

# Analyzing Impact of the Four Labour Codes on Indian Economy

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## **Abstract**

With labour being an important factor to determine the economic development of a nation, labour laws hold a crucial place in the legislative horizon of a nation. Multiplicity of labor laws in India created confusion and ambiguity for employees as well as employers. The four labor codes passed by the current NDA government have proved to be a paradigm shift in the history of Indian labour law. Dwelling on to understand the provisions of the four labor codes, the paper tries to highlight the labor policies of capitalist, communist and socialist economics of America, China and Brazil respectively. The new codes have provided special provisions for inter-state migrant workers, gig workers, etc. but failed to address the migrant/seasonal agricultural labour, international workers, etc among other factors. With effective inclusion of agricultural laborers, extension of protection to whistleblowers and inclusive policies for gig workers, the paper also tries to provide some suggestions for improving the labour laws in India.

## **Introduction**

“Obedience to the law of bread labour will bring about a silent revolution in the structure of society” - M.K.Gandhi.

Land, labour, capital and enterprise are crucial determiners of a country's economy. Labour has remained a pivot for several political and economic theories. Labour has been derived from the Latin word labor meaning toil or trouble. Labour has been the driving force behind the Industrial Revolution of Europe followed by industrialization in other nations. Even in the pre-industrial revolution era, harsh working conditions prevailed. Though the industrial revolution was characterized by transition from hand made products to machine made goods, the importance of labour didn't reduce. The industrialisation of agriculture converted to conversion of small farms to large units having profound impact on the agricultural labourer. Countries that pioneered democratic institutions in the world, treated the labour of their country with utmost disgrace. Even England and its colonies passed labour laws that mandated long working hours, inadequate remuneration, child labour, minimum breaks, etc. It was only during the mid twentieth century that rights of labourers were recognised and were given constitutionally/statutory status. Establishment of the International Labour Organisation (ILO) helped streamline the labour laws in various countries.

In India, during the British era, several Factory Acts and Charter Acts were passed to recognise rights of laborers like fixed working hours, abolition of child labour, overtime wages. Despite this, the British continued to exploit them and working conditions in factories remained harsh. Labourers and Workers participated in the Indian independence movement in great numbers compelling the British government to take cognizance of them. After independence, labour laws were made a part of the Concurrent List. As a result, the center as well as the states had different labour laws. Such multiplicity of laws led to confusion not only among workers and employees but also the employers. With the efforts of the current central government, labour laws of India have been codified into four codes namely- Code on Wages, Industrial Relations Code, Social Security Code, Occupational Safety, Health and Working Conditions Code. Let's have a look at some of the important provisions from these codes.

## **Analyzing the Four Labour Codes**

### CODE ON WAGES, 2019

Four wages acts namely-The Minimum Wages Act, 1948, The Equal Remuneration Act, 1976, the Payment of Bonus Act, 1964, The Payment of Wages Act, 1936-have been subsumed into one Code, the Code on Wages 2019. One of the most important features of the Code is to universalise the provision of minimum wages. As per the new Code, "wages" include remuneration whether by way of salary, allowance, if the term of employment is fulfilled. The Code prohibits gender based discrimination among employees in establishments on matters relating to wages, with respect to the same work done or work of a similar nature. The Code mandates the employer to pay the employee wages which are not less than the minimum wages. "Work of similar nature" is defined as work for which the skill, experience, effort and responsibility required are the same when performed under similar conditions. The minimum rate of wage can be determined on the basis of hour, day or month worked by the employer or worker. The government along with fixing the floor wage, can also appoint committees for fixing and revising minimum wages. The floor wage can be fixed on the basis of minimum standard of living for the entire country or different floor wages for different geographical areas. Under the assumption of full implementation, the Code expects the average wage level to go up, ensuring economic growth and reducing poverty and inequality. The code stresses on the need for timely payment of the wages which are guaranteed on daily/weekly/fortnightly/monthly basis. The code also makes a provision for payment of annual minimum bonus to every employee, which is calculated at eight or one-third percent of the wages earned by the employee or ₹100, whichever is higher. In addition, the employer will also distribute

the gross profit among the employees. As mentioned further in the Occupational Safety, Health and Working Conditions Code, 2020, the Code on Wages, 2019 also extends overtime compensation twice the normal wages to all employees who have consented for such overtime. The Code promotes digitization in wage payment and issue of wage slip to all employees. The Code precisely mentions the conditions of permissible deduction of employees' wages, which includes grounds of fine, absence from duty, accommodation given by employer, recovery of advances/loan, income tax levied. Establishment of a Central Advisory Board, permitted under the Code, aims at resolving issues like fixation and revision of minimum wages and other concerned matters, providing increasing employment opportunity for women, etc. A similar State Advisory Board must also be established at this state level. With the introduction of graded penalty for the first time, the Code charges high monetary penalties and provision of imprisonment aiming to improve compliance and effective application.

According to the Code on Wages, wages now include the Basic Pay, Dearness Allowance and Retaining Allowance (if any) and exclude House Renting Allowance, Provident Fund, statutory bonus, etc. Many of the Code's rules are also made applicable to all employees under the Code on Wages, and there is no upper pay limit. This is a significant change, and in order to comply with it, businesses will need to alter the way they view several rules. It implies that all employees are entitled to overtime pay, which is something that most businesses do not practice today.

### INDUSTRIAL RELATIONS CODE, 2020

The Code, by amending and amalgamating previous laws, provides a policy framework related to trade unions, protecting the rights of employees, managing the relations between the employee and employer and settling industrial disputes. Among other terms, the Code defines "employees" and "fixed term employment" for the first time. "Employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.<sup>1</sup> "Fixed Term Employment" means the engagement of a worker on the basis of a written contract of employment for a fixed period. His hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature, he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by

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<sup>1</sup> Section 2(l) of The Industrial Relations Code, 2020 of Government of India

him, ) he shall be eligible for gratuity if he renders service under the contract for a period of one year.<sup>2</sup>

It is now mandatory for the employer to publish and display the statutory employment conditions or the 'standing orders' which consists of the details of working hours, leaves, holidays, misconduct, etc. The provision for application of standing order to industrial establishments with 300 or more workers is welcomed. On the other hand, a 'model standing order' has been drafted with respect to mines, factories and the service sector (which did not exist before).The Code enables for the formation of a Work Committee in an establishment with one hundred or more workers employed for 12 months. Such a committee must consist of representatives of employers and representatives of workers who would secure, promote and preserve good relations between the employer and worker. The Code provides for setting up a Grievance Redressal Committee in an industrial establishment with 20 or more workers for resolving disputes arising out of individual grievances. With proportional representation to women, the Committee must not exceed the strength of 10. Apart from this, the Code mandates for appointing a Conciliation Officer to mediate and promote settlement of Industrial disputes and setting up of Industrial Tribunal and National Industrial Tribunal. The Code prohibits workers from striking against employers and employers from locking-out its workers without a notice within sixty days before striking or locking out or within fourteen days of giving such a notice. Lay-off refers to an employer's inability to provide employment to a worker owing to a variety of circumstances such as a lack of coal, power, or mechanical breakdown. A non-seasonal industrial facility (such as a mine, factories and plantation) consisting of 50 to 300 workers need to: pay a dearness allowance and half of the basic wage to an employee who was laid off; provide one month's notice or salary in lieu of notice; obtain prior approval from central or state government before lay-off, retrenchment or closure. In case of closure of an industrial establishment, the employer is required to serve 60 days advance notice to the Government and also provide for compensation to workers who have worked in continuous service for not less than one year. The code also provides for a workers reskilling fund that will consist of an amount equal to 15 days wages drawn last drawn by the worker before the retrenchment.

### SOCIAL SECURITY CODE, 2020

The code subsumes nine central labor legislations and caters to the organized and unorganized sector, gig workers, platform workers with an aim to extend social security schemes like life insurance, health and maternity benefit, provident fund, etc. The Code envisages establishment of

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<sup>2</sup> Section 2(o) of The Industrial Relations Code, 2020 of Government of India

several social security organizations like The Central Board of Trustees of Employees' Provident Fund, The Employees' State Insurance Corporation, National Social Security Board for Unorganized Workers, The State Unorganised Workers' Social Security Board, The State Building and Other Construction Workers Welfare Boards and any other organization or special purpose vehicle declared to be the social security organization by this Central government. The gratuity benefit has now been extended to include fixed term contract workers. An employee will be eligible for gratuity on termination of employment after he/she has rendered service of not less than five years on occasion of superannuation, retirement/ resignation, death or disablement due to disease or accident, expiration of fixed term employment or any other event notified by the central government. The five year service condition is not mandatory for fixed term (or contract) employees', who will now be paid the gratuity pro-rata basis.

The Code notes that no woman shall work in any establishment during the six weeks immediately after the day of delivery, miscarriage or medical termination of pregnancy. A woman shall be entitled for a maternity benefit of maximum twenty-six weeks during which she will also have a right to payment of maternity benefit at the rate of average daily wage for the period of her absence. The Code also mandates for the establishments to have the facility of creche in such a way that the employer must allow four visits a day, to the creche, by the woman. Though the provision of creche has been mandated by the Social Security Code, the ambit of the facility has been reduced significantly. Now only establishments will have creche, while the earlier Building and Other Construction Workers Act mandated the facility in any employment place with more than 50 workers. Further, the Code mandates for registration of unorganized workers, gig workers and platform workers who have attained the age of sixteen by submitting an electronic self-declaration. Any failure by the employer to deposit employees' contribution attracts stringent penalties that include fine upto ₹. 1,00,000 or imprisonment of 1-3 years. Employee compensation for cases involving fatal accidents, bodily injuries or death during work is equal to 50% of the deceased person's wages or 60% of the wages in case of permanent total disability. To secure funds for welfare of building and other construction workers, a cess of minimum 1% and maximum 2% has been levied on the employer. As per the Code, the employer will be required to report vaccines in his/her establishment to career centers but shall not be obliged to recruit any person through the career centers. Lastly, the Code mandates the employer of an establishment to issue wage slip to the employees in electronic form (or otherwise), display notices at workplace, file returns for such period as prescribed by the appropriate government, maintain records and information of persons employed, finance and account, muster roll, wages and other particular details. In the Social Security Code, the meaning of unorganised sector includes self-employed and other individuals who provide good and services. It doesn't mention wage workers. According to the regulation, an

enterprise can only employ a maximum of "ten" people before it is deemed to be unorganised. This restriction is problematic because it presents a technicality as a justification for denying advantages to a firm that is truly operating in the unorganised sector. The Central Government may create programmes for gig workers, platform workers, and unorganised employees under Section 45 of the SS Code. The word "may" is used to qualify the Central Government's power to enact specified plans, indicating that the enactment of such schemes is at the Central Government's discretion. The assurance of the creation of such welfare schemes is undermined by the absence of a mandate. Therefore, it is essential that this stance be modified and that the Central Government be given a more strict directive.

### OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITION CODE, 2020

The Code aims to regulate occupational safety, health and working conditions of employees in various establishments by integrating 13 existing labor legislations. The Code caters to the employees of formal establishments as well as informal sector workers like factory workers, mine workers, beedi and cigar workers, inter-state migrant workers, etc. The Code mandates the employer of any establishment to register it within 60 days of the commencement of the Code by making an electronic application to the registering office appointed by the central or State government. Chapter III of the Code specifies the duties of employer and employee in great detail. Duties of an employer include to ensure that the workplace is free of hazards, comply with safety and health standards, conduct annual health examination or test free of cost, provide information, instruction and supervision to ensure health and safety of the employees, make arrangements to provide adequate ventilation, cleanliness, lighting, potable drinking water and issue an offer letter to every employee on his/her appointment within three months after the commencement of the Code. The employer shall be responsible to provide various welfare facilities in the establishments like ambulance room, rest room, temporary accommodation, appointment of welfare officer, etc. Apart from this, the employer also has to send a notice of certain accident, dangerous incident or certain diseases to a competent authority as prescribed by the government. On the other hand, the duties of an employee include compliance with safety and health standards, reporting unsafe or unhealthy conditions, cooperating with employers in meeting statutory obligations and avoiding misuse of safety appliances.

The Code establishes a National Occupational Safety and Health Advisory Board to advise the Central Government on the standards, rules, regulations and policies to be framed under this Code. The Code empowers the Chief Inspector-cum-Facilitator to survey factories, mines and other establishments and collect relevant data. The Code further mandates collection of statistics and

creation of a portal on inter-state migrant workers by the Central and State government. The Code changes the earlier 9 working hours a day to 8 working hours a day and a total of not more than 6 days in a week. Employees who have worked for more than 180 days can take 1 day leave for every 20 days of work done. In case of overtime, employee's consent is mandatory and his/her entitlement to wages becomes twice the normal wages. With a special emphasis on the inter-state migrant workers, the Code lists down detailed provisions for their welfare. The employer has to make sure safe working conditions and extend all benefits to the inter-state migrant worker. The worker is also entitled to a journey allowance from the employer for a to and fro travel to his native place, benefits of public distribution system and facility of a toll free helpline number. The Code mandates for appointment of a manager who will be responsible for the overall management, supervision, control and directions being given to the mine. No one below the age of eighteen must be employed in a mine. In case of workers at a plantation, the employer has to provide necessary accommodation, health facility, educational facility to the worker's children and recreational facility.

Dalit women have worked in "housekeeping services" for decades. The OSHWC Code forbids the use of contract labour in the core activities of any establishment, but it specifically excludes "housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment" from the definition of core activities. In addition, sanitation and housekeeping are important aspects of several sectors, such as the hospital, which makes cleanliness a requirement for the industry's ability to function and provide care. The growing fake contractualization of those who are caste, class, and gender sensitive is effectively sanctioned by legislation. Recall that the Supreme Court compared contract labour to a better version of bonded labour in the *Sankar Mukherjee and Ors. v. Union of India*. The employment of women in night shifts with their consent is seen as extension of exploitative practices towards women. Considering the highly unequal power structure and unequal bargaining power a contract of service might appear to be voluntary but maybe involuntary since the employee who is in a helpless economic condition might submit to the terms of the powerful employer. Thus, consent taken from women to be employed in night shift might not be a free choice and a travesty of justice. Under the OSHWC Code, provision of unused leaves getting lapse has been done away with. If the leaves exceed 30 days, the employees will be entitled to encash the excess leaves which will be calculated at the end of the calendar year. Employees can avail, carry forwards or encash their annual leaves. It is important to note that this provision is only applicable to employees who are not in managerial, administrative and supervisory roles.



## Impact on Formal and Informal sector

As said earlier, Labour is a subject under the Concurrent List. Majority of the labour laws enacted till date have been a result of the tripartite consultation. Unfortunately, no such consultation was done with the representatives of workers before passing these Codes. The highest tripartite labour policy decision making body, the Indian Labour Conference, wasn't organized a single time while framing of these Codes was underway.

Starting with the Social Security Code, the threshold is set for only 10 or more building and construction workers to be under the ambit of this Code. It however excludes personal residential construction workers that form a huge chunk of the daily unorganised workers.<sup>3</sup> The facility of Provident Fund has the restriction of 20 or more employees under an establishment. This leaves out many small and micro enterprises. There is still ambiguity about how social security protections will operate in cases of home-based workers, self-employed, piece rate workers, etc. Lastly, neither is there a provision for inclusion of SC/ST/women in the Board of Trustees of the Employees Provident Fund Organisation nor is there any kind of sectoral representation to incorporate the diversity within the unorganised sector.

While analyzing the impact of labor codes, it is noticed that a lot of provisions have been introduced for the time while other provisions have been updated and amended to suit the changing nature of the Indian economy. The government had introduced the Contract Labour (Regulation and Abolishment) Act 1970 to regulate the contractual form of employment. During the 1970's and 1980's workers were initially hired on contract basis and were then absorbed in the establishment as permanent workers. However in 2001, a court judgment denied the "right" of contract workers to be absorbed as permanent workers. The new Industrial Relations Code legalizes the system of 'fixed term employment' thereby reducing the burden on the employer for the permanency of employment. The Code states, for the first time, eligibility of the fixed term contract employees to receive gratuity in lieu with the service rendered for the period of minimum 12 months/1 year, removing the earlier limit of 5 years (of service rendered). The employer can also further extend the tenure of the contract. This has created a confusion, since extension or renewal of contract can lead to change in eligibility and quantum of gratuity payable to the employee. Also the proviso of "pro rata" basis can indicate a possibility of a shorter period to be eligible for gratuity as a fixed term employee.<sup>4</sup>

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<sup>3</sup> [Why the new labour codes leave India's workers even more precariously poised than before](#)

<sup>4</sup> [Fixed Term Employment under the Labour Code](#)

The Code on Wages, 2019 has made a historic and revolutionary provision of universalizing minimum wages for the first time. Every worker in the country has a right to claim minimum wages, the standard of living is expected to increase. The extension of legal coverage of floor wage and minimum wages to all workers will benefit around 48% of the total 468.8 million workforce of India. The extension of legal protection in conjunction with the universalisation of wages that will benefit the most vulnerable group of workers from India's informal sector. Earlier, a complex minimum wages structure led to more than 1915 minimum wage rates across the states. Doing away with the earlier practice of fixing occupational minimum wage rate or wage fixation by scheduled employment, the Code on Wages 2019 mandates fixing of minimum rates of wage by skill categories or geographical location or both. However, fixing the rate of minimum wages by such order won't be an easy task and the states might have technical support for the same. Nevertheless, the Code on Wages is an important redistributive tool devised by the government to improve the standard of living and welfare of low paid workers. Several times, ill motivated trade unions used to misguide workers of an establishment that would invariably lead to a strike. Such spontaneous and sudden strikes/closure of work led to loss of the employer and wastage of raw materials especially in establishments like food processing units, etc. The provision of a notice period before the strike would serve in the better interest of the employer. The OSHWC code has introduced the provision of worker's health check up. This provision has been welcome to employees and workers especially those of the unorganised sector. A small example of this was given by the Honorable Member of Parliament Shri. Pallab Lochan Das. He said that tea workers in the northern and the north-east parts of India like Assam will be greatly benefited by this provision. Pregnant women workers who worked in the tea fields did not have their antenatal check up as it would lead to a wage loss for them. Thus, the workers prioritize the work over their and the babies health. This invariably leads to a high maternal mortality rate as well as infant mortality rate. With the new provision, such unwanted mishaps can be avoided. Despite this, the maternity benefits have not been universalised throughout sectors.

### **Impact on Gig Economy**

The Social Security Code mentions the employment and growing sector of platform and gig workers, estimated to be around 15 million in India. Gig workers are defined as the ones outside the traditional employer employee relationship like contractors or freelance workers. Platform workers are those who work for an organization that provides specific service using an online platform directly to individuals or organizations. (eg. drivers at Ola or Uber) The new legislation

requires to create a cess-based welfare scheme for the platform workers with a maximum of 5% of the contribution from the aggregator (aggregator is the digital intermediary or a marketplace for buyers or users of these services to connect with the seller or service provider). Compared to this, the total contribution by the employers to the ESI (Employees State Insurance Corporation) & EPF (Employees Provident Fund) for the organized sector is around 15.5%.<sup>5</sup> Thus, the welfare facility available to the platform and gig workers is at a maximum, less than one-third available to the organized sector. The Codes also mandate the registration of all gig and platform workers for the efficient delivery of welfare schemes. However if critically looked at, the government has lost an opportunity for the serious introspection of the gig economy by putting a “non-binding obligation” on itself as well as the states to roll out schemes favoring them. These workers lack legal backing in cases of disputes with their management and don’t have a right to form registered trade unions. The gig and platform workers are excluded from accessing any specific/independent grievance redressal mechanism, making the employment relationship lop-sided in favor of the management or the aggregator. They also do not possess the right to collective bargaining. The uncertain nature of the gig economy has created hurdles in registering the trade union of gig and platform workers. In absence of such registration, the unions are denied the immunity from civil, criminal and contractual liability that allowed them to voice the demands of the employees. Although the new labor codes represent a significant development in the Indian labor laws, they do not adequately address the status of the gig economy in India.<sup>6</sup>

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<sup>5</sup> Ushering thin welfare regimes at the cost of thick labour jurisprudence: A tale of new labour codes in India

<sup>6</sup> [Labour Law and the Gig Economy](#)

## **Lessons to be learnt from other countries**

### THE UNITED STATES OF AMERICA<sup>2</sup>

The US Department of Labor administers and enforces around 180 federal laws for about 150 million workers and 10 million workplaces. These laws are applicable to businesses, job seekers, retirees, contractors and grantees from the public as well as private sector. With the majority of provisions being in tune with the current four labor codes of India, the US labor laws also have certain special provisions for laborers and workers in their economy. The Fair Labour Standards Act prescribes the standards for wages, standard of working place and overtime pay. With workplace inspections and investigation, the Occupational Safety and Health Act obligates the employer to provide a workplace free from recognised, serious hazards. One of the striking features of the US labour laws is the 'workers compensation program'. The program directs a dedicated amount as compensation apart from monthly cash payments, vocational rehabilitation and medical care facilities to the employees and their dependent survivors in case of disability or death of an employee during performance of the duty. The program extends to include coal miners totally disabled from pneumoconiosis (black lung diseases), death/injury of maritime employees on navigable waters of the US and employees of the Department of Energy suffering from cancer or certain illnesses caused by exposure to radiation. The compensation amount can be as high as \$1,50,000 for the employees of the Department of Energy. An Employee Protection Act also mandates whistleblower protection for employees who report about the violation of the labour laws by their employer. Unlike the Indian labour Codes, the Migrant and Seasonal Agricultural Worker Protection Act in the US prescribes and regulates employment activities of agriculture employers, farm labour contractors and associations using migrant and seasonal agricultural workers, wage protection, housing, transport safety standards and farm labour contract registration. The Act requires payment of minimum wages to all workers employed on the farms but denies the right to overtime pay. It also prohibits children under 16 years from working on fields, except when the children are employed on their families farms. The Act also mandates for special safety and health standards that apply to agricultural operations.

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<sup>2</sup> [U.S. Department of Labour](#)

## CHINA<sup>8,2</sup>

In the People's Republic of China, employment can be legalized only by a written contract. An employer has to provide the contract to an employee within 30 days failing to which the employer will be liable for a double wage penalty. The Chinese Labour Law mandates three types of employment contracts namely- Fixed Term Labour Contracts (for a specific period of time either full time or part time), Open Ended/Indefinite Labour Contracts (does not have a set termination date and can be ended only after a mutual agreement) and Project-based Contracts (based on specific project/task; expires after delivery of the project). The contract has to fulfill all statutory benefits and paid leave requirements like maternity leave, holidays, health coverage, sick leave, workers compensation and pensions. The notorious practice of "996", which is a week that went from 9:00 a.m. to 9:00 p.m. 6 days a week, was struck down as illegal by the Supreme Court and Ministry of Human Resources of China. Though such working hours had become a badge of honor for many Chinese companies, especially the big tech-giants, employees were rarely compensated for the overtime. With changes made in August 2021, the working hours are fixed to be not more than 8 hours each day and 40 hours per week, the overtime limit in China is fixed to one hour per day. The maximum number of extra hours can't exceed three hours per day or 36 hours per month. Minimum wages are determined by local governments on the criteria of average wage levels, cost of living and degree of economic development in the particular region. The employer is required to provide social security contributions to medical expenses, employment pension, housing fund, maternity benefit and work related injuries or accidents. Employee leaves granted on statutory basis are much less as compared to other nations. With the total working years between 1 year and 10 years, an employee is entitled to 5 days of annual statutory leave; with 10-20 working years, 10 days of annual leave; more than 20 working years, 15 days of annual leave. Considering the Communist polity/political structure of China, workers and employees do not have a freedom of association and labour unions (they cannot simply join or form any Union of their choice). There is only a single recognised, government sanctioned labour union within China which is called the All-China Federation of Trade Unions. The ACFTU has strong ties with the Chinese Communist Party and acts as an organ of the Communist Party ever since its establishment. Local level unions have to submit to the authority of the ACFTU and their power to negotiate for the interest of the employees is challenged by the government's discretion. Very clearly, the ACFTU has failed to work for the interest of the workers.

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<sup>8</sup> [China Labor Law](#)

<sup>9</sup> [Understanding labour law and employment in China](#)

## BRAZIL<sup>10 11</sup>

The Brazilian Labour Law also known as the Consolidation of Labour Laws encompasses a maze of complex, nuanced labour laws of Brazil. Most of these laws are mandated by Brazil's Constitution while others have been covered by collective bargaining agreements with trade unions. Four types of contracts are widely observed in Brazil: indefinite-term employment contract, definite-term employment contract, temporary employment contract and intermittent employment contract. One of the most distressing features of the Brazilian labour laws is the “At-will Employment”. Employees in Brazil can be terminated or retrenched any time, with or without specified causes. Nevertheless, they are entitled to notice periods, severance pay and other entitlements. Brazil has strong anti-discrimination protections for the employees, where the employers are prohibited from discrimination based on gender, race, place of origin, marital status, color, age, certain medical conditions like pregnancy or criminal history. Brazilian employees have a right to associate or form a trade union of their choice. Until recently, membership of a trade union was compulsory for every Brazilian employee (it has now been made optional). Collective Bargaining Agreements are commonly practiced among the employers and trade unions, on behalf of the employees, in Brazil. Such agreements tend to serve the interest of employees like annual salary hike, additional benefits and working conditions requirements. Working hours cannot exceed 8 hours per day and 44 hours in a week. Overtime must be paid 150% of the usual pay or 200% on holidays and weekends. The employer is responsible for workplace health and safety standards. Maternity leave is granted for 120 days and can be extended upto 180 days. A unique provision of the Brazilian labour law is payment of the 13-month salary payments. The extra payment is given as a Christmas bonus, at the end of the year. Apart from the income tax deduction, 7.5% to 14% of an employee's salary is deducted for social security benefits. An employer has to contribute 8% of an employee's salary towards the state's indemnity fund and 26.8% of the salary towards social security. Depending on the establishment, some employees are eligible for health and life insurance.

### **Shortcomings in the Codes & Recommendations**

It won't be an exaggeration to say that the new labor codes are magnum opus labour legislations and have led to a paradigm shift in the labour landscape of India. Most of the earlier labour laws had become outdated while others carried the colonial remnants with themselves. With such a large piece of legislation trying to incorporate various sectors, fields and employment types, certain

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<sup>10</sup> [Brazilian labor and employment laws](#)

<sup>11</sup> [Employment in Brazil](#)

things have naturally been missed out, ill-predicted or miscalculated. The Social Security Code makes the Aadhaar mandatory to receive the benefits. Many Parliamentarians have objected to this provision, saying that it is a violation of the Hon' Supreme Court's judgment in the *Justice K.S.Puttaswamy v Union of India*. According to the Puttaswamy judgment, Aadhaar could be linked only if funds were being withdrawn from the Consolidated Fund of India. The Social Security Code mandates Aadhaar for the purpose of registration and benefits like the ESIC & EPFO. It is important to note that funding for both ESIC & EPFO is not covered under the Consolidated Fund of India.<sup>12</sup> The Codes are also silent on the 'international worker'. No provisions with respect to their wages, social security, etc. have been made. Employers engaging with international workers have ambiguity while calculating their provident fund. The OSHWC Code has reduced the manpower applicability for provisions on welfare like canteen, restrooms, appointment of welfare officer, etc. They have brought down the limit from the earlier (as mentioned in the Factories Act) 150 to 50 for restrooms, 500 to 250 for appointing a welfare officer. While this provision has been championed by employees, workers and the trade unions, the MSMEs, who are already suffering, will find it as an additional burden.

While these shortcomings persist, following are some of the recommendations to make the labour codes further inclusive and efficient.

- The Codes are silent on the seasonal and migrant agricultural laborer in India. It is a known fact that agriculture employs around 55% of India's population. With disguised employment at its peak in the agricultural sector, the rural poor has shown a high degree of engagement as agricultural laborers despite exploitation. Taking the example of Maharashtra, many agricultural laborers along with their families migrate from Marathwada to Western Maharashtra to work in the sugarcane fields during the harvest season. The six months seasonal employment leads to a high degree of exploitation which is coupled with lack of payment of minimum wages, occupational safety, social security benefits like housing, public distribution system, etc. Taking inspiration from the US labor laws, the Indian government must take steps towards catering the interests of such migrant, seasonal agricultural workers by framing a dedicated policy for their welfare.
- As said earlier, the Codes have made passive attempts to cater to the needs of the gig economy. These provisions are definitely insufficient for matching the needs of the sector that is growing at a speed like never before. Keeping the Rajasthan Platform-based Gig Workers (Registration and Welfare) Act 2023 as the base, **the central government could frame a nation-wide gig workers policy**. Certain provisions of the policy could include

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<sup>12</sup> [Aadhaar and Exclusion: The Right to Social Security](#)

classifying gig workers as employees to grant them labour protection and rights, registration of gig workers along with a renewal system to incorporate gig worker's changing engagements, assign unique ID to gig workers, right to grievance redressal mechanism, establishment of a welfare board, etc.

- **Extension of the Whistleblowers Protection Act, 2014** to the private sector and all kinds of establishments will help in reporting the instances of misuse and violation of labour laws by the employer. With an aim of increased transparency and vigilant conduct, the legislation can act as a deterrence for any non-compliance with the labour codes and ensure maximum welfare of the workers and employees.
- The provision of fixed term employment has been welcomed by many employers in the light of the growing need of the industry to hire for projects or seasonal requirements. However the job security of the employee remains at the discretion of the employer who can fire the employee once the targeted work is achieved and avoid permanent employment. It is recommended to **fix a minimum as well as maximum tenure for the fixed term employment.**
- The re-skilling fund, a novel initiative under the Code, requires contribution from the Government and the employer with the 15 days wages within 45 days of the retrenchment of the employee. Here, the **Ministry of Skill Development also can make monetary as well as non-monetary contributions towards the re-skilling fund.**
- The Code on Wages does not specify the criteria for fixing the floor wage rate other than the general factors like food, clothing, housing. It is recommended that the government must shift towards a nationally representative and culturally palatable balanced diet approach to determine the floor wage rate, given by the Experts Committee in 2019. The Committee, appointed by the government, produced evidence based research for intake of 2400 calories, 50 grams protein, 30 grams of fat per day. The Committee has also recommended five regional floor-level minimum wages taking into account the vast socio-economic diversity of India. Just like these, incorporating some other relevant recommendations of the Expert Committee would better refine the government's aim for welfare of laborers.
- The Codes find no mention about the people employed in the film and entertainment industry. India's film industry is estimated to have a total worth of over 170 million rupees as of 2022. Due to the unregulated nature of the industry, service providers (like actors, directors, script writers, etc.) have no legal right over their wages and working conditions. Equal pay for equal work is still a distant dream for the industry to accomplish. The #MeToo movement has proved the lack of occupational safety and risk of workplace sexual harassment of women in the entertainment industry. **The government must take steps**



towards framing a policy mainstreaming business and employer-employee related relations in the entertainment industry, without actually hampering the industry's creative liberty and work culture. The policy could aim at broader avenues like payment of wages to service providers within 30-45 days of the completion of the work (it is currently 90 days), fixing a proportion of the wages to be mandatorily paid by the financier to the service providers even if the cinema/television serial/series/advertisement suffers a loss, occupational safety and social security benefits like health insurance of on-camera (actors) as well as off-camera (technicians, director, cinematographer, etc.) service providers to be the responsibility of the financier, etc.

## Conclusion

In today's world of the cutting edge technology, competition has grown like never before and artificial intelligence has replaced humans in all possible fields. Nevertheless, the importance of human capital, the importance of labour has not been reduced. Labour codes in a country determine the labour welfare policy and the level of ease of doing business. The four labour codes recently introduced in India are considered to be a paradigm shift. While the codes have introduced several provisions for the first time, it has bobbed up in some basic premises. It will be interesting to analyze how the labour codes will stand the test of time in wake of the changing nature of the Indian economy.

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