Research Paper
Impact Factor: 7.358
Peer Reviewed & Indexed Journal
www.ijmsrr.com

IJMSRR
E- ISSN - 2349-6746
ISSN -2349-6738

IMPLEMENTATION OF LABOUR CODES REGIME- A MOVE TO WITHERAWAY LABOUR JURISPRUDENCE IN INDIA

Dr. Rajendrakumar Hittanagi
Karnataka State Law University, Hubballi.

Abstract
India's Labour Policy is mainly centred towards various labour laws. These laws have evolved over a period of time in response to two main needs. In the first place, they reflected certain needs of individuals; society and the nation based on the Fundamental Rights guaranteed by the Constitution. The labour laws were also influenced by important Human Rights and the conventions and standards that have emerged from the United Nations and the International Labour Organization. The recent initiatives of the Government of India to implement four major labour codes in India codifying and consolidating 29 various labour legislations shows its commitment to welfare state. The article shows issues and concerns connected with these labour codes which may lead to further reforms in the field of industrial jurisprudence.

Key words: Labour Codes, Trade Unions, Wage and Industrial Relations.

Introduction

The role of right of freedom of association is significant in the development of rights of labour and capital in majority states of the world. Historically, it is a proven fact that the enactment of labour legislations in India from the period of later part of 19th century till to the beginning of the first decade of 21st century was by a way of a strong Trade Union movement in the country[1]. The tripartite forum in labour relations, namely the Indian Labour Conference (ILC) played a committed role in this context from the phase of 1940s to the end of 20thCentury. Any major initiations by way of reforms or repeal into the subject of existing labour legislations witnessed a committed constitution of High Power Commission namely, the National Commission on Labour followed by a positive response from the State on its' recommendations. In this background if one examines the initiation of four labour codes, an amalgamation of twenty nine existing key labour legislations prove the fact that such initiation have no background of any recommendations from such High Power Commissions. The initiation of present four Labour Codes run even counter to the recommendations made by the Second National Commission on Labour (NCL) 2002.[2] The existence of industrial relations laws, laid solid foundations for the emergence of labour jurisprudence in India with the active interpretations made by the higher judiciary.

Background

The National Democratic Alliance (NDA) government after assuming its power for a third term, immediately initiated the task of implementation of these four Labour Codes by directing the remaining few States to comply with the process of framing and the publication of Rules made there under. Initially the exercise of initiation of new Labour Codes commenced in the year 2015 and lasted till 2020. During this crucial period, the Trade Union movement in India raised their concerns about the efficacy of these Labour Codes and termed them as anti-labour.[3]

[1]Last visited on 3.12.2025 available at https://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue6/Version-4/B020640810.pdf
[2] Last visited on 2.12.2025 available at https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf
[3] Last visited on 2.11.2025 available at https://publicservices.international/resources/news/unions-erupt-in-protests-in-india-against-anti-worker-labour-codes-?id=16291&lang=en

Codes on Labour Law

A perusal of the content of these four Labour Codes, leads to the establishment of a threshold part statement, namely 'the Code on Industrial Relations, 2020[4] (IR Code) and Code on Occupational Safety, Health and Working Conditions, 2020 (Code on OSHSC) will have no application of whatsoever for any industrial establishment in the country' (including 'labour contractor' in the capacity of an employer, if he hires the services of the persons under the category of employees). It is an absolute freedom regime for an employer of an industrial establishment in the country to hire and fire a worker or an employee according to his own will or wish. A worker or an employee employed in an industrial establishment either individually or collectively have no legally ensured right to bargain with his employer regarding his- wages (except a right to claim for floor level minimum wage); security of employment or service; or conditions of service. . In this context, it is interesting to have a perusal of certain vital provisions in these Codes. The definition of 'Registrar' of trade unions confines only to the Registrars appointed by the State Governments. After coming into operation of the Code, no central trade unions will be in existence. Suitably the Industrial Relations (Central) Rules, 2020 do not contain any provisions or Forms pertaining to the registration of a trade union and its' related formalities. Employees or workers employed in an industrial establishment cannot form a trade union nor can apply for the registration of a trade union under the Code in view of a provision for an agreement between the employer and employees or workers. However, even in absence of such agreement still the workers cannot form a trade union since the definition of worker does not include workers employed through a labour contractor or workers employed under 'fixed term' contract. Under the Code an employer can employ the workers as 'fixed term' workers in his industrial establishment. A worker can be hired as contract labour by the employer within the meaning of the term 'contract labour' as defined in the Code on OSHWC. An employer is no way under an obligation to issue a letter of appointment to the workers employed in his employment. The employees employed in an industrial establishment are alone entitled to be issued a letter of appointment as specified under the Code. The IR Code defines both the terms, namely an employee and the worker. The term employee is nowhere dealt in the forgoing provisions of the Code save in case of the application of Chapter III by way of an implication. In this regard an employer is having an absolute freedom to enter into a contract of employment with an employee under any terms. No scope for any regulation of such contract of employment under the Code. What ought to have been in the domain of express terms of labour legislations now have been passed on into the realm of an ordinary law of the land, namely the Indian Contract Act,1872. The key areas in matters relating to industrial relations under the Code, have no application to the employees, the workers, if they are hired through a labour contractor or employed under the category of 'fixed term' workers, employed in an industrial establishment.[5]

The definition of the term settlement confines only to the employer and worker and as such the employer is not under any binding obligation to enter into a settlement with his employees or with 'fixed term' workers. The matters relating to ' Unfair Labour Practices' as listed in Schedule II of the Code would be redundant both for the employees at the first instance and for workers, if the workers are hired through a labour contractor or employed under 'fixed term' category. In such situations, the provisions relating to recognition of Negotiating Union or Negotiating Council in an industry or establishment would be redundant as for as the employees at the first instance or for workers if they are hired through a labour contractor or employed under 'fixed term' category. The requirement of

[4] Last visited on 2.11.2025 available at https://www.pib.gov.in/FactsheetDetails.aspx?id=150475&NoteId=150475&ModuleId=16&reg=3&lang=2

[5]Definitions under the Code on Industrial Relations,2020

framing of Model Standing Orders is not mandatory in respect of an establishment wherein employees are employed and also in situations where in less than 300 workers are employed. In this context, it is pertinent to note the fact that the Code does not contain any provisions relating to Model Standing Orders. An employee or a contract worker or a 'fixed term' worker in an organization have no right under the Code to be represented by a registered trade union in cases of any disputes or domestic inquiries. An employee has no legal right to approach an industrial tribunal relating to an industrial dispute involving his discharge or dismissal or otherwise termination of his services. The right of a worker to approach an industrial tribunal after the conciliation proceedings in respect of industrial dispute is confined only to matters which are not settled by the conciliation officer. This would run counter to the very theme of conciliation.

The present Code provides exceptions to the requirement of notice of change in two situations, namely emergent situation requiring a shift in working schedule as well as the power of the appropriate Government by an order to grant an exemption to any industrial establishment from the provisions of the Code. The Appropriate Government is also having an exclusive power to exempt by notification any industrial establishment from the provisions of the Code, which is unimaginable from the point of view of welfare of workers employed in an industrial establishment. The provisions relating to protection of service conditions to remain unchanged during the pendency of proceedings are made applicable only to workers employed in an industrial establishment and not to the employees or fixed term workers.

In entirety, after coming into force of the IR Code[6], an employer is bestowed with the following advantages namely- (i) no scope for existence of trade unions in the establishment or in an industry ; (ii) no compulsion to enter into a settlement with regard to conditions of service; (iii) no compulsion to frame or adopt Model Standing Orders applicable to his industrial establishment; (iv) total relief from strikes or labour unrest in the industrial establishment; (v) blanket free privilege from industrial disputes in the establishment; (vi) no compulsion to recruit the persons under the category of regular workers or regular employees – a regime of total freedom in matters relating to contract of employment; (vii) absolute freedom for an employer to go for lay off ; retrenchment and for closure in all situations; (viii) a total mitigation of transactional costs such as loss on account of strikes or lockouts, conduct of industrial disputes before the conciliation; industrial tribunals; arbitration and higher judiciary; (ix) total exemption from the payment of gratuity and the bonus etc.

Conclusion

One can imagine the extent of freedom granted to an employer under the popular slogan of 'easing the business' regime as propagated by the Government of India and its prospective unimaginable hardships on the lives of the millions of working class population in the country, whose livelihood is thrown to the feet of employers' mercy. It is hard to imagine as to how these drastic adverse labour reforms have gradually crept into the domain of a country which is having a foundational document, namely the 'Constitution of India' which vociferously commits itself to the concepts of social welfare and social justice. Can the labour movement in India regenerate itself in taking up the challenge to ensure a minimum level of decent conditions of work to the millions of labour population in the country which is already confronting with the challenges of exploitation by the capital as well as job loss situation?

[6] The Code on Industrial Relations,2020