

Analysis on Labour Codes

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PROBLEMS WITH LABOUR LAWS IN INDIA

Labour laws are under concurrent list. Currently, there are 44 labour laws under the purview of Central Government and more than 100 under State Governments, which deal with a host of labour issues.



Low Employment Elasticity:

Even though, Indian Economy has grown rapidly, it has failed to create enough jobs leading to low employment elasticity.

Archaic Labour Laws:

Labour Laws need to be reoriented to address the emerging needs of the service sector and the new technology intensive manufacturing sector.

Multiplicity of Labour Laws:

This not only leads to significant increase in the compliance costs for the firms and gives scope for corruption and harassment.

Poor Coverage of workers:

Cover only around 10% of workforce employed as Formal Workers; Remaining 90% Informal workers face significant challenges in terms of poor wages, working environment and lack of social security benefits.

Problem of Missing Middle:

Labour law imposes compliance costs on the mid-sized and large firms and incentives the small firms to stay smaller. This in turn adversely affects the job creation in the Indian Economy.

Lack of Flexibility to Firms:

Labour laws fail to provide necessary flexibility to the firms. For example: Industrial Disputes Act (IDA) requires firms employing more than 100 workers to seek permission from their respective state governments to retrench or lay off workers.

Obstacle to Human Capital Formation:

Industries play crucial role in skill development. However, as stated before, labour laws discourage firms from employing a large number of permanent workers and steer them towards employing more casual or contract workers. The firms do not invest in upgrading the skills of the informal workers leading to lack of human capital formation.

Reduce Global Competitiveness:

Labour-intensive industries such as Textile and Leather have remained mainly informal in nature due to labour policies.

WAGES CODE

MINIMUM WAGES ACT, 1948	
Provisions	Problems
Centre and State required to bring different forms of employment under the act Covered around 1900 Scheduled Employment	Did not automatically extend to new forms of Employment. Did not cover 1/3rd of India's workforce.
Included workers in both Organized sector and certain categories of workers in Unorganized Sector	Did not explicitly include vast majority of workers in the Unorganized Sector
Wages fixed based upon the Subsistence Level/Poverty Lines	Low Level of Minimum wages
Minimum Wages varied across Employments, Within States and across States.	Variation across Employments -> Gender Bias -> Minimum wage for Security Guards (men) higher than that of Domestic workers (Women)Variation within States -> Wage Disparities between different forms of Employment.Variation across States -> Region-wise Discrimination

WAGES CODE PROVISIONS

Objective:

Regulate wage and bonus payments. 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:

Applicable to all employees, 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.

Floor wage:

Central government will fix a floor wage, considering living standards of workers. Further, it may set different floor wages for different geographical areas. Minimum wages decided by central or state governments must be higher than floor wage.

Fixing minimum wage:

Code prohibits employers from paying wages less than minimum wages. Minimum wages will be notified by central or state governments. While fixing minimum wages, central or state governments may consider factors such as: (i) skill of workers, and (ii) difficulty of work.

HOW THE CODE ON WAGES WOULD BENEFIT?

- Expansion in coverage of Employees covers both formal and informal workers.
- Unlike Minimum wages Act, 1948, there is no need to explicitly bring different forms of employments.
- Introduction of National Minimum Wage to address regional disparities.
- Addresses gender disparity by ensuring equal remuneration for men and women.
- Reduced Compliance burden since 4 laws have been subsumed into a single code.
- Ease of Doing Business- Replaces inspector with inspector cum facilitators to handle inspections. The Code also provides for inspection, which is web based and automatic, thereby eliminating any corrupt practices which were earlier carried by the Inspectors.

WAGES CODE CONCERNS

Lack of Methodology for Fixing Minimum Wages:

The Code does not outline methodology for fixing an adequate minimum wage. It completely ignores the formula, which was unanimously recommended by Indian Labour Conference (ILC) as well as Supreme Court ruling in Raptakos Brett case of 1992. According to this formula, wages should be set by considering expenses on food, clothing, fuel and lighting, education and healthcare as well as social costs such as marriages, festivals etc. This methodology prioritised needs of workers, rather than viewing them merely as factors of production.

Lower National Level Minimum Floor wages:

Anoop Satpathy Committee (2019) recommended the government increase the national minimum wage to Rs 375 per day. However, as of now, the minimum wages are still lower at just Rs 178 per day.

Delay in implementation:

Even after more than 2 years, Code on wages along with labour codes have not been notified by Government. Government was expected to implement labour reforms from April 2021, but it has been delayed further.

Prompt race to bottom:

State Governments can compete to lower minimum wages to attract private sector investment. This goes against interests of the workers.

Poor Consolidation of Labour Laws:

Earlier, number of provisions were incorporated in the act itself, but now under Code on wages 2019, these provisions have been converted into rules to be formulated by Government.

Hence, if we combine Code of wages 2019 along with rules formulated under it, it would be much bulkier and more complex as compared to previous 4 laws.

Discretionary powers:

Minimum wage will be determined according to the skill of employee, difficulty of work, geographical location etc. This strengthens discretionary powers of the administrators.

Employer Friendly rather than Worker Friendly:

Penalties/fines imposed under Code on wages, 2019 are quite meagre and hence may not be sufficient to discourage firms from violation of law. Hence, law can be considered to be mere paper tiger.

Grievance Redressal Mechanism:

Wage Code takes away jurisdiction of courts in providing justice to workers who have faced violations with respect to their wages. This means that workers can no longer access courts, but can only approach the quasi-judicial body and appellate authority set up under the provisions of the Wage Code

INDUSTRIAL RELATIONS CODE

The Code provides for the recognition of trade unions, notice periods for strikes and lockouts, standing orders, and resolution of industrial disputes. It subsumes and replaces three labour laws: the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act, 1946.

FIXED TERM EMPLOYMENT PROVISIONS

Provision:

Introduces provisions on fixed term employment. Fixed term employment refers to workers employed for a fixed duration based on a contract signed between the worker and the employer.

Feature	Fixed term employee	Permanent employee	Contact labour
Type of employment	Employment under written contract. No contractor or agency is involved. On the payroll of the establishment.	Employment directly under a written contract. On the payroll of the establishment.	Engaged in an establishment through a contractor or agency. Not on the payroll of the establishment.
Term	Stipulated fixed term. Employment lapses on completion of term, unless renewed.	Employed on a permanent basis. Notice must be given for termination of employment.	Based on terms negotiated with the contractor.
Nature of work	Not specified.	Hired for routine work.	Employment may be prohibited in certain cases, e.g., if similar work is carried out by regular workmen.

BENEFITS OF FIXED TERM EMPLOYMENT

- Allow employers flexibility to hire workers for a fixed duration and for work that may not be permanent in nature.
- Fixed term contracts are negotiated directly between employer and employee and reduce role of a middleman such as an agency or contractor.
- Benefits worker since Code entitles fixed term employees to the same benefits (such as medical insurance and pension) and conditions of work as are available to permanent employees.
- Improve conditions of temporary workers in comparison with contract workers who may not be provided with such benefits.

REASONS FOR OPPOSITION

- Unequal bargaining powers between worker and employer could affect the rights of workers.
- Employer has power to renew contracts and hence lead to Job Insecurity
- Code does not restrict the type of work in which fixed term workers may be hired. Therefore, they may be hired for roles offered to permanent workmen.

WHY ARE FIRMS CONTINUING TO HIRE CONTRACT WORKERS INSTEAD OF FIXED TERM EMPLOYEES?

- Ideally, to encourage a shift away from contract workers to fixed-term employees, government should have completely prohibited use of contract labour in core activities, that is, those activities for which the establishment is set up and includes any activity which is essential or necessary to the core activity. However, Industries have been allowed to hire contract workers in core activities under certain conditions such as a sudden increase of volume of work. Such a provision encourages use of contract workers and undermines the initiative of introducing fixed-term employment.
- Cost of hiring contract workers continues to remain lower than cost of hiring fixed-term employees. This is because Fixed-term employees need to be provided with benefits such as medical insurance, pension, provident fund etc.
- Reduced compliance cost for hiring Contract workers since it is staffing companies that are required to incur monitoring and litigation costs.
- Rapid growth of staffing companies

ADDRESSING CONSTRAINTS FACED BY FIXED-TERM EMPLOYEES

Constraints: Industrial Relations Code does not specify a minimum or maximum tenure for hiring fixed-term employees. It does not specify number of times contract can be renewed. It does not restrict type of work in which fixed term workers may be hired. Absence of such safeguards can lead to an erosion of permanent jobs.

HOW THIS COULD BE IMPROVED UPON?

Second National Commission on Labour (2002) had recommended that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than two years. International Labour Organisation (ILO) has highlighted that several countries restrict the use of fixed term contracts by: (i) limiting renewal of employment contracts (Example- Vietnam, Brazil and China allow two successive fixed term contracts), (ii) limiting duration of contract (Example- Philippines limits it up to a year), or (iii) limiting proportion of fixed term workers in the overall workforce. These recommendations of Second National Commission on Labour and ILO need to be incorporated.

APPLICABILITY OF STANDING ORDERS

Provision:

IR Code, 2020 provides that all industrial establishment with 300 workers or more must prepare standing orders on the matters related to: Classification of workers, method for termination of employment, grievance redressal mechanisms etc.

Problems:

This means that Small Scale Industries employing less than 300 workers would no longer be required to lay down standing orders and hence may lead to exploitation of workers.

CLOSURE AND LAY-OFF

Provision:

Earlier, an establishment having at least 100 workers was required to seek prior permission of government before closure, lay-off, or retrenchment. The threshold has been increased to 300 workers.

Problems:

Enable small scale Industries to hire and fire workers at will.

Strikes and Lockouts

Provision:

Prior notice of 14 days before a strike or lock-out.

Problems:

Impacts the ability of the workers to carry out Strike or lock-out; Decreases their bargaining power

POWER TO EXEMPT INDUSTRIES

Provision:

Provides government with power to exempt any new industrial establishment or class of establishment from any or all its provisions if it is in "Public Interest".

Reason for Opposition:

Factories Act, 1948 permitted exemptions from its provisions only in cases of public emergency and limited such exemption to three months. However, under IR Code 2020 there is no limit on time duration for which Industries can be exempted. The term "Public Interest" could be interpreted broadly and hence government has wide discretion in providing exemption.