

DECODING STANDING ORDERS VIS-À-VIS INDUSTRIAL RELATIONS CODE, 2020

Precarious or Precious: the fate of standing orders?

ANUSHKA DHAWAN, K GUHAN
PGDM (Human Resource Management)
XLRI, Jamshedpur

Abstract: This paper has been penned to illustrate the implications of changes in the regulations relating to standing orders under the Industrial Relations Code, 2020, keeping in mind the rights of workmen, heavier importance of employment contracts, the shift in the industrial jurisprudence of the country, and the possible lacunae in the implementation of such regulations. This article emerges from the change in premise of application of the standing orders from 100 to 300 workmen presently or previously employed in the preceding 12 months, and explores the issues relating to this change.

Labour law in India has always strived to establish justice in terms of social, political, and economic values, in line with our constitution¹. It aims to protect the weaker sections of the community by providing equal opportunity to all irrespective of caste, creed, religion, and belief. It also sets up conditions to drive economic growth in the country by improving the ease of doing business while also protecting workers from exploitation, thereby aiming to improve labour standards.² The balance between these aspects is what maintains industrial peace in organizations.³

The incumbent government has consolidated 29 central acts into four labour codes in order to facilitate major & long-pending reforms of labour jurisprudence in the country⁴. One of those consolidated is the Industrial Relations Code of 2020 (“hereinafter referred to as “IRC”).

Chapter IV of the IRC⁵ stipulates significant changes in the regulations relating to standing orders, their applicability, and the process. Standing orders, prior to the new code, found their roots in the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as “*Old Act*”). Standing orders came into existence after a long tenure of turbulence in terms of unequal bargaining powers within the employers and workmen, lack of uniformity, and subsequent overdependence on employment contracts, which were also, in fact, a product of inconsistent, often one-sided employment contracts.⁶ The old act states that it is “*expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them,*”⁷ and that succinctly establishes the reason for the existence of the said regulation.

Standing orders are prepared by the employer, subject to the approval of the registrar, and traditionally includes matters relating to classification of workers and the number required, manner of intimation of period and hours of work, leaves, holidays, overtime, conditions of leave, payday and mode of payment, misconduct,

¹ Rai, D., 2019. A Guide to Labour Laws in India. [Blog] *iPleaders*, Available at: <<https://blog.ipleaders.in/labour-laws/>> [Accessed 3 March 2021].

² In: *Introduction to Industrial Legislation*. n.d. Labour Laws - Concept, Origin, Objectives And Classification. [online] Available at: <<http://www.egyankosh.ac.in/bitstream/123456789/6911/1/Unit-3.pdf>> [Accessed 1 March 2021].

³ Asmitha, N., n.d. A Summary on Existing Labour Laws in India. [Blog] *Legal Service India*, Available at: <<http://www.legalserviceindia.com/legal/article-4220-a-summary-on-existing-labour-laws-in-india.html>> [Accessed 1 March 2021].

⁴ “*The central government proposes to replace 29 existing labour laws with four Codes. The objective is to simplify and modernise labour regulation. The major challenge in labour reforms is to facilitate employment growth while protecting workers’ rights. Key debates relate to the coverage of small firms, deciding thresholds for prior permission for retrenchment, strengthening labour enforcement, allowing flexible forms of labour, and promoting collective bargaining.*”, PRSIndia, n.d. *Overview of Labour Law Reforms*. Finance, Industry & Labour.

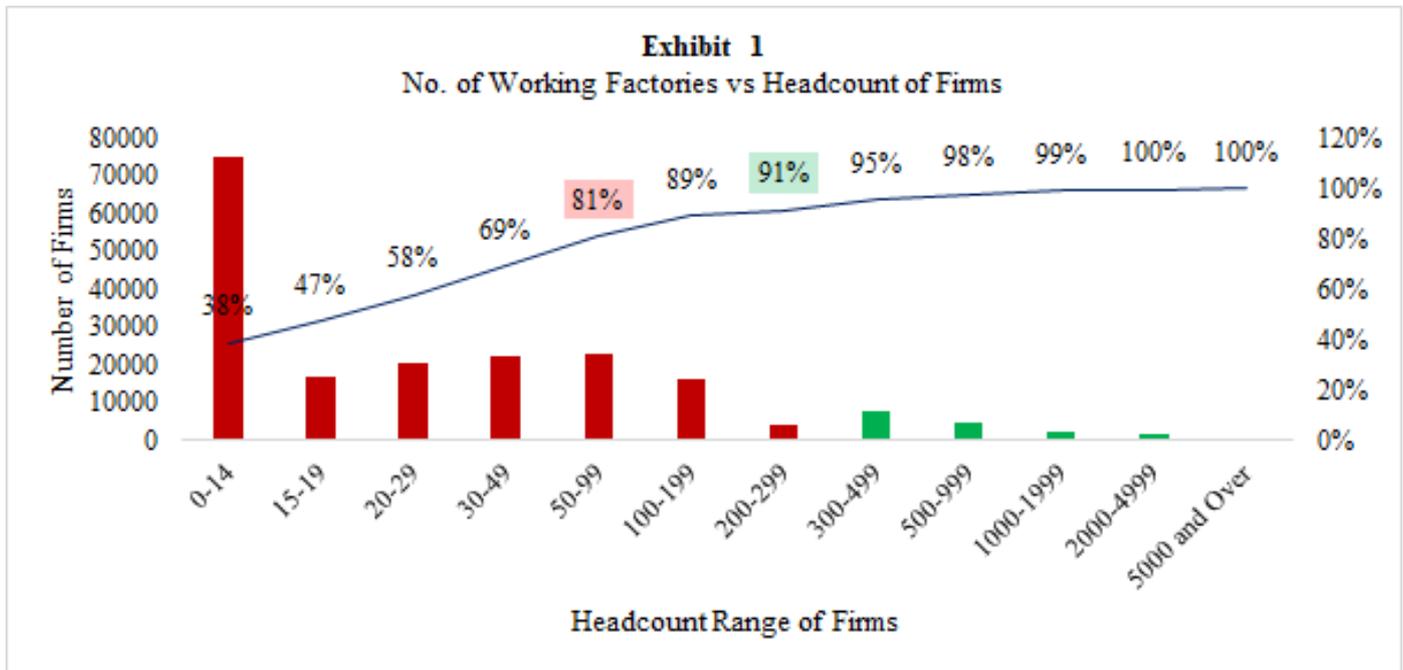
⁵ *Industrial Relations Code, 2020*. Chapter IV. Available at: <http://egazette.nic.in/WriteReadData/2020/222118.pdf> [Accessed 02 March, 2021].

⁶ Toppr.com. n.d. *Industrial Employment (Standing Orders) Act 1946*. [online] Available at: <<https://www.toppr.com/guides/legal-aptitude/labour-laws/industrial-employment-standing-orders-act-1946/>> [Accessed 2 March 2021].

⁷ *The Industrial Employment (Standing Orders) Act, 1946*. S. 1 (3).

grievance redressal, and termination of employment.⁸ It is a type of umbrella contract arrived at through a tripartite process involving the trade union, employers, and representatives from the state labour department. It envisages collective conditions of work. It is safe to treat it as an executive summary of the rules and procedures particular to an organization. As per the old law, standing orders applied to all industrial establishments where 100 or more workmen are or were employed in the preceding twelve months.

In the stride of the free market, the new law has made big changes to the applicability clause. With the advent of IRC, standing orders are now applicable to establishments with 300 or more workers who are or were employed in the preceding twelve months. This is a change from the previously applicable labour laws where this number was capped at 100⁹. There are multiple layers to this shift in applicability, most of them leaving the workers in a state of uncertainty and precariousness.

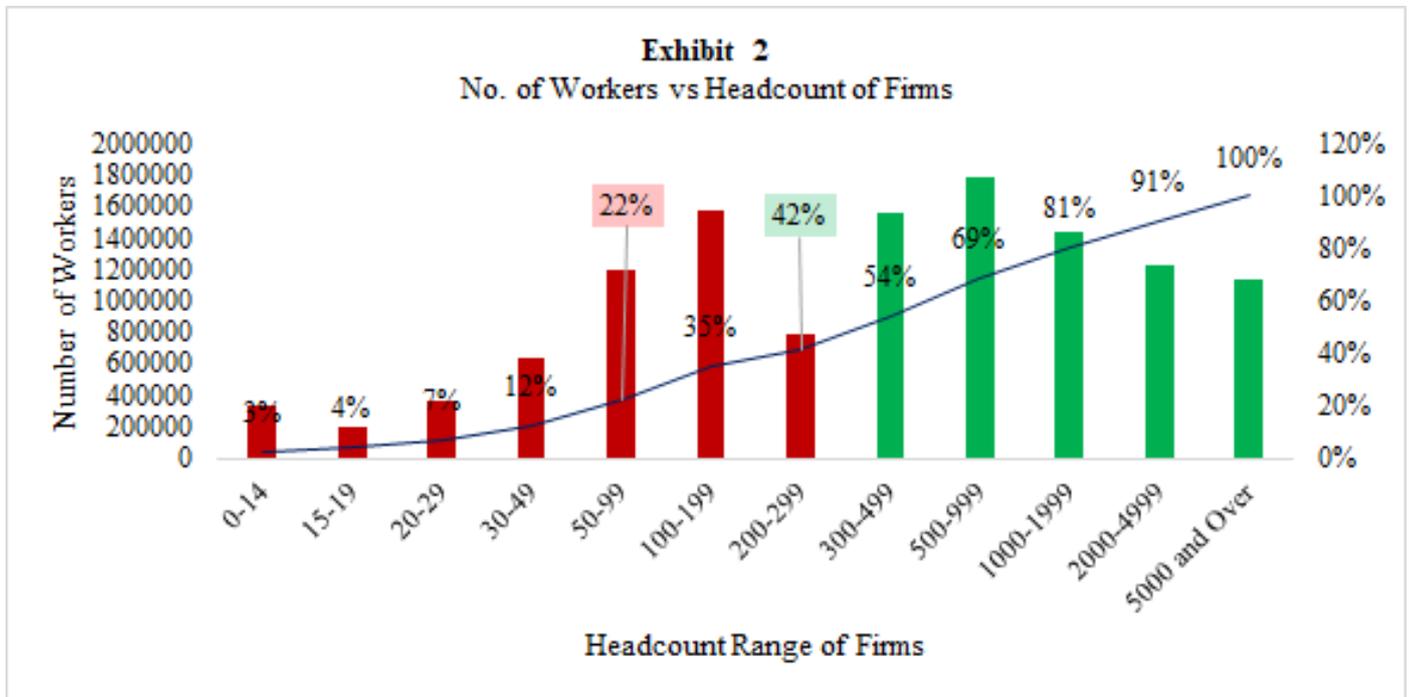


Using data from the Annual Survey of Industries from 2017¹⁰, we can make a few key inferences. The number of factories that need not have standing orders in India has increased by more than 20000, just a 10% increase, as is evident from Exhibit 1. However, a big challenge comes concerning the number of workers for whom standing orders need not be applied once the new law is implemented. This number has increased by almost 24 lakh workers, a 20% increase in the number of workers for whom standing orders do not apply.

⁸ The Leaflet. 2021. *Industrial Relations Code and Standing Orders Act: A Deregulation that Spells Chaos and Hurts Workers*. [online] Available at: <<https://www.theleaflet.in/industrial-relations-code-and-standing-orders-act-a-deregulation-that-spells-chaos-and-hurts-workers/#>> [Accessed 01 March 2021].

⁹ The Indian Express. 2021. *Explained: In the three new labour codes, what changes for workers & hirers?*. [online] Available at: <<https://indianexpress.com/article/explained/govts-new-versions-of-labour-codes-key-proposals-and-concerns-6603354/>> [Accessed 1 March 2021].

¹⁰ Ministry of Statistics & Programme Implementation, 2018. Summary of Results for Factory Sector, Annual Survey of Industry.



As a result, 50 Lakh workers are not protected by some of the policies that were previously enforced by model standing orders. This comes as a welcome boost to small companies and start-ups who do not have a healthy cash flow, allowing them to hire & fire employees as per their needs. However, it negatively affects labour standards and gives an opportunity for companies to exploit workers. It is also important to note that this was done to promote investment in India by simplifying businesses with respect to labour compliance in the hope of creating more jobs as contract workers and fixed-term-employments.¹¹

This could leave the workmen at the mercy of employers in many ways. For starters, bringing into place a certified SO was a tripartite process¹², making all the active stakeholders a part of the minimum working conditions that the SO envisages to determine. As has already been stated, many establishments under the ambit will now be on their own, resulting in commotion, especially in the start-up or MSME spectrum. A bigger problem is that, as per the old act, any amendments required had to be approved by the registrar, along with a due process of law. For all the establishments out of the scope of applicability of Chapter IV, it is pertinent to mention that employment contracts will now be the governing documents in such cases. That has three significant implications; the first, that the employment contracts will have to be very exhaustive and self-supportive. It will be the onus of the employers to ensure a balance of interests in the contract. In case they are not comprehensive, there will be a higher probability of never-ending litigation for the companies. The industrial jurisprudence in India points towards a pro-labor attitude; therefore, it is crucial to ensure these factors, in case matters do end up reaching the courts. Second, this gives companies the leeway to dictate the terms and conditions on the amendment of the contract and may lead to a situation where amendments to service rules are made at the behest of the employer, especially for the employees that are unaware of the implications of their employment contracts, to begin with. Third, we are yet to see where this leaves us on the matters of temporary workers, especially FTEs and Contract Workers who are entitled to social benefits¹³ by the virtue of the new codes.

¹¹ The Indian Express. 2021. *Explained: In the three new labour codes, what changes for workers & hirers?*. [online] Available at: <<https://indianexpress.com/article/explained/govts-new-versions-of-labour-codes-key-proposals-and-concerns-6603354/>> [Accessed 1 March 2021].

¹² Shyam Sunder, K., 2020. Shortcomings in the Draft Industrial Relations Rules [Part 1]. *The Leaflet*, [online] Available at: <<https://www.theleaflet.in/shortcomings-in-the-draft-industrial-relations-rules-part-1/#>> [Accessed 4 March 2021].

¹³ Rajalakshmi, T., 2020. The new labour codes: Labour's loss. *Frontline*. Available at: <<https://frontline.thehindu.com/the-nation/labours-loss/article32749705.ece>>

Traditionally, the Standing Orders contained answers limited to the matters specified¹⁴ in the old act's first schedule. Now, the IRC allows the employer to draft SO for matters above and beyond the code's schedule, depending on the operation area of the industry, subject to necessary approvals. There have also been multiple reports on the revised draft rules for the service industry¹⁵, including game-changing provisions like work from home¹⁶, etc. Substantive law is mere words without implementation and sanction¹⁷, and it is fair to say that the jury is still out on the implementation of a plethora of these provisions.



¹⁴ *Md. Yasin vs Presiding Officer* (1975) ILLJ 100 Ori (Orissa High Court). Available at: <<https://indiankanoon.org/doc/1303320/>>

¹⁵ Manchanda, D. and Sharma, S., 2021. Model Standing Orders For Services Sector. *Mondaq.com*, [online] Available at: <<https://www.mondaq.com/india/employee-rights-labour-relations/1031442/model-standing-orders-for-services-sector>> [Accessed 6 March 2021].

¹⁶ Ojha, P., 2021. 'Work From Home' Standing Order for Service Sector. *Law Times Journal*, [online] Available at: <<http://lawtimesjournal.in/work-from-home-standing-order-for-service-sector/>> [Accessed 8 March 2021].

¹⁷ Lever, J., 1999. Why Procedure is more Important than Substantive Law. *International and Comparative Law Quarterly*, 48(2), pp.285-301.