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The Industrial Relations Code, 2020: A Critique

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ABSTRACT

The Ministry of Labour and Employment has introduced many labour reforms. Among them, one of the labour reforms is to consolidate and amend the 29 labour laws into 4 codes. Out of the 29 existing labour laws, The Industrial Relations Code 2020 replaces the 3 existing laws, i.e., The Trade Unions Act, 1926; The Industrial Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947. This code also introduced new provisions. The Central Government decided to ascertain the status of labour laws whether they are really beneficial to workers or not and whether any labour law is preventing them from making any progress. This paper makes a comprehensive analysis of the Industrial Relations Code 2020 vis-à-vis the earlier laws and an attempt has been made to critically analyse the various provisions of the code and their implications on labour.

Keywords: Labour, Industrial Relation, Industrial Dispute, Worker.

I. INTRODUCTION

In India, the subject matter of labour falls under the concurrent list of the Constitution which allows both the Centre and the State to make laws on it.² The Government of India felt that the existing set of labour laws were unsatisfactory and therefore constituted the National Commission on Labour to give its report and suggestion. In order to bring labour reforms, Government of India constituted the Second National Commission on Labour under the Chairmanship of Hon'ble Shri Ravindra Varma on 15.10.1999 and submitted its report in the year 2002. The Commission was given a two-point terms of reference (i) to suggest rationalization of existing laws relating to labour in the organized sector; and (ii) to suggest 'umbrella' legislation for ensuring a minimum level of protection to the workers in the unorganized sector. The commission also said that there was multiplicity of Labour Laws in India and therefore, recommended that at the Central level multiple Labour Laws should be

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² Entry No 55- Regulation of labour and safety in mines and oil fields; Entry No 22- Trade Unions; industrial and labour disputes; Entry No. 61-Industrial disputes concerning Union employees; Entry No 23- Social Security and insurance, employment and unemployment; Entry No 65- Union agencies and institutions for "Vocational --- Training..."; Entry No 24 -Welfare of labour including conditions of work, provident funds, employers' invalidity, old age pension and maturity.

codified in 4 or 5 Labour Codes.³ Based on these recommendations, 29 labour laws were codified into 4 codes. They are

- 1) The Code on Wages, 2019.
- 2) The Industrial Relations Code, 2020.
- 3) The Code on Social Security, 2020.
- 4) Occupational Safety, Health and Working Conditions Code, 2020.

The Industrial Relations Code, 2020 (hereinafter referred to as IR code, 2020) is one of the four major codes that was passed by both the Houses of Parliament and received the assent by the President on 28th September 2020. However, these codes were yet to be implemented.

II. SALIENT FEATURES OF THE IR CODE, 2020

The Salient features of the Industrial Relations Code are as follows:

- The IR code 2020 consists of 104 sections divided into 14 chapters and also has 3 schedules.
- The object of the Code is to consolidate and amend the laws relating to Trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto.
- The Code introduces the term “**Industrial Relations**” in the heading with the intent to provide a broader framework for protecting the rights of workers, minimize frictions between the employers and workers, redress and settle the differences.
- The Code has bi-partite forums. They are Works committee and Grievance Redressal Committee. Grievance Redressal Committee has become mandate under the IR Code 2020.
- The Code provides for a recognition of negotiation union or negotiating council in an industrial establishment. The employer is required to recognize such trade union as the negotiating union of the workers. It has become mandatory.
- The Code defines an industrial establishment as defined under the Payment of Wages Act, 1936. It says that all industrial establishments with at least 300 workers must prepare standing orders as per the model standing orders prepared by the Central

³³ https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf (visited on September 7, 2023).t

Government, on classification of workers, manners of informing workers about hours of work, holidays, paydays and rates of wages, termination of employment, suspension for misconduct, etc.

- The Code redefines the term “Strike” and includes the concerted casual leave on a given day by fifty percent or more workers employed in an industry.
- The Code prohibits strikes and lock-outs in all industrial establishments without giving notice of 14 days.
- The Code says that an employer who fires an employee must set up a "reskilling fund" to help the employee learn new skills. The fund shall be utilised by crediting 15 days wages last drawn by the workers to his account who is retrenched within 45 days of such retrenchment.
- The penalty provisions in the Code have been made more stringent such as contravention of provisions under lay-off, retrenchment, closure by the establishment attracts a fine of Rs. 1 Lakh to 10 Lakhs for the first offense, and in the case of subsequent repeated offense the fine shall be of Rs. 5 Lakhs to 20 Lakhs and/or imprisonment up to 6 months
- The appropriate government may exempt any new industrial establishment or class of establishments from the provisions of the Code in public interest.

III. MAJOR CHANGES BROUGHT UNDER THE IR CODE 2020

(A) Definitions

New definitions of employee, fixed term employment has been introduced. Some of the existing definitions have been modified.

a. Employer

Section 2(m) of the IR Code 2020 provides for a wider definition of the term 'employer' when compared to section 2(g) of the Industrial Disputes Act, 1947 (hereinafter called as ID Act, 1947). The new Code includes within its ambit occupier of the factory, factory manager, contractor and legal representative of the deceased employer.

This new provision will affect the rights of the workers employed through intermediary contractors as it would be difficult for such workers to press claims against the principal employer.

b. Worker

The term “workman” defined under Section 2(s) of the ID Act, 1947 has been replaced by the

term “*worker*” under Section 2(zx) of the IR Code 2020. The term “*worker*” under the IR Code, 2020 excludes an apprentice but includes working Journalists⁴ and Sales Promotion Employees⁵. Persons employed in an industry primarily in a managerial or administrative capacity stands excluded from the ambit of the term 'worker.' Similarly, persons employed in a supervisory capacity drawing wages exceeding Rs. 18,000/- per month or any other amount notified by the central Government also stand excluded from the scope of the definition under section 2(zr) of the new Code. The scope of the term “worker” is therefore narrowed.

c. Employee

The ID Act, 1947 has not defined the term “Employee”. However, the IR Code has defined the term “*Employee*”.

“*Employee*” means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed by an industrial establishment to do any skilled, semi-skilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.⁶

The usage of both the terms ‘*employee*’ and ‘*worker*’ in the Code without any explanation or clarity makes the situation more complex rather than simplifying the laws which is the primary purpose of this Code. There is uncertainty about the rights conferred on the persons who fall within the definition of ‘*employee*’ but do not fall within the ambit of the term ‘*worker*’, which leads to more confusion in the minds of the people.

For instance, the definition of the term ‘*industrial dispute*’ under section 2(q) of the Code refers to ‘*worker*’ and not ‘*employee*’ which implies that only workers as defined under Section 2(zr) of the Code will have the right to access the mechanisms for resolution of industrial disputes and the ‘*employee*’ shall not have such a right. Whereas, Section 91 of the Code states that any ‘*employee*’ may make a complaint to the concerned authority if his employer prejudicially alters his conditions during the pendency of an industrial dispute, despite the term ‘*employee*’ being outside the scope of the definition of ‘*industrial dispute*’ under section 2(q) of the Code. Thus, the term ‘*worker*’ and ‘*employee*’ are confusing and self-contradictory⁷.

⁴ Section 2(f) of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

⁵ Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976

⁶ Section 2(l) of the IR Code 2020.

⁷ "Critical Analysis of Industrial Relations Code, 2020", International Journal of Emerging Technologies and Innovative Research (www.jetir.org), ISSN:2349-5162, Vol.7, Issue 12, page no.991-999, December-2020,

d. Fixed term Employment

The ID Act, 1947 does not contain the provision “*Fixed term employment*”. Employers often enter into the contract for a short term and was not regulated. To overcome this situation the IR Code, 2020 has introduced the term “*Fixed term employment*”. It means the engagement of a worker on the basis of a written contract of employment for a fixed period⁸.

However, the Code does not provide for the term for which a worker may be engaged as a fixed term employee and also does not specify the nature of work for which workers can be engaged on a fixed term basis. This implies that a fixed term employee can be engaged for any kind of work any number of times. Further, Section 2(zh) of the Code which defines the term ‘*retrenchment*’ excludes termination of service of a worker engaged on a fixed term employment. As a result, such a worker would not be entitled to any retrenchment compensation upon termination from service⁹.

e. Industry

The Code redefines the term “*industry*” and gives a more elaborate definition compared to the previous Industrial Disputes Act, 1947. Section 2(p) of the IR Code defines the term ‘*industry*’ to mean ‘*any systematic activity carried on by co-operation between an employer and worker for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes, whether or not any capital has been invested for the purpose of carrying on such activity or any activity is carried on for any gain*’. However, section 2(p) does not include within its ambit institutions owned or managed by organizations that are engaged in any charitable, social or philanthropic service or any activity of the appropriate Government related to its sovereign functions or any domestic service or any other activity as may be notified by the Central Government.

f. Strikes

Section 2(zk) of the Code provides for a wider definition of the term ‘*strike*’ when compared to section 2(q) of the Industrial Disputes Act. The new Code includes within its definition ‘*concerted casual leave on a given day by fifty percent or more workers employed in an industry*’.

This implies that the penalties for participation in an illegal strike would be applied even in

Available: <http://www.jetir.org/papers/JETIR304314.pdf>

⁸ Section 2(O) of the IR Code, 2020

⁹ "Critical Analysis of Industrial Relations Code, 2020", International Journal of Emerging Technologies and Innovative Research (www.jetir.org), ISSN:2349-5162, Vol.7, Issue 12, page no.991-999, December-2020, Available :<http://www.jetir.org/papers/JETIR304314.pdf>

cases where majority of workers absent themselves by availing of casual leave.

IV. BI-PARTITE FORUMS

There are two bi-partite forums for the settlement of disputes and grievances.

- a) Works committee (Section 3 of the IR code, 2020) and
- b) Grievance Redressal Committee (Section 4 of the IR Code 2020) (hereinafter called as GRC).

There is no significant change in the Works committee. But there are many significant changes in the GRC under the IR Code, 2020 compared to its predecessor. There are 11 sub-sections under the Code instead of 8.¹⁰ The total number of members of the GRC shall not exceed 10. Earlier it was 6. The aggrieved Worker with individual grievance may file an application before GRC within 1 year from the date of cause of action of such dispute.¹¹ GRC has to conduct its proceedings within 30 days.¹² Decision of the GRC shall be made on the basis of majority view provided more than half of the members representing the workers have agreed otherwise it shall be deemed that no decision could be arrived by the Committee.¹³ Worker can seek an appeal if not satisfied with the decision of the GRC, within 60 days & file an application before the conciliation officer through the Trade Union.¹⁴ A worker can also directly approach Tribunal for adjudication of the dispute after the expiry of 45 days from the date he has made an application to the conciliation officer.¹⁵ The time limit to raise an industrial dispute by an individual worker is now only 2 years.¹⁶

V. TRADE UNION

This is the first code to recognise trade union as a negotiating union. The old Trade Unions Act of 1926 did not feature any mandates with regards to recognition and registration for trade unions and just dealt with a framework on the registration and operation of the registered trade unions.

a) Application for Registration, alteration of name and procedure thereof

There is a significant change on the application for registration, alteration of name and procedure. Electronic application has to be made to the Registrar for the registration of a trade

¹⁰ Section 4(4) of the IR Code, 2020

¹¹ Section 4(5) of the IR Code, 2020

¹² Section 4(6) of the IR Code, 2020

¹³ Section 4(7) of the IR Code, 2020

¹⁴ Section 4(8) of the IR Code, 2020.

¹⁵ Section 4(10) of the IR Code, 2020

¹⁶ Section 4(11) of the IR Code, 2020

union¹⁷ and a declaration has to be made by an affidavit¹⁸. It must be accompanied by the copy of the rules of the trade union¹⁹, the copy of the resolution authorising the applicant to make an application²⁰ and the Resolution regarding agreeing to constitute a federation or a central organization of Trade Unions²¹.

b) Registration of Trade Unions and Cancellation

The Registrar has power to cancel the certificate of registration if obtained by fraud or mistake has been omitted in the IR Code, 2020 which was previously existed in the Trade Union Act, 1926. Cancellation of Trade Union is allowed if the Tribunal orders so²². He has also to record reasons in writing and communicate the same if he cancels the certificate of registration which was not existed before.²³

c) Appeal against non- registration or cancellation of trade union

Tribunal is the only authority to appeal under the Code²⁴. Earlier it was the High Code or the Labour Court or Industrial Tribunal.

d) Recognition of negotiating union or negotiating council

Section 27 of the new Code provides for the recognition of trade union federations as Central and State trade unions by the central and state Government respectively. However, the Code is silent on the criteria or procedure for the grant of such recognition.

Section 14 of the Code provides for the recognition of trade union as a ‘negotiation union’ or a ‘negotiating council’ in an industrial establishment for negotiating with the employer. If there is only one trade union in an industrial establishment, then the employer is required to recognize such trade union as the sole negotiating union of the workers²⁵. If there are multiple trade unions, the trade union having 51% or more workers on the muster roll of that industrial establishment will be recognized as the negotiating union by the employer of that industrial establishment²⁶. If no Trade Union has 51% or more workers as stated above, then the employer shall constitute a negotiating council with the representatives of such registered Trade Unions which has the support of at least 20% of workers on the muster roll of that industrial establishment.²⁷ The

¹⁷ Section 8 (1) of the IR Code, 2020

¹⁸ Section 8(1)(a) of the IR Code, 2020

¹⁹ Section 8(1)(b) of the IR Code, 2020

²⁰ Section 8(1)(c) of the IR Code, 2020

²¹ Section 8(1)(d) of the IR Code, 2020

²² Section 9(6) of the IR Code, 2020

²³ Section 9(7) of the IR Code, 2020

²⁴ Section 10 the IR Code, 2020

²⁵ Section 14(2) of the IR Code, 2020

²⁶ Section 14(3) of the IR Code, 2020

²⁷ Section 14(4) of the IR Code, 2020

recognition of the negotiating council shall be valid for three years from the date of recognition or constitution and it may be extended to 5 years to be mutually decided by the employer and the trade union.²⁸

e) Adjudication of disputes of Trade Unions

It is newly inserted under Section 22 of the IR Code. Only the Tribunal shall have the power to entertain any suit or proceedings in relation to any dispute that arises.

VI. MECHANISMS FOR THE RESOLUTION OF THE INDUSTRIAL DISPUTES

In place of multiple adjudicating bodies like the Court of Inquiry, Boards of Conciliation and Labour Courts under the Industrial Disputes Act, 1947, only Industrial Tribunals have been envisaged as the adjudicating body to decide appeals against the decision of the conciliation officer. With the abolition of labour Courts at the district level, the workers will be denied access to justice owing to the lesser number of Industrial Tribunals in each State.

(i) Industrial Tribunals

Every Industrial Tribunal shall consist of 2 members to be appointed by the Appropriate Government. Out of which one is the Judicial and the other is administrative member²⁹. Earlier it was only one person. The Judicial member shall preside over the Tribunal where the Tribunal consists of one Judicial Member and Administrative Member.³⁰

(ii) National Industrial Tribunal

Instead of National Tribunal under the ID Act, 1947 the Code introduces National Industrial Tribunal to decide questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such disputes³¹. Every National Industrial Tribunal shall consist of 2 members to be appointed by the Central Government. Out of whom one is the Judicial and the other is an administrative member³².

a. Strike and lock-out

The Code provides that a worker cannot go on strikes and lockouts in an Industrial establishment without issuing a notice in advance. Section 62(1) of the Code states that before going on a strike, the workers are to give notice of a minimum of 14 days and a maximum of 60 days to

²⁸ Section 14(6) of the IR Code, 2020

²⁹ Section 44 (2) of the IR Code, 2020

³⁰ Section 44 (8) of the IR Code, 2020

³¹ Section 46 (1) of the IR Code, 2020

³² Section 46 (2) of the IR Code, 2020

the employer. Whereas, under Section 22 under Industrial Disputes Act, 1947, only workers engaged in public utility service are asked to give prior notice to their employer before going on a strike. Such a requirement would make it very difficult for a worker engaged in any industrial establishment to go on a strike even if it is legal and are justified in doing so.

b. Lay-Off, Retrenchment and Closure

The number of workers has been increased from 100 to 300 to seek prior permission of the government before closure, lay-off, or retrenchment to apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently). Also, this threshold can be increased by Appropriate Government through a notification³³.

c. Worker Re-Skilling Fund

The Industrial Disputes Act 1947 does not contain the provision of “*Worker Re-Skilling fund*”. The IR Code 2020 says that an employer who retrenches an employee must set up a “*reskilling fund*” to help the employee learn new skills. The following amounts will go into the fund:

- employer’s contribution which will be an amount equal to 15 days of the laid-off worker’s salary and
- contribution from other sources as may be prescribed by the appropriate Government.

The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account within 45 days of the worker’s termination.

d. Offences and Penalties

The penalties under this Code for different types of violations have been rationalized to be commensurate with the gravity of the violations. For example, Section 86 in the Code provides that an employer who contravenes the provisions of section 78 (prohibition of lay-off), 79 (conditions precedent to retrenchment of workers to which Chapter 10 applies), or 80 (procedure for closing down an undertaking) shall be punishable with fine which shall not be less than ₹1,00,000, which may extend to ₹10,00,000 for the first offence (Section 86(1)). In case of the second and subsequent offences relating to the abovementioned sections, the penalty shall not be less than ₹5,00,000, which may extend to 20,00,000 or with imprisonment which may extend to 6 months.

³³ Section 77 of the IR Code, 2020

- **Composition of Offences**

This is a new provision introduced under section 89 of the IR Code, 2020. The Appropriate Government may appoint a Gazetted Officer to compound the offence on an application of the accused person, any offence punishable under this code not being an offence punishable with imprisonment only, or with imprisonment and also with fine by a notification by paying 50% of the maximum fine provided for such offence punishable with fine only and by paying 75% of the fine amount for offences punishable with imprisonment for a term which is not more than one year or with fine.

VII. CONCLUDING REMARKS

This study critically examines the features of the IR Code 2020. Some features of the IR Code, 2020 harm the interests of the workers. Introducing fixed-term employment, necessitating the recognition of a trade union as a sole negotiating agent, raising thresholds for standing orders and prior approval for lay-offs, retrenchment and closure are bones of critical contention within the Industrial Relations Code, 2020. By drawing the curtains on the right to strike, workers are denied a fundamental right. In summation, the Industrial Relations Code is biased in favour of employers and not geared towards ensuring welfare or guaranteeing wage and income security for workers.
