THE LEGALITES LEXSCRIPTA

ISSN 3108-2416 (ONLINE)
Editor-in-Chief: - Prof. (Dr.) Aryendu Dwivedi
Volume II Issue II (April-June) Page No.: - 235 to 262

Recasting India's Labor Law Regime: An Analysis of the New Labor Codes and the Imperative for Reform – A Legal Analysis

Author: Aniket Chaturvedi, LL.B. (Hons.), 3rd Year Student, Amity University, Noida

ABSTRACT

India is a country that is globally known for providing skilled, efficient and cheap labors. This is one of the reasons why more and more foreign companies are establishing their business in India. Not only foreign companies but domestic companies are also growing as the country is progressing towards the service and manufacturing sectors. India has emerged to be one of the largest markets in the world in terms of consumption being the largest populated country in the world. This is the reason why protection and development of labor population have always turned out to be an important sphere to pay attention in.

Since British era, many laws have been emerged that channelizes towards protection and development of the labor population in the country, for an instance Payment of Wages Act, 1936 or Trade Unions Act,1926 that were enacted in pre-independence time, Minimum Wages Act, 1948 or Factories Act,1948 that were enacted in post-independence era are some of the laws made by the government for the labor population. The laws were made a long time back according to the then scenarios and situation of the laborers. However, in today's times the scenario is different as the era of modernization has covered the globe. The existence of multiple labor laws in the country led to increase in complexity and hardships in compliances and thus a requirement of a reform in labor laws era deemed necessary. In 2019 and 2020, the Indian government scrapped the old labor laws and compiled them together to be known as four labor codes i.e. Code on Wages, 2019, Industrial Relations Code, 2020, Code on Social Security, 2020, Occupational Safety, Health and Working Conditions Code, 2020.

In the following dissertation the background of labor laws in India, the need for the reform, the introduction of the labor codes, the new changes brought in and the challenges will be discussed along with landmark judgements.

Key word: Codes, Labor laws, wages, acts, amendment, introduction, provision

CHAPTER 3: COMPARITIVE ANALYSIS- OLD LAWS VS NEW LAWS

Purpose of Comparison

In previous chapters, we have undergone the objectives behind the constitution of the previous existing laws, the need of reforms, the amendment or addition to the labor laws. This chapter is incorporated and provided a separate status to further understand the amendments i.e. the previous provisions of the laws which in later was converted into the labor codes with new amendments and addition of new provisions. In Chapter 2, the highlight was on discussing about the objectives of existing 39 labor laws and the changes brought in via the four labor codes. In this chapter, a comparative analysis of the past provisions in comparison to the new provisions will be done and on the basis of which the critical analysis will be drawn in the next chapter i.e. chapter 4.

Code on wages Comparison

Code on wages consolidated four acts within itself i.e. The Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. The comparative analysis of the pre-reforms provisions and post-reforms provisions are as follows-

- ### Definition of Wages

  In the pre labor laws reform, the definition of wages was mentioned in all the four acts. There was no single, unified definition of the same and each act carried its own definition for wages. This led to inconsistencies, hurdles in compliances. Therefore, the new code unified the definition of wages.

  The Payment of Wages Act, 1936 defined wages as all remuneration expressed in terms of money and included certain allowances but excluded bonuses, contributions to PF, gratuity, etc.

The Minimum Wages Act, 1948 defined wages as want included basic wages and dearness allowance but explicitly excluded HRA, overtime, bonus, etc.

The Payment of Bonus Act, 1965 defined wages as basic wage and dearness allowance only.

Earlier there existed no concept of 50% Rule. Thus, employers could freely structure salaries by raising excluded components like HRA and allowances to lower the "wage" component. This allowed them to reduce their liability for PF, gratuity, and bonus contributions.

- ## Non-Discrimination in Wages

The past law i.e. Equal Remuneration Act,1976 only included male and female in the ambit of payment of remuneration on the grounds of sex. There were no provisions made for the transgenders. The reforms increased the scope of the act and included transgenders as well. Apart from this the codes strengthen the provisions for prohibition of any form of discrimination in aspect of recruitment, payment of wages of similar nature of work

- ## Minimum Wages & Floor Wage

In the past law, the provisions for minimum wages were only applicable to scheduled employments that were listed in the act. There was no protection given to the unorganized workers. The concept of National floor wage was also not in existence in past law leading to state governments fixing their own minimum wages without a basic floor creating disparities. Therefore, the codes extended the provision to the unorganized workers as well and set a national floor wage.

- ## Overtime Wages

The provisions for overtime wages extended only to the scheduled employments. There was no inclusion of the unorganized or non-scheduled workers in the same. The Code on Wages extended the provision of overtime wages to the non-scheduled and unorganized workers as well.

- ## Time Limit for Settlement of Wages upon Dismissal/Retrenchment

Section 5 of the Payment of Wages Act, 1936, described wage payment timelines which were as follows:

i. In case of establishments having lower than 1,000 workers, wages needed to be paid by the 7th of the following month.
ii. In case of establishments having more than 1,000 workers, wages needed to be paid by the 10th of the following month.
iii. In the case of dismissal, wages were to be paid before the expiry of the second working day from the date of dismissal.

Thus, there was no uniform provision to address the cases of retrenchment and resignation in terms of payment of wages and deadlines for the same which led to delay of payments creating ambiguity. Thus, the code prescribed a uniform two-day limit for dismissal, retrenchment, and resignation cases alike.

- ## Eligibility and Quantum of Bonus

The Payment of Bonus Act, 1965 u/s Sections 8, 10 & 11 listed the provision for Eligibility and Quantum of Bonus as follow:

i. section 8 mentioned that an employee was eligible for bonus if he had worked for not less than 30 working days in an accounting year
ii. under Section 10, minimum bonus was fixed at 8.33% of wages or ₹100, whichever was higher.
iii. under Section 11, Maximum bonus was capped at 20% of the wages out of the allocable surplus.

In the old law, the wage ceiling for bonus eligibility was significantly lower. Apart from this the old law lacked a unified wage definition.

- ## Limitation Period for Filing Claims

In the past laws, there were shorter and restrictive limitation periods.

The Payment of Wages Act, 1936 mentioned about filing of a claim within one year from the date on which the deduction was made or payment became due.

The Minimum Wages Act, 1948 mentioned about the limitation period being six months to one year depending on the nature of the claim.

There was limited discretion given to authorities to condone delay, and the shorter period often left workers, particularly unorganized and migratory labor, unable to file claims in time due to lack of awareness or access to legal systems.

- Role of the Inspector

In the past enactments, the Inspector acted as an enforcement authority. The Inspector had the power to enter, inspect, examine registers, and take evidence. The Inspector carried out the role of punitive/ prosecutorial in charge of the office i.e. inspections could directly lead to prosecution and employers had no right to rectify violations. Thus, the code brought in amendment to this provision and extended the role of Inspector.

- Penalties and Decriminalization

The pre-existing statutes consisted criminal penalty for any offence with no gradation between minor lapses and serious offences. The first-time offences could also attract criminal prosecution and imprisonment. There was no provision for compounding of offences. Thus, in the new codes, there is a removal of criminal penalty in offences and the provision for compounding was included. The pre-reforms laws had criminal liability for minor non-compliance, and it burdened courts with large volumes of labor law prosecutions.

3.1.2 Industrial Relations Code, 2020

The Industrial Relations Code, 2020 consolidated three pre-existing labor laws i.e. the Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947. The comparative analysis of the pre-reforms provisions and post-reforms provisions are as follows-

- Fixed Term Employment

In the past laws, the definition of Fixed Term Employment was not recognized. The

workers who were engaged for a specific duration were typically treated as contract labor or as casual workers. Both of the workers had fewer rights and benefits. The employer did not provide any benefits such as gratuity to the employees (unless they completed a continuous service of five years which was nearly impossible as they were employed for a fixed term) and instead exploited them. The IR code brought in new changes to tackle this issue and defined Fixed term employment. The code also extended social security benefits for the fixed term employees.

- ## Definition of Strike

Section 2(q) of the Industrial Disputes Act, 1947, defined strike was as a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal or refusal under a common understanding to continue to work or to accept employment. There was no provision of mass casual leave in the same which led to workers and trade union exploiting this gap and coordinating mass absenteeism through casual leave without attracting any consequences of strike such as notice requirements, illegality provisions, and penalty clauses. Thus, the new code added mass casual leave in the definition of strikes which would attract the same consequences and eligibility of a strike.

- ## Definition of Wages

As previously discussed under the Code on Wages, 2019, There was no single, unified definition of the same and each act carried its own definition for wages. This led to inconsistencies, hurdles in compliances. Therefore, the new code unified the definition of wages. The Payment of Wages Act, 1936 defined wages as all remuneration expressed in terms of money and included certain allowances but excluded bonuses, contributions to PF, gratuity, etc. The Minimum Wages Act, 1948 defined wages as want included basic wages and dearness allowance but explicitly excluded HRA, overtime, bonus, etc. The Payment of Bonus Act, 1965 defined wages as basic wage and dearness allowance only. Earlier there existed no concept of 50% Rule. Thus, employers could freely structure salaries by raising excluded components like HRA and allowances to lower the “wage” component. This allowed them to reduce their liability for PF, gratuity, and bonus contributions.

- ## Registration of Trade Unions

  Section 4 of the Trade Unions Act, 1926, listed the requirements for registration of trade union. The provision was very lenient i.e. any seven persons could apply for registration of a trade union, irrespective of the proportion of the total workforce. Thus, any seven members of an establishments could easily register as for a trade union as there was no minimum membership threshold in terms of percentage of the total workforce leading to the issue multiplicity of trade unions.

  There was no requirement to maintain a minimum membership threshold after registration, meaning unions could register with seven members and subsequently shrink without losing recognition. Thus, under the amendment, any seven or more members can apply for registration of a trade union under. No Trade Union can be registered unless at least 10% of workers or 100 workers, whichever is less, are members

- ## Concept of Negotiating Union / Negotiating Council

  Before the labor reforms, there was no central legislation mandatorily requiring an employer to recognize any trade union for collective bargaining purposes. The Trade Unions Act, 1926, provided only for the registration of trade unions and not their recognition i.e. a union could acquire a legal identity through registration, no employer was statutorily obligated to bargain with it. There was no such concept of a Negotiating Union or Negotiating Council at the central level. Thus, there existed multiplicity of unions wherein several unions coexisted in the same establishment without any representation in case of bargaining at the table allowing employers to selectively engage with whichever union suited their interests.

  The codes for the first time at the central level, introduced a statutory recognition framework by providing for a sole Negotiating Union where a single union or a union with 51% or more worker support exists, and a Negotiating Council where no union crosses the 51% threshold but unions with at least 20% support are represented, thereby creating a legally enforceable collective bargaining structure in India.

- ## Threshold for Applicability of Standing Orders

  The Industrial Employment (Standing Orders) Act, 1946 was applicable to every

industrial establishment having 100 or more workmen preceding twelve months.

There was a threshold **of 100 workers** which meant that a significantly larger number of establishments and small and medium enterprises were required to draft, certify, and maintain Standing Orders. The Standing Orders covers necessary information such as working hours, leave, disciplinary action, termination procedures, and misconduct.
The code has increased the threshold for applicability of provision of standing orders from 100 to 300 or more workers.

- ## Provisions Relating to Strikes

Under the Industrial Disputes Act of 1947, the rules regarding strikes were inconsistent and applied differently across sectors. Section 22 required a mandatory fourteen-day advance notice before any strike could happen. The strike had to start within six weeks of that notice and was not allowed during conciliation proceedings and for seven days after. Section 23, on the other hand, restricted strikes in non-public utility workplaces only when conciliation, arbitration, or tribunal proceedings were ongoing, and it did not require advance notice. This led to a confusing and sector-specific regulatory environment. Section 24 declared strikes illegal under certain conditions, but its reach was limited, and enforcement was weak. Although Section 25 prohibited funding for illegal strikes, it lacked the necessary power for proper enforcement. The Industrial Relations Code of 2020 introduces a consistent and unified framework for regulating strikes with Sections 62 and 63. It removes the previous dual standard by requiring a sixty-day notice before any strike. The strike must begin within fourteen days of this notice. Strikes are also barred during and for certain periods after conciliation, arbitration, and tribunal proceedings. This change tightens the legal position since the sixty-day notice requirement did not exist under the old law for most establishments. The unification of strike-related rules in one code clears up the confusion between public utility and non-public utility services, resulting in a stricter, clearer, and more coherent legal framework governing the right to strike in India.

- ## Lay-Off Compensation

In the past the provision of lay-off compensation **beyond 45 days** existed u/s25C but the Code now makes it clearer that compensation beyond 45 days is not mandatory if there exists a prior agreement. The provisions of the same is applied only to establishments with 300 or more workmen, under the new Code unlike before.

- ### Retrenchment — Prior Government Permission Threshold

  In section 25N of the Industrial Disputes Act, 1947, an establishment consisting of 100 or more workers was required to attain prior approval from appropriate government in cases of layoffs, retrenchment or closure. This requirement was only applicable to specified establishments having 100 or more workers in preceding twelve months.

  Post-reform, the threshold for obtaining prior government permission for retrenchment, layoff, and closure was increased from 100 to 300 workers. This was done to combat the challenges faced by the industrialists who required prior approval every time the carried any of the above activity. The establishments below the mentioned threshold need not to seek such approval. The threshold can be raised further (not lowered) by state governments. In case of events such as natural calamities or power outages, prior approval from government is not required.

- ### Worker Re-Skilling Fund

  In the past enactment, there was no provision for a Worker Re-Skilling Fund. There was no special fund for skill building of displaced workers and the retrenched worker only received severance compensation and a right of re-employment preference. The Industrial Relations Code, 2020 introduced a special fund called the Worker Re-skilling Fund to be set up by the appropriate Government which requires employers to contribute an amount equal to 15 days' wages last drawn by the worker immediately before retrenchment, with this amount to be credited directly to the retrenched worker's account within 45 days of such retrenchment. In addition to this, the threshold requirement for prior approval from government is also increased from 100 to 300 workers.

Code on Social Security, 2020

The Code on Social Security, 2020 consolidated nine pre-existing labor laws, i.e. the Employees' Compensation Act, 1923; the Employees' State Insurance Act, 1948; the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; the Maternity Benefit Act, 1961; the Payment of Gratuity Act, 1972; and the Unorganized Workers' Social Security Act, 2008. The comparative analysis of the pre-reforms provisions and post-reforms provisions are as follows-

- ## Definition of Employee

The definition of employee was defined in multiple acts with each act carrying its own definition. The definition of employee was narrow and fragmented. The ESI Act, 1948 defined an employee as a person employed for wages in or in connection with the work of a factory or establishment to which the Act applied. The EPF Act, 1952 defined an employee as any person who was employed for wages in any kind of work. The Payment of Gratuity Act, 1972 defined an employee as any person employed on wages in an establishment, factory, mine, oilfield, plantation, port, railway company, or shop. In all the definitions, there was no recognition given to the Gig workers, platform workers, and home-based workers. The outside workers were neglected and unrecognized and thus no social security was provided to them.

The pre-reforms enactments lacked provisions to expand the ambit of the term employee was. Thus, the code on social security, provided for a uniformed, single definition of employees wherein the Gig workers, platform workers and home-based workers are also recognized.

- ## Recognition of Gig Workers

In the past labor laws, the concept of a "gig worker" did not existed. The workers engaged in activities like delivery, cab drivers, freelance taskers were classified in the definition of independent contractors or self-employed persons, wherein they were not provided with any social security. The new code introduced the concept of Gig workers and provided recognition to them. The unorganized workers were made access to social security benefits such as ESI, EPF, gratuity, or maternity benefits.

- ## Definition of Social Security

In the pre-existing laws, the provisions of social security only covered the organized sector. Unorganized workers, gig workers, and platform workers were not provided with right to health care, income security during unemployment, sickness, old age, or work injury under any unified framework. The code of social security extended the provisions of social security to the Unorganized workers, gig workers, and platform workers.

- ## Definition of Wages

As previously discussed under the Code on Wages, 2019, There was no single, unified

definition of the same and each act carried its own definition for wages. This led to inconsistencies, hurdles in compliances. Therefore, the new code unified the definition of wages. The Payment of Wages Act, 1936 defined wages as all remuneration expressed in terms of money and included certain allowances but excluded bonuses, contributions to PF, gratuity, etc. The Minimum Wages Act, 1948 defined wages as want included basic wages and dearness allowance but explicitly excluded HRA, overtime, bonus, etc. The Payment of Bonus Act, 1965 defined wages as basic wage and dearness allowance only. Earlier there existed no concept of 50% Rule. Thus, employers could freely structure salaries by raising excluded components like HRA and allowances to lower the "wage" component. This allowed them to reduce their liability for PF, gratuity, and bonus contributions.

- ## Registration of Establishments

  In the past legislations, the process of registration of establishments was fragmented. An establishment had to register separately as per the individual statues i.e. the ESI Act, the EPF Act, the Gratuity Act, and other applicable statutes, having their own form, procedure, authority, and timeline. There was multiplicity of registrations which was leading to compliance burden for the establishments. Apart from this there was no provision for unified electronic registration system and the registration was done on paper before the authorities. The code brought in a single, simplified, unified system of registration of establishments with the introduction of an electronic registration system.

- ## Social Security Schemes for Unorganized, Gig & Platform Workers

  In the past laws, there was no scheme for social security was framed for gig or platform workers as they were unrecognized. The families of the unorganized workers were kept outside the coverage of social security schemes and for the workers themselves, the Implementation of the schemes was poor. The code extended the provision of social security schemes for the unorganized workers, gig or platform workers as well as their families.

- ## Payment of Gratuity

  The Payment of Gratuity Act, 1972 consisted of restrictive provisions regarding gratuity. The fixed term employees could only avail the benefit of gratuity if they completed five years of service in the establishment. However, the employers

deliberately hired these workers for shorter duration leading to non-fulfilment of the five-year essential.

The time limit for filing a gratuity claim with the Controlling Authority was 90 days, from the date the gratuity is paid out. This was a short time frame for workers unaware of their rights or those facing post-employment hardships. The maximum amount of gratuity that private sector employees could get was ₹10 lakh. This was the rule until the Payment of Gratuity Amendment Act was passed in 2010. On the government decided that private sector employees could get up to ₹20 lakh in 2018. This was not always the case. For central government employees the maximum gratuity was also ₹20 lakh before it was changed to ₹25 lakh.

- ## Maternity Benefit and Medical Termination of Pregnancy

  Section 4 of Maternity Benefit Act, 1961 did not covered medical termination of pregnancy i.e. abortion in its provision as a separate protected event.

  Thus, women who underwent a medical termination of pregnancy we're not clearly covered under the provision of section 4 of the act. The same gap was filed by the code on social security wherein the provisions of medical termination of pregnancy was included as an event for maternity benefit.

- **Medical Examination and Delay Condonation — Employees' Compensation**

  Under Section 11 of the Employees Compensation Act, 1923 an employee who wanted to avail employees Compensation had to undergo for a medical checkup when the employer demanded for it. If the employee did not undergo for medical checkup and failed to submit a genuine reason for the same, they were not entitled to receive the Employees Compensation until they fulfil the criteria.

  The old provision did not provide for the exemptions in case an employee fails to appear for the checkup. This provision was unfair, strict to the employees who required the need of the compensation and could not receive due to non-appearance for medical checkup. This was rectified in the codes as the codes allowed the provisions for exemption in cases of nonappearance for medical checkup.

- ## Registration of Unorganized, Gig & Platform Workers

  Under the Social Security of Unorganized Workers Act of 2008, registration was

provided to unorganized workers through the District Administration, this entire process was done manually without an electronic mode of registration. There was no concept of Aadhaar registration or digital authentication of identity under the Act. More importantly, as gig workers and platform workers were unidentified categories, there was no provision anywhere to register such workers under social security legislation. The age criterion of sixteen years for registration was not clearly mentioned under the previous system. The Code on Social Security, 2020, introduced the provision of a national registration of unorganized workers, gig and platform workers through an online portal based on their Aadhaar number.

- Social Security for Gig & Platform Workers — Aggregator Contributions

Under the past laws, there were no obligations on digital aggregators in the sectors of cab services, food deliveries, and e-commerce to contribute to any social security fund for their gig or platform employees.

There was nothing like an obligation for aggregators to make a fixed percentage of their annual turnover towards any fund and no ceiling limit as well. The new codes introduced the provision for social security for gig and platform workers which is to be contributed by aggregators. For aggregators – that is, the digital intermediaries that connect gig workers – it is mandated that they pay a certain portion (1-2%) of their total revenue for the year (maximum of 5% of what would be paid to gig workers) towards the social security fund.

- Maintenance of Records — Electronic Format

Under the past laws. each law had its own individual registers and records that were to be kept by employers such as the Form of Register of Employees, muster rolls, wage registers, contribution cards, and others, all of which were separate for each individual law. Record keeping was manual and paper based. Although there were certain provisions that facilitated the digitization of record keeping in subordinate legislation, there was no mandatory requirement in the statutes for electronic record keeping under all social security laws. The multiple record keeping requirements under several legislations was cumbersome for small employers who would have to maintain their registers separately under ESI, EPF, Gratuity, Maternity Benefits, and Workmen's Compensation.

There was no uniform statutory format for all of these aspects under one single

legislation. The Code have introduced the provision for maintenance of statutory records and registers in electronic form. The employers will be allowed to maintain statutory records, registers, returns, and notices in digital form, eliminating the need to maintain voluminous paper registers. Records maintained in electronic form have also been made admissible as evidence during any inspection or proceeding.

- **Prohibition on Reduction of Wages on Account of Social Security Contributions**

  In the past enactments, there was no specific statutory clause which prohibited the employer from cutting the salary of his employees due to the higher social security contribution. There was no specific codified provision which would could protect employees from salary cuts due to their social security contributions.

  The code brought in a protective clause wherein the provisions has put restriction on employers from making any reduction in the wages payable to the worker on the basis of making social security contributions. The employers will not be permitted to make any deduction in the wages of the worker by way of his/her liability to contribute towards provident fund, employee state insurance, gratuity, or any other social security benefit scheme.

Code on Occupational Safety, Health and Working Conditions, 2020

The OSHWC Code, 2020 consolidated thirteen pre-existing labor laws, the most significant among which were the Factories Act, 1948; the Mines Act, 1952; the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; the Contract Labor (Regulation and Abolition) Act, 1970; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Plantations Labor Act, 1951; and the Cine Workers and Cinema Theatre Workers Act, 1981. Below are the original provisions corresponding to each amendment:

- Definition of Establishment

  In the past laws, there was no single, unified statutory definition of "establishment" Each statues defined their scope of applicability differently i.e. the Factories Act defined about ‘factories’, the Mines Act mentioned about ‘mines’, the BOCW Act defined ‘building or other construction work’, etc.

  In this way, there were varied interpretations and application of "establishment" that caused immense confusion concerning what law should be applied. This is because none

of these Acts had a comprehensive statutory definition of places where there was industry, trade, business, manufacture, or occupation with a certain number of workers within them. The OSHWC unified the definition of establishment and covered all kinds of establishments under it.

- ## Definition of Factory — Worker Threshold

U/s 2(m) of the Factories Act, 1948, a 'factory' is defined as place of work which was deemed to be a factory when there were ten or more workers engaged in manufacturing with the aid of power, and twenty or more workers for manufacturing without the aid of power.

After the reform, the threshold has been increased from ten workers where manufacturing is carried out with the aid of power to twenty workers and from twenty workers where manufacturing is carried out without the aid of power to forty workers.

This has led to fewer establishments being categorized as factories and has reduced the compliance burden on smaller entities.

- ## Definition of Audio-Visual Worker

Prior to reform, the category of audio-visual workers was merely confined to the traditional film production workers or cine workers who were categorized as individuals engaged in any form of cinematograph film production.

Dubbing artists, stunt artists, and digital production workers were not provided statutory recognition under the laws. Thus, they remained outside the ambit of employment law protections.

Post reform u/s 2(f) of the OSHWC Code the statutory recognition has been provided to dubbing artists, stunt artists, and digital production workers, while section 66 of the code explicitly provides statutory recognition and employment protection to actors, singers, dancers, and anchors.

- ## Definition of Inter-State Migrant Worker

According to the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, inter-state migrant workmen are individuals hired by or through a contractor in one State for work in another State, earning up to a specific limit. This was a significant limitation because it only included workers recruited by a

contractor. Inter-state migrants who found jobs without a contractor were completely excluded from the law's protections. This gap was considerable since many independent inter-state migrants worked directly for employers without any security from the Act. The monthly wage limit in the old Act was set at ₹1,600, which was outdated and mentioned only in scattered notifications. The new Code raises this limit to ₹8,000 per month.

The reforms led to an amendment where now as per Section 2(zf) of the OSHWC Code, any person who works under direct employment with the employer or via a contractor, and migrates from another state for a monthly wage below ₹8,000 falls within its ambit.

- ## Definition of Wages

As previously discussed under the Code on Wages, 2019, There was no single, unified definition of the same and each act carried its own definition for wages. This led to

inconsistencies, hurdles in compliances. Therefore, the new code unified the definition of wages. The Payment of Wages Act, 1936 defined wages as all remuneration expressed in terms of money and included certain allowances but excluded bonuses, contributions to PF, gratuity, etc. The Minimum Wages Act, 1948 defined wages as want included basic wages and dearness allowance but explicitly excluded HRA, overtime, bonus, etc. The Payment of Bonus Act, 1965 defined wages as basic wage and dearness allowance only. Earlier there existed no concept of 50% Rule. Thus, employers could freely structure salaries by raising excluded components like HRA and allowances to lower the "wage" component. This allowed them to reduce their liability for PF, gratuity, and bonus contributions.

- ## Registration of Establishments

In the pre-reform laws, there existed a fragmented and statutory-specific registration process, which was based as per each statue. In case of Factories Act, an industrial undertaking had to register separately before the Inspector of Factories. The main contractor had to register separately under the Contract Labor Act before the Registering Officer.

The construction industry had to register separately under the Building and Other Construction Workers (BOCW) Act before the Registering Officer appointed under that Act.

Each Act provided for its own specific registration procedure, form, fee, authority, and time limit for the registration process. There was no provision for electronic registration, the entire registration process was carried on manually. There was no unified registration scheme, and there was no common license or certificate valid for more than one Act at a time. There was no stipulation for registration within sixty days from the date of coming into force of the Act.

In Post-reform, Section 3 of the OSHWC Code introduced the procedure of registration of establishments electronically every establishment must be registered within 60 days of the application of the OSHWC code.

- ## Duties of Employer

Section 7A of the Factories Act imposed a general duty on occupiers to ensure the health, safety, and welfare of all workers and provision of information and training.

The duty to provide annual health examinations to all employees existed only for workers who were employed in hazardous processes under Section 41B of the Act. Workers in non-hazardous processes had no statutory right to employer-funded annual health check-ups.

The duty to issue a formal letter of appointment to every employee upon appointment was not statutorily mandated. Particularly in construction, plantations, and contract labor worked without any formal appointment letter, leaving them with no documentary evidence of employment when disputes arose.

Section 6 of the Occupational Safety and Health Work Committee (OSHWAC) code has greatly increased employers' responsibilities. The employers must make sure that the workplace is free of dangers, adheres to all safety and health regulations, performs health examinations or tests annually, and issues a certificate of appointment to each worker.

- ## Rights of Employees — Health and Safety Information

In past statue, the right to information regarding health and safety was not explicitly provided to individual workers. Workers could express their concern in terms of safety committees; however, this right could be exercised only where such factories undertook hazardous operations and not in general manufacturing where factories did not require the setting up of safety committees. There was no statutory right for an individual worker to request information related to health and safety from his or her employer.

Though the right to approach an Inspector in case the worker was dissatisfied with the action taken by the employer could be considered, yet it was never articulated as an individual right of the worker.

However, with the OSHWC Code, each and every employee is entitled to demand information regarding his health and safety at work from his employer, and can bring up his concerns either directly to his employer or through the Safety Committee and, in case he remains dissatisfied, approach the Inspector-cum-Facilitator.

- ## National Occupational Safety and Health Advisory Board

Under the pre-existing framework, the advisory and standard-setting functions were scattered across multiple sector-specific bodies. Each of the statue carried its own specifications. The Factories Act empowered the Central Government to constitute

advisory committees for specific purposes but had no advisory board for occupational safety standards across all industries.

The Mines Act, 1952 had a Mining Board at the central level for the mines sector only. The BOCW Act had a separate Central Advisory Committee for construction workers. Each of the statutes had its own sector-specific advisory mechanisms and there was no single apex body providing consolidated advice to the government on occupational safety and health standards across all industries.

Post-reform, Section 16 of the OSHWC Code constitutes a single unified body i.e. the National Occupational Safety and Health Advisory Board. The purpose of this board is to advise the Central Government on safety standards, regulations and policies for all industries, replacing the earlier multiplicity of sector-specific committees with a single comprehensive advisory structure.

- ## Registration Portal for Inter-State Migrant Workers

Under Inter-State Migrant Workmen Act, 1979, there was no provision relating to online registry portal for inter-state migrants. It was the duty of the contractor who hired the inter-state migrant workmen to register them. There was no such system available through which migrant workers themselves could do self-declaration and self-registration. Thus, because many contractors did not have their own registration or were not following the law, millions of migrant workers had no formal registration at all.

The system of Aadhar-based registration facility was absent from the statute.

The introduction of the code simplified the registration procedure by mentioning the provision of online registration of these workers by the employers where in it will be done through an identity document such as Adhar Card.

- ## Safety Committee and Safety Officer Thresholds

Before the reform, the rules for appointing safety officers and forming safety committees were low and inconsistent across different laws. After the reform, Section 22 of the OSHWC Code clarifies and raises these thresholds. For factories, the threshold is now 500 or more workers. For factories involved in hazardous processes, it is 250 or more workers. For construction sites, it is also 250 or more workers. For mines, the

threshold is 150 or more workers. This change focuses mandatory safety measures on larger, higher-risk places.

- ## Washroom Accommodation for Transgender Workers

Section 19 of the Factories Act, 1948 provided for the provision of separate and sufficient latrines and urinals for male and female workers – the provision was made on the basis of a strict gender binary. There was no statutory provision requiring the provision of separate washroom facilities for transgender persons in industries, thus neglecting the welfare provisions of this class of workers.

This was reflective of the general discrimination against transgender persons under labor laws, which the new Codes addressed. Section 23 of the OSHWC Code explicitly ensures the availability of washrooms for transgender persons.

- ## Welfare Facility Thresholds — Crèche, Welfare Officer, Canteen

Under the Factories Act, 1948, the criteria required for providing welfare facilities were higher, thus making less factories bound to provide these facilities. The welfare facilities included-

i. Crèche facilities wherein there was an obligation to provide this facility in case the factory employs 30 or more women workers. The code amended the requirement of employees and reduced it to 50 employees total (and not only women).
ii. Welfare Officer wherein there was an obligation in case the factory employs 500 or more workers. In the Code, the criterion is reduced to 250 workers.
iii. Canteen facility wherein there was an obligation in case the factory employs 250 or more workers. In the Code, the requirement is reduced to 100 workers.

The Code thus increases the number of establishments required to provide welfare facilities because of reduction of the thresholds.

- ## 14. Working Hours

Under the Factories Act, 1948, the working hour provisions were substantially similar but with some differences:

Section 51 – No employee shall be made to work in the factories for more than 48 hours in any week.

Section 54 – A worker shall not work for more than 9 hours in any day (in contrast to the 8-hour clause under the Code).

Section 56 – Spread of work along with rest periods shall be for no more than 10.5 hours in any day.

Six-day week clause is somewhat embedded in the clause of 48-hour week in addition to one-day weekly holiday clause provided in Section 52. The Working Hours Clauses of the BOCW Act, Mines Act and Plantation Labor Act are all distinctive of each other. After the amendment in OSHWC code, Section 25 of OSHWC Code states that an employee should work for 8 hours a day, 48 hours a week and not for more than six days in a week.

- ## Overtime Wages

In the past legislation i.e. the Factories Act, section 59 provided for overtime wages rate at twice the ordinary rate where a worker worked for more than 9 hours in a day or 48 hours in a week. The provision was only applicable to the workers engaged in construction sites, mines, plantations, and other establishments. Workers who were kept out of the ambit of the act had no entitlement to overtime wages whatsoever.

Section 27 of the OSHWC Code revised the pre-existing provision by ensuring that any worker working beyond specified hours is entitled to overtime wages at double the rate of ordinary wages, consolidating these protections under a single unified framework.

- ## Annual Leave with Wages

According to section 79 of the Factories Act, 1948, if a worker worked for a period exceeding 240 days in a calendar year, he was eligible for annual leave with pay.

In the Code, the number of days required is reduced to 180, enabling even those workers whose period of work does not exceed the year to avail themselves of annual leave with pay. The Factories Act did not provide for any scheme of encashing accumulated leave at the end of the year; leave could lapse or accumulate, but there was no right to be paid money for leave.

After reform, the OSHWC Code provides a new scheme whereby workers can encash their accumulated leave at the end of the year.

- ## 17. Inspector to Inspector-cum-Facilitator

Pre-reform, inspectors under various labor laws functioned primarily as enforcement officers, with a focus on penalizing violations rather than assisting employers in achieving compliance. Under Section 8 of the Factories Act, Inspectors had powers to enter, inspect, examine, take samples, and prosecute.

An Inspector could directly initiate prosecution for violations without giving the employer any opportunity to rectify the non-compliance creating an adversarial dynamic and a system susceptible to harassment and corruption.

Post-reform, Section 34 of the OSHWC Code redesignates the Inspector as an Inspector-cum-Facilitator, with amended powers that reflect a shift in philosophy from pure enforcement to a facilitative, compliance-assistance role, aimed at promoting a more cooperative relationship between the State and industry.

- ## Employment of Women — Night Shifts

In the past enactment, the women were prohibited to work between 6 am and 7 pm. The regulation aimed at providing protection to women but was often termed as paternalistic and economically restricting as well, which restricts women from employment in certain sectors like IT/ITES, BPO, manufacturing, and hospitality which function 24 hours a day.

The prohibition made no exception to the willingness of the women to work and did not consider her consent to work night shift or otherwise.

The OSHWC code amended this provision and allowed women employment in all establishments before 6 am and after 7 pm provided they give their consent and conditions are satisfied as per the government's criteria.

- ## Women in Hazardous Operations

In the past statues, there was a prohibition of employment of women in hazardous establishments. Section 22of the Factories act,1947 prohibited women from cleaning, oiling, and adjusting certain machines while they were operating. The provisions of the

laws mentioned about absolute prohibition of women worker in hazardous establishments.

The OSHWC code, amended this provision and opened women employment in hazardous establishments imposing certain safety measures ensuring that women can safely undertake certain tasks. Section 44 of the code provides safety measures for women employed in hazardous occupations.

- ## Threshold for Applicability of Contract Labor

Provisions Contract Labor Threshold

Prior to reform, the scope of applicability of the provisions included establishments that used 20 or more contract workers according to the Contract Labor (Regulation & Abolition) Act, 1970. In post-reform, however, Section 45 of the OSHWC Code specifies the number of contract workers to be 50 or more, thus excluding smaller establishments from its provisions.

- ## Responsibility for Welfare Facilities of Contract Workers

Prior to reform, the duty to provide welfare facilities for contract workers existed between the contractor and the principal employer in a manner that left the issue open to ambiguity and thus led to a lack of provision for welfare facilities. With the reform, section 53 of the OSHWC Code now explicitly places the duty to provide welfare facilities for contract workers on the principal employer, thus ensuring clarity and better results for such workers. Through the placement of the duty on the principal employer, the OSHWC Code solved the structural defect.

- ## 22. Benefits for Inter-State Migrant Workers

Inter-state migrant workers prior to the reforms had little access to portable social security benefits and were not even eligible for benefits such as the public distribution system, insurance, and provident funds in their place of work. After reforms, however, Sections 60, 61, and 62 of the OSHWC Code guarantee inter-state migrant workers benefits through insurance, provident funds, other forms of social security, travel fare as reimbursement from their employers for going back to their native place, and ration cards and benefits from the public distribution system – which together form a complete package of welfare benefits for this disadvantaged group of workers.

- ## Penalties

In pre-reform era, quantum of penalties for contraventions against safety and health norms was less and merely of a criminal nature without any compulsory directive towards compensating the injured worker or his/her family. Section 92 of the Factories Act states that any contravention leading to the first conviction will render the occupier/manager punishable for two years of imprisonment, fine amounting to ₹1 lakh or both. For second time onwards, three years of imprisonment and fine of ₹2 lakh.
There was no provision for compensation for victims wherein if employers were found guilty of safety violations and caused injuries or death, the financial penalty would be paid to the state and not the victim's family.

Post-reform, Section 94 of the OSHWC Code stipulates higher penalties in which any employer involved in such contravention will have to pay ₹2 lakh which can further be extended to ₹3 lakh. Courts are also allowed to order the payment of at least 50% of the total penalty paid to the victim in case of serious bodily harm or the legal heirs in case of death. The criminal nature penalties have been reduced.

- ## Social Security Fund for Unorganized Workers

Under the existing framework, the BOCW Act, 1996 established a Construction Workers' Welfare Fund at the state level. This fund is financed through a cess collected under the BOCW Welfare Cess Act, 1996, which applies only to construction workers. The idea of funding a social security system by collecting fines from compounded offences and directing that money into a welfare fund was completely novel. Unorganized workers outside the construction sector did not have a dedicated welfare fund at the central level under any of the existing laws.
After the reforms, Section 115 of the OSHWC Code sets up a Social Security Fund for the welfare of unorganized workers. This fund will receive money collected from compounding certain offences.

- ## Single Common License for Contractors, Factories & Industrial Premises

Under the previous system, licenses and registrations were completely fragmented. A factory needed to register and obtain a license separately under the Factories Act before the Inspector of Factories. A contractor required a separate license under the Contract

Labor Act from the Registering Officer. A construction establishment needed separate registration under the BOCW Act. If a contractor in construction used workers from another state, they also had to meet the licensing requirements of the Inter-State Migrant Workmen Act. Each license came with its own form, fee structure, validity period, renewal procedure, and issuing authority. This meant a single business could need to hold and maintain four or more separate licenses under different laws at the same time, each from different authorities.

Section 119 of the code introduces a single common license for contractors, factories, and industrial premises. This significantly reduces the compliance burden and administrative fragmentation that defined the earlier system.