

Emerging Issues in Labour Laws of India

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Abstract: Labour Laws have always been a contentious issue for the Government of India. It governs a majority of the population and is also directly related to the economy of a country. It is imperative for the Government to bring in constant changes and amendments to the existing framework to face the challenges and seize the opportunity that may come up in the future. In this article, the discussion will be on the Four Labour Codes, which were long due. The current Government finally brought in these codes to purportedly amalgamate and simplify the extra-enormous laws governing employment and labour. Further, an important question regarding the Gig Economy and its workers would be raised. Gig Workers are fighting for their rights, which are getting equal wages, benefits, pluses etcetera.

Moving further, the author has discussed the skewed balance in employment patterns with respect to gender. The last issue is related to a very heinous crime, that is sexually harassing co-workers, juniors, or seniors at the workplace. Further, the Prevention of Sexual Harassment Act also and its effectiveness, have been discussed. In conclusion, the author has incorporated the whole discussion into a few paragraphs with suggestions.

Keywords: *Labour Codes, Gig Economy, Gender Parity at Workplace, POSH Act.*

1. Introduction

The 21st century came with a plethora of challenges and opportunities, especially in the domain of employment. To usher through these challenges, we need a robust mechanism, specifically through legislation. The internet revolution paved the way for many once-in-an-era discoveries, namely Google, Uber, Facebook, YouTube etcetera. Laws have to be pliable to changes, and they must be amended periodically to take into account the challenges of a new era.

Labour legislation has always been an issue of national importance, as it affects the livelihood of people. It is seen that the government in India while piloting labour legislation

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has to do a balancing act of providing maximum assistance to the employees and not hurting the interest of the employers.

2. The Labour (Friendly) Codes

The government has passed four Labour Codes in the last two years with the objective to consolidate, amalgamate, and rationalize the plethora of central legislations dealing with labour and incidental thereto.

Earlier, there were close to 50 central legislation concerning labour and over 200 state labour laws in the country.¹ In the 7th Schedule of the Indian Constitution, Labour is a concurrent subject on which both the Union and the State government can legislate. India is a country which has the world's second-largest labour force, making it a land of opportunity. It also brings challenges for the government of India to devise a near-perfect business environment by constantly adapting to the changes of the dynamic labour population and the market needs which can be achieved by bringing changes in the labour laws.

The Government of India has constituted many different committees in the past to keep pace with the new challenges and opportunities in the labour market. The First National Commission on Labour (FNCL) of independent India was set up in 1966 under the chairmanship of Pralhad Balacharya Gajendragadkar with the goal to (but not limited to):

- Make improvements in the labour policy with a long-sighted view of challenges that can emerge in the future.
- Make recommendations for the betterment of the workers who are left out of the orbit of current labour laws.

Some tangible changes did happen after the FNCL but that was not enough which can be seen by the setting up of subsequent committees – for example: Tripartite Committee on Industrial Relations Law (1977), Sanat Mehta Committee (1983), Bipartite Committee

¹Udit Misra & Nushaiba Iqbal, 'Explained what Labour Law changes by States Mean' (*The Indian Express*, 16 May 2020) <www.indianexpress.com/article/explained/what-labour-law-changes-mean-coronavirus-6403611/> accessed 20 January 2022

(1990), National Commission on Labour Standards (1995), and a 12 Member Bipartite Committee (1996).²

The Second National Labour Commission (“SNLC: *hereinafter*) was set up in 1999 by the Vajpayee government under the chairmanship of Ravindra Varma with the objectives - “to suggest rationalization of existing laws relating to labour in the organized sector and to suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganized sector.”³ The commission submitted its report in 2002 to the Government of India, the author tries to converge some of the recommendations of the report and the provisions of the new labour law codes of 2019 and 2020.

The SNLC recommended the Union Government categorize different laws relating to labour into four to five groups.⁴ It took the Union Government, 17 years to finally implement this recommendation through the new labour code bills. The Labour Code Bills are broadly divided into four heads, which are:

- The Code on Wages, 2019
- The Occupational Safety, Health and Working Conditions Code, 2020
- The Code on Social Security, 2020
- The Industrial Relations Code, 2020

2.1. The Code on Wages, 2019

This Code was passed in 2019 by the Rajya Sabha, this will subsume four legislations: (i) the Payment of Wages Act 1936, (ii) the Minimum Wages Act 1948, (iii) the Payment of Bonus Act 1965, and (iv) the Equal Remuneration Act 1976.⁵

The Code also says that the provision related to the wages will be applicable to both organized and unorganized sectors, which is in line with the recommendation of the SNLC, also the Code explicitly mentions that - “there shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters

² K.R. Shyam Sundar, ‘Second National Commission on Labour: Not up to the Task’ (2000) 35(30) Economic and Political Weekly 2607

³ Sundar (n 2)

⁴ G Shivaji Rao, ‘The Report of The Second National Labour Commission- 2002: An Overview’ (*Mondaq*, 5 March 2003) <www.mondaq.com/india/employee-rights-labour-relations/20167/the-report-of-the-second-indian-national-labour-commission-2002---an-overview#> accessed 21 January 2022

⁵ Code on Wages Act 2019

related to wages by the same employer, in respect of same work, or work of a similar nature done by any employee.”⁶ It also states that there can be no discrimination in the recruitment process on the basis of gender.⁷

The Code also introduces the concept of “floor wage” which is to be fixed by the central government. The floor wage is to be fixed by gauging the minimum living standard of a worker. This will differ geographically depending upon different factors. It is also provided that the minimum wage fixed by the appropriate government shall not be less than the floor wage.⁸

The Code also provides a new definition of basic pay, which means that the employer has to keep the basic pay at or above 50% or one-half of the total wage (as defined in clause 2y of Code on Wages Act, 2019) of an employee. This means that the so-called in-hand salary will decrease, and the gratuity will increase, the government has said that this will save money for the employees that can be encashed after their retirement leading to a better future. Employers and Employees are both wary of this amendment. This can be crippling in the short term, but in the long run, this will give the employee more funds in their bank accounts leading to a comparatively better life after retirement.

The government is also pitching the idea of four days a week, which can give more freedom to the companies to decide how many days in a week they want their employees to work, this will also be beneficial for the employees as they can now get more time to spend with family.⁹ This Code has many provisions which are laudable and are in the right direction, the government has to make sure that the act is implemented in the manner in which it was envisaged.

2.2. The Occupational Safety, Health and Working Conditions Code, 2020

This Code was passed by the Rajya Sabha in 2020, this bill subsumes thirteen acts.¹⁰ The Code defines an interstate migrant worker as someone who works in some other state and

⁶ Code on Wages Act 2019, s 3

⁷ Code on Wages Act 2019, s 3(2)

⁸ Code on Wages Act 2019, s 9

⁹ ‘Explained: A four day week? Here’s what India’s plan entails’ (*The Indian Express*, 18 February 2021) <www.indianexpress.com/article/explained/new-labour-codes-india-four-day-week-7182376/> accessed 21 January 2022

¹⁰ Occupation Safety, Health and Working Conditions Code 2020, s 143

earns less than ₹18,000.¹¹ This will make it feasible for the government to launch a targeted scheme for the benefit of these workers. This Code also provides a mechanism for a single license for contract work,¹² which is a relief for contractors who have to run from pillar to post to obtain multiple licenses. This also helps in tackling the so-called “License Raj”. This Code also has a provision which will require free cost annual health checks.¹³ This Code provides the government and the stakeholders with clarity on various definitions which were hitherto not defined.

2.3. The Code on Social Security, 2020

This Code was passed by the Rajya Sabha in 2020, this bill subsumes nine laws.¹⁴ This Code extends social security to the unorganized sector, the gig workers, and the platform workers.¹⁵ This will help a huge population which falls in this stratum, The Code also mandates contribution by the employer to the fund established by the concerned government.¹⁶

The SNLC also suggested that there should be social security packages that must encompass both organized and unorganized sectors of the economy¹⁷, the above amendments in the law suggest that this recommendation of SNLC has been implemented. This Code will help in the assimilation of the unorganized sector, gig workers, and platform workers into the mainstream, where the government can make laws for their welfare.

2.4. The Industrial Relation Code, 2020

This Code was passed by the Rajya Sabha in 2020, this bill subsumes three laws. This is one of the most debated labour laws in the country because of some provisions that are discussed in the subsequent lines. This Code replaces ‘workman’ with ‘worker’, as suggested by the SNLC that a gender-neutral term may preferably be used. This Code also introduces a method of compensation for the employees who are laid-off (certain conditions which the code mentions have to be met)¹⁸, which is helpful to both: the

¹¹ Occupation Safety, Health and Working Conditions Code 2020, s 2(zf)

¹² Occupation Safety, Health and Working Conditions Code 2020, s 119

¹³ Occupation Safety, Health and Working Conditions Code 2020, s 133

¹⁴ Code on Social Security 2020

¹⁵ Code on Social Security 2020, Chapter IX

¹⁶ Code on Social Security 2020, ss 114 and 141

¹⁷ Rao (n 4)

¹⁸ Industrial Relation Code 2020, s 67

employer can lay off employees during financial hardship and the employee can get adequate compensation.

The Code also says that any establishment employing less than 300 employees does not require prior government permission while retrenchment¹⁹, previously this limit was less than 100 employees. The issue that is being flagged with this amendment is that the establishment will have immense power to hire and fire at will, this amendment is a win-win for both the employer and the employee.

Suppose there is person 'A' who wants to open a semiconductor factory which requires huge capital and at least 125 employees, with the previous limit (100) 'A' will be in a dilemma about whether to open a factory in India. If unfortunately, the business is at the precipice of shutdown then she will have to take permission from the government to make retrenchments making the whole process very cumbersome. With the new amendment, prospective entrepreneurs will get a fillip to imagine and implement their plan without the risk of getting stuck in the web of government procedure.

Also, the issue that the employees will be fired will find no base as the threshold is still present, in a country like India where unemployment is a big issue, the abovementioned amendment will provide more opportunities to the people than problems. If India wants to emerge as a manufacturing giant on the global scene, then it is imperative to bring more labour business-friendly laws into the country.

In conclusion, these Labour Codes reflect that the recommendation of the SNLC is not only a dusty file prepared by some experts, but something that the policymakers have realized can steer India through uncertain times. Some reforms are indeed novel and were not recommended by the SNLC in 2002. We cannot become averse to reform on everything, there might be some problems in the Labour Codes which have to be dealt with by the government, but in a broader perspective, they are employer/employee friendly.

3. Gig Workers: Why not bring them Under the Net?

The term 'gig economy' was first used by Tina Brown in 2009, she used this word in the context of freelancers (people who provide their services on a contract basis). Gig workers

¹⁹ Industrial Relation Code 2020

are basically people who work on a contract basis and online platform workers with the company on a temporary basis until the allotted work is completed. With the advent of social media/digital applications, the gig economy has seen a massive uptick in terms of gross volume and people employed. As one estimate suggests that the current gig economy stands at \$ 347.8 billion.²⁰ It is also projected by Mastercard, that the gross volume will touch ~\$455 billion by 2023.²¹ One might think why this gig economy is growing at an unprecedented pace, the reason lies behind the advantages that it offers in contrast to the normal work culture.

3.1. Advantages of Gig Economy

The *first* and the biggest advantage is that one can do the work at any time, in most cases, one does not even have to go out on the road to find work as the majority of the gig work is available online. *Second*, it provides the company with a plethora of choices as the number of gig workers in the economy is growing. *Third*, this setup provides the worker with a sense of ownership or flexibility, where they can choose to work at their ease. *Fourth*, the employer does not have to worry about the accommodation/perks and all the pluses that a regular employee has to be provided. The fourth advantage for the employer is a major disadvantage for the gig workers as they are denied the basic benefits that their counterparts working in the orthodox setup the of employer-employee relationship avail. This is a very serious issue and requires intervention from the Legislature by not only framing appropriate laws but also implementing them satisfactorily

3.2. Are there any steps taken to protect the interests of Gig Workers?

The Code on Social Security, 2020 extends social security to gig workers. It also has a provision under which the Central Government has to establish a National Social Security Board, which will help in making enactments related to (but not limited to) gig workers.²² The Code also says that the aggregators who employ gig workers have to contribute 1-2% of their annual turnover for the social security of the gig workers.²³ This can be understood

²⁰ 'Economy, Gig economy projected gross volume' (*Statista*, 21 June 2021)

<www.statista.com/statistics/1034564/gig-economy-projected-gross-volume/> accessed 26 January 2022

²¹ 'The Global Gig Economy: Capitalizing on a ~\$500B Opportunity' (*Mastercard News Room*, May 2019)

<www.newsroom.mastercard.com/wp-content/uploads/2019/05/Gig-Economy-White-Paper-May-2019.pdf> accessed 28 January 2022

²² Code on Social Security 2020, s 6

²³ Code on Social Security 2020, s 141 and 114(4)

as an initial step to provide the gig workers with the benefits that workers who work in the traditional set-up receive. Of course, the road to championing the cause of gig workers is yet to be traversed but this is a step in the right direction and requires constant policy change to tackle the novel challenges of this dynamic sector.

Developed nations around the world are still not able to devise a statute to protect gig workers. Recently, The British Supreme Court unanimously held that Uber drivers are not “self-employed” but “workers”. This judgement led to a flurry of articles and contemplations about whether will this be a watershed moment for the gig economy? Indeed, it was a very progressive pronouncement by the 7-judge bench (6-judge bench after Lord Kitchin fell ill).

The Court used the employment test and with a 5-point premise came to the conclusion that Uber drivers qualify as workers.²⁴ As stated above, this can be a watershed moment for the gig economy, as one of the biggest concerns of the Gig Workers is that they are always left out of the safety net. This pronouncement which classifies Cab drivers of Uber London as workers can be a positive judgement for the Gig Workers. It is also crucial for countries around the world to work for the betterment of the hitherto neglected Gig Workers.

The critics of this classification say that Gig Workers by their definition are ‘temporary’ and cannot be equated with regular employees. This argument seems acceptable so far, we are not delving into the terms of employment. As propounded in the above-mentioned judgement that: (i) a cab driver cannot choose their passenger by themselves, they are allotted a passenger according to the algorithm of the Uber application, (ii) cab driver has no control over the terms on which the driver carries the passenger, these standard agreements have to be signed by the drivers to work in Uber.

Also, there is a system of penalty 10-minute log-off if the driver cancels an already accepted trip. These shreds of evidence show that the company has full control over the cab driver, but when it comes to giving equal benefits and pluses similar to the regular employees, the company shrugs off its responsibility stating that drivers don’t qualify as workers.

²⁴ *Uber BV and Ors v Aslam and Ors* [2021] UKSC 5

Recently a petition was filed in the Supreme Court to declare gig workers as wage workers or unorganized workers, the petitioner also relied on the UK judgement mentioned above to substantiate their claim²⁵. It has to be seen what the court decides as the matter is still sub judices.

The answer to the question of bringing gig workers under the net of social security and benefits stands affirmative since it is the need of the hour to provide the same benefits and pluses to the gig workers that, a similarly placed worker or employee in a traditional setup enjoys. Looking at the current number and the increase that happened in the last few years, it is understood that the gig economy is bound to increase and will provide millions of people with employment around the globe. Not only India, but the governments around the world have to take cognizance of this huge population and have to work towards the betterment of these people.

4. Achieving Gender Equality at the Workplace

There is a long-held belief that women are vulnerable in the workplace and their male counterparts have the responsibility to protect and assist them in every unpleasant situation. This attitude to keeping the women at the receiving end of the help, which is often out of largesse, makes the situation look grimmer for women. This viewpoint makes them look vulnerable and helpless, it also makes them look reliant on their male counterparts.

Some of the stereotypical views also mar the objective of gender equality. It is a wrongly held belief that women are not assertive, or women are not emotionally strong as compared to their male counterparts. There are women who are excelling in their fields like Justice Indira Banerjee (Judge, Supreme Court of India), Justice BV Nagarathna (Judge, Supreme Court of India), Jacinda Ardern (Prime Minister of New Zealand), Indira Jaisingh (Lawyer) and the list will go on until we stop.

This is a testimony to the fact that women are also not behind in the race. Does this mean that everything is hunky dory? No, these examples only suggest what the behemoths are

²⁵ Shruti Kakkar, 'Gig Workers' Approach Supreme Court Seeking Social Security Benefits From Zomato, Swiggy, Ola, Uber' (*Live Law*, 21 September 2021) <<https://www.livelaw.in/top-stories/gig-workers-approach-supreme-court-for-social-security-zomato-ola-uber-swiggy-182107?>> accessed 28 January 2022

doing in their respective domains. We have to get a true picture of what is the condition where the majority of women are employed.

During the COVID-19-induced lockdown, the markets and economy of the world were hit drastically. This came down heavily on the people who were already employed in precarious jobs. International Labour Organization in its report titled “Building Forward Fairer: Women’s Rights to Work and at Work at the Core of the COVID-19 Recovery” suggests that women getting employed in 2021 will be 1.3 crores less than that in 2019, whereas men will close this void.²⁶

There are also many unproven theories that are supported and accepted by the public at large, some of them include “women are under-confident” or “women are risk-averse”. There are reasons to disapprove of these made-up theories, Women tend to feel under-confident not because of any inherent quality but due to the work environment in which they work. It is said that they are subject to more scrutiny than their male counterparts.²⁷ Also, the same research found that there is no evidence on hand to suggest that women are less likely to take risks. These fabricated assumptions are majorly responsible for the reluctance of an employer to hire a female employee.

- There have to be awareness campaigns around the globe to dissipate these mindless theories.
- There is also a dire need to encourage female entrepreneurs to come ahead and set up enterprises.
- The legislature has to formulate policies to incentivize women to come up as entrepreneurs.

It has been observed that women are paid less than men in the new Code on Wages says that there can be no discrimination based on gender at the workplace with respect to remuneration, this essentially means that an employer cannot pay a woman less than her male counterpart, provided they are doing the same work. The Code also says that one-third of the seats in the Central Advisory Board and the State Advisory Board will be

²⁶ ‘Fewer women than men will regain employment during the COVID-19 recovery says ILO’ (*International Labour Organization*, 19 July 2021) <www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_813449/lang--en/index.htm> accessed 27 January 2022

²⁷ Catherine H. Tinsley & Robin J. Ely, ‘What Most People Get Wrong About Men and Women’ (*Harvard Business Review*, May-June 2018) <<https://hbr.org/2018/05/what-most-people-get-wrong-about-men-and-women>> accessed 30 January 2022

specifically for women.²⁸ The Central Board may advise the Central government on the issues related to (but not limited to) minimum wages and increasing employment of women. The State Board would give its advice to the State government in matters related to (but not limited to) the fixation of minimum wages and increasing employment for women.

The working conditions code says that any establishment employing ten or more people shall provide distinct bathing rooms and locker rooms for male, transgender, and female employees²⁹. It also says that women can be employed for all types of work,³⁰ meaning that the employer cannot say that “this work is not for women”, also it says that even if the government is of the view that particular employment is hazardous for women, the government may necessitate the employer to make adequate changes for the safety of women before the employment,³¹ the important thing to note is that the government is not asking women to not work at hazardous places but instead requiring the employer to provide a satisfactorily safe environment to work in. This Code also prohibits the employment of pregnant women in dangerous work.

The Code on Social Security says that no employer can knowingly employ a woman, for six weeks after her delivery, miscarriage, or medical termination of pregnancy.³² The Code also asks the employer to affix an abstract and rules relating to maternity benefits at a conspicuous place in the establishment.³³

These codes are undoubtedly on the right path, but they are not enough. This problem cannot be solved just by making laws, also the laws are still incomplete. The government must set up a specialized committee consisting of people from different domains to deliberate and suggest tangible steps to increase the participation of women in furthering the economy, the committee must be given a specific date to come up with all the recommendations and the date has to be adhered to. A country with more than 1.3 billion people must not suffer just because some select people cannot prepare a report before the

²⁸ Code on Wages 2019, ss 42(2) and 42(7)

²⁹ Megha Chandra, ‘Explained: What India’s New Labour Codes Mean for Women And Persons With Disabilities’ (*Un Gender*, 3 November 2020) <<https://www.ungender.in/india-new-labour-codes-for-women-explained/>> accessed 30 January 2022

³⁰ Occupational Safety, Health and Working Condition Code 2020, s 43

³¹ Occupational Safety, Health and Working Condition Code 2020, s 44

³² Code on Social Security 2020, s 59

³³ Code on Social Security 2020, s 71

specified deadline. This will be aggravating the vulnerability of women. It would be appreciated if the government comes up with very strict guidelines for the committee with respect to deadlines and submissions.

5. Harassment at Workplace: Why does the Problem Persists?

The government in past has tried to curb violence/sexual harassment at the workplace but it looks like an unsuccessful attempt. Let's not call it an incomplete or partially successful attempt. One might wonder, what is the difference between sexual harassment at the workplace and elsewhere. (Caveat: This does not, in no manner whatsoever, allude that those other harassments are not despicable or something, neither it is intended to say that women who don't work are less independent sexual or any kind of harassment is disgusting, hateful, condemnable, and deplorable, these acts must be dealt by legally prosecuting the culprits.)

What makes this heinous crime in the workplace loathsome is the fact that it affects working women in numerous ways. Sometimes a woman has to leave her work because of these disturbances. Women who choose to continue have to bear this disgusting act. Does the question arise that is there a law in place? If yes, then why don't women just approach the concerned authority and get the issue sorted?

The answer to the first question is in the affirmative, in India, we have the Sexual Harassment Act 2013 which provides protection and redressal against sexual harassment at the workplace. This particular Act defines 'sexual harassment' under five forms which are physical contact, demand for any sexual favour, showing pornography, any unwelcome physical or non-verbal communication, and making sexually coloured remarks. This Act also mandates that an employer who is employing more than 10 has to establish an Internal Complaints Committee (ICC).³⁴ If there are less than ten employees then, the concerned District Officer shall set up a Local Complaints Committee (LCC).

These provisions might look very effective but in real life, they are unable to bring reform, the biggest problem is that the government has no data on sexual harassment at the workplace, one might wonder how the government framed law without streamlined data

³⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 4 and 5

on this issue. Also, the majority of women are excluded from the purview of this legislation as it does not extend to the informal sector, in which around 90% of women work.³⁵

The root cause of the problem is that the legislation in place is unable to meet its objective, in an RTI request by Martha Foundation, it was found that out of 655 districts, 29 percent of them replied that they have an LCC in their district, 15 percent of the total district said they have not yet established LCC and 56 percent of the total districts did not reply.³⁶ There has to be a transparent system, where the data has to be published, data of how many complains were registered and how many were adjudicated, these publications shall also not reveal the identity of the victim or the accused.

A committee must be set up to look into the loopholes of the current legislation and provide effective steps to deal with the same, it is imperative for the government to work for the betterment of women, not just by affirmative actions (reservation) but by making them self-reliant and free from fear of any mishap at work. This issue is very grave and requires urgent action from the government.

6. Conclusion

There is indeed a dire need to reform the labour laws of India, although the new labour codes are in the right direction, the work is not yet completed. The labour codes solve the problem of plenty but there is still so much more to be achieved. The gig economy is also very crucial for the betterment of the Indian economy, it will be interesting to see how the government will proceed in this direction.

India being a land of the largest youth population has the implicit responsibility to be in the vanguard of labour reforms throughout the world. India has to adopt many progressive reforms happening elsewhere. It has to not only move ahead but also learn from the past. Women are also participating with vigour and enthusiasm in the economy, several women are taking up the responsibility of their families and are fulfilling it. The government also

³⁵ Shalini Singh 'In India's informal economy, crores of women face gender bias and insecurity' (*Scroll*, 5 April 2021) <<https://scroll.in/article/990984/in-indias-informal-economy-crores-of-women-face-gender-bias-and-insecurity>> accessed 30 January 2022

³⁶ Anoo Bhuyan & Shreya Khaitan, '8 years on, poor compliance with sexual harassment law at workplace' (*Business Standard*, 30 May 2021) <https://www.business-standard.com/article/current-affairs/8-years-on-poor-compliance-with-sexual-harassment-law-at-workplace-121022300195_1.html#:~:text=Crime%20records%20data%20on%20sexual%20harassment&text=But%20women%20can%20separately%20file.from%2057%20cases%20in%202014> accessed 30 January 2022

has to work to increase the participation of women in the economy and make women working outside it a 'norm' rather than an 'exception.'

India stands at a crossroads, where it does not matter which road is more or less travelled. The crucial point would be to bring reforms in the labour laws to deal with the novel challenges of the 21st century.