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# Industrial Relations Code, 2020: The Dawn of the Reformation

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## ABSTRACT

*India is a country with huge population and the need to earn livelihood is of paramount importance to cater the essential needs of the family. Amidst the pandemic and otherwise also, several instances have been reported of unfair trade practices that encroaches the right of the employers, employees and the workers. In order to curb these unfair practices, the Indian government has made constant efforts to implement major legislative reforms. One of the recent and major labour law reform involves consolidation of three critical industrial relation legislation into one: The Industrial Relations Code, 2020. The main aim of the code is to strike a balance between the demands of the workforce and providing freedom of business to the employers to conduct their business efficiently. The legislation is an attempt on the part of the Central government to bestow benefits to the working population of both organized and unorganized sectors. With the current situation in the country, it is imperative to provide strong support to the employer to accelerate the business effectively and also safeguard the dignity of the labours. The manuscript analyses the significance of the code, various important provisions and the reaction of the general public to this legislative reform.*

**Keywords:** *retrenchment, negotiating unions, re-skilling funds, strikes and lockouts, fixed term employment.*

## I. INTRODUCTION

In the year 2002 the Second Indian National Labour Commission<sup>3</sup> recommended consolidation of existing 40<sup>4</sup> central labour laws, some of which predate Indian independence, into 4 to 5 broad categories namely, (i)Industrial Relations, (ii)Welfare and Working Conditions, (iii)Social Security, (iv)Wages, and (v)Safety to suit the contemporary requirements and

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<sup>3</sup>Report of the 2nd National Commission on Labour, Ministry of Labour and Employment, 2002, <https://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.

<sup>4</sup>List of Central Labour Laws Under the Ministry of Labour and Employment, Ministry of Labour and Employment, [https://labour.gov.in/sites/default/files/Central%20Labour%20Acts\\_0.pdf](https://labour.gov.in/sites/default/files/Central%20Labour%20Acts_0.pdf).

remove all the inconsistencies regarding several aspects. Acting upon the recommendation, the Centre introduced three bills in the Parliament on 28th November, 2019<sup>5</sup> namely, Industrial Relations Code, 2019, Social Security Code Bill, Occupational Safety, Health and Working Conditions Code Bill which were referred to the standing committee for examination. The committee submitted its report three months after such intimation and proposed 233 recommendations out of which 174 have been incorporated in the bills<sup>6</sup>.

Industrial Relations Code, 2020 was introduced in Lok Sabha on 19<sup>th</sup> September 2020 vide Bill No. 120 of 2020. It seeks to amalgamate, amend, simplify and rationalize the provisions of the three existing central labor laws: The Industrial dispute Act, 1947, Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946. The Industrial Relations Code 2020 is the third Code which has been framed in the series of four other labor laws, the other being Social Security Code, Industrial Safety and Welfare Code and Code on Wages. The proposed legislation provides for a broader framework to protect the rights of the employees to from the unjust practices rampant in the organization due to trade unions and also provides provisions regarding investigation and settlement of industrial disputes along with promoting ease of business by achieving industrial peace, harmony and cordial relationship between the employers and workers. The code has been divided into 14 chapters and 104 sections.

## II. SALIENT FEATURES OF THE CODE

The key takeaways from the Industrial Relations Code, 2020 are as follows:

- The code defines the expression "workers" to include the individuals in supervisory capacity getting wages up to eighteen thousand rupees per month or an amount as may be notified by the central government from time to time.
- The definition of industry has been revised which substantially adopts the existing framework of triple test laid down by the apex Court in *Bangalore Water Supply and Sewerage Board v. AS Rajappa*<sup>7</sup>, in its interpretation of the definition of "industry", however the Code excludes the "institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service".

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<sup>5</sup>Standing Committee On Labour, Ministry of Labour and Employment the Industrial Relations Code, 2019 [http://164.100.47.193/lssccommittee/Labour/17\\_Labour\\_8.pdf](http://164.100.47.193/lssccommittee/Labour/17_Labour_8.pdf).

<sup>6</sup>Yogiam Seth Sharma, *Govt introduces three crucial Bills on labour laws in Lok Sabha amid Congress' opposition*, THE ECONOMIC TIMES, (Sep 22, 2020, 01:45 PM), [https://m.economictimes.com/news/economy/policy/govt-introduces-three-crucial-bills-on-labour-laws-in-lok-sabha-amid-congress-opposition/amp\\_articles/78203977.cms?s=08](https://m.economictimes.com/news/economy/policy/govt-introduces-three-crucial-bills-on-labour-laws-in-lok-sabha-amid-congress-opposition/amp_articles/78203977.cms?s=08).

<sup>7</sup>*Bangalore Water Supply and Sewerage Board v. A. Rajappa*, (1978) 2 SCC 213.

- The Code promotes fixed-term employment across all working sectors with an objective that the employee gets all the benefits like that of a permanent worker (including gratuity, provident funds, medical benefits amongst various others). It also clarifies that the individual appointed for a fixed period on a written contract will be entitled to benefits available to permanent workers performing similar nature work except for notice of notice period after expiry of fixed period, and retrenchment compensation.
- Under the code, seven or more members of a trade union can apply for its registration and all the trade unions that have a membership of at least 10 % of the workers or 100 workers, whichever is less, will be registered.
- Section 14 of the code also provides for a negotiation union in an industrial establishment, having registered trade unions, for the purpose of negotiating in case of dispute relating to members of trade union or disputes with the employers. The incorporation of negotiation union may facilitate more effective collective bargaining. The code specifically provides in case of multiple trade unions, the trade union with support of at least 51% of the workers of that establishment will be recognized as negotiating union.
- The code lays down that any person who commits unfair labor practices listed in a schedule to the Code (including restricting workers from forming trade unions, coercing workers to join trade unions, destroying employer's property, etc.) is punishable with a fine between 10 thousand rupees and 2 lakh rupees.
- The definition of strike has been expanded to include the concreted casual leave within its ambit and section 62 of the code, provides for serving a prior notice of fourteen days for a strike and a lockout to all industries.
- It provides for setting up of grievance committee where twenty or more workers are employed in an industrial establishment. There shall be adequate representation of the women workers therein in the proportion of the women workers to the total workers employed in that particular establishment.
- The Code makes it necessary for all the industrial establishments with 300 or more workers to prepare standing orders on certain matters enlisted in First and Second schedule of the Code, which includes:
  1. Classification of workers.
  2. Grievance redressal mechanisms for workers.
  3. Suspension for misconduct.

4. Termination of employment.
  5. Manner of informing workers about hours of work, paydays, holidays and wage rates.
- Till standing orders prepared by the employer are certified by the Central government, the model standing orders shall be deemed to have been adopted by such establishment.
  - Provisions related to lay-off and retrenchment (it means termination of services of a worker for reasons other than disciplinary actions) are described as follows:
    1. The worker employed in non-seasonal industrial establishments with 50 to 300 workers and in non-seasonal industrial establishment with at least 300 workers must be paid 50 % of basic wages and dearness allowances in case he has been laid off and the employer should give one month's notice or wages for the notice period in case the worker is retrenched off.
    2. It is compulsory for a non-seasonal industrial establishment with at least 300 workers to take prior permission of the central or state government before lay-off, retrenchment, closure. The central or state government may increase this threshold by way of notification.
    3. If an employer seeks to re-employ a person within one year of retrenchment of workers, he must give preference to retrenched workers over others.
  - Section 83 provides for workers re-skilling fund. According to the provision the employer will be required to an amount equal to 15 days wages last drawn by the worker to his account who is retrenched, within 45 days of such retrenchment.
  - Chapter VII provides mechanism for resolution of industrial disputes. As per sec. 44 now the Industrial tribunal will consist of two members out of whom one shall be judicial member and the other will be administrative member. Sec. 47 provides that it will adjudicate the disputes as bench. Till now it has been only one-member tribunal. The decision will be taken by consensus. In case of conflict, the point will be referred to the appropriate government, on which the government will then appoint a judicial member of other tribunal to hear the point himself and shall be decided according to majority of decision.
  - Further the code allows for industrial disputes related to terms of employment, non-employment and dismissal, retrenchment, or termination of workers to be voluntarily

referred to arbitration by the employer and workers. However, there has to be a written agreement between the employer and the worker to go into the process of arbitration.

- The code also suggests that in case the industrial dispute involves questions of national importance, the central or state government may appoint conciliation officers to mediate, investigate and hold conciliation proceedings to reach a fair and amicable settlement of the dispute. It is the responsibility of the conciliation officer to send a report of settlement to the concerned parties or the appropriate government within 45 days. However, this period may be extended with the approval of conciliation officer. If no settlement is arrived at or the parties are not satisfied with the decision, either of the parties may make an application within 90 days from the date of such receipt to the Industrial Tribunal Constituted under this code.
- The code empowers the appropriate government to exempt any industrial establishment from any of the provisions of the Code in the public interest for the specified period.

### **III. COMPARISON BETWEEN INDUSTRIAL RELATIONS CODE AND SUBSUMED LAWS**

The new Industrial Relations Code, 2020(hereinafter the code) paves way for the much-needed reform in the area of labour law. The archaic set up of labour laws have been replaced by well scrutinized and deliberated laws by the Centre. The major difference between the laws earlier in effect are as follows:

1. Section 2(p) of the code defines the term "industry" which was earlier defined under Industrial Disputes Act, 1947 under Section 2(j). Definition under the code expressly excludes charitable and philanthropic institutions including educational institutions which are engaged wholly or substantially for non-profit motive, even though established by big business empire engaging numerous workers, from its ambit. Educational institutions which are established for profit motive can be included under the scope of industry although the term 'educational institution' does not find a mention under the new code. Apart from this, 'domestic services' have also been expressly excluded from the definition of industry under the code on the reasoning that it will be covered under unorganized sector and moreover, compliance would become difficult as every household will be covered under the ambit of labour laws but the same does not exclude domestic workers provided by manpower agencies like electrician, plumber, security guards, etc. However, Section 2(p)(iv) leaves an open-ended provision which empowers the government to exempt any other "extraordinary" thing from the purview of industry for public or national interest in case of emergency.

2. The code goes on to define "industrial dispute" under Section 2(q) which was defined under Section 2(k) of Industrial Disputes Act, 1947. The definition under the code has been expanded to include any dispute which arise out of discharge, dismissal, retrenchment or termination of any worker.<sup>8</sup>
3. Section 2(o) of the code describes "fixed term employment"(hereinafter FTE) as any person employed on the basis of written contract of employment for a fixed period. The provision is included to foster the employer- employee relation and to strike a balance between the rights of an employer as well as the employee. The provision was earlier added to Industrial Employment (Standing Orders) Act vide notification dated 16th March 2018<sup>9</sup> as another category of worker. Although, FTE and contract employment, at first, may not be differentiated but FTE is included as a separate category to provide flexibility to the employer to hire workers for a fixed term and on the other hand provide such workers equal pay and benefits as are availed by permanent workers. However, no minimum or maximum term has been mentioned in the provision as, according to the ministry, would defeat the purpose of FTE. Therefore, as per the requirement of the employer FTE worker could be engaged for however long the employer wishes and it is on this reason it is speculated that it might promote 'hire and fire' policy.
4. The code has expanded the ambit of "employer" by including 'contractor' and 'legal representative of a deceased employer'. The initial bill which was presented before the Parliament in 2019 did not include the term 'worker' along with employee after 'one or more employee' in the provision and the same was questioned by the Committee<sup>10</sup> as the two terms were separately defined under the code. After the recommendation of the committee to include the term 'workers' in the definition the same was incorporated in the Code.
5. The code introduces a new feature of "negotiation unions or negotiating councils" under Section 14 of the code. The employer can basically recognize a trade union as a negotiator between worker and employer. Where, in an industrial establishment exists only one registered trade union then it will be recognized by the employer as the sole negotiation union for workers but in case of more than one registered trade unions then a trade union which gets the support of at least 51% of the workers will be recognized

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<sup>8</sup>Industrial Relations Code, 2020, [https://www.prsindia.org/sites/default/files/bill\\_files/Industrial%20Relations%20Code%2C%202020.pdf](https://www.prsindia.org/sites/default/files/bill_files/Industrial%20Relations%20Code%2C%202020.pdf)

<sup>9</sup>Standing Committee On Labour, Ministry of Labour and Employment the Industrial Relations Code, 2019 [http://164.100.47.193/lssccommittee/Labour/17\\_Labour\\_8.pdf](http://164.100.47.193/lssccommittee/Labour/17_Labour_8.pdf).

<sup>10</sup>*Id.*

as sole negotiating union for workers. Difference between negotiating council and union, as stated by the Ministry, is that negotiating union would be a trade union which acquires 51% support or more whereas if any trade union falls below this 51% mark will be considered a negotiating council which will be formed with representatives of the union having support of 20% of the total workers on muster roll.

6. The code expands the scope of "strikes" under Section 2(zk) to include 'casual leave' by more than 50% of workers of the establishment on a given day.
7. Chapter IV of the code deals with "Standing Orders" which increases the threshold of 100 workers to 300 workers to make the industrial establishment comply with the rules of standing orders under Section 28(1). Now only those industrial establishments have to frame the conditions of employment and rules of conduct of workmen in which workers are more than 300. Government permission required before retrenchment where establishment exceeds 100 workers under Industrial Disputes Act, 1947 is now raised to 300 workers which again makes the hire and fire of workers easier at the hand of employers. Albeit, the provision works in favour of the corporate world and promotes government's 'ease of doing business' policy but probably at the cost of security of desperate workers.
8. "Strikes and lockouts" covered under Chapter VIII, section 62(a) and 62 (b) of the Code lays down the that in all industrial establishments, workers cannot go on a strike and lockout without serving "prior notice of 2 weeks" the period of strike availed through this notice is 60 days.<sup>11</sup> The Industrial Relations Code, 2020 provides an edge to the employers by expanding the definition of strike to include casual leaves taken by the workers which will be penalized if the conditions are not fulfilled. It considers mass left as a strike if the percentage is about 50% or above<sup>12</sup>. The code imposes a fine of rupees 10,000 or imprisonment of one month if the procedure mentioned in the code is not followed while organizing strike. Under this code, it is obligatory for the works to provide information to the conciliation officer before going on a strike<sup>13</sup> and during the conciliation process strike and lockout is not allowed. The prohibition period on strike and lockout can be extended beyond the limit of 60 days if the issues are not resolved during conciliation and either of the parties takes the matter to the tribunal. Similar provisions under Industrial Disputes Act, 1947 which were applicable only to public

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<sup>11</sup> The Industrial Relation Code LS Bills (2019) 364, cl 62.

<sup>12</sup> *Id.* cl 2 (zf).

<sup>13</sup> *Id.* cl 58.



utility services (like railways and airlines, etc) has been extended to non-public utilities as well under the code. The report submitted by National Labor Commission states that the importance of applicability of such provision on public utility services as these services have an impact on majority of the population. However, the application of these provisions on all industrial establishment impacts the ability of workers to strike which sounds beneficial for the employer or the industrialists.

9. Chapter VI lays down the provision related to voluntary reference of disputes to Arbitration. Section 42 permits to refer the industrial disputes related to terms of employment, dismissal, retrenchment, or termination of workers to be resolved through arbitration. There has to be written agreement amongst the employee and employer specifying the person or persons to be arbitrator or arbitrators and a copy of such agreement shall be forwarded to appropriate government and the conciliation officer. Section 42 (8) clearly specifies that the such arbitrations will be governed by this Code itself and nothing in the Arbitration and Conciliation Act, 1996, shall apply to arbitrations under this section.
10. Under Chapter VII which provides mechanism for resolution of industrial disputes multiple adjudicating bodies like the Court of inquiry, Board of Conciliation and Labor Courts have been replaced by Industrial Tribunals. According to section 44 and 47, Industrial Tribunal shall consist of a Judicial member and Administrative member who will adjudicate the matter as a bench, instead of only Judicial member who presently presides the Tribunal. On the other hand section 46 of the code has removed the reference system for adjudication of industrial disputes, except the reference to the National Industrial Tribunal for adjudication. The code also suggests that the Central government may by notification, constitute tribunals for adjudication of industrial disputes which involves question of national importance. The code has introduced a new provision (section 53) that restricts the conciliation officer to hold a proceeding relating to industrial dispute after 2 years from the date on which the industrial dispute arose.

#### **IV. SECURES THE EMPLOYER OR THE EMPLOYEE?**

While the government claims that The Industrial Relation Code, is a part of wider efforts of the government to simplify the existing complex and overlapping labor laws which will be beneficial for the dynamic business environment, unions call the related bill "anti-worker" as

the code puts the employer on an edge by making hiring and firing an easier process.<sup>14</sup> The argument of the unions is based on the reasoning that the code does not provide safeguards for workers making it harder for them to negotiate. Despite such formidable credentials, the grounds on which the bill is being opposed are numerous. Some critics state that the uncertain nature of the provisions related to retrenchment and strikes would encourage the employers to exercise severe discretion, which will be contrary to the interest of the workers. The lack of clarity in provisions will also make the implementation process more difficult for the central and the State government. The code is confused, unrealistic, empirically ungrounded and most woefully lacks a perspective, says Mr. K.R Shyam Sundar, labor economist.<sup>15</sup> According to him, the code is a poor balancing act and several clauses are prone to misuse. Amarjeet Kaur, general secretary of all India Trade Union Congress, believes that "the Industrial relation Code, is pushing us back to the British era", as the Code aims to suppress and destroy trade unions by attacking process of collective bargaining and also imposing restrictions on the right to strike<sup>16</sup>. While there has been strong opposition of the code, it has been widely welcomed by Corporate India as the broad vision of the code is to accelerate economic activity without adversely affecting the interests of the workers. Another promising feature is that the code aims to promote the "ease of doing business" by codifying several central and state labor laws which will bring uniformity across various states in India. The provision mandating prior notice before going on a strike is not a drawback but is an opportunity that the industrial establishments will make an attempt to resolve the grievance before going a on a strike.

## V. CONCLUSION

Consolidation and reformation in the field of labour law was long awaited by our country and most importantly by the labour sector which roughly comprises of 50 crore workforces.<sup>17</sup> Amalgamation of 40 inconsistent and ambiguous centre labour laws into 4 comprehensible statutes reduces the complexity and equivocacy to a great extent. It aims to strike a balance between the basic needs of workers and providing freedom to the industrial establishments to function at ease and not compromise in their business operations because of stern laws. The code hugely benefits workers in unorganized sector as now seasonal workers will also be

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<sup>14</sup> Labor codes passed are anti-workers, says trade unions, (2020), <https://www.thehindu.com/news/national/labour-codes-anti-worker-say-trade-unions/article32680053.ece#>.

<sup>15</sup> Industrial relations code: A poor balancing act, (2019), <https://www.financialexpress.com/opinion/industrial-relations-code-a-poor-balancing-act/1793548/>.

<sup>16</sup> Good bad and ugly of industrial relations code, (20220), <https://www.businesstoday.in/current/economy-politics/good-bad-and-ugly-of-industrial-relations-code/story/391272.html>.

<sup>17</sup> Labour Force, total- India, The World Bank, <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=IN>

employed under a contract by which they shall be able to avail the same benefits which are enjoyed by regular workers; hence, equal treatment can be expected from the employers. Introduction of new appreciable concepts like negotiating unions or councils, grievance redressal committee and skill training funds also promises with its inception a suitable working environment for workers which looks-out for them. Apart from the positive inferences, a few provisions have potential nuisances like strike, lock-outs and retrenchment which has the ability to curtail the right of workers to or provisions which are albeit well-liked by the industrial establishments are likely to go against workers. However, the true impact of the labour laws can only be determined through the years by witnessing its proper implementation but the groundwork has been laid by introducing refined laws.

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