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LEGISLATIVE COMMENTARY ON THE INDUSTRIAL RELATIONS CODE – 2020

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INTRODUCTION

“Should any political party attempt to abolish social security, unemployment insurance, and eliminate labor laws, you would not hear of that party again in our political history.”⁵

- Dwight D. Eisenhower

*In the two decades after the liberalization of the Indian economy, the issue over whether or not the country's labour laws restrict the mobility of workers has been front and centre. Changes to India's labour laws have been on the table for some time. Employers have long sought for labour law simplification to improve **“ease of doing business.”**⁶In response to this outcry from business leaders, the Indian government is actively pursuing one of the key recommendations of the **“2002 Report of the Second National Commission on Labour”**⁷: the simplification and integration of all labour regulations into a few labour codes.*

*Four labour codes were subsequently drafted and approved by the Indian Parliament in the year 2020. The new set of labour laws known as the **“(1) Industrial Relations Code (2) the Code on Occupational Safety and Working Conditions Code, (3) the Social Security Code, and (4) the Code on Wages”**⁸ replace and modernize a total of 44 older statutes. **“The Industrial Relations Code amended and subsumed the following three labor laws:***

- a) *The Industrial Disputes Act, 1947*
- b) *The Industrial Employment (standing orders) Act, 1946*
- c) *The Trade Unions Act, 1926⁹*

GRASP - EDUCATE - EVOLVE

⁵ Quote by Dwight D. Eisenhower

⁶ *India: the Industrial Relations Code, 2020* by A. Obhan and B. Bhalla

⁷ Report of the Second National Commission on Labour With Emphasis on Rationalization of Labour Laws & Unorganized Labour, 2002 (Thirty Ninth Session of the Indian Labour Conference New Delhi – October 16-18, 2003)

⁸ The Evolution of Labour Law in India : An overview and commentary on Regulatory Objectives and Development, Asian Journal of Law and Society, Volume 1, Issue 02.

⁹ Report of the Second National Commission on Labour With Emphasis on Rationalization of Labour Laws & Unorganized Labour, 2002, (ThirtyNinth Session of the Indian Labour Conference New Delhi – October 16-18, 2003)

SCOPE

Despite the fact that the “**Industrial Relations Code, 2020**”¹⁰ is supposed to be a consolidation of the three major industrial laws by keeping their core aspects the same, there are several important changes that have been made to the code that could have important impacts for employees' rights. However, the new Labour Code has been passed primarily to safeguard industrial institutions at the expense of the working population by streamlining current labour legislation¹¹. The scope of each provision of labour legislation before the code's enactment depended on how its definitions of terms like "industrial worker," "labourer," "employee," and so on were interpreted. The updated definition of "**Industry**"¹² is included in the code. In accordance with the supreme court's ruling, the law defines "industry" as "any business functioning in a connection of employee and employees, working together to fulfil the consumer wants," with the emphasis on "working," rather than "investing" or "profiting."¹³ It has expanded the code's potential recipients. *However, the code continues to exclude organisations whose primary or only activity is philanthropic work.*

IMPORTANCE OF THE CODE

The outbreak of Covid has prompted us to reevaluate the legislative dynamism deficit in India, particularly in the labour sector, which has been stagnant for decades. When it comes to protecting and balancing the employer-employee relationship and facilitating business, the “Industrial Relations Code”¹⁴ is crucial. The labour law loopholes exposed by the migrant crisis caused by the pandemic made the code

all the more significant as a reform to these problems.

ANALYSIS AND INTERPRETATION OF IMPORTANT PROVISIONS

1. TRADE UNIONS (SECTION 27)

- Before the code, trade unions in India were subject to a patchwork of different laws and regulations. Unions are permitted to engage in "**collective bargaining**"¹⁵ under the law. The code fills the void left by the lack of relevant legislation by outlining the numerous requirements and procedures for registering a trade union.
- Any seven or more members can register a union by submitting their names to the union's rules and following the procedures laid out in this law. Because Trade Unions are treated as separate legal entities, they are exempt from the requirements of the "*Societies Registration Act, the Cooperative Societies Act, the Multi-State Cooperative Societies Act, and the Companies Act.*"¹⁶
- An industrial establishment with registered Trade Unions is required to form a negotiating union in order to engage in collective bargaining with the employer in accordance with the "Industrial Relation Code, 2020"¹⁷. There shall be one and only one bargaining representative for employees at any industrial facility where only one trade union is recognised. Every business that has a recognised labour organisation must form a single negotiating union or council to handle all issues in accordance with the IR Code.

2. INDUSTRIAL GRIEVANCE REDRESSAL MECHANISM (SECTION 4) AND INDUSTRIAL TRIBUNAL (SECTION 44)

- In order to create a more effective and representative grievance redressal body, the code revises Section 9C of the "Industrial Disputes Act"¹⁸. There should be a good

¹⁰ Hindustan Aeronautics Ltd. v. Workmen, AIR 1975 SC 1737.

¹¹ Industrial Relations Code, Sc. 2(p).

¹² Sarkar, Amalgamation of Existing Laws or Labour Reform, 54 ECONOMIC AND POLITICAL WEEKLY, 33 (2019).

¹³ Corporation of City of Nagpur v. Its Employees [1960] 2 SCR 942

¹⁴ "Industrial Jurisprudence: A Treatise on the Theory and Practice of Industrial Law with Special Reference to India" by S.R. Samant (1961)

¹⁵ Industrial Relations Code, Sc. 27

¹⁶ Industrial Relations Code, Sc. 4(6)

¹⁷ Industrial Relation Code, 2020

¹⁸ Industrial Disputes Act

number of women on the committee, which has a maximum size of ten members and must have representation from both management and the worker group.

- The Committee will make a decision on any issue brought before it **within 30 days** of receiving the complaint. No longer may an employee appeal to their employer if they are dissatisfied with the outcome of an investigation or a grievance if a conciliation officer is involved.
- The code abolishes labour courts and establishes industrial tribunal for all the settlement of industrial disputes. In case the conciliation fails, the aggrieved can appeal to the industrial tribunal.

3. NEGOTIATING UNION/COUNCIL (SECTION 14)

- There may be more than one trade union at an organisation, but only one may have bargaining rights under the current law. The code departs from its previous requirement of **75% employee** members by lowering it to **51%**. If no labour union represents the necessary 51 percent, the company can choose who sits on the negotiating committee¹⁹. Every labour organisation that represents 20 percent or more of the workforce must have a representation on this council.
- This union/council shall be valid for a period of three years, with the possibility of extension to five years with the permission of the employer.

4. STANDING ORDERS (SECTION 30)

- In order to maintain uniformity in terms and circumstances, businesses must establish standing orders that govern day-to-day operations. Appointment, probation, suspension, etc., policies for top executives are included.
- With the new regulations, businesses with more than **100 employees can increase up to 300** employees. The central or state government, at its exclusive discretion, may

issue an order reducing the employer's responsibility.

5. NOTICE OF CHANGE (SECTION 40)

- Any modifications to the terms and conditions of services for the establishment must be communicated to the employers at least **21 days in advance**, per Section 40 of the Code. The guideline is in line with **"Section 9A of the Act on Industrial Disputes."**²⁰
- However, the new addendum provides that the grievance redressal body may implement the change after deliberating on the matter. Alterations may also be implemented in response to government mandates in other instances.

6. RIGHT TO STRIKE (SECTION 62)

- According to the statute, a **"strike"**²¹ is defined to include a coordinated day of nonwork by fifty percent or more of the workforce in a certain industry. Strikes are a powerful tool of functioning democracies because they involve the interruption of employment alongside coordinated action to get industrial demands enforced.²²
- But this freedom is curtailed by the new code. For future strikes, workers must provide advance warning within **14-60 days**. This extends the previous notice requirement under the Industrial Disputes Act, which formerly applied solely to industries classified as public utilities.

7. LAYOFF AND RETRENCHMENT (SECTION 77)

- When an employee is laid off for reasons other than poor performance, it is called a retrenchment.
- "Layoffs, retrenchments, and closures in industrial companies with more than 300 employees each working day on average in the previous 12 months require prior

²⁰ Industrial Disputes Act, 1947
²¹ Industrial Relation Code, 2020
²² Management of Kairbetta Estate, Kotagiri v. Rajamanickam & Ors 1960 AIR 893, 1960 SCR (3) 371

¹⁹ Industrial Relations Code, Sc. 14(3)

government authorisation.”²³ There was a time when this number averaged 100 people.

- The amount of compensation due, however, has not changed from the prior law's fifteen days each calendar year. In fact, the pay is lower than before because the new definition of "wages"²⁴ does not include housing rent allowance and other commissions.
- Both the minimum number of employees at an establishment and the number of days for which compensation is awarded to workers who lose their jobs may be adjusted by the government as provided for in the code.
- Industrial businesses with less than **50 workers** on an ordinary working day or seasonal industrial establishments are exempt from the layoff and retrenchment regulations under "Industrial Relations Code 2020".

- People who are impacted by layoffs and retrenchments will be safeguarded by the re-skill fund established by the code under retrenchment.
- There has been steady improvement in the conflict resolution process.

NEGATIVE ASPECT

- The government's decision to recognise labour unions is based only on political considerations, without any established procedures or regulations, making the decision-making process opaque and arbitrary. In a similar vein, the government will decide on the scope of subjects for collective bargaining with the negotiating councils, limiting the union's ability to do its job.
- Any time the government is given the authority to change a provision, such authority is unrestrained and may cause the law's intended purpose to be wholly undermined.
- In a significant case, the Supreme Court emphasised the significance of standing orders, pointing out that they might be used as the basis for service contracts²⁵. Now that the barrier has been raised from **100 to 300** workers, industries with less than 300 employees are completely unprotected and at the mercy of their employers. The raised threshold leaves workers below the line at the mercy of the employer in the event of layoffs and other forms of retrenchment.
- Also, the new legislation reduces the amount of compensation that can be paid out to those who have been negatively impacted by downsizing or layoffs.

IMPACT IN THE DEVELOPMENT OF LABOUR JURISPRUDENCE

The new code will have far-reaching effects on the working world. There are benefits and drawbacks to the new laws that will affect the workforce as a whole. While there are some positives, such as the fact that India is making strides to provide a safer and more secure workplace for its employees, the negatives are considerably more severe, as they threaten the freedom and safety of workers, which was one of the main motivations for passing the code.

Two aspects of the effect can be seen:

POSITIVE ASPECT

- The code's applicability to a wider range of workers is the result of new and revised core definitions.
- The definition of "**Industry**" in the code has been expanded to include nearly all establishments. Actually, the code also safeguards temporary workers.

CONCLUSION AND RECOMMENDATIONS

As with the rest of the globe, India's experience of industrialization was not uniform. The Indian workforce shifted from artisans to wage earners as skilled workers flocked to these areas to take advantage of the rising economic prospects.

²³ Industrial Relations Code, Sc. 77

²⁴ Rajasthan State Electricity Board v. Mohanlal [1967] 3 SCR 377

²⁵ Sudhir Chandra Sarkar v Tata Iron and steel company limited, AIR 1984 SC 1064

The Code has several promising features, but it also has significant flaws in its construction and the unrealistic approach it takes to industrial law. As a result, the new labour regulations have produced enough confusion to be construed differently by various industries. **Certain recommendations that can bridge its drawbacks are:-**

- Unchecked and unrestrained discretion shapes arbitrary choices. As a result, provisions that provide the government unrestricted authority to make changes to it must be amended.
- The Code is silent on the pervasive problem of sexual harassment, despite the pressing necessity of addressing it.
- The availability of the right to strike must be expanded.
- The lack of laws on fixed-term contracts and identification of such employees may, once again, lead to the uneducated masses of workers falling under the control of their employers.

Incorporating these and other fixes into the code could fix the problems it currently has. No one can dispute that the new code is friendlier to businesses than the old one. The government of India has been working toward a more robust labour force for quite some time. The government's focus shifted from labour protection to a more inclusive social justice agenda as time went on. The new legislation is being criticised for going against the historical stance of safeguarding workers from businesses, and as a result, reforms are needed.

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