

Labour Reform (LR) - for Migrant Workers (MW)

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ABSTRACT: Policymakers face several kinds of choice and, hence, trade-offs. They can emphasise on enforcing higher wages only but at the cost of low employment. Higher growth at the cost of low wages is another option to the policymakers. Again, job security of existing workers may be the concern for policymakers at the cost of encouraging employers to adopt labour-displacing techniques of employment. The Covid-19 pandemic is a black swan event in the lives of the world. The novel coronavirus has put us through a never-seen-before lockdown. India is staring at a long road towards economic recovery and several reputed rating agencies have stated that an unparalleled global recession is underway, owing to the disruptions. Fitch has forecast India's GDP growth slipping to 0.8 per cent for the 2020-21 fiscal. However, a crisis like this also brings with it opportunities to look inwards and make certain desirable changes. In this backdrop, state governments in Uttar Pradesh, Gujarat, Goa and Madhya Pradesh have undertaken labour reforms to attract investment. Their policy initiative has invited both criticism and praise. In the post-Covid-19 world, it will only be the survival of the fittest. Therefore, it was imperative that these labour reforms were undertaken. Industries operating will have the power to hire and fire; working shifts will be increased from 8 hours to 12 hours, and there will be a sizeable reduction of compliance regulations. The three main stakeholders to benefit from these reforms are the workers, companies and the economy at large.

Key Words: Labour Reform(LR), Migrant Workers(MW), Covid-19, Pandemic,Stakeholders,Compliance Regulations.

I. INTRODUCTION:

About 90 per cent of India's estimated 47 crore workforce is not benefitting from the existing and old labour law provisions. In fact, these laws have served as a deterrent to newer businesses. The

announced relaxations will not only incentivise but also create new industrial investment opportunities and environment resulting in more jobs for the workers at a time when the unemployment rate has hit a record high of 27 per cent. These labour reforms, to some, may come across as harsh measures, but we should also remember that the Indian economy currently is in doldrums, owing to the pandemic. The reforms undertaken are the need of the hour and we cannot fall into a trap, construing these measures as anti-labour. If India is to gain a competitive advantage over other nations, it will have to transform itself as a manufacturing hub and become self-reliant, it is necessary that such steps are undertaken. This will also be in the line of vision of Hon'ble Prime Minister-AatmNirbhar Bharat. The International Monetary Fund in August 2018 had termed the Indian economy as an elephant starting to run. These labour reforms have the potential to allow the elephant to break the shackles and move forward leaps and bounds. Migrant workers who were employed in big cities are now heading back to their home states and many may not return, at least in the near future.

01. These reforms will result in bringing jobs to the workers' doorstep. A major chunk of migrant workers who travel to big urban centres in search of livelihoods, comes from UP, Bihar, MP and Jharkhand states. These state governments have taken initiative to bring the job from migrant workers, simultaneously under ease of business doing, they have relaxed some labour laws for the benefit of the companies^[1].

02. There are as many as 40 central labour laws in India and states also have their own set of legislations governing the industry and labour. A majority of these labour laws were introduced in the years right after the Independence or even pre-Independence. The importance of these laws in that era cannot be understated, however, they have not stood the

test of time. In 1991, even though India liberalised its economy, it failed to reform its labour laws^[2].

03. These laws have proved to be a hurdle for investment in India, and can best be described as archaic. Scrapping such archaic labour legislations can provide India the investment push^[3].
04. As a fallout of COVID, it is expected that several businesses will move out of China. India must take advantage of it. We need to introspect as to how India can become a more favourable option for the world, compared to a country like Vietnam, which has already implemented bold labour reforms. These reforms will give industries the operational freedom they require and they will not be subjected to the usual compliance rigmarole.
05. The economy at large will be the biggest beneficiary of these reforms. If an industry is set up or expanded, it is not only the workers or the company which will benefit. The expansion will also lead to job creation across different sectors, which will result in a higher purchasing power of the people, and an increase in revenue for the government. Metros are the major engines of economic growth in India, but these reforms have the capacity to create new growth pockets in villages and small towns, too^[4].

OBJECTIVE:

- To study and define the old and outdated labour laws.
- To analyse between old and new labour laws.
- To create the job opportunity for migrant workers.
- To access the benefits for migrant workers from labour reform.
- To measure the benefits for industries from labour reform.
- To access & study the benefits for Indian Economy from labour reform.

SIGNIFICANCE OF THE LABOUR REFORM:

As many as labour laws are more than 50 years old and some even belong to the pre-independence era, then it is essential to introduce and simplify existing labour laws.

(A) In CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITION BILL 2019:

- The bill simplifies, amalgamates and rationalizes the provisions of 13 central labour laws.

- It expands the ambit of the provisions relating to working conditions of cine, theatre workers and journalists.
 - It expands the definition of family to include dependent grandparents.
 - It allows the women employees to work at night
- (B) In CODE ON WAGES BILL 2019;
- The bill simplifies the definition of wages
 - It universalizes the provisions of minimum wages and timely payment of wages to employees irrespective of the sector and wage ceiling.
 - It seeks to increase the legislative protection of minimum wage to 100% of the workforce.
 - Minimum wage will be fixed based on geography and skills.
 - As India has a federal form of government and has federal features, here labour law comes under concurrent list, so here every state has right to set a minimum wage for their respective state but according to the guidelines given by the central government.
 - To cease the arbitrariness of State, central government only gave power to make legislation regarding National Minimum Wage equivalent or not more than which is prescribed by the central government.
 - Bonus gave to all eligible workers without any arbitrariness.
 - As to avoid gender discrimination, equal remuneration must pay to all workers with equal minimum wages.
 - This bill set a floor for the certainty of provisions and for universalizing all provisions of labour laws.
 - Facilitation for ease of compliance of labour laws will promote setting up of more enterprises which raised the country on the global index of 'ease of doing businesses.
 - Bills supposed to get benefits of 'use of technology in its enforcement, reduce violations and use to transform the entire system of labour inspection.'
 - 'Employers are no longer bound by law to cooperate with inspectors. The newly designated 'inspector's-cum-facilitators' under the bill are meant to assist employers in complying with the law and can even forgive them for violations' which ensure better compliance and implementation.
 - Removing and eliminating the multiplicity of definitions and authorities. Taking effort in advancing codes is to 'simplify and rationalize' the law.

- Companies will soon not require multiple registrations, as they do now under a plethora of labour laws, because the government has proposed one license, one registration and one return for establishments for executing projects for 5 years. This promotes 'EASE OF DOING BUSINESS INDEX'.

LABOUR REFORM(LF):

44 labour laws to be amalgamated into 4 codes :

As part of legislative reforms of labour laws, the Centre has started the process of codification and amalgamation of 44 Central labour laws into four codes in order to simplify them. The four codes will pertain to labour, industrial relations, social security and welfare and safety and working conditions.

List of major Central Labour Laws Under Ministry of Labour and Employment

1. The Minimum Wages Act, 1948
2. The Payment of Wages Act, 1936
3. The Payment of Bonus Act, 1965
4. The Equal Remuneration Act, 1976
5. The Trade Unions Act, 1926
6. The Industrial Employment (Standing Orders) Act, 1946.
7. The Industrial Disputes Act, 1947
8. The Weekly Holidays Act, 1942
9. The Factories Act, 1948
10. The Plantation Labour Act, 1951
11. The Mines Act, 1952
12. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
13. The Motor Transport Workers Act, 1961
14. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
15. The Contract Labour (Regulation and Abolition) Act, 1970.
16. The Bonded Labour System (Abolition) Act, 1976
17. The Sales Promotion Employees (Conditions of Service) Act, 1976
18. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
19. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
20. The Dock Workers (Safety, Health and Welfare) Act, 1986
21. The Child Labour (Prohibition and Regulation) Act, 1986
22. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

23. The Working Journalists (Fixation of rates of Wages) Act, 1958
24. The Employees' Compensation Act, 1923
25. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
26. The Employees' State Insurance Act, 1948
27. The Maternity Benefit Act, 1961
28. The Payment of Gratuity Act, 1972
29. The Unorganized Workers' Social Security Act, 2008
30. The Building and Other Construction Workers Cess Act, 1996
31. The Mica Mines Labour Welfare Fund Act, 1946
32. The Cine Workers Welfare (Cess) Act, 1981
33. The Cine Workers Welfare Fund Act, 1981
34. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
35. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
36. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976
37. The Beedi Workers Welfare Cess Act, 1976
38. The Beedi Workers Welfare Fund Act, 1976
39. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
40. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

The Four codes of Labour laws by amalgamation of 44 labour laws being introduced Govt. of India are:

1. **Social security law or code:** Laws related to social security, including the Employees' Provident Fund and Miscellaneous Provisions Act, Employees' State Insurance Corporation Act, Maternity Benefits Act, Building and Other Construction Workers Act and the Employees' Compensation Act will be merged.
2. **Industrial safety and welfare code:** Several industrial safety and welfare laws such as the Factories Act, the Mines Act and the Dock Workers (Safety, Health and Welfare) Act, will be merged.
3. **Code on Wages:** The Minimum Wages Act, the Payment of Wages Act, the Payment of Bonus Act, the Equal Remuneration Act are merged. The notification in this regard has already been issued.
4. **The Labour Code on Industrial Relations** will combine Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946.

A CII release said that although labour laws were a concurrent subject, “the States are on the same page as they all feel the need for a conducive atmosphere for development.”

Code on Wages 2019

Background

Pursuant to the recommendations of Second National Commission on Labour and with a view to rationalize the central labour enactment relating to wages, the Ministry of Labour and Employment (the "**Ministry**") introduced the Code on Wages, 2017 in the Lok Sabha on August 10, 2017. However, the said code lapsed upon dissolution of the Sixteenth Lok Sabha.

On July 23, 2019, the Ministry re-introduced the Code on Wages, 2019 ("**Code**") in the Lok Sabha. Both Houses of the Parliament have now passed the Code. The Code consolidates, subsumes & transforms four central labour laws relating to wages, namely: (a) the Equal Remuneration Act, 1976; (b) the Minimum Wages Act, 1948 ("**MWA**"); (c) the Payment of Wages Act, 1936 ("**PWA**"); and (d) the Payment of Bonus Act, 1965 ("**PBA**") (collectively, "**Current Laws**").

- ❖ The Code on Wages, 2019 was introduced in Lok Sabha by the Minister of Labour, Mr. Santosh Gangwar on July 23, 2019. It seeks to regulate wage and bonus payments in all employments where any industry, trade, business, or manufacture is carried out. The Code replaces the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.
- ❖ **Coverage:** The Code will apply to all employees. The central government will make wage-related decisions for employments such as railways, mines, and oil fields, among others. State governments will make decisions for all other employments.
- ❖ Wages include salary, allowance, or any other component expressed in monetary terms. This does not include bonus payable to employees or any travelling allowance, among others.
- ❖ **Floor wage:** According to the Code, the central government will fix a floor wage, taking into account living standards of workers. Further, it may set different floor wages for different geographical areas. Before fixing the floor wage, the central government may obtain the advice of the Central Advisory Board and may consult with state governments.
- ❖ The minimum wages decided by the central or state governments must be higher than the floor wage. In case the existing minimum wages fixed by the central or state governments are higher than the floor wage, they cannot reduce the minimum wages.
- ❖ **Fixing the minimum wage:** The Code prohibits employers from paying wages less than the minimum wages. Minimum wages will be notified by the central or state governments. This will be based on time, or number of pieces produced. The minimum wages will be revised and reviewed by the central or state governments at an interval of not more than five years. While fixing minimum wages, the central or state governments may take into account factors such as: (i) skill of workers, and (ii) difficulty of work.
- ❖ **Overtime:** The central or state government may fix the number of hours that constitute a normal working day. In case employees work in excess of a normal working day, they will be entitled to overtime wage, which must be at least twice the normal rate of wages.
- ❖ **Payment of wages:** Wages will be paid in (i) coins, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account, or (v) through electronic mode. The wage period will be fixed by the employer as either: (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly.
- ❖ **Deductions:** Under the Code, an employee's wages may be deducted on certain grounds including: (i) fines, (ii) absence from duty, (iii) accommodation given by the employer, or (iv) recovery of advances given to the employee, among others. These deductions should not exceed 50% of the employee's total wage.
- ❖ **Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.
- ❖ **Gender discrimination:** The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the

skill, effort, experience, and responsibility required are the same.

- ❖ **Advisory boards:** The central and state governments will constitute advisory boards. The Central Advisory Board will consist of: (i) employers, (ii) employees (in equal number as employers), (iii) independent persons, and (iv) five representatives of state governments. State Advisory Boards will consist of employers, employees, and independent persons. Further, one-third of the total members on both the central and state Boards will be women. The Boards will advise the respective governments on various issues including: (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.
- ❖ **Offences:** The Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

The timeline to make payment of wages under the Act is as follows:

Nature of termination	Timeline
Termination of employment by the employer	Before expiry of second working day from the date of termination of employment
Termination due to closure of establishment	Before expiry of second working day from the date of termination of employment
Any railway, factory and industrial or other establishment having less than 1000 persons employed	Before expiry of seventh day from the last day of wage period
Any railway, factory and industrial or	Before expiry of tenth day from the

other establishment having 1000 or more persons employed.	last day of wage period
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(Source: Deloitte India)

II. CONCLUSION:

The Code has been passed by the both the Houses of the Parliament and has also received Presidential assent. Its date of enforcement is 8 August, 2019 notified in the Official Gazette.

On one hand the Code emphasizes on compliance as it increases the cost of non-compliance. Gone are the days when employers could take it easy on non-payment of overtime wages as Shops & Establishments laws hardly provided a deterrent with a paltry fine. At the same time, diligent employers who are willing to comply with the Code get an opportunity to compound the offence. Prior to the Code, only some States had introduced provisions for compounding offences in their respective States. The Code makes this opportunity to compound uniformly available and is a step forward in the direction of ease-of-business. In some cases, the Code also provides an opportunity to rectify breach and in which case employers need not worry about prosecution. It usually takes about a month to get your full and final payment after you leave a job. However, this could change soon. According to the Code on Wages, 2019, notified on August 8, your employer will have to pay all your wages within two days after your last working day.

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