

Statement on the New Labour Codes Undermining Constitutional and Labour Rights

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The Union Labour Ministry has introduced new Labour Codes, codifying 29 existing labour laws with modifications into four codes, namely, the Code on Wages, the Code on Social Security, the Industrial Relations Code, and the Occupational Safety, Health & Working Conditions Code.

Evidently, the Central government has neither taken the workers' associations nor the States into confidence fully before imposing the new set of codes, resulting in nationwide protests from workers. It is significant that the BJP's own workers' wing, the Bharatiya Mazdoor Sangh (BMS), has opposed these codes. Though the subject, "labour", is in the Concurrent List, the States were not consulted, and one State, namely Kerala, has announced that it will not implement the codes.

The government should take note of the fact that Article 39 enjoins upon the State as follows:

Article 39

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(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and

the tender age of children are not abused and that citizens are not forced

by economic necessity to enter avocations unsuited to their age or strength”

The newly proposed Labour Codes fail to comply with the above.

The labour laws that are in force have been enacted by the government from time to time to align State policy in tune with the intent underlying the Directive Principles. In a capitalist economy, the promoters and managers of businesses, whether organised or unorganised, aim to maximise their profits at the cost of the welfare of the workers, women workers in particular. Especially in the case of the unorganised sector, it is public knowledge that not only male workers' rights are suppressed, but also women workers and children are subject to harassment, exploitation, and abuse. It is to safeguard the interests of all such workers that successive governments at the Centre and the States have introduced different labour laws. The newly proposed Labour Codes turn this idea upside down and modify the labour laws fundamentally to make it easy for the promoters and managers of businesses to maximise their profits without hindrance, at the cost of the workers.

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India is a founder member of the ILO and has been a signatory to several ILO conventions that have stipulated norms relating to workers' rights and welfare. The ILO has recognised the pitfalls of globalisation as an instrument of development and its likely adverse impact on workers' individual and collective rights.

While the government should align the labour laws with the ILO norms, the newly introduced Labour Codes deviate from the ILO norms in several respects, which we have discussed in the following paragraphs.

Before we do that, we wish to point out that, though India is a founder member of the ILO, it has not signed the ILO Conventions C87 (Freedom of Association and Protection of the Right to Organise), C98 (Right to Organise and Collective Bargaining Convention), and C190 (on violence and harassment of workers, especially women, in the world of work).

C190 has direct relevance for India. No doubt, the country has implemented some protective laws such as the POSH Act to prevent harassment of women and laws like the Child Labour (Prohibition and Regulation) Act. Ratification of C190 would require significant legal alignment.

In order to align the labour laws in line with the Directive Principles and also harmonise them with the ILO Conventions C87, C98, and C190, the government should ratify these Conventions immediately and amend the laws accordingly.

Even in the case of those ILO Conventions which India has ratified, there are significant deviations from the norms set out in them vis-à-vis the new Labour Codes, as discussed below.

The Code on Wages

While the ILO has emphasised the importance of prior consultation with the workers in the matter of determining and periodically revising their wages so as to ensure that they remain fair and in line with living standards, the new code in India lacks a robust institutional arrangement for its realisation. The annual conventions which were held every year with employee organisations, employers, and the government have been discontinued since 2015.

In effect, the codes may result in a wage structure that fails to maintain decent living conditions for workers. While the ILO insists on a living wage and decent wage, the codes talk about minimum wage only.

The Code on Social Security

The ILO standards mandate adherence to the principle of equity and proportionality in social protection. The latest Indian code, which gives the Central Government extensive autonomy in establishing and managing social security schemes, may not ensure this, as it does not provide for prior consultation either with the States or the workers in determining norms underlying the social security schemes. This violates predictability and consistency from the point of view of the States and the workers.

Code on Industrial Relations

The ILO's Right to Organise and Collective Bargaining Convention guarantees that every worker has a say in determining terms and conditions of employment and promoting an equitable and democratic work environment, and it emphasises the importance of the right to strike as a cornerstone of the freedom of association.

The 8-hour workday attained through struggles and sacrifices has been diluted by providing 8–12 hours work flexibility.

The Wage Code and IR Code have surreptitiously brought in privatisation by including a clause which says that government shareholding in the public sector can be below 50%.

Those whose work is supervisory in nature are not covered by the codes. Those who earn a salary above Rs 18,000 per month are also excluded. The Supreme Court, in a judgment on a pilots' strike, ruled that they are also workers even if they earn a lakh as salary, as they are not part of the management. This has been ignored in the new codes.

The latest Indian code makes it difficult for the workers to exercise the right to strike. In addition, it makes hiring and firing procedures simpler, which cuts at the root of the ILO standards that support stable employment conditions. The code jeopardises the job security of workers and deters workers from attempting to form a union.

Code on Occupational Safety, Health and Working Conditions

The ILO's Occupational Safety and Health Convention mandates not only the stipulation of rigorous norms of occupational safety, health, and working conditions of workers, but also the putting in place of a strong regulatory institutional arrangement to enforce those norms.

The ghastly Bhopal gas tragedy remains a standing testimony to the inadequacy of norms that exist in India to ensure the safety of industrial workers and the communities that live in the vicinity of hazardous industrial units. Though the Centre has introduced several changes in the provisions of the Factories Act consequent to that accident, there has not been much improvement in the occupational safety of workers. The reason for this is the strong and unholy nexus that exists between political parties and private businesses. As elections are getting more and more expensive as a result of the deteriorating ethical standards of political parties, they turn to big businesses to fund them in exchange for political support to the latter in diluting the laws and regulations that exist to enforce environmental and safety norms for businesses. In addition, political parties, often more loyal to their corporate cohorts than the people who elect them, compromise the integrity of enforcement of laws and regulations by appointing business-friendly regulators.

As a result, the ILO-stipulated norms of occupational safety and health standards are rarely realised in India, and the latest code unilaterally imposed by the Centre further aggravates the situation.

As already stated, the whole exercise of “codifying and simplifying” the existing labour laws is aimed more at making it easy for private businesses to maximise their profits without having to allow workers to exercise their fundamental rights, without having to hold prior consultation with them on matters relating to their wages, their safety, their welfare, and most importantly, allowing them the right to form unions and bargain collectively with the promoters of businesses.

The latest codes confer excessive authority on the Centre in determining the minimum wages for different classes of workers, the norms for their safety and welfare, etc., and thus run counter to the spirit of federalism that is a part of the basic structure of the Constitution.

The codes, in our view, will accentuate the existing inequities in society, and therefore run counter to the values that underlie the Directive Principles of the Constitution.

It is important to take note of the fact that the majority of workers in India belong to the informal sector, information on which, as it stands today, is thoroughly inadequate, even though they contribute significantly to the nation's income. What is urgently called for is to take them into reckoning and adapt the existing labour laws so as to enhance their social security and welfare.

In view of the above, we demand that:

1. The new Labour Codes be revoked forthwith.
 2. The existing labour laws be brought fully in alignment with the letter and spirit of the Directive Principles of the Constitution.
 3. The existing labour laws be brought fully in line with the ILO Conventions to which India is a signatory.
 4. India ratify C87 (Freedom of Association and Protection of the Right to Organise), C98 (Right to Organise and Collective Bargaining Convention), and C190 (on violence and harassment of workers, especially women, in the world of work).
 5. Before making any changes in the labour laws, the Centre hold meaningful discussions with the States and the workers. It is important that the idea of federalism is in no way diluted.
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People's Commission on Public Sector and Public Services

About Peoples' Commission on Public Sector and Public Services (PCPSPS): Peoples' Commission on Public Sector and Services includes eminent academics, jurists, erstwhile administrators, trade unionists and social activists. PCPSPS intends to have in-depth consultations with all stakeholders and people concerned with the process of policy making and those against the government's decision to monetise, disinvest and privatise public assets/enterprises and produce several sectoral reports before coming out with a final report. Here is the first interim report of commission- Privatisation: An Affront to the Indian Constitution.

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