



LABOUR LAW REFORMS: DECODING CODE ON WAGES AND INDUSTRIAL RELATION CODE

By *Mathivadhani.C and Madhumita Christina Jegaraj. A*
From *School of Excellence in Law (SOEL),
The Tamil Nadu Dr. Ambedkar Law
University, Chennai*

Introduction:

Indian labour laws, referring to the laws regulating labour and employment, is interwoven with Indian independence movement with the history of British colonialism. The colonial labour legislation favouring the British employers underwent substantial changes in independent India including fair wage and fair working conditions. The significance of the labour rights and the need to safeguard their interests are enshrined in part III and IV of the constitution. The labour laws enacted were sought to have high degree of protection towards the labours, but the compliance differs as labour law is a concurrent subject. Currently there are nearly 44 central laws and 100 state-level legislations making the industries shackled by socialist-era laws. Numerous labour laws made the compliance quite tough, created confusion, complexity and chaos and was a deterrent to industries and foreign investors.

The NDA government vociferously engaged in labour law reforms as promised by streamlining the existing central laws

regarding labour into four codes: code on wages, industrial relations, social security and occupational safety, health and working conditions. The government claims that this simplification and consolidation of compliances which will promote the ease of doing business and will instigate investor confidence. Among the four codes the two codes regarding the wages and industrial relations are dealt in detail which together subsumes seven existing labour laws. Most of the laws are pre-independent laws, so the codes aim to transform aged and obsolete laws, moving towards more accountable and transparent labour laws.

II) Code on wages, 2019

The code on wages, 2019 one of the four labour laws subsumes and repeals the following four acts relating to wages and bonus: The Payment of Wages Act, 1936, The Minimum Wages Act of 1948, The Payment of Bonus Act of 1965 and The Equal Remuneration Act of 1976. The object of the code as mentioned in the preamble is to “amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto”.

A. Enhanced coverage of the code:

Merits: The code on wages claims to set one’s sight on achieving a way round to all the surmountable obstacles faced by the workers and has been aimed to benefit around 500 million¹ over the country. In India there is a fall in labour share profits, accordingly the wages paid have not increased in proportion

¹ Yogima Sharma, *Parliament Passes Wage Code Bill to Ensure Minimum Wage for Workers*, Economic Times,

<https://economictimes.indiatimes.com/news/economy/policy/rajya-sabha-passes-wage-code-bill/articleshow/70501009.cms>.



to the labour productivity², furthermore one in three workers are not safeguarded by the minimum wage protection³ because of futile enforcement mechanisms. So the need for a progressive code was obligatory for a long time to enhance this situation.

The new code attempts to simplify and untangle the multiplicity of definitions and authorities involved, thereby the extensive definitions (such as for ‘employee’⁴, which now includes individuals appointed in managerial, supervisory and administrative roles and ‘employer’⁵, also refers to contractors making them responsible for paying minimum wages as prescribed) would improve compliance and widen the coverage of previous laws to make them inclusive of the unorganised sector. Forging ahead the code defines ‘establishment’⁶ for the first time. It also obliterated the small catch kept in the previous legislation to get protection, such as the Minimum wages act, 1948 only applied to scheduled employments⁷ and the Payment of wages act, 1936 did not cover workers from informal sectors. So, the code endeavours to cover workers from all sectors including unorganised which includes around 92% roughly⁸ unlike the previous laws. The economic implication of this would increase the consumption expenditure of the country which in turn aggregate GDP growth.

The new code’s arrival in this situation is ideal and can become the saviour of the poor workers. Experts reckon the detrimental effects on the economy and workers losing

their jobs after this COVID-19 pandemic. The increase in unemployment will result in exploitation of labours at very low wages in the informal sectors. So even with the market wages that fall below the minimum wages, the informal sector, which accounts for 500 million people, will now be safeguarded with minimum wages by this new code unlike the previous legislation.

Demerits: As endorsed by the Directive Principles, the new code seeks to cover all employees (around 90% of the workforce) and it will eventually lead to menace of harassment from the labour officials. Removing the concept of scheduled employments, which lists the specific industries protected by minimum wages will lead to repress wages in industries thereby bringing down the wages in all sectors. The minimum wages fixed by the state might be based on indigent workers and the industrial workers having higher wages through the protection of the schedule are affected as it gives no clarity whether the minimum wages will be set at the same level for all industries.

B. National minimum wage:

Provision: Introducing the concept of national minimum wage (National-level floor wages) was broached by various governments in order to efface the imbalance and disparities in income distribution and is ultimately included in the Code of wages, 2019 that the central government would fix a national minimum wage. According to S.9 of

² *Unemployment and decent work deficits to remain high in 2018*, ILO report, 2018.

³ Economic Survey 2018-19, Department of Economic Affairs 2019.

⁴ S.2(k) of the Code on wages, 2019.

⁵ S.2(l) of the Code on wages, 2019

⁶ S.2(m) of the Code on wages, 2019.

⁷ S.2(1A) of the Minimum wages act, 1948.

⁸ *REPORT OF NATIONAL COMMISSION ON LABOUR*, 2018, Ministry of Labour and Employment.



the code the central government will fix the floor wage or it may fix different floor wages for different geographical regions taking into account minimum living standards of a worker, after obtaining the advice of the Central Advisory Board and consult State Governments in such manner as may be prescribed⁹. The minimum rates of wages fixed by the appropriate Government shall not be less than the floor wage and while fixing the minimum wage it shall take into account skill of the workers and arduousness of work¹⁰. If the minimum wage set by the appropriate government is higher than the floor wage, they cannot reduce the minimum wages. The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years¹¹.

Merits: It is prominent that our country suffers a serious wage problem and 45% of regular workers are paid below the minimum wages¹². But with this simple and easily applicable national wage floor which applies to the whole country and all job types are safeguarded by minimum wage security. The code, besides anticipated the government to stipulate to set as few minimum wages as possible unlike the current situation where there are several hundred rates of minimum

wages for diverse industries, zones etc, making it strenuous for the actual beneficiaries to know the wage they deserve. For example, Tamil Nadu has 76 categories of minimum wages, ranging from ₹132 to ₹419. The national floor wage will limit the possibility of different wage rates across states for the same occupation and this uniformity in wages will prevent the complications of economic migration and the corresponding repercussions.

Demerits: However, the code did not specify the methodology or the factors to be taken into account while devising the floor wage and minimum wages, leaving it to the discretion of the government authorities. The expert committee, 2019¹³ recommended that the existing norms i.e. the principles of Indian labour conference (ILC), 1957 and from the Raptakos Brett case, 1992¹⁴ must be upgraded with respect to the changing labour conditions such as the previous three consumption units of a family must be now updated to 3.6 consumption units. The committee after scrutinising the above principles recommended the floor wage to Rs. 375 per day (equal to Rs. 9,750 per month as per July 2018) irrespective of the sector of employment, skill, rural or urban etc. But the new code did not even consider the above

⁹ S. 9(3) of the Code on wages, 2019.

¹⁰ S. 6(6) of the Code on wages, 2019.

¹¹ S. 8(4) of the Code on wages, 2019.

¹² Periodic Labour Force Survey 2017-18, Ministry of Statistics and Programme Implementation.

¹³ *REPORT OF THE EXPERT COMMITTEE ON DETERMINING THE METHODOLOGY FOR FIXING THE NATIONAL MINIMUM WAGE*, Ministry of Labour and Employment, Government of India, 2019.

¹⁴ The Tripartite Committee of the Indian Labour Conference'- 1957 has formulated five norms for the

fixation of 'minimum wage' (i) three consumption units for one earner disregarding earnings of women, children and adolescents; (ii) minimum food requirement based on net intake calories; (iii) clothing requirement at 72 yards per annum for an average working family of four; (iv) house rent corresponding to minimum area provided for under the Government's Industrial Housing Scheme; (v) 20% of total minimum wage for fuel, lighting and other miscellaneous items. These principles were approved by the Supreme Court.



guidelines given by the ILO and Supreme Court, the code sets the floor wage to be Rs. 178 per day and it is only Rs. 2 higher than the previous floor wage (not binding on any states). Such a low floor wage will defeat its very purpose and will help in promoting forced labour¹⁵, minimum wage can only be a potent tool when it is set at an appropriate level.

It was believed to be a 'game changer' to the status quo as far as informal sector workers accounting for 93% of working population contributing to around 60% of GDP rather it will suffer the same fallacies as the previous laws because the existing wage rates were already above the stipulated floor wage and the labour's life will not improve and there won't be any raise in consumption expenditure as estimated. By creating a façade of false promises, the floor wage meant the starvation wages (Rs. 18 per day) denying the right to living wage. The landmark jurisprudence in the 'raptakos' case¹⁶ explained the right to living wages¹⁷ where the new code still continues to push starvation wages.

The Fair Wages Committee¹⁸, insisted that "the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. Accordingly the minimum wage must cover the expenses for education, medical

requirements, etc. Also the directive principles proclaims the right to living wage and conditions of work ensuring a decent standard of life¹⁹. On that account the code should have treated living wage as a fundamental right.

In *U. Unichoyi and Others v. The state of Kerala*²⁰ it was pronounced that the problems of unemployment and poverty crisis in underdeveloped countries should not be used to push the workers to starvation wages. The Supreme Court said that the minimum wage must guarantee not only the sustenance of the employee and his family but also preserve his efficiency as a worker. It is a blunder to calculate minimum wages based on the worker's physical needs and to keep himself above starvation. Woefully the new framework exacerbates this archaic practice and promotes forced labour. It is sad that the code which is expected to enhance the life of workers by providing economic and social justice now exploits them by seeing them as mere factors of production. In India according to ILO report nearly 41% are poorly paid²¹ and India ranks fourth from the bottom in salary satisfaction among the 22 countries of the Asia-Pacific region.

Without setting any methodology and norms it gave it to the hands of administrators (central and state government) on its discretion disregarding the workers' rights to

of life, industrial wage, looking as a whole, has not yet risen higher than the level of minimum wage.

¹⁵ *Sanjit Roy v. State of Rajasthan*, 1983 AIR 328, 1983 SCR (2) 271.

¹⁶ *Workmen Represented By Secretary vs Management Of Reptakos Brett*, 1992 AIR 504, 1991 SCR Supl. (2) 129.

¹⁷ In spite of the promise by the Constitution of a living wage and a 'socialist' framework to enable the working people a decent standard

¹⁸ Fair Wages Committee report, Government of India, Ministry of Labour, in 1949.

¹⁹ Art.43 of the Indian Constitution.

²⁰ *U. Unichoyi and Others v. The state of Kerala*, 1962 AIR 12, 1962 SCR (1). 946.

²¹ *Ibid*, 2.



adequate wages. This might lead to adverse effects such as lobbying to lower wages by the bureaucracy. Also the recommendations of the advisory boards are not binding and the representation of women among the nominated employees in the board has been reduced from 50% to one-third. This move has taken us back dissipating the work spent strengthening the robustness of these bodies.

In spite of the floor wage, the state governments have the power to fix minimum wages as per their specific conditions and requirements in their own states which might lead to a race between them competing to bring in investments by labour cheapening.²² For this the expert committee recommended splitting the country into five regions and having a different regional minimum wage, on the basis of the cost of living. This was not accepted.

Economic implications of minimum wages: The impediments faced in fixing higher minimum wages are hesitation in hiring leading to unemployment and in lower minimum wages, the workers are exploited. These two results leave the economists and policy makers with a paradox. The equilibrium wage is the one where there is neither excess or shortage of labour. However, due to governmental intervention in imposing minimum wage as flooring, the equilibrium is disturbed. The supply becomes excess, over the demand and unemployment is created when a minimum wage higher than the equilibrium wage is fixed. This mostly affects the vulnerable group who are unskilled.

In India it is difficult to arrive at an equilibrium wage thus making it difficult to measure the efficiency of minimum wages. Nonetheless with the current floor wage (Rs.178) it is clear that there won't be any impact in the labour market. For better understanding taking the average wage estimated by ILO, Rs. 247 as equilibrium wage and it is clear that the stipulated minimum wage is below the average wage. The miserable part is despite very low minimum wages the supply won't decrease given the lack of alternate sources of earning resulting in forced labour.

Recommendation: The government must emphasize on "Need Based Minimum Wage" covering nutrition, healthcare, education, housing and provisions of old-age. Therefore, guaranteed minimum wage should be treated as a fundamental constitutional right for every citizen of India. Minimum wages should be adjusted to inflation so as to align the wages to market volatility and 5 year is quite a long period considering the volatility in the market. Adopting a national floor minimum wage across five regions²³, after that the States can fix minimum wages accordingly would bring uniformity and will equally attract the labour cost for investment reducing distress migration.

To handle the problem of inequality mandating minimum wage alone is not important, other measures such as Phelps idea of wage subsidies must be considered. That is mandating job quota for locals while keeping wage bills low for firms operating in competitive environments.

²² For instance, this was seen in the case of the Okhla Industrial Area in Delhi, wherein businesses shifted out from Okhla to Haryana and Uttar Pradesh (UP) to

take advantage of lower minimum wage rates in the latter.

²³ Ibid, 13.



C. Definition of wages:

Demerits: Regarding the concern to achieve uniformity among various labour laws, the new code came up with a single wage definition creating some odd outcomes. It eliminated house rent allowance (HRA) and any award or settlement between the parties from the definition²⁴ without any explanation, hitherto HRA is guaranteed in nature. This exclusion is unfair, creates ambiguity and legal uncertainty, resulting in more lawsuits and litigation.

The proviso clause mentions that few allowances excluded from the wage will be included for the purpose of payment of wages and its ambiguous why the same is excluded from the ambit of minimum wages or wages for the purpose of determining bonus eligibility. Also, the approach to count the sum-total of the excluded components exceeding 50% of the total remuneration calculated under the definition of wages is ineffective and it tends to create some more uncertainty.

Deduction of wages based on performance, damage, loss, advances is arbitrary as the code did not mention any due process and affects the bargaining power and right to association of workers making them scared to demand even basic wages, also paving ways to dominate the workers.

D. Inspection scheme:

Merits: The 'inspector' is now replaced with 'Inspector-cum-Facilitator' in the new code with auxiliary duties such as advice to

employers and workers relating to compliance with the provisions and effective implementation of the act²⁵. With the advent of Digital India, now inspections can be done through a web-based inspection scheme and summoning of information electronically, which may ease compliance burdens²⁶. Detaching the inspector from their respective geographical regions and facilitating the inspector-cum-facilitators beyond their jurisdiction through a random computerised scheme will steer transparency, accountability, better implementation of labour laws.

Demerits: ILO's Labour Inspection Convention recommended²⁷ that a well-resourced and independent inspectorate with provisions to allow thorough inspections and free access to workplaces. Being a signatory to this convention it did not imply these principles in the code. The term facilitator means one who supplies information and advice, this benevolent approach towards the employers for labour law violation is deplorable. It also removed the surprise checks and examined persons from the previous acts because web-based inspections through an automated centralised system will pull out surprise checks.

E. Penalties:

Merits: The new code enhanced the penalties prescribing larger fines for non-compliances and the burden of proof in case of non-payment or deficient payment of wages or bonus lies on the employer. The code went a step ahead and stipulated imprisonment only

²⁴ S.2(y) of the Code on Wages, 2019.

²⁵ S.51(5) of code on wages, 2019.

²⁶ S.51(2) of code on wages, 2019.

²⁷ International Labour Organisation's Labour Inspection Convention of 1947 (Convention C081).



for more serious offences, if they are repeated, and done away with any sort of imprisonment for mere procedural non-compliance. It also allows compounding of offences for the first time by settlement to avoid lengthy court proceedings.

Demerits: The Supreme Court stated that non-compliance of minimum wages amounts to forced labour in *Sanjit Roy v State of Rajasthan*²⁸, but these violations are now given opportunity to comply with the provisions of the Wage Code or give reasons for such violation for the first time. This type of compassion towards employers are detrimental towards the workers.

F. Jurisdiction of courts:

The wage code made another major change, taking away the jurisdiction of courts placing it in the hands of quasi-judicial bodies completely. The reason the government claims for this change is speedy, cheap and effective resolution of wage disputes and providing quick justice for the workers. But violating S. 9 of CPC by providing sole power to the appellate authority, which are not subject to review of court is not ok. A claim can only be filed by an appropriate authority, employee or trade union ignoring the undocumented, casual and informal workers, as well as workers who do not belong to a trade union who will find it extremely difficult to file a case. Thereby further disempowering them to assert their right to be paid the legally mandated wages.

III) Industrial Relation code:

²⁸ *Sanjit Roy v State of Rajasthan*, 1983 AIR 328, 1983 SCR (2) 271.

Industrial relation code is the third among the four law reform codes that has been proposed by the Ministry of Labour and Employment in 2019. This code is an attempt to facilitate ease of doing business and to simplify, regulate and integrate three pre-independence acts namely: industrial dispute act of 1947, trade union act of 1926 and Industrial Employment (standing order) act of 1956. Some of the key issues have been analysed and censured in detail.

A. Fixed-term employment:

In 2018, the Central Government appended fixed-term employees to the categories of workers under schedule I of Industrial Employment (standing order) Act, 1946 by amending standing order rules, 1946. Its origin can be traced back to 2003, where the government had to withdraw its proposal to set up fixed-term employment due to pressure and protest from the trade union. The Industrial Relation bill, 2019 in the course of subsuming standing order act, 1946 included this provision under clause 2(1) of the bill.

Object:

Fixed-term employment can be understood as a type of contractual employment where employer and employees directly enter into a written contract for fixed duration. This facility was rudimentarily drafted with the ideology to uplift contractual employees on par with regular employees. This provision suffices three predominant requirements of employer and employee. Firstly, to provide working rights to contractual labourers, secondly to provide adequate workforce to



employers to do seasonal work at plausible rates and conditions in accordance to fluctuating market demands and lastly to sidestep mismanagement and inordinate expenses that was caused by the intervention of a third-party contractor.

Analogy of contract labours and FTE:

SUBJECT	CONTRACT LABOURS	FTE
Regulating act	The Contract labour (regulation and abolition) act, 1970. Now brought under the scope of OSHW code ²⁹ ,2019	Industrial Employment (standing order) Act,1946. Brought under the scope of IR code,2019.
Kind of employment	Hired through a middleman/contractor	Hired directly by the employer.
Salary	On the establishment's payroll	Not on the establishment's Payroll
Tenure	As per the negotiable terms entered with contractor	On the expiry of term specified in the written

		contract entered between employer and employee
Exempted nature of work	Stated under clause 57(2) *indispensable/incidental to the establishment *perpetual nature *work done by regular workers.	Not specified.
Benefits	Not entitled to statutory benefits of a permanent worker	Entitled to all statutory benefits like bonus, sick days, allowances etc

Merits:

- a) The code confers fixed-term employees with benefits and rights equivalent to that of permanent employees such as wages, allowances and social security benefits except retrenchment compensation.
- b) Entering into a written contract with the employer leads to formalisation of workforce.
- c) The minimum gratuity period requirement of 5 years has been relaxed for the fixed-term

²⁹ The Occupational Safety, Health and Working Conditions Code, 2019.



employees, who by OSHW³⁰ code will be paid gratuity on a pro rata basis³¹.

d) This provision aids employers who are uncertain about the demand-supply pattern to recruit employees.

e) It is a win-win for employers and employees as it cuts down intermediary cost and mitigates other financial expenses for the employer as well as provides substantial benefits to employees.

Demerits:

a) The code doesn't specify the prohibited nature of work under fixed-term employment, this can lead to substitution of permanent employment and greater risk of replacement of permanent jobs with FTE by the employers.

b) Fixed-term employees are susceptible to employer's exploitative manipulation on the term of employment as there is no ceiling imposed on the number of contract renewals

and there is no minimum tenure prescribed by the code.

c) The code fails to warrant job security for fixed-term employees as they can be terminated from work on the expiration of the contract without prior notice.

d) As the key to contract renewal lies with the employer, the fixed-term employees will be dissuaded to raise disputes on violation of their rights which eventually leads to dilution of bargaining power.

e) By amending the standing orders Act instead of contractual labour Act, the code has failed to tend to its objective of elevating rights of contractual labourers. Instead of extending the protection and benefits to contractual labourers, it has created a new category of works which is highly stifling.

B. Power to executives to nullify tribunal's award:

Clause 53(3)³² of the code confers the appropriate government with discretionary

³⁰ The Occupational Safety, Health and Working Conditions Code, 2019.

³¹ 53. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,— (a) on his superannuation; or (b) on his retirement or resignation; or (c) on his death or disablement due to accident or disease; or (d) on termination of his contract period under fixed term employment; or (e) on happening any such event as may be notified by the Central Government: Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment or happening of any such event as may be notified by the Central Government

³² (3) An award made under this Code shall become enforceable on the expiry of thirty days from the date of its communication under sub-section (2): Provided that— (a) if the appropriate Government is of the opinion in any case, where the award has been given by a Tribunal in appeal in relation to an industrial dispute to which it is a party; or (b) if the Central Government is of opinion in any case, where the award has been given by a National Industrial Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification, declare that the award shall not become enforceable on the expiry of the said period of thirty days.



power to annul an award passed by industrial tribunal, if it discerns that the award is inexpedient on public grounds and affects national economy/ social justice. This provision has serious implications has it infringes on two fundamental principles:

1. Doctrine of separation of power
2. Nemo judex in causa sua

a) Separation of power:

Clause 53(3) by bestowing executives with judiciary power has violated the doctrine of separation of power. Section 17-A³³ of Industrial Dispute act, 1946 (which was analogous to clause 53) was struck down by Andhra and Madras High courts in *Telugunadu Workcharged Employees state federation v. Government of India*³⁴ and *Union of India v. Textile Technical Tradesman*³⁵ respectively. The courts in both the cases opined that section 17-A transcends and encroaches upon independence of Judiciary, thereby impinges upon the constitutionally ingrained principles of separation of power and rule of law. Hence there is high probability that clause 53 if enacted will be struck down based on the high courts ruling.

³³ (1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17: Provided that (a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the

b) Nemo Judex in causa sua:

Nemo judex in causa sua is a rule against bias which lays down that “no one can be a judge of his own cause”. Clause 53(3) empowers the Government with discretion to nullify a tribunal’s award in all disputes in case of certain contingencies (inclusive of cases where it might itself be a party to the dispute). This implies that the government can play a dual role by being a party as well as judge of the dispute. This will result in biased decisions and also erode the fundamental right to access justice guaranteed under article 21 of the constitution. Hence this provision violates the natural principle of rule against bias.

c) Forbidding right to strike:

The right to strike is integral to collective bargaining, subject to the legality and humanity of the situation. This right of the weaker group viz., labour, to pressure the stronger party viz., capital, to negotiate and render justice are processes recognised by industrial jurisprudence and supported by Social Justice³⁶. The definition and scope of right to strike has been broadened by the code which through its twisted provisions robs workers of their right to strike.

appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

³⁴ *Telugunadu Workcharged Employees state federation v. Government of India*, 1997 (3) ALT492.

³⁵ *Union of India v. Textile Technical Tradesman*, 2014 (6) CTC 427.

³⁶ *Gujarat Steel Tubes Ltd vs Gujarat Steel Tubes Mazdoor Sabha* 1980 AIR 1896, 1980 SCR (2) 146



a) Adding ‘mass casual leave by 50%’ in clause 2(zf) makes the definition digress from the subject matter of strike as it fails to consider the intent of the employees. As a result, coincidental leaves taken by innocent employees with no intention to revolt may also be deemed to be illegal strike under clause 62³⁷. This will make them susceptible to sanction ranging to 50k/ 1month imprisonment and they could also be deprived of compensation under clause 69, as the code prescribes no protection.

b) The right to strike has been proscribed by the code implicitly by imposing certain restrictions (initially it was imposed only on PSU’s):

i) Time frame: Workers can strike only between 14 th and 60 th day from the date of sending notice to the employer.

ii) Clause 62(6) mandates the employer to forward notice to the conciliation officer within 2 days from the date of receipt of notice. This will lead to commencement of conciliation proceedings, which will terminate strike even before it is initiated.

iii) If the conciliation proceeding goes unsettled, then the employer using clause 52(6) can approach the tribunal to cease employers from striking³⁸.

iv) Workers can resume strike only after 7/ 60 days of dispute resolution (under conciliation/ industrial tribunal respectively), within which, the timeframe to commence

strike will expire. If the tribunal award doesn’t fulfil workers’ demands and if they want to recourse to strike to express their agitation, they again have to go back to step 1 which will result in process looping.

v) Altogether, this provision instead of simplifying the procedure makes it more complicated which inconsistent with the code’s objective.

D. Exit policy:

The 2017 draft bill initially proposed that industries having less than 300 employees can retrench/ lay off employees/ close the establishment without seeking government’s permission. The 2019 code has lowered the threshold value from 300 to 100³⁹ which is commendable, but on the other end of the spectrum it gives unrestricted power to the appropriate government to change the threshold value without setting out the maximum and minimum limit. This will have the following adverse effects:

There are chances that appropriate government might set:

i) Undesirable high ceiling limit, that will scrap out job security of employees as it will accentuate hire and fire policy in the state.

ii) Undesirable lower limits, that will be a sticking point in growth of GDP as foreign investors will shy away investing in India. This will also hamper the development of smaller domestic industries as they will be

which the report under sub-section (4) is received to the concerned party and the Tribunal shall decide such application in the prescribed manner.

³⁹ Clause 77 of industrial relation code,2019.

³⁷ Clause 2(zf).

³⁸ Clause 53(6) Any concerned party may make application in the prescribed form to the Tribunal in the matters not settled by the conciliation officer under this section within ninety days from the date on



reluctant to take up risks to expand the industry.

Hence this contentious issue should be drafted with clarity so that balance is not affected.

E. Definition:

a) worker and employer:

The code has classified persons entitled to seek protection under code under two categories as worker and employee defined under clause 2(zm) and clause 2(i). Both the terms are similar with few differences as follows:

WORKER	EMPLOYEE
Includes working journalists, Newspaper Employees and sales promotion employees	Includes person employed in managerial and administrative capacities
Excludes person employed in supervisory capacity earning more than 15 k wages	Includes person employed under supervisory capacity irrespective of their wages

a. The employees also belong to the working class under the employers and it is unjustifiable to classify them by treating them differently.

b. There is difficulty in interpreting their rights resulting in perplexity differential rights classification is unjustified causing

difficulties in interpretation of their rights and procedures.

b) Industry:

Right from 1946 till date, the legislature and judiciary has been attempting to lay down an unambiguous definition for the term ‘industry’, but the journey has only been tempestuous as it only led to futile results due to heterogeneous contradictory judgments. The Legislature through section 2(m) of the code has attempted to bring about a solution to this ambiguity, but unfortunately it suffers from following discrepancy:

a) The code has deprived employees employed in charitable, social or philanthropic services (profit motive) of their pre-existing rights⁴⁰ to avail protection under the industrial dispute act.

b) There is no distinction made for institutions run by charitable trust with profit motive and non-profit motive. Hospitals, educational institutions that are run by charitable trusts who have established huge business empires with profit motive employing 1000s of employees will also be excluded.

c) There is no clarity as to what institutions fall under the clause ‘substantially engaged charitable, social or philanthropic service’ which again makes it equivocal.

F. Recognition and Registration of trade union:

Recognition of trade union in an industry/establishment is crucial for an

⁴⁰ Bangalore Water-Supply v. R. Rajappa & amp; Others 1978 AIR 548, 1978 SCR (3) 207



effective tripartite consultation as the worker's grievances and demands will be fairly attended to only if they are given due recognition. Till date, recognition is done in accordance with the code of discipline, 1958 which is voluntary in nature. There is no statutory obligation on the employer to recognise trade unions as there was no provision for it in trade union act 1926. The IR code has filled this void by providing for setting up a negotiating union/ council in clause 14.

Merits:

One of the major impediments encountered in collective bargaining is plurality of trade unions. Employers had to meet contradictory demands from different trade unions which resulted in chaos and delay in arriving at a solution. Formation of a negotiating union will help streamline and simplify this issue thereby facilitating collective bargaining.

Demerits:

Clause 14 however suffers from certain irregularities:

- a) Registration of trade union is the foremost condition to be granted recognition, but the provisions with regard to registration itself suffers from certain loose ends:
- There is no prescribed deadline issued to the registrar to finalise the application of registration.
 - Even when all the requirements to register are duly met by the trade union, there is no strict mandate on the registrar to grant them registration.

- These laxities might result in unnecessary lagging and unfair non-registration by the registrar. This will impede the union's right to get registered and recognised⁴¹.

b) The code has set a benchmark that a Trade union possessing 75% workforce will be qualified to constitute a negotiating union. This criterion should be brought down as it is too rigid and unrealistic being self-defeating in nature.

c) Out of 12 recognised central trade unions hitherto, 11 unions have political affiliations which speaks for itself the larger political interference in the unions. Granting the power to recognise trade unions to the appropriate government will lead to further politicization in the structure. Greater political interference doesn't bode well for serving the interests of workmen.

G. Adjudicatory bodies:

The code has brought about the following positive changes in adjudicatory mechanism to resolve disputes.

- The code has shrunk the number of adjudicatory bodies by eliminating labour court from three to two making tribunals as the sole adjudicatory bodies. Along with it, the court of enquiry has been deleted. Limiting forums will cut down plurality of claims before diverse forums and hence aid in resolving disputes promptly and effectively.
- b. The code has remarkably put an end to executive's volition in referring disputes to tribunal (except national industrial tribunal). This has now shifted to the concerned parties of the dispute who can now approach

⁴¹ ILO convention 87.



tribunals for dispute resolution. This provides for limiting political interference and guaranteeing autonomy to the parties.

Though this provision is beneficial there are two irregularities that requires change:

- The provision to constitute Single member (administrative) tribunal to adjudicate disputes distorts separation of power doctrine.
- Setting up a two-members tribunal might sometimes prolong the dispute due to differences of opinion between the members which might lead to further entanglement.

Recommendations:

- a) The number of tribunals should be set up in proportion to workforce for expeditious resolution.
- b) It is advisable to constitute an odd number bench (preferably 3).

H. Reskilling fund:

The code stipulates the employers to contribute 15 days of the last drawn wage of the retrenched employee as reskilling fund. This provision is laudable as it is in tune to recommendations made by the world economic forum in its report 'Future of jobs 2018'. The report stressed upon the need to reskill workers to meet the demands of the technological-driven future.

IV) Conclusion:

Industrial relation code can be attributed as a mix of medicine and poison, as certain provisions such as reskilling fund, limiting the number of adjudicating forums, acknowledgment of recognition of trade

unions cure the deficiencies of archaic laws while some provisions providing for conferring excessive power to the government, curbing right to strike, nebulous definitions, distortion of separation of power further aggravate the existing problems. Likewise, code on wages has fallen short of its objectives to attain harmonization and uniformity in the laws as some of the core definitions like wages, employer, employee, hours of work lack coherence. The legislature needs to address the scant enforcement mechanism provided by the code. There is also a compelling need to explicate the scope of the code as it is unambiguous and cumbersome.

In decoding the above two labour codes, it is evident that the codes suffer from imbalance between ease of doing business and upholding labour rights. This has invited huge unrest among the trade unions and workforce as they strongly reckon the codes are employer friendly. Abraham Lincoln was right in quoting, "*Labour is prior to and independent of capital. Capital is only the fruit of labour and Labour deserves much the higher consideration.*" Hence the parliament on virtue of its constitutional obligation under article 38 to secure social order and to eliminate inequalities among its citizens should append the code in light to secure balance between uplifting labour rights and economic upliftment.
