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# ANALYSIS OF THE NEW LABOUR CODES: A LEGISLATIVE STEP UNDERMINED BY PERSISTENT GRAY AREAS AND LOOPHOLES

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## ABSTRACT

*India's labour laws are crucial for regulating relationships between employers, employees, and the government, promoting fairness and safety. "The consolidation of 29 labour laws into four new codes aims to modernize this framework, yet the unimplemented codes reveal gray areas and loopholes." This paper explores these deficiencies, particularly within the Code on Wages, Code on Social Security, Code on Occupational Safety, Health and Working Conditions, and Code on Industrial Relations. Recent tragic incidents of employee fatalities due to work-related stress highlight the pressing need for stronger legislation and enforcement. Additionally, an ongoing PIL by Uber and Zomato workers underscores the necessity for protecting rights in the unorganized sector. While countries like the UK and Singapore showcase progressive labour reforms, India has yet to implement comparable protections. The paper offers recommendations for improving compliance and refining the labour codes to establish a more equitable and worker-centric legal framework.*

## I. INTRODUCTION AND CONTEMPORARY RELEVANCE OF THE TOPIC

Labour laws in India play a critical role in regulating the relationship between employers, employees, and the government, ensuring fairness, safety, and welfare in the workplace. These laws govern various aspects of employment, including working conditions, wages, job security, dispute resolution, and social security, addressing the needs of both organized and unorganized sectors within the country's vast workforce.

The consolidation of 29 labour laws into 4 major labour codes is a commendable step toward modernization and simplification, yet these new codes remain unimplemented. Moreover, despite the reforms, there are still gray areas and loopholes in the laws, signalling the need for further refinement and reform to effectively address the challenges faced by workers.

The contemporary relevance of this topic is underscored by recent tragic incidents, including the death of an EY employee due to work-related fatigue and an HDFC employee's fatal fall, both linked to excessive work pressure. These cases highlight the urgent need for stringent legislation and effective enforcement by companies to safeguard employee well-being.

Similarly, the ongoing Public Interest Litigation (PIL) in the Supreme Court, filed by Uber and Zomato workers, underscores the growing demand for recognition and benefits for workers in

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the unorganized sector. This case further illustrates the need for robust and efficient labour laws to protect vulnerable workers.

On the international stage, countries such as the United Kingdom offer flexible working hours, New York mandates paid prenatal leave for pregnant employees, and Singapore provides temporary financial support to help individuals upskill for better long-term employment prospects. In contrast, India, despite being the most populous country with one of the largest labour forces, has yet to introduce comparable reforms. This gap in India's labour law framework calls for revolutionary changes that prioritize both societal welfare and employee rights.

## II. RESEARCH QUESTIONS

- Do the new labour codes adequately resolve the longstanding issues within the labour sector in India?
- What are the prevailing loopholes in the newly introduced labour codes?
- What amendments should be considered for the new labour codes prior to their implementation?

## III. CRITICAL ANALYSIS

To answer the first and second research question, the four new labor codes do not resolve the longstanding issues and the ambiguities and loopholes have been elaborated below-

### A. Code on Wages 2019

The state governments are not allowed to fix the minimum wages below the floor price. "The issue is that all the state governments fix their minimum wages above the binding floor price only. Rather than fixing a binding floor wage, the government should fix a binding minimum wage rate so that there is no dual wage rate. The Court in *Kamani Metals & Alloys Ltd. v. Their Workmen*, stated that fixing a wage structure is a complex task requiring a balance between ensuring workers receive their fair share of national income to improve their living standards and the negative impact wage increases can have on profits, potentially diverting capital from industries.<sup>2</sup> The difficulty is further heightened by regional and industrial variations.

To address these challenges, the court has established guiding principles over time for wage determination. "In *Karnataka Film Chamber v. State of Karnataka*, The court held that the concept of minimum wage is dynamic and evolves with economic growth and societal

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<sup>2</sup> Kamani Metals & Alloys Ltd. v. Their Workmen, (1967) II LLJ 55.

progress, varying across regions and industries.”<sup>3</sup> It must adapt to changes in the standard of living over time.

#### B. Code on Social Security, 2020

The code excludes a significant portion of workers by only covering those in establishments with a minimum number of employees (e.g., 10 or 20), offering benefits like pensions and medical insurance to these establishments. Workers in the unorganised sector, with fewer than 10 employees or self-employed individuals, are left reliant on discretionary schemes that the government may notify. Additionally, benefits like Provident Funds, pensions, and medical insurance are restricted to employees earning above a certain threshold set by the government, leaving other workers without such protections.

“In *N. M. Deshpande vs. Union of India*, the court reaffirmed the right of employees to receive health benefits and emphasized the need for employers to comply with legal requirements regarding medical and health provisions.”<sup>4</sup>

#### C. Code on Occupational Safety, Health and Working Conditions, 2020

The code includes specific provisions for the working conditions of certain professionals, such as limiting working journalists to a maximum of 144 hours over four weeks and granting additional leave to sales promotion employees. However, this appears discriminatory toward other workers who do not receive similar benefits. “In *K. K. Sethi vs. Union of India*, the Court emphasized that any form of discrimination in employment, including differences in pay and benefits without justification, is against the principles of equality and fairness enshrined in the Constitution.”<sup>5</sup>

#### D. Code on Industrial Relations, 2020

Workers' ability to strike and employers' capacity to lock out employees will be impacted by the Code, which mandates that all individuals working in an establishment must provide a 14-day advance notice before initiating a strike or lock-out. This notice remains valid for up to 60 days. Additionally, the Code prohibits strikes and lock-outs in two specific scenarios: first, during and for seven days following conciliation proceedings, and second, during and for sixty days following proceedings before a tribunal.

In “*S.P. Gupta vs. Union of India*, while this case primarily dealt with judicial accountability, it reinforced the principle that labour rights, including the right to strike, are subject to reasonable restrictions and must comply with legal standards.”<sup>6</sup>

#### E. Unorganized Workers, Gig Workers and Platform Workers

<sup>3</sup> Karnataka Film Chamber v. State of Karnataka, ILR 1986 KAR 2183.

<sup>4</sup> N. M. Deshpande vs. Union of India, (2014) 2 SCC 167.

<sup>5</sup> K. K. Sethi v. Union of India, (2000) 1 SCC 123.

<sup>6</sup> S.P. Gupta vs. Union of India, AIR 1982 SC 149.

The new labour codes have overlapping definitions, which may complicate their implementation. For instance, an Uber driver without a formal employment contract or regulated work hours might be classified as a gig worker due to the absence of a traditional employer-employee relationship. However, since the driver works through the Uber app, they could also be considered a platform worker. This overlap creates uncertainty regarding how specific schemes for these workers will apply. The **Code on Social Security 2020** lacks clarity on the benefits and entitlements for such workers and does not offer a unified registration or compliance system.

The Standing Committee's recommendation for a "minimum entitlement" to ensure portability of benefits across states for construction and unorganized workers was not implemented. The text suggests exploring a "new social contract" as proposed by French entrepreneur Nicolas Colin, which would address modern risks faced by gig workers, such as difficulties in securing housing or loans, and provide support for skill development as workers transition between jobs.

In the case of “*Indian Federation of App-Based Transport Workers v Union of India*,” the Supreme Court of India, where the transport workers' unions argued for the inclusion of gig workers and platform workers within the ambit of social security benefits, given their growing role in the economy.”<sup>7</sup> While the court acknowledged the emerging gig economy, it referred to legislative changes for formal recognition and did not issue a decisive judgment on the classification of such workers.

#### IV. CONCLUSION & RECOMMENDATIONS

In conclusion, the new labour codes represent a much-needed improvement to the existing labour framework in India. By streamlining and modernizing labour regulations, these reforms mark a significant advancement over the outdated laws currently in place. However, it is important to note that these reforms appear to be more employer-friendly, outlining conditions under which employers may potentially exploit workers' rights. While the reforms have simplified many compliance requirements, they have also introduced ambiguity by leaving key terms undefined. Ultimately, only time will reveal the long-term effectiveness of these new labour codes.

##### Recommendations to Enhance the Comprehensiveness of the Labour Codes-

##### 1. Amendments to the Codes Before Implementation

The identified loopholes, such as the discriminatory allocation of benefits to specific worker groups and the inadequate provisions for gig workers, should be addressed within the legislation before the new labour codes are implemented.

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<sup>7</sup> Indian Federation of App-Based Transport Workers v Union of India, W.P.(C) 1068/2021.



2. **Robust Compliance Mechanisms**


A comprehensive approach involving training programs, regular inspections, and strict penalties for non-compliance should be instituted by the relevant ministry. This will foster a culture of accountability and ensure adherence to the labour codes.

3. **Incorporation of International Best Practices**

International labour practices, such as fixed working hours in the UK and paid prenatal leave in the USA, should be adapted to suit the Indian workforce. These global standards can help improve labour conditions and employee welfare in India.

4. **Alignment with Corporate Policies**

Indian companies should ensure that their human resource policies are in full compliance with the new labour codes. Collaborative discussions, such as roundtables between government ministries and business leaders, can facilitate better understanding and implementation of enhanced HR practices that promote inclusivity and adherence to the new legal framework.



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