INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 6 AND ISSUE 3 OF 2026

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 6 and Issue 3 of 2026 (Access Full Issue on - https://ijlr.iledu.in/volume-6-and-issue-3-of-2026/)

Publisher

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INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 3 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

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THE EROSION OF THE 'SOCIAL CONTRACT': A HUMAN RIGHTS CRITIQUE OF INDIA'S NEW LABOUR CODES

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BEST CITATION - AKANSHA TOPPO, THE EROSION OF THE 'SOCIAL CONTRACT': A HUMAN RIGHTS CRITIQUE OF INDIA'S NEW LABOUR CODES, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR),* 6 (3) OF 2026, PG. 642-647, APIS – 3920 – 0001 & ISSN - 2583-2344.

ABSTRACT

The promulgation of the four New Labour Codes—the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health and Working Conditions Code, 2020—marks a watershed moment in India's industrial jurisprudence. While the stated legislative intent is to simplify the labyrinthine complex of 29 central labour laws and foster "Ease of Doing Business," this paper argues that the consolidation comes at a significant cost to the fundamental human rights of the working class.

This paper adopts a rights-based approach to critique the Codes, analyzing them against the anvil of the International Labour Organization's (ILO) Core Conventions and the Constitutional mandate of Article 21 and Article 43. Specifically, it scrutinizes the dilution of the "Right to Strike" under the Industrial Relations Code, the exclusion of millions of informal and gig workers from the mandatory ambit of the Social Security Code, and the potential violation of the "Right to Dignified Work" through increased threshold limits for retrenchment.

The central hypothesis is that the Codes represent a paradigm shift from "State Paternalism" to "Market Facilitation," effectively rewriting the social contract between the State and Labour. By expanding the discretionary powers of the "appropriate government" to exempt establishments from statutory compliance, the Codes risk reducing labour rights to mere administrative dispensations rather than inalienable human rights. The paper concludes by suggesting a human-rights-centric review of the Codes to balance economic growth with social justice, ensuring that the "Amrit Kaal" of the Indian economy does not become a dark age for its workers.

Keywords: Labour Codes 2020, Human Rights, ILO Conventions, Right to Strike, Social Security, Gig Economy.

I. INTRODUCTION: THE PARADIGM SHIFT

The history of labour law in India has always been a tug-of-war between two competing philosophies: the *laissez-faire* doctrine of free markets and the *welfarist* doctrine of social justice. For seventy years, Indian labour jurisprudence, heavily influenced by the Directive Principles of State Policy, leaned towards the latter. Courts consistently held that in a tussle between a mighty corporation and a humble workman, the law must tilt in favour of the workman to equalize the bargaining power.

However, the enactment of the four New Labour Codes represents a decisive pivot. The *Code on Wages, 2019*, the *Industrial Relations (IR) Code, 2020*, the *Code on Social Security, 2020*, and the *Occupational Safety, Health and Working*

Conditions (OSH) Code, 2020[1543] have amalgamated 29 distinct central labour laws into four consolidated statutes.

The Government of India argues that this consolidation is necessary to remove the "Inspector Raj," digitize compliance, and attract foreign investment by making labour laws flexible. While "simplification" is a laudable goal, a granular analysis reveals that "flexibility" often serves as a euphemism for the "hire and fire" regime.

This paper posits that labour rights are not merely statutory rights; they are human rights. The right to form a union is a civil liberty; the right to a minimum wage is a right to life; and the right to social security is a right to dignity. By viewing the New Labour Codes through the lens of Human Rights specifically the Universal Declaration of Human Rights (UDHR) and ILO Conventions this research highlights deep prospective concerns regarding the commodification of labour in the pursuit of GDP growth.

II. THE INDUSTRIAL RELATIONS CODE, 2020: SILENCING THE COLLECTIVE VOICE

The most contentious of the four codes is undoubtedly the *Industrial Relations Code, 2020*. It replaces three key acts: the Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947. From a human rights perspective, the IR Code raises two alarming red flags: the restriction on the Right to Strike and the expansion of the "Hire and Fire" capability.

A. The Right to Strike: A Human Right under Siege?

The right to strike is not explicitly guaranteed under the Constitution of India but has been recognized as a legitimate weapon of collective bargaining by the Supreme Court in *B.R. Singh v. Union of India*.[1544] Furthermore, ILO Convention No. 87 (Freedom of Association) implicitly protects the right to strike.[1545]

Section 62 of the IR Code, however, introduces a blanket restriction[1546]. It mandates that *no* person employed in an industrial establishment shall go on strike without giving a notice of 14 days. Previously, this restriction applied only to "Public Utility Services" (like water, electricity, transport). By extending this to *all* industrial establishments, the Code effectively makes a legal strike impossible.

- *The Legal Trap*:

If a union gives a 14-day notice, the conciliation proceedings typically begin immediately. Section 62(1)(d) prohibits strikes *during* the pendency of conciliation proceedings. Thus, the moment a notice is given, a strike becomes illegal.

- *Human Rights Concern*:

This statutory loop effectively neuters the collective bargaining power of workers. Without the credible threat of a strike, unions lose their leverage at the negotiation table, turning collective bargaining into "collective begging."

B. The "Hire and Fire" Threshold

Under the old Industrial Disputes Act, establishments with 100 or more workers needed prior government permission to retrench (fire) workers or close down. The IR Code raises this threshold to **300 workers**.

- *The Implication*:

According to the Sixth Economic Census, over 90% of India's registered factories employ fewer than 300 workers[1547]. This means that for the vast majority of the Indian formal workforce, job security has

[1543] *The Code on Wages, 2019*, No. 29, Acts of Parliament, 2019 (India); *The Industrial Relations Code, 2020*, No. 35, Acts of Parliament, 2020 (India); *The Code on Social Security, 2020*, No. 36, Acts of Parliament, 2020 (India); *The Occupational Safety, Health and Working Conditions Code, 2020*, No. 37, Acts of Parliament, 2020 (India).

[1544] B.R. *Singh v. Union of India*, (1989) 4 S.C.C. 710 (India).

[1545] *Convention Concerning Freedom of Association and Protection of the Right to Organise* (ILO No. 87), July 9, 1948, 68 U.N.T.S. 17.

[1546] *The Industrial Relations Code, 2020*, § 62.

[1547] MINISTRY OF STATISTICS & PROGRAMME IMPLEMENTATION, GOVT. OF INDIA, SIXTH ECONOMIC CENSUS (2016).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 3 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
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technically vanished. Employers can now retrench workers without government oversight, reducing employment to a precarious contract terminable at will. This violates the spirit of Article 41 (Right to Work) and Article 43 (Living Wage and Decent Standard of Life) of the Constitution.[1548]

III. THE CODE ON SOCIAL SECURITY, 2020: THE ILLUSION OF INCLUSION

The *Code on Social Security, 2020* has been hailed for legally recognizing "Gig Workers" and "Platform Workers" for the first time. However, a closer reading reveals that while the definitions are inclusive, the *rights* are elusive.

A. The Definition Trap

The Code distinguishes between "Employees" (who get mandatory Provident Fund and Gratuity) and "Gig Workers" (who get schemes notified by the government).

- *Human Rights Concern*:

By creating a separate category for gig workers (like Zomato/Uber drivers), the Code implicitly accepts that they are *not* "employees."[1549] This denies them the guaranteed protections of minimum wage and overtime pay, violating the ILO recommendation that "employment relationships" should be determined by facts[1550], not contractual labels.

B. The Funding Lacuna

While the Code proposes a "Social Security Fund" for gig workers, the funding mechanism is vague. It suggests a levy of 1-2% of the aggregator's turnover. However, there is no *sovereign guarantee* of social security. If the fund runs dry, the benefits stop. In contrast, traditional social security (like EPF) is a statutory liability of the employer. Transforming a "Right" into a "Welfare Scheme" dependent on available funds is a regression in human rights jurisprudence.

[1548] INDIA CONST. art. 41; INDIA CONST. art. 43.
[1549] *The Code on Social Security, 2020*, § 2(35).
[1550] International Labour Organization, *Employment Relationship Recommendation, 2006 (No. 198)*.

OCCUPATIONAL SAFETY, WAGES, AND THE WAY FORWARD

IV. THE OSH CODE, 2020: SAFETY AS A PRIVILEGE, NOT A RIGHT

The *Occupational Safety, Health and Working Conditions Code, 2020* (OSH Code) amalgamates 13 labour laws, including the *Factories Act, 1948* and the *Inter-State Migrant Workmen Act, 1979*[1551]. While consolidation was necessary, the Code raises prospective concerns regarding the **"Right to Safe Work"** (derived from Article 21) by systematically excluding smaller establishments from its safety ambit.

A. The Threshold Dilemma: Legalizing Unsafe Work?

Under the old *Factories Act, 1948*, [1552]safety regulations applied to any unit with **10 workers** (with power) or **20 workers** (without power). The OSH Code raises this threshold to **20 workers** (with power) and **40 workers** (without power).

- *Human Rights Critique*:

This seemingly minor administrative change has massive human rights implications. According to the *Annual Survey of Industries (ASI)*, nearly 74% of India's manufacturing units employ fewer than 20 workers.[1553] By raising the threshold, the Code effectively "deregulates" safety standards for the majority of India's micro-factories—precisely where industrial accidents, fires, and hazardous conditions are most rampant.

- *Article 21 Violation*:

The Supreme Court in *Consumer Education and Research Centre v. Union of India*[1554] held that the "right to health and medical care is a fundamental right under Article 21." By removing statutory safety oversight for

[1551] *The Occupational Safety, Health and Working Conditions Code, 2020*, No. 37, Acts of Parliament, 2020 (India).
[1552] *The Factories Act, 1948*, No. 63, Acts of Parliament, 1948 (India).
[1553] MINISTRY OF STATISTICS & PROGRAMME IMPLEMENTATION, GOVT. OF INDIA, ANNUAL SURVEY OF INDUSTRIES (2018-19).
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small units, the State is arguably abdicating its constitutional duty to protect the life and health of workers in the unorganized sector.

B. The Migrant Worker Paradox

The COVID-19 migrant crisis of 2020 exposed the vulnerability of India's invisible workforce. The OSH Code attempts to address this by expanding the definition of "inter-state migrant worker." However, it introduces a critical flaw:

- *The Income Cap*:

The definition now includes only those migrant workers earning less than **₹18,000 per month**.

- *Human Rights Critique*:

Human rights are universal; they do not expire when one earns ₹18,001. A migrant worker earning ₹19,000 is equally vulnerable to exploitation, unsafe housing, and non-payment of displacement allowance in a foreign state. By capping protection based on income, the Code violates the principle of **Universality of Human Rights**. Furthermore, the Code removes the specific liability of the *principal employer* to provide journey allowance, shifting the burden solely to the contractor, who often lacks the financial capacity to pay.

V. THE CODE ON WAGES, 2019: GENDER JUSTICE AND THE "FLOOR WAGE"

The *Code on Wages, 2019* replaces four laws,[1555] including the *Minimum Wages Act, 1948* and the *Equal Remuneration Act, 1976*.[1556] While it universalizes minimum wages to all sectors (a positive step), the methodology remains regressive.

A. "Floor Wage" vs. "Living Wage"

The Code introduces the concept of a "Floor Wage" to be fixed by the Central Government. State governments cannot fix minimum wages below this floor.

- *Human Rights Critique*:

The concept of a "Floor Wage" (a bare subsistence level) contradicts the constitutional goal of a "Living Wage" (Article 43)[1557]. A living wage includes education, health, and dignity, not just calories. By statutorily anchoring wages to a "floor," the Code risks legitimizing poverty wages rather than aspirational fair wages.

B. Dilution of Gender Justice

The *Equal Remuneration Act, 1976* prohibited discrimination in recruitment and promotion against women. The new Code prohibits discrimination on the ground of "gender" generally.

- *The Facade of Equality*:

While "gender-neutral" language sounds progressive, in a patriarchal society like India, women need *specific* protection. The new Code allows women to work night shifts (7 PM to 6 AM) with their consent. While this promotes the "Right to Work" (Article 19(1)(g))[1558], without robust enforcement of safety protocols (which have been diluted for small establishments under the OSH Code), this "freedom" may essentially become coercion for female workers in the garment and electronics sectors.

VI. INTERNATIONAL HUMAN RIGHTS ANALYSIS: THE ILO GAP

India is a founding member of the International Labour Organization (ILO). Although India has not ratified fundamental Conventions No. 87 (Freedom of Association) and No. 98 (Right to Collective Bargaining), it is bound by the **ILO Declaration on Fundamental Principles and Rights at Work (1998)**.[1559]

A. Violation of Freedom of Association

[1555] *The Code on Wages, 2019*, No. 29, Acts of Parliament, 2019 (India).
[1556] *The Minimum Wages Act, 1948*, No. 11, Acts of Parliament, 1948 (India); *The Equal Remuneration Act, 1976*, No. 25, Acts of Parliament, 1976 (India).
[1557] INDIA CONST. art. 43.
[1558] INDIA CONST. art. 19, cl. 1(g).
[1559] International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work*, 86th Session, Geneva, June 1998

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The ILO Committee on Freedom of Association [1560]has repeatedly stated that "the right to strike is an intrinsic corollary to the right to organize."

- *The Conflict*:

The IR Code's blanket ban on strikes without 14 days' notice (Section 62) and the prohibition of strikes during conciliation make legal strikes virtually impossible. This directly contravenes the ILO's principle that restrictions on strikes should be limited only to "essential services" in the strict sense of the term (where life/safety is endangered). Extending this to *all* industries violates international customary law.

B. The "Inspector-Facilitator" Shift

All four Codes replace the "Labour Inspector" with an "Inspector-Cum-Facilitator." The focus shifts from *enforcement* (penalizing violations) to *facilitation* (advising employers).

- *Human Rights Critique*: ILO Convention No. 81 (Labour Inspection) [1561]mandates that inspectors must have the power to enforce laws without prior notice. By diluting the "police power" of inspectors and introducing "random web-based inspection schemes," the Codes signal a retreat of the State from its protective role. In a country where feudal employment relations persist (e.g., bonded labour in brick kilns), a "facilitator" is toothless against entrenched exploitation.

VII. CONCLUSION: RECLAIMING THE SOCIAL CONTRACT

The New Labour Codes of 2020 represent a tectonic shift in India's industrial jurisprudence. They transition the Indian labour market from a "State-Protected" model to a "Market-Driven" model.

While the "Ease of Doing Business" is a legitimate economic goal, it cannot be achieved by turning the "Ease of Living" for workers into a casualty. The prospective concerns highlighted in this paper—the silencing of unions, the exclusion of gig workers, the safety deficit in small factories, and the dilution of gender protections—suggest that the Codes may fail the constitutional test of Article 21 (Right to Dignity) and Article 14 (Equality).[1562]

The Way Forward:

1. **Universal Social Security:**

The government must operationalize the Social Security Fund with a dedicated tax/cess, ensuring that gig workers have an *enforceable right* to benefits, not just a scheme.

2. **Restoring the Right to Strike:**

The definition of "public utility services" must be narrowed. A blanket ban on strikes in *all* industries is disproportionate and unconstitutional.

3. **Safety for All:**

The threshold for OSH Code applicability should be removed. Safety is a human right, whether one works in a factory of 5 people or 500.

As India marches towards a $5 Trillion economy, it must decide: Will its growth be built on the shoulders of empowered workers or the backs of a silenced precariat? The answer lies in how these Codes are implemented—or challenged—in the years to come.

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