

# Critical Analysis of Industrial Relations Code, 2020

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**Abstract:** Though Industrial Relations Code, 2020 claims to consolidate the provisions of the 3 major industrial laws, by simplifying the existing labour laws, there are many ambiguities in the present Code which instead makes the Code more complex.

For instance, under the new Code, the term 'workmen' under the Industrial Disputes Act, 1947 has been replaced with the term 'worker' which is comparatively narrow in its scope. Along with the term 'worker', the term 'employee' has also been defined under the new Code, which was not present under the old Act. The usage of both the terms 'employee' and 'worker' in the Code without any explanation or clarity makes the situation more complex rather than simplifying the laws which is the primary purpose of this Code.

Further, the definition of 'industry' has been narrowed down under the new Code, as a result of which several institutions owned or managed by organizations engaged in any charitable, social or philanthropic service are deprived of their rights as they are ousted from the ambit of the Code. Though a new term 'fixed-term employment' has been introduced under the new Code, where a worker can be engaged for a fixed period, there exists ambiguity on the terms and conditions of employment.

The new Code is employer-friendly as it provides for a great amount of flexibility to the employers. The increase of threshold to 300 workers under the new Code reduces the protection available to the workers who are working in an industrial establishment where the total number of workers are less than 300, as the employers are obliged to take prior government approval in the case of lay off, retrenchment and closure only if the number of workers engaged in an industrial establishment is three hundred or more. This would mean that the workers working in an industrial establishment with less than 300 workers are subjected to the risk of arbitrary lay-offs, retrenchment and closure which would result in loss of livelihood.

Under the new Code, the penalty of imprisonment has been removed in respect of the commission of offences by employers. On the other hand, participation in illegal strike and other related offences committed by the employee continue to be punishable with imprisonment or fine or both. In fact, the fine amount for participating in such illegal strike has been enhanced when compared to the old Act. The new Code provides for compounding of offences which would mean that there may be no instances where an employer would be prosecuted and convicted.

Thus, it is clear that most of the changes introduced under the new Code are employer-friendly thereby affecting the workers' rights.

## **I. Introduction**

The Industrial Relations Code, 2020 is one of the three labour Codes which received the assent of the President on 28<sup>th</sup> September 2020. The Government has codified 29 existing central laws governing labour affairs into four Codes. The Code on Wages, 2019 was passed by the Parliament on 8<sup>th</sup> August 2019, and the Parliament passed the Occupational Safety, Health & Working Conditions Code, 2020 and the Social Security Code, 2020 along with the Industrial Relations Code, 2020 (IR Code). However, the date of the Code coming into force is yet to be notified.

IR Code seeks to replace three major labour laws that are referred to as the 'mothers' of Indian Industrial legislation viz., The Industrial Disputes Act, 1947, The Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946, which lays down the overall substantive rights of workers and trade unions in India. This Code is an attempt to transform the basis of industrial jurisprudence. This Code was passed amidst severe criticism and protest by many trade unions.

Though Industrial Relations Code, 2020 claims to consolidate the provisions of the 3 major industrial laws, by retaining its fundamental features, certain significant changes have been made to the law that have serious implication on the workers' rights. While one of the primary purposes behind the enactment of the new Labour Code is to simplify the existing labour laws, there exists many ambiguities in the present Code

which instead makes the Code more complex. The Code is designed to protect the industrial establishments at the cost of the workforce.

## **II. Salient Feature of the Industrial Relations Code, 2020**

The key features of the IR Code, 2020, can be summarised as follows:

1. This Code received the assent of the President on 28<sup>th</sup> September 2020.
2. Objectives of the Code: To consolidate and amend the laws relating to:
  - i. Trade Unions;
  - ii. Conditions of employment in industrial establishment or undertaking;
  - iii. Investigation and settlement of industrial disputes;
  - iv. Other connected matters.<sup>1</sup>
3. Applicability: The Code extends to the whole of India.<sup>2</sup>
4. The IR Code comprises of 104 sections divided into 14 chapters.
  - i. Chapter 1 containing sections 1 and 2 are the introductory provisions dealing with application and definitions.
  - ii. Chapter 2 containing sections 3 and 4 deals with establishment of Bi-Partite Forums i.e., the Works Committee and the Grievance Redressal Committee.
  - iii. Chapter 3 containing sections 5 to 27 deals with provisions relating to trade union.
  - iv. Chapter 4 containing sections 28 to 39 deals with Standing Orders.
  - v. Chapter 5 containing sections 40 and 41 deals with notice of change.
  - vi. Chapter 6 containing section 42 deals with voluntary reference of disputes to arbitration.
  - vii. Chapter 7 containing sections 43 to 61 deals with mechanism for resolution of industrial disputes
  - viii. Chapter 8 containing sections 62 to 64 deals with strikes and lock-outs.
  - ix. Chapter 9 containing sections 65 to 76 deals with lay off, retrenchment and closure.
  - x. Chapter 10 containing sections 77 to 82 deals with special provisions relating to lay-off, retrenchment and closure in certain establishments.
  - xi. Chapter 11 containing section 83 deals with worker re-skilling fund.
  - xii. Chapter 12 containing section 84 deals with Unfair Labour Practices.
  - xiii. Chapter 13 containing sections 85 to 89 deals with Offences and Penalties.
  - xiv. Chapter 14 containing sections 90 to 104 deals with miscellaneous provisions.
5. The Code contains three schedules.
  - i. Schedule 1 deals with matters to be provided in standing orders under this Code.
  - ii. Schedule 2 deals with unfair labour practices both on the part of employers and trade unions of employers and on the part of workers and trade unions of workers.
  - iii. Schedule 3 deals with conditions of service for change of which notice is to be given.

## **III. Major Changes brought under the new Code**

### **A. Definitions**

The most significant damage to worker's rights has been done by making changes in the key definitions under the Code and by omitting certain terms defined in the older legislations.

#### (i) 'industry'

The new Section 2(p) under the Industrial Relations Code, 2020 provides for an elaborate definition of the term 'industry' when compared to the definition under Section 2(j) of the Industrial Disputes Act, 1947. The new Code defines the term 'industry' to mean '*any systematic activity carried on by co-operation between an employer and worker for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes,<sup>3</sup> whether or not any capital has been invested for the purpose of carrying on such activity<sup>4</sup> or any activity is carried on for any gain<sup>5</sup>*'. However, section 2(p) does not include within its ambit institutions owned or managed by organizations that are engaged in any charitable, social or

<sup>1</sup> Industrial Relations Code, 2020, Preamble, The Gazette of India, pt. II, sec 1 (September 29, 2020)

<sup>2</sup> *Id.* at § 1(2).

<sup>3</sup> *Id.* at § 2(p)

<sup>4</sup> *Id.* at § 2(p)(i)

<sup>5</sup> *Id.* at § 2(p)(ii)

philanthropic service<sup>6</sup> or any activity of the appropriate Government related to its sovereign functions<sup>7</sup> or any domestic service<sup>8</sup> or any other activity as may be notified by the Central Government.<sup>9</sup>

Though the new definition seeks to bring a greater number of activities within its ambit, this definition excludes institutions owned or managed by organizations engaged in any charitable, social or philanthropic service, thereby depriving such institutions from the coverage of the Code. Further, this provision empowers the central Government to exclude 'any other activity' from the scope of the definition by issuing a notification.

(ii) 'employer'

Section 2(m) of the 2020 Code provides for a wider definition of the term 'employer' when compared to section 2(g) of the Industrial Disputes Act, 1947. The new Code includes within its ambit occupier of the factory,<sup>10</sup> factory manager,<sup>11</sup> contractor<sup>12</sup> and legal representative of the deceased employer.<sup>13</sup>

This new provision will affect the rights of the workers employed through intermediary contractors as it would be difficult for such workers to press claims against the principal employer.

(iii) 'worker'

The term '*workman*' defined under section 2(s) of the Industrial Disputes Act, 1947 has been replaced with the term '*worker*' under Section 2(zr) of the Code which is comparatively narrow in its scope. For instance, 'apprentice' as defined under the Apprentices Act, 1961, has been excluded from the definition. It has brought within its scope 'working journalist' and 'sales promotion employees'.<sup>14</sup> Persons employed in an industry primarily in a managerial or administrative capacity stands excluded from the ambit of the term 'worker.' Similarly, persons employed in a supervisory capacity drawing wages exceeding Rs. 18,000/- per month or any other amount notified by the central Government also stand excluded from the scope of the definition under section 2(zr) of the new Code.

(iv) 'employee'

The Industrial Disputes Act, 1947 did not define the term 'employee'. However, the Industrial Relations Code, 2020 introduces the definition of the term 'employee' under section 2(l), which is wider than the definition of the term 'worker' under section Section 2(zr) of the Code. It includes within its ambit any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward. It excludes any member of the Armed Forces of the Union.<sup>15</sup>

The usage of both the terms 'employee' and 'worker' in the Code without any explanation or clarity makes the situation more complex rather than simplifying the laws which is the primary purpose of this Code. There is uncertainty about the rights conferred on the persons who fall within the definition of 'employee' but do not fall within the ambit of the term 'worker', which leads to more confusion in the minds of the people. For instance, the definition of the term 'industrial dispute' under section 2(q) of the Code refers to 'worker' and not 'employee' which implies that only workers as defined under Section 2 (zr) of the Code will have the right to access the mechanisms for resolution of industrial disputes and the 'employee' shall not have such a right. Whereas, Section 91 of the Code states that any 'employee' may make a complaint to the concerned authority if his employer prejudicially alters his conditions during the pendency of an industrial dispute, despite the term 'employee' being outside the scope of the definition of 'industrial dispute' under section 2(q) of the Code. Thus, the term 'worker' and 'employee' are confusing and self-contradictory.

<sup>6</sup> *Id.* at § 2(p)(ii)(i)

<sup>7</sup> *Id.* at § 2(p)(ii)(ii)

<sup>8</sup> *Id.* at § 2(p)(ii)(iii)

<sup>9</sup> *Id.* at § 2(p)(ii)(iv)

<sup>10</sup> *Id.* at § 2(m)(i)

<sup>11</sup> *Id.* at § 2(m)(ii)

<sup>12</sup> *Id.* at § 2(m)(iii)

<sup>13</sup> *Id.* at § 2(m)(iv)

<sup>14</sup> *Id.* at § 2(zr)

<sup>15</sup> *Id.* at § 2(l)

(v) 'industrial dispute'

The term 'industrial dispute' under Section 2(q) of the new Code includes within its ambit any dispute or difference between an individual worker and an employer connected with, or arising out of discharge, dismissal, retrenchment or termination of such worker.<sup>16</sup>

(vi) 'strikes'

Section 2(zk) of the Code provides for a wider definition of the term 'strike' when compared to section 2(q) of the Industrial Disputes Act. The new Code includes within its definition 'concerted casual leave on a given day by fifty percent or more workers employed in an industry'.<sup>17</sup> This implies that the penalties for participation in an illegal strike would be applied even in cases where majority of workers absent themselves by availing of casual leave.

(vii) 'wages'

The definition of 'wages' under Section 2(zq) of the new Code is narrower than the definition provided under section 2(rr) of the 1947 Act. The new Code excludes house rent allowance, value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grain or other articles,<sup>18</sup> travelling concession,<sup>19</sup> commission payable on the promotion of sales or business or both,<sup>20</sup> which were all explicitly included under the definition of 'wages' under section 2(rr) of the Industrial Disputes Act, 1947.

(viii) 'trade union dispute'

The new Code omits the definition of the term 'trade dispute' as provided under Section 2(g) of the Trade Unions Act, 1926 and instead provides for a definition of the term 'trade union dispute' under section 2(zm) of the new Code which states that '*Trade Union dispute means any dispute relating to Trade Union arising between two or more Trade Unions or between the members of a Trade Union inter se.*'<sup>21</sup>

This definition is much narrower when compared to the definition of 'trade dispute' under the Trade Unions Act, 1926 as it is strictly limited to disputes between only the trade unions or its members.<sup>22</sup>

(ix) 'fixed term employment'

The term 'fixed term employment' has been introduced under Section 2(o) of the Code which means a worker is engaged for a fixed period on the basis of a written contract as per the conditions set out under the proviso of the section.

The proviso states that the hours of work, wages, allowances and other benefits of a fixed term employee shall not be less than that of a permanent worker doing the same work or work of a similar nature.<sup>23</sup> Further, a fixed term employee shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him.<sup>24</sup> He shall also be eligible for gratuity if he renders service under the contract for a period of one year.<sup>25</sup>

However, the Code does not provide for the term for which a worker may be engaged as a fixed term employee. The Code also does not specify the nature of work for which workers can be engaged on a fixed term basis. This implies that a fixed term employee can be engaged for any kind of work any number of times.

Further, section 2(zh) of the Code which defines the term 'retrenchment' excludes termination of service of a worker engaged on a fixed term employment. As a result, such a worker would not be entitled to any retrenchment compensation upon termination from service.

<sup>16</sup> *Id.* at § 2(q)

<sup>17</sup> *Id.* at § 2(zk)

<sup>18</sup> the Industrial Disputes Act, 1947, § 2(rr)(ii); *See* IR Code, 2020, § 2(zq)(b)

<sup>19</sup> *Id.* at § 2(rr)(iii); *See* IR Code, 2020, § 2(zq)(d)

<sup>20</sup> *Id.* at § 2(rr)(iv); *See* IR Code, 2020, § 2(zq)(i)

<sup>21</sup> IR Code, 2020, § 2(zm)

<sup>22</sup> *Compare* The Trade Union Act, 1927, § 2(g) and IR Code, 2020, § 2(zm)

<sup>23</sup> IR Code, 2020, Proviso (a) to § 2(o)

<sup>24</sup> *Id.* at Proviso (b) to § 2(o)

<sup>25</sup> *Id.* at Proviso (c) to § 2(o)



## **B. Flexibility for employers**

### **(i) Framing Standing Orders**

Under the Industrial Employment (Standing Orders) Act, 1946, every employer of industrial establishment was obliged to prepare draft standing orders if one hundred or more workmen are employed.<sup>26</sup> However, under the new Code, the threshold of workers for the application of standing orders has been raised to three hundred workers by virtue of Section 28 of this Code. Section 30 r/w Section 28 of the new Code imposes an obligation on the employer of industrial establishment to prepare draft standing orders only if the number of workers employed are three hundred or more.

With the increase of threshold to three hundred workers, the employers engaging workers less than three hundred are absolved from the obligation of drafting standing orders which implies that they are not obliged to frame uniform contracts to all its workers and has the liberty to enter into individual contracts with the workers.

**(ii) Fixed term employment** – The new Code expressly recognizes the concept of ‘fixed term employment’. On a combined reading of Section 2(o) with Section 28 of the Code, would imply that the employers have the right to engage as many workers as they please as ‘fixed term employees’ instead of engaging permanent workers, even if the work is of a regular nature. Though this is beneficial to the employers as they are given the right to hire workers based on requirement through a written contract, the workers’ rights are affected as they will not be able form and join trade unions. This is one of the most vicious changes made under the Code as there is a threat of the workers getting terminated from service without any just and reasonable cause.

### **(iii) Lay off, Retrenchment and Closure**

The increase of threshold to three hundred workers under the new Code reduces the protection available to the workers who are working in an industrial establishment where the total number of workers are less than three hundred, as the employers are obliged to take prior government approval only if the number of workers engaged in an industrial establishment is three hundred or more by virtue of Section 77 of the Code. This would mean that the workers working in an industrial establishment with less than three hundred workers are subjected to the risk of arbitrary lay-offs, retrenchment and closure. This would result in loss of livelihood of such workers which is an infringement of their fundamental right to livelihood which forms a part of Article 21 of the Indian Constitution. The Code also gives the liberty to the Government to raise this threshold by notification. This would cause great hardship to the workers/employees.

### **(iv) Lesser compensation**

Section 70(b) provides for the condition precedent to the retrenchment of workers. It provides that no worker who has been employed for not less than one year under an employer shall be retrenched unless such a worker is paid retrenchment compensation equivalent to average pay of fifteen days' or such days as may be notified by the appropriate Government for every completed year of continuous service or any part thereof in excess of six months.<sup>27</sup>

### **(v) Exceptions to the rule of notice**

In similar lines with section 9-A of the Industrial Disputes Act, 1947, Section 40 of the new Code also envisages that the employer shall give advance notice of at least twenty-one days to the workers before making any change in their conditions of service. However, the new Code provides for certain exemptions. It exempts the employers to issue notice where the change is effected in pursuance of any settlement or award<sup>28</sup> or where the change is effected in pursuance of any settlement or award, etc., apply<sup>29</sup> or in case of emergent situation which requires a change of shift or shift working, otherwise than in accordance with the applicable standing orders in consultation with the Grievance Redressal Committee<sup>30</sup> or if such a change is effected in accordance with the orders of the appropriate Government or in pursuance of any settlement or award.<sup>31</sup>

<sup>26</sup> Industrial Employment (Standing Orders) Act, 1946, § 1(3) & § 3.

<sup>27</sup> IR Code, 2020, § 70 (b)

<sup>28</sup> *Id.* at § 40 proviso (a)

<sup>29</sup> *Id.* at § 40 proviso (b)

<sup>30</sup> *Id.* at § 40 proviso (c)

<sup>31</sup> *Id.* at § 40 proviso (d)

**(vi) Advance notice**

The Code prohibits the exercise of strikes and lockouts without issuing a notice in advance. Section 62(1) of the Code states that before going on a strike, the workers are to give notice of a minimum of 14 days and a maximum of 60 days to the employer. Whereas, under Section 22 under Industrial Disputes Act, 1947, only workers engaged in public utility service are asked to give prior notice to their employer before going on a strike. Such a requirement would make it very difficult for a worker engaged in any industrial establishment to go on a strike even if it is legal and are justified in doing so.

**(vii) Penalty Provisions**

Unlike section 25-U of the Industrial Disputes Act, Section 86(5) of the new Code provides that the commission of any unfair labour practice is punishable only with fine. Under the 1947 Act, the commission of an unfair labour practice is punishable with imprisonment or fine or both. Similarly, under Section 86(6) of the new Code, any contravention of sections 78,79 and 80 pertaining to the need for government approval before effecting lay-off, retrenchment or closure is punishable only with fine. However, under sections 25-Q of the ID Act, 1947, any contravention of these provisions were punishable with either, imprisonment or fine or with both.

Penalty of imprisonment has been waived off in respect of commission of offences by employers. Whereas, participation in an illegal strike, instigating others to participate such strike or financially aiding such strike continue to be punishable with imprisonment or fine or both.<sup>32</sup> In fact, the fine amount for participating in such illegal strike has been enhanced to a maximum of Rupees Ten Thousand and Rupees Fifty Thousand for instigating others to participate in a strike or financing an illegal strike.<sup>33</sup>

**(viii) Compounding of offences**

The new Code provides for compounding of offences. This would mean that there may be no instances where an employer would be prosecuted and convicted.

Section 89(1) of the Code states that a person accused of any offence punishable under this Code (not being an offence punishable with imprisonment only, or with imprisonment and also with fine) may file an application to compound such an offence by paying 50% of the maximum fine provided for such offence punishable with fine only and by paying 75% of the fine amount for offences punishable with imprisonment for a term which is not more than one year or with fine.<sup>34</sup>

**(ix) Exemption of certain industrial establishments**

The power vested with the Government under the new Code is much wider than that under section 36B of the Industrial Disputes Act, 1947.

Section 96 of the Code empowers the appropriate Government to exempt any industrial establishment or undertaking or any class of industrial establishments or undertakings, by issuing a notification, if it is satisfied that adequate provisions exist to fulfil the objects of any provision of this Code,<sup>35</sup> or if the appropriate Government is satisfied that it is necessary to do so in the interest of the public.<sup>36</sup>

The Government, by exercising such power of exemption would deprive the workers the right of access to justice, freedom of association, collective bargaining rights etc. Such measures afford greater flexibility for employers and cause hardship to the workers/employees.

**C. Industrial Dispute Resolution mechanism****(i) Grievance Redressal Committee**

Although section 9-C of the Industrial Disputes Act, 1947 inserted by the 2010 amendment to the Act provides for the constitution of Grievance Redressal Committee, the new Code has brought about certain changes regarding the constitution and functioning of the Committee.

Section 4 of the Code imposes an obligation on the employers engaging twenty or more workers to constitute Grievance Redressal Committees for resolution of disputes arising out of individual grievances.<sup>37</sup>

<sup>32</sup> *Id.* at § 86 (13), (15) & (16).

<sup>33</sup> *See* ID Act, 1947, § 26, 27 & 28

<sup>34</sup> IR Code, 2020, § 89(1)

<sup>35</sup> IR Code, 2020, § 96(1)

<sup>36</sup> *Id.* at § 96(2)

<sup>37</sup> *Id.* at § 4(1)

Under the 1947 Act, such Committees could be constituted only if fifty or more workers are employed in a particular industrial establishment.<sup>38</sup>

The new Code along with increasing the number of Committee members from six to ten, also provides for representation of women workers on the Committee.<sup>39</sup> The period of limitation prescribed for filing an application before the Grievance Redressal Committee is one year from the date on which cause of action arises<sup>40</sup> and the proceedings must be completed within thirty days of receipt of such application.<sup>41</sup> The time period provided under the Code is shorter than that provided under the 1947 Act, which was forty-five days.<sup>42</sup>

#### (ii) Conciliation

In the event, the dispute could not be resolved before grievance redressal committee within a period of 30 days as provided under Section 4(6) of the Code, or if any worker is aggrieved by the decision of such a Committee, he may file an application before the conciliation officer for the resolution of dispute through the trade union of which he or she is a member.<sup>43</sup> The Conciliation proceedings must be concluded within a period of forty-five days from the date of its application failing which the worker can approach the Tribunal directly.<sup>44</sup> The application to the tribunal must be made before the expiry of two years from the date of discharge, dismissal, retrenchment or otherwise termination of service.<sup>45</sup>

#### (iii) Abolition of Labour Courts

The Industrial Disputes Act, 1947 provides for establishment of Labour Courts for adjudication of Industrial disputes. However, the new Code abolishes Labour Courts and provides for adjudication of industrial disputes only by Industrial Tribunals. With the abolition of labour Courts at the district level, the workers will be denied access to justice owing to the lesser number of Industrial Tribunals in each State.

#### (iv) Two-member Industrial Tribunals

Chapter VII of the Code deals with mechanism for resolution of industrial disputes. Section 44 provides for the appointment of both, a Judicial Member and an Administrative Member to every Tribunal.<sup>46</sup> However, to be appointed as an Administrative Member of the Tribunal there is no requirement for such a person to have prior experience in dealing with labour matters.

#### (v) Transfer of Pending cases

Section 51 of the Code states that, cases that are pending before the existing Labour Courts and Industrial Tribunals shall be transferred to the Tribunals to be constituted under the Code and these matters shall be dealt with de novo or from the stage at which they were pending prior to the transfer.

#### (vi) Interim relief

Section 50(2) of the new Code empowers the Industrial Tribunals to grant interim relief to the worker during the pendency of the industrial dispute. However, it is restricted only to cases of dismissal or discharge or termination of workers and the tribunal shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter for the purpose of granting such interim relief.<sup>47</sup>

#### (vii) Reference

Under the new Code, there is no provision relating to 'reference of disputes to Boards, Courts or Tribunals' as provided under section 10 of the Industrial Disputes Act, 1947. However, in case of disputes of national importance, the central Government may refer an industrial dispute for adjudication to the National Industrial Tribunal.<sup>48</sup>

Another instance when reference is made under the new Code is when the members of the Industrial or national tribunal differ in opinion on any point. In such circumstances, they are required to make a reference

<sup>38</sup> The ID Act, 1947, § 9-C

<sup>39</sup> IR Code 2020, S. 4(4)

<sup>40</sup> *Id.* at § 4(5)

<sup>41</sup> *Id.* at § 4(6)

<sup>42</sup> The ID Act, 1947, § 9-D

<sup>43</sup> IR Code 2020, § 4(8)

<sup>44</sup> *Id.* at § 4(10)

<sup>45</sup> *Id.* at § 4(11)

<sup>46</sup> *Id.* at § 44(2)

<sup>47</sup> *Id.* at § 50(2)

<sup>48</sup> *Id.* at § 54(1)

to the concerned Government as provided under Section 47(2) of the Code. The Government then appoints a Judicial Member of another Tribunal who shall hear the points in dispute and then the case would be mutually decided by majority of the members of the Tribunal who have heard the case earlier, and the newly appointed Judicial Member of the other Tribunal who heard the case.<sup>49</sup>

#### **D. Other provisions**

##### **(i) Recognition of trade unions**

Section 27 of the new Code provides for the recognition of trade union federations as central and state trade unions by the central and state Government respectively. However, the Code is silent on the criteria or procedure for the grant of such recognition.

##### **(ii) Negotiating Unions**

Section 14 of the Code provides for the recognition of trade union as a 'negotiation union' or a 'negotiating council' in an industrial establishment for negotiating with the employer. If there is only one trade union in an industrial establishment, then the employer is required to recognize such trade union as the sole negotiating union of the workers.<sup>50</sup> If there are multiple trade unions, the trade union having 51% or more workers on the muster roll of that industrial establishment will be recognized as the negotiating union by the employer of that industrial establishment.<sup>51</sup> If no Trade Union has 51% or more workers as stated above, then the employer shall constitute a negotiating council with the representatives of such registered Trade Unions which has the support of at least 20% of workers on the muster roll of that industrial establishment.<sup>52</sup>

##### **(iii) Worker re-skilling fund**

Section 83 of the Code provides for the setting up of worker re-skilling fund which shall consist of the contribution of the employer of an industrial establishment an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment, or such other number of days as may be notified by the Central Government<sup>53</sup> and these funds shall be utilized by crediting 15 days wages last drawn by the worker to his account who is retrenched, within forty-five days of such retrenchment.<sup>54</sup>

#### **IV. Conclusion and Suggestion**

The Code has been enacted in a hasty manner amidst the Covid-19 pandemic to avoid any backlash. The Code does not seem to have taken into account the welfare of the workers and has instead given tremendous amount of flexibility to the employers with regards to hiring and retrenchment. With the imposition of new conditions, industrial strikes are made more difficult and the social security norms are imposed on both formal and informal workers. There is use of the term 'worker' as well as 'employee' without any justification which creates confusion.

Thus, the Code needs to be amended in order to remove the existing ambiguities. Provisions to safeguard the rights of the workers/employees have to be included. The flexibility given to the employers has to be restricted to avoid any misuse. Fixed term employees should be treated on par with permanent workers in terms of hours of work, wages, allowances and other benefits. The increase in the threshold for standing orders from the existing 100 to 300 is totally uncalled for. Small firms that hire less than 300 workers now have complete impunity in hiring and firing employees.

Labour law reform must focus on the marginal informal worker who works under all circumstances beating all odds and most often gets paid lower than even the minimum wage. Such workers lack social security and it is such areas that needs to be addressed rather than merely consolidating the legislations into one Code and making employer-friendly changes.

<sup>49</sup> *Id.* at § 47(3)

<sup>50</sup> *Id.* at § 14(2)

<sup>51</sup> *Id.* at § 14(3)

<sup>52</sup> *Id.* at § 14(4)

<sup>53</sup> *Id.* at § 83(2)

<sup>54</sup> *Id.* at § 83(3)



## References

1. Industrial Relations Code, 2020
2. The Industrial Disputes Act, 1947
3. The Trade Unions Act, 1926
4. The Industrial Employment (Standing Orders) Act, 1946

