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Provisions of Occupational Safety, Health and Working Conditions Code, 2020 (OSHWC Code)—A Comparative Analysis with Existing Laws

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INTRODUCTION

The state of labour laws in a particular country can be seen as a product of the struggle between the interests of capital and labour. India as an independent nation has had a wide array of labour law legislations, addressing various aspects of capital-labour relations, which more or less took care of the basic rights and well-being of its workers, mainly in the organised sector. And these laws were highly influenced by the workers' movements in the 19th and 20th century, which demanded better working conditions, the right to organise and collective bargaining, better wages, etc. At the same time, the other concerned party, i.e., the employers, demanded the restriction of the powers of workers and trade unions and also wanted provisions for not too high minimum labour hiring costs. Therefore, the enacted laws were a result of the bargaining process between these two stakeholders – the employees and the employers, or symbolically, labour and capital. They were also influenced by important Human Rights and various conventions and standards put forth by the International Labour Organization (ILO).

In the due course of time since its independence, the Indian labour laws have undergone considerable amendments, according to the changing political and socio-economic situations in the country at different periods of time. And since the subject of labour is in the concurrent list of the constitution, different states had introduced their own laws and regulations, taking into consideration their specific regional situations and policy regimes. The country has therefore a plethora of labour laws spanning various sectors and addressing various issues related to the employment relations. This includes about 50 central laws and more than 100 state laws.

Since the neoliberal era has set foot in India in the late 80s and the early 90s, the demands for the deregulation of the economy and particularly the labour market has been at the forefront. The most significant step in this direction was the 1991 LPG (Liberalisation, Privatization and Globalization) reforms which started the structural adjustment process in the Indian economy according to neoliberal principles. Various political regimes have taken more or less considerable steps in the direction of deregulating the labour market and diluting the labour laws since then, but none has been as massive as the latest labour law reform process introduced by the current BJP-led right wing government of India. Labour market flexibilization being the underlying agenda, this reform process aims for a higher position in the global EoDB Index (Ease of Doing Business Index), which is the need of the hour in the present globalized world's context of 'One earth, one world, one market'. The government claims that there shall be a substantial increase the employment opportunities through this process.

The latest labour law reforms process is a long due process recommended by the Second National Labour Commission Report in 2002. The process includes amendments to the existing laws, the enactment of new laws, codification of the laws, and the issue of advisories,

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model bills and business reform action plans. It codifies 29 existing central labour laws into 4 labour codes, addressing 4 different aspects of capital-labour relations. Namely, the Code on Wages, the Code on Industrial Relations, the Code on Social Security and the Code on Occupational Safety, Health and Working Conditions. Among these, the Code on Wages has been passed in 2019, and the rest have been passed in 2020. "Minimum government, maximum governance" is the motto and the spirit of the central government in relation to the introduction of the new labour codes, which, resonates well with the neoliberal formula itself, i.e., withdrawal of the state from regulating the economy and aims at thriving business opportunities and promoting businesses, both indigenous and multinational, on the Indian soil.

Literature review :

The existing literature has already recognised the inadequacies in India's occupational health and safety system in the existing labour laws and advocates for a comprehensive reform to address this gap. Ramachandran and Singamani (2014) argue that the current disregard for workers' health and safety could prove costly in the long run, and any growth in manufacturing must entail a clear practicable system to ensure occupational health and safety for workers. They point out that annually, 1 per 1000 workers in India die, due to work-related causes, which is a considerably high number, and any increase in this sector will only increase the disease and injury burden further. Considering this situation, they call for regulatory reforms, significant investments by central and state governments, and administrative reforms.

As the state governments introduced major relaxations in the labour laws during the Covid pandemic, several authors had raised concerns over its implications for these states' labour forces. Sundar (2020) examines these amendments particularly concentrating on Madhya Pradesh and Uttar Pradesh and suggests that, by eroding several labour market securities, the suspension of labour regulations will informalize the formal sector. Nagaraj (2021) connects the rising industrial accidents and deaths occurred in India during the period to the relaxations in labour laws by the states.

Roychowdhury and Sarkar (2021) analyse the new labour law reforms and its political roots and its implications for the workers and the economy placing it in a neo-liberal backdrop. Several other authors also have examined the new reforms and the particular codes to make sense of the impacts it may cause for India's workforce. For example, Gopalakrishnan (2020), Mathew (2021) and Rajalakshmi (2019), all have analysed these new reforms in their works.

Chigateri (2022), in her extensive analysis of labour law reforms and women's work in India, examines the reforms from a gender lens and advocates for major changes in the legal framework to effectively address the employment of women considering the unique nature and characteristics of women's work in India. Sarkar and Samantroy (2023) analyse the new labour codes and its implications for women workers in the context of declining female labour force participation.

Although there is only limited availability of research with specific focus on the Code on Occupational Safety, Health and Working Conditions, there are few valuable insights put forward by some authors. Patnaik (2022) expresses concern over the increased industrial accidents and deaths of workers and the state's and employer's apathy towards them. She contends that the monetary compensation has now been incorporated into the institutional corporate strategy and state control, where reimbursing deaths with money has become an everyday business for employers, as workplace conditions continue to be fraught with weak labour laws and safety measures. " Sundar (2020) examines the code and enforcement mechanisms critically, in order to determine if the new code and the administrative system can guarantee safe workplaces.

These are some of the studies which have done an analysis, critically too, for the new OSHWC Code, 2020, especially *vis-à-vis* the existing multiplicity of labour laws of our country.

The code on occupational safety, health and working conditions, 2020:

Background:

The Code on Occupational Safety, Health and Working Conditions was introduced in the Lok Sabha on 19th September 2020, passed in the Lok Sabha on 22nd September 2020, passed in the Rajya Sabha on 23rd September 2020, and received the presidential assent on 28th September 2020. It aims to regulate the safety, health and working conditions of various industries and establishments in India. As it came into existence, it effectively repealed 13 central labour laws addressing the occupational conditions of various sectors. The laws

repealed include, the Factories Act, 1948; the Plantations Labour Act, 1951; the Mines Act, 1952; the Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; the Working Journalist (Fixation of rates of wages) Act, 1958; the Motor Transport Workers Act, 1961; the Beedi and Cigar Workers (Conditions of Employment) Act, 1966; the Contract Labour (Regulation and Abolition) Act, 1970; the Sales Promotion Employees (Conditions of Service) Act, 1976; the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1979; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Cine Workers and Cinema Theatre Workers Act, 1981; and the Dock Workers (Safety, Health and Welfare) Act, 1986.

There have been some substantial changes in this code *vis-à-vis* the laws that it has subsumed. Whether it is in the threshold limit, duties of the employers, or the inspection process and penalties, many major changes would affect the entire workforce and the employment relations and structure. The major changes are analysed in this paper, as discussed below.

Changes in the Contract Labour Act:

The Contract Labour (Regulation and Abolition) Act, 1970 has been amended to a great extent From the applicability to the power of the appropriate governments, the changes are wide-ranging and substantial. The law previously used to apply to all the establishments or contractors employing 20 or more contract workers. But now according to the new code, it will apply to only those establishments or contractors employing 50 or more contract workers (Section 45). This will push out a significant number of contract workers outside of any of the protective measures they have been having, which will lead to further casualization of these employment relations. Also, in the previous law there were provisions allowing the appropriate government to apply the regulations to any establishment or contractor that employs a lesser number of workers than the threshold. This provision has been removed from the formulation of the new code. Then that makes the impact of this new change of threshold even more significant. Now the threshold has been increased to 50 from 20 and the governments cannot even consider lowering the threshold in certain cases if needed. This was a desirable step to allow misuse of the provisions to suit certain interests.

The old law allows the employment of contract labour in only those activities which are casual or intermittent in nature that do not necessarily need regular workers. And if a question arises regarding whether an activity is of intermittent or casual nature, the appropriate government may take a decision consulting with the Central or State Advisory Contract Labour Board, and this decision will be final.

The appropriate government could also prohibit the employment of contract labour for any work in any establishment, taking into consideration that whether the process, operation or other work is incidental to, or necessary for the establishment; whether it is of perennial nature; and whether it is done ordinarily through, regular workmen in that establishment or an establishment similar thereto. The new code has some considerable changes in this regard. It introduces a definition for a "core activity", *i.e.*, any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity, and prohibits the employment of contract labour in these core activities (Section 2).

This definition of core activity also particularly excludes many activities which cannot be considered as essential or necessary, namely, sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste; watch and ward services including security services; canteen and catering services; loading and unloading operations; running of hospitals, educational and training Institutions, guest houses, civil and other constructional works, including maintenance; gardening and maintenance of lawns and other like activities; housekeeping and laundry services, and other like activities, clubs, courier services and the like where they are in the nature of support services of an establishment; transport services including, ambulance services; and any activity of intermittent nature even if that constitutes a core activity of an establishment. This too shall lead to lesser misuse of the provisions as all the workers shall be considered and their interests safeguarded in the core industry they are employed in.

Further, some provisions have been introduced to exempt establishments or contractors to employ contract labour even in the defined "core activities" in certain situations. And if any question arises as to whether an activity is "core activity" or not, the appropriate government may take a decision after consulting with a designated authority the government appoints for this matter. But unlike in the previous law, there is no particular

mention of the Central or State Advisory Contract Labour Board and the specifications for its composition. What the new code has effectively done is, instead of dictating for which activities one may employ contract labour and thereby prohibiting its employment in all the other activities, it specifies some activities, or "core activities", where contract labour is prohibited and allows its employment in all the other activities. Further, it removes the power of the appropriate government to prohibit contact labour in any establishment as it may decide to do, with even allowing the employment of contract labour in some core activities itself. In short, it significantly widens the scope for the employment of contract labour which will lead to employment of a widespread number of people in all kinds of activities.

Changes in the Migrant Labour Act:

Formerly, the Inter-State Migrant Workmen Act, 1979 applied to every establishment or contractor employing 5 or more inter-state migrant workers. Now the new code makes it to 50 or more workers, (Section 59). The code considerably relaxes the obligations of the contractor who employs inter-state migrant workers regarding the submission of the data and information of the employment. For example, according to the old law, any contractor who employs the threshold number of migrant workers should submit the particulars regarding the employment to the specified authorities in the state from which the worker is recruited and the state in which that worker is employed. And the contractor should furnish a return in case a migrant worker ceases to be employed, including a declaration that all the wages and other dues payable to the worker and the fare for the return journey back to their state have been paid. Contractor should also issue a pass book to each migrant worker, affixed with a passport size photograph of the worker and indicating the name and place of the establishment wherein the worker is employed, the period of employment, the proposed rates and modes of payment of wages, the displacement allowance payable, the return fare payable to the worker, deductions made, etc., and maintain this pass book up to date. All of these provisions have been successfully removed from the new code, making it easier for the contractors and employers, as promised in the beginning of the formulation of these codes by the central government. Thus, there relaxations for the duties of the contractors that involved unnecessary paper work. Further, previously, the inter-state migrant had to be paid a displacement allowance by the contractor at the time of recruitment in addition to the wages and it shall not be refundable. The worker also had to be provided with suitable residential accommodation during the period of employment. These have also been eliminated from the new code, as these were deterrents in employers' choice in hiring migrant workers. That is, from the amendments made regarding the employment of inter-state migrant labour, we can easily see the enhancing of the ease of doing business and the flexibilities to labour to work in their hometown or other states where work opportunities are more.

Changes Related to Women's Labour:

The code incorporates a section pertaining to the employment of women (Chapter X) with two sections. It allows for the employment of women workers in any activities and also during night shifts, if the employer takes adequate precautionary measures (Section 43). The employment of women after 7 p.m. and before 6 a.m. was prohibited according to the Factories Act, 1948, and also there was a ban on employing women in certain hazardous activities. These prohibitions have now effectively been removed. This change can be seen as a welcome move as it does away with the gendered discrimination women workers face in employment but considering the notable dilutions in the inspection processes and penalties, if adequate measures are not taken by the employer, this can prove to be fatal. The code has also doubled the applicability threshold for the Factories Act to 20 workers or more (with power) and 40 workers or more (without power), which used to be 10 workers or more and 20 workers or more respectively. This combined with the increases in the threshold limits of other acts too, will further the size of the women workforce not protected by state labour legislations.

Going through the legislations, it's also clear that there is an inherent bias in the formulation of these laws as the worker is always addressed as "he", indicating that a worker is always perceived as a male entity by the lawmaking authorities. This bias creates a cognitive blackout in considering the working conditions and occupational safety which specifically applies to the women workers. The narrative in the new code has changed and gender neutrality and equal work, equal pay, equal rights are visibly marked in all provisions of this new code.

Changes in Inspection and Penalties:

Earlier, the registration of an establishment by misrepresentation or suppression of data could cause the cancellation of registration. Now according to the new code, it cannot lead to the cancellation of registration nor could it affect the running of the establishment (Section 3). There is significant curtailing of the powers of inspecting officers, which effectively means, end of red-tapism, which had had a rottening effect on the system for ages together. For one thing, they are now called "Inspector-cum-Facilitators" instead of Inspectors (Section 2). This change suggests that now the inspecting officers are viewed as facilitators of business instead of law enforcing officers.

They used to be able to enter any establishment premises at all reasonable hours and require information regarding the employment of its workers. But now the inspections will be centrally controlled and randomised so that the "inspector-cum-facilitators" cannot conduct checkups as they want to in any establishment with a view to harass the owner, employer or the business doer.

Web based inspections are also allowed so that the employers can submit the required details via online portal (Section 34). These changes are in contravention with the ILO Convention 81 (Article 12), that states "Labour Inspector shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection", which India also had ratified. But keeping in mind the need of the hour and the digital era we are in, the government took the bold step of deviating from the provisions to further facilitate the ease of doing business and providing services at finger clicks. Also, previously, these inspectors could proceed with the prosecution processes if they find any contraventions from the part of the employers. Now they have to give an opportunity to comply with the provisions within a notice period of 30 days. And if the employer complies within this period, no prosecution proceedings can be initiated (Section 110). Further, now there is no imprisonment for the contravention of provisions for the first time (Section 97). Earlier, there was an imprisonment for up to 3 months which has been changed to an imprisonment for up to 6 months only if the offence is repeated or it continues. Although the fine amount has been raised to 50,000-1,00,000 Rs, this is not indexed, which makes it not responsive to the changes in inflation rates. Thus, while making provisions for punishing the guilty, the code has done the very right step to avoid unnecessary harassment of business doers, especially at the hand of government officials. This shall, besides helping the existing business, also lays ground for a more congenial atmosphere to growth and flourishing of start-ups and entrepreneurial ventures.

Powers of the Appropriate Governments:

Aloeng with these changes, there is also considerable enhancement of the powers of the appropriate governments to make the decisions and facilitate the relaxation of provisions for the benefit of the employers. According to the new code, the central government will be the appropriate government in central public sector undertakings even if the central government's quity holding in that undertaking is less than 50% (Section 2). This will lead to further centralisation and reducing the powers of the state governments, thereby reducing the scope of arbitrariness. The appropriate governments can now exempt any establishments from all the provisions of the code for certain periods of time. Furthermore, the state governments can exempt any new establishments from the provisions of the code in the interest of creating more economic growth and employment opportunities.

All these amendments point to the commitment of the lawmakers to enhance the flexibility or the ease of doing business for the better growth and employment opportunities for the nation.

Conclusion:

The new Code on Occupational Safety, Health and Working Conditions, 2020, comes true to its claim to regulate the safety, health and working conditions of various industries and establishments in India, and pave way for an industrialized India, with higher rankings in ease of doing business.

Besides the major changes that are aimed at benefit for the nation, certain worker specific provisions are the need of the hour and much applaudable part of the code. Some of these include provisions for free health checkups once a year for workers more than a specific age; legal right for getting employment letters to workers; accumulation of 1 day leave for every 20 days of work for the workers, after completion of 180 days of work rather than 240 as were earlier stipulated; and many such similar ones that go a long way to ensure good working conditions. Furthermore, clarifications and procedures will be established by Rules and Regulations made under this

Code by the Central and State Government, that leaves reduced scope for loopholes and misinterpretation of provisions to suit a few.

Additionally, the OSHWC aims to standarsise the labour law regime in the country by synchronizing a number of provisions that existed earlier and were applicable to establishments, factories, mine, etc. There was a multiplicity and duplicity of provisions on the same stakeholders, that left a lot of scope for misuse and ultimate harassment to the worker, which has been done away in this code now. While the OSHWC Code has certainly simplified the regulatory processes for the employers, it has also imposed greater duties and compliance requirements on the employees. The provisions of the code may work better in alliance with the rules and alignment with them.

Overall, Code aims to empower both employees and employers. On one side it allows flexibility in hiring and retrenchment on the other side it will expand the social security net for both formal and informal workers.

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