

BRIEF NOTES ON
NEW LABOUR CODES 2020

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The Central Government on recommendations of The Second National Commission on Labour proposed to replace 29 existing Labour Laws with four Codes to simplify and modernise labour regulation. The major challenge was to facilitate employment growth while protecting workers' rights.

The Labour Codes which were passed in both the Houses of the Parliament and received Presidential Assent are as follows:

- 1- Occupational Safety, Health & Working Conditions Code, 2020
- 2- Social Security Code
- 3- Industrial Relations Code
- 4- Wages Code

1) The Occupational Safety, Health and Working Conditions Code, 2020

The Occupational Safety, Health and Working Conditions Code, 2020 was introduced in Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in Rajya Sabha on 23 September 2020. It received Presidential assent on 28 September 2020.

Aim: The code aims to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.

Laws Replaced: The Occupational Safety, Health and Working Conditions Code, 2020 replaces 13 existing Laws:

- (a) The Factories Act, 1948
- (b) The Mines Act, 1952
- (c) The Dock Workers (Safety, Health and Welfare) Act, 1986
- (d) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- (e) The Plantations Labour Act, 1951
- (f) The Contract Labour (Regulation and Abolition) Act, 1970
- (g) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

(h) The Working Journalist and other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

(i) The Working Journalists (Fixation of rates of wages) Act, 1958

(j) The Motor Transport Workers Act, 1961

(k) The Sales Promotion Employees (Condition of Service) Act, 1976

(l) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

(m) The Cine-Workers and Cinema Theatre Workers Act, 1981.

The Code has fourteen chapters which are as under

- Chapter 1 – Preliminary
- Chapter 2 – Registration
- Chapter 3 – Duties of Employer and Employees etc

Some of the definitions as mentioned under the Code:

Appropriate Government:

- (a) In relation to, an establishment carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified by notification in this behalf, by the Central Government or the establishment of railways including metro railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or the central public sector undertaking or subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies or any company in which not less than fifty one percent of the paid up share capital is held by the Central Government, as the case may be, or in relation to an establishment having departments or branches in more than one State, as the case may be, the Central Government; and
- (b) In relation to any other establishment, the State Government.

Explanation 1 – For the purpose of this clause, the expression “metro railway” means the metro railway as defined in sub clause (i) of clause (1) of Section 2 of the Metro Railways (Operation and Maintenance) Act, 2002 (60 of 2002)

Explanation 2 – For the purpose of this clause, the Central Government shall continue to be the appropriate Government for the central public sector undertakings even if the holding of the Central Government reduces to less than fifty per cent equity in that public sector undertaking after the commencement of this code.

Employer:

Employer means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority is so specified, by the head of such department, in this behalf or where no authority is so specified, the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes –

- (a) In relation to an establishment which is a factory, the occupier of the factory;
- (b) In relation to mine, the owner of the mine or agent or manager having requisite qualification under the law for the time being in force and appointed by the owner or agent of the mine as such;
- (c) In relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
- (d) Contractor; and
- (e) Legal representative of a deceased employer;

Occupier:

“Occupier” in respect of a factory means the person who has ultimate control over the affairs of the factory:

Provided that –

- (a) In the case of a firm or other association of individuals, any one of the individual partners or members thereof;

- (b) In the case of a company, any one of the directors, except any independent director within the meaning of sub-section (6) of section 149 of the Companies Act, 2013 (18 of 2013);
- (c) In the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the state Government or the local authority or such other authority as may be prescribed by the Central Government,

Shall be deemed to be the occupier;

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, the owner of the dock shall be deemed to be the occupier for all purposes except the matters as may be prescribed by the Central Government which are directly related to the condition of ship for which the owner of ship shall be deemed to be the occupier.

Factory: It is a premise where at least 20 employees work for a process with power and 40 employees work for a process without power.

Establishments engaged in hazardous activity: The Code will be applicable to all the establishments where any hazardous activity is carried out regardless of the number of workers.

Working Hours: No worker in any establishment will work for more than 8 hours a day and 6 days a week.

Wages:

“Wages” means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment; and includes,

- (a) Basic pay;
- (b) Dearness allowance; and
- (c) Retaining allowance; if any

but does not include –

- (a) Any bonus payable under any law of the time being in force, which does not form part of the remuneration payable under the terms of employment;
- (b) The value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) Any conveyance allowance or the value of any travelling concession;
- (e) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) House rent allowance;
- (g) Remuneration payable under any award or settlement between the parties or order of a Court or Tribunal;
- (h) Any overtime allowance;
- (i) Any commission payable to the employee;
- (j) Any gratuity payable on the termination of employment;
- (k) Any retrenchment compensation or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment, under any law for the time being in force;

Provided that for calculation the wages under this clause, if payments made by the employer to the employee under sub-clauses (a) to (i) exceeds one-half, or such other per cent as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the percent so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause;

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in sub-clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation – Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen percent of the total wages payable to him, shall be deemed to form part of the wages of such employee;

Overtime: In the case of overtime, the employee is entitled to overtime compensation (at least twice the normal wages). It will also be applicable to a small establishment having up to 10 workers.

Gender Discrimination: The Code prohibits discrimination based on gender and empowers the women workforce.

Women Employment: Women employed in all the establishments for all types of work will be able to work before 6 a.m. and beyond 7 p.m. subjected to their consent, safety, holidays and working hours. If women are required for undertaking dangerous operations, the employer will provide adequate safeguards to them prior to their employment.

Rights of Transgenders: It is mandatory for all the establishments to provide washrooms, bathing places and locker rooms for male, female and transgender employees.

Rights of Contractual Workers: The Code prohibits contract labour in core activities except (i) the normal functioning of the establishment is such that the activity is ordinarily done through a contractor, (ii) the activities are such that they do not require full-time workers for the major portion of the day, or (iii) there is a sudden increase in the volume work in the core activity which needs to be completed in a specified time. This Code will be applicable to contract labour engaged through a contractor in the offices of the Central and State Governments (where the respective government is the principal employer).

Inter-state migrant workers and unorganized workers: Any person who went to another state and obtained employment there will be regarded as an inter-state migrant worker. Only those people who are earning maximum wages as notified by the Central Government will be considered as inter-state migrants.

The inter-state migrant workers are entitled to certain benefits such as (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.

The Central and State Governments will also maintain the details of the inter-state migrant workers in a portal.

Social Security Fund: For the welfare of unorganised workers, the Government will establish a Social Security Fund. The amount received from the composition of the offences under the Code will be credited to the Fund. It may also be funded by such other sources as may be prescribed by the Government.

'Spread over time' introduced: On 19 November 2020, the Ministry of Labour and Employment proposed maximum 12 hours working in a day inclusive of intervals under the Occupational Safety, Health And Working Conditions Code, 2020. It also said that no worker should be required or allowed to work in an establishment for more than 48 hours in any week. 'Spread over time' refers to working hours plus the time for lunch and other breaks.

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2) The Code on Social Security, 2020

The Code on Social Security, 2020 was introduced in Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in Rajya Sabha on 23 September 2020. It received Presidential assent on 28 September 2020.

Aim: It aims to extend social security to all employees and workers either in the organised or unorganised or any other sectors.

Laws Replaced: The Code on Social Security, 2020 replaces 9 existing laws:

- (a) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- (b) Payment of Gratuity Act, 1972
- (c) Employees' Compensation Act, 1923
- (d) Maternity Benefit Act, 1961
- (e) Employees' State Insurance Act, 1948
- (f) Workers Cess Act, 1996
- (g) Cine Workers Welfare Fund Act, 1981
- (h) Building and Other Construction and Unorganised Workers' Social Security Act, 2008
- (i) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

The Code has fourteen chapters which are as under

- Chapter 1 - Preliminary
 - Chapter 2 – Social Security Organisations
 - Chapter 3 – Employees Provident Fund
- Some of the definitions as mentioned under the Code:

Entitlements: The Central Government by notification can apply this Code to any establishment subjected to the size-threshold as may be notified.

Social Security Funds: The Social security funds for unorganised workers, gig workers and platform workers will be set up by the Central Government. The State Governments will also set up and administer separate social security funds for unorganised workers. The Code also makes provisions for the registration of unorganised workers, gig workers and platform workers.

National Social Security Board: In addition to the unorganised workers, it will also administer schemes for the welfare of gig workers and platform workers. The Board will comprise of five representatives of aggregators appointed by the Central Government, five representatives of gig workers and platform workers appointed by the Central Government, Director General of the ESIC and five State Governments representatives. The number of representatives of Central Government officials in the Board from 5 to 10 members and in the State Boards from 7 to 10 members for unorganised workers.

Role of aggregators: The welfare schemes for the gig and platform workers will be funded through a combination of contributions from the Central Government, State Governments, and Aggregators. It mentions nine categories including ride-sharing services, food and grocery delivery services, content and media services, and e-marketplaces. It is to be noted that any contribution from the aggregator may be at a rate notified by the Government between 1-2% of the annual turnover of the aggregators and must not exceed 5% of the amount paid or payable by an aggregator to gig workers and platform workers.

Gratuity: For working journalists, gratuity period is reduced from five to three years.

Offences: The Code specifies penalties for certain offences such as (i) maximum imprisonment for obstructing an inspector from performing his duty has been reduced from one year to six months (ii) unlawfully deducting the employer's contribution from the employee's wages has been changed from imprisonment of one year or fine of Rs 50,000 to only fine of Rs 50,000.

Additional Powers: 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.

3) The Industrial Relations Code, 2020

The Industrial Relations Code, 2020 was introduced in Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in Rajya Sabha on 23 September 2020. It received Presidential assent on 28 September 2020.

Aim: It aims to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

Laws Replaced: The Industrial Relations Code, 2020 replaced 3 existing laws:

- (a) the Trade Unions Act, 1926
- (b) The Industrial Employment (Standing Orders) Act, 1946
- (c) The Industrial Disputes Act, 1947.

The Code has fourteen chapters which are as under

- Chapter 1 - Preliminary
- Chapter 2 – Bi- Partite Forums
- Chapter 3 – Trade Unions
- Chapter 4 – Standing Orders
- Chapter 5 – Notice of Change
- Chapter 6 – Voluntary Reference of Disputes to arbitration

Some of the definitions as mentioned under the Code:

Exemption: The Government may exempt any new industrial establishment or class of establishments from the provisions of the Code in the public interest.

Standing Orders: All industrial establishments with at least 300 workers must prepare standing orders on the matters related 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.

Permission for closure, lay-off and retrenchment: All industrial establishments with at least 300 workers are required to seek prior permission of the government before closure, lay-off, or retrenchment.

Lay-off: The inability of an employer to continue giving employment to a worker in adverse business conditions.

Retrenchment: The termination of the services of an employee for any reason other than disciplinary action.

Negotiating Union: The trade union having more than 51% of the workers as members would be recognised as the sole negotiating union in cases where more than one registered trade union of workers are functioning in an establishment.

Negotiation Council: If there's no eligible sole negotiating union, a negotiating council will be formed having at least 20% of the workers as members.

Termination of the services: The disputes related to the discharge, dismissal, retrenchment, or termination of the services of an individual worker will be an industrial dispute. The worker may apply to the Industrial Tribunal for adjudication of the dispute.

Prior Notice: The workers in factories will have to give notice at least 14 days in advance to employers if they want to go on strike.

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4) **The Code on Wages, 2019**

The Code on Wages, 2019 was introduced in Lok Sabha on 23 July 2019 and was passed on 30 July 2019. The Bill was passed in Rajya Sabha on 2 August 2019. It received Presidential assent on 8 August 2019.

Aim: It aims to regulate wage and bonus payments in all employments (industry, business, trade and manufacture).

Laws Replaced: The Code on Wages replaces 4 existing Laws:

- (a) Minimum Wages Act, 1948
- (b) Payment of Wages Act, 1936
- (c) Payment of Bonus Act, 1965
- (d) Equal Remuneration Act, 1976

The Code has nine chapters which are as under:

- Chapter 1 – Preliminary
- Chapter 2 – Minimum Wages
- Chapter 3 – Payment of Wages
- Chapter 4 – Payment of Bonus
- Chapter 5 – Advisory Board
- Chapter 6 – Payment of Dues, Claims & Audit
- Chapter 7 – Inspector-cum-Facilitator
- Chapter 8 – Offences and Penalties
- Chapter 9 – Miscellaneous
- Some of the definitions as mentioned under the Code:

Coverage: This Code will be applicable to all the employees. For the people employed in mines, railways, and oil fields, the Central Government will make the wage-related decisions while for all other employments, the State Governments will take the said decisions.

Wages: The Wages in this Code includes salary, allowance or any other monetary component excluding the bonus and travelling allowance among others.

Floor Wage: As per the Code, the floor wage will be fixed by the Central Government, considering the living standards of workers. It is to be noted that the floor wages will be different for different geographical locations.

Minimum Wages: The minimum wages notified by the Central or States Governments should be more than the floor wages. The skill of the workers' and the difficulty level of the work will be taken into account by the Government before fixing the minimum wages. These will be revised and reviewed every five years by the government. The employers are prohibited from employing people on less than the minimum wages.

Note: If the existing minimum wages are more than the floor wage, the Central or States Governments cannot reduce the minimum wages.

Working Hours: The Central or States Governments will fix the number of working hours. In case of overtime, the employee is entitled to overtime compensation (at least twice the normal wages).

Payment of Wages: The employer can fix the wage period as: daily, weekly, fortnightly or monthly. The payment will be made in coins, currency notes, through electronic medium, cheque or by a credit to the bank account.

Deductions: The employer has the right to deduct wages on the following grounds: fines, absence from duty, accommodation provided by the employer or the advance payment made to the employee. It is to be noted that the deductions should not be more than 50% of the employee's total wage.

Bonus: The employees whose wages do not exceed a specific monthly amount are entitled to an annual bonus which will be at least 8.35% of his wages or Rs. 100, whichever is higher. As per the Code, an employee can receive a maximum bonus of 20% of his annual wages.

Gender Discrimination: The Code prohibits discrimination based on gender in matters associated with wages and recruitment of employees for the same work or work of similar nature.

Work of Similar Nature: Work for which the skill, effort, experience, and responsibility required are the same.

Advisory Boards: These will be constituted by the Central and State Governments and will advise the respective governments on several issues including fixation of minimum wages and increasing employment opportunities for women.

The Central Advisory Board will comprise an equal number of employees and employers, five state government representatives and independent persons. The State Advisory Board will comprise of employees, employers and independent persons.

One-third of the total members on both the Advisory Boards will be women.

Offences: The Code specifies penalties for offences committed by an employer in cases where any provision of the Code is contravened or employees' are paid less than the minimum wages.

As per the Code, the maximum punishment for the said offences is three-month imprisonment along with a fine of Rs. 1 lakh.

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