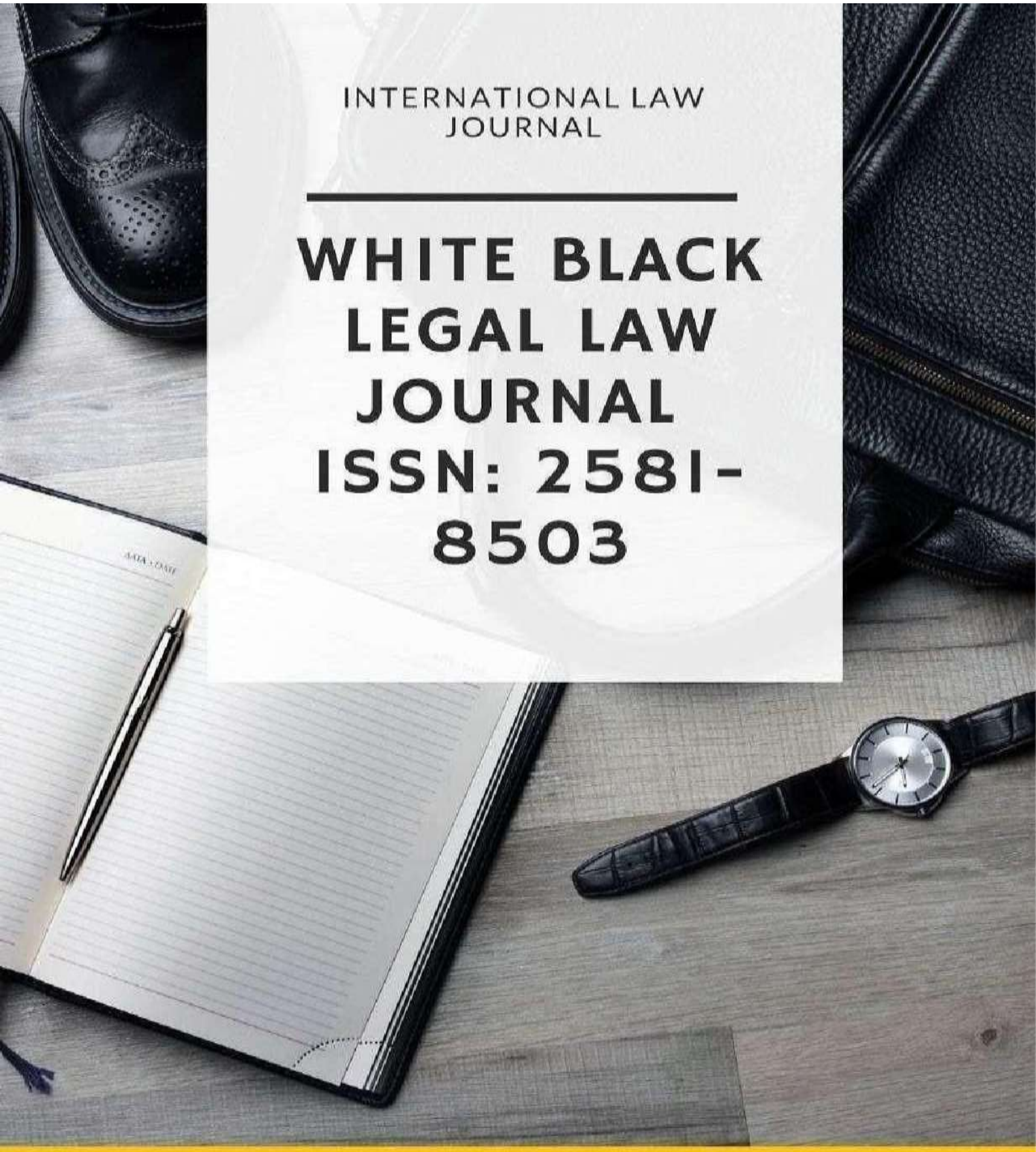

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# THE IMPACT OF THE INDUSTRIALRELATIONS CODE, 2020 ON LABOUR LAWS IN INDIA

AUTHORED BY - HARBANS SINGH

## Abstract

The ruling National Democratic Alliance regime in India pushed through three labour codes in September 2020 namely the Code on Social Security; Occupational Safety, Health and Working Conditions Code; and the Industrial Relations Code. These along- side the Code on Wages approved earlier in 2019 amalgamate several labour laws. This study is an endeavour towards a critical examination of the Industrial Relations Code, 2020. It engages in a comparative analysis of the various provisions of the Code vis-à-vis the laws which were its predecessors. Some key features of the Code as well as their ramifications are probed. Further, their potential impact on trade unionism and the right to strike is discussed. The relationship between capital and labour is adversarial rather than complementary. This paper argues that reforms in the real sense must seek to balance the interests of both parties rather than that of employers alone.

**Keywords** Labour law reforms · Industrial Relations Code, 2020 · Labour market flexibility · Fixed term employment · Trade unions · Strike

## 1 Imbalancing Act: The Industrial Relations Code, 2020

In September 2020, the Parliament of India approved three labour codes. These comprise the Code on Social Security; Occupational Safety, Health and Working Conditions Code; and the Industrial Relations Code. This is part of a larger exercise of 'rationalisation' of labour laws recommended by the Second National Com- mission on Labour in 2002. The Code on Wages approved in 2019, as well as the three aforementioned codes, consolidate approximately 29 labour laws. The implementation of the codes has been deferred because of the COVID-19 pan- demic. Nevertheless, it is important to discuss these changes which are set to induce wide-rangingrepercussions on the world of work, particularly on the informalsector which houses more

than 90% of the Indian workforce.[1]

It must be noted that this codification of laws is not an isolated instance. In May 2020, several state governments temporarily suspended fundamental labour laws in order to resuscitate industries after the pandemic. A slew of changes has been underway since the ruling NDA regime came to power in 2014. For instance, in the very same year, the state legislative assembly of Rajasthan amended several labour regulations. To list a few, the threshold for prior government approval for retrenchment of workers was raised to 300, and objections could only be raised up to three months from the date of retrenchment. Such changes were later emulated by the state governments of Punjab, Haryana, Uttar Pradesh, Gujarat, and Maharashtra. It is therefore not surprising that some of these have also been incorporated into the Industrial Relations Code, 2020. The hasty approval of the three aforementioned labour codes in a truncated 2020 Monsoon session of the Parliament does not bode well for the functioning of a healthy democracy.

Notwithstanding the undemocratic manner in which these were passed despite protests and a walkout staged by many members of the opposition parties, there are several pernicious provisions in the codes themselves. Of para- mount importanceis the Industrial Relations Code, 2020, which consolidates the laws governing trade unions and employment conditions in various industrial establishments. It lays the roadmap for the resolution of industrial disputes. It thus aims at establishing industrial peace by maintaining amicable relations among employers and workers. However, the Code amends several existing laws as well as introduces new provisions. It is imperative to scrutinise its features in order to assess its prob- able impact on labour rights and welfare.[2]

This paper comprehensively discusses the Industrial Relations Code, 2020. It is an attempt to critically analyse various provisions of the Code and their implications on labour. Given that the structures governing capital and labour are unequal, labour laws are essential for providing elementary protections toworkers. Stringent laws ensuring mandatory compliance help maintain checks and balances on the employ- ers, thereby safeguarding the interests of the workers. This study aims to examine the extent to which the Industrial Relations Code can ensure sound industrial relations without undermining essential labour protections.

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[1] Labour Bureau. Report on Employment in Informal Sector and Conditions of Informal Employment, Government of India, Ministry of Labour and Employment, available at: https://labour.gov.in/sites/default/files/Report%20vol%204%20final.pdf (last visited on 30 July, 2023)

[2] Sarkar, K. "Under new labour code, an Uber driver can be both gig and platform worker. It's a problem". The Print (2020).

## 1.1 The Debate on Labour Market Flexibility

The demands for labour law reforms are premised on the argument that the extant labour laws are anachronistic in nature. These must be reformed in accordance with the rapid technological advancements, trends in globalisation, and the transformations underway in the world of work. Despite an abundant labour supply, India continues to have a weak manufacturing base. This alongside the slow pace ofemployment generation is often attributed to rigid labour laws. Hence, greater flexibility for employers is often advocated in the name of efficiency and at the cost of workers' job security provisions.

It is claimed that rigidities in the labour market are not conducive to flexible labour use, leading to high direct transaction costs coupled with lower efficiency in production. These are said to hinder competitiveness and discourage investment. However, Papola and Pais (2007) refute these contentions by asserting that most labour laws apply only to units in the organised sector which employ at least ten workers. A majority of establishments are smaller and thus excluded from the purview of labour regulation. That most labour laws apply only to the organised sector where less than 10% of the workforce is concentrated itself, illustrates that laws alone can hardly be the cause for employment stagnation.[3]

Roychowdhury observes that several arguments for labour market flexibility are not logically sustainable. For instance,a critical bone of contention is Chapter V-B of the Industrial Disputes' Act (IDA), 1947. This chapter mandates prior government approval for retrenching permanent workers of firms engaged in mining, plantation and manufacturing activities. However, this only applies to firms with 100 or more workers. Arguments in favour of flexibility have ranged from raising the threshold to 300 or 1,000 workers, to entirely eliminating the requirement for government approval. It must be emphasised thatthe law applies only to the three aforementioned sectors, which do not comprise more than one- third of the whole organised sector.With labour laws having such limited cover- age, Indian labour markets can scarcely be deemed rigid or inflexible.

Jha (2016) argues that the rigidities in Indian labour markets are a myth. In addition to the restricted scope of a majority of labour market regulations which apply only to the formal sector, there is poor implementation on ground. It must also be noted that around 60% of the workers in the formal sector are informal (ibid.) and hence outside the ambit of core labour

[3] Roychowdhury, A. Labour law reforms in India: All in the name of jobs. Oxon: Routledge (2018).

legislation. Thus, the view that rigidities are present in Indian labour markets can hardly be sustained; frequent and gross violations of labour regulations by employers indicate otherwise. While proponents of labour market flexibility maintain that it fosters productivity, several studies by Buchele and Christiansen find that protection of workers' rights has a positive impact on their productivity per hour. Further- more, linkages between high flexibility and high economic growth of a country were seen to be rather weak. Increasing flexibilisation without adequate socioeconomic protections for workers can further strain capital– labour relations, causing a decline in rather than enhancement ofproductivity.

### 1.2 What is the Industrial Relations Code, 2020?

In the backdrop of the labour market flexibility argument, it is interesting to look at the Industrial Relations Code, 2020. It subsumes three fundamental labour laws— Trade Unions Act, 1926; Industrial Employment (Standing Orders Act), 1946; and Industrial Disputes Act (IDA), 1947. These former laws now stand repealed. The Industrial Relations Code thus amalgamates and amends laws related to trade unions, conditions of employment, and industrial disputes. It consists of 14 chapters with 104 sections and three schedules dealing with matters such as definitions, bipartite forums, trade unions, standing orders, strikes and lock-outs, lay-offs, retrenchment and closure, as well as offences and penalties.[4] It is worth noting that the new labour codes have been welcomed by the industry but have drawn flak from trade unions, labour rights organisations and activists.

These sweeping changes in labour laws are said to be in response to a long-standing demand for labour law reforms. These are also aimed at increasing global competitiveness. It is hardly surprising that India's overall standing in the now discontinued World Bank Ease of Doing Business rankings improved by leaps and bounds since the NDA regime came to power in 2014. India ranked 63rd as per the 2020 report, which marks an improvement of 79 positions compared to its standing in 2014. Further, it is argued that India must make its labour markets flexible in order to attract the multinational corporations planning to exit from China due to the pandemic.

Another contention in favour of labour market reforms is that deregulation will encourage expansion of firm size, thereby leading to employment genera- tion. Inspection regimes

[4] Working Peoples' Charter. India's labour law reform: Briefing note for parliamentarians. (2020), available at: https://workingpeoplescharter.in/media- statements/indias-labour-law- reform-briefing-note-for-parliamentarians/ (last visited on 4 August 2023).

are considered to be another constraint for employers.

It is believed that labour law reforms will free them of the burden of cumbersome compliance. Opposition to the new labour codes emerges mainly from their focus on the interests of employers rather than that of the workers.

## 2 Implications of the Industrial Relations Code, 2020

This section analyses some contentious features of the Industrial Relations Code, 2020, and their possible repercussions on labour rights and welfare.[5]

### 2.1 Powers of the Central Government

To begin with, several powers earlier vested with the appropriate government have been transferred to the central government under the Industrial Relations Code, 2020. These include the powers to make rules regarding the recognition of trade unions [Section 99(3)(a)], to amend schedules (Section 101), and to remove difficulties (Section 103). Greater concentration of power with the central government contravenes the principles of federalism and democratic decentralisation. Labour is a subject in the concurrent list of the Constitution. In a country like India with stark regional disparities, the conditions of labour cannot be uniform across states. In the spirit of democracy, due consultation with the states is essential before legislating.

### 2.2 Altering Definitions

Tinkering with definitions shall have a bearing on the interestsof workers. For example, the definition of 'industry' under Section 2(p)(ii)(ii) of the Code excludes departments of the central government associated with space, defence research, and atomic energy.). Simply put, this curtails the rights of employees of organisations such as the Indian Space Research Organisation (ISRO) or Defence Research and Development Organisation (DRDO) to strike. Furthermore, equating concerted casual leave by 50% or more workers witha strike implies that accidental mass leave might also invite penal action.[6]

House rent allowance (included in the Minimum Wages Act, 1948) as well as the value of house

[5] Mathew, B., and C. Jain, " Reviewing the labour code on Industrial Relations Bill" 53 (21) Economic and Political Weekly 16–18 (2018).

[6] Krishnan, R.T. Kanungo, K. and Kanungo, K. "Are labour law reforms the panacea to the investment problem?" The Hindu Business Line (2020).

accommodation including supply of electricity, water, and medical attendance, travel concessions and commission payable (included in IDA, 1947) shall no longer be accounted for in the computation of wages. This is not in favour of the workers. It might lead to a reduction in the amounts of subsistence allowance and compensations payable in case of lay-off, retrenchment or closure, much to the agony of workers.

Although the definition of employee has been added and that of worker amended, these changes fail on several counts. Whenit is claimed that these new labour codes have been enacted in response to the demands of the contemporary labour market, the definitions should also have been updated bearing this in mind. Several classifications of workers namely home-based workers, self-employed workers, platform or gig workers, trainees, IT workers, those involved with start-ups, MSME workers, and most importantly, unorganised and informal sector workers have been over-looked. While some of these definitions have been included in the Code on Social Security Code, 2020, problems of overlaps and lack of clarity persist in those as well. Besides, the definition of a workman under the IDA, 1947 included apprentices. However, apprentices have been explicitly excluded from the definitions of both 'worker' and 'employee' in the Industrial Relations Code, 2020. Not being recognised as workers not only makes their jobs more insecure and vulnerable but also fails to uphold the dignity of labour.

### 2.3 Fixed Term Employment and Contractualisation

Fixed term employment shall accelerate the trend of contractualisation already pervading both the formal and informal sectors. Such workers can be fired without notice, will not be eligible for retrenchment compensation, and shall be barred from participating in strikes called by other workers. No regulations have been framed regarding their tenure of contracts or the number of renewals. In addition, given that the threshold for the applicability of standing orders has been elevated to 300, employers shall be free to hire as many fixed- term employ- ers as they wish instead of permanent workers, for work of regular nature as well. The constant fear of non- renewal of their fixed-term con- tracts and not being granted permanent status will also discourage them from exercising their freedom of association.

### 2.4 Thwarting Collectivisation

Trade unions have a quintessential role to play in mediating and negotiating industrial disputes. These act as bargaining agents and represent workers legally, economically and politically

against injustice in the workplace. Collective bargaining helps workers resist their exploitation by capitalists. Besides, appointing the largest union (with 51% or higher membership) as the sole negotiating agent implies that smaller trade unions will be unable to represent themselves. It might trigger tendencies towards unitary trade unionism wherein workers could be coerced to join management-sponsored unions. Moreover, fragmentation and subsequent conflicts among big and small trade unions would inhibit efficient bargaining, again benefiting the employers and disadvantaging the workers.

The amendments related to trade unions are alleged to be aimed at weakening unionism. The general secretary of Bhartiya Mazdoor Sangh, the trade union affiliated with theideological parent of the ruling regime, expressed his disapproval stating that the objections raised and the recommendations by any of the trade unions were not incorporated in the Code (Labour codes passed are anti-worker, say trade unions, 2020). The demands for universal coverage of labour laws and extending their scope to the unorganised sector as well were not heeded. This lack of tripartite discussion and consultation is also a violation of the 144th Convention of the Inter- national Labour Organisation (ILO) which India has ratified and is bound to abide by.[7]
Two goals of employers are achieved by tweaking the norms for registration of trade unions and banning outsiders from occupying key positions therein. First, it constrains the very ability to form new trade unions. Second, it hampers the usual activities of trade unions and makes it tougher to collectively agitate over demands and grievances. Trade unions require external members for advice on legal, finan- cial and accounting issues, to name a few. The duties of office-bearers are divided between their job and the activities of the union. Limiting the number of outsiders who can lead trade unions attacks the autonomy of the unions alongside interfering with their functioning (Mathew and Jain, 2018).

### 2.5 Normalising Hire and Fire Regimes

In keeping with employers' demands, the threshold for applicability of standing orders on crucial workers' issueshas been elevated to 300. This will result in the further exclusion of the vast majority of India's workers, particularly those belonging to the informal sector, from

[7] Tripartite Consultation (International Labour Standards) Convention, 1976, available at: https://www.ilo.org/dyn/normlex/ en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C144 (last visited on 5 August, 2023).

their purview. Fears of normalising hire and fire regimes are not misplaced in the wake of this increased flexibility to employers if nothing is done to protect workers. Over and above hiring and firing, state governments will be empowered to heighten this threshold by executive order and notification only. Further raising it to 1,000 or more workers shall exempt a large proportion of the establishments from following rules related to standing orders, much to the disadvantage of workers.[8]

## 2.6 Appeals

Among the erstwhile adjudication mechanisms, conciliation boards, courts of inquiry, and labour courts at the district level have been abolished by the Industrial Relations Code, 2020. What remains are conciliation officers, arbitrators, and Indus- trial Tribunals at the state and national levels. Section 4 of the Industrial Relations Code details the functions of a Grievance Redressal Committee. According to it, an application regarding an industrial dispute can be filed within one year from the date on which the dispute arose. The Committee is bound to finish its proceedings within 30 days of receiving such an application. In case the worker is not satisfied with the decision of the Committee, she/he can approach the conciliation officer within 60 days of the date of the decision. She/he is expected to approach the said officer through the trade union she/he is a member of. A worker can also directly approach a Tribunal, but only after 45 days of applying to the conciliation officer. This application must bemade to a Tribunal within two years from the date of being discharged, dismissed, retrenched, or terminated from service.

Section 32 of the Code raises the period for appeals against an order of a certifying officer to 60 days from the earlier 30 days under IDA, 1947. This is a welcome move. However, the door should remain open for appeals for a longer duration. Workers might not have or not be in a position to arrange for the requisite legal and financial resources immediately or within a short span. At the same time, many cases are exposed much later, only when the aggrieved workers find the courage and adequate support systems to approach and access theadjudication mechanisms. Considering the lack of resources faced by workers, all the more if they have been retrenchedor terminated, limiting the application window to two yearsmight be unrealistic. Workers must be provided reasonable time flexibility in matters related to registering grievances

[8] Rajalakshmi, T.K. "The new labour codes: Labour's loss". Frontline (2020).

as well as filing appeals against decisions.[9]

## 2.7 Labour Rights at Stake

Progressive labour law reform should be oriented towards the statutory recognition of the right to strike. Strikes without notice were prohibited for public utility services such as railways, airports, ports and docks, and sanitation under the IDA, 1947. The Industrial Relations Code expands this blanket ban to all sectors regard- less of whether its nature is essential or not. The complete omission of the category of public utility services from the Industrial Relations Code is a misstep. Worse, it virtually closes all doors for the right to strike to be statutorily recognised. Instead of treating non-essential workers at par with essential workers and stripping both of their rightto strike, reforms must have focused on strengthening both their rights.

As specified in various clauses of Section 62(1) of the Code, strikes are forbid- den once the process of conciliation commences, and seven days after the conclusion of those proceedings. For proceedings pending before arbitrators, Tribunals, or National Tribunals, the period of strike prohibition is 60 days after the proceedings conclude. The conciliation proceedings might go on for years and workers will not be able to agitate no matter how long the delay in justice. Taken together, the various curbs on strikes are a violation of every individual's constitutional right to peaceful assembly or freedom of association.

## 2.8 Easing Norms for Lay-Offs, Retrenchment, and Closure

With the passage of the Industrial Relations Code, 2020, it is no longer necessary for employers of factories, plantations and mines up to 299 workers to acquire prior government approval for lay-offs, retrenchment and closure. The stance ofthe cen- tral government has been defensive, regarding official approval as unnecessary. It maintained that the tedious processes of acquiring permission add to the losses and liabilities of the firms on the cusp of closure. The focus should have been on increasing efficiency and making the process of acquiring permission speedy and hassle-free. Easing norms for laying-off, retrenchment, or shutting businesses would usher hire and fire regimes, further disempowering the workers.

[9] Papola, T.S., and J. Pais, " Debate on labour market reforms in India: A case of misplaced focus" 50 (2) Indian Journal of Labour Economics 183–200 (2007).

### 2.9 Compounding of Offences

The composition of offences provides for out-of-court settlements where employers are most likely to call the shots. Repeat offences are not compoundable. However, compounding of the first offence is possible both before and during the trial. This benefits the employers but can severely compromise justice. Along with compounding, abating the penalties for lay- offs, retrenchment and closure without notice, as well as unfair labour practices to fine only, spares the employers from imprisonment. Considered a deterrent, imprisonment as a mode of punishment is necessary to ensure strict compliance with labour laws.[10] Affluent employers might get away with out-of- court settlements or a minimum punishment of payment of fine only. Composition of offences might ease the burden of Tribunals, but is likely to run counter to the principles of justice and fairness.

## 3 Conclusion

This study critically examined the features and implications of the Industrial Relations Code, 2020. The four recent labour codes on wages, social security, occupational health and safety, as well as industrial relations are a result of the long-standing demand for labour law reforms. Whether these are reforms in the true sense is open to debate as these can be seen to fail to strike a balance between the interests of employers and workers. Some features of the Industrial Relations Code arepernicious and harm the interests of the latter. Besides, claims of rigidity in Indian labour markets from which several of the provisions of the Code are derived hold little merit as Indian markets come across as quite flexible. There is no strong empirical evidence to suggest that labour laws are a burden or disincentive for employers to expand and invest. Cumbersome compliance procedures can be eased for achieving efficiency, but this should nowhere imply the suspension or extreme dilution of due process and labour regulations.

Introducing fixed-term employment, necessitating therecognition 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 Rela- tions Code is biased in favour of employers and not geared towards ensuring welfare or guaranteeing wage and income security for workers.

[10] Nath, D. Govt. seeks comments on draft IR Code rules. The Hindu (2020).

Labour laws perform the essential function of redistribution of wealth as well as bargaining power. These are meant to safeguard workers against wage changes, hazardous conditions of employment, arbitrary dismissals and termination of service, to name a few. Instead of formalising the informal economy, degrading labour rights and welfare results in the institutionalisation of informality. The relationship between labour and capital is rife with conflict, contestations and contradictions. Since both are not on an equal footing, trade unions provide workers with a space for collective representation and bargaining. Far from being a battle- ground, the enterprise can be transformed into a space for discussions, negotiations, and participatory decision-making. Whether these labour codes will be able to balance conflicting interests andrealise this transformation in the workplace, only time can tell.

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