



# REFORM AND CODIFICATION OF INDIA'S **LABOUR** LAWS

## INTRODUCTION

Any law or regulation enacted in the past needs to be revisited and updated with changing times and requirements of the society. It has been a long-standing agenda of the government to codify and consolidate the labour laws in order to address the prevalent issues and lay the ground for a conducive business environment. The problem came to the forefront as lockdowns due to COVID-19 affected India's economy. It was the labour market which bore the disproportionate costs in the form of largescale layoffs, job losses and cut in wages. This exposed the absence of basic safety nets for large sections of the labour force and has forced us to re-evaluate and reform our current institutional framework of labour laws.

In this edition, we will try to understand why labour laws are important for any economy, how and under what context India's labour laws have evolved since independence, why was there a need to reform those laws and how this recent codification will address the existing issues. Further, we will also see if the recent reforms are enough or more needs to be done?

## **WHAT ARE LABOUR LAWS AND WHAT ROLE DO THEY PLAY IN ANY ECONOMY?**

- Labour law also known as **employment law** is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations.
- Labour legislations that are adapted to the economic and social challenges of the modern world of work fulfil three crucial roles:
  - ⌚ **Redistribute legal power and more importantly, bargaining power** in an economy. Labour laws give workers the ability to enforce laws, negotiate better employment terms and participate in the management of firms.
  - ⌚ Establish a legal system that **facilitates productive individual and collective employment relationships**, and therefore a productive economy. It also provides a framework within which employers, workers and their representatives can interact with regard to work-related issues, **servicing as an important vehicle for achieving harmonious industrial relations**.
  - ⌚ **Provide a clear and constant reminder and guarantee of fundamental principles and rights** at work which have received broad social acceptance and establish the processes through which these principles and **rights can be implemented and enforced**.

## **HOW THE EVOLUTION OF LABOUR LAWS TOOK PLACE IN INDEPENDENT INDIA?**

- The history of labour legislations in India can be traced back to the history of **British colonialism**. The industrial/labour legislations enacted by the British were primarily intended to protect the interests of the British employers.
  - ⌚ For instance, **Factories Act, 1884** was introduced in the backdrop of stiff competition offered by the Indian textile goods to British textiles in the export market.
- The original colonial legislations underwent substantial modifications in the **post-colonial era**. The labour laws of independent India derive their origin, inspiration and strength partly from the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the Constituent Assembly debates and partly from the provisions of the Constitution and the International Labour Organisation's (ILO's) Conventions and Recommendations.
- But, the **major influence** on the formation of post-independence labour and economic policy was the priority given to government-directed "nation-building". It strongly emphasized on securing industrial peace & labour support for industrialization through **trade-union cooperation**.
  - ⌚ **As a result, a large number of labour laws have been enacted** catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages.





- **Post 1990s**, with the advent of liberalisation, there were demands to roll back the over regulation of labour and workplaces, particularly those laws which impacted upon the capacity of enterprises to hire and fire more easily, to engage labour in more flexible arrangements, and those requiring the payment of minimum wages.
- ⊙ As a part of **New Industrial Policy**, a shift to a less regulated labour market, particularly in relation to the tight controls exercised (at least in the organized sector) over dismissals and redundancies and the use of contract labour was seen. The idea behind these reforms was that workers were to be disciplined by the market rather than by state control.

## LABOUR AND THE CONSTITUTIONAL RIGHTS IN INDIA

- Under the Constitution of India, **Labour is a subject in the concurrent list** where both the Central and State Governments are competent to enact legislations.
- The articles which directly concerns labour rights are:
  - ⊙ **Article 19(1) (c)** that gives the right to form unions or associations,
  - ⊙ **Article 23** prohibits forced labour.
  - ⊙ **Article 24** goes on to prohibit child labour which includes that child below the age of 14 years should not be included in hazardous jobs.
  - ⊙ **Article 38(1)** promotes the welfare of people and **Article 38(2)** minimizes or decreases the inequality of income.
  - ⊙ **Article 43(A)** secures the participation of workers in the management of undertakings.

## ROLE OF INTERNATIONAL LABOUR ORGANIZATION (ILO) IN LABOUR WELFARE

- ILO was **established in 1919 by the Treaty of Versailles** as an affiliated agency of the **League of Nations** and is the **only tripartite United Nations agency** - bringing together governments, employers and workers representatives from its 187 member states.
- The **mission of the ILO is to promote social justice and internationally recognized human and labour rights**, based on the founding principle that social justice is essential to universal and lasting peace.
- As part of its mission, the ILO **aims to achieve decent work for all** by promoting social dialogue, social protection and employment creation, as well as respect for international labour standards.
- **International labour standards** are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and **setting out basic principles and rights at work**. They are either **Conventions (or Protocols)**, which are legally binding international treaties or **Recommendations**, which serve as non-binding guidelines.
  - ⊙ **Convention lays down the basic principles to be implemented by ratifying countries** and serves as a tool to bring national laws in line with international standards. While a related **recommendation, supplements the Convention by providing more detailed guidelines** on how it could be applied.
- **ILO Declaration on Fundamental Principles and Rights at Work** was adopted in 1998. It commits member states to respect and promote eight fundamental principles and rights in four categories, whether or not they have ratified the relevant conventions. They are:
  - ⊙ Freedom of Association and The Right to collective bargaining (Conventions 87 and 98)
  - ⊙ Elimination of forced or compulsory labour (Conventions No. 29 and No. 105)
  - ⊙ Abolition of child labour (Conventions No. 138 and No. 182)
  - ⊙ Elimination of discrimination in respect of employment & occupation (Conventions No. 100 & No. 111)

## INDIA AND ILO

- India is a **founding member** of the ILO and it has been a **permanent member of the ILO Governing Body since 1922**.
- India has **ratified six out of the eight-core/fundamental ILO conventions**. These conventions are No. 29, 105, 100, 111, 138 and 182.

# WHY WAS THERE A NEED TO REFORM AND CODIFY INDIA'S LABOUR LAWS?

The central challenge to labour regulation is to provide sufficient rights to workers while creating an enabling environment that can facilitate firm output and growth, leading to job creation. It has been observed that apart from other issues, the existing laws have neither benefited industries nor workers due to various reasons such as:

- **Complexity and plethora of laws:** Numerous labour laws, both at the centre (>40) and in states (>100) and that too added in a piecemeal manner, has resulted in these laws being ad-hoc, complicated, mutually inconsistent with varying definitions, and containing outdated clauses.
- ⊗ There are **multiple laws each on wages, industrial safety, industrial relations, and social security.** For instance, the minimum wage framework has **nearly 1,915 minimum wages for various job categories** across states
- ⊗ **Several laws have differing definitions of common terms** such as “appropriate government”, “worker”, “employee”, “establishment”, and “wages”, resulting in varied interpretation.
- ⊗ Further, multiplicity of laws affect the ability to of an entrepreneur to start business in India, indirectly affecting **India's Ease-of-Doing business (EODB) Rankings.** For example, an entrepreneur has to maintain eight registrations and four licences to run a business under the existing labour laws. Besides, they have to file eight labour returns, including to the EPFO, ESIC and Chief Labour Commissioner.



## STEPS TAKEN BY VARIOUS STATES:

As the subject of labour falls under concurrent list of the constitution, many states have utilised this opportunity to amend their labour laws by either suspending or relaxing many of them.

- **Rajasthan has increased the threshold of applicability of the Factories Act, 1948.** The Economic Survey (2018-19) validated this step by highlighting that increased thresholds for certain labour laws in Rajasthan resulted in an increase in growth of total output in the state and total output per factory.
- **Madhya Pradesh and Uttar Pradesh,** in particular, have carried out significant changes in the labour laws, largely **contracting the scope of Factories Act, 1948.**
- To increase industrial productivity, states such as **Gujarat, Madhya Pradesh and Himachal Pradesh have proposed to extend the working hours** of factory workers from eight to 12 hours a day.

## ➤ **Poor enforcement of laws:**

- ⊗ Various studies have observed that labour enforcement in India has been weak and has not protected workers adequately. In a performance audit, CAG noted that the **effectiveness of the adjudication process was diluted by various factors**, such as (i) routine delays by the government in referring labour disputes for adjudication, (ii) delay in disposal of cases (iii) delay in publication of court awards in the gazette and (iv) delay in implementation of awards.
- ⊗ Furthermore, the Economic Survey 2018-19 has revealed that **1 in 3 wage workers are not protected by the minimum wage laws due to a faulty enforcement mechanism.**

## ➤ **Constrained growth of firms:** It has been

argued that firm sizes have remained small in India mainly because of:

- ⊕ **High administrative burden:** Most labour laws apply to establishments over a certain size (typically 10 or over). Low numeric thresholds create **adverse incentives for establishments to remain small**, in order to avoid complying with labour regulation, thus **promoting dwarfism and hindering growth of formal economy**. High administrative burden has **also resulted in corruption and rent-seeking**.
  - The **6th Economic Census (2013-14)** reported that there were 5.9 crore establishments in India employing 13.1 crore people. But, around **79% workers were in establishments with less than ten workers**.
- ⊕ **Lack of an easy exit option:** The Industrial Disputes Act (IDA) 1947, requires factories, mines and plantations employing 100 or more workers to obtain prior permission of the government before closing down, or laying off or retrenching workers. It has been argued this **requirement of prior permission has created an exit barrier for firms and hindered their ability to adjust labour workforce to production demands**.
- **Promoted more capital intensive industries:** With restrictive labour regulations, Indian firms find it cost-effective to engage in capital-intensive production instead of labour intensive industries despite the country's labour abundance (17% share in world population). India thus lacks competitiveness in these entry-level labour-intensive industries and **has not been able to grasp its natural comparative advantage**.
- **Contractualization of labour:** Labour compliances and economic considerations have resulted in increased use of contract labour. However, it has been observed that rights of contract labour to wages and social security dues have not been enforced to the same extent as that of permanent workmen and they face precarious working conditions.
  - ⊕ The **share of contract workers** in factories among total workers **increased from 26% in 2004-05 to 36% in 2017-18**, while the share of directly hired workers fell from 74% to 64% over the same period.
- **Impact on collective bargaining rights of workers:** As of 2015, there were 12,420 registered trade unions in India with an average membership of 1,883 persons per union. **A large number of unions** within an establishment along with their **lack of formal recognition** hampers the process of collective bargaining as it is **difficult to reach a settlement with all** of them. Further, questions have been raised on the extent to which non-employees may be permitted in trade unions.
- **Inadequate coverage hiking social issues:** Labour laws **only covered the organised sector** that accounts for just 7% of the workforce, and remaining 93% of the total workforce is informal that is left uncovered.
  - ⊕ This includes migrant labour, gig economy workers, taxi drivers, house helps etc. They are typically **very vulnerable and can easily slip back into poverty** when faced with even a single contingency.

## TO WHAT EXTENT THE PROVISIONS UNDER THE NEW LABOUR CODES WILL ADDRESS THE ABOVE ISSUES?



- **Consolidation and simplification of labour laws :** 29 central labour laws have been subsumed under the four Codes viz. Code on Wages, Industrial Relations Code, Occupational Safety, Health and Working Conditions Code and Code on Social Security. This will help in simplifying labour laws, reducing compliance hassles, and streamlining them. It will also reduce multiplicity of definition and multiplicity of authority for businesses.

LABOUR CODES	MAJOR ACTS SUBSUMED
Code on Wages, 2019	Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; and Equal Remuneration Act, 1976.
Occupational Safety, Health and Working Conditions Code, 2020	Factories Act, 1948; Mines Act, 1952; Contract Labour (Regulation and Abolition) Act, 1970; and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
Industrial Relations Code, 2020	Trade Unions Act, 1926; Industrial Employment (Standing Orders) Act, 1946, and Industrial Disputes Act, 1947.
Code on Social Security, 2020	Employees' Provident Funds and Miscellaneous Provisions Act, 1952; Employees' State Insurance Act, 1948; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972; Unorganised Workers Social Security Act, 2008.

### OTHER IMPORTANT STANDALONE CENTRAL LAWS RELATED TO LABOUR

- Apprentices Act, 1961
- Bonded Labour System (Abolition) Act, 1976
- Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
- Public Liability Insurance Act, 1991
- Sexual Harassment at Workplace Act, 2013
- Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

#### ➤ Extended coverage of workers and establishments:

- ⊗ The labour codes on wages and industrial relations will apply to all establishments, with limited exceptions.
- ⊗ The codes on social security continue to apply to establishments over a certain size (typically, above 10 or 20 workers) but enables the government to formulate schemes for the benefit of unorganised workers, and gig and platform workers.
  - The code thus reflects the changing nature of the economy; the growth of the gig sector and the vulnerability of sections of workers, from migrant labour to house helpers, who despite playing a crucial role did not fit into the traditional definition of "worker".
- ⊗ The Occupational Safety Code states that the applicability thresholds (of 10 or above) will not apply in those establishments in which hazardous activities are being carried out. Further, it makes provisions to notify a separate social security fund for unorganised workers.

#### ➤ Guaranteed and timely minimum pay to all

- ⊗ The Code on Wages has universalised the provision of minimum wages. It mandates that minimum wages be paid for all types of employment – irrespective of whether they are in the organised or the unorganised sector.
- ⊗ Code introduces a national minimum wage to be set by the central government that will act as a floor wage and state governments will have to fix their minimum wages above this standard.
- ⊗ Further, all wages payable to employees on their termination, retrenchment or resignation needs to be settled in two working days.

- Facilitating growth of firms along with job creation: The Industrial Relations Code increases the threshold to 300 workers (to seek prior permission of the government before closure, lay-off, or retrenchment) while retaining the notice and compensation requirements specified under the IDA 1947. It also allows the government to further increase the threshold by notification. It will help industries balance the need for economic efficiency of their businesses and will also generate employment.



➤ **Improved labour Administration :**

- ⊕ The Codes create **enabling provisions for web-based inspections** (which may be accompanied by randomized inspections) and in some cases and **third-party certification** (for notified classes of establishments in some cases) and create some provisions for common registers and returns.
- ⊕ The Codes **also increase the quantum of fines and imprisonment** in several cases and allows for **compounding of offences** in certain cases. With regard to dispute resolution, the Industrial Relations Code removes the requirement for reference to the government and publication of award in the gazette and **replaces industrial courts/tribunals with two-member labour tribunals** (with one judicial and one administrative member).

➤ **Protection of contract labourers' rights:**

- ⊕ Currently, contract labour provisions apply to establishments/contractors hiring at least 20 workers. The **Code on Occupational Safety and Health increases this threshold to 50** workers. Further, it **prohibits contract labour in core activities** except in certain circumstances (which includes any sudden demand in work). It also specifies a list of non-core activities where the prohibition would not apply.
- ⊕ Further, it **shifts the primary responsibility of providing welfare facilities from the contractor to the principal employer**. It also **provides for automatic absorption of contract workers into the establishment** of the principal employer where they are engaged through an unlicensed contractor.
- ⊕ The **Industrial Relations Code** on the other hand, introduces provisions to employ **fixed term labour**. (Refer table to better understand types of employment.)

FEATURE	FIXED TERM EMPLOYEE	PERMANENT EMPLOYEE	CONTRACT LABOUR
Type of employment	Employment under written contract. No contractor or agency is involved. On the payroll of the establishment.	Employment directly under a written contract. On the payroll of the establishment.	Engaged in an establishment through a contractor or agency. Not on the payroll of the establishment.
Term	Stipulated fixed term. Employment lapses on completion of term, unless renewed. No notice is required to be given for retrenchment.	Employed on a permanent basis. Notice has to be given for termination of employment.	Based on terms negotiated with the contractor.
Nature of work	Not specified.	Hired for routine work.	Employment may be prohibited in certain cases, e.g., if similar work is carried out by regular workmen.

➤ **Recognition of Trade Unions :** The **Industrial Relations Code** makes provisions for recognition of a negotiation unions with 51% membership. In the absence of such support, a negotiation council may be formed. This **can help in ensuring the collective bargaining rights of the workers**.

➤ **Easing the process for entrepreneurs:** The codes provide for **'one labour return, one licence and one registration'** to smoothen compliance. The government is also contemplating to digitise the entire process of labour law compliance.

# WHAT ISSUES AND CONCERNS HAVE BEEN RAISED AGAINST THE NEW CONSOLIDATED CODES?

While the codes consolidate and simplify existing laws to some extent, they fall short in some respects. Some major issues concerning the codes are as follows:

## ➤ Issues with the minimum wage:

- ⊙ The wage code mandates a universal minimum payment of ₹178 a day which is only ₹2 higher than the previous national minimum wage, which was set two years ago. This is less than half the ₹375 a day recommended by a high-powered labour ministry panel and is also less than the ₹700 fair wage that the 7th Central Pay Commission had arrived at.
- ⊙ Further, the **national floor wage might lead to a race to the bottom** between states that are competing with one another to lower wage rates and bring in greater investments. The consequence of this competitive federalism, based on **labour cheapening** between states would be repressed wages throughout the country.
  - For instance, this was seen in the case of the Okhla Industrial Area in Delhi, wherein businesses shifted out from Okhla to Haryana and Uttar Pradesh (UP) to take advantage of lower minimum wage rates in the latter.

➤ **Wide jurisdiction of Government:** The codes specify that the central government will continue to be the appropriate government for a central PSU even if the holding of the central government in that PSU becomes less than 50%. It is unclear as to why the central government should continue to exercise jurisdiction over an establishment in which it does not own controlling stake (even in cases where it has sold its entire stake).

➤ **Over-delegation of legislation:** Under the Constitution, the legislature enacts a law covering the general principles and policies, and delegates detailed rule-making to the government to allow for expediency and flexibility. However, such a delegation should not undermine and bypass legislature's scrutiny.

- ⊙ The **codes delegate various essential aspects of the laws to the government** through rule-making. These include: (i) increasing the threshold for lay-offs, retrenchment, and closure, (ii) setting thresholds for applicability of different social security schemes to establishments, and (iii) specifying safety standards, and working conditions to be provided by establishments under the occupational safety Code

## ➤ Wide discretion in providing exemptions:

- ⊙ Industrial Relations code provides the government with the power to exempt any new industrial establishment or class of establishment from any or all of its provisions if it is in public interest. The code on Occupational Safety also gives the appropriate government the power to exempt any establishment for a period to be specified in the notification.
- ⊙ Therefore, the **central and the state government have wide discretion in providing exemptions** from these codes. Every factory would generate employment, and **public interest could be interpreted broadly**. The exemptions could cover a wide range of provisions including those related to hours of work, safety standards, retrenchment process, collective bargaining rights and contract labour.



- **Gig workers** refer to workers outside the “traditional employer-employee relationship”.
- **Platform workers** are those who are outside the “traditional employer-employee relationship” and access organisations or individuals through an online platform and provide services.
- **Unorganised worker** is defined as one who works in the unorganised sector, and includes workers not covered by the Industrial Disputes Act, 1947, or other provisions such as provident fund or gratuity. It also includes self-employed workers.

### ➤ **Overlap between the definitions:**

- ⊗ The Code on Social Security introduces definitions for ‘gig worker’ and ‘platform worker’ and unorganised workers which include self-employed persons and creates provisions for different schemes for all these categories of workers (and defines the role that aggregators may be expected to play in some of these schemes).
- ⊗ However, there may be some overlap between these three definitions which **may result in lack of clarity on the applicability of social security schemes** to these different categories of workers.

### ➤ **Certain workers not covered under the codes :**

- ⊗ The Code on Industrial Relations applies to all establishments, with separate thresholds for layoffs, retrenchment and closure, and for requirement of standing orders. On the other hand, the **Code on social security and occupational safety continue to apply to establishments over a certain size.**

Some have argued that **basic provisions** for enforcement of wages, provision of social security, safety at the workplace, and decent working conditions, **should apply to all establishments, regardless of size.**

- ⊗ Some have argued that **basic provisions** for enforcement of wages, provision of social security, safety at the workplace, and decent working conditions, **should apply to all establishments, regardless of size.**
- **Emerging challenges:** In addition to **traditional freelance work, independent work would include emerging digital platforms** which provide **opportunities for task-based “crowd-work”** (e.g., **freelance work over digital platforms**) and **“on-demand work”** (e.g., taxi and restaurant aggregators). It remains to be seen how the new codes adapt to these aspects.



## **WHAT MORE COULD HAVE BEEN DONE?**

### ➤ **For coverage of workers:**

- ⊗ 2nd National Commission on Labour (2002) had recommended **a separate law for small scale units** (having less than 20 workers) with less stringent provisions for conditions such as payment of wages, welfare facilities, social security, retrenchment and closure, and resolution of disputes.

- **For coverage of establishments:** The Standing Committee on Labour (2020) recommended that the Code on security should provide a framework for achieving universal social security by expanding the coverage of establishments, employees, and types of benefits. These include:
- Expanding the definition of “**establishment**” to include other enterprise categories such as **agricultural and own account enterprises**,
  - Expanding definitions of “**employees**” to include **ASHA and Anganwadi workers**, and “**unorganised workers**” to include **agricultural workers**.
  - Creating a **separate fund for inter-state migrant workers**
  - Introducing **unemployment insurance for unorganised workers**
- **To strengthen peaceful resolution of disputes:** The NCL recommended a system of **labour courts, lok adalats and Labour Relations Commissions (LRCs)** as the integrated adjudicatory system in all labour matters (including wages, social security and welfare). LRCs would act as appellate bodies to hear appeals against the decisions of the labour courts.
- **To protect the rights of fixed term and ad-hoc contract workers** by restricting their share in the overall work force. ILO (2016) noted that several countries restrict use of fixed term and ad-hoc contract workers in the total workforce in order to prevent their over-exploitation. For example:
- Vietnam, Brazil and China allows only two successive renewals of **fixed term contracts**. Philippines and Botswana limit the duration of such contracts up to a year.
  - Indonesia and Brazil limit the use of **ad-hoc contract workers** in core activities and China has fixed the use of such workers at 10% of total workforce.
- **To counter low unionization in the unorganised sector:** The NCL recommended that a **specific provision may be made** to enable workers in the unorganised sector to form trade unions (with any number of workers) and get them registered even where an employer-employee relationship does not exist or is difficult to establish.



## WAY FORWARD

While courageous, these labour reforms are only the first step. The onus is now on states to use this opportunity and thoroughly review the rules and reduce duplication, overlaps and redundancy thereby reducing the regulatory burden. Further, the states need to talk to one another and facilitate standardisation of the regulatory regime, such that enterprises can comply with certainty and uniformity across the country rather than being subject to inconsequential local nuances leading to complexity. The authorities on their part, have to ensure that they are implemented with honesty and integrity, then only the country will be able to achieve the desired goal of speeding up economic growth and unleashing the untapped potential of thousands of our industries, businesses and entrepreneurs to take the nation to new heights.

## TOPIC AT A GLANCE

### Labour Laws and their role

- They are a body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations.
- Labour legislations fulfill three major roles:
  - **Redistribution of legal powers** between workers and employees.
  - Facilitation of individual and collective **employment relationships**.
  - It serves as a reminder and **guarantee of fundamental principles and rights** at work.

### Evolution of Labour Laws in India

- The labour laws of independent India can be associated with **views expressed by important nationalist leaders, Constituent Assembly debates, provisions of the Constitution and ILO's Conventions and Recommendations**.
- Post-independence, labour laws were majorly driven by economic policy of **government directed "nation-building"**.
- With the advent of liberalization in 1990s, the New Industrial Policy started shifting towards a less regulated labour market.

## REFORM AND CODIFICATION OF INDIA'S LABOUR LAWS

### Need for reform and codification of India's Labour Laws

- Labour laws are **highly complex** and overlapping in nature and also **very high in number**.
- **Poor enforcement** of laws due to delays in referral, disposal and implementation of awards in cases.
- **Constrained growth of firms** with high administrative burden and lack of an easy exit option.
- It is indirectly **promoting more capital-intensive industries**.
- A **large number of unions** within an establishment negatively impact **collective bargaining rights of workers**.
- **Inadequate coverage** of workers **aggravates social issues like poverty**.

### Potential effect of Labour Code on these issues

- This will lead to **consolidation and simplification of labour laws**.
- It has **extended the coverage to more categories of workers and establishments**.
- It **guarantees timely minimum pay to all** with provisions like National Minimum Wage.
- It **facilitates growth of firms along with job creation** by increasing the permission threshold before closure, lay-off, or retrenchment to 300 workers.
- **Improves labour administration** through web-based inspections and compounding of offences in certain cases.
- It increases **protection of contract labourers rights** by increasing responsibilities of the contractor.
- It **provides recognition to negotiation unions** with 51% membership.
- Easing the process for entrepreneurs with '**one labour return, one licence and one registration**' policy.

### Issues and concerns against the new consolidated codes

- **Universal minimum wage is very low** and can lead to the process of **labour cheapening**.
- Unnecessarily **wide jurisdiction of the government** in certain cases.
- **Over-delegation of legislation** leading to bypassing of legislative scrutiny in some laws.
- The central and the state government have **wide discretion in providing exemptions** from these codes.
- **Overlap between the definitions** of gig workers, platform workers and unorganized workers.
- Certain code like social security and occupational safety do not apply to all the workers.
- **Other emerging challenges** like dealing with new kind of workforce like "crowd-work" or "on-demand" work.

### Other steps that could have been taken

- National Commission on Labour (NCL) (2002) had **recommended a separate law for small scale units**.
- Standing Committee on Labour (2020) recommended that the Code on security should provide a framework for achieving **universal social security**.
- NCL recommended a system of **labour courts, lok adalats and Labour Relations Commissions (LRCs) as the integrated adjudicatory system** in all labour matters.
- ILO (2016) highlighted that **restricted use of fixed term and ad-hoc contract workers** in the total workforce could prevent their over-exploitation.
- NCL recommended that a **specific provision may be made to enable workers in the unorganized sector to form trade unions**.



## CODES

## IMPORTANT PROVISIONS

**CODE ON WAGES, 2019**

It seeks to regulate wage and bonus payments in all employments where any industry, trade, business, or manufacture is carried out.

- **Coverage:** The Code will apply to all employees.
- **Floor wage to be fixed by the Central Government** taking into account living standards of workers.
- **Fixing the minimum wage:** The minimum wages decided by the central or state governments must be higher than the floor wage and will be revised and reviewed by the central or state governments at an interval of not more than five years.
- **Overtime Wages:** Employees working in excess of a normal working day will be entitled to overtime wage, which must be at least twice the normal rate of wages.
- **Wage deduction of an employee** (on certain grounds such as fines, absence from duty etc.) **should not exceed 50% of the employee's total wage.**
- **Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus that will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. An employee can receive a **maximum bonus of 20% of his annual wages.**
- **Prohibition of Gender discrimination:** in matters related to wages and recruitment of employees for the same work or work of similar nature.
- **Constitution of Central and State Advisory boards:**
  - ⊗ The Central Advisory Board will consist of: (i) employers, (ii) employees (in equal number as employers), (iii) independent persons, and (iv) five representatives of state governments. State Advisory Boards will consist of employers, employees, and independent persons. Further, **one-third of the total members on both the boards will be women.**
  - ⊗ The Boards will advise the respective governments on various issues including: (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.
- **Penalties for offences** committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code.

**CODE ON INDUSTRIAL RELATIONS, 2020**

Consolidates and amends the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation & settlement of industrial disputes.

- **Standing Orders:** all industrial establishment with 300 workers or more must prepare standing orders on the matters relating to: (i) classification of workers, (ii) manner of informing workers about work hours, holidays, paydays, and wage rates, (iii) termination of employment, and (iv) grievance redressal mechanisms for workers.
- **Closure, lay-off and retrenchment:** an establishment having at least 300 workers is **required to seek prior permission of the government** before closure, lay-off, or retrenchment.
  - ⊗ Also, this threshold can be increased by Central Government through a notification.
- **Formation of Negotiating Union and Council**
  - ⊗ **Sole Negotiating Union:** If there are more than one registered trade union of workers functioning in an establishment, the trade union having more than 51% of the workers as members would be recognised as the sole negotiating union.



⊗ **Negotiation Council:** In case no trade union is eligible as sole negotiating union, a negotiating council will be formed consisting of representatives of unions that have at least 20% of the workers as members.

- **Constitution of Industrial Tribunals for settlement of disputes** consisting of Judicial and administrative members. The code classifies any dispute in relation to discharge, dismissal, retrenchment, or otherwise termination of the services of an individual worker to be an industrial dispute.
- **Exemption from the code:** The appropriate government may exempt any new industrial establishment or class of establishments from the provisions of the Code in public interest.

## CODE ON SOCIAL SECURITY, 2020

To amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors.

- **Application of social security entitlements:** central government may, by notification, apply the Code to any establishment (subject to size-threshold).
- **Social Security Fund: for unorganised workers, gig workers and platform workers** will be set up by the Central Government. Further, state governments will also set up and administer separate social security funds for unorganised workers.
- **Provisions for registration** of all three categories of workers - unorganised workers, gig workers and platform workers.
- **National Social Security Board:** for the purposes of welfare of above three categories of workers and to recommend and monitor schemes for them.
- **Contribution for schemes:** schemes for gig workers and platform workers may be funded through a combination of contributions from the central government, state governments, and aggregators.
  - ⊗ The code specifies a list of nine aggregators including ride sharing services, food and grocery delivery services, content and media services, and e-marketplaces.
- **Changes in definitions:** These include expanding the definitions of (i) 'employees' to include workers employed through contractors, (ii) "inter-state migrant workers" to include self-employed workers from another state, (iii) "platform worker" to additional categories of services or activities as may be notified by the government, (iv) audio-visual productions to include films, web-based serials, talk shows, reality shows and sports shows.
- **Penalties have been reduced for certain offences** which includes obstructing an inspector from performing his duty, unlawfully deducting the employer's contribution from the employee's wages.
- **Additional powers during an epidemic:** the central government may defer or reduce the employer's or employee's contributions (under PF and ESI) for a period of up to three months in the case of a pandemic, endemic, or national disaster.

## CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS, 2020

To consolidate & amend the laws regulating the Occupational safety and health and working conditions of the persons employed in an establishment.

- **Threshold for coverage of establishments**
  - ⊗ **Factory:** that employs more than 20 workers (if using power) and more than 40 workers (if not using power).
  - ⊗ **Establishments:** where any business, trade, or occupation is carried out with 10 or more workers and includes all establishments where any hazardous activity is carried out regardless of the number of workers.
  - ⊗ **Contract workers:** the Code will apply to establishments or contractors employing 50 or more workers and prohibits contract labour in core activities (to be determined by the appropriate government).



➤ **Work hours and employment conditions**

- ⌚ **Daily work hour limit** at eight hours per day.
- ⌚ **Employment of women is permitted** in all establishments for all types of work and **employer to provide adequate safeguards** in case women are required to work in hazardous or dangerous operations.

➤ **Inter-state migrant workers**

- ⌚ **Definition of inter-state migrant worker:** any person who moves on his own to another state and obtains employment there and is earning a maximum of Rs 18,000 per month, or such higher amount which the central government may notify.
  - ⌚ **Benefits for inter-state migrant workers: include:** (i) option to avail the benefits of the public distribution system either in the native state or the state of employment, (ii) availability of benefits available under the building and other construction cess fund in the state of employment, and (iii) insurance and provident fund benefits available to other workers in the same establishment.
  - ⌚ **Database for inter-state migrant workers:** the central and state governments to maintain or record the details of inter-state migrant workers in a portal and the migrant worker can register himself on the portal on the basis of self-declaration and Aadhaar.
- **Social Security Fund:** for the welfare of unorganised workers. The amount collected from certain penalties under the Code (including the amount collected through compounding) will be credited to the Fund.
- **Exemption from the code:** State governments can exempt any new factory from the provisions of the Code in order to create more economic activity and employment.