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India's New Labour Codes Undermine a Century of Worker Protections

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India's new labour codes that consolidated 29 central labour laws in 2019-2020 reveal a pro-employer ideology. These codes reverse hard-won protections and return conditions to colonial-era standards.

The shift in India's economic policy in July 1991 continues to be heralded as marking the start of an end to things that were seemingly wrong with the post-colonial economic programme. The handbook under review is a provocation to study one of the demands that has been raised since then: changes to laws regulating labour.

Since 1991, sessions of the labour ministry's Indian Labour Conference have been dominated by demands to change these laws, especially the Industrial Disputes Act, 1948, to allow employers to hire and fire workers. It has been argued that Chapter V-B of the Act, which was inserted into it in 1976, spelt disaster to industrial development. The provision made it mandatory for industrial establishments employing more than 300 workers to seek the sanction of the appropriate government before effecting any layoff or retrenchment of workers, or before closing any establishment. (An amendment in 1982 reduced to 100 the number to 100.)

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The Indian Labour Conference is a forum consisting of central trade unions, employers' organisations, and various ministries. In its sessions, representatives of employers as well as the votaries of the 1991 policy shift made it appear that provisions like Chapter V-B were inimical to industrial growth and hence against national interest. The context for the 1976 provision was that many industries had become 'sick' because their owners neglected or refused to modernise their plants. At that time, the government believed it was unacceptable for workers to bear the consequences through layoffs, retrenchment, or closures. However, the supporters of the new regime paid no attention to this.

However, as pointed out in a comprehensive introduction by Babu Mathew and Madhulika, the Indian Labour Conference at no time discussed or scrutinised the four labour codes brought in by the government that absorbed 29 central labour laws: the Code on Wages (2019); the Industrial Relations Code (2020); the Code on Social Security (2020); and the Occupational Safety, Health and Working Conditions Code (2020). As they point out, these codes were pushed through in an unethical fashion, with little time for legislative scrutiny. Parliament took only four days to enact these crucial changes. The Code on Wages, which subsumed four existing Acts, was introduced in the Lok Sabha on 23 July 2019 and was passed by it on 30 July 2019, and by the Rajya Sabha on 2 August 2019. The Occupational Safety, Health and Working Conditions Code-subsuming 13 Acts-was introduced and swiftly pushed through Parliament during the Covid-19 pandemic. It passed the Lok Sabha on 22 September 2020 and the Rajya Sabha on 23 September 2020, meaning it took just two consecutive working days. A similar process took place for the Industrial Relations Code, which combined the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947. The Code on Social Security, which merged nine pieces of legislation, also followed the same legislative timeline.

The overview also highlights how easily the Bharatiya Janata Party (BJP) and the Congress collaborated after the establishment of the Second National Commission on Labour in October 1999. (Not pointed out, but noteworthy is that commission was notified by a caretaker BJP government before the 13th Lok Sabha had been convened.) Labour representation on the commission was limited to the BJP's Bharatiya Mazdoor Sangh (BMS) and the Congress party's Indian National Trade Union Congress (INTUC), with all other central trade unions and the unorganised sector excluded. Given the ubiquitous evidence of trade unions turning into rent-seekers, even in the organised sector, and that the commission was mandated to look into laws or regulations in the unorganised sector, such exclusion was illogical.

At that time, this decision to establish the commission was not regarded as the start of any move to deregulate conditions of work or employment, nor as an attempt to undermine workers' security. Yet, two decades later, after the new codes, it became clear that 1999 was the beginning of a process that would eventually fulfil the long-standing demands of employers. The introduction sets the context well, and the subsequent chapters carefully examine each section of the four new codes. They compare these sections with the relevant

provisions in the previous Acts, highlighting their shortcomings and explaining why unions need to resist them.

The handbook takes on the challenging task of navigating this complex legal landscape-often seen as a haven for lawyers-and succeeds in making the new labour codes accessible to ordinary readers, especially workers who may not be familiar with legal language. Authors Balamurugan, Selvi, and Shreela, all trained in law, have rendered this possible in four separate chapters, each dealing with one of the four codes.

The Second National Commission on Labour in its June 2002 report recommended rationalising existing labour laws into four or five comprehensive codes. However, as the handbook shows, the new codes have ended up with inconsistent definitions-even for basic terms like 'worker' and 'employee'-both between different Codes and sometimes within the same Code. For example, Section 5.2 of the Code on Wages, 2019, defines 'worker' and 'employee' differently. This undermines the goal of simplification and creates confusion that did not exist under earlier laws such as the Minimum Wages Act, 1948. Moreover, the code's applicability threshold is set at just Rs 18,000 per month, far below the Rs 26,000 minimum wage demanded by trade unions.

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Chapter 2 of the handbook lays bare that the new code is intended to exclude a large section of the workforce-whether called 'workers' or 'employees'-from its ambit. The anomaly is further pronounced when the Occupational Safety, Health and Working Conditions Code, 2020 lays the threshold at Rs 15,000 per month, less than what the Code on Wages prescribes.

Similarly, the Code on Wages classifies 'contractors' as 'employers'. While this might seem progressive, the handbook shows that it could actually harm workers employed by contractors. By defining a contractor as an employer, the law allows the primary (principal) employer to avoid responsibility for workers' rights. If a contractor fails to provide social security benefits like the Employees' State Insurance (ESI) or Provident Fund, contract workers cannot hold the principal employer accountable.

Further, Section 2-which defines the term 'establishment'-does not include workplaces such as those employing domestic workers and gig workers. Given the large number of people now working in these sectors, their exclusion leaves them outside the protections of the Code on Wages. This is not simply an oversight or an unusual anomaly. The Industrial Relations Code, 2020-which combined the Industrial Disputes Act, 1948, and the Trade Unions Act, 1926-makes this exclusion clear. Section 2, which defines 'wages', specifically leaves out "commission payable to owners". As a result, gig workers-such as those delivering food, transporting people, or carrying goods-are not covered and cannot seek remedy under the code. Ideally, a law meant to rationalise existing labour regulations should have included such workers, but the code deliberately leaves them out, as the handbook highlights.

Chapter 4, in which Shreela carefully examines the Industrial Relations Code, 2020, exposes how the code legitimises the principle of hire and fire-a longstanding demand of employers' organisations that successive governments had resisted for nearly three decades. The handbook explains how the implementation of the code has finally realised this demand. Section 2(o) of the Industrial Relations Code, 2020 introduces a new category called 'fixed term employment', which did not exist under the Industrial Disputes Act, 1947. Under this category, fixed term employees are entitled to the same working hours, allowances, and other benefits as permanent workers performing the same or similar jobs. However, the code does not stop employers from hiring workers on fixed-term contracts and then dismissing them once the contract ends.

In effect, fixed term employment is just another form of contract labour. Unlike some state laws, which require that contract workers who have worked for more than 480 days over two consecutive years must be made permanent, the code does not offer such protection to fixed term employees.

> Each code is examined across three columns-one lists the relevant section, the second briefly explains the implications, and the third outlines suggested actions for trade unions.

The handbook exposes the ideology behind the four labour codes. It makes it clear-without resorting to rhetoric-that these codes are designed to benefit employers rather than workers. The authors also point out that, instead of improving on existing labour laws (most of which were the result of long struggles and moments in India's history when welfare was prioritised over profit), the new codes are actually a step backwards. They argue that these changes set workers' rights back by at least a hundred years, to a time before the Trade Unions Act of 1926 enacted by the colonial government.

Another notable feature of the handbook is its style and layout. Each code is examined across three columns-one lists the relevant section, the second briefly explains the implications, and the third outlines suggested actions for trade unions.

Interestingly, the authors choose not to recommend any specific legal challenges to the new provisions. I believe it is important to highlight that some aspects of these codes may actually violate the Constitution and its framework.

Finally, the handbook is freely available; it is not a priced publication. The creators have stated that there are no restrictions on reproducing its contents, in part or in full. Besides the print edition, the handbook can also be accessed online at https://indialabourcodesbook.com/ This is a commendable initiative worthy of emulation.

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