



VGNLI POLICY PERSPECTIVES



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New Labour Codes – Putting India on a High Growth Trajectory

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The Second National Commission on Labour which had submitted its Report in June, 2002 had recommended that the existing set of labour laws in India should be broadly grouped into four or five categories. More recently, the Global Commission on Future of Work, 2019 constituted by the International Labour Organisation as a part of its centenary, had expressed that there are strong and crucial links between trade, financial, economic and social policies and that the success of human-centered growth and development agenda of the nations depend on coherence across these policy areas.

To match the emerging requirements of the world of work, make the existing structures of labour governance more worker and employer friendly, put the economy on a high growth trajectory and ensure inclusive growth, the Ministry of Labour and Employment decided to simplify, rationalise and amalgamate the existing 29 labour laws into Four Codes – Wages; Industrial Relations; Social Security and Occupational Safety, Health and Working Conditions. These Codes have been rolled out after sustained and wide ranging discussions and consultations with various social partners and the state governments. While the Code on Wages was passed by the Parliament in 2019, the other three Codes were passed in September 2020.

The Code on Wages, 2019

The existing four central labour legislations viz. The Payment of Wages Act, 1936; The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965 and The Equal Remuneration Act, 1976 have been rationalized and subsumed into this Code.

A significant feature of this Code is its strong intent to universalize its applicability. The payment of minimum wage was hitherto confined to workers engaged in notified scheduled employment. With the enactment of this Code, minimum wages legislative protection gets extended to hitherto excluded categories such as home based workers, domestic workers, marginal workers in the informal economy and other similar workers. As per the relevant provision, 'no employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate government'. Provision of minimum wages to all segments of workers was a long pending demand which has been addressed in this Code.

With the enactment of this Code, payment of wages in time to all workers without any unauthorised deductions will become the new norm. The Code has also put the responsibility and the proof of payment of wages squarely on the employer, which would turn out to be a huge relief to the myriad illiterate and less educated informal economy workers. Such a transparency in the

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payment of wages would go a long way in boosting the morale of workers and bringing economic inclusiveness. The Code has thus been able to extend its scope of the minimum wage regulations to all wage workers from the existing limit of 66 per cent workers as per the ILO India Wage Report (2018) and this universal coverage is in accordance with the ILO Centenary Declaration (2019). Access by workers to minimum wages would enhance their purchasing power and drive aggregate demand in the economy.

Highlights

- Existing Four Wage-related Acts become Single Code
- Universalisation of Payment of Wages and coverage of workers
- No Unauthorised deductions and no gender discrimination in wage payment
- Premium on Skills – a boost to the ‘Skill India’ Programme
- Review of Minimum Wages atleast once in five years
- Re-designation of ‘Inspector’ as ‘Inspector-cum-facilitator’

The minimum wage rates have been classified as per the geographical region of the country and the levels of skill of the workers. Provisions also exist for defining skills objectively by using National Skills Qualification Framework (NSQF) criteria so that higher level of skills, competencies and qualifications are appropriately rewarded through higher minimum wages. This will also give a fillip to the “Skill India” programme of the government by putting appropriate premium on skills whereby encouraging workers, especially the young to constantly re-skill and up-skill themselves.

Prohibition of gender based discrimination in matters related to minimum wages, payment of wages, recruitment and conditions of work have the potential to enhance the participation rate of women in the labour market, thus financially and socially empowering them. The Code has also provisioned for review of fixation of minimum wages ordinarily in every five years.

The re-designation of ‘Inspector’ as ‘Inspector-cum-Facilitator’ is likely to change the perception of employers and the inspecting officials, towards each other. The inspector-cum-facilitator now may not just inspect but may now be expected to provide information and advice to employers and workers on effective ways to comply with the various provisions of the Code. Further, the inspection regime and landscape is likely to become more transparent and smoother with the introduction of web-based randomized generation of inspection schedules and jurisdiction-free inspections. The universalisation of minimum wages and their timely payment are also likely to reduce the number of industrial disputes as most of them arise due to non-payment or short payment or delayed payment of wages.

The Industrial Relations (IR) Code, 2020

The relevant provisions of the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947 have been amended, rationalized and simplified in this new Code. The Code aims at bringing in speed, transparency and accountability in the enforcement of labour laws and promoting better employer-employee relations.

The Code has prescribed many worker friendly initiatives. It mandates the industrial

establishments to prepare standing orders on matters related to service viz. classification of workers; publishing information about hours of work, holidays, paydays, wage rates; available grievance redressal machinery for workers; issue appointment letters to the workers at the time of appointment; apart from others. The Code prohibits the employers from restricting workers from forming trade unions and establishing employer sponsored trade unions. The definition of 'Worker' has been further revised by including persons getting salary up to Rs. 15,000/- per month or an amount as may be notified by the Central Government from time to time, as against the current ceiling of Rs. 10,000/-, which would mean a larger number of workforce would be benefited from the social dialogue process.

The Code has put in place a simple and effective machinery to resolve the industrial disputes. The central or state governments may appoint 'Conciliation Officers' to mediate and promote settlement of industrial disputes. If no settlement is arrived at, then any party to the dispute can make an application to the Industrial Tribunal. In place of hitherto multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts under the existing Industrial Disputes Act 1947, an Industrial Tribunal has been envisaged as an adjudicating body to decide on the appeals against the decision of the conciliation officer. A 2-member Industrial Tribunal with second member from administrative side, would help in expeditious finalization of the mounting cases in the Central Government Industrial Tribunals.

The introduction of the 'Fixed-Term Employment' (engagement of a worker on the basis of a written contract of employment for

a fixed period) with all statutory benefits like social security, wages, pro-rata gratuity, etc. on par with the regular employees who are performing same work or work of similar nature, is expected to uphold equity and promote inclusiveness among the workforce in the country. Further, termination of the service of a worker as a result of completion of tenure of a fixed term would not be considered as retrenchment. The introduction of fixed-term employment would also provide functional flexibility to the enterprises to plan their workforce requirements precisely as per the seasonality of operations and the demands of the ever dynamic market.

Key Reforms

- Simplified, rationalized and amalgamated existing three Acts related to Industrial Relations
- Enterprises can hire workers on fixed-term contract for any duration- benefits to workers on par with regular worker.
- 'Re-skilling fund' set up for training of retrenched employees.
- The threshold limit of workers in case of retrenchment, etc. increased from 100 to 300. Now retrenched worker to be paid 15 days' wages within 45 days.
- Concept of 'Negotiating Union' and 'Negotiating Council' introduced.
- Definition of 'Worker' enlarged to include workers with monthly pay upto Rs 15,000/-.

A distinguishing feature of the code is the provision of a 'Negotiating Union' or a 'Negotiating Council' in an establishment, wherein a Trade Union will be recognised as a sole 'Negotiating Union' if it has the

support of 51% or more workers on the muster roll of that establishment. If no single trade union has the support of 51% or more of workers then a 'Negotiating Council' representing all trade unions who have support of not less than 20% of the total workers on the muster roll with one representative for each 20% will be constituted to negotiate with the employer. Further, an enabling clause has also been added to prescribe through Rules matters on which negotiations will take place, manner of verification of membership and facilities which would be provided at establishment level to the Negotiating Union/ Council by the establishment. Requirement of a notice period of 14 days has been incorporated for strikes and lockouts in establishments.

The threshold limit of workers under the Industrial Disputes Act for seeking approval by establishments in case of retrenchment, closure and lay-off has been increased from 100 to 300 workers. This would help the enterprises to grow in size in terms of workforce count and scale up their operations. It would also help the workers as their numbers would now not get under-counted in establishments for various regulatory reasons. The importance of scaling up the operations in the manufacturing and services sectors to make Indian products and services more competitive – both domestically and internationally, have been even flagged by the earlier annual pre-budget Economic Survey's. With the enhancement in the upper ceiling from 100 to 300 workers in establishments, there are possibilities of enterprises becoming more productive by attaining economies of scale as well as economies of scope, thus paving way towards making Bharat Atmanirbhar.

The Code also provisions for a 'Re-skilling Fund' in the enterprises for training of retrenched workers with payment of 15 days wages within 45 days from the date of retrenchment. This would help the workers in getting themselves re-skilled and up-skilled as per the demands of the market, apart from acting as a succor.

The Occupational Safety, Health & Working Conditions (OSH) Code, 2020

The Code aims at providing a broad legislative framework to ensure safe and better working conditions for the numerous workers in the country. It simplifies and amalgamates the existing 13 labour laws relating to safety, health and working conditions namely: The Factories Act, 1948; Mines Act, 1952; Building & Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996; Plantation Labour Act, 1951; Motor Transport Workers Act, 1961; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Contract Labour (Regulation and Abolition) Act, 1970; Sales Promotion Employees (Condition of Service) Act, 1976; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981; Dock Workers (Safety, Health and Welfare) Act, 1986; Working Journalists and other Newspapers Employees (Condition of Service) & Miscellaneous Provisions Act, 1955 and Working Journalists (Fixation of rates of Wages) Act, 1958. The Code widens the ambit of provisions and enhances the coverage of workers manifold. The definition

of inter-state migrant worker has been enlarged to include workers recruited or engaged by an employer directly, from one state to another for employment in the establishment, thus benefiting the migrant workers in many ways.

Key Reforms

- Simplified, rationalized and amalgamated existing 13 Acts related to OSH
- Scope of migrant and Cine/Theatre workers enlarged
- Women can now work in Night Shifts
- Mandatory Annual Health Check-up for workers at employers cost
- No overtime working without consent of the worker
- Issuance of Appointment Letter made mandatory

The Code provisions that workers cannot be compelled to work overtime without their consent. It also proposes to address the health concerns of the workers by prescribing mandatory annual health check-up/examination for employees, subject to laid down criteria, the cost towards which would be borne by the employer. This would lead to timely detection and cure of occupational diseases, thus addressing the health concerns of workers.

With the advent of this Code, the number of registers/returns/forms would get reduced whereby paving way for more transparency and promoting ease of doing business. The

introduction of a single All India license valid for a period of 5 years, substituting the existing mechanism of issuing/obtaining multiple licenses against each work order under the Contract Labour Act and audit by third party for start-ups would create an amiable ambience for the businesses to grow and generate more employment.

The conditions of work in the audio-visual and digital industry has been addressed in the Code. The provisions in the Cine Workers and Cinema Theatre Workers Act, 1981 which is currently restricted to cine and theatre workers, has been extended to include all audio visual workers, employed directly or through a contractor viz. actors, musicians, singers, anchors, dancers, dubbing artists including stunts, all skilled/unskilled/manual/supervisory/technical personnel encompassing all forms of electronic and digital media. Similarly, the definition of working journalist has been extended to include all journalists including news readers working in electronic media, e-paper establishment, radio, etc.

In order to protect and formalize workers' rights, mandatory provision for issuing appointment letter by the employer of an establishment has been incorporated in the Code. This would benefit the workers as the appointment letter will be a proof of employment and experience as well. The Code further empowers women workers by permitting them to work at night, i.e. beyond 7.00 p.m. and before 6.00 a.m. subject to the conditions relating to their safety, their consent, observance of holidays, working

hours or any other condition as prescribed by the appropriate government.

The Code on Social Security, 2020

The existing nine pieces of Social Security Legislations in the country, viz. The Employee's Compensation Act, 1923; Employees State Insurance Act, 1948; Employees Provident Fund and Miscellaneous Provisions Act, 1952; Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972; Cine Workers Welfare Fund Act, 1981; Building and Other Construction Worker's Welfare Cess Act, 1996 and Unorganised Workers Social Security Act, 2008 have been simplified and amalgamated into the comprehensive Social Security Code. The Code, for the first time, attempts to universalize the social security measures for the entire workforce in the country- working in both unorganized and organized sectors.

One of the notable features of the code is the strong intent to cover even the workers belonging to the gig and platform economy. While most of the countries, including the developed and emerging are attempting to understand comprehensively the contours of working of these category of workers, India has made significant efforts in trying to bring them into the labour market fold and secure them in matters relating to life and disability cover, health and maternity benefits, old age pension, etc. The Code has also introduced initiatives for enhancing the social security of unorganised workers (home-based, self-employed/own account, casual wage workers, etc.) by provisioning their access to

schemes like provident fund, employee injury benefit, housing, educational benefits for their children, old age assistance and funeral expenses.

Key Reforms

- Simplified, rationalized and amalgamated existing Nine Acts related to Social Security
- Universalisation of Social Security, including for eligible Gig and Platform economy workers
- Life & Disability cover, Health and Maternity benefits, Old age pension, etc. to all eligible workers
- Establishment of a Social Security Fund & Social Security Organisation with Boards to monitor
- Extension of PF coverage to all enterprises instead of hither to only scheduled ones
- Enterprises involved in hazardous operations can be brought into ESIC ambit even if there is one worker

The Social Security Fund to be set up would be used to provide welfare benefits to the workers. It will be monitored by the Social Security Organisation with various boards meant for the purpose. The Code allows schemes for unorganised workers to be additionally funded by the corporate social responsibility fund defined under the Companies Act, 2013. A significant attempt has been made to reduce the gratuity period from five years to three years for working journalists. For fixed-term workers, gratuity is linked to their tenure of work and for seasonal workers will be equivalent to salary for seven days for every season of work

undertaken. The Provident Fund coverage has been extended to other establishments which was hitherto restricted to scheduled establishments. Like-wise there is a provision for appropriate government to bring any organization/ enterprise into the fold of Employees State Insurance Corporation (ESIC) if such necessity arises due to hazardous/ dangerous nature of operations. The Code also attempts to further empower women by universalising the maternity benefit to all women workers. It mandates the employers to pay average wages for the prescribed period of absence due to maternity reasons. These provisions are expected to promote social and financial inclusion of all workers on a colossal scale in the country.

To conclude, the labour reforms have been undertaken with the twin goals of promoting socio-economic inclusiveness and ensuring sustainability of enterprises and with an overall objective of putting India on a high growth trajectory - thus enabling India to take a leap towards achieving the Sustainable Developmental Goals, 2030 of the United Nations.

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