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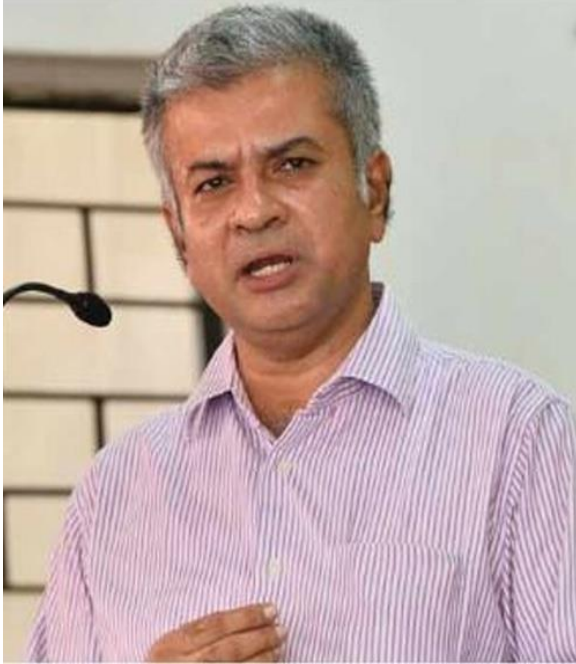
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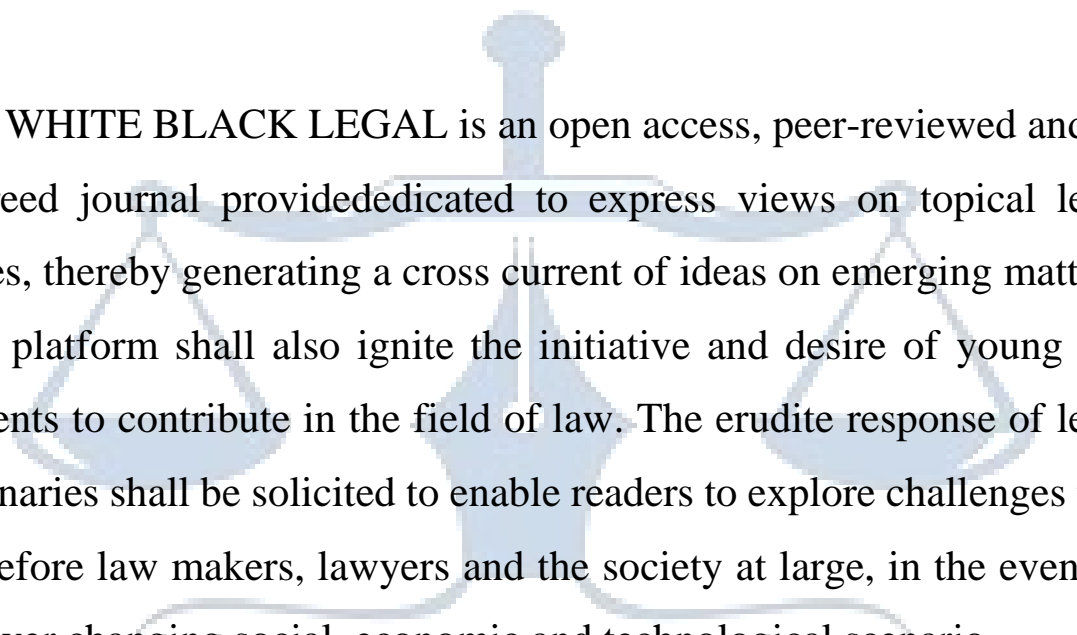
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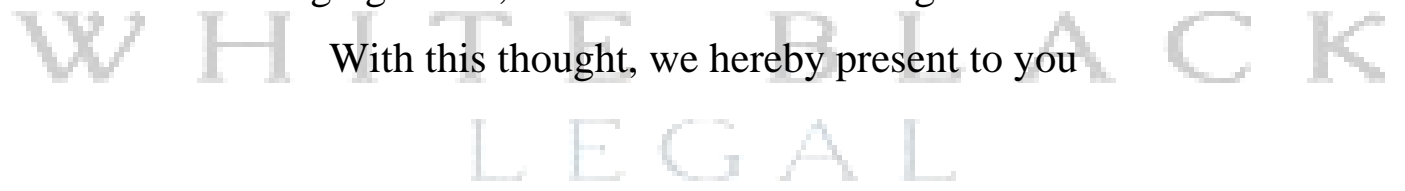
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With this thought, we hereby present to you





# **INDUSTRIAL RELATIONS CODE 2020 AND ITS IMPACT ON LABOURERS - A CRITICAL ANALYSIS**

AUTHORED BY - PRIYA KUMARI & ANIKET SAHU

## **ABSTRACT**

*The Industrial Relations Code of 2020 is a comprehensive revamp of India's labour laws that aims to simplify and consolidate a previously complicated regulatory framework. The goal of this legislation is to bring India's labour laws up to date. The tremendous effects that this law will have on employees all around the nation are the primary emphasis of this abstract. The law makes a number of significant changes, one of which is a shift in language from "workmen" to "worker," and it also adds the word "employee," which raises issues about the ambiguity that exists in defining these categories. In addition to this, it introduces the concept of "fixed-term employment" without providing any clear criteria for its implementation, which may result in employees in such agreements experiencing uneven treatment and less job security.*

*In addition, the code has an effect on the processes for the settlement of grievances. It changes the requirements for the establishment of grievance redressal committees and imposes more stringent timetables for the resolution of disputes. These changes are being made with the goal of improving both efficiency and accessibility. There are some beneficial parts of the code, such as provisions for exemptions in the public interest and modifications in regulatory thresholds; nonetheless, the lack of clarity in language and possible complications relating to fixed-term employment raise worries about the rights and welfare of employees. Despite these positive aspects of the code, there remain concerns concerning the rights and welfare of workers.*

## **INTRODUCTION**

Labour is a subject on which both the Central as well as the State governments have the power to make laws. It falls under List III, i.e. the Concurrent list. Due to this, prior to the year 2020, there were more than 100 state laws and more than 40 central laws pertaining to various aspects of labor

in India.<sup>1</sup> There was a different legislation to settle industrial disputes, a different one to take care of the working conditions of employees and a different law altogether for social security and wages. The impact of multiplicity of legislations on the overall efficiency of administration of justice is well-known all over the country. The fragmented nature of these legislations made it extremely difficult for effective welfare of the laborers and acted as a hurdle in effective provision of rights.<sup>2</sup>

The Second National Law Commission (2002) acknowledged the problem of complexity in the fragmented legal framework.<sup>3</sup> Not only were the definitions inconsistent, there were certain provisions that just did not meet the demands of the present-day needs of the society. The Commission recommended that the central labor laws be consolidated into a single code in order to increase efficiency, bolster enforcement and reduce the overall complexity of the law.

It was in the year 2019 that the recommendations of the committee were finally implemented. Four bills were introduced to consolidate 29 central laws. The Code on Industrial Relations, 2020 was one such legislation that aimed at consolidating the various fragmented laws into one single legislation. These bills were referred to the Standing Committee which submitted its report post which, the abovementioned bills were replaced by certain new Bills in the year 2020.<sup>4</sup>

## **1. EXEMPTION TO CERTAIN INDUSTRIES IN PUBLIC INTEREST**

Labor laws are often comprehensive and can apply to a wide range of industries and situations.<sup>5</sup> However, not all industries or establishments may have the same labor-related needs or challenges. Some may require specific regulations or exemptions due to the unique nature of their operations.<sup>6</sup> Thus, the Code makes provision for exemption of any new industrial establishment or a class of establishments from the provisions of the code in public interest. The provision allows the government to encourage and promote industrial growth and investment by offering exemptions to

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<sup>1</sup> Sundar, K.S., 2020. Critiquing the industrial relations code bill, 2019. *Urban Poor and Healthcare Access*, p.45.

<sup>2</sup> MEHTA, K., *Demystifying Code on Industrial Relations 2020*.

<sup>3</sup> Roy, G.K. and Dubey, A., 2022. A Note on Industrial Relations Code, 2020. *The Indian Journal of Labour Economics*, 65(2), pp.533-543.

<sup>4</sup> Bhuta, A., 2022. Imbalancing Act: India's Industrial Relations Code, 2020. *The Indian Journal of Labour Economics*, 65(3), pp.821-830.

<sup>5</sup> Barklamb, S., 2021. Wake-up call for a dysfunctional system: Employer perspectives on industrial relations in 2020. *Journal of Industrial Relations*, 63(3), pp.411-421.

<sup>6</sup> Weiss, M., Schmidt, M. and Hlava, D., 2023. *Labour law and industrial relations in Germany*. Kluwer Law International BV.



certain new industrial establishments. By doing so, it can attract businesses to set up operations in certain areas or industries that might be crucial for economic development. In certain situations, there may be compelling reasons to exempt a particular industry or establishment from specific labor regulations. For example, if a new industry is in the experimental or developmental phase and requires a more lenient regulatory environment to thrive, exemptions can be granted. The phrase "in public interest" is crucial. It means that the government will use its discretion to assess whether granting an exemption to a new industrial establishment or class of establishments aligns with the broader welfare and interest of the public. The government should consider factors such as job creation, economic development, and overall societal benefit when making such decisions. It's important to note that the power to grant exemptions is not absolute or without oversight. The appropriate government, when exercising this power, typically has to provide reasons and justifications for the exemption. This ensures that the decision is not arbitrary but is made after careful consideration of the specific circumstances. The exemption process should ideally be transparent and subject to scrutiny. It should be clear how and why a particular establishment or industry was granted an exemption, and there should be mechanisms in place to review and potentially revoke exemptions if they are not serving the public interest as intended.

## **2. STANDING ORDERS**

The 2019 Bill originally proposed that all industrial establishments with 100 workers or more must prepare standing orders. This threshold was set at 100 workers to cover a broader range of establishments. The rationale behind this lower threshold could have been to ensure that a significant portion of the workforce, even in relatively smaller establishments, had access to standardized and well-defined terms and conditions of employment. In the 2020 Bill, the threshold for the applicability of this provision was increased to establishments with at least 300 workers. This change indicates a shift towards applying this requirement to larger industrial establishments. One potential reason for the change is to reduce the regulatory burden on smaller establishments. Smaller businesses may have fewer resources to dedicate to administrative tasks such as preparing and maintaining standing orders. The change may reflect an intent to prioritize the regulation of labor relations and working conditions in larger industrial establishments where there is a potentially larger workforce with greater complexities in employment relations. Larger establishments often have a more substantial impact on the labor market and the overall economy. The government might have considered that it is more efficient to concentrate resources and regulatory oversight on larger establishments where labor-

related issues may be more pronounced and critical.

It's important to note that the specific threshold chosen, whether 100 workers or 300 workers, is a matter of legislative discretion and policy choice. The government may have conducted assessments, consultations, or studies to determine the most appropriate threshold based on factors such as the economic landscape, the prevalence of labor-related disputes, and the capacity of different establishments to comply with the requirement.

Ultimately, the change in the threshold for the applicability of the provision regarding standing orders in the 2020 Bill indicates a refinement in the legislative approach, with a focus on targeting larger industrial establishments while potentially reducing regulatory obligations for smaller ones. This change aims to strike a balance between protecting the rights and interests of workers and minimizing the administrative burden on businesses, especially those with limited resources.

### **3. CLOSURE, LAY-OFF AND RETRENCHMENT**

The difference in the threshold for seeking prior permission from the government before closure, lay-off, or retrenchment between the 2019 Bill and the 2020 Bill, as well as the change in the powers granted to the central government regarding the threshold, reflect alterations in the regulatory approach and the authority to adjust these thresholds. Under the 2019 Bill, establishments with at least 100 workers were required to seek prior permission from the government before taking actions like closure, lay-off, or retrenchment. This threshold was relatively lower and encompassed a broader range of establishments. In the 2020 Bill, the threshold for seeking prior permission was increased to establishments with at least 300 workers. This change means that larger industrial establishments would need to obtain government permission before taking such actions. The 2019 Bill allowed the central government to exercise more flexible powers concerning the threshold. It empowered the government to both increase or decrease the threshold for establishments to seek prior permission before closure, lay-off, or retrenchment. This flexibility meant that the government could respond to changing economic conditions or labor market dynamics by adjusting the threshold in either direction. In contrast, the 2020 Bill limits the central government's powers in this regard. It only allows the central government to increase the threshold through notification. This change implies that the government can raise the threshold to include more substantial industrial establishments under the requirement for prior permission but cannot lower it to include smaller establishments. The threshold

can only be adjusted upwards. Increasing the threshold to 300 workers might be seen as a way to strike a balance between regulating labor relations in larger establishments and reducing regulatory burdens on smaller ones. It acknowledges that smaller establishments may have different dynamics and challenges in handling labor-related issues. By allowing the central government to only increase the threshold, the 2020 Bill promotes stability and predictability in labor regulations. It prevents frequent changes to the threshold and provides employers with more clarity about their obligations. The government might view the threshold adjustment as a tool to respond to specific economic conditions or labor market trends by bringing larger establishments under closer regulatory scrutiny when necessary.

#### **4. NEGOTIATING UNION AND COUNCIL**

Under the 2019 Bill, if there were multiple registered trade unions in an establishment, the trade union with more than 75% of the workers as members would be recognized as the sole negotiating union. This threshold required a significant majority of workers to be members of a single union for it to be recognized as the exclusive bargaining representative. In the 2020 Bill, the threshold for recognizing a Sole Negotiating Union was lowered to 51% of workers as members. This change means that a union representing just over half of the workers can now be recognized as the sole negotiating union. According to the 2019 Bill, if no single trade union had more than 75% of the workers as members, a Negotiation Council would be formed. This council would consist of representatives of trade unions that had at least 10% of the workers as members. This threshold allowed smaller unions with at least 10% membership to participate in negotiations through the council. The 2020 Bill increases the threshold for participation in the Negotiation Council to 20% of workers as members. This means that trade unions must have a higher proportion of workers as members (20% instead of 10%) to be eligible to participate in the council. Lowering the threshold for recognizing a Sole Negotiating Union and increasing the threshold for participating in a Negotiation Council may simplify the negotiation process. A lower threshold for the Sole Negotiating Union means that negotiations are more likely to be conducted by a single union, potentially reducing complexity and conflicts in negotiations. Raising the threshold for the Negotiation Council may reduce the number of participating unions, making the council more manageable. By lowering the threshold for the Sole Negotiating Union, the 2020 Bill may encourage greater unity among workers, as it becomes easier for a single union to achieve recognition. This could lead to more cohesive bargaining on behalf of workers. Increasing the threshold for the Negotiation Council may streamline the negotiation process by limiting the number

of unions involved. This could make negotiations more efficient and focused. The changes aim to strike a balance between the interests of workers and the need for practical and effective negotiation processes. Lowering the threshold for the Sole Negotiating Union may be seen as empowering workers to have a stronger collective voice, while raising the threshold for the Negotiation Council may prevent negotiations from becoming too fragmented.

## **5. CRITICAL ANALYSIS: IMPACT ON WORKERS**

The Industrial Relations Code, 2020, brought about changes in terminology by replacing the term 'workmen' with 'worker' and introducing the term 'employee' without providing clear distinctions or explanations. The transition from 'workmen' to 'worker' and the introduction of 'employee' without precise definitions or differentiations can create confusion regarding who exactly falls under each category. In labor law, these distinctions often have legal significance, such as the applicability of specific rights and protections. Without clear definitions, it becomes challenging for both employers and employees to understand their respective rights and obligations. Ambiguities in terminology can lead to legal disputes and disagreements. Workers and employers may have different interpretations of their status under the new terminology, leading to conflicts that require resolution through legal channels. This can result in an increased workload for labor courts and tribunals, causing delays in justice delivery. The use of imprecise terminology may have implications for the rights and protections afforded to workers. For example, different categories of workers may have varying entitlements regarding working conditions, termination, or collective bargaining. If these distinctions are not clearly defined, it can lead to inconsistencies in the application of labor laws and potentially result in unfair treatment of workers. Employers often use legal terminology in employment contracts to define the terms and conditions of employment. Ambiguities in the terminology used in the Industrial Relations Code can make it challenging to draft clear and legally sound employment contracts. This could lead to contractual disputes between employers and employees. Employers may find it difficult to ensure compliance with labor laws when the definitions of key terms are unclear. Compliance with the law is critical for both ethical reasons and to avoid legal liabilities. Ambiguities in terminology can make it harder for employers to navigate the legal landscape and meet their obligations.

The lack of precise definitions for these terms means that different parties, such as employers, employees, labor unions, and legal practitioners, may interpret them differently. This divergence in



interpretation can lead to disputes over the applicability of specific rights, obligations, or benefits. Employers may misclassify workers due to uncertainties in the terminology. For example, a worker who should be classified as an 'employee' with specific legal entitlements might be incorrectly categorized as a 'worker' with different rights. Such misclassifications can result in disputes when workers realize they are not receiving the benefits and protections they are entitled to. Labor unions may face challenges in representing the interests of their members when the terminology used to define who qualifies as a union member or who can participate in collective bargaining is unclear. This can lead to disputes between unions, employers, and regulatory bodies. Employment contracts often refer to legal terminology to specify the terms and conditions of employment. When the terminology in the Industrial Relations Code is ambiguous, it can lead to discrepancies between what is stipulated in employment contracts and what the law intends. This can result in contractual disputes between employers and employees. Workers who believe that they are not receiving their due rights and protections under the law may resort to legal challenges. This can lead to an increased workload for labor courts, tribunals, and other legal authorities, which may struggle to resolve disputes promptly due to the lack of clarity in the law. Legal disputes stemming from terminology ambiguities can lead to delays in the delivery of justice. Workers who believe their rights are being violated may have to wait for extended periods for resolution, affecting their well-being and job security. Employers may face uncertainty when trying to understand and comply with labor laws. The lack of clear terminology can make it challenging for them to determine their legal obligations and navigate complex labor regulations, potentially leading to inadvertent violations.

Fixed-term employment refers to a type of employment arrangement where a worker is hired for a specific duration or until the completion of a particular project, with a pre-determined end date. The ambiguity arises from the lack of clear guidelines within the Industrial Relations Code, 2020, regarding the terms and conditions of fixed-term employment. This includes uncertainties about wages, benefits, job security, and the treatment of fixed-term workers in comparison to permanent employees. Without well-defined terms, employers may exploit fixed-term employment by offering less favorable terms than those provided to permanent employees. This could include lower wages, reduced benefits, limited job security, and fewer opportunities for career advancement. Ambiguities in fixed-term employment can lead to discrimination and inequality within the workplace. Workers engaged on a fixed-term basis may feel marginalized or unfairly treated compared to their permanent counterparts, leading to workplace tension and reduced morale. Workers engaged in fixed-term

employment often lack job security because their employment is contingent on the completion of a specific project or a set time frame. Ambiguous terms can exacerbate concerns about job stability and financial security. The law should provide a precise definition of fixed-term employment, outlining its scope, duration, and specific circumstances under which it is applicable. This clarity helps both employers and workers understand when and how fixed-term arrangements can be used. Fixed-term workers should be entitled to the same wages, benefits, and working conditions as permanent employees performing similar tasks. Legal provisions should emphasize equal treatment to prevent discrimination and ensure fairness. Legal safeguards should be in place to protect the job security of fixed-term workers. This may include provisions for notice periods, severance pay, or avenues for transitioning to permanent employment after a specified duration of fixed-term employment. Fixed-term workers should have the right to participate in collective bargaining and union activities, ensuring that they can negotiate for their rights and interests effectively. Clear guidelines should be established to prevent the misuse of fixed-term employment. Employers should not use this type of employment to circumvent labor laws or deny workers their rightful entitlements. Legal frameworks should include mechanisms for resolving disputes related to fixed-term employment, allowing workers to seek recourse if they believe their rights are being violated. While fixed-term employment can provide flexibility for employers, it is essential to establish clear guidelines and safeguards within labor laws to protect the rights and interests of fixed-term workers. Clarity in terms and equal treatment can help prevent potential exploitation and ensure fairness in the workplace. Additionally, providing pathways for job security and dispute resolution can contribute to a more balanced and equitable employment environment for all workers.

The 1947 Act required that Grievance Redressal Committees could be constituted only if fifty or more workers were employed in a particular industrial establishment. In other words, it applied to larger establishments. Section 4 of the new Code imposes an obligation on employers engaging twenty or more workers to constitute Grievance Redressal Committees. This is a significant change as it lowers the threshold for establishing these committees. Now, smaller industrial establishments with twenty or more workers are required to have such committees in place. The composition of Grievance Redressal Committees was not explicitly defined in the 1947 Act, leaving some flexibility. The new Code increases the number of Committee members from six to ten. This expansion of the Committee size can be seen as an effort to ensure diverse representation and potentially enhance the effectiveness of grievance resolution. Additionally, the new Code provides for representation of

women workers on the Committee, which promotes gender inclusivity and diversity in grievance handling. The 1947 Act allowed for a period of forty-five days for the resolution of grievances by the Grievance Redressal Committee. The new Code shortens the time period significantly. It prescribes a period of one year from the date on which the cause of action arises for filing an application before the Grievance Redressal Committee. Moreover, the proceedings before the Committee must be completed within thirty days of receiving such an application. This reduction in time frames is aimed at expediting the resolution of grievances. These changes in the Industrial Relations Code, 2020, regarding Grievance Redressal Committees reflect a shift towards greater inclusivity, efficiency, and accessibility. By lowering the threshold for committee establishment, increasing the number of members, and reducing the time frames for resolution, the Code aims to provide more workers with access to a structured grievance redressal mechanism while ensuring that such mechanisms are timely and effective. Additionally, the inclusion of women workers on the Committee recognizes the need for gender-sensitive grievance handling, acknowledging that workplace grievances can have gender-specific dimensions.

## **6. CONCLUSION**

The Industrial Relations Code, 2020, marks a pivotal moment in India's labor laws, with the intent of simplifying and consolidating a previously complex legal framework. While there are notable positive changes, such as provisions for exemptions in the public interest and adjustments in thresholds for various regulations, there remain areas of concern.

One of the primary concerns revolves around the ambiguity in the code's terminology. The shift from 'workmen' to 'worker' and the introduction of 'employee' without clear definitions create uncertainty regarding who qualifies under each category. This ambiguity could potentially lead to disputes over the applicability of specific rights and obligations, affecting both employers and employees. Another significant concern arises from the introduction of 'fixed-term employment.' While it offers flexibility to employers, the lack of clear guidelines for the terms and conditions of such employment raises questions about potential worker exploitation, job security, and discrimination against fixed-term workers.

These ambiguities have consequences. They can result in legal disputes and delays in justice delivery as different parties interpret the law differently. Employers may struggle to understand their

obligations, potentially leading to inadvertent violations. Workers may feel marginalized or unfairly treated, impacting workplace morale. To address these concerns and ensure fairness in labor relations, it is crucial to establish clear definitions and guidelines within the Industrial Relations Code. This clarity can help prevent potential exploitation, ensure equal treatment for all workers, and create a more balanced and equitable labor landscape in India. Collaboration between the government, labor unions, and employers is essential to strike the right balance between flexibility for businesses and protection for workers in this evolving regulatory framework. In the middle of the Covid-19 outbreak, the Code was adopted in a fast way in order to minimise any potential reaction.

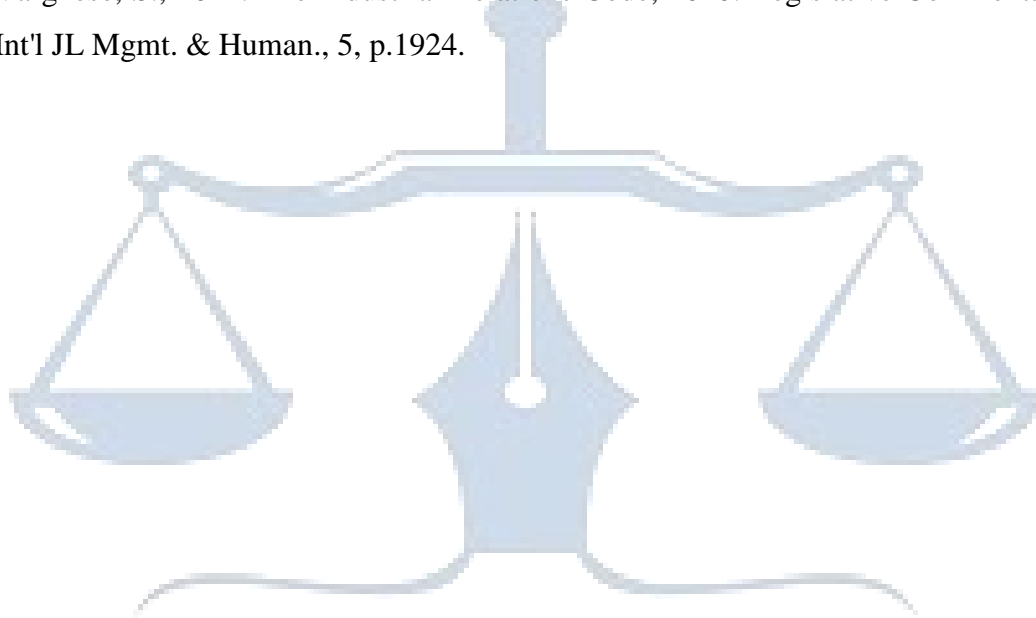
The wellbeing of the workers does not seem to have been taken into consideration while drafting the Code; rather, it appears to have provided employers a significant degree of leeway in terms of employing new employees and laying off existing ones. Both formal and informal employees are subject to the social security rules that have been established as a result of the imposition of new circumstances. This makes it more difficult for workers to go on strike. The usage of the terms "worker" and "employee" without providing any explanation for their distinction contributes to the confusion that this causes.

Because of this, amendments need to be made to the Code in order to clear up any confusion that may have been caused by it. It is imperative that provisions be included to ensure that the rights of workers and employees are protected. It is necessary to place boundaries on the amount of leeway that may be taken advantage of by employers. Employees hired for a certain period of time should get the same treatment as permanent workers in terms of the number of hours worked each week, salary, and other perks. It is completely unwarranted to raise the minimum amount for a standing order from the current level of 100 to the new level of 300. There are no longer any restrictions placed on the ability of small businesses with less than 300 employees to recruit and fire personnel. The marginal informal worker is the primary target for reforming labour laws since they are the ones who work in the most precarious conditions, defy all odds, and are paid, on average, less than the minimum wage. These employees are not covered by social security, and it is precisely these areas that need to be addressed rather than just merging the many laws into a single Code and making modifications that are more accommodating to employers.



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