

## **New Labour Codes and their Implications for Indian Working Class**

The Social Development Forum of Council for Social Development, New Delhi organized a panel discussion on the implications of new labour codes on Indian working class on 31<sup>st</sup> December 2020. Prof Santosh Mehrotra and Dr Rahul Suresh Sapkal from TISS Mumbai deliberated at length on the various aspects of labour codes. The session was chaired by Prof Nitya Nanda, Director, CSD New Delhi.

Over the past seven decades, labour laws implemented by the Union governments have mushroomed in number to about 45, in addition to over 100 state-specific labour laws devised and implemented by different states. The high number of labour laws led to massive rent seeking which required huge efforts by the employers to work around these laws. The present Union government first cut down the number of, as well as repealed many redundant labour laws bringing down their number to around 29 and then amalgamated them into four labour codes. A careful analysis of new labour codes shows that notwithstanding the series of consultations that took place over the years, labour codes are largely cut and pasted from the earlier labour laws.

The Union government passed these labour codes hurriedly in the expectation that enterprises withdrawing from China in the post-pandemic scenario will look out for other lucrative destinations and India should be projected as one such destination. However, enterprises who left China shifted their base to the countries like Vietnam, Bangladesh and Cambodia and only a few came to India. While the intended objective of introducing labour codes has not been achieved, the new codes will lead to increased precarity in employment opportunities and a sharp reduction in social security coverage.

It is also important to note that the earlier existing labour laws as well as the new labour codes affect only those enterprises who operate with workers above a certain threshold. Most of these codes do not apply to the informal or unorganized sector enterprises. Among the 64 million non-farm units in the country, 99.7 per cent are unorganized sector units leaving only 0.3 per cent of the units that are formally registered. Further, 84 per cent of the unregistered enterprises are Own-Account Enterprises (OAEs) which are essentially self-employed units and in maximum likelihood operating with unpaid family labour. Moreover, among the unorganized sector units, only 31 per cent are registered (under any Act) while the remaining 69 per cent units are registered nowhere. Clearly, the proportion of units where labour codes can be applied is very small. The new codes just like the earlier labour laws suffer from the same lacunae of threshold i.e. labour codes are applicable only when a certain number of labourers are employed in an enterprise. Otherwise, if the workers are fewer than the threshold, such laws do not apply.

The codes have introduced a new category of workers viz. Fixed Term Employees (FTEs). This category stands between a permanent worker and a contract worker. It is an improvement upon the phenomenon of a contract worker. The FTE category provides flexibility in hiring and firing as the employer can adjust the number of FTEs as per the requirement for non-permanent workers. FTEs are at par with permanent workers in terms of wages, bonuses, access to training etc. and their term can continue on a rolling basis. However, they are not entitled to the termination salary which is equal to the salary of fifteen days for permanent employees (under the provisions of IDA). While the code specifies that FTEs will get gratuity from the day one of their employment in the unit, it is silent on the provisions relating to the automatic absorption of such workers after they have worked continuously for say, two or three years, in that firm.

With the introduction of FTEs, the category of contract workers could have been abolished, continuation of which may motivate employers to hire contract workers to reduce their labour costs. The new codes specify that contract workers can be hired in enterprises employing 50 or more workers as against the earlier threshold of 20 or more workers. This new threshold means that firms employing less than 50 workers are now outside the ambit of the provisions mentioned in the Contract Labour and Regulation Act (CLRA).

The Inter-state Migrant Workers Act (1979), the clauses of which have been incorporated into the Occupational Safety, Health and Working Conditions (OSH) code is applicable now only to units which have 10 or more workers compared to its earlier implementation on units employing five or more workers. The revised threshold has taken out 10 percentage points of non-OAE units from the ambit of this Act leaving only 9 per cent of non-OAE units where this law can be applied.

The threshold for the provisions of the IDA to be made applicable has also been increased from 100 to 300 workers. This looks a positive development as the threshold of 100 workers meant that most of the organized sector enterprises earlier clustered around the mark of 100 workers and hired the remaining workers under contractual employment at lower wages with no other entitlements. However, the upward shift in threshold of workers also means that the units operating with the workers below the threshold are under no compulsion to comply with the provisions related to fixation of wages and recognition of trade unions. These units will be completely left out of Industrial Relations (IR) system leading to a decline in the formal sector employment and a rise in the volume of precarious employment in the system.

In the new codes, the definition of 'industry' includes terms like 'charitable', 'philanthropic' etc. which are undefined and can be misused by the employers for their benefit. Further, they provide that a worker drawing less than Rs. 18000 in a month will be considered as a worker but nothing has been mentioned as to where the figure of 18000 has been taken from. It is unclear whether the Union government accepted the recommendation of Anoop Satpathy Committee report on the

minimum wages and accepted that Rs. 18000 should be the minimum wages in a month in the country?

Labour strikes have also become difficult in the new setting. In the provisions under the IDA, workers could go on strike on a notice of 14 days while a prior notice of 60 days or six weeks has to be given now to the employer before the initiation of strike. Such a provision will weaken trade union activities which in turn will further debilitate the process of collective or social dialogue on the factory floor. Trade unions have opposed the new codes also because their implementation will lead to the shifting of the power vested in labour laws from the State governments to the Union government. As trade unions negotiate mostly with the State government, they will greatly lose their relevance if the power of the state government in dealing with labour laws is curtailed.

There has also been an attempt to subjugate the matter from the court of enquiry and the industrial disputes to special courts. While this is a welcome move, it needs to be seen whether the administrative courts will have the kind of wisdom and labour jurisprudence needed to deliver justice that is pro-labour and protective of workers. There were industrial tribunals in the past and it needs to be seen whether the same power as those enjoyed by these tribunals will be conferred to the special courts?

In the new codes, the government should have increased the amount of termination payment for permanent workers from the stipulated 15 days salary earlier to at least six weeks salary for each year's work. This sort of agreement was reached in the second National Labour Commission but unfortunately the current government has not increased the two week compensation amount. Rather the government has asked the employers to pay the remaining funds (remuneration of four weeks) to a skill development fund for the skill development of the terminated workers. Sadly, the performance of enterprises on this front has been very deplorable over the years. It is worthwhile to mention here that the World Bank survey of 2009 reported that only 16 per cent of registered enterprises in India carried out in-house training for their workers. In 2014, this figure increased to 36 per cent indicating that even in 2014, two-third of the formally registered enterprises did not carry out vocational training for their workers. The formally or vocationally trained or educated workers in Indian labour force were 2.3 per cent in 2014 and 2.4 per cent in 2018.

For the application of the Factories Act (1948), the threshold in the new labour codes is doubled from 10 to 20 workers, thus taking out a large number of smaller factories, which constitute most of the industrial structure in the country, from complying with a large number of important regulatory provisions.

In regards to the newly designed Social Security Code, a comprehensive inclusion of all categories of workers in this code was essential in view of the fact that Demographic Dividend in India will be over in the next twenty years resulting in a huge bulge in the non-working or aged population.

Given that 91 per cent of workers in the country are without any kind of social security coverage, the time was most ripe to gradually increase social safety net for workers. Sadly, the new code does not address this alarming concern.

The Social Security code allows the workers above 16 years to register as the new platform or gig economy workers which in itself is in contravention to the provisions of minimum age of the ILO's convention (of 138). It may be noted that children or adolescent workers, who have not attained the age of 18 years, are banned from being employed in gainful employment. The Social Security code also specifies mandatory nominations of the members of Social Security Board. Earlier, members of the civil society as well as trade unions were included in such workers' welfare boards. It is yet to be seen whether the new Social Security board, whose constitution is mentioned in the Code, will have the same kind of representation of workers and their representatives.

There are other ambiguities in the new codes too. For example, supervisors are included in workman category at one instance, and are entitled to receive social security coverage and benefits just like workmen in the IR code, but in the code on Social Security, they are not considered as workers and so are not entitled for social security cover. It is to note that a lot of supervisory staff in the gig or the platform economy work in a highly precarious employment. The IR code also excludes migrant workers, commercial sex workers, domestic workers, gig economy workers, own-account workers etc.

The new codes are also not gender sensitive. The spread of 26 week leave under maternity, mentioned in the Maternity Benefit Act of 1961, is not clearly mentioned in the new codes.

It may be noted here that proponents of neo-liberalism have always advocated the dilution of labour laws by arguing that stricter labour laws discourage investment. However, labour laws in India look stricter only on paper while their implementation and enforcement has been very weak since the mid-1990s mainly because of inadequate recruitment and severe understaffing in the law-enforcing departments at the state level. In fact, in a survey conducted by the World Bank in 2014-15 on the hurdles faced by industrialists in their growth process, the factors cited by them in the decreasing order were: Administration (officialdom and bureaucratic corruption), Electricity Supply and Logistics, Taxation, Labour Laws, Shortage of Skills. Evidently, industrialists accorded a much lower rank to stricter labour laws among the factors that impedes their growth. In fact, only 27 per cent of them reported labour law regulation as the biggest hurdle while inadequate access to credit was cited as the primary reason by most of the respondents.

The union government through the four labour codes has attempted to improve its own position on the 'Ease of Doing Business' Index but these codes pose a serious threat to the well-being of labourers through eroding the existing social security coverage, which although is not adequate,

provide at least some degree of protection to workers. The state through these codes has shed off its own responsibility in labour law governance and has placed more responsibility on the employer. Such an arrangement will create disharmony between workers and employers and curtail the process of social dialogue on the factory floor. The three parties; the state, the employers and the employees, all have a joint responsibility of striving for good industrial relations. It is high time that the old conventions and instruments of the ILO and Indian labor commission need to be revived in order to ensure the thriving of Indian industries as well as protecting the interests of labour.

In nutshell, even though, consolidating a large number of labour laws into four labour codes is a welcome step, the new codes will mostly likely lead to further informalisation of formal sector workers through an upward shift in the threshold limit as well as erosion of social security measures. Suppressing further the already poor labour will not augur well for the economy as it will lead to demand contraction which in turn will make the process of economic growth even more slow and difficult.