

A CRITICAL ANALYSIS OF LABOUR CODES

*A dissertation to be submitted in partials fulfillment of the requirement
for the degree of Master of Laws.*

In

School of Legal Studies

(2020-21)

By

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Under the Guidance

of

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Session 2020-21

CERTIFICATE

This is to certify that the dissertation titled “**A CRITICAL ANALYSIS OF LABOUR CODES**” is the work done by **Aditi** under my guidance and supervision for the partial fulfilment of the requirement for the Degree of Master of Laws in School of Legal Studies, Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her success in life.

Date: 14/06/2021

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- iii. I have not permitted, and will not allow, anybody to copy my work with the purpose of passing it off as his or her work.
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ABBREVIATIONS

1. NCL National Commission on Labor
2. GOVT. Government
3. NRF National Renewal Fund
4. VRS Voluntary Retirement Scheme
5. EPFO Employee Provident Fund Organization
6. EPF Employee Provident Fund
7. MINISTRY Ministry of Labor and Employment
8. ESIC Employee State Insurance Corporation
9. CoW Code on Wages
10. CoSS Code on Social Security
11. CoIR Code on Industrial Relations
12. OSHWC Occupational Safety, Health, and Working Conditions Code
13. IR Industrial Relations
14. ID Industrial Disputes

CHAPTER 1: INTRODUCTION

1.1 STATEMENT OF PROBLEM

British rule left India with its labor laws and practices. However, it took a long time for labor rules to reform until 1991, when liberalization reached India's borders. India reached new heights after its liberalization efforts. Every government's priority has always been labor reform. The current Government has begun rephrasing and replacing practically the whole set of Central labor legislations by 2022, keeping with an overall vision of making India a hub of the manufacturing base. Prior to the 1970s, India's labor laws were primarily designed to serve the needs of the manufacturing sector, and they failed to solve the difficulties of the millennium's quickly increasing service sector, which now accounts for around 55 percent of our GDP.¹ Many obsolete and restrictive rules in present labor regulations regarding wages safeguard around 40% of the organized workforce, severely limiting the organized sector's ability to generate jobs.² The majority of the 10-12 million young people who enter the labor field each year are forced to work in the unorganized informal sector, where working conditions and earnings are poor and survival is difficult.

We have a profusion of labor and employment rules in India, but they are not effectively implemented. The Indian Labor and Employment Rules have gaps, and there is a lack of execution of these laws in the real world, according to the Economic Survey 2005-2006.³ The Labor Codes attempt to replace outdated and ineffective labor regulations with more accountable and transparent ones, which is urgently needed. It will also bring existing labor laws into line with the emerging economic picture, reduce complexity by establishing standard definitions and reducing the number of authorities under several Acts, and increase openness and accountability in labor law enforcement. This, in turn, would make compliance easier, so accelerating the establishment of manufacturing units and promoting labor-intensive industries like agricultural and manufacturing exports. This would improve employment options as well as formalize them while also protecting worker safety, social security, and welfare.

¹ 'Economic Survey 2019-20 | PRSIndia' <<https://www.prsindia.org/report-summaries/economic-survey-2019-20>> accessed 15 June 2021.

² *ibid.*

³ 'Economic Survey 2005-06 | National Portal of India' <<https://www.india.gov.in/economic-survey-2005-06>> accessed 15 June 2021.

To close loopholes and make existing labor and employment rules more accountable, transparent, and simple to apply in 1999, the Second National Commission on Labor was established with the goal of rationalizing current labor laws in the organized sector and proposing umbrella legislation to provide a basic degree of protection to workers in the unorganized sector.⁴ The Commission's report was released in June 2002, and it recommended that the existing labor laws be grouped into the following categories:⁵

- i. *“Wages*
- ii. *Labor-management relations*
- iii. *Social Security*
- iv. *Occupational Health and Safety, as well as Working Conditions”*⁶

1.2 RECOMMENDATIONS OF THE 2ND NATIONAL LABOR COMMISSION⁷

1. *“Only three national holidays should be gazetted, namely Independence Day, Republic Day, and Gandhi Jayanti Day; two additional days may be added to be determined by each State according to its own tradition; and apart from these, each person should be allowed to take ten restricted holidays per year, Government holidays should be delinked from holidays under the Negotiable Instruments Act”*.⁸

2. *“Flexibility in the number of hours worked per week and overtime pay.”*⁹

3. *“Attempting to convert the basis of tenure in all positions (permanent and non-permanent) to contractual and for specified periods necessitates a fundamental shift in mindset. If changing the foundations of all work is a social requirement because it has become an economic need for industrial and commercial firms, it is also required to build societal tolerance for the shift and social institutions capable of dealing with the repercussions.”*¹⁰

4. *“The government may establish a list of high-paying jobs that are now classified as workman employment but are not covered by workman laws and are included in the proposed law for the protection of non-workmen. Another option is for the government to step in. fix a salary cut-off limit that is sufficiently high in the current situation, such as Rs.25,000/- p.m. After then, the employee will not be treated as a regular “workman”.*”¹¹

⁴ ‘NLCII-Report.Pdf’ <<https://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>> accessed 15 June 2021.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Para 5.29 of report by 2nd National Commission on Labor

⁹ Para 5.32 of report by 2nd National Commission on Labor

¹⁰ Para 5.34 & 5.35 of report by 2nd National Commission on Labor

¹¹ Para 6.19 of report by 2nd National Commission on Labor

5. *“It would seem logical to keep all supervisory people, regardless of their pay/salary, outside of the worker's rank and out of the reach of labor laws intended for workers. All supervisory personnel should be lumped together with those who perform management and administrative duties. The Commission also suggested that this new definition of worker be incorporated into all labor legislation. Because supervisory personnel will now be part of the managerial fraternity, management is required to look out for their interests.”*¹²

6. *“The Commission believed that the coverage and definition of the term "worker" should be consistent across all groups of laws, with the caveat that social security benefits must be available to all employees, including administrative, managerial, supervisory, and other employees not classified as workers or excluded from the category of workers.”*¹³

7. *“It is also required to offer a minimum level of protection against unjust dismissal or removal for managerial and other (excluded) personnel. This must be done through a labor court or the Labor Relations Commission or through arbitration.”*¹⁴

8. *“The Industrial Disputes Act of 1947, the Trade Union Act of 1926, the Industrial Employment (Standing Order) Act of 1946, and the Sales Promotion Employees (Conditions of Service) Act of 1976 are the current key legislation governing labor relations. There are also state-level laws on the matter. The group proposed that all of these laws' provisions be judiciously merged into single legislation known as "The Labor-Management Relations Law" or "Law on Labor-Management Relations”.”*¹⁵

9. *“The commission proposed that a small-scale unit-specific law be enacted. They came to the conclusion that 19 workers would be a suitable maximum. Any business with more than that amount of employees cannot be considered "small." Registration of establishment, (provisions pertaining to) securing safety, health, and welfare, awards of work, leave, payment of wages, payment of bonus compensation in case of layoff, retrenchment, and closure, resolution of individual and collective worker disputes, and so on are all included in the composite law we propose for small businesses. The proposed bill also included measures for social security. A composite law, according to the Commission, will not only protect the interests of workers in these businesses but will also make it easier for small businesses to comply with the law.”*¹⁶

10. *“Every workplace must set up a grievance redressal committee with an equal number of worker and employer representatives. The aforementioned committee will be the entity to which a worker's employment grievances will be sent for a decision within a specified time frame.”*¹⁷

¹² Para 6.20 of report by 2nd National Commission on Labor

¹³ Para 6.21 of report by 2nd National Commission on Labor

¹⁴ Para 6.22 of report by 2nd National Commission on Labor

¹⁵ Para 6.26 of report by 2nd National Commission on Labor

¹⁶ Para 6.28 of report by 2nd National Commission on Labor

¹⁷ Para 6.80 of report by 2nd National Commission on Labor

11. *"The PF Act should be extended to all types of businesses with the exception of those listed above".*¹⁸

12. *"The Payment of Gratuity Act could be combined with the Employees' Pension Fund Act to create a social insurance program."*¹⁹

13. *"Make a provision for all employees to receive an educational allowance."*²⁰

14. *"A national scheme should be developed to give pensions to leprosy patients and mentally ill people in the same way that a physically handicapped person receives a pension."*²¹

15. *"Three types of social security plans will be available:*

i. *Contributory scheme of the form of social insurance*

ii. *Partially contributing and partly socially aided schemes such as subsidized insurance/welfare funds.*

iii. *This will be a completely non-contributory social aid program."*²²

16. *"A permanent catastrophe management commission, similar to the election commission, should be established."*²³

17. *"The National Renewal Fund (NRF) was formed in February 1992 to give a pay guarantee that had to be used for re-training, re-deployment, counseling, and other purposes; but, in fact, the NRF has primarily been utilized to implement the VRS. This fund should be restructured to function as a pay guarantee fund."*²⁴

18. *"The Commission recommends that EPFO commission an independent investigation into the operation of all exempted funds and evaluate the entire mechanism of providing exemptions from the EPF Act's stipulations."*²⁵

19. *"The Workmen's Compensation Act should be changed from an employers' liability scheme to a social insurance plan, with coverage gradually expanded to other occupations and classifications of employees and limiting restrictions in Schedule II abolished."*²⁶

20. *"The penalties should be made more severe so that they have a deterrence impact. Serious crimes should be made punishable."*²⁷

21. *"Several further suggestions were made on the following topics: Child labor and women*

i. *Development of skills:*

¹⁸ Para 8.149 of report by 2nd National Commission on Labor

¹⁹ Para 8.182 of report by 2nd National Commission on Labor

²⁰ Para 8.182 of report by 2nd National Commission on Labor

²¹ Para 8.380 of report by 2nd National Commission on Labor

²² Para 8.343 of report by 2nd National Commission on Labor

²³ Para 8.393 of report by 2nd National Commission on Labor

²⁴ Para 8.179 of report by 2nd National Commission on Labor

²⁵ Para 8.126 of report by 2nd National Commission on Labor

²⁶ Para 8.97 of report by 2nd National Commission on Labor

²⁷ Para 8.97 of report by 2nd National Commission on Labor

- ii. *Administration of Labor*
- iii. *Participation of workers in management*
- iv. *The country's employment situation*
- v. *Wages and pay policy are being reviewed*
- vi. *Work on labor statistics and research*
- vii. *Laws on the Constitution and the Workplace*²⁸

1.3 THE CONSTITUTION AND THE LABOR LAWS

Labor is a subject under the Concurrent List of the Indian Constitution²⁹, which means that both the Central and State governments can enact legislation on it, with the exception of some topics that are reserved for the Centre, as listed below:

- i. *“Entry No. 55 of the Constitution of India's Seventh Schedule, dealing with labor and safety in mines and oilfields, is included in the Union List.”*³⁰
- ii. *“Entry No. 61 on the Union List, which deals with industrial issues involving Union employees.”*³¹
- iii. *“Entry No. 65 of the Union List deals with Union agencies and institutions for:*
 - a. *professional, vocational, or technical education, including police officer training.*
 - b. *the encouragement of specialized research or studies*
 - c. *In the investigation or detection of crime, scientific or technical aid is provided.”*³²
- iv. *Entry No. 22 of the Seventh Schedule of the Constitution of India, which deals with trade unions, industrial and labor issues, is included in the Concurrent List.*³³
- v. *“Entry No. 23 of the Concurrent List, which deals with social security and social insurance, as well as employment and unemployment.”*³⁴

²⁸ Para 8.97 of report by 2nd National Commission on Labor

²⁹ ‘Constitution of India | National Portal of India’ <<https://www.india.gov.in/my-government/constitution-india>> accessed 15 June 2021.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

- vi. *“Entry No. 24 of the Concurrent List deals with labor welfare, including working conditions, provident funds, employers' liability, workers' compensation, invalidity, and old-age pensions, and maternity benefits.”*³⁵

1.4 LITERATURE REVIEW

A. LABOR AND INDUSTRIAL LAWS by Dr. V G Goswami (Central Law Publication)³⁶

*“The Industrial Disputes Act, 1947, The Factories Act, 1948, The Minimum Wages Act, 1948, The Payment of Wages Act, 1936, The Payment of Gratuity Act, 1972, The Payment of Bonus Act, 1965, The Trade Unions Act, 1926, The Employees' Compensation Act, 1923, The Employees' State Insurance Act, 1948, The Employees' Provident Fund Act, 1948, The Employees' Provident Fund Act, 1948, The Employees' Provident Fund and Miscellaneous Provisions Act, 1952, The Fatal Accidents Act, 1855, The Industrial Employment (Standing Orders) Act, 1956, The Maternity Benefit Act, 1961, The Apprentices Act, 1961, The Equal Remuneration Act, 1961, The Child Labor (Prohibition and Regulation) Act, 1986 and The Contract Labor (Regulation and Abolition) Act, 1970.”*³⁷

It presents the fundamentals of labor and industrial laws in a methodical and easy-to-understand manner.

B. INDUSTRIAL LABOR PROBLEMS IN INDIA by V V Giri (Asia Publishing House)³⁸

*“The book examines India's primary labor problem and attempts to compile basic knowledge on essential aspects of the Indian labor situation. The goal is to present significant information in a straightforward, understandable manner that is accessible to a wide range of people. In addition, the book has been translated into several Indian languages.”*³⁹

C. LABOR LAW AND SOCIAL SECURITY by S.C Shrivastava (Eastern Book Company, Lucknow)⁴⁰

The book is structured into discrete parts that cover all topics and make it easy to understand new to the edition and covers all key labor law revisions through 2016.

³⁵ Ibid.

³⁶ Dr. V G Goswami, *LABOR AND INDUSTRIAL LAWS*, 11th Central Law Publication 2019

³⁷ Ibid.

³⁸ V V Giri, *LABOR PROBLEMS IN INDIAN INDUSTRY* 3rd Asia Publishing House 1980

³⁹ Ibid

⁴⁰ S.C Shrivastava, *SOCIAL SECURITY AND LABOR LAW* Eastern Book Company, Lucknow 1985

D. NEW INDUSTRIAL AND LABOR CODES by V.K. Kharbanda (Law Publishing House)⁴¹

“The book covers all four new labor codes, including The Code on Wages, 2019, The Code on Social Security, 2020, The Code on Industrial Relations, 2020, and The Occupational Safety, Health, and Working Conditions Code, 2020, as well as an in-depth analysis of each.”

1.5 IDENTIFICATION OF ISSUE

1. What are the major provisions of labour codes?
2. What are the 2nd Indian National Labor Commission's recommendations?
3. What are the key changes in labour laws and labour codes?
4. What are the loopholes of labour codes?

1.6 RESEARCH OUTCOME

The study will look at India's 29 labor and industrial laws, as well as the country's impending labor codes, such as The Code on Wages, 2019⁴², The Code on Social Security, 2020⁴³, The Code on Industrial Relations, 2020⁴⁴, and The Occupational Safety, Health, and Working Conditions Code, 2020⁴⁵. It will highlight the key flaws in existing legislation and the extent to which the codes have addressed them. In addition, the study would look into the lack of provisions that are essential in the present day.

1.7 RESEARCH METHODOLOGY

The technique used will be doctrinal, with modifications being proposed based on an analysis of existing rules and frameworks. As a research approach, an evaluation of the efficiency of existing regulations governing the field of research will be used. The following are the data collection sources a) Primary Data: The appropriate policies, processes, and legislation, as well as case studies in this field, will be examined. The information will be obtained from public

⁴¹ V.K. Kharbanda, *NEW INDUSTRIAL AND LABOR CODES* 1st Law Publishing House 2021

⁴² ‘The Code on Wages, 2019’ (*PRS Legislative Research*) <<https://prsindia.org/billtrack/the-code-on-wages-2019>> accessed 15 June 2021.

⁴³ ‘SS_Code_Gazette.Pdf’ <https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf> accessed 15 June 2021.

⁴⁴ ‘The Industrial Relations Code, 2020’ (*PRS Legislative Research*) <<https://prsindia.org/billtrack/the-industrial-relations-code-2020>> accessed 15 June 2021.

⁴⁵ ‘The Occupational Safety, Health And Working Conditions Code, 2020’ (*PRS Legislative Research*) <<https://prsindia.org/billtrack/the-occupational-safety-health-and-working-conditions-code-2020>> accessed 15 June 2021.

agencies under the Right to Information Act of 2005⁴⁶, which will assist in this investigation.

b) Secondary Data: Authors from all over the world will be referred to various articles, books, lectures, and research papers in order to examine the subject of research in greater depth and analyze the current state of the process and legislative provisions in India, as well as their efficacy.

1.8 HYPOTHESIS

The ineffectiveness, flaws in execution, a multitude of compliances that are not only complicated but also repeated under numerous laws, and unskilled and non-technical compliances are all reasons for eliminating all labor and employment regulations. This study will result in a comparative and critical examination of existing labor and industrial laws as well as new labor rules.

1.9 INTENDED OUTCOME

The following outcomes are the focus of the research:

1. The Author will conduct a comprehensive examination of all four impending labor regulations.
2. The Author will conduct a comparative analysis of labour laws currently enforced and upcoming labour codes.
3. The author will attempt to establish a link between the two, namely labor laws and labor codes.

⁴⁶ 'Right to Information' <<https://rti.gov.in/>> accessed 21 June 2021.

CHAPTER 2: THE CODE ON WAGES, 2019⁴⁷

2.1 OVERVIEW

The word "labor" transports us back to the opening pages of Macroeconomics when it was described in black and white for the first time just how important labor is in moving the economy. It was also stated that this influence was not restricted to a single economy but was observed, perceived, and accepted worldwide.

However, the calculation of National Income is based on a variety of revenues, one of which is wage income. While India's labor market is notorious for its abundance of workers, it also appears to be the driving force toward wage equity. The need of the hour is for an effective minimum wage strategy that targets the most vulnerable wage earners, not just to boost aggregate demand but also to kick-start a period of sustained and equitable growth.

“Wage is a reimbursement paid to workers for the job they do and the services they provide to their employers.”⁴⁸ Economists and sociologists have proposed several theories on the idea of wages, each of which explains different parts of pay problems. These notions, however, are not relevant in all situations. Wages are a portion of the costs of running a firm, and they increase the value of the employee's principal protected note or net investment.

2.2 THE CODE'S EVOLUTION

The Ministry of Labor and Employment held talks with trade unions, employers, and state governments in response to the recommendations of the 2nd NCL and to streamline the Central labor laws relating to wages. Through the Ministry's website, a draft of the 2019 Wage Code was made accessible to the public. The bill was first tabled in the Lok Sabha on August 10, 2017, and was referred to a Parliamentary Standing Committee, which issued its report on December 18, 2018. The Government approved 17 of the 24 recommendations provided by the Standing Committee⁴⁹.

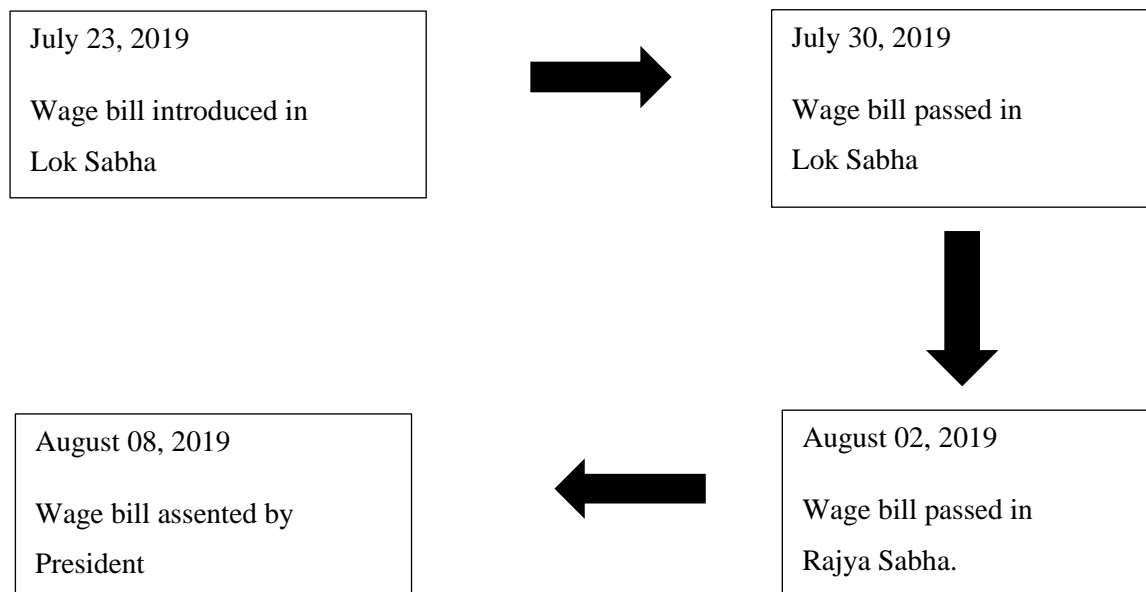
The stated Code, however, expired with the dissolution of the 16th Lok Sabha. The Ministry of Labor reintroduced the Wages Code, 2019, in the Lok Sabha on July 23, 2019. Both Houses of

⁴⁷ ‘The Code on Wages, 2019’ (n 43).

⁴⁸ *ibid.*

⁴⁹ *ibid.*

Parliament voted in favor of the Code. The Code on Wages, 2019, was approved by the Lok Sabha on July 30, 2019, by the Rajya Sabha on August 2, 2019, and finally by the President on August 8, 2019, though the Central Government has yet to notify its applicability and enforceability under section 1(3) of the Code, which states that it shall come into force on such date as the Central Government may, by notification in the Official Gazette. The Code's passage is a long-awaited first step toward harmonizing labor laws.



The 2019 Wage Code aims to govern wage and bonus payments in all jobs that involve any industry, commerce, company, or manufacturing.

The following four laws are repealed by the Code:

i. The Wage Payment Act of 1936⁵⁰

The Act was enacted to ensure that employers pay workers' wages within the time limits established by the Act. The Act also assures that no deductions from the pay of workers who are not specifically named in the law are made.

ii. The Minimum Wages Act of 1948⁵¹

This Act establishes minimum wage rates for particular occupations. The goal is to prevent labor/worker exploitation, and to that end, it tries to establish minimum wages that employers must pay.

iii. The Bonus Payment Act of 1965⁵²

⁵⁰The Wage Payment Act of 1936

⁵¹The Minimum Wages Act of 1948

⁵²The Bonus Payment Act of 1965

This Act applies to every factory or other business that employs twenty or more people on any given day during the fiscal year. The Act will allow employers to offer bonuses to employees based on profits and losses, as well as output and productivity. According to the Act, the business is required to pay a minimum bonus even if it is losing money.

iv. The Equal Remuneration Act 1976⁵³

This Act mandates equal compensation for men and women workers, as well as the prohibition of gender-based discrimination against women in the workplace and other areas.

The preamble of the Code states that:

"An Act to reform and consolidate the laws relating to wages and bonuses, as well as matters related to or incidental to them."

The Code's passage reflects a fundamental revision of India's labor rules regarding pay and bonuses. The Code places a premium on compliance by raising the cost of non-compliance. Gone are the days when employers could get away with not paying overtime wages since Shops & Establishments legislation only provided a modest punishment as a deterrent. Simultaneously, conscientious employers that are willing to follow the Code have the option to compound the offense. Prior to the Code, only a few states had enacted laws allowing for the compounding of offenses in their jurisdictions. The Code makes this chance to compound equally available, and it is a step toward making business easier.

2.3 THE CODE'S APPLICABILITY

The Code guarantees all employees the right to a minimum wage and timely payment of earnings, regardless of their income cap or job sector. Currently, the Payment of Wages Act, 1936 applies to workers and employees earning less than a set wage limit (up to Rs. 24,000 per month), while the Minimum Wages Act, 1948 only applied to a specific type of job listed in the Act's Schedule.

Gender discrimination in income and working conditions by the same employer is prohibited by the Code. There is no provision in the Code that explains how the Code should be applied. Unless specifically exempted in the Code, it applies to all establishments, employees, and employers.

⁵³ **The Equal Remuneration Act 1976**

The Code also includes:

1. To any place where trade, industry, or industrial process takes place.
2. To all types of personnel (regardless of income level), skilled, semi-skilled, unskilled, supervisory, and managerial, in all industries.
3. To all types of employers who hire people to work in their trade, industry, or manufacture.

All employees shall be subject to the Code. Wage decisions will be made by the central government for jobs like railways, mines, and oil fields, among others. All other jobs will be decided by state governments.

2.4 KEY DEFINITIONS

i. Employee⁵⁴

“Managers, supervisors, and administrative personnel are included in the employee definition, as are all employees paid to undertake skilled, semi-skilled, unskilled, operational, or manual work. A person who has been declared an employee by the competent authority is included in the definition. It does not, however, include apprentices employed under the Apprentices Act of 1961 or members of the Union's Armed Forces.”⁵⁵

ii. Worker⁵⁶

“Any person engaged in any industry to perform any physical, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward is considered a worker.

It also includes 'working journalists' and 'sales promotion employees,' and any such person who has been dismissed, discharged, retrenched, or otherwise terminated in connection with, or as a result of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, for the purposes of any proceeding under this Code concerning an industrial dispute.

It excludes any such individual:

- a. Who is covered by the Air Force Act of 1950, the Army Act of 1950, or the Navy Act of 1957?*
- b. who works for the police force or as a prison officer or other prison employee?*

⁵⁴ ‘The Code on Wages, 2019’ (n 43).

⁵⁵ *ibid.*

⁵⁶ *ibid.*

- c. *who works primarily in a managerial or administrative position?*
- d. *who is employed in a supervisory position and receives a monthly remuneration in excess of Rs.15,000 or such other amount as the Central Government may notify from time to time?*
- e. *who is an apprentice under the 1961 Apprentices Act?*⁵⁷

iii. Wages⁵⁸

“Wages refer to all remuneration, whether in the form of salaries, allowances, or other forms of remuneration, expressed in monetary terms or capable of being expressed in monetary terms, that would be payable to a person employed in respect of his employment or work performed in such employment if the terms of employment, express or implied, were met, and includes:

- a. *the basic salary*
- b. *Depreciation allowance*
- c. *retaining allowance*⁵⁹

2.5 DIFFERENCE BETWEEN WORKER AND EMPLOYEE

The terms "employee" and "worker" are used interchangeably. All employees, including managers, supervisors, and administrative staff, are included in the employee definition; however, administrative and managerial staff are excluded from the worker definition. Supervisors are also exempt from the definition of a worker if their monthly remuneration exceeds Rs.15,000 or the amount set by the government. Sales promotion employees and working journalists are included in the word "worker," which excludes management and supervisory workers.

2.6 DISCRIMINATION ON THE BASIS OF GENDER IS PROHIBITED

Gender equality is a principle that is enshrined in our Constitution.⁶⁰ The Constitution not only provides that everyone should be treated equally before the law, but it also specifies that no citizen should be discriminated against solely because of their religion, caste, gender, or other characteristics.

Employers are prohibited from discriminating in compensation payments or recruitment of workers based on gender under the Equal Remuneration Act of 1976.⁶¹ The Code incorporates

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ ‘Constitution of India | National Portal of India’ (n 29).

⁶¹ The Equal Remuneration Act of 1976.

the Equal Remuneration Act of 1976 and includes particular rules prohibiting salary discrimination based on gender.⁶²

While the Equal Remuneration Act of 1976 contained protection provisions in favor of women, the Code has chosen a gender-neutral approach, forbidding wage discrimination on the basis of gender. “*Discrimination on the basis of gender is prohibited by Section 3 of the Code.*”⁶³

In matters relating to remuneration by the same employer, in respect of the same work or work of a similar character done by any employee, there shall be no discrimination on the basis of gender in an establishment or any unit thereof.

No employer is required to pay equal compensation to all employees:

- i. any employee's wage rate is reduced.
- ii. discriminate on the basis of gender in the recruitment of employees for the same or similar jobs, or in the terms and conditions of employment, unless the employment of women in such jobs is prohibited or limited by or under any current law. Under the Code's definition of equal pay, no discrimination based on the gender of employees is permissible. This is slightly more expansive than the previous clause of the Equal Remuneration Act of 1976, which prohibited discrimination based on gender.

HIGHLIGHTS

- i. The term "employee" has been expanded to include all types of workers, including managers, supervisors, administrative, and operational personnel.
- ii. A unified definition of the term "wages" has been established.
- iii. No salary discrimination based on gender among employees performing similar labor or labor of a similar nature.

2.7 MINIMUM WAGE PAYMENT

The Minimum Wages Act of 1948 specifies which jobs need companies to pay workers minimum wages.⁶⁴ The Act covers both organized and unorganized labor, including agricultural employees.⁶⁵ More jobs may be added to this list by the Center and States, and minimum wages must be paid for those jobs as well. Currently, the Central and State governments have announced/notified about 1700 job/employments.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ The Minimum Wages Act of 1948.

⁶⁵ Ibid.

According to the National Commission on Labor's report for the Ministry of Labor and Employment, the unorganized sector employs 92 percent of the country's workforce. The Minimum Wages Act of 1948 does not cover a major percentage of these people.⁶⁶

The Code intends to do away with the concept of bringing specific jobs under the Act, instead of requiring that minimum wages be paid for all sorts of work, whether in the organized or unorganized sector. The Code ties the minimum wage across the country to the employee's abilities and the location of employment.

The minimum wage has been universalized for all employees under the Code, and as a result, people who were previously outside the ambit of minimum wages will be protected by the protection afforded by the Code.

The requirements of the Minimum Wages Act, 1948 govern the method for determining minimum wages by the competent government.

The Code, on the other hand, includes the notion of a Floor Wage, which is to be decided by the Central Government after taking into account the basic living standards of workers in a defined way, which may vary by geographical location. Under no circumstances can the local government set a minimum wage rate that is lower than the central government's set floor rate.⁶⁷

They cannot, however, cut minimum wages if the existing minimum wages set by the appropriate government are higher than the floor wage. Furthermore, the Code mandates that the minimum wage rate be reviewed and updated by the appropriate government at least every five years.

The Code on Wages, 2019, is based on the payment of minimum wages. No employer is allowed to pay an employee less than the minimum wage set by the competent government.⁶⁸

*"Minimum Wage rules are included in sections 5 to 14 of the Code."*⁶⁹

HIGHLIGHTS

- i.** All employees, both organized and unorganized, are affected.
- ii.** No employer shall pay any employee less than the minimum wage rate established by the relevant government. On a time, work basis, the minimum wage rate may be set on an hourly, daily, or monthly basis.
- iii.** The Central Government will set "floor wages" for various geographical areas based on a worker's minimal living conditions. The minimum wage rates set by the Central/State

⁶⁶ 'NLCII-Report.Pdf' (n 4).

⁶⁷ Ibid.

⁶⁸ The Code on Wages, 2019

⁶⁹ 'The Code on Wages, 2019' (n 43).

Governments cannot be less than the floor wage, and they cannot be reduced if the current minimum pay rates set by the Central/State Governments are higher than the floor wage.

- iv. The Central Government may seek advice from the Central Advisory Board and confer with the State Government in determining the floor wage.
- v. The minimum wage shall be increased and reviewed by the Central / State Government every five years, taking into account elements such as skills and work difficulties.

2.8 SALARY PAYMENT

Only employees earning less than Rs.24,000 per month are covered by the Payment of Wages Act, 1936⁷⁰. The Code, on the other hand, makes no mention of such a barrier, and the Code's wage payment rules apply to all employees.

As a result, the Code has increased an employer's responsibility to ensure correct wage structuring and timely distribution of those wages to all of its employees.

The monthly wage settlement period has been changed to the 7th day of the following month rather than the 10th day of the following month. Where employees are hired in the establishment through a contractor, the Company/Firm must pay the contractor before the date of wage payment (before the 7th day) so that the contractor's employees are paid favorably according to Section 17.⁷¹

If an employee is fired, retrenched, resigns, or becomes unemployed as a result of an establishment's closure, the pay must be reimbursed within two working days. The 1936 Payment of Wages Act did not include any deadlines for resignation instances.⁷²

The provisions for Wage Payment are included in sections 15 to 25 of the Code.⁷³

Wages are paid in the following ways:

- The most recent coin
- Bills of Exchange
- Cheque
- Depositing funds into a bank account
- Switch to electronic mode
- Fixing the wage period

⁷⁰ The Payment of Wages Act, 1936.

⁷¹ 'The Code on Wages, 2019' (n 43).

⁷² Ibid.

⁷³ 'The Code on Wages, 2019' (n 43).

- On a daily basis, at the end of the shift
- Weekly: On the last working day of the week, before the weekly holiday
- Fortnightly: Before the end of the second day following the fortnight's conclusion
- Monthly: Before the seventh day of the following month's expiration

HIGHLIGHTS

- i. It applies to all types of businesses and employees (defined establishments and ceiling of earning of Rs.24,000 under the Payment of Wages Act, 1936 is done away with).
- ii. Wages must be paid within two working days following an employee's removal, dismissal, retrenchment, or resignation.
- iii. Instead of the 10th day of the following month, the settlement date for monthly wages has been set for the 7th day of the next month.
- iv. Wages to be electronically or by check deposited into employees' bank accounts. Wages can only be paid in cash up to a certain sum set by the government.

2.9 BONUS PAYMENT

Only employees earning less than Rs.21,000 per month are covered by the Payment of Bonus Act, 1965.⁷⁴ Employees earning less than the wage threshold set by the State government are entitled to bonus payments, according to the Code.⁷⁵

The Code's chapter on bonus payments applies exclusively to companies with at least 20 employees on any one day during the accounting year, similar to the terms of the Payment of Bonus Act, 1965.⁷⁶

A yearly bonus will be paid to all employees whose earnings do not exceed a certain monthly amount (to be determined by the federal or state governments). Bonuses are paid on top of a higher minimum wage or a wage ceiling set by the appropriate government.

While the appropriate government must notify the threshold for determining the payment of bonuses to employees, it should be noted that the regulations relating to bonus computation are consistent with the Payment of Bonus Act, 1965.⁷⁷

The provisions relating to the payment of the bonus are found in sections 26 to 41.⁷⁸

Bonuses eligibility

⁷⁴ The Payment of Bonus Act, 1965.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

- Applicable to businesses with at least 20 workers
- Businesses with at least 20 employees on any given day throughout the relevant accounting year.
- The bonus will be in the range of 8.33 percent to 20% of the employee's salary, or one hundred rupees, whichever is greater.

Bonus disqualifications

- Fraud
- Acts of rioting or violence on the premises of the establishment
- Theft, misappropriation, or sabotage of any establishment property
- A sexual harassment conviction

HIGHLIGHTS

- i. Applicable to businesses with 20 or more employees.
- ii. A bonus will be granted to every employee who earns less than the amount specified by the government.
- iii. Within eight months after the end of the accounting year, any bonus payments payable to an employee will be credited to the employee's bank account.
- iv. On the employer's application and with acceptable reason, the 8-month period might be extended to two years by the appropriate government.
- v. If the employee is fired because of a sexual harassment conviction, he will be ineligible to receive a bonus.

2.10 CENTRAL AND STATE ADVISORY BOARDS

The provisions of Section 42 of the Code relate to the functions of the Central and State Advisory Boards.⁷⁹

Central Advisory Board

- The Central Advisory Board will be appointed by the Central Government.
- The Central Advisory Board is made up of representatives from employers, employees, independent individuals, and five State Government officials appointed by the Central Government.
- Women must make up one-third of the members.

State Advisory Board

⁷⁹ 'The Code on Wages, 2019' (n 43).

- Every state government must establish a State Advisory Board to provide advice to the government.
- One or more committees or sub-committees may be formed by the State Advisory Board.
- State Advisory Boards are structured similarly to Central Advisory Boards, with the exception of Central Government nominees.

Central and State Advisory Boards' Broad Functions

- Minimum wage fixation or revision, as well as other related issues
- Increasing the number of job options for women
- The number of women who can work in such establishments.
- Any other issue concerning the Code

HIGHLIGHTS

The Central Advisory Board will be formed by the Central Government and will include representatives from employers, employees, independent individuals, and five representatives from state governments, with one-third of the members being women.

Every state government will also establish a State Advisory Board.

The Central Advisory Board will provide advice to the Central Government on the following topics:

- i. minimum wage determination or modification, as well as other related topics.
- ii. expanding the number of job options for women.
- iii. the extent to which women may be employed in establishments or occupations that the Central Government may prescribe by notification.
- iv. any other issue concerning this Code.

2.11 DUES PAYMENT, CLAIMS, AND AUDIT

The provisions for payment of dues, claims, and audits are covered in Section 43-50 of the Code.⁸⁰ Every employer must pay all amounts due under this Code to every employee he employs (such as unpaid wages, leave encashment, bonus, and so on).⁸¹

HIGHLIGHTS

- i. The appropriate government will appoint one or more authorities to hear and decide claims brought under this Code's provisions.

⁸⁰ Ibid.

⁸¹ Ibid.

- ii. Within three years after the date on which claims arise, the application before authorities may be filed.
- iii. If the applicant shows sufficient grounds for the delay, the responsible body may consider the application even after three years.

2.12 INSPECTOR-CUM-FACILITATORS APPOINTMENT AND POWERS

Inspector-cum-Facilitators under this Code will be appointed by the competent government and will exercise their powers throughout the State or within the geographical boundaries allotted to one or more enterprises. Through a random automated system, facilitators outside their authority will de-link inspectors from specific geographical regions, resulting in greater openness, accountability, and law enforcement. The government can undertake a web-based examination and request any information electronically by sending a notification. The appointed Inspector-cum-Facilitator may provide compliance advice to employers and workers, as well as inspect enterprises as directed by the appropriate government.

2.13 PENALTIES AND OFFENSES

The Code establishes a graduated penalty scheme for violations of the Code's requirements. Unlike the requirements of the Minimum Wages Act of 1948 and the Payment of Bonus Act of 1965, which both call for the incarceration of up to six months, the legal implications under the Code are very moderate, involving merely a fine.

A second conviction within five years of the first conviction, however, is punishable by imprisonment under the Code. The amount of penalties for violations of the Code has increased significantly. Furthermore, it should be highlighted that non-maintenance or incorrect maintenance of records and registers in the establishment is only penalized by a fine.

In cases of initial contraventions, the Inspector-cum-Facilitator is required by the Code to provide the employer notice before beginning prosecution procedures. Contraventions that are unintentional or due to a true lack of information on the side of the employer will benefit from this capability. Under the Code, detailed procedures for compounding offenses have been established.

Non-compliance penalties have been significantly increased, which may help to develop a compliance culture by acting as a deterrent. Furthermore, allowing for the compounding of offenses may result in increased enforcement. Finally, the Code places the burden of evidence on the employer in cases of accusations of non-payment or deficient payment of wages or bonuses.

The provisions relating to offenses and punishments are found in sections 52 to 56 of the Code.

HIGHLIGHTS

- i.** A punishment of up to Rs.50,000 can be imposed if an employer pays an employee less than the due amount. If a comparable offense is committed within five years, a sentence of up to three months in prison or a fine of up to one lakh rupees, or both, may be imposed.
- ii.** Any employer who violates any other provision of this Code faces a punishment of up to Rs.20,000. If a comparable crime is committed within five years, a sentence of up to one month in prison or a fine of up to Rs.40,000, or both, may be imposed.
- iii.** If records are not kept up to date or are kept incorrectly, the employer may be fined up to Rs.10,000.

2.14 ADDITIONAL PROVISIONS

Miscellaneous provisions are covered in Section 57-69 of the Code.⁸²When an employee files a claim for non-payment of compensation or bonus, or for less payment of wages or bonus, or for deductions not authorized by this Code from an employee's earnings, the employer bears the burden of proving that the dues have been paid. The provisions of this Code supersede anything inconsistent with them in any other legislation now in force, as well as the conditions of any award, agreement, settlement, or service contract.

2.15 COMPARISON OF EXISTING LAWS WITH THE CODE ON WAGES, 2019⁸³

EXISTING PROVISIONS	UPCOMING PROVISIONS
The Minimum Wages Act, 1948: Under the Act minimum wages the appropriate State Governments fixes the minimum wages for scheduled employments with more than 1,000 employees in the State.	Under the Code, all employees will receive the minimum wages.
The Payment of Wages Act, 1936: Applicabl to employees whose wages are under Rs, 24000.	Payment of wages will be applicable to all employees of organized and unorganized sectors, irrespective of any such wage limit.

⁸² Ibid

⁸³ Ibid.

<p>The Payment of Bonus Act, 1965: Applies to every establishment which has 20 or more employees, on any given day, in an accounting year but is applicable only on those employees whose wages do not exceed Rs.21,000 per month.</p>	<p>Payment of Bonus will be applicable to employees whose wages does't exceeds a monthly amount notified by Central or State governments.</p>
<p>Central and State government revises minimum at least once every five years on descretion.</p>	<p>Mandatory provisions are made to revise minimum wages in every 5 year interval by the appropriate government.</p>
<p>No provisions exists for national minimum wage/Floor wage</p>	<p>Central Government will be empowered to fix the national minimum wage /floor wage after taking into account the minimum standard of living of workers. The State Government shall not fix the minimum wage below the floor wage.</p>
<p>Provisions of overtime differ from state to, mostly provided in the Shops and Establishments Act of each respective State.</p>	<p>Overtime payment shall be at two times i.e. the normal wages/ ordinary wages.</p>
<p>Prohibits gender discrimination in wage payment, recruitment, transfers, and promotions.</p>	<p>Prohibits gender discrimination in wage payment and any form of gender discrimination in any of the 'conditions of employment'.</p>

<p>Inspectors are appointed to carry out:</p> <ol style="list-style-type: none"> i. surprise checks ii. examine persons and require them to give information, among other powers. 	<p>The office of 'inspector' under the previous laws has been replaced with an 'Inspector-cum-Facilitator', who has additional duties of guiding and advising employers and employees on effective compliance implementation of the Code.</p> <p>The employer can seek the help of Inspector-cum-Facilitator to ensure compliance under the Code.</p>
<p>Claims for wages and bonuses can be filed within a period varying from 6 months to 2 years.</p>	<p>The period of limitation for filing claims relating to wages and the bonus has been enhanced to 3 years.</p>
<p>Offences under The Minimum Wages Act, 1948 are:</p> <ol style="list-style-type: none"> i. paying employees less than minimum wages ii. not providing for a day of rest in the week. <p>Penalties include fines up to Rs.500 and imprisonment up to six months.</p> <p>Offences under The Payment of Wages Act, 1936 are:</p> <ol style="list-style-type: none"> i. non-payment of wages at specified time period ii. unauthorised deductions from wages. <p>Penalties include fines up to Rs.7,500.</p> <p>Offences under The Payment of Bonus Act, 1965 are:</p> <p>In case a person or company does not comply with the Act, they can be punished</p>	<p>Employers who pay less than what is due under the Code shall be liable to pay a fine of up to Rs.50,000.</p> <p>If an employer is guilty of a repeat offense within five years, penalties include imprisonment up to three months or a fine of up to Rs.1 lakh or both.</p> <p>Employers who do not comply with any other provision of the Code or any rule made or order made or issued thereunder shall be liable to pay a fine of up to Rs.20,000.</p> <p>If an employer is guilty of the same offense again within five years, penalties include imprisonment up to one month or a fine of up to Rs.40,000 or both.</p>

<p>with imprisonment up to six months or a fine up to Rs.1,000.</p> <p>Offences under The Equal Remuneration Act, 1976 are:</p> <ul style="list-style-type: none"> i. non-maintenance of documents with employees ii. discrimination against women in recruitment. Penalties include fines up to Rs.20,000 or imprisonment up to one year or both. 	
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2.16 THE CODE'S IMPACT

The Code is a well-intentioned piece of law that seeks to strike a balance between the employer and employee's interests. Despite the fact that the Code maintains significant elements of the abolished laws, it makes a good effort to replace their outmoded elements. The codification of labor laws will eliminate the plethora of definitions and authorities that currently exist. The amount of compliance in the form of maintaining records, registers, returns, and posting notices will be significantly reduced. As a result, the cost of compliance will be reduced, and any litigation concerning a convoluted definition of pay, employee, and so on will hopefully be avoided. Because the Code will apply to practically all employees, the government will need a solid framework to settle employee concerns. If 5% of all employees (about 50 crores) file claims/complaints about unpaid wages, the government must have a comprehensive system in place to quickly address these claims/complaints.

The Code's provisions instill trust in the business community, and once the Code's subordinate legislation and norms are in place, even more clarity will be gained. Compliance will be difficult for companies with offices in different states, hence uniformity in Form Nos. It should be guaranteed throughout all states. States should also be given the option of adopting the Central Rules (including the required forms) in their entirety under the Code. The ease of compliance is also projected to encourage the formation of more businesses, resulting in additional job possibilities.

The Payment of Wages Act of 1936, the Minimum Wages Act of 1948, the Payment of Bonus Act of 1965, and the Equal Remuneration Act of 1976 are all incorporated into the Code. As we all know, no statute or law can be comprehensive in every way or provide a solution to every

problem; thus, there will be certain obstacles in putting the provisions of the Code into practice. We anticipate that the rules will be established by the individual State governments in order to address concerns and obstacles that may arise during the Code's implementation across India. The Code is being hailed as a watershed moment in India's labor reforms and ease of doing business without jeopardising employees' basic rights. The Code strives to ensure that labor laws are enforced with transparency and accountability, and it is intended to considerably lower the cost of compliance for employers. The Code is a well-intentioned piece of law that seeks to strike a balance between the employer and employee's interests. Despite the fact that the Code maintains significant elements of the abolished laws, it makes a good effort to replace their outmoded elements. The Code's provisions instill confidence in the business community, and once the Code's subordinate legislations and rules are in place, even more clarity will be possible.

CHAPTER 3: THE CODE ON SOCIAL SECURITY, 2020

3.1 OVERVIEW

The Directive Principles of State Policy, as enshrined in the Indian Constitution, provide the foundation for India's social security law.⁸⁴ These mandates required social security benefits, either entirely at the expense of the employers or in exchange for a combined payment by the employers and employees. While employees are entitled to certain protections, employers are primarily responsible for ensuring compliance.

Social Security is both a concept as well as a system. It represents basically a system of protection of individuals who are in need of such protection by the State as an agent of the society. Such protection is relevant in contingencies such as retirement, resignation, retrenchment, death, disablement which are beyond the control of the individual members of the Society.

India's social security system is composed of a number of schemes and programs spread throughout a variety of laws and regulations. Social security schemes in India cover the following types of social insurances:

- Pension
- Health Insurance and Medical Benefit
- Disability Benefit
- Maternity Benefit
- Gratuity

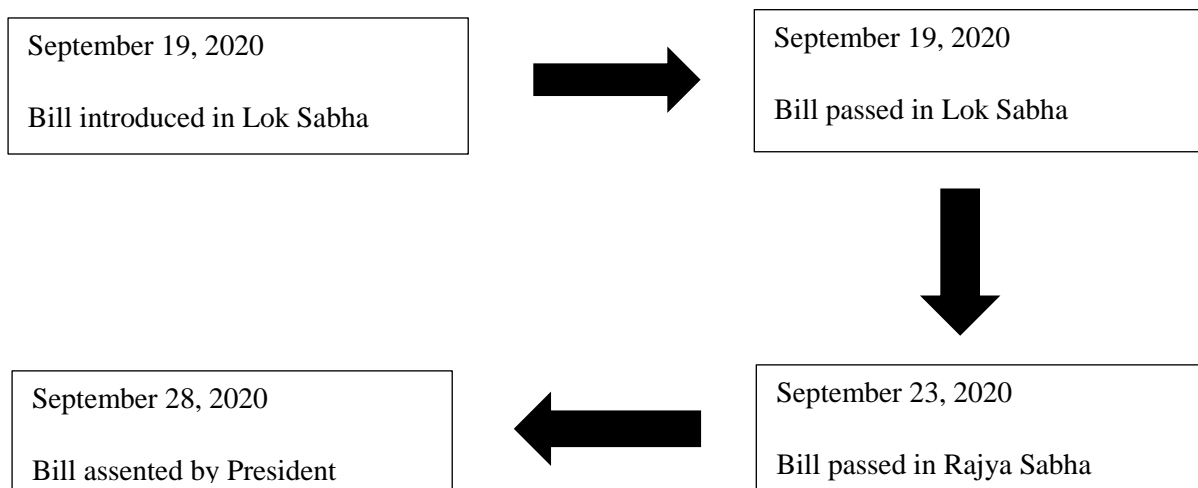
While a great deal of the Indian population is in the unorganized sector and may not have an opportunity to participate in each of these schemes, Indian citizens in the organized sector (which include those employed by foreign investors) and their employers are entitled to coverage under the above schemes. The applicability of mandatory contributions to social insurances is varied. Some of the social insurances require employer contributions from all companies, some from companies with a minimum of ten or more employees, and some from companies with twenty or more employees.

⁸⁴ 'Constitution of India | National Portal of India' (n 29).

3.2 THE CODE'S EVOLUTION

The 2nd NCL proposed for amalgamation of various laws in 2002 upon which the draft of the Labour Code on Social Security and Welfare placed in the Ministry's website for consultations and comments in March 2017.⁸⁵ Later in 2018 revised draft was prepared after considering recommendation and comments of stake holders and was published on Ministry's website for information which led to consultation processes with worker's organizations and employers.

Finally in 2020 the updated version of CoSS was introduced in Lok Sabha and discussions were held in both the houses and the bill was passed and assented by the President.



The relevant provisions of the following nine central labor enactments relating to social security are amalgamated, simplified, and rationalized in the Code on Social Security, 2020:

- i. **The Employees' Compensation Act, 1923**⁸⁶: *The Act provides for payment of compensation to workmen or their dependents in case of personal injury caused by accident or certain occupational diseases arising out of and in the course of their employment.*⁸⁷
- ii. **The Employees' State Insurance Act of 1948**⁸⁸: *"An Act to provide for certain benefits to employees in the event of sickness, maternity, or "occupation damage," as well as to provide for various other items related thereto."*⁸⁹

⁸⁵ 'NLCII-Report.Pdf' (n 4).

⁸⁶ **The Employees' Compensation Act, 1923**

⁸⁷ Ibid.

⁸⁸ **The Employees' State Insurance Act of 1948**

⁸⁹ Ibid.

- iii. **Employees' Provident Funds and Miscellaneous Provisions Act, 1952**⁹⁰: *“An Act to provide for the formation of a provident funds pension fund and a deposit-linked insurance fund for factory and other establishment employees.”*⁹¹
- iv. **The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959**⁹²: *Act requiring employers to notify employment exchanges of vacancies.*⁹³
- v. **The Maternity Benefit Act of 1961**⁹⁴: *A piece of legislation that protects women's employment throughout their maternity leave. It enables female employees to a maternity benefit, ' which entitles them to full pay throughout their time off from work to care for their children.*⁹⁵
- vi. **The Payment of Gratuity Act, 1972**⁹⁶: *“Act to provide for a program for the payment of gratuity to personnel employed in factories, mines, oilfields, plantations, ports, railway companies, shops, or other facilities, and for things connected with or incidental thereto.”*⁹⁷
- vii. **The Cine Workers Welfare Fund Act of 1981**⁹⁸: *“An Act to provide funding for initiatives promoting the welfare of select Cine-Workers.”*
- viii. **The Building and Other Construction Workers Welfare Cess Act, 1996**⁹⁹: *“An Act to provide for the levy and collection of a cess on the cost of construction incurred by employers in order to supplement the resources of the Building and Other Construction Workers Welfare Boards established under the Building and Other Construction Workers Welfare Boards Act, 1996.”*
- ix. **The Unorganised Workers' Social Security Act, 2008**¹⁰⁰: *“An Act to provide for the social security and welfare of unorganized workers, as well as other things related to or incidental to that act.”*¹⁰¹

The preamble of the Code states that:

"An Act to amend and consolidate the laws relating to social security with the goal of extending social security to all employees and workers, whether in the organized or

⁹⁰ **Employees' Provident Funds and Miscellaneous Provisions Act, 1952**

⁹¹ Ibid.

⁹² **The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959**

⁹³ Ibid.

⁹⁴ **The Maternity Benefit Act of 1961**

⁹⁵ Ibid.

⁹⁶ **The Payment of Gratuity Act, 1972**

⁹⁷ Ibid.

⁹⁸ **The Cine Workers Welfare Fund Act of 1981**

⁹⁹ **The Building and Other Construction Workers Welfare Cess Act, 1996**

¹⁰⁰ **The Unorganised Workers' Social Security Act, 2008**

¹⁰¹ Ibid.

unorganized sector, or any other sector, and for matters connected with or incidental thereto."

The Code on Social Security, 2020 is drafted in a manner so as to cover the largest number of working individuals in the country. Its recognition of non-conventional forms of work outside the scope of the traditional employer-employee arrangement is encouraging.¹⁰²

3.3 THE CODE'S APPLICABILITY

In the First Schedule of the CoSS 2020, applicability thresholds are defined for each scheme. Some examples being¹⁰³:

- CoSS 2020 is applicable to every establishment subject to the minimum threshold of employees employed therein
- Establishment to which CoSS applies shall be required to be registered within such time and in such manner as may be prescribed by the Central Government
- EPF provisions shall be applicable to every establishments with 20 or more employees.
- ESI shall be applicable to establishments with 10 or more employees except seasonal factory
- Applies to factories carrying hazardous process or life-threatening occupation as notified by Central Government even for a single person employed
- Provisions for gratuity are applicable to every factory, mine, oilfield, plantation, port and railway company and shop or establishment in which 10 or more employees are employed or were employed on any day of the preceding twelve months
- Provisions for maternity benefit applies to every factory, mine, oilfield, plantation, port and railway company and shop or establishment in which 10 or more employees are employed or were employed on any day of the preceding twelve months
- Provisions related to employee's compensation are applicable to the employers and employees only if ESIC is not applicabled
- CoSS 2020 not only recommends or administers schemes for unorganised sector workers but also dwells into the welfare of gig and platform workers, where such schemes were not applicable till now and these schemes shall be funded by central government, state governments, and aggregators (as mentioned in Seventh Schedule)

¹⁰² 'SS_Code_Gazette.Pdf' (n 44).

¹⁰³ *ibid.*

3.4 KEY DEFINITIONS

i. Employee¹⁰⁴

“Employee means any person (other than an apprentice employed under the Apprentices Act, 1961) who is paid by an establishment, either directly or through a contractor, to perform any skilled, semi-skilled, or unskilled manual, operational, supervisory, managerial, administrative, technical, clerical, or other work, whether the terms of employment are express or implied, and also includes a person who is employed on a contract basis.”¹⁰⁵

ii. Employer¹⁰⁶

“A person who hires any number of people, but especially certain types of workers:

- a. In the case of a factory, the term "employer" refers to the factory's occupier or the individual who has ultimate control over the company's business.*
- b. For particular types of establishments, such as factories, mines, dock workers, and construction workers, the Code makes additional provisions. There are different laws for licensing, safety standards, and employer responsibilities.*
- c. in the case of a mine, the owner of the mine, or an agent or manager selected by the owner or agent of the mine, who has the required qualifications under the law in effect at the time.*
- d. in the case of any other establishment, the person or authority that has ultimate responsibility for the establishment's activities, and when such affairs are entrusted to a manager or managing director, such manager or managing director.*
- e. Contractor*
- f. an employer's legal representative who has died.”¹⁰⁷*

iii. Self-employed Individuals¹⁰⁸

“Who are not hired by an employer but work in the unorganized sector for a monthly wage or own cultivable land but are not employed by an employer.”¹⁰⁹

¹⁰⁴ ‘NLCII-Report.Pdf’ (n 4).

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

iv. Workers who work from home¹¹⁰

“This means a person who, for a fee, produces goods or services for an employer in his house or other location of his choice other than the employer's workplace, regardless of whether the employer provides the equipment, supplies, or other inputs.”¹¹¹

v. Gig Worker¹¹²

“This refers to someone who works or participates in a work arrangement outside of the usual employer-employee relationship and makes money from it. For instance, consider freelancers.”¹¹³

vi. Platform Worker¹¹⁴

“A platform worker is someone who works on or on a platform. In exchange for payment, such workers work outside of the traditional employer-employee relationship, allowing "organizations or individuals to use an online platform to access other organizations or individuals to solve specific problems or services, or any other activities notified by the Central Government.”

vii. Aggregator¹¹⁵

“A digital middleman or marketplace that connects a buyer or user of service with the vendor or supplier of that service.”¹¹⁶

3.5 ESTABLISHMENT REGISTRATION AND CANCELLATION

The code requires every unorganised worker, gig worker, and platform worker to register in order to profit from the relevant scheme outlined in the code, provided they meet the following criteria¹¹⁷:

- i. he has reached the age of sixteen or such other age as the Central Government may specify.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

- ii. He has filed a self-declaration with the Central Government with the required information.
- iii. Every qualified worker must submit an application for registration in the form stipulated by the Central Government, together with the required documentation, including their Aadhaar number.

“Section 3 lays out the registration method for any establishment covered by the CoSS 2020, which can be done electronically or otherwise.”¹¹⁸

If the establishment's business activities are about to close, there is also an option for cancellation of registration.

3.6 ORGANISATIONS INVOLVED IN SOCIAL SECURITY

The manner in which social security organisations are formed and composed is outlined in Section 4 to 13.¹¹⁹

The Code also includes requirements for the following¹²⁰:

- i. the circumstances that lead to a member of a Social Security Organization being disqualified and removed.
- ii. the Social Security Organization's protocol for meetings, functions, and allowances
- iii. Without previous consent from the Central Government, the Central Provident Fund Commissioner and the Director-General may not conduct any task unrelated to their job.
- iv. the Central or State Government, as the case may be, taking over the Corporation, the Central Board, the National Social Security Board, the State Unorganized Workers' Board, or the Building Workers' Welfare Board.
- v. the establishment of the State Board, Regional Boards, local committees, and so on.
- vi. the Central Government entrusting more tasks to Social Security Organizations.

Central Board of Trustees of Employees' Provident Fund

The Central Board is in charge of fund administration, with one or more committees of the same composition assisting it in carrying out its duties.

Employees' State Insurance Corporation

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

The Corporation is divided into two committees:

- i. Standing Committee to administer the Corporation's affairs, exercise any of the Corporation's powers, and perform any of the Corporation's functions, and to submit for the Corporation's consideration and decision all cases and matters as specified in the regulations made in this behalf, as well as any other case or matter.
- ii. The medical benefit committee's role is to support the Corporation and the Standing Committee in carrying out their medical benefit administration responsibilities.

National Social Security Board for Unorganised Workers

The Board's responsibilities include:

- i. urges the Central Government to develop appropriate schemes for various groups of unorganised workers, gig workers, and platform workers.
- ii. advise the Central Government on concerns arising from the administration of this Code and supervise the Central Government's social welfare plans for unorganised workers, gig workers, and platform employees.
- iii. conduct an evaluation of the state's record-keeping functions.
- iv. examine the fund and account expenditures.
- v. the Board has a three-year term and meets three times a year to follow the norms of procedure for conducting business at its sessions.

Unorganized Workers Social Security Board of the State

The Board's responsibilities include:

- i. urges the state government to develop appropriate plans for various segments of the unorganised sector workforce.
- ii. provide advice to the State Government on topics related to the administration of this Code.
- iii. keep track of the state government's social welfare programmes for unorganised workers.
- iv. conduct an evaluation of the district's record-keeping functions.
- v. assesses the status of registration and card issuance for workers in the unorganised sector.
- vi. examine the spending of cash from various initiatives.

State Boards for the Welfare of Building and Other Construction Workers

The Board's responsibilities include:

- i. pays a beneficiary or his dependents death and disability benefits.
- ii. to make pension payments to recipients who have reached the age of 60.
- iii. to pay the sum due in connection with the beneficiaries' Group Insurance Scheme premium.
- iv. devise educational initiatives for the benefit of the recipients' children
- v. pay for a beneficiary's or a dependent's medical expenses for the treatment of catastrophic illnesses
- vi. provide maternity benefits payments to the recipients.
- vii. devise skill-building and awareness-raising programmes for the beneficiaries
- viii. offer transit or hostel accommodations for the beneficiaries
- ix. the State Government, in collaboration with the Central Government, develops any alternative welfare programme for building worker beneficiaries.
- x. provides and upgrade any additional welfare measures and amenities that the Central Government may deem necessary.

3.7 EMPLOYEES' PROVIDENT FUND

Employees Provident Fund Scheme ("EPF") application has been changed by the code.

The EPF will be applicable to businesses with 20 or more employees. The Central Government may establish a Provident Fund, in which the employer contributes 10% of the wages for the time being payable to each of the employees (whether employed directly or indirectly by or through a contactor), and the employee's contribution is equal to the contribution paid by the employer.¹²¹

An employee may contribute more than 10%, provided that the company is not obligated to pay more than 10%, and that the Central Government may change the rate from 10% to 12% by notification.¹²²

Authorising employers to maintain provident fund account: The Central Government may authorize the employer to maintain a salient features provident fund account in the manner prescribed on receipt of the application from the employer and the majority of employees in relation to an establishment employing one hundred or more persons.¹²³

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

Transfer of accounts: The accumulated amount in provident fund account or pension fund account of an employee relinquishing his employment shall be transferred or dealt with in the manner specified in the Provident Fund Scheme or the Pension Scheme, as the case may be.¹²⁴

Self-employed Workers: Scheme may be framed by the Central Government for providing social security benefits to self-employed workers or any other classes of persons.¹²⁵

*The provisions relating to provident funds are covered in Section 14 to 23.*¹²⁶

HIGHLIGHTS

- i. The Central Government appoints officers to the Central Board.
- ii. Employees' Provident Fund Scheme, Employees' Pension Scheme, and Employees' Deposit Linked Insurance Scheme are examples of plans that have been framed.
- iii. With regard to Schemes, the Central Government established the Provident Fund, the Pension Fund, and the Deposit-Linked Insurance Fund.
- iv. contribution from employees and subcontractors
- v. Make provisions for the fund to be recognised under the 1961 Income Tax Act.
- vi. provide for the payment of contributions to take precedence over other debts.
- vii. provide for the exclusion of certain institutions from the application of Chapter III.
- viii. allow for the establishment of provident fund accounts by specified employers.
- ix. provision for the transfer of accounts when a person leaves his or her job and finds work in another establishment.
- x. For the reasons stated therein, you may file an appeal with the Tribunal.

3.8 EMPLOYEES STATE INSURANCE CORPORATION

The ESI system will apply to businesses with ten or more employees. It also applies to an establishment that employs even a single employee in a hazardous or life-threatening activity as defined by the Central Government. Under the ESI plan, the code applies to gig and platform workers.

It also applies to employer of plantation who has opted for application of ESIC.

Employees State Insurance Fund:

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

- i. Contributions, user charges and other moneys shall be paid into a fund.
- ii. Grants, donations, Corporate Social Responsibility Fund and gifts from the Central Government, State Government, local authority or any individual or body whether incorporated or not.

Purpose of Fund: Fund shall be used for the following purposes:

- i. Payment of benefits and provision of medical treatment and attendance
- ii. Payment of fees and allowances to members of Corporation and Committees
- iii. Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities etc.

Insured Persons:

Every employee in an establishment shall be insured, whether electronically or otherwise, as may be prescribed by the Central Government.

Contribution:

- i. The contribution payable in respect of an employee shall comprise contribution payable by the employer and employee.
- ii. The contribution shall be paid to the Corporation by the employer.
- iii. Employer shall recover the employee's contribution from the employee by reduction from wages.

Failure to Contribute:

If an employer fails to pay ESI payments, the ESIC (Employees State Insurance Corporation) may pay the employee's benefits and reclaim the capitalised value of the benefit, including the contribution amount, interest, and damages, from the employer as an arrear of land income or otherwise. Employee state insurance corporation provisions are covered in Section 24 to 51.

HIGHLIGHTS

- i. ensures the payment of all contributions and other funds received by the Employees' State Insurance Fund, as well as its management.
- ii. the Corporation's acquisition and holding of property, as well as the sale or other transfer of both mobile and immovable property.

- iii. the contribution to the Corporation that is due from both the employer and the employee.
- iv. payment of payments by employers and recovery of contributions from contractors if they are paid by them and should bear the costs of remitting contributions to the Corporation.
- v. benefits to insured persons, their dependents, and others, such as periodic payments to any insured person in the event of sickness, periodic payments to an insured person who is a woman in the event of confinement or miscarriage, or sickness arising from pregnancy, confinement, premature birth of a child, or miscarriage, such woman being certified to be eligible for such payments by an authority.
- vi. In the instances above, an accident is considered to have occurred as a result of and during the course of an employee's job.
- vii. The acquiring of the disease by an employee engaged in any of the jobs listed in that Schedule, in the manner described in that section, is presumed to be an "employment harm," arising out of and in the course of employment, unless the opposite is proven.
- viii. a medical benefit to an insured person and his family, subject to the Central Government's requirements for qualifying, conditions, scale, and duration of the benefit.
- ix. To increase the quality of services offered under the Employees' State Insurance Scheme, the Corporation established medical education facilities, including colleges, dentistry colleges, nursing colleges, and training institutes for its officers and personnel.
- x. Where the Corporation considers that the incidence of sickness among insured persons is excessive due to the default or neglect of the owner or occupier of the factory or other establishment or the owner of the tenement or lodgings, the owner or occupier of the factory or other establishment or the owner of the tenement or lodgings is liable for payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit.
- xi. system for other beneficiaries and their families for providing medical services at any hospital created by the Corporation in any underserved area, on payment of user fees, and the terms and conditions for the plan's operation shall be governed by Central Government guidelines.
- xii. Schemes for giving benefits to unorganised workers, gig workers, and platform employees, as well as their families.
- xiii. By notification, the State Government establishes the Employees' Insurance Court.

3.9 GRATUITY

Any factory, mine, oilfield, plantation, port, and railway firm must pay gratuity to their eligible employees; and every establishment with 10 or more employees must pay gratuity to their eligible employees on any day in the preceding 12 months.

Eligibility: Gratuity is payable to an employee upon termination of employment after he has rendered continuous service for at least five years, provided that the completion of five years of continuous service is not required where an employee's employment is terminated due to death, disablement, or the expiration of a fixed-term contract.

In the case of a working journalist, the gratuity is paid upon termination of employment after three years of continuous service.

Gratuity at the rate of 15 days wages or such number of days as may be notified by the Central Government, based on the rate of wages last drawn by the employee shall be payable for every completed year of service or part thereof in excess of six months

Fixed-term employees (those hired for a set period of time) are entitled to pro-rata gratuity based on the length of their contract.

The provisions of gratuity are covered in Section 53 to 58.

HIGHLIGHTS

- i. payment of a gratuity to an employee upon cessation of service, subject to the terms and conditions set forth therein.
- ii. The amount of gratuity is determined. The employer must make arrangements to pay the gratuity amount within thirty days of the day it becomes due to the individual to whom the gratuity is due.
- iii. Every employer, with the exception of those who work for or are controlled by the Central Government or a State Government, is required to carry insurance.

3.10 MATERNITY BENEFIT

Maternity benefits applies to every establishment being a factory, mine or plantation including any such establishment belonging to Government; and every shop or establishment in which 10 or more employees are employed, or were employed, on any day of the preceding twelve months and such other shops or establishments notified by the appropriate Government.

- i. During the six weeks following her delivery, miscarriage, or medical termination of pregnancy, no woman shall work in any establishment.

- ii. For the length of her actual absence, every woman is entitled to maternity benefit at the rate of the average daily income.
- iii. Every woman is entitled to maternity benefits if she has worked for at least eighty days in the twelve months immediately before her projected delivery date in an establishment of the employer from whom she is claiming maternity benefits.
- iv. The maximum duration for which a woman is entitled to maternity benefits is twenty-six weeks, with no more than eight weeks preceding her scheduled delivery date.
- v. Every woman is entitled to a medical bonus of up to INR 3,500 in addition to maternity benefits in terms of paid leaves (if pre-natal confinement and post-natal care is not provided by the employer)
- vi. In the event of a miscarriage or medical termination of pregnancy, a woman is entitled to six weeks of paid leave at the maternity benefit rate, beginning on the day of the miscarriage.

The provisions of maternity benefit are covered under Section 59-72.

3.11 SOCIAL SECURITY AND PROCESS FOR BUILDING AND OTHER CONSTRUCTION EMPLOYEES

Building and other construction workers are covered by Section 101-108's social security and cess requirements. It covers all establishments that fall under the category of building and other construction work. In the CoSS, the term "building or other construction work" is defined.

HIGHLIGHTS

- i. The Central Government shall levy and collect a cess for the social security and welfare of construction employees at a rate of not more than 2% but not less than 1% of the cost of construction paid by the employer, as notified by the Central Government.
- ii. Every employer who performs building or other construction work is required to pay a levy.
- iii. Employer shall be liable to pay interest at the rate set by the Central Government on the amount of cess not paid by the employer for the period from the day on which payment is due until the amount is actually paid.
- iv. By notification, the Government may exempt any employer or class of employers in a State from paying the cess if the cess is already collected and due under any similar law in effect in that State.

- v. The employer must pay a cess based on his self-assessment on the cost of construction within 60 days or such term as may be specified by the Central Government of the completion of building and construction work.

3.12 SOCIAL SECURITY FOR UNORGANIZED WORKERS, GIG WORKERS, AND PLATFORM WORKERS

The terms, 'Unorganised Workers', 'Gig Workers' and 'Platform Workers' have been defined in the CoSS.¹²⁷

The Central Government and State Government shall frame welfare schemes for such workers.

Fund for Schemes: The schemes may be funded by the Central Government or State Government or beneficiaries of the Scheme or employers or from corporate social responsibility fund maintained under Companies Act, 2013¹²⁸ or the aggregators. The contribution by aggregators shall be at the rate not exceeding 2% but not less than 1% of the annual turnover of aggregator specified in the Seventh Schedule. The rate shall be notified by the Central Government.

ESIC: The Central Government may frame ESIC scheme for unorganized workers.

Unorganized workers, gig workers, and platform workers are covered by Section 109-114.

HIGHLIGHTS

- i. In the CoSS, the phrases "unorganised workers," "gig workers," and "platform workers" have been defined.
- ii. Welfare plans for such workers will be developed by the federal and state governments.
- iii. The schemes may be supported by the federal government, state governments, programme beneficiaries, employers, or aggregators from a corporate social responsibility fund established under the Companies Act of 2013.¹²⁹ Aggregators must contribute at a rate of not more than 2% but no less than 1% of the aggregator's annual turnover, as defined in the Seventh Schedule. The central government will announce the rate.
- iv. The ESIC scheme for unorganised workers may be framed by the central government.

¹²⁷ Ibid.

¹²⁸ Companies Act, 2013

¹²⁹ Ibid.

3.13 AUTHORITIES, EVALUATION, COMPLIANCE, AND RECOVERY

The provisions of authorities, assessment, compliance, and recovery are all covered in Section 122-132.¹³⁰

HIGHLIGHTS

- i. The Central Government appoints Inspector-cum-Facilitators, and the Inspector-cum-Facilitator searches or seizes property.
- ii. An establishment's employer must keep records and registers in the form defined by rules set by the appropriate government, whether electronically or otherwise, comprising information about employees, muster rolls, wages, and other information.
- iii. The employer must submit such return electronically or otherwise to such officer or authority in the manner and within the timeframes specified by the appropriate government's rules.
- iv. prohibits the employer from reducing, directly or indirectly, the wages of any employee or the total quantum of benefits to which such employee is entitled under the terms of his employment, express or implied, concerning an establishment to which the Bill or any scheme framed thereunder applies, solely because of his liability for the payment of any contribution under the Bill, or any charitable contribution under the Bill.
- v. From the date on which any sum due under the Bill becomes due until the day on which it is actually paid, the employer is responsible to pay simple interest at such rate as the Central Government may notify.
- vi. recovery of any money owed to an institution by an employer or any other person, including any contribution or cess due, charges, interest, damages, or benefit, or any other amount that is past due.

3.14 OFFENSES AND PENALTIES

The punitive provisions are found in Sections 133-138.¹³¹

HIGHLIGHTS

- i. penalty for refusal to contribute, etc., as indicated in the article and in proportion to the seriousness of the offences.

¹³⁰ 'NLCII-Report.Pdf' (n 4).

¹³¹ *ibid.*

- ii. For the second, or any subsequent, such offence, the penalty is increased.
- iii. Every individual who was directly in control of and responsible to the company for the conduct of the company's business at the time the act was committed, as well as the company, shall be regarded guilty of the offence and liable to be prosecuted and punished accordingly.

3.15 INFORMATION ON EMPLOYMENT AND MONITORING

Sections 139-140 deal with providing and monitoring employment information.¹³²

- i. In the CoSS, the notion of 'Career Centres' has been introduced. It refers to any office (including an employment exchange, a location, or a portal) formed and maintained for the purpose of delivering career services (such as registration, data gathering, and dissemination, either through the keeping of registers or otherwise) as may be prescribed.
- ii. It is mandatory for businesses to disclose vacancies to the career centre before filling them.
- iii. The company is under no obligation to hire through the career centre.

3.16 COMPARISON OF EXISTING PROVISIONSs WITH THE CODE ON SOCIAL SECURITY, 2020¹³³

EXISTING PROVISIONS	UPCOMING PROVISIONS
<p>Below mentioned terma are not defined in the existing provisions</p> <ul style="list-style-type: none"> • Self-employed Worker • Fixed-term employment • Aggregator • Career Centre • Home-Based Worker • Unorganised Workers • Gig Worker • Platform Workers. 	<ul style="list-style-type: none"> i. New definitions has been introduced in the Code of Social Security. ii. Definition of employee has been introduced in the Code and is commonly applicable on all the provisions.

¹³² *ibid.*

¹³³ *ibid.*

<p>Employee has not been defined under Maternity Benefit Act, Cine Workers Act, Welfare Fund Act, Building and Other Construction Workers Welfare Cess Act & Unorganized Workers' Social Security Act</p>	
<p>Currently the employer was bound to take Registration and Cancellation of an Establishment under all the labor laws.</p>	<p>Under the Code, if establishment is registered under any existing Central Labor Laws, it is not required to obtain registration under Section 3 of the Code of Social Security.</p>
<p>There is no provisions for the formation of social security organisations.</p>	<p>The Code makes a mandatory provision for constitution of the Social Security Organizations for the administration of funds for the type of workers which have been newly added in the Code of Social Security.</p>
<p>There are no provisions for National Social Security Board and State Unorganized Workers' Board under any central labor laws.</p>	<p>The Code enforces to form the National Social Security Board and State Unorganized Workers' Board by persons of eminence in the fields of labor welfare, management, finance, law, and administration. It will also administer schemes for the welfare of gig workers and platform workers.</p>
<p>Rule 7 of EPF Appellate Tribunal (Procedure) Rules: It is mandatory for employer to pay demad draft payable in the fund and bearing 75% of the amount due in order to proceed on an appeal by the tribunal.</p>	<p>Employer shall deposit 25% of the amount in the Social Security Organisation concerned to make make the appeal entertained by the Tribunal unless.</p>
<p>There are no provision for excessive sickness benefit in existing labor laws.</p>	<p>Provides extra expenditure as a sickness benefit for insanitary working conditions in the factory or in the accommodations due to the neglect of the owner.</p>

<p>There are no provisions for Schemes for unorganized workers, gig workers and platform workers in existing labor laws.</p>	<p>The Code provides Employees State Insurance benefits to unorganized workers, gig workers and platform workers and their families also.</p>
<p>The payment of gratuity term for a working journalist is currently for 5 years.</p>	<p>The Code has reduced the term for payment of gratuity to three years for working journalists.</p>
<p>Funded Schemes for unorganized workers, gig workers and platform workers are not available in labour laws</p>	<p>Welfare schemes for unorganised workers, gig workers and platform workers at the Central and State level are introduced on matters related to the protection of life, health, accident, education, skill up-gradation, provision of old age home etc.</p>
<p>Helpline, facilitation centre for unorganized workers, gig workers and platform workers are not available in labour laws</p>	<p>The Code provides for setting up a toll-free call centre or helpline to promulgate information on available social security schemes, the process to apply for registration, to assist unorganized workers, gig workers and platform workers to obtain registration etc.</p>
<p>Only Inspectors were appointed to Inspect the Establishment.</p>	<p>State shall appoint Inspector-cum-Facilitators for the inspection. The employees and employers shall also comply with the Code.</p>
<p>The provisions for maintaining registers, records and returns are not so extensive.</p>	<p>The Code provides to maintain registers, records for the number of days/hours of work performed by employees, wage paid, leave, leave wages, wages for overtime work and attendance, employees identification number, number of dangerous occurrences, accidents, injuries in respect of which compensation, statutory deductions made by an</p>

	<p>employer from the wages of an employee, details as to cess paid in respect of building and other construction work; the total number of employees (regular, contractual or fixed-term employment) on the day specified; persons recruited during a particular period; occupational details of the employees, and vacancies for which suitable candidates were not available,</p> <p>Display notices at the workplaces.</p>
<p>No limitation period is mentioned for the determination of money due from an employer, under the EPF Act.</p>	<p>In case of any dispute or proceedings for the determination of dues from the employer, fixed the limitation period of proceedings and inquiry to be five years.</p>
<p>The inclusion of strict enhanced punishment lacks in existing labor laws.</p>	<p>Enhanced punishment for every subsequent offence has been included in the Code.</p> <p>Allows employer an opportunity to correct non-compliance for any offence under the Code before the initiation of the prosecution or proceedings</p> <p>Compounding of Offence: Any offence committed for 1st time which is punishable with:</p> <p>fine & imprisonment up to 1 year or both</p> <p>Person can be compounded on payment of an amount in case of fine – half of the maximum fine</p>

	<p>In case of imprisonment – 3/4th of maximum fine</p> <p>Repeated offender to get enhanced punishment imprisonment up to 2 years and with a fine of INR 2 Lakhs.</p>
No provision for defer or reduction of contribution exists in labour laws.	The Code provides that the Central Government may by order, defer or reduce employer's contribution, or employee's contribution, or both for a period up to three months at a time, in the event of a pandemic, endemic or national disaster.
Misuse of benefits did not have any separate provisions under the labor laws.	If any person has misused any benefit then the person will be deprived of such benefit were manner to ascertain misuse of any benefit will be specified in the Provident Fund Scheme or the Pension Scheme or the Insurance Scheme.

3.17 THE CODE'S IMPACT

- i. The code mostly keeps the old setup and does not fully implement the NCL suggestions.
- ii. NCL has emphasised the importance of universal and comprehensive social security coverage to minimise deprivation of workers' basic necessities and proposed that existing legislation be simplified and consolidated to that aim.
- iii. NCL suggested that:
 - The social security system should be applicable to all businesses.
 - The current wage ceilings for coverage should be eliminated.
 - The management of existing schemes should be functionally integrated.
 - Each employer and employee may make a single contribution for the supply of all benefits, subject to a contribution ceiling.

- iv. The code maintains thresholds for making certain benefits mandatory based on the size of the business. Benefits such as pensions and medical insurance are still only required for businesses with a certain number of employees (such as 10 or 20 employees). Discretionary schemes notified by the government may encompass all other types of workers (i.e., unorganised workers), such as those employed in establishments with less than ten employees and self-employed workers. As a result, a big number of workers may remain unemployed.
- v. The code continues to differentiate amongst employees in the same establishment based on the quantity of compensation they earn. For example, provident fund, pension, and medical insurance benefits are only required for employees in qualified establishments who earn above a particular threshold (as determined by the government).
- vi. The code maintains the current fragmented system for delivering social security funds. These are some of them:
 - The EPF, EPS, and EDLI Schemes will be administered by a Central Board of Trustees.
 - the establishment of an Employees State Insurance Corporation to oversee the ESI scheme.
 - Social Security Boards at the national and state levels to oversee plans for unorganised workers.
 - construction worker welfare boards based on a levy.
- vii. The laws on gratuity for fixed-term workers differ between the Code on Social Security and the Industrial Relations Code, 2020, and it is unclear if a fixed-term employee with a contract of less than one year will be entitled to gratuity under the Code on Social Security, 2020.
- viii. To get social security benefits, an employee or worker (including an unorganised worker) must furnish his Aadhaar number. This could be in violation of the Supreme Court's decision in the Puttaswamy case.
- ix. The Supreme Court declared in its decision that the Aadhaar card/number may only be made mandatory for spending on a subsidy, benefit, or service from the Consolidated Fund of India. Because certain entitlements, including as gratuity and provident fund (PF), are supported by employers and employees rather than the Consolidated Fund of India, making Aadhaar essential for receiving such benefits may be in violation of the ruling.

- x. Informal workers, who make up 91 percent of the workforce, are not adequately protected by the Social Security Code. The pandemic, as well as the pain it has caused to these haphazard workers, emphasises the necessity for universal social protection.

CHAPTER 4: THE CODE ON INDUSTRIAL RELATIONS, 2020

4.1 OVERVIEW

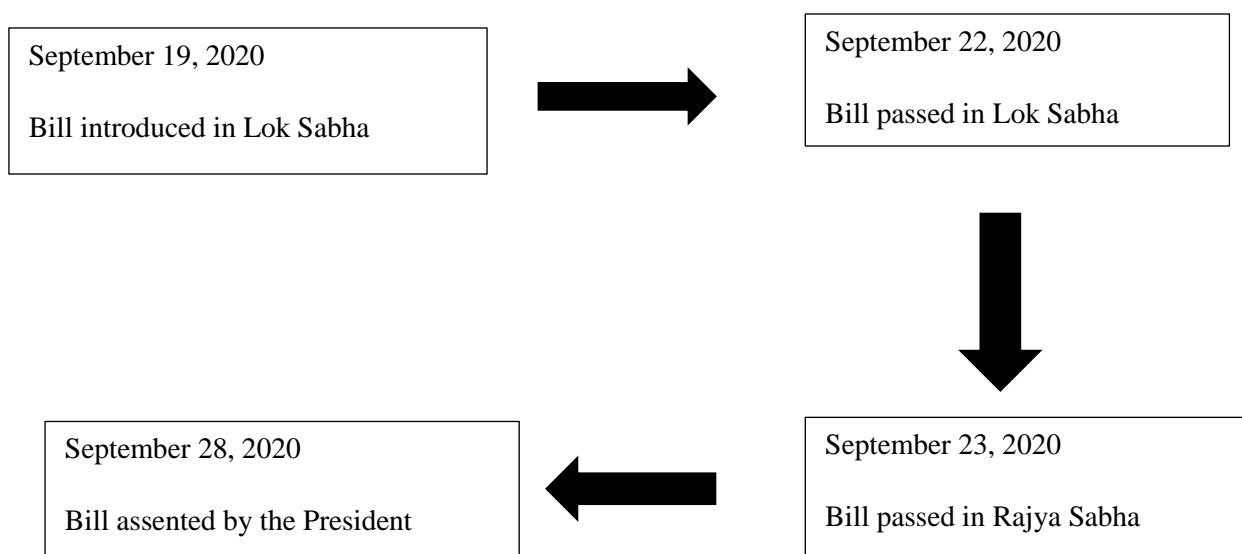
Industrial relations may be defined as the relations and interactions in the industry particularly between the labour and management as a result of their composite attitudes and approaches in regard to the management of the affairs of the industry, for the betterment of not only the management and the workers but also of the industry and the economy as a whole.

The term industrial relations explains the relationship between employees and management which stem directly or indirectly from union-employer relationship.

Industrial relation is the relation in the industry created by the diverse and complex attitudes and approaches of both management and workers in connection with the management of the industry.

4.2 THE CODE'S EVOLUTION

The Code on Industrial Relations Code, 2020 ¹³⁴establishes a broader framework for protecting workers' rights to form unions, reducing friction between employers and employees, and establishing rules for resolving industrial disputes.¹³⁵



¹³⁴ The Code on Industrial Relations Code, 2020

¹³⁵ Ibid.

The IR Code was drafted after the following three central labor laws were merged, simplified, and repealed:

- i. **The Trade Unions Act of 1926¹³⁶**: The Act allows trade unions (including employers' associations) to be registered in order to allow for authorised labor organisation and collective bargaining. A recognised trade union is also granted certain protections and benefits under the Act.
- ii. **The Industrial Employment (Standing Orders) Act of 1946¹³⁷**: This Act requires employers in industrial establishments to formally describe employment conditions and submit draught standing orders for certification to a certifying authority.
- iii. **The Industrial Disputes Act, 1947¹³⁸**: The Industrial Disputes Act's goal is to promote industrial peace and concord by establishing a method and method for investigating and resolving industrial disputes through conciliation, arbitration, and adjudication.

The preamble of the Act says:

An Act to consolidate and revise the laws relating to Trade Unions, conditions of work in industrial establishments or undertakings, investigation, and settlement of industrial disputes, and for matters connected with or incidental thereto.¹³⁹

The Code is intended to protect employers' and employees' rights by making labor reforms simple and facilitating Ease of Doing Business.

The Code's goal is to achieve industrial peace and harmony as the ultimate goal in settling industrial disputes, as well as to enhance the industry's progress by establishing a harmonious and cordial relationship between employers and employees.

The Code aims to harmonise and modernise the legislation governing trade unions, working conditions in industrial establishments and undertakings, and the swift resolution of industrial disputes. The following areas are governed by the code:

- Trade Union Registration
- Trade Unions are being disbanded.
- Change in the name of the trade union
- Establishment of a Work Committee

¹³⁶ **The Trade Unions Act of 1926.**

¹³⁷ The Industrial Employment (Standing Orders) Act of 1946

¹³⁸ The Industrial Disputes Act, 1947

¹³⁹ 'The Industrial Relations Code, 2020' (n 45).

- Establishment of a Registered Trade Union
- Acceptance of the Negotiating Union
- Preparation of Standing Order
- Standing Orders Register
- Establishment of an Industrial Tribunal
- Illegal Lockouts and Strikes
- Retrenchment and Re-employment Procedures for Retrenched Workers
- Workers' Compensation in the Event of a Transfer of Establishment
- Layoffs are prohibited.
- Dismantling of a manufacturing facility
- Establishment of an Industrial Tribunal
- Illegal Lockouts and Strikes
- Retrenchment and Re-employment Procedures for Retrenched Workers
- Workers' Compensation in the Event of a Transfer of Establishment
- Layoffs are prohibited.
- Dismantling of a manufacturing facility

4.3 THE CODE'S APPLICABILITY

Industrial Relations Code, 2020 introduces more conditions for workers to strike, alongside an increase in the threshold relating to layoffs and retrenchment in industrial establishments having 300 workers from 100 workers to provide more flexibility to employers for hiring and firing workers without government permission.¹⁴⁰

The threshold for constitution of Works Committee consisting of representatives of employer and workers shall be 100 or more workers.

The threshold for constitution of Grievance Redressal Committees for consisting of equal number of members representing employer and workers shall be 20 or more workers.

The threshold for preparation of draft standing order by employer shall be 300 or more workers within a period of 6 months from the date of commencement of IR Code.

4.4 KEY DEFINITIONS

¹⁴⁰ *ibid.*

i. Worker¹⁴¹

Working journalists, as defined in Section 2(f) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, and sales promotion employees, as defined in Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976, have been added to the definition of "worker." Persons engaged in a supervisory role and earning less than Rs. 18,000/- per month (or any amount as authorised by the Central Government) have also been included in the definition.¹⁴²

ii. Industry¹⁴³

The following are specifically excluded from the definition of "industry" under the IR Code:

- a. charitable, social, or philanthropic institutions owned or administered by organisations that are completely or largely engaged in charity, social, or philanthropic service.*
- b. any activity of the relevant Government related to the suitable Government's sovereign powers, including all actions carried out by Central Government departments dealing with defence research, atomic energy, and space.*
- c. any type of domestic service*
- d. any other action that the Central Government may specify.*

Several other establishments previously excluded from the criteria, such as hospitals, educational, and scientific institutions, have recently been removed from the list of exceptions under the ID Act.¹⁴⁴

iii. Disputes in the Workplace¹⁴⁵

This definition has been broadened to cover any disagreement or conflict between an individual worker and his or her employer that is related to or arises out of such person's discharge, dismissal, retrenchment, or termination.¹⁴⁶

iv. Strike¹⁴⁷

This term has been broadened to cover the concerted use of casual leave by fifty percent or more of an industry's workers on a given day.¹⁴⁸

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

v. Employer

The term "employer" has been broadened to include:

- a. in the case of a factory, the occupier of the factory as defined in section 2(n) of the Factories Act, 1948, and, if a person has been named as the factory's manager under section 7(1)(f) of such act, the person so designated.*
- b. in the case of any other establishment, the person or authority that has ultimate responsibility over the institution's activities, and where those affairs are entrusted to a manager or managing director, that manager or managing director.*
- c. the builder; and*
- d. the executor or administrator of a dead employer's estate.*

vi. Employed for a Limited Time¹⁴⁹

The IR Code adds a new provision for "fixed-term employment," which means and refers to the hiring of a worker for a set amount of time based on a documented contract of employment, provided that:

- a. His or her hours of labor, salaries, allowances, and other benefits must be comparable to those of a permanent worker performing the same or similar task.*
- b. even if his/her length of employment does not extend to the qualifying length of employment required by the laws, he/she shall be eligible for all statutory benefits granted to a permanent worker proportionately according to the term of service performed by him/her; and*
- c. If he or she works for the company for a year, he or she will be eligible for a gratuity.*

vii. Labor Union¹⁵⁰

Any federation of two or more Trade Unions is defined as a combination, whether temporary or permanent, formed primarily to regulate the relations between workers and employers, or between workers and workers, or between employers and employers, or to impose restrictive conditions on the conduct of any trade or business.¹⁵¹

viii. Retrenchment¹⁵²

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

Retrenchment is defined as the termination of a worker's employment by his or her employer for any cause other than disciplinary action, but does not include:

- a. the worker's voluntary retirement*
- b. the worker's retirement when he or she reaches the age of superannuation.*
- c. the worker's service being terminated as a result of the employer's failure to renew the contract of employment.¹⁵³*

4.5 STANDING ORDERS

The regulations governing standing orders apply to all industrial companies with three hundred workers, according to the IR Code. The employers of such enterprises must prepare standing orders on the issues outlined in the IR Code's first schedule ("Schedule"). The following are the items included in the Schedule¹⁵⁴:

- i. Worker classification, including permanent, temporary, apprentices, probationers, badlis, and fixed-term contracts.
- ii. Method of informing workers about work periods and hours, holidays, pay days, and salary rates.
- iii. Working in shifts.
- iv. Attendance and tardiness
- v. Conditions for, and the method for seeking for, leave and holidays, as well as the authority that can give them.
- vi. The obligation to enter premises by specific gates, as well as the right to search.
- vii. Closing and reporting of portions of the industrial plant, temporary work stoppages, and the employer's and workers' rights and liabilities flowing therefrom.
- viii. Termination of employment and the notice required by both the employer and the employees.
- ix. Misconduct-related suspension or dismissal, as well as acts or omissions that constitute misconduct.
- x. Remedies available to workers who have been subjected to unfair treatment or improper deductions by their employer, his agents, or servants.
- xi. Any other matter that the appropriate government may specify by notification.

Model standing orders relating to terms of employment and other matters ancillary to or associated with them must be issued by the Central Government. When an employer adopts a Central Government model standing order with respect to matters relevant to the employer's

¹⁵³ Ibid.

¹⁵⁴ Ibid.

industrial establishment or undertaking, the model standing order is deemed to have been certified, and the employer must forward the information to the concerned certifying officer in the manner prescribed.

4.6 REDRESSAL COMMITTEE FOR GRIEVANCE

According to the IR Code, any firm employing twenty or more workers must have one or more grievance redressal committees for the resolution of disputes, with an equal number of members representing the employer and the workers chosen in a manner defined by the IR Code. Furthermore, the total number of members of such a committee shall not exceed ten, and there shall be equal representation of women workers in the committee, which shall not be less than the proportion of women workers to the total number of workers in an establishment. Previously, the law required that grievance mediation authorities be established in businesses employing at least fifty people. Furthermore, it did not ensure that women were represented equally, as required by the IR Code.¹⁵⁵

4.7 CONSTITUTION OF INDUSTRIAL TRIBUNALS

To resolve industrial disputes, the IR Code establishes one or more industrial courts, as well as a National Industrial Tribunal. Industrial tribunals would replace the ID Act's existing various adjudicating authorities, such as the court of inquiry, board of conciliation, and labor courts. In place of the current one judicial member, every industrial tribunal will have two members nominated by the appropriate government, one of whom will be a judicial member and the other an administrative member. Furthermore, the Central Government may establish one or more National Industrial Tribunals¹⁴ by notification for the adjudication of industrial disputes that, in the Central Government's opinion, involve questions of national importance or are of such a nature that industrial establishments in more than one State are likely to be interested in or affected by such dispute. In addition, the National Industrial Tribunal will include two members nominated by the Central Government.

4.8 STRIKES AND LOCKOUTS ARE PROHIBITED

Strikes and lockouts have been planned for, and the following provisions have been made:

- i. No employee can go on strike without giving the employer advance notice.

¹⁵⁵ Ibid.

- a. sixty days prior to striking.
 - b. within fourteen days of the notification being given.
 - c. before the strike date mentioned in the notice expires.
 - d. while the conciliation process is ongoing.
 - e. or seven days after the conciliation processes are completed.
 - f. or while arbitration proceedings are pending.
 - g. or sixty days after the arbitration proceedings are completed.
 - h. or for any period during which a settlement or award in respect of any matters covered by the settlement or award is in effect.
- ii. No industrial employer may lock out any of his or her employees unless the conditions outlined above are met. While the ID Act included comparable restrictions about strike and lockout notification, these rules only applied to public utility services.

4.9 RETRENCHMENT, CLOSURE, AND LAY-OFF

Industrial establishments with more than a hundred employees were obliged to acquire prior approval from the competent government to lay off/retrench workers, as well as to close an industrial undertaking, under the ID Act. For industrial businesses such as mines, factories, and plantations employing not less than three hundred workers or such larger number as may be certified by the government, the IR Code has abrogated this requirement. It is not essential to acquire prior approval if the layoff is due to a power outage or a natural disaster, or if the layoff is due to fire, flood, an excess of combustible gas, or an explosion in the case of a mine. If the Government does not communicate the order granting or refusing permission to the employer within sixty days of the date on which the application is made, the permission requested is deemed to have been granted as requested at the end of the sixty-day period, and the application is deemed to have been disposed of.¹⁵⁶

4.10 NEGOTIATING UNION/COUNCIL APPOINTMENT

In an industrial establishment with a registered trade union, the IR Code establishes a single negotiating union/council for negotiating on such subjects as may be mandated. When only one registered trade union of workers is active, the employer of that business must recognise that trade union as the sole bargaining union of the workers, subject to any requirements that may be imposed. If more than one trade union is active, the union with the greatest number of members (51%) is recognised as the workers' only bargaining union. Furthermore, if more than one trade union of workers operates in an industrial establishment and none of the trade unions

¹⁵⁶ Ibid.

has fifty-one percent or more of the workers, the employer must form a negotiating council consisting of not less than twenty percent of the total workers in that industrial establishment.¹⁵⁷

4.11 WORKER RE-SKILLING FUND

For the first time, the IR Code includes measures for re-skilling laid-off workers so that they can re-enter the workforce. According to the IR Code, the fund must include the following:

- i. In the case of retrenchment alone, the employer of an industrial establishment contributes an amount equal to fifteen days wages last taken by the worker immediately before the retrenchment, or such other number of days as the Central Government may notify, for each retrenched worker.
- ii. Contributions from any other sources that the appropriate government deems suitable.

Within forty-five days following retrenchment, the fund shall be used by crediting fifteen days earnings last drawn by the retrenched worker to his account in the manner prescribed.

In terms of offering a simpler system for dispute settlement, the IR Code appears to be a step in the right direction. The creation of a bargaining union/council will also help to speed up the process of striking acceptable agreements between employers and employees. More enterprises will have freedom in terms of retrenchment of staff and establishment closures if the threshold for industries requiring prior authorization under the IR Code is raised. However, the impact of the IR Code on workers' right to strike remains to be seen.

4.12 MODIFICATION IN SERVICE CONDITIONS

The employer is required to notify the affected workers of any changes in their working circumstances in the following areas¹⁵⁸:

- i. salaries, bonuses, and other benefits
- ii. any payment made or payable by the employer to any provident fund, pension fund, or other fund for the benefit of employees under any law in effect at the time.
- iii. working hours and relaxation periods.
- iv. leave with pay and vacations.
- v. a shift that begins, changes, or ends in a manner that is not in conformity with standing orders.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

- vi. grade-level classification
- vii. the revocation of any customary favour or privilege, or a change in use, the introduction of new discipline provisions, or the revision of existing regulations, unless as stipulated in standing orders.
- viii. any increase or decrease in the number of people employed or to be employed in any vocation, procedure, department, or shift that is not caused by events over which the employer has no control.

4.13 KEY HIGHLIGHTS

- i. defines "workers" to include persons in supervisory capacities earning wages of up to Rs. 8,000 per month or an amount as may be notified by the Central Government from time to time
- ii. provide for fixed-term employment with the goal of providing the employee with all the benefits of a permanent employee (including gratuity), except for the notice period after the c the employer has been given the flexibility to hire people on a fixed-term basis based on need and without regard for industry.
- iii. to revise the definition of "industry" to include, with certain exceptions, any systematic activity carried out by co-operation between the employer and workers for the production, supply, or distribution of goods or services intended to satisfy human wants or wishes (not just spiritual or religious wants or wishes).
- iv. to include concerted casual leave in the definition of a strike.
- v. at an industrial establishment employing twenty or more workers, give the maximum number of members in the Grievance Redressal Committee up to 10. In the proportion of women workers to total workers engaged in the industrial establishment, there must be adequate representation of women workers.
- vi. to include a new feature allowing an employer to recognise a negotiating union and negotiating council in an industrial establishment for the purpose of bargaining. The fifty-one percent or more workers on a muster roll of an industrial establishment has been set as the requirement for recognition of a negotiating union. In terms of the negotiating council, a Trade Union with the backing of 20% of workers will be given one seat, and the portion above 20% will be ignored.
- vii. to provide for an appeal to the Industrial Tribunal against the non-registration or annulment of a trade union's registration.
- viii. to give the Central Government and State Governments the authority to recognise a Trade Union or a federation of Trade Unions as the Central Trade Union or the State Trade Unions, respectively.

- ix. Provide for the application of a three-hundred-worker threshold for an industrial facility to receive certification of standing orders if the standing order differs from the Central Government's model standing order.
- x. to specify that if an employer produces and accepts a model standing order of the Central Government relating to matters affecting the employer's industrial establishment, the model standing order is regarded certified. Otherwise, only those clauses that deviate from the model standing orders may be certified by the industrial establishment.
- xi. to establish an Industrial Tribunal with a Judicial Member and an Administrative Member, rather than the current single Judicial Member who preside over the Tribunal. Certain defined instances will be decided by a two-member Tribunal, while the rest will be determined by a single-member Tribunal, unless the regulations provide otherwise.
- xii. to replace existing numerous adjudicating entities such as the Court of Inquiry, Board of Conciliation, and Labor Courts with Industrial Tribunals.
- xiii. to abolish the reference system for industrial disputes adjudication, with the exception of referrals to the National Industrial Tribunal for adjudication.
- xiv. to establish that conciliation proceedings are deemed to have begun on the date of the first meeting held by the conciliation officer in an industrial dispute after the conciliation officer receives the notice of strike or lock-out.
- xv. prohibiting strikes and lockouts in all industrial enterprises without a fourteen-day notice period
- xvi. to make it mandatory for industrial establishments with three hundred or more employees to seek prior permission from the appropriate government before laying off, retrenchment, or closing, with the flexibility for the appropriate government to raise the threshold to higher numbers by notification.
- xvii. to establish a re-skilling fund for retrenched workers' training. The fund will be made up of the employer's contribution of fifteen days' pay last drawn by the worker immediately before the layoff, or such other number of days as the Central Government may specify in the event of retrenchment alone. The fund will be used by crediting fifteen days of earnings to the account of a retrenched worker within forty-five days of the retrenchment, as stipulated by rules.
- xviii. to provide for the compounding of offences by a Gazetted Officer, as the appropriate Government may specify by notification, for a sum equal to fifty percent of the maximum fine provided for such offence punishable solely by fine, and for a sum equal to seventy-five percent provided for such offence punishable by imprisonment for a term not exceeding one year, or with fine.

- xix. to establish punishments for various sorts of violations in order to rationalise and proportionate with the severity of the infractions.
- xx. to authorise the competent government to exempt any industrial establishment from any of the Code's provisions for a predetermined term in the public interest.

4.14 COMPARISON OF EXISTING LAWS WITH THE CODE ON SOCIAL SECURITY, 2020¹⁵⁹

EXISTING PROVISIONS	UPCOMING PROVISIONS
<p>Definitions</p> <p>i. Employee and Fixed-term employment is not defined in any of the Act</p> <p>ii. Changes in definitions of Strike, Wages, Industrial Dispute, Lay off, Workman was defined in the Industrial Dispute Act</p>	<p>New Definition of Employee, fixed-term employment has been introduced</p> <p>Definition of Strike has been amended to mass casual leave by 50% or more workers on a given day, while the definition of Wages kept aligned with other Labor code</p> <p>Workman now renamed as the worker</p>
<p>Industrial Dispute Act:</p> <p>The workman need not raise its grievance to the committee before moving to a conciliation officer.</p>	<p>The Code make mandatory provisions for Grievance Redressal Committee.</p>
<p>No provision for “Negotiating Union”</p>	<p>Recognition of “Negotiating Union” is mandatory</p>
<p>Standing Orders</p> <p>Only the Industrial Establishments defined under the Industrial Establishment Standing Order Act required to formulate standing orders</p>	<p>The code defines an Industrial Establishment as defined under the Payment of Wages Act, 1936</p> <p>Therefore, unless specifically notified under the Payment of Wages Act, the provisions of the code do not apply to an industrial</p>

¹⁵⁹ Ibid.

<p>Threshold for applicability of standing order was on having 100 or more workers</p>	<p>establishment, except railways, the establishment of a contractor of an industrial establishment and factories</p> <p>Threshold limit has been increased up to 300 workers</p>
<p>No time limit mentioned for completing the disciplinary proceedings against the worker</p>	<p>Investigation and inquiry have to be completed within 90 days from the date of suspension of a worker.</p>
<p>Resolution of Industrial dispute use to be done by only one member Tribunal under Industrial Dispute Act</p>	<p>The mechanism for the resolution of industrial disputes introduced under the Industrial Relations Code.</p> <p>Now the Industrial tribunal will consist of two members out of whom one shall be a judicial member and the other will be an administrative member.</p>
<p>Prior notice condition was only applicable to public utility service industries</p>	<p>The Code make mandatory provisions of 14 days prior notice before strike for all industrial establishments</p>
<p>No concept for worker re-skilling fund</p>	<p>New chapter introduced for worker's re-skilling fund.</p> <p>According to the provision, the employer will be required to deposit an amount equal to fifteen days last drawn wages of every retrenched worker.</p>
<p>No provision are there for fixed-term Employment. Employers often enter into a contract with employees for the short term, but the same was not regulated</p>	<p>The Code introduces fixed-term employment, which refers to workers employed for a fixed duration based on a contract signed between the worker and employer.</p>

<p>Penalties:</p> <p>For failure to certify standing orders or the modifications to the same and comply with the finally certified standing orders, fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to INR 200 for every day after the first during which the offence continues.</p>	<p>The Code provided for more stringent penalties now.</p> <ul style="list-style-type: none"> i. Up to INR 2,00,000 ii. In case of non-certification of standing orders, an additional fine of INR 2,000 per day during which the contravention continues iii. In subsequent contravention of the finally certified standing orders, fine up to INR 4,00,000 and imprisonment for a term up to 3 months, or both
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4.12 THE CODE'S IMPACT

The Industrial Relations Code introduced many new provisions to reform and rationalise labor laws, but it also raised many concerns about provisions dealing with legal strikes, the implications of raising the threshold for standing orders, and the rules on hiring and firing, and as a result, it has faced opposition from a variety of sources. Furthermore, the Code has been chastised for incorporating a number of measures that benefit employers while reducing the protection offered to workers in an industrial setting.

According to analysts, raising the standing order requirement will weaken workers' rights in small businesses with less than 300 employees. “The rise in the threshold for standing orders from 100 to 300 is unjustified, and it demonstrates the government's desire to provide corporations with enormous hiring and firing flexibility... For all industrial establishments employing less than 300 workers, firing for claimed misconduct and retrenchment for economic reasons will be entirely possible. “This is a complete destruction of job security,” said KR Shyam Sundar, an XLRI professor and labor economist.

New requirements for carrying out a valid strike are also introduced by the Industrial Relations Code. In contrast to the current situation, where only the time for conciliation is included in the conditions for workers before going on a legal strike, the time for arbitration proceedings has been included in the conditions for workers before going on a legal strike.

For example, the IR Code stipulates that no individual employed in an industrial establishment may go on strike without 60 days' notice and during the pendency of proceedings before a Tribunal or a National Industrial Tribunal, as well as sixty days after such processes have concluded. As a result, the legally permitted time frame for workers to go on a legal strike has been extended, making a legal strike all but impossible. For the needed notification period and other requirements for a valid strike, the IR code has been expanded to cover all industrial facilities. The Standing Committee on Labor had advised against extending the mandatory strike notification time to include public utility services such as water, electricity, natural gas, telephone, and other critical services. Currently, a person engaged in a public utility service cannot go on strike unless he gives six weeks' notice or fourteen days' notice, which the IR Code currently intends to apply to all industrial companies.

CHAPTER 5: THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

5.1 OVERVIEW

Occupational health and safety (OHS) relates to health, safety, and welfare issues in the workplace.

OHS includes the laws, standards, and programs that are aimed at making the workplace better for workers, along with co-workers, family members, customers, and other stakeholders.

Improving a company's occupational health and safety standards ensures good business, a better brand image, and higher employee morale.

Occupational health and safety is concerned with addressing many types of workplace hazards, such as:

- Chemicals
- Physical hazards
- Biological agents
- Psychological fallout
- Ergonomic issues
- Accidents

Occupational health and safety standards are in place to mandate the removal, reduction, or replacement of job site hazards. OHS programs should also include material that helps minimize the effects of the hazards.

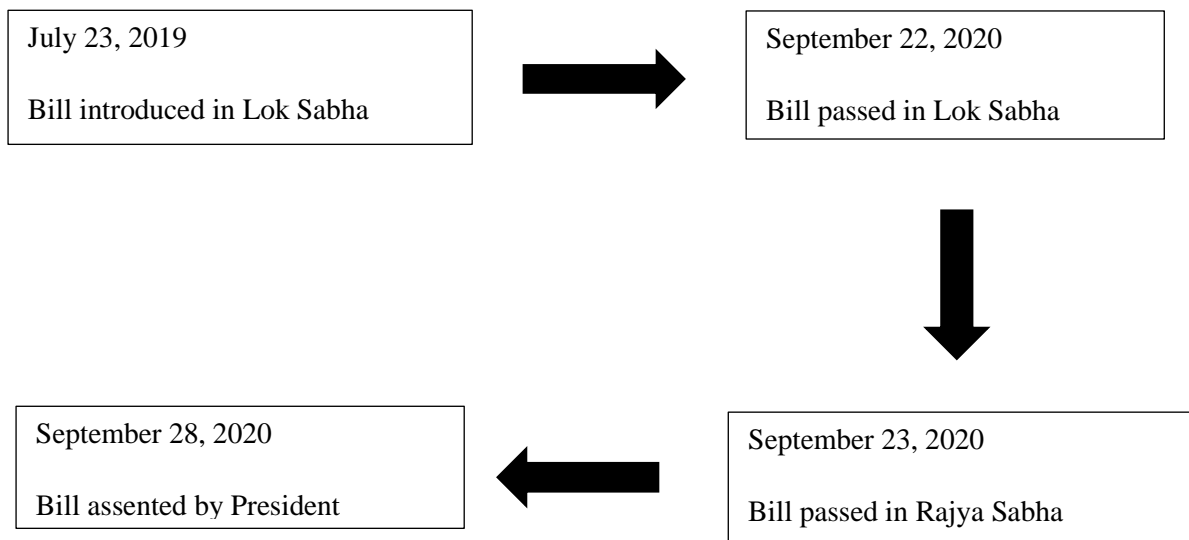
Employers and company management are obliged to provide a safe working environment for all of their employees.

5.2 THE CODE'S EVOLUTION

It has been determined to bring the Occupational Safety, Health, and Working Conditions Code, 2020, in accordance with the recommendations of the aforementioned Commission and the

deliberations made at the tripartite meeting comprised of the Government, employers, and industry representatives.¹⁶⁰

Occupational Safety, Health and Working Conditions Code, 2020 was introduced in Lok Sabha by the Minister of State for Labour and Employment. It was re-introduced with new changes leading to the withdrawal of the Occupational Safety, Health and Working Conditions Code, 2019.¹⁶¹



The legislation combines, simplifies, and rationalises the relevant sections of the thirteen Central labor enactments relating to employees' employment, safety, health, and working conditions, namely:

1. **The Factories Act of 1948¹⁶²**: The Factories Act of 1948 protects workers' health, ensures workplace safety when dealing with machines, improves working physical conditions, and offers welfare amenities. The Act only applies to factories.
2. **The Plantations Labor Act of 1951¹⁶³**: An Act to provide for the welfare of plantation workers and to regulate working conditions.
3. **The Mines Act of 1952¹⁶⁴**: The Mines Act of 1952 contains provisions for health, safety, and welfare measures for coal, metalliferous, and oil mine workers. The Act specifies the owner's responsibilities for managing mines/mining operations, as well as mine health and safety.

¹⁶⁰ 'The Occupational Safety, Health And Working Conditions Code, 2020' (n 46).

¹⁶¹ *ibid.*

¹⁶² **The Factories Act of 1948**

¹⁶³ **The Plantations Labor Act of 1951**

¹⁶⁴ **The Mines Act of 1952**

4. **Working Journalists and Other Newspaper Employees (Conditions of Service and Other Provisions) Act of 1955¹⁶⁵**: The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, among other things, authorises the Central Government to determine and amend pay for working journalists on a regular basis, as well as to establish a Wage Board to do so.
5. **The Working Journalists (Fixation of Rates of Wages) Act of 1958¹⁶⁶**: An Act to set rates of wages for working journalists and to provide for matters associated therewith.
6. **The Motor Transport Workers Act of 1961¹⁶⁷**: The Motor Transport Workers Act of 1961, which went into effect in March 1962, was enacted to protect the welfare of motor transport workers and to govern their working conditions.
7. **The Beedi and Cigar Workers (Conditions of Employment) Act, 1996¹⁶⁸**: An Act to provide for the welfare of workers in beedi and cigar establishments, as well as to regulate their working conditions and related things.
8. **The Contract Labor (Regulation and Elimination) Act of 1970¹⁶⁹**: An Act regulating the employment of contract labor in certain enterprises and providing for its abolition in certain circumstances, as well as topics related thereto.
9. **The Sales Promotion Personnel (Condition of Service) Act of 1976¹⁷⁰**: This act governs the working conditions of sales promotion employees in specific companies.
10. **The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979¹⁷¹**: An Act to control the employment of inter-state migrant workers, as well as their working conditions and related topics.
11. **The Cine Workers and Cinema Theatre Workers Act of 1981¹⁷²**: An Act to regulate the employment conditions of some cine-workers and cinema theatre workers, as well as related topics.
12. **The Dock Workers (Safety, Health, and Welfare) Act of 1986¹⁷³**: An Act to provide for the safety, health, and welfare of dockworkers and related subjects.
13. **The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act of 1996¹⁷⁴**: An act to regulate the employment and conditions of service of building and other construction workers, as well as to provide

¹⁶⁵ **Working Journalists and Other Newspaper Employees (Conditions of Service and Other Provisions) Act of 1955**

¹⁶⁶ **The Working Journalists (Fixation of Rates of Wages) Act of 1958**

¹⁶⁷ **The Motor Transport Workers Act of 1961**

¹⁶⁸ **The Beedi and Cigar Workers (Conditions of Employment) Act, 1996**

¹⁶⁹ **The Contract Labor (Regulation and Elimination) Act of 1970**

¹⁷⁰ **The Sales Promotion Personnel (Condition of Service) Act of 1976**

¹⁷¹ **The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979**

¹⁷² **The Cine Workers and Cinema Theatre Workers Act of 1981**

¹⁷³ **The Dock Workers (Safety, Health, and Welfare) Act of 1986**

¹⁷⁴ **The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act of 1996**

for their safety, health, and welfare, as well as other matters related to or incidental to their employment.

The Preamble of the Act states,

*"An Act to consolidate and reform the laws controlling occupational safety, health, and working conditions of persons employed in establishments, and for matters associated with or ancillary thereto."*¹⁷⁵

5.3 THE CODE'S APPLICABILITY

The Code applies to workplaces with 20 or more people and a powered production process, as well as facilities with 40 or more workers and a manual production process.¹⁷⁶

Emphasizes the health, safety, and welfare of workers in industries, trade, business, manufacturing, factory, motor transportation undertakings, building and other construction work, newspaper establishments, audio-video production, plantation, mine & dock-work, and service sectors.¹⁷⁷

The Code does not apply to offices of the Central Government, State Governments, ships of war, or people of any nationality, but it does apply to contract labor employed by a contractor in offices where the Central Government or State Government is the primary employer.

The Code establishes national and state occupational safety boards to advise the federal and state governments on the standards, rules, and regulations to be enacted as a result of the Code. Special provisions are made in the Code for various types of businesses, such as factories, mines, port workers, and construction employees. There are different laws for licencing, safety standards, and employer responsibilities.

The Code is divided into schedules that include a list of industries participating in the hazardous process, a list of subjects where standards for worker health and safety must be observed, and a list of notifiable diseases that must be reported to the appropriate authorities.

5.4 KEY DEFINITIONS

i. Contract Labor¹⁷⁸

¹⁷⁵ 'The Occupational Safety, Health And Working Conditions Code, 2020' (n 46).

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

A worker judged to be employed in/in conjunction with the work of an establishment when hired for such work through a contractor, with or without the knowledge of the principal employer, has been defined as contract labor. Any worker (other than a part-time employee) who is regularly employed by the contractor for any activity of his establishment and whose employment is governed by mutually accepted standards of conditions of employment and receives periodic pay increases and other welfare benefits is excluded from the definition.¹⁷⁹

ii. Employee¹⁸⁰

An employee is a person who is paid by an enterprise to perform any skilled, unskilled, manual, operational, supervisory, management, administrative, technical, clerical, or other work². All of the new codes, as well as the Code on Wages for 2019, have a similar definition of employee.¹⁸¹

iii. Employer¹⁸²

The OSH Code defines an employer as a person who employs one or more employees in his establishment, whether directly or through another person, or on his behalf, or on behalf of another person, and includes, among other things, the person/authority who has ultimate control over the establishment's affairs and contractor.¹⁸³

iv. Establishment¹⁸⁴

A business is defined as:

- i. any location with ten or more employees where any industry, trade, company, manufacture, or activity is practised.
- ii. a motor transport company, a newspaper, an audio-visual production company, a construction company, or a plantation employing ten or more people.
- iii. a factory that employs ten or more people.
- iv. a mine, a port, or the area around a port where dock work is done.¹⁸⁵

v. Hazardous Process¹⁸⁶

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

A hazardous process, according to the OSH Code, is any process or activity related to particular industries (as defined in Schedule I of the OSH Code), in which raw/intermediate/finished/bye-products, etc., would:

- i. Endangered the health of those involved in or associated with the activity.
- ii. Cause pollution of the environment in general¹⁸⁷

vi. Principal Employer¹⁸⁸

A primary employer, as defined by the OSH Code, is a company that employs more than one person.

- i. any person in charge of the establishment where contract labor is employed or engaged in terms of supervision and control.
- ii. the factory's owner or occupier, and, if a factory manager has been named, that individual.

vii. Wages

Wages, as defined by the OSH Code, are all remuneration, including salaries, allowances, and other forms of remuneration, expressed in monetary terms or capable of being expressed in monetary terms, that would be payable to a person in respect of his employment, whether express or implied, or work performed in such employment, and include basic pay, dearness allowance, and retaining allowance, if any.

The OSH Code specifies that wages do not include the following items:

- Bonus
- the cost of lodging or light, water, and medical attention
- contribution by the employer to any pension or provident fund
- transportation allowance
- the amount paid to an employee to cover extra charges.
- allowance for house rent
- Overtime compensation
- gratuity and so on¹⁸⁹

viii. Workers¹⁹⁰

While the OSH Code's definition of workers is similar to the Contract Labor (Regulation and Abolition) Act of 1971's definition of "workmen," it excludes from its scope anyone

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

employed in a supervisory capacity and earning more than Rs. 18,000/- (Rupees Eighteen Thousand only) per month or such other amount as the Central Government may notify.¹⁹¹

5.5 REGISTRATION AND LICENSE

Establishments subject to the Code must register electronically with registering officers appointed by the Central or State governments within 60 days of the Code's implementation. Additionally, some businesses, such as factories and mines, as well as those that hire Beedi and Cigar workers, may be required to obtain additional permits in order to operate.

Section-3: This clause governs the registration of establishments and lays forth the procedures for doing so.¹⁹²

Section-5: This clause governs the employer's notification of the factory, mine, contract labor, or building or other construction work prior to the start of any industry, trade, business, manufacture, or occupation in the concerned establishment, as well as the termination thereof.

5.6 EMPLOYER RESPONSIBILITIES

Every employer is required by the OSH Code to do the following:

- i. ensure that the workplace is free of dangers that may cause or are likely to cause harm or occupational disease to employees, and that the OSH Code and government directives on the subject are followed.
- ii. offer certain kinds of employees with a free annual health examination or test.
- iii. provide and maintain, to the extent that it is practically practicable, a safe and healthy working environment for employees.
- iv. distribute appointment letters to staff.
- v. ensuring that no employee is charged for maintaining workplace safety and health, including conducting medical examinations and investigations to detect occupational disorders.

Furthermore, the OSH Code imposes stricter obligations on employers in the areas of factories, mines, dock work, building and other construction activity, and plantations, including:

¹⁹¹ Ibid.

¹⁹² Ibid.

- i. workplace arrangements for assuring workplace safety and the absence of health risks associated with the usage, storage, and transportation of articles and substances.
- ii. providing all required information, education, training, and monitoring to protect the health and safety of all employees at work, and so on.

The OSH Code also states that it is the responsibility of the architect, project engineer, or designer responsible for any building or construction work, or the design of any project relating to such a building, to ensure that the safety and health of the building workers and employees who are employed in the erection, operation, and maintenance of such a building is taken into account during the planning stage.

5.7 EMPLOYEE'S RIGHTS

Under the OSH Code, every employee has the following rights:

- i. to obtain information about an employee's health and safety at work from the employer, and to notify the employer of any inadequacies in the employer's provision for the protection of the employee's safety or health in connection with work activity in the workplace, and, if the employer is not satisfied, to the inspector-cum-facilitator.
- ii. If he has a reasonable suspicion of impending serious personal damage or death, or imminent danger to his health, he may immediately notify his employer and simultaneously notify the inspector-cum-facilitator.
- iii. If the employer is certain that there is an imminent danger, he must take urgent corrective measures and notify the action taken to the inspector-cum-facilitator in the way established by the Government.
- iv. If the employer is not satisfied with the existence of any imminent danger as perceived by his or her employees, he or she must immediately report the situation to the inspector-cum-facilitator, whose decision on the existence of such imminent risk shall be final.

5.8 WORKING CONDITIONS, SAFETY, AND HEALTH

Employee welfare activities, as stipulated by the Central Government, must be provided, and maintained by the employer, including:

- i. separate and adequate facilities for male and female staff for washing
- ii. separate bathing and locker rooms for male, female, and transgender personnel
- iii. seating for all employees who are required to work in a standing position.

- iv. sufficient first-aid boxes or closets with contents accessible at all times during working hours
- v. any further welfare measures that the Central Government believes necessary for employees to live a dignified life under the circumstances.

Furthermore, the Central Government has the authority to order the provision of, among other things:

- i. cleanliness and hygienic conditions
- ii. temperature, humidity, and ventilation
- iii. a sufficient level of humidification
- iv. Drinking water that is safe to consume.
- v. sufficient lighting
- vi. sufficient criteria to prevent congestion, and so on

5.9 CONTRACT LABOR AND INTER-STATE MIGRANT WORKER'S EMPLOYMENT

The number of minimum contract laborers has been increased from twenty to fifty under the OSH Code. The major employer of the establishment is required to provide welfare amenities to contract labor engaged in the establishment, as stated by the OSH Code.

The OSH Code allows for a common licence in respect of a factory, industrial premises for beedi and cigar operations, and contract labor, which should be helpful. It has also been clarified that no contractor may engage in any contract labor without first obtaining a licence under and under the OSH Code.

The OSH Code also protects the rights of inter-state migrant workers by requiring contractors to provide all benefits accessible to employees under various labor laws to inter-state migrant workers. Furthermore, every applicable establishment's employer is required to pay a lump sum fee to every inter-state migrant worker for the to and from journey between his native location and his place of employment.

The implementation of the OSH Code comes at a critical juncture at which workers' rights have been hotly debated in every arena and their hardship has been brought to the forefront during the pandemic. The OSH Code makes it apparent that it wants to address the concerns that have come to light, such as interstate migratory labor. Furthermore, the adoption of the single licence signals a clear movement toward simplification of the compliance regime. While the OSH Code contains all of the elements of well-rounded legislation, it is smart to hold off on labelling it a success until it has reached the implementation stage.

5.10 HIGHLIGHTS

- i. The Code strives to reduce the burden on employers by consolidating several registrations under numerous enactments into a single registration, one licence, and one return, which will result in a centralised database and be beneficial to ease of doing business.
- ii. To provide flexibility in adjusting to technology developments and dynamic elements in areas such as worker health, safety, welfare, and working conditions.
- iii. Workplace dangers that cause or are likely to cause harm or occupational disease to employees should be avoided.
- iv. To include in the definition of "working journalist" journalists who work in electronic media, such as e-paper establishments, radio, or other media.
- v. Employers must provide free annual health screenings to their employees.
- vi. Employers must guarantee that hazardous and toxic waste, including e-waste, is properly disposed of.
- vii. Issuance of an appointment letter to each employee on their first day on the job.
- viii. Workers/employees are entitled to receive double pay for overtime hours worked.
- ix. Employers or contractors are responsible for providing interstate migrant employees with welfare services.
- x. Employers must provide amenities such as ventilation, humidification, drinkable drinking water, adequate lighting, a creche, washing facilities, bathing areas, locker rooms, and other amenities.
- xi. The Code requires employers to offer a safe working environment and to attempt to mitigate the possibility of regrettable accidents occurring during the course of employment.
- xii. To make the provisions relating to Inter-State Migrant Workers applicable to any establishment in which ten or more migrant workers are employed or were employed on any day during the preceding twelve months, and to allow an Inter-State Migrant to register himself as an Inter-State Migrant Worker on the portal based on self-declaration and Aadhaar.
- xiii. The Code prohibits civil courts from hearing Code-related cases. A person who has been wronged has only one legal option: file a writ petition before the relevant High Court.
- xiv. The Central Government shall establish a National Occupational Safety and Health Advisory Board to carry out the functions delegated to it by or under this Code, as well as to provide advice to the Central Government on matters relating to the standards, rules, and regulations to be enacted under this Code.

- xv. The State Government shall establish the State Occupational Safety and Health Advisory Board to advise the State Government on concerns arising out of the administration of this Code that the State Government may submit to it.
- xvi. An Inter-State Migrant Worker is entitled to portability of benefits in the destination State, including rationing and building and other construction worker cess benefits.
- xvii. The competent government may mandate the formation of safety committees in specific businesses and for specific personnel. Representatives from both the company and the workers will serve on the committees. Employer representatives, on the other hand, cannot outnumber employee representatives. Employers and employees will be able to communicate through these committees.
- xviii. The appropriate authority's licence for inter-state migrant workers shall be issued electronically, containing all pertinent information, such as the number of contract laborers, the nature of work for which contract laborers are to be employed, the contractor's responsibilities, and other pertinent information, including information relating to the employment of inter-state migrant workers.
- xix. To provide for a "common licence" for factories, contract labor, and beedi and cigar establishments, as well as to introduce the concept of a single five-year all-India licence to engage contract labor.
- xx. If the number of contract laborers increases, the contractor must apply for a licence amendment and provide a security deposit.
- xxi. Inter-state migrant workers shall be provided with the same benefits as other employees of that establishment, including benefits under the Employees' State Insurance Act, 1948, or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, or any other law in force at the time, and the same medical check-up facility as other employees.
- xxii. It is the employer's sole responsibility to pay yearly journey allowances to every inter-state migrant worker a lump-sum amount of fare for to and from travel to and from his native place from his place of employment, in a manner that takes into account the minimum service for entitlement, periodicity, and class of travel.
- xxiii. Employer in plantation to provide necessary housing, including drinking water, kitchen and toilet facilities, health, and recreational facilities, to every worker employed in the plantation (including his family), crèches facilities for plantations with more than 50 workers (including workers employed by any contractor), educational facilities for children of workers between the ages of five and ten years.

- xxiv. To give the Central Government broad authority to govern the general safety and health of people living in India, whether in whole or in part, in the event of an epidemic, pandemic, or tragedy.
- xxv. To set aside money for a Social Security Fund to help unorganised workers.
- xxvi. To provide for the adjudication of fines imposed under the Code.

5.11 COMPARISON OF EXISTING PROVISIONS WITH THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020¹⁹³

EXISTING PROVISIONS	UPCOMING PROVISIONS
Key terms like "Employee", "Employer" and "Establishment" were defined inconsistently in various Acts and Rules.	New definition of Employee introduced with a wide coverage New definition of Employer introduced covering Occupier of a factory The establishment is now defined to include factory, newspaper establishment and plantation in which more than ten workers are employed.
Separate registration is required separately under all the labor laws.	One single electronic registration is required for every establishment under the Code.
Multiple returns are required to be filed under various Acts	One single consolidated return is required to be filed under ease of doing business.
Threshold limit for appointment of Welfare Officer is currently 500 workers in a factory	In factories, mines and plantation industries it is now mandatory to appoint Welfare Officer if there are more than 250 workers.
There are no provisions for mandatory welfare facilities to inter-state migrant workers.	The Code made mandatory provision for welfare facilities to inter-state migrant workers as well.

¹⁹³ Ibid.

There are no provision for the constitution of the National Occupational Safety and Health Advisory Board.	The Code makes mandatory provisions for the constitution of National Occupational Safety and Health Advisory Board.
Annual leave with wages for one day on every 20 days of working by employees/workers are available in labor laws	Annual leave with wages provision kept same in the Code hence no change in this provision.
The threshold limit for the Crèche facility is currently 30 Female workers/employees.	The Code has enhances the threshold limit for crèche facility increased up to 50 number of female workers/employees in the establishment.
The threshold for the canteen facility is 250 workers/employees in any establishment.	The Code has reduced the threshold limit for Canteen to 100 number of workers/employees in the establishment.
There are no provision for women employment during the night shift.	The Code introduces new provisions for for employment of female employees for working beyond 7 pm till 6 am with their consent and conditions relating to safety, holiday, working hours.
There are no provision for workers employed in transport, sales, promotion and journalism	The Code introduces special working hours and leave requirements for workers employed in transport, sales, promotion and journalism.
There are no specific provisions in any of the existing laws overtime with consent.	Under the Code overtime work can be taken by the employer with the consent of the worker/employee.
Under labour laws the threshold limit for constitution of Safety Committee and appointment of Safety Officer is 1000 workers in the establishment.	The Code will change the thresholds limit for constitution of Safety Committee and appointment of Safety Officer in following manner: i. 500 workers in Factory ii. 250 workers in a building and other construction works iii. 250 workers in a hazardous process iv. 100 workers in a mine.

A day off as week off provisions is available under labour laws.	The Code introduced the same provision in a new manner now. Workers cannot be required to work for more than 6 days/week and shall be entitled to one day off for every 20 days of work & one day off every week.
There are no provisions for leave encashment	The Code introduces provision for entitlement of leave encashment.
Offences and Penalties are lenient in terms of less monetary fine and imprisonment duration.	The Code shall have stringent penalties with the comparatively high monetary amount and imprisonment period.

5.12 THE CODE'S IMPACT

The Code contains general provisions which apply to all establishments. These include provisions on registration, filing of returns, and duties of employers. However, it also includes additional provisions that apply to the specific type of workers such as those in factories and mines, or as audio-visual workers, journalists, sales promotion employees, contract labor and construction workers.

It may be argued that special provisions on health and safety are required for certain categories of hazard-prone establishments such as factories and mines. It may be necessary to allow only licensed establishments to operate factories and mines. Similarly, special provisions may be required for specific categories of vulnerable workers such as contract labor and migrant workers. However, the rationale for mandating special provisions for other workers is not clear.

For example, the Bill requires that any person suffering from deafness or giddiness may not be employed in construction activity that involves a risk of an accident. The question is why such a general safety requirement is not provided for all workers. Similarly, the Bill provides for registration of employment contracts for audio-visual workers, raising the question of why there is a special treatment for this category.

Further, the Bill specifies additional leave for sales promotion employees. It also specifies that working journalists cannot be made to work more than 144 hours in four weeks (i.e., an average of 36 hours per week). For all other workers covered under the Bill, the minimum leave and maximum work hours are prescribed through rules. The rationale for differential treatment

about working conditions between working journalists and sales promotion employees on the one hand, and all other workers, on the other hand, is unclear.

Note that, if any sector-specific provisions are needed, the Bill empowers the government to notify them.

OSH Code restricts the ambit of its beneficiaries from the previous law (Factories Act, 1948) and does not extend its benefits to apprentices. There is no good reason to exclude a trainee from basic safety standards.

Moreover, although through the Code, the Government takes pride in bringing one of the biggest laws reforms of the decade, it still has not included the unorganised sector in its ambit. By not clearly laying down the intended beneficiaries and explicitly excluding the invisible workers, the Code does not tie together the loose ends of its predecessor law, the Factories Act, 1948. The Code only dispenses fragmented rights and fails to guarantee protection to sectors other than mines and industries. The Code applies to any establishment employing 10 or more employees, but it is a fact that the majority of establishments in India employ 10 or fewer workers.

The object of the Government while consolidating the 13 different occupational health and safety laws into the OSH Code was to move towards simplistic compliance and ease of doing business. Unfortunately, the Code creates its own roadblocks in the way of achieving this goal. An important example that has the effect of adding to the burden of compliance is the change in the requirement of 'Welfare Officers' to be appointed in an enterprise. Under the Factories Act, 1948, this was a mandate for enterprises with 500 or more workers, The Code extends this requirement to enterprises with 250 workers or more workers. Due to this change, small and medium-sized enterprises will have to appoint welfare officers.

The Covid-19 pandemic has brought into light the weak healthcare infrastructure in the country and the need to raise the standards of working conditions for the safety and wellbeing of healthcare workers. Fighting on the frontlines thousands of healthcare workers have lost their lives owing to inadequate health and safety measures.

Although the Code aims to cover a broad spectrum of establishments, it provides for no special provision to include or to address the particular issues faced by the healthcare sector. Thus, the problem here is not restricted to lack of clarity regarding the inclusion of the health care sector but also that the Code despite being moulded during the pandemic did not establish a more stringent liability of employers and the State towards healthcare workers.

For example, it only establishes a vague and general accountability for clean and hygienic working conditions. The details regarding the standards are yet to be notified by the Central Government. Although the Government had a fair chance to introduce reformed standards of health and safety and have a special regard for health care workers, no cut above has been made

by drawing from foreign jurisprudence or international labor standards. Moreover, in the time of technological revolution, The Code neither takes into account the problems of the modern worker nor uses technology in its stride. The Code makes no mention of mental health, although it is one of the most pressing issues of the 21st century. With these ever-rising numbers, the Code must make provisions to deal with the mental health of the workers, by making support groups or advisory boards to tackle the problems related to the workplace. Unless the Government tends to these problems, the Code will only be as good as the already available legislations.

CHAPTER 6: CONCLUSION & SUGGESTION

6.1 ACROSS THE LABOR CODES COMMON CHANGES

1. Appropriate government for Central Public Sector Undertakings

The Codes state that for every central public sector initiative, the central government will function as the proper government (PSUs). The Codes further state that the central government will continue to be the appropriate government for a central PSU even if the central government's ownership in that PSU falls below 50% after the Bills take effect.

2. Appropriate government for a particular industry

For particular businesses, such as railways, mines, telecommunications, and banking, the Codes specify that the central government is the appropriate government. It goes on to say that any “Controlled Industry” will fall under the jurisdiction of the central government (that the government may specify). A controlled industry has been defined (in the Occupational Safety and Industrial Relations Bills) as an industry over which the Union's control has been recognised in the public interest by any Central Act.

3. Consolidation of criminal offences punishable by imprisonment

The Code provided for the compounding (settlement) of offences that were not punished by jail, or by imprisonment and a fine if certain requirements were met. Compounding was permitted for an amount equal to 50% of the maximum penalties for the offence. In addition, the Code on Industrial Relations and Social Security states that offences punishable by up to a year in prison or a fine are compoundable. Compounding is permitted for fine-only offences up to 50% of the maximum fine authorised for the offence. Compounding is authorised for a sum of 75% for offences that result in jail. When a ‘penalty’ is imposed (e.g., for non-maintenance of registers), 50 percent of the penalty may be compounded, and 75 percent for ‘offences,’ according to the Code on Occupational Safety (e.g., for falsification of records).

6.2 COMMON PROBLEMS ACROSS THE LABOR CODES

1. ‘Appropriate Government’ Definition

The central government will operate as the proper government for any central public sector endeavour, according to all labor codes (PSUs). Even if the central government's share in a central PSU falls below 50%, the central government will continue to be the proper government for that PSU. It is unclear why the federal government should continue to have authority over a company in which it has no controlling interest (even in cases where it has sold its entire stake). Note that the Committee has previously suggested that the central government exercise powers exclusively over PSUs in which it owns more than a 50% stake while reviewing prior versions of the Codes on Industrial Relations and Social Security.

2. Delegated Legislation

The legislature has the right to make laws, and the government is responsible for enforcing them, according to the Constitution. To provide for speed and flexibility, the legislature frequently enacts a legislation that covers fundamental principles and policies while delegating technical rulemaking to the executive. Certain functions and powers, on the other hand, should not be given to the government. This includes determining the law's principles through formulating the legislative policy. Any Rule should also stay within the delegating Act's scope.

Through rulemaking, the Codes delegate many key components of the laws to the government. These are some of them:

- i. raising the layoff, retrenchment, and closure thresholds.
- ii. establishing thresholds for the applicability of various social security plans to businesses.
- iii. Occupational safety Code specifies the safety standards and working conditions that establishments must provide. The debate is whether the legislature should retain authority over such topics or whether it should be ceded to the government.

The Standing Committee on Labor highlighted in its review of the Social Security Code that the Bill delegated various areas to the government for rulemaking, particularly in relation to establishing entitlements, benefits, and contributions under the Codes.

3. The ability to exempt businesses.

If it is in the public interest, the government can exclude any new industrial establishment or class of establishment from any or all of the rules of the Code on Industrial Relations. The Code on Occupational Safety also grants the appropriate authorities the authority to exempt any establishment for a set length of time. It also

allows the state government to exempt any new plant from its provisions in order to boost economic activity and jobs. It is worth noting that the Factories Act of 1948 only allowed for three-month waivers from its rules in the event of a public emergency.

As a result, the federal and state governments have a lot of leeway in granting exclusions from these Codes. Every plant would provide jobs, and public interest may be interpreted in a variety of ways. Exemptions could apply to a wide range of rules, including those relating to working hours, safety requirements, layoff procedures, collective bargaining rights, and contract labor.

4. Workers who are not covered by the Bills.

All establishments are subject to the Code on Industrial Relations, which has various thresholds for layoffs, retrenchment, and closure, as well as the requirement of standing orders. The Codes on Social Security and Occupational Safety, on the other hand, continue to apply to businesses of a certain size - the Occupational Safety Code applies to businesses with 10 or more employees, while the Code on Social Security only requires businesses of a certain size (typically 10 or 20) to provide mandatory benefits (such as provident fund and pension).

5. Against Employees' Best Interests

Industrial establishments have the freedom to hire and fire personnel at will under the codes. This approach could allow businesses to impose arbitrary service terms on employees.

6. States have a free hand.

The federal government has also been chastised for giving states carte blanche to pass laws that violate workers' rights. However, the Union Labor Minister has stated that the labor issue is addressed in the Constitution's Concurrent List, and that states have been granted the freedom to make modifications as they see fit.

7. Have an Impact on Industrial Peace

Workers in factories will have to give employers at least 14 days' notice if they wish to strike, according to the Industrial Relations Code.

8. Notice period lengthening

The Standing Committee on Labor, on the other hand, had previously advised against expanding the mandatory strike notification period beyond public utility services such as water, electricity, natural gas, telephone, and other critical services.

9. The Trade Union's Role

The Bharatiya Mazdoor Sangh has also spoken out against the Code, portraying it as an attempt to marginalise trade unions.

6.4 BENEFITS OF LABOUR CODES

1. Complex laws consolidation and simplification

The three Codes combine 25 central labor legislation that have been on the books for at least 17 years, simplifying labor rules.¹⁹⁴

2. Definitions that are consistent

It will stimulate industry and employment while also reducing the number of definitions and authorities available to firms.¹⁹⁵

3. Licencing Mechanism (Single)

A single licencing mechanism is provided by the codes. It will provide sectors a boost by bringing about significant changes to the licencing system. Currently, industries must apply for licences under a variety of legislation.

4. Dispute Resolution Made Easier

The regulations also streamline old labor rules and modernise the adjudication process, paving the door for faster dispute settlement.

5. Business Simplicity

According to the business community and some economists, such reforms will increase investment and make conducting business easier. It significantly reduces complexity and internal inconsistencies, boosts flexibility, and modernises safety and working conditions laws.

6. Additional Labor Benefits

The regulations will encourage fixed-term employment, limit trade union power, and increase the social safety net for workers in the informal economy.

¹⁹⁴ Kasturirangan and others (n 42).

¹⁹⁵ Ibid.

6.5 CONCLUSION

According to the Periodic Labor Force Survey, 71% of regular wage/salaried workers in the non-agriculture sector do not have a formal contract, and 50% do not have access to social security. The new legislation should encourage worker formalisation by making compliance easier.¹⁹⁶

The new labor rules will aid in speeding up the creation of high-quality jobs to meet the demands of an expanding workforce, rising ambitions, and labor out-migration from agriculture. This way, India will be able to fully utilise its natural labor and talent costs, assisting in a rapid economic recovery, particularly following Covid-19.

Furthermore, in the public interest, the Code on Industrial Relations and Occupational Safety authorises the government to exempt any new establishment from its rules. This raises the question of whether the Codes should apply to all establishments.

To lower the compliance burden on baby industries and support their economic growth, labor rules based on the number of employees are desired. Low numeric criteria, on the other hand, may provide disincentives for businesses to stay small in order to avoid complying with labor regulations.

Some states have altered their labor laws to raise the application requirement in order to encourage the growth of smaller businesses. For example, Rajasthan has increased the Factories Act's applicability threshold from 10 to 20 workers (if electricity is used) and from 20 to 40 workers (if no power is used) (if power is not used).

Increased thresholds for some labor rules in Rajasthan increased total output and total output per factory, according to the Economic Survey (2018-19).

The Code on Occupational Safety makes comparable adjustments to the size of the factory thresholds, increasing them from 10 to 20 people (if electricity is used) and from 20 to 40 workers (if no power is used). Furthermore, it raises the bar for applying laws governing the employment of contract labor from 20 to 50 people.

Basic measures for wage enforcement, social security, workplace safety, and acceptable working conditions, on the other hand, should apply to all establishments, regardless of size.

¹⁹⁶ 'Unorganised Labour Force in India — Vikaspedia' <<https://vikaspedia.in/social-welfare/unorganised-sector-1/categories-of-unorganised-labour-force>> accessed 15 June 2021.

The applicability thresholds (of 10 or higher) will not apply in workplaces where hazardous or life-threatening operations (as declared by the central government) are being carried out, according to the Code on Occupational Safety.

Employer flexibility, as a result of the simplicity of deployment and removal, will allow industries to operate their operations more smoothly. This freedom will allow employers to operate their businesses with the best interests of the company in mind and without the limitations of labour legislation, resulting in increased business growth and employment.

A single nation will be governed by a single law. Labor laws are similar to the "Ocean in the pitcher" in that they open up a new route of consistency among states. Unions may feel the loss of their democratic right to strike in order to demonstrate their fundamental right to resist their employer over any difference of opinion or behaviour.

Multinationals will be attracted to the Indian market by the ease of doing business and foreign direct investment. The former system used an antiquated technique of keeping records in hard registers, which were also susceptible to frequent examination. The new law makes it possible to keep records and file returns online.

The government's labour code will be a game-changer initiative, and its successful implementation will give workers leverage in raising their standards and conditions of employment, employers flexibility in protecting their business interests and building transparency through digitalization, and employees' interests taken into account.

The code will also aid in the ease of doing business in India, as well as attract foreign direct investment and multinational and Indian entrepreneurs, in order to promote the expansion of business opportunities and propel India to new heights. The union, on the other hand, may lose control and fundamental rights to demonstrate and employ forceful instruments to safeguard unit closures and workers' interests amid poor business conditions.

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