

Labour codes hugely increase coverage of workers: Santosh Kumar Gangwar

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- **In a Q&A, the Labour and Employment Minister says Removal of rigidity in labour laws, reducing compliance levels would stimulate setting up larger industries generate employment.**

The National Democratic Alliance government has been able to achieve its ambitious plan of converting 29 labour laws into four codes. Labour and Employment Minister Santosh Kumar Gangwar tells Indivjal Dhasmana and Somesh Jha in an interview that the codes will remove red-tapism and lead to setting up of big factories as it removes rigidity in labour laws. Edited excerpts:

How will the new laws promote job creation?

The labour codes promote formalisation of employment through the provisions of issue of appointment letters, expanding social security coverage and securing the right of workers through minimum wages. The unorganised sector and new forms of employment such as gig and platform workers have been given special emphasis in the codes. Removal of rigidity in labour laws, reduction of compliance requirements and time-bound delivery of services would act as a stimulus for setting up larger industries which, along with the steps taken for formalisation, would act as a catalyst for employment generation.

There is a view that the new labour laws will give a free hand to industries to go for contractual jobs and will promote 'hire and fire'...

The provisions in the IR Code do not promote 'hire and fire' but intend to eliminate red-tape in labour law governance. The requirements of permission before retrenchment or closure do not serve much purpose. On the contrary they lead to accumulation of losses and liabilities of firms (that are) on the verge of closure. Delaying closure of financially unviable establishments due to procedural web would not help workers in any manner. We should understand that an employer would not want to close his establishment willingly. Further, due to this low threshold of 100, firms hesitate to expand their size and often do not show workers on their payrolls. This move will therefore lead to formalisation, encourage labour-intensive production and promote establishment of big enterprises. We have ensured that no rights of a retrenched worker have been restricted.

But the government did not commensurately increase the retrenchment compensation. Is there a reason why?

The appropriate government has been provided with the flexibility to enhance the retrenchment compensation in the Industrial Relations Code. So we have left this option on the appropriate government and they may exercise the same at opportune time.

Can we expect more industrial harmony under the new regime?

The utmost importance of trade unions in protecting the rights of workers and maintaining industrial harmony has been firmly recognised by our government. We have, for the first time in legal terms, introduced the concept of three-tier recognition of trade unions-at the unit level, state level and

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central level. We believe these steps would protect the interest of workers, businesses and also promote industrial peace and harmony. Further, provisions for ensuring speedy and time-bound resolution of the disputes in the codes would contribute immensely to industrial peace and harmony.

Trade unions feel strike will become impossible for them...

The right of workers to go on strike has been protected and not taken away from them in any manner. A mandatory notice period of 14 days is just an effort to resolve the worker's grievances or the matter of dispute on the negotiating table through mutual talk and deliberation.

But trade unions argue that conciliation process begins the moment there is a notice of strike that is issued and going on a strike during conciliation is not allowed under the law. So are they not correct in their assessment?

First of all, we need to understand that the objective of the dispute resolution mechanism is to do so as soon as possible, for the benefit of workers and (it is) not the closure of industry or stopping of production by way of strike or lockout. I would also like to clarify that the conciliation proceedings do not start just by receiving notice of strike but from the date on which first meeting of conciliation is held. Secondly, such conciliation proceedings initiated on strike notice has to be concluded in a time limit of 14 days. If the matter is not resolved by negotiation and there is failure of conciliation, the workers may proceed on strike. So, this fear is unfounded that the initiation of conciliation proceedings or negotiation will stop worker from going on strike. If the matter is not resolved during this notice period, the workers are free to resort to strike. I would also like to add that such provisions of notice period is also applicable for employers going for lock out of industry so that workers are not taken aback by sudden decision of the employer. So you will appreciate this 14 days' notice period will work for the benefit of workers by stopping any sudden disruption of work in the industry either by strike or lockout.

Do the labour laws give more powers to the States in going ahead with changes through the executive route-something which the Parliamentary Standing Committee had criticised?

We all understand India is a vast country with wide variation in local conditions, demographic profile of workforce and differential levels of economic development. Labour regulation, being a subject in the concurrent list of the constitution, allows both the Centre and the States to make changes in these legislations within their respective jurisdictions. This is in line with the spirit of federalism enshrined in the Constitution. Further, our intention is to make labour legislations flexible and dynamic so that wage ceilings and safety standards may be modified with the need of time.

Wouldn't it have been a better idea to cover more factories or establishments under ambit of labour laws, rather than bringing them out of it as monitoring of workers' welfare will become difficult as was seen during the pandemic?

We have attempted to substantially expand the coverage of labour laws for worker in four labour codes as compared to the present coverage under the existing labour laws. The Code on Wages and the Industrial Relations Code is applicable on all establishments with no minimum threshold. We have provided universal legal right of getting minimum wages and timely payment of wages to the entire workforce. Similarly, the ambit of Occupational Safety Health and Working Conditions Code has been enhanced by changing the definitions of migrant workers, cine worker to audio-visual worker, working journalist etc. Not only this, the provisions of the OSH Code are now applicable to all establishments and not only to certain sectors like factory, dock, mines, etc. As far as factory is concerned, we can apply the provisions on hazardous factories even to those with one worker. Appropriate government

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under the OSH Code has been given flexibility to make any or all provisions of the OSH Code applicable on any place where manufacturing is being done irrespective of the number of workers employed. Similarly, various provisions have been made in Social Security Code to extend the coverage of the ESIC and the EPFO and to provide social security coverage to the unorganized sector. So if you analyse, you will find the coverage of labour laws has been enhanced substantially to provide wage security, health security and social security to our workforce.

The threshold for factories and contract labour law has been raised and there is no need for a standing order for bigger firms now. This was not a part of any discussion when labour law changes were discussed, trade unions argue. What do you have to say?

I don't know if you are aware that the thresholds under the Factories Act, the Contract Labour Act etc are a part of concurrent list of the Constitution and in line with the spirit of federalism. About 15 or 16 States have already changed these thresholds much before than the codes came into existence. Secondly, I would like to clarify that the threshold for contract labour is basically applicable on the licensing provisions and all other safety, health and welfare provisions would be applicable uniformly on contract labours working in establishments.

How is the balance between safeguarding workers' rights and ensuring smooth business environment in the labour codes?

Workers and industry are interdependent on each other. Without industry, workers won't get decent work opportunities, and without workers industry will not survive. We have attempted to maintain a balance between the rights of workers and the requirements of the industry to promote employment generation through the labour Codes. We have made provision for securing minimum wages and timely payment of wages to all workers under the Code on Wages; safe and conducive working environment through the Code on Occupational Safety, Health and Working Conditions; social security coverage to organised and unorganised workers through the Code on Social Security, and a proper and timely dispute resolution mechanism through the Industrial Relations Code. So far as industry is concerned, we have also ensured that the compliance burden on the employers is reduced. We have replaced 8 registrations under the existing laws with one registration, replaced existing 3-4 licenses with a single license, reduced the number of registers and returns to a large extent and made service delivery time bound and technology driven. All these steps would facilitate ease of compliance resulting in better enforcement of labour laws and reduced time, effort and cost on the part of industry.

In a recent interview, you said all the four codes will come into force by December 2020. Isn't that too ambitious a target? Also, will there be a phased implementation of the four new laws?

You are aware that any labour law, including framing of subordinate legislation, requires extensive consultation with our social partners and all relevant stakeholders and we intend to go for exhaustive consultation process while making rules. The rules of Code on Wages are to be finalised soon as we have completed the consultation process on it. The Ministry has initiated work on framing of rules of other three Labour Codes and we have already formed the committees for it. We would make all efforts to complete the drafting of rules by year-end. Subsequently, the draft rules would also have to follow all pre-publication notification procedure as per the legal provisions of the code. Final notification would be after completion of this pre-publication procedure.

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When can we expect full social security coverage of the workforce? The previous social security code draft was meant for universalisation but the new law is quite different.

The Government is committed towards progressive universalization of social security to all the 50 crore organised and unorganised workers in the country. Our Ministry has already started Pradhan Mantri Shram Yogi Mandhan Yojana (PMSYM), a pension scheme for unorganised workers and another pension scheme for traders and small businessmen. We have two major social security institutions in our country i.e. EPFO and ESIC. Through the social security Code, we have tried to bring previously left out workers in the fold of social security coverage through these two institutions by incorporating provisions like voluntary coverage for smaller establishments having workers less than the specified threshold, mandatory ESIC coverage for hazardous industries irrespective of the number of employees, removal of schedule of establishments under EPFO and option for plantation owners to join ESI scheme voluntarily. Besides, we have also made provisions for constituting a Social Security Fund for unorganised workers and coverage of new form of work such as gig and platform workers in the social security net.

Is the government confident that all migrant workers will get social security and job cover?

We have learnt from our experience during the Covid-19 pandemic and strengthened the provisions for the Migrant workers in the OSH Code, 2020 particularly widening the definition of Migrant worker and creation of database for migrant workers. I am confident that we would be able to provide a secure future to our migrant workers.

Recently, your response in the Lok Sabha drew flak as you said the government does not have data on migrant deaths. What have the States told the Centre, as you also mentioned that data on migrant deaths is being collected from them?

Labour being in the concurrent list, barring few Central Acts relating to EPF or ESIC, other Acts are being implemented by the State Governments predominantly. Inter State Migrant Workmen Act was such Act where the registration of migrant workers and their data has to be maintained by the respective State Government. During the Covid-19 pandemic, special efforts were made by the Ministry of Labour and Employment to collect the data of migrant workers from State Government who have returned to their home states. Creation of a comprehensive database of migrant workers and unorganized workers is our priority and accordingly we have made statutory provisions in OSH Code and IR Code. We have already started the work for creating a database of unorganized workers including migrant workers through the DG, Labour Welfare Office of our Ministry.

Q> Can you throw some light on the re-skilling fund as there is no clarity as to how the money for it will be collected?

A> The workers require support in case of their retrenchment. With this purpose, the IR Code, 2020 has envisaged a worker re-skilling fund to support retrenched workers to upgrade skills and find the new employment. The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of such retrenchment.

In this fund the employer shall contribute an amount equal to fifteen days wages last drawn by the worker before the retrenchment. Further, the appropriate governments have also been empowered to prescribe other sources for supplementing this fund. The detailed procedure and modalities in respect of the re-skilling fund shall be provided in the rules.