

# LABOUR CODES IN INDIA

Status Update

## Introduction

Untangling the web of multiple labour laws and ensuring reform for ease of doing business, has been the subject of intense discussion in the past few years. This article provides a brief overview of four labour codes that have been enacted:

- A. Code on Wages, 2019,
- B. Code on Social Security, 2020
- C. Code on Occupational Safety and Healthy Working Conditions, 2020, and
- D. Industrial Relations Code, 2020.

While these Codes are yet to become fully operational, there has been partial implementation of specific sections as will be briefly explained below. The Central and State Governments are also in the process of drafting the rules under each of the Codes, some of which have been published for public consultation and stakeholder comments.

By way of a brief background, labour is a matter under the concurrent list of the Constitution of India, which means that both the Centre as well as State Governments can make laws with respect to labour. There are presently over 40 laws governing wages, industrial relations, social security, workplace safety and working conditions. Due to the multiplicity of rules and regulations, a key concern for Indian industries has been the multiple compliance requirements, often leading to expending resources, documentation, administrative time and costs. The new labour codes are an attempt to consolidate the various existing labour laws in India and streamline the various compliance requirements. As indicated in the title of each code, each governs a specific area of labour law, and aims to consolidate and replace the existing laws in that area.

The new labour codes were initially expected to come into force by 01.11.2021. Media reports indicate that this may be delayed to give states and industry bodies adequate time to transition to the new laws and rules. There is as yet no official statement from the Government regarding the exact date of implementation of the codes.

The purpose of this article is to provide a short overview of the each of the codes.

### **A. CODE ON WAGES, 2019**

1. The Code on Wages received assent of the President of India and was published in the Gazette of India on 08.08.2019. The purpose and objective of the Code on Wages is to amend and consolidate the laws relating to wages, bonus and other related matters. As will be explained below, only some provisions of the Code have been implemented so far. Once brought into force, the Code on Wages 2019 will repeal and replace the following existing labour laws:
  - a. The Payment of Wages Act, 1936;
  - b. The Minimum Wages Act, 1948;
  - c. The Payment of Bonus Act, 1965; and

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- d. The Equal Remuneration Act, 1976.
2. As of now, only specific sub-sections of section 42 and section 67 (to the extent they relate to the Central Advisory Board), and section 69 (rule-making power of the Central Government to the extent they relate to the Central Government) and section 8 of the Minimum Wages Act, 1948 have been brought into effect.<sup>2</sup>
  3. Under the Code on Wages, 2019, the main functions of the Central Advisory Board are to advise the Central Government on issues relating to (i) fixation or revision minimum wages and other connected matters; (ii) providing employment opportunities to women; and other related matters. The implementation of the limited provisions of the Code on Wages that have been brought into force will allow the Central Government to fix or revise the minimum wages applicable to various industries as well as to create employment opportunities for women.
  4. In order to give effect to the above provisions of the Code, the Code on Wages (Central Advisory Board) Rules, 2021 were published in the Gazette of India on 01.03.2021.<sup>3</sup> They came into force on the date of publication in the Official Gazette and are currently in force. These rules replaced the Minimum Wages (Central Advisory Board) Rules, 2011 and certain provisions of the Minimum Wages (Central) Rules, 1950 with respect to the Central Advisory Board and the committees under it. The rules provide for the constitution of the Central Advisory Board, the manner in which proceedings would be conducted, tenure of members of the Board.
  5. On 07.07.2020, the draft Code on Wages (Central) Rules, 2020 were published in the Gazette of India<sup>4</sup> for receiving comments from stakeholders. These draft rules primarily deal with the following aspects: (i) manner of fixation of minimum wages; (ii) rules for payment of wages and bonus; (iii) revision of dearness allowance; (iv) fixation of working hours and other related matters.
  6. As explained above, “labour” is a subject in which both the legislature at the Central and State levels can enact laws. The Code on Wages therefore also empowers states to enact rules to implement various provisions. Accordingly, several states including Gujarat, Uttar Pradesh, Karnataka, Madhya Pradesh, Uttarakhand, Punjab, Odisha, Tripura, Chhattisgarh, Jammu and Kashmir and Bihar, have drafted the state-wise Code on Wages rules. These draft rules pertain to the specific state-wise implementation of the Code on Wages, particularly provisions with respect to minimum wages. These and the other provisions of the Code on Wages, are expected to be progressively implemented.

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<sup>2</sup> Ministry of Labour & Employment Notification No. S.O. 4604(E) dated 18.12.2020 available at <<https://labour.gov.in/sites/default/files/cab.pdf>>

<sup>3</sup> Code on Wages (Central) Advisory Rules available at <[https://labour.gov.in/sites/default/files/Code\\_on\\_Wages\\_%28Central\\_Advisory\\_Board%29\\_Rules%2C2021.pdf](https://labour.gov.in/sites/default/files/Code_on_Wages_%28Central_Advisory_Board%29_Rules%2C2021.pdf)>

<sup>4</sup> Draft Code on Wages (Central) Rules, 2020 available at <<https://labour.gov.in/sites/default/files/gazette%20notification.pdf>>

## B. CODE ON SOCIAL SECURITY, 2020

7. The Code on Social Security, 2020 (“SS Code”) was passed by the Lok Sabha on 22.09.2020 and by the Rajya Sabha on 23.09.2020 and was published in the Gazette of India on 28.09.2020, upon receiving the assent of the President.
8. The purpose and objective of the SS Code is to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors. As the title indicates, the SS Code deals with all aspects relating to social security, and once it is brought into effect, it would repeal and replace the following social security legislations:
  - a. The Employees’ Compensation Act, 1923;
  - b. The Employees’ State Insurance Act, 1948;
  - c. The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952;
  - d. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
  - e. The Maternity Benefit Act, 1961;
  - f. The Payment of Gratuity Act, 1972;
  - g. The Cine Workers Welfare Fund Act, 1981;
  - h. The Building and Other Construction Workers Cess Act, 1996; and
  - i. The Unorganized Workers’ Social Security Act, 2008.
9. On 05.05.2021, the Ministry of Labour and Employment notified Section 142, SS Code regarding the Application of Aadhar to enable Ministry of Labour and Employment to collect Aadhar details for the database of beneficiaries under various social security schemes.<sup>5</sup> On 12.05.2021 the Ministry of Labour and Employment clarified that while Section 142, SS Code is in force, till the schemes and benefits under the SS Code are implemented, the requirement for submitting Aadhar details for availing benefits is not mandatory.<sup>6</sup>
10. On 26.08.2021, the Government of India launched the “e-Shram” Portal to facilitate the registration of unorganized workers.<sup>7</sup> The portal will build the National Database of Unorganized Workers (NDUW). The portal will connect unorganized workers to the various social security schemes of the government. The registration is free and upon registration, workers will be issued an “eSHRAM card” along with a Unique Universal Account Number to access benefits of the various social security schemes.
11. On 13.11.2020, the Ministry of Labour and Employment published the draft Code on Social Security (Central) Rules, 2020 in the Official Gazette for comments from stakeholders.<sup>8</sup> On 10.02.2021, representative of the Ministry of Labour and Employment

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<sup>5</sup> PIB Press Release: Section 142, Social Security Code Notified, available at <<https://pib.gov.in/PressReleasePage.aspx?PRID=1716239>>

<sup>6</sup> Ministry of Labour and Employment, Notification no. F.No. S-38013/4/2021-22-SS-1 dated 12.05.2021, available at <https://www.esic.nic.in/attachments/circularfile/97716378d1891ac0a2faba7a75b8b919.pdf>

<sup>7</sup> PIB Press Release on NDUW Portal dated 26.08.2021 available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1749294>

<sup>8</sup> Code on Social Security (Central) Rules, 2020: available at <<https://static.pib.gov.in/WriteReadData/userfiles/223073.pdf>>

informed the Rajya Sabha that the Ministry was in receipt of comments on draft rules from various individuals, organisations, trade unions, employers' associations including from the Indian Federation of App-based Transport Workers.<sup>9</sup> Once notified, these rules supersede the rules under the specific laws being replaced by the SS Code.

12. On 03.06.2021, the Code on Social Security (Employee's Compensation) (Central) Rules, 2021 were published in the Official Gazette by the Ministry of Labour and Employment as draft rules for stakeholder consultation.<sup>10</sup> Once notified, these rules would replace the Employee's Compensation Rules, 1924, Employee's Compensation (Transfer of Money) Rules, 1935 and Employee's Compensation (Venue of Proceedings) Rules, 1996. These rules pertain to the procedure in which compensation is payable to an employee in case of any workplace injury.
13. Like the Code on Wages, the SS Code also empowers states to make rules under it. Some states such as Chhattisgarh, Odisha, Bihar, Uttar Pradesh, Uttarakhand and Jammu and Kashmir have published draft rules under the SS Code. These draft rules are primarily with respect to the various social security organisations to be established by the states, and their procedural mechanisms.

#### **C. CODE ON OCCUPATIONAL SAFETY & HEALTHY WORKING CONDITIONS, 2020**

14. The Code on Occupational Safety and Healthy Working Conditions, 2020 ("OSHWC") received the assent of the President on 20.09.2020 and was published in the Official Gazette. The purpose and objective of the OSHWC is to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and other connected matters. The OSHWC also contains provisions with respect to employment of women in all types of work. Once in force, the OSHWC will repeal and replace the following acts:
  - a. The Factories Act, 1948
  - b. The Contract Labour (Regulation and Abolition) Act, 1970
  - c. The Mines Act, 1952
  - d. The Dock Workers (Safety, Health and Welfare) Act, 1986
  - e. The Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1979
  - f. The Plantations Labour Act, 1951
  - g. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
  - h. The Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955
  - i. The Working Journalist (Fixation of rates of wages) Act, 1961
  - j. The Cine Workers and Cinema Theatre Workers Act, 1961
  - k. The Motor Transport Workers Act, 1961
  - l. The Sales Promotion Employees (Conditions of Service) Act, 1976

<sup>9</sup> Written Reply in Rajya Sabha regarding SS Code available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1696810>

<sup>10</sup> Code on Social Security (Employee's Compensation) (Central) Rules, 2021 available at [https://labour.gov.in/sites/default/files/pre\\_published\\_draft\\_rules\\_on%20Employees\\_%20compensation.pdf](https://labour.gov.in/sites/default/files/pre_published_draft_rules_on%20Employees_%20compensation.pdf)

m. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

15. On 19.11.2020, the Ministry of Labour and Employment published the Occupational Safety, Health and Working Conditions (Central) Rules, 2020<sup>11</sup> in the Official Gazette as draft rules, for stakeholder consultation. These Rules deal with registration of establishments under the OSHWC, as well as the various duties of employers and employees.
16. On 01.03.2021, the Central Government has constituted Expert Committees comprising industry and subject experts from both the public and private sector across the country to review the existing rules and regulations on safety, health and working standards, pertaining to factories, docks and construction work.<sup>12</sup> The Expert Committees for Factories and Dock Works, Expert Committee for the Building & Other Construction Works and the Expert Committee on Fire Safety have been constituted for establishing uniform and updated standards of safety and health of workers.
17. On 15.03.2021 the Ministry of Labour and Employment published the draft rules for technical Committee to assist the National Occupational Safety & Health Advisory Board<sup>13</sup> for stakeholder consultation. These draft rules pertain to the procedure for constitution and functioning of technical committees under the OSHWC, for framing, formulating and reviewing standards, rules and regulations on occupational health and safety.
18. States have the power to enact rules under the OSHWC. The following states have published draft rules under the OSHWC - Madhya Pradesh, Punjab, Uttar Pradesh, Uttarakhand, Jammu and Kashmir, Chhattisgarh. The rules pertain to registration of factories and establishments, duties of employers and employees and the setting up of safety procedures and safeguards. These rules, once in force, will also lay down the state-specific work hours and work conditions.

#### **D. INDUSTRIAL RELATIONS CODE, 2020**

19. The Industrial Relations Code, 2020 (“IR Code”) received the assent of the President on 28.09.2020 and was published in the Official Gazette. The purpose and objective of the IR Code is to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishments, undertaking investigation and settlement of industrial disputes along with other connected matters. Once in force, the following acts will be repealed and replaced by the IR Code:
  - a. the Trade Unions Act, 1926;

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<sup>11</sup> Draft the Occupational Safety, Health and Working Conditions (Central) Rules, 2020 available at <https://labour.gov.in/whatsnew/draft-occupational-safety-health-and-working-conditions-codecentral-rules-2020>

<sup>12</sup> PIB Press Release on constitution of Expert Committees under OSHWC available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1708924>

<sup>13</sup> Draft Rule for technical Committee to assist the National Occupational Safety & Health Advisory Board, 2021 available at [https://labour.gov.in/sites/default/files/226628\\_compressed.pdf](https://labour.gov.in/sites/default/files/226628_compressed.pdf)

- b. the Industrial Employment (Standing Orders) Act, 1946; and
  - c. the Industrial Disputes Act, 1947.
20. The draft Industrial Relation (Central) Rules, 2020 was published in the Official Gazette on 29.10.2020 for public consultation.<sup>14</sup> The rules pertain to constitution of work committees under the IR Code as well as forming Standing Orders for establishments, dispute resolution mechanism and other aspects of the IR Code.
21. On 02.01.2021, the Central Government published the draft Model Standing Orders for the Manufacturing Sector, Mining Sector and Service Sector in the official gazette, inviting suggestions/objections from stakeholders.<sup>15</sup> "Standing orders" are the general conditions and rules of employment in industrial establishments which have to be clearly displayed in the industrial establishments. Keeping in view the needs of the services sector, a separate Model Standing Orders for Services Sector has been prepared first time.
22. On 04.05.2021, the Ministry of Labour and Employment published the draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021 for stakeholder comments.<sup>16</sup> The rules are with respect to the registration and verification of Trade Unions, Trade Union members, recognition of Negotiating Unions and other related matters.
23. The IR Code empowers state governments to enact rules under it. Several state governments such as Karnataka, Gujarat, Bihar, Madhya Pradesh, Uttar Pradesh, Punjab, Tripura, Jammu and Kashmir and Uttarakhand had released drafts of their respective states' Industrial Relations Rules. These rules broadly pertain to the establishment and recognition of bi-partite forums for dispute resolution, recognition of Trade Unions, Standing Orders for establishments and other matters under the IR Code.

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<sup>14</sup> Draft Industrial Relation (Central) Rules, 2020 available at [https://labour.gov.in/sites/default/files/Draft\\_IR\\_Rules\\_2020.pdf](https://labour.gov.in/sites/default/files/Draft_IR_Rules_2020.pdf)

<sup>15</sup> PIB Press Release on Model Standing orders available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1685527>

<sup>16</sup> Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021: available at [https://labour.gov.in/sites/default/files/Draft\\_IR\\_Notification.pdf](https://labour.gov.in/sites/default/files/Draft_IR_Notification.pdf)