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## ILO'S Influence On New Labour Codes

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### Abstract

ILO has integrated itself with the UN system and participated in common and concerted efforts towards the solution of major world problems related with the labour. The tripartite committee adopts conventions and recommendations with regard to international labour. Whereas a recommendation when adopted by member state act as a guide to the national action standards. India, being a founding member of the International Labour Organisation (ILO) has deep respect for its principles and objectives. ILO has not commented about India's lack of compliance with ILO Convention -144 on Tripartite Consultations in implementing the Labour Code.

The four Codes, namely, the Code on Wages, 2019, the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020 and the Code on Social Security, 2020 have been notified in Gazette of India. Labour reforms are progressing as at least 24 states have pre-published draft rules for four labour codes. The code has expanded the applicability of regulations for the organized as well as unorganized sector. Hence, it becomes relevant to understand the facet of the code to know its impact on the economy. The implementation of the wage code calls for examination as it draws serious concerns for the labor force. All the four repealed pieces of legislation were enacted historically at different points in time and to deal with different situations. The combining of asymmetrical laws into a single code is not an easy task and will only create its own set of new problems.

**Keywords:** International Labour Organisation, labour Code, Implementation, Gazette, Economy.

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### Introduction

Economy.

International Labour Law took a great leap forward with the establishment of International Labour Organization (ILO). The ILO became accompanied agency of the UN which created a landmark in the history of international co-operation. It was established to bring about a better international order in the industrial legislation of the world and to the worker his just and proper place in the law of all nations. ILO has integrated itself with the UN system and participated in common and concerted efforts towards the solution of major world problems related with the labour. Its methods of action include the creation of international labour standards, the provisions of technical co-operation services, research and publication on social and labour matters. The aims and objectives of the ILO are i) to establish everywhere human conditions of labour ii) to institute and apply a system of international labour legislation. It has tripartite character i.e. at different levels of the organization workers, employers and governments are associated in its function. Since the delegates from workers and employers belong to private groups they serve the interest of their groups and not those of their Governments. The Governments will however take care of their interest. Because of the tripartite nature of ILO structure, the partners to disputes can work together at the international level. The tripartite committee adopts conventions and

recommendations with regard to international labour standards. A convention is a treaty which when ratified by the member state becomes international binding on the State to implement. It forms basis for national legislation of the State.<sup>1</sup> These are stated below:

- I. Laws relating conditions of work in factories and establishments.  
These are:
  - a. General laws which apply to all establishments not otherwise provided for  
Ex: Factories Act of 1948 and  
The Industrial Employment (standing Orders) Act 1946
  - b. Specific laws which apply to particular Industries  
Ex: The Indian Mines Act of 1952  
The Plantations Labour Act of 1951 &  
The Dock Workers (Regulation of Employment) Act of 1948.
- II. Laws relating to associations of workers.  
Ex: The Trade unions Act of 1926.
- III. Laws relating to Industrial Dispute,  
Ex: The Industrial Disputes Act of 1947.
- IV. Laws relating to Wages and emoluments,  
Ex: The Payment of Wages Act of 1936.  
The Minimum Wages Act of 1948.  
The Provident Fund Act of 1952 etc.
- V. Laws relating to social insurance i.e, Laws which provide security against risks like accidents, maternity etc.  
Ex: The workmen's compensation Act, 1923.  
Maternity Benefit Acts of different states  
the Employees' State Insurance Act of 1948.
- VI. Laws relating to children and Women. There are specific provisions relating to children and women in the Factories Act, 1948, the Indian Mines Act, 1952 etc., The Employment of children Act, 1938 and the children (Pledging of Labour) Act, 1933 are some special statutes which specifically deal with the employment of children.

Whereas a recommendation when adopted by member state act as a guide to the national action. So after the establishment of International Labour Organisation (ILO) large numbers of beneficial industrial laws have appeared on the Statute book of many countries of the world including India. Therefore ILO has been shaping a system of international labour law.

#### LABOUR CODE:

India, being a founding member of the International Labour Organisation (ILO) has deep respect for its principles and objectives. The Government of India has always upheld the basic tenets of tripartism. ILO has not commented about India's lack of compliance with ILO Convention -144 on Tripartite Consultations in implementing the Labour Code.

The four Codes, namely, the Code on Wages, 2019, the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020 and the Code on Social Security, 2020 have been notified in Gazette of India. Prior to that, the Government had done extensive consultations inviting all Central Trade Unions, Employers' Associations and State Governments. The Government had undertaken nine tripartite consultations on all the four Codes on 10.03.2015, 13.04.2015, 06.05.2015, 14.07.2015, 06.10.2015, 04.10.2017, 22.11.2018, 27.11.2018 and 05.11.2019 inviting all Central Trade Unions, Employers' Associations and State Governments. All these Codes were also placed on the website for inviting comments from all stakeholders including general public.

Further, all the Codes were referred to the Parliamentary Standing Committee on Labour for examination. The Parliamentary Standing Committee on Labour, in the process of examination of the Codes, had invited the views/suggestions from Trade Unions/ Organizations/Individuals/Stakeholders and also took oral evidence of the representatives of Central Trade Unions and various other Associations/Organizations/Stakeholders. The reports of the Committee were taken into account before these Codes were considered and passed by the Parliament. As a step towards

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<sup>1</sup> Srigouri Kosuri "Human Rights Dimension of Labour Rights India" 2013 Readworthy Publications

implementation of four Codes and to discuss the draft Rules on four Codes, tripartite meetings inviting representatives of all Central Trade Unions and Employers Associations were convened through Video Conferencing on 24<sup>th</sup> December, 2020 and 12<sup>th</sup> January, 2021. Third tripartite meeting was held on 20<sup>th</sup> January, 2021 in physical mode.

However, the Industrial Relations Code, 2020 reduces the requirement of minimum continuous service in case of fixed term employees from five years to one year<sup>2</sup>.

## LABOUR REFORMS

Labour reforms are progressing as at least 24 states have pre-published draft rules for four labour codes on wages, social security, industrial relations and occupation safety, As many as 31 states/Uts have pre-published the draft rules under the Code on Wages, 26 states/Uts under Industrial Relations Code, 25 states/Uts under Code on Social Security, and 24 states/Uts under Occupational Safety Health & Working Conditions (OSH) Code, Minister of State for Labour and Employment Rameshwar Teli said in a written reply to the Lok Sabha. 'Labour' as a subject is in the Concurrent List of the Constitution of India and under the Codes, the power to make rules has been entrusted to the central government as well as state governments.

As a step towards implementation of the four Labour Codes, the central government has pre-published the draft rules, inviting comments of all stakeholders.

Union Minister for Labour and Employment Bhupender Yadav said almost all states have prepared draft rules on the four labour codes<sup>3</sup> and the new rules will be implemented at an appropriate time.

The ministry intends to implement all four labour codes by the Centre and states in one go for a seamless transit to the new legal framework in the country.

The new laws are in tune with the changing labour market trends and at the same time accommodate the minimum wage requirement and welfare needs of the 4144 compare 4144d 4144d sector workers, including the self-employed and migrant workers, within the framework of legislation.

The central government notified four labour codes the Code on Wages, 2019, on August 8, 2019; the Industrial Relations Code, 2020, the Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020 on September 29, 2020.

However, the Centre and states are required to notify rules under the four codes to enforce these laws in their respective jurisdictions.

Under the Codes, the power to make rules has been entrusted to the central government, state government and appropriate government and there is a requirement for publication of rules in their official gazette for a period of 30 or 45 days for public consultation.

As per the written reply to the Lok Sabha, the draft rules are pre-published by 31 states and union territories on the Code on Wages.

These states are Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh, Uts of Andaman & Nicobar Islands, Chandigarh, Jammu & Kashmir, Ladakh, NCT of Delhi and Puducherry<sup>4</sup>.

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<sup>2</sup> This information was given by Minister of State (I/C) for Labour & Employment Shri Santosh Kumar Gangwar in a written reply in Lok Sabha.

<sup>3</sup> In 2019 and 2020, 29 central labour laws were amalgamated, rationalized and simplified into four labour codes, viz, the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health & Working Conditions Code, 2020.

<sup>4</sup> [https://www.business-standard.com/article/politics/at-least-24-states-uts-pre-publish-draft-rules-on-4-codes-labour-min-122071800704\\_1.html](https://www.business-standard.com/article/politics/at-least-24-states-uts-pre-publish-draft-rules-on-4-codes-labour-min-122071800704_1.html)

A devoted and hardworking labor force is considered as the nerve of the economy. It is pertinent to mention over here Karl Marx who conceives labor as a “productive activity,” which has a multiplier effect on the economy.<sup>5</sup> A factor of production receives income payment in lieu of its economic productivity. Subsequently, wages are the income payments to the labor force, which is determined by the marginal productivity of the labor. A change in the nominal wage rate affects the real purchasing power and creates undulates in the livelihood of the labor forces. The subject matter of labor comes under the concurrent list of the Centre and the State. A plethora of laws is enacted regarding employment, wages, and social security for the workforce. By and large labor legislation is adapted to meet the socio-economic challenges of the modern world. The recent wage code on the labor, 2019 is the first labor act which has created ripples in all the sectors of the economy. The central reason is the omission of the previous legislation mentioned in the various labor laws. In order to streamline the four laws related to labor, namely the Payment of Wages Act, 1936; Minimum Wage Rate Act, 1948; Payment of Bonus Act, 1965; Equal Remuneration Act, 1976; the inclusive Wage Code, 2019, was proposed. The code has expanded the applicability of regulations for the organized as well as unorganized sector. Hence, it becomes relevant to understand the facet of the code to know its impact on the economy. The implementation of the wage code calls for examination as it draws serious concerns for the labor force.

Labour is one of the major sources of the factor of production. Consequently, labor law and social security measures should be in line with the labor reform policy. The recent wage code has invited critical insight into its new structure.

#### How the Code on Wages 2019 compares with Bonded Labour

The Code on Wages, 2019 gives legal sanction to debt bondage by allowing employers to extend limitless credit advances to their workers and charge an unspecified interest rate on them.

#### What is the Code on Wages, 2019:

- The Code on Wages, 2019 seeks to consolidate and simplify four pieces of legislation into a single code. The legislations are,
  - Payment of Wages Act, 1936
  - Minimum Wages Act, 1948
  - Payment of Bonus Act, 1965
  - Equal Remuneration Act, 1976
- It was based on the recommendations of 2<sup>nd</sup> National Commission on Labour, 2002.

#### What are the key features of the code:

- **Coverage-** The Code will apply to all employees.
- The central government will make wage-related decisions for employments such as railways, mines, and oil fields while State governments will make decisions for all other employments.
- Wages include salary, allowance, or any other component expressed in monetary terms but excludes bonus payable to employees, travelling allowance, among others.
- **Fixing the minimum wage-** The Code prohibits employers from paying wages less than the minimum wages which will be notified by the central or state governments.
- The minimum wages will be revised and reviewed at an interval of not more than five years.
- While fixing minimum wages, the central or state governments may take into account factors such as skill of workers, and difficulty of work.
- **Floor wage-** The central government will fix a floor wage, taking into account living standards of workers and different floor wages may be set for different geographical areas.
- The minimum wages decided by the central or state governments must be higher than the floor wage.
- **Overtime-** The central or state government may fix the number of hours that constitute a normal working day.
- For employees working in excess of a normal working day, they will be entitled to overtime wage, which must be at least twice the normal rate of wages.
- **Payment of wages-** Wages will be paid in coins, currency notes, cheque, crediting to the bank account, or through electronic mode.
- The wage period will be fixed by the employer as daily, weekly, fortnightly, or monthly.

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<sup>5</sup> *Sayers v Smithkline Beecham Plc* [2007] EWHC 1346 (QB)

- **Deductions-** An employee's wage may be deducted on certain grounds including – fines, absence from duty, accommodation given by the employer, or recovery of advances given to the employee, etc.
- These deductions should not exceed 50% of the employee's total wage.
- **Determination of bonus-** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus.
- An employee can receive a maximum bonus of 20% of his annual wages.
- **Gender discrimination-** The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature.
- **Advisory boards-** The central and state governments will constitute advisory boards to advise the respective governments for fixation of minimum wages and increasing employment opportunities for women.
- One-third of the total members on both the central and state Boards will be women.
- **Offences-** Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to 1 lakh rupees.

Criticisms of the code:

- **A free pass to debt bondage-** The code allows for deductions from wages for the recovery of advances of whatever nature and the interest thereof which have huge implications.
- The code has done away with the cap of **not more than two months of a worker's wages** under the earlier Act that an employer can give as advance thus allowing employers to lend unlimited advances to their workers.
- It has 4146ompare4146d the charging of an interest rate by the employer on such advances with no details on what might be charged which sanctions for the bonded labour system to flourish.
- The Code increases the permissible monthly deduction towards such recovery, up to one-half of the worker's monthly wage as compared with one-fourth under the earlier Act.
- **Cases in Rajasthan-** In Baran district, Rajasthan (2011-12), a series of Sahariya families spoke of their harrowing experiences of violence and rape at the hands of landlords, for whom they had worked as 'halis' for generations.
- The mostly upper-caste government officials refused to acknowledge them as bonded labourers as per the Act, thereby denying them any sort of relief or rehabilitation.
- In a survey in a mining cluster of Nagaur district, Rajasthan for the Mine Labour Protection Campaign (2015), one in three workers interviewed had taken advances from their employers ranging from Rs. 1,000-Rs. 1,50,000 at the time of joining work, mostly to pay off the earlier employer or a moneylender.
- But in Parliament, the existence of bonded labour has simply been denied among elected representatives, or grossly understated.
- **Deepening inequality-** The disproportionate effect of this Labour Code will fall on Dalits and the landless.
- This will deepen the economic inequality to the advantage of the privileged castes and classes thereby keeping true political freedom out of the workers' reach.

What does this call for:

- Economic enslavement was an extreme form of coercion that rendered political freedom meaningless, and that democracy itself required state intervention in the economic structure to prevent such practice.
- Dr Ambedkar proposed a complete recast of rural and agrarian land structures and state ownership of land and also defined democracy as resting on two premises that required the existence of economic rights.
- These anti-labour codes, with numerous other dilutions that snatch away the mostly non-existent rights of the far more vulnerable class of workers need a re-analysis.

The Code on Wages (yet to be notified) has not succeeded in a consolidation of laws and is a case of tall official claims

In the brief monsoon session of Parliament, three new labour codes (The Industrial Relations Code, the Social Security Code and the Occupational Safety, Health and Working Conditions Code, 2020) were bulldozed into passing and now await the President's assent. Labour Minister Santosh Gangwar told the media that four new labour codes will become operational before the year ends.

Prime Minister Narendra Modi, on his part, has said the Code on Wages, 2019 would expand the coverage of workers in all industries in the unorganized sector as the old Minimum Wages Act covered only 30% of the total

workforce. He also said that while there were 10,000 slabs of minimum wages that existed, they would now be reduced to 200 slabs.

What does the new Industrial Relations Code say, and how does it affect the right to strike?

The Code on Wages, 2019 seeks to consolidate and simplify four pieces of legislation Payment of Wages Act, 1936, Minimum Wages Act, 1948, Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976 — into a single code. Its object and reasons stated that even the Second National Commission on Labour (Ravindra Varma, 2002) suggested consolidating all labour laws into four codes.

While the previous four pieces of legislation had a total of 119 sections, the new Code has 69 sections. Considering that the repealed legislations each had a definition section, inspectors, penalties, a competent authority, an appellate authority, and rule-making powers, any consolidation will impact their length.

Further, all requirements for enforcing the Act, have been relegated to the Rules. Section 67 had authorized the framing of rules relating to as many as 38 provisions of the Act. As a result, the delegated pieces of legislation (Rules) will be bigger than the Code; this is no way to condense prior pieces of legislation.

### **Dilution without adequate deliberation**

New problems will arise

All the four repealed pieces of legislation were enacted historically at different points in time and to deal with different situations. The combining of asymmetrical laws into a single code is not an easy task and will only create its own set of new problems.

Barring a few new concepts, the new Code retains almost all provisions. These are features such as the procedure for fixing minimum wage, limit for fines and deductions in wages, minimum and maximum bonus, calculation of allocable and available surplus, as well as gender neutral consideration in fixing wages.

Code debate: On new labour Bills

The Code will have the same definition of the term “worker”; but, a person employed in a supervisory capacity drawing up to ₹15,000 will also be considered a worker. In the (erstwhile) Minimum Wages Act, to fix minimum wage in an employment which has more than 1,000 workers to be first included in the Schedule, and, thereafter, minimum wages will be fixed as per law. The new Code has dispensed with the necessity of having a minimum number of workers and the inclusion of such employment into the schedule.

The central government will have the power to fix a “floor wage”. Once it is fixed, State governments cannot fix any minimum wage less than the “floor wage”. It is unwarranted since many States always fix minimum wages higher than the existing rates, depending upon the employment and workforce involved. The concept should be for a binding minimum wage and not have dual wage rates — a binding floor wage and a non-binding minimum wage.

### **Labour codes passed are anti-worker, say trade unions**

On MGNREGA

Hitherto, there was a conflict between the minimum wages fixed by the State governments for agriculture workers. There were cases as to whether the Minimum Wages Act would have an over-riding effect over the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005. Several High Courts have placed the Minimum Wages Act to override MGNREGA. That has been set to rest by excluding MGNREGA from the purview of the Code on Wages.

However, foremost in the labour code will be its enforcement provisions and the sanctions behind it. The Code has created an omnibus inspector-cum-facilitator who will act as per the inspection scheme framed by the government. He will advise employers and workers to comply with the provisions of the code and may carry out inspections as may be assigned by the government (Section 51).

As for the claim mechanism, Section 45 stipulates that they will be heard and determined by an authority who is not below the rank of a “Gazetted Officer”. A government official without legal and administrative background can hear such claims. However, any dispute regarding bonus will continue to go before the Industrial Tribunal (the new Industrial Relations Code Bill contemplates a two-member Tribunal). As against the decision of the Gazetted Officer, one can prefer an appeal to an appellate authority who must be one rank higher than the competent authority (Section 49).

### **Former Minister Mallikarjun Kharge terms new labour laws ‘anti-worker’**

Neither the Code nor the Rules (presently, draft Rules) prescribe the qualifications and experience required for appointment of competent authority. Complicated questions of law and facts arising out of claims will henceforth be decided first by a Gazetted Officer, and thereafter by an Appellate Authority who must hold one rank above him.

#### **Provisions on penalty**

The penal provisions found hitherto in any pieces of labour legislation never had an impact on employers. In *People's Union For Democratic Rights and Others vs. Union Of India & Others*, 1982 (Asiad case), the Supreme Court of India observed: “If violations of labour laws are going to be punished only by 41480mpar fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws.”

But, curiously, a new provision (Section 52) has been introduced where an officer (not below the rank of an undersecretary to the government will be notified with power to impose a penalty in the place of a judicial magistrate. An essential judicial function is now sought to be vested with the executive in contravention of Article 50 of the Constitution, where the State has been mandated to separate the judiciary from the executive in public services.

### **New codes don't promote 'hire and fire', says Labour Ministry**

A similar provision Section 21 of the Bonded Labour System (Abolition) Act, 1976 which empowered revenue officers designated as executive magistrates to try offences under the Act was struck down by the Division Bench of the Madras High Court.<sup>6</sup> A review filed by the central government was dismissed.<sup>7</sup> The Division Bench had observed: “On enforcement of the Code (Criminal Procedure), there has been complete separation of Judiciary from the Executive to implement the mandate under Article 50 of the Constitution which requires that State shall take steps to separate the Judiciary from Executive. By merging the judicial function in the executive, the basic structure of the Constitution is affected; justice and fair trial cannot be ensured by the Executive Magistrates in as much as they are not required to be legally qualified and trained persons and in actual practice are required to perform various other functions... In fact the functions of the Judiciary and Executive are quite different. In other words it is clear that the Executive Magistrate has no role to play in conducting judicial trial and recording judicial decisions.”

Apart from providing for a compounding of offences (Section 56), the Code also exempts employers from penal provisions if they were able “to prove that they had used due diligence in enforcing the execution of the code and it was the other person who had committed the offence without his knowledge, consent or connivance”.

Though the Prime Minister had claimed that the erstwhile provisions covered only 30% of the workers, there is nothing particular in this Code that it will have wider coverage. Similarly, as minimum wages mostly help the unorganized worker, the 200-slab categorization may not have much of an impact.

#### **Breaking down the new labour codes**

The Code on Wages (yet to be notified) has neither succeeded in a consolidation of laws nor will it ever achieve the claims made by the Prime Minister.

Justice K. Chandru is a retired judge, Madras High Court

Over the years, there has been proliferation of labour legislation. Numerous labour laws provided for some specific issues. Often, there were duplications and contradictions. Compliance with numerous labour legislation is becoming a big challenge.

Need was felt to consolidate numerous labour laws. After great efforts and elaborate discussions and feedbacks, some 29 labour laws have been consolidated into four Labour Codes, as follows.”

(1) *The Code on Wages, 2019* consolidates four labour legislations. The Code on Wages has received assent of President on 8-8-2019<sup>6</sup> and was 41480mpare on 8-8-2019.

(2) *The Industrial Relations Code, 2020* consolidates three labour legislations. The Industrial Relations Code, 2020 has received assent of President on 28-9-2020 and was 41480mpare on 29-9-2020.

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<sup>6</sup> Gajendran, 2014.

<sup>7</sup> 2018.

(3) *The Code on Social Security, 2020* consolidates nine labour laws. The Code on Social Security, 2020 has received assent of President on 28-9-2020 and was 41490mpare on 29-9- 2020.

(4) *The Occupational Safety, Health and Working Conditions Code, 2020* consolidates 13 labour laws. The Occupational Safety, Health and Working Conditions Code, 2020 has received assent of President on 28-9-2020 and was 41490mpare on 29-9-2020.

These Codes will become effective from the date they are notified.

The labour ministry wanted to implement all the four codes and rules under those in one go as all of them are inter-linked.

### **Hotchpotch Labour Codes**

The labour codes are not truly consolidated codes. Practically, the separate Acts are included in each Labour Code as separate chapters, practically and mostly, independent of each other. However, definition clause is common in each Code.

Interestingly, in some provisions, reference has been given to earlier labour legislations, which are supposed to be repealed when the new Labour Codes become effective.

### **No radical change in statutory provisions**

The Four Codes mainly consolidate earlier legislation. There is no radical change in any of the laws. Some redundant provisions have been omitted. 'Industrial Disputes Act has been made slightly industry friendly. Fourteen days notice is required for a strike or lockout. Provisions relating to closure, layoff and retrenchment will apply only when number of workers exceeds 300 (present limit is 100).

Scope of Minimum Wages Act has been widened and rationalized. Provision has been made to declare 'floor wage' by Central Government. Any wage notified by State Government cannot be less than 'floor wage'.

MNREGA has been specifically excluded from purview of the Code on Wages, to avoid disputes, Rule making powers have been considerably widened. Thus, many provisions, which were in the Act will now get covered through Rules, giving more flexibility to Government in implementing law.

### **Conclusion**

ILO was established and the international labour Conventions-the quintessence of worldwide experience in the progress towards higher social and economic objectives. The consolidation of various scattered labour laws will result in ease of compliance. Uniformity in definitions will reduce disputes relating to labour matters. The Code cannot be termed to be law of 21<sup>st</sup> Century but there is improvement from previous provisions. Some redundant and absurd provisions have been rationalized.

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