New Labour Codes and Their Loopholes

Every successive reform in labour laws fails to plug the loopholes.

The passage of the three labour code bills by Parliament—the Industrial Relations Code (irc) Bill, 2020, the Code on Social Security (css) Bill, 2020, and the Occupational Safety, Health and Working Conditions Code (oshwcc) Bill, 2020—and the Code on Wages (cw) Bill enacted in 2019 is the first major milestone in labour market reforms in over three decades. The four labour code bills that were first introduced in Parliament in 2019, and of which three were replaced in September 2020, consolidate 29 central labour laws. Though the government claims that the new laws will reduce complexities, improve ease of compliance, usher in more transparency and accountability, and help both employers and workers, the actual gains to workers remain suspect.

This is because the new laws have further eroded even the limited protection currently available to the workers by expanding the space available to employers to unilaterally close down establishments and retrench workers without even making any effort to provide adequate compensation or protection. The trade unions have already made known their displeasure against various aspects, including the failure to universalise social security benefits and the corporatisation of the social security funds. Unions have also pointed out that legalisation of fixed-term contracts will usher in the hire and fire policy from the backdoor and consequently shrink the number of permanent workers. However, the full impact of the new acts can be assessed only after the draft rules of the legislation are finalised in the coming months.

What is really disturbing are the legal provisions that allow considerable discretion to the government in applying the new laws. For instance, the irc Bill, 2020 allows the appropriate government to exempt any establishment or class of establishments from its provisions in public interest. Similarly, clauses in the oshwcc Bill, 2020 allow the government to exempt new establishments from the law for a specified period in the interest of promoting economic activity and employment. Earlier, such exemptions were allowed only for public emergencies and that too was limited to a three-month period. These exemption clauses will have a negative impact on the coverage of the new laws and affect labour welfare.

What makes matters worse is that the new labour codes often confer substantial benefits to the employers at the expense of the workers. Nowhere is it more visible than in the provisions of the irc Bill, 2020 where the threshold limits for issuing standing orders on work hours, wage rates, worker classification, holidays, wage days, termination of employment and grievance redressal mechanism by establishments have been raised from 100 workers to 300 workers. More debilitating is the increase in the threshold level for securing prior government permission for closure of establishments and for lay-offs and retrenchments of workers from 100 to 300. The provision for fixed-term employment of workers on the basis of a contract in the irc Bill, 2020 will not only put the worker at the mercy of the employer, especially since the power of renewal of contract lies exclusively with the employer, but will also reduce the incentive to hire permanent workers.

Another setback for labour is that the irc Bill, 2020 requires a 14-day notice period before a strike or lockout, which has a limited validity of 60 days. Strikes and lockouts are also barred up to a period of seven days of a conciliation proceeding and up to 60 days after the proceedings of a tribunal. Read together, all this will restrict the workers, right to strike.

Similarly, though the css Bill, 2020 extends the provisions of the law to more areas, it has failed to utilise an opportunity to universalise social sector benefits. Workers will also suffer as the css Bill, 2020 restricts the powers of the officers to decide the quantum of provident fund and Employees State Insurance dues from the employers and also limits their powers to reopen old cases. The relaxation of the penal provision for obstructing inspectors from performing duties will also deter their ability to protect the interests of the workers.

The oshwcc Bill, 2020 passed by parliament also suffers from some major drawbacks. Though the 2020 bill allows employment of women in all establishments unlike in the 2019 bill, which allowed the government to prohibit women in dangerous work, the new legislation bars employing women within six weeks of delivery, miscarriage or medical termination of pregnancy. Similarly, maternity benefit can only be claimed if the worker puts in a minimum 80 days of employment preceding her delivery. Workers also lose since the threshold limits for application of the oshwcc legislation has been doubled and raised to 20 workers in the case of establishments with power and 40 workers for establishments not using power. Further, the provisions of the new law do not provide for a judicial mechanism for hearing disputes, which once again puts the workers at a disadvantage.

Given such extensive loopholes in the new legislations, the hopes for any substantial improvement in the labour regime have been dashed. The wide discretionary powers conferred to the central and state governments for allowing exemption from the
laws will ensure that even the limited gains assured will remain elusive. All this only proves that the labour reforms will remain a mirage and that there is still a long way to go for providing decent employment opportunities and adequate protection to labour, which is imperative given the steady decline in the share of wages in the national income, from a peak level of above 40% in the late 1980s to just about 35% now, and the stagnation in the strength of trade union membership at around 10% of the total workforce.