New Labour Codes: Three Changes That Adversely Affect Workers

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An overhaul of India's labour laws has been long pending. The four new codes that replace 29 laws usher in beneficial provisions, such as expanding the scope of social security and streamlining dispute resolution.

Yet, there are aspects in the new Codes that have workers, trade unions and labour rights activists worried. Experts point out that by revising key thresholds and safeguards, the government has weakened some of the existing protections available to workers.

Key among those is the dilution of provisions relating to

- industrial standing orders,
- exemption powers of the government,
- and recognition of fixed-term employment.

KR Shyam Sundar, professor and labour economist at XLRI Jamshedpur, explained that from an overall reading of the Codes, while there are some green shoots and advances made, but they have been neutralised by many retrograde steps or measures and incomplete provisions that go against the workers' interests.

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Leaving Some In The Lurch...

Several provisions in the new law hit at the heart of safeguards which have so far protected workers from exploitative practices of employers.

For instance, the Industrial Relations Code has revised the provisions relating to strikes. While earlier workers could go on a strike after giving six-week advance notice to an employer, the period has now been increased to 60 days.

Second, the requirement of industrial standing orders—which acted as the bedrock for workers' rights—has also been watered down. Standing orders regulate the terms of employment, grievances, misconduct etc, of the workers. So far, establishments with 100 workers were required to frame these rules. The threshold has now been revised to 300.

The third important area of concern is that because the threshold for registering under the Factories Act has been increased for manufacturing companies, workers in a large number of smaller establishments won't be covered under the law. And finally, the requirement of having a safety committee in factories employing hazardous process, which was earlier a statutory right, has now been made contingent upon orders by the central or state government.

Laws progressively must cover more and more workers, Professor Sundar said, but what's happened is quite the opposite.

> "If they are removed from the purview of law by revision of thresholds, such safeguard goes away. Trade unions are less likely to be available for such excluded and unorganised workers in the micro and small units, thereby leaving them at the mercy of the employers. In case of exploitation, what safeguards will such workers have?"
>
> **KR Shyam Sundar, professor and labour economist, XLRI Jamshedpur**

Consequences Of Excessive Delegation

Matters relating to trade unions, conditions of employment, investigation and settlement of disputes etc., are dealt with under the Industrial Relations Code. It lays down compensation, rights of workers in the event of layoffs, conditions for retrenchment and other such crucial beneficial provisions.

Labour experts are concerned that the new law gives the executive wide powers to dilute these rights. As per the new Code:

- The government can grant a conditional or unconditional exemption to industrial establishments. This is couched in a safeguard that there must be adequate alternative means to fulfil the objectives of the IR Code.
- New undertakings, establishments or a class of them can be granted exemption from ***any or all*** provisions of the IR Code.

So far, such exemption under the Factories Act was allowed in the event of public emergency. That has been changed under the new Code to public interest. For instance under the Occupational Safety Code, an exemption can be granted if it results in creation of more economic activity and employment opportunities.

The language used for granting exemptions is very wide and ambiguous, Sharath Chandrasekhar, partner at law firm DSK Legal, told BloombergQuint. "The nature and meaning of public interest have not been defined which would lead to different interpretations," he said.

It's not inconceivable that to attract investment, a state government may grant exemption from rules relating to occupational safety in the garb of public interest, some experts said.

Others countered it to say that labour laws are meant for the protection of workers and have always been interpreted beneficially.

A worker will remain protected under the provisions dealing with unfair labour practices even if an exemption relating to Standing Orders has been granted, Pooja Ramchandani, partner at Shardul Amarchand Mangaldas & Co., pointed out.

> "If at all—pursuant to an exemption—there's any foul play by an employer vis-a-vis the terms and conditions of employment which the Standing Orders prescribed for, such an act will be considered as an unfair labour practice and an affected worker can still seek remedy before court of law. "
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> **Pooja Ramchandani, partner, Shardul Amarchand Mangaldas & Co**

One can also expect the government to add necessary safeguards by prescribing conditions before granting blanket exemptions, she added.

Perils Of Fixed-Term Employment

Another contentious issue arising from the labour reforms is the concept of fixed-term employment, where the law allows businesses to hire workers for a fixed duration based on a contract, That is, these workers are not permanent employees.

To be clear, alternative forms of employment such as contractual hiring or temporary employment have existed even under the earlier law. But now, they have been given broader recognition. The new Code explicitly incorporates fixed term employment in the law itself, allowing such hiring by any prescribed establishment.

But unlike the earlier framework, it neither specifies the maximum number of fixed term workers who can be hired, nor for how many terms such hiring can be done.

This is contrary to many mature labour jurisdictions where clear limits are specified, Sameer Jain, managing partner at PSL Advocates and Solicitors, pointed out.

> "European countries like Greece and Italy stipulate the maximum term of 24 months and four renewals, while Poland limits the aggregate term to 33 months with three renewals. Germany limits the aggregate term to 24 months, while in Asian countries like Japan and China, employees can—after a term of 5 and 10 years, respectively—demand to become permanent employees. "
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> **Sameer Jain, managing partner, PSL Advocates and Solicitors**

There are several adverse consequences of giving wider recognition to fixed-term employment, professor Sundar said. Some benefits are only available to permanent employees, salaries become stagnant, ability of a worker to negotiate reduces for fear of contract not being renewed etc.

> "Where would then be an incentive for the employers to create permanent employment? The immediate victim will be unionization and workers. Employers will end up mostly hiring temporary, casual, contract or fixed term employees and hire fewer permanent workers only for core functions.
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> **K R Shyam Sundar, professor and labour economist, XLRI Jamshedpur**

Ramchandani took a benevolent view. She said that this provision must be analysed in light of the principles of fairness and equity. And that courts in India have generally frowned upon any workaround by employers to prevent hiring of permanent employees by relying on contractual workers.

There are many court rulings which have set out legal principles and held that employment for fixed term comes to an end automatically after completion of work or efflux of time, she said.

> "If an employer appoints a person for a fixed term for a perennial job and successively renews the contract, such an employment will be a permanent one. "
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> **Pooja Ramchandani, partner, Shardul Amarchand Mangaldas & Co.**

Any artificial gaps between two terms of renewal will not be considered as a break in service by a court in case of challenge, she added.

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