day. Other such amendments diluted protective provisions, making labour laws more flexible and allowing firms to 'hire and fire' more easily.

According to the doctrine of 'creating shared value', propounded by Michael Porter and Mark Kramer, sustainability must be sought to be achieved not just in the context of employers' concerns but employees' interests as well. Both are interconnected and the dilemma of choosing between the two is an illusory one. Sustainability, from the employees' perspective is predicated on minimum wages, a written job contract that specifies terms and conditions of work, social security provisions etc. These increase costs in the short run but augment economic optimisation in the long run by enhancing the productivity of the workforce. A productive workforce adds to the profitability of the business. From the employers' point of view, consequently, it requires not only ease of compliance of laws but also whether short term losses entail long term gains.

The central government's labour codes incorporate most of the elements of sustainability under their four arms, which seek to balance the interests of the employers as well as the employees. The broad vision is to give an impetus to economic activity without adversely affecting the interests of workers. Thus, on the one hand, it increases the threshold for an establishment to obtain government permission before closure or lay-off or retrenchment. On the other, the social security code promises establishment of a social security fund for unorganised workers along with a Social Security Board. Similarly, the fixed term contractual employment along with guarantees of all kinds of statutory payments will meet commonly accepted standards for decently employment and, at the same time, allow for greater competitiveness and create more jobs. In their totality, the codes give much greater freedom to businesses when it comes to taking on and shedding employees, while putting trade unions to new tests about their representational claims.

The 'CODE' Ahead

The four codes, at the introduction stage, covered a total of 360

pages. As the following Table amply demonstrates, a gargantuan and painstaking exercise, spread over five years, has produced a monumental piece of legislation, comparable, in effort and size, to the Constitution of India, in a sense.

While the Codes consolidate and simplify existing laws to some extent, they fall short in some respects. For example, the Codes on OSH and Social Security continue to retain distinct provisions of each of the laws that these Codes subsume. Thus while the OSH Code contains provisions on leaves for all employees, it continues to retain additional leave entitlements for sales promotion employees (e.g. earned medical leave for 1/18th of time on duty). Similarly, while the Codes rationalise definitions of different terms to a large extent, they are not uniform in all respects. For example, while the Codes on Wages, OSH and Social Security contain the same definition of "contractor", the code on industrial Relations does not define the term. The discrepancies between the union and the state labour codes would also need to be ironed out. Moreover, changes in labour laws are necessary but not sufficient conditions for achieving the goal. Simultaneous changes would need to be carried out to reduce cost of factory land, power and transport as well as stabilise the tax regime.

Even the Constitution of India faced major challenges when it was put into practice, leading to the First Amendment, and a major one at that, before the ink on it had dried, so to speak. The amendment was passed in 1951 under article 368, by the indirectly elected Provisional Parliament and when the mandated second chamber (Council of States or the Rajya Sabha) had not come into existence.

There would be, therefore, no shame if, based on the experience of their implementation, the four codes need some adjustment here and there because everything cannot be thought through at the drafting stage of a law. The government should be open to suggestions from stakeholders and accommodate their meaningful and legitimate concerns.

**Dr. V. K. Agnihotri, IAS (Retd.) is the Director General - Golden Peacock Awards Secretariat at the Institute of Directors. He is also the former Secretary - General, Rajya Sabha (Parliament of India).*

SI. No.	CONTENTS CODES	CHAPTERS	SECTIONS	SCHEDULES	NOTES ON CLAUSES	ACTS REPEALED
	WAGES CODE	9	69	-	68	4
	OHS CODE	14	143	3	143	13
	IR CODE	14	104	3	103	3
	SOCIAL SECURITY CODE	14	164	7	164	9
	TOTALS	51	480	13	478	29