The Industrial Relations Code, 2020: An Overview

Online Training Programme on New Labour Codes

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Context

- Every society needs continuous supply of goods and services, which is possible only with the cooperation of industry and the workers

- However, the interest of both these parties are not the same. While the employer wants the maximum return on the capital invested by him, the workers want maximum return in terms of remuneration, social security and conditions of service, etc.

- There is, therefore, always a chance of conflict and tussle which needs to be minimized, if not eliminated altogether by way of putting in place appropriate regulatory measures

- That is why most of the countries in the world (including India) have enacted labour laws/legislations as per their needs

- As per the scheme of the Indian Constitution, both Parliament and State Legislatures are vested with the power to make labour laws. That is how over the years, more than 150 labour legislations have been enacted by the Centre and States covering aspects like wages, social security, industrial relations and occupational safety, health and working conditions, etc.

- As far as, the regulation of the relations between the employers and employees engaged in various sectors and sub-sectors of industry and services, we had in India till recently, The Trade Unions Act, 1926, The Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947.

- These enactments primarily dealt with aspects like procedure for registration of trade unions, their rights and duties (Trade Unions Act, 1926); regulation of conditions of service including aspects like recruitment, discharge, misconduct (including acts or omissions which constitute misconduct), disciplinary action, holidays and leaves etc, by way of framing of the standing orders and obligating the employers to include these matters in the Standing Orders and getting the same certified (Industrial Employment Standing Orders Act, 1946) and the procedure and mechanism for investigation and settlement of industrial disputes as well as the procedure for resorting to lay-off, retrenchment and closure, etc. (ID Act, 1947)

- However, till recently, there was a common perception that many of the provisions of these enactments are archaic, obsolete and not in conformity with the present day needs of industry and workers and hence it was felt that there was a need to consolidate and rationalize the provisions of these enactments as per the present day needs

- In this context, a comprehensive and massive exercise was made to consolidate and amalgamate the salient features of the above mentioned three enactments in one code along with rationalization of the various provisions in the shape of the enactment of the Industrial Relations Code, 2020.

- The Industrial Relations Code, 2020 is one of the four Labour Codes envisaged under the over all scheme of codification of various central labour legislations (total 29 in numbers)

- It is expected that the codification of the these Labour Laws by consolidation of relevant provisions at one place would help in facilitating the implementation and removing the multiplicity of definitions and authorities without compromising with the available safeguards

- The IR Code, 2020 seeks to bring transparency and accountability in the enforcement of labour laws which is expected to lead to better industrial relations and thus higher productivity

- It is expected that the ease of compliance of labour laws would promote setting up of more enterprises, thus catalyzing the creation of ample employment opportunities in the Country

- The Industrial Relations Draft Code, was **introduced in Lok Sabha on 28.11.2019**. It was referred to the Parliamentary Standing Committee on 23.12.2019 for examination

- In the process of examination of the Code, the Committee invited the views and suggestions from trade unions, employers organizations, civil society organisations and individuals through a Press Communiqué and received a large number of views/suggestions

- The committee also took oral evidence of the representatives of Central Trade Union Organizations and various other Associations such as All India Railwaymen's Federations and All India Defence Employees Federation; representatives of industrial and commercial establishments, state governments and academic community

- The committee sought a large number of clarifications from the government on various issues and submitted its report on **23 April 2020**. It was passed by Lok Sabha on **Sep. 22, 2020**, by Rajyasabha on **Sep. 23, 2020** and was notified in the gazette on **Sep. 29, 2020**

Broad Scheme of the Code

- The IR Code has total 104 sections spread over 14 chapters and three schedules

Chapter 1	Preliminary	Chapter 10	Special Provisions relating to Lay-off, Retrenchment, and Closure
Chapter 2	Bi-partite Forums	Chapter 11	Worker Re-Skilling Fund
Chapter 3	Trade Unions	Chapter 12	Unfair Labour Practices
Chapter 4	Standing Orders	Chapter 13	Offenses and Penalties
Chapter 5	Notice of Change	Chapter 14	Miscellaneous
Chapter 6	Voluntary Reference of Disputes to Arbitration	Schedule 1	Matters to be Provided in Standing Orders under the Code
Chapter 7	Mechanism for Resolution of Industrial Disputes	Schedule 2	Unfair Labour Practices
Chapter 8	Strikes and Lockouts	Schedule 3	Conditions of Service for Change of which Notice is to be Given
Chapter 9	Lay-off, Retrenchment, and Closure		

- Out of the 14 chapters, 3 chapters i.e. Chapter 6 dealing with Voluntary Reference of Disputes to Arbitration, Chapter 11 dealing with Worker Re-Skilling Fund, and Chapter 12 dealing with Unfair Labour Practices have **only one section each** and three chapters i.e. Chapter 1 – Preliminary, Chapter 2 dealing with Bi-Partite Forums, and Chapter 5 dealing with Notice of Change, have **only two sections each**

THE FIRST SCHEDULE

MATTERS TO BE PROVIDED IN STANDING ORDERS UNDER THE CODE

[Sections 2(ze) and 30(1) and (5)]

1. Classification of workers, whether permanent, temporary, apprentices, probationers, badlis or fixed term employment
2. Manner of intimating to workers periods and hours of work, holidays, pay-days and wage rates
3. Shift working
4. Attendance and late coming
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays

6. Requirement to enter premises by certain gates, and liability to search
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workers arising there from
8. Termination of employment, and the notice thereof to be given by employer and workers
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct
10. Means of redress for workers against unfair treatment or wrongful exactions by the employer or his agents or servants
11. Any other matter

THE SECOND SCHEDULE

[Sections 2 (zj), 84 and 86 (5)] UNFAIR LABOUR PRACTICES

I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS

(1) To interfere with, restrain from, or coerce, workers in the exercise of their right to organise, form, join or assist a Trade Union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection

(2) To dominate, interfere with or contribute support, financial or otherwise, to any Trade Union

(3) To establish employer sponsored Trade Unions of workers

(4) To encourage or discourage membership in any Trade Union by discriminating against any worker

(5) To discharge or dismiss workers—

(a) by way of victimization

(b) not in good faith, but in the colourable exercise of the employer's rights

(c) by falsely implicating a worker in a criminal case on false evidence or on concocted evidence

(d) for patently false reasons

(e) on untrue or trumped up allegations of absence without leave

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the worker, thereby leading to a disproportionate punishment

(6) To abolish the work of a regular nature being done by workers, and to give such work to contractors as a measure of breaking a strike

(7) To transfer a worker mala fide from one place to another, under the guise of following management policy

(8) To insist upon individual workers, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work

(9) To show favouritism or partiality to one set of workers regardless of merit

(10) To employ workers as badli workers, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workers.

(11) To discharge or discriminate against any worker for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute

(12) To recruit worker during a strike which is not an illegal strike

(13) Failure to implement award, settlement or agreement

(14) To indulge in acts of force or violence

(15) To refuse to bargain collectively, in good faith with the recognised Trade Unions

(16) Proposing or continuing a lock-out deemed to be illegal under this Code

II. ON THE PART OF WORKERS AND TRADE UNIONS OF WORKERS

(1) To advise or actively support or instigate any strike deemed to be illegal under this Code

(2) To coerce workers in the exercise of their right to self-organisation or to join a Trade Union or refrain from, joining any Trade Union

(3) For a recognised union to refuse to bargain collectively in good faith with the employer

(4) To indulge in coercive activities against certification of a bargaining representative

(5) To stage, encourage or instigate such forms of coercive actions as willful, "go-slow", squatting on the work premises after working hours or “Gherao" of any of the members of the managerial or other staff

(6) To stage demonstrations at the residence of the employers or the managerial staff members

(7) To incite or indulge in willful damage to employer's property connected with the industry

(8) To indulge in acts of force or violence or to hold out threats of intimidation against any worker with a view to prevent him from attending work

THE THIRD SCHEDULE (Section 40)

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

1. Wages, including the period and mode of payment
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workers under any law for the time being in force
3. Compensatory and other allowances
4. Hours of work and rest intervals
5. Leave with wages and holidays
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders

7. Classification by grades
8. Withdrawal of any customary concession or privilege or change in usage
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workers
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control

Salient Features of the Code

- Contracting the scope of ‘Industry’ by defining the same so as to exclude institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic services; sovereign functions; domestic services; and any other activity as may be notified by the Central Government {Section 2(m) in the Code}

- This new definition is based on the definition of industry passed by the Parliament in 1982 (46 of 1982) but which could not come into force {Section 2(m) in the Code}

- Change in the definition of wages under section 2(z) of the code so as to exclude a component of house rent allowance, conveyance allowance…… which were included in the definition of ‘wages’ under section 2(rr) of the Industrial Disputes Act, 1947

- The changed definition would have an impact on the quantum of compensation payable to a worker in the event of retrenchment, closure or lay-off

- Revision/modification in the definition of ‘worker’ by way of enhancing the salary limit from INR 10,000 to INR 15,000 per month or an amount as may be notified by the central government from time to time {Section 2(zm) in the code} so as to include persons engaged in supervisory capacity drawing salary upto this limit

- Modification/ change in the definition of ‘strike’ so as to include the concerted casual leave on a given day by 50 percent or more workers employed in an industry, also within its ambit {Section 2(zf) in the code}

Introduction of Fixed Term Employment

- Defining of 'Fixed Term Employment' (engagement of a worker on the basis of a written contract of employment for a fixed period) and including the same as one of the categories of employment in classification of workers in the Schedule for matters to be provided in Standing Orders {Section 2(l) in the code}

- In addition, insertion of a provision that a fixed term employee will get all statutory benefits like social security, wages, etc. at par with the regular employees who are doing work of same or similar {Section 2(l) in the code}

- Further, to bring clarity a clause has been added that termination of the services of a worker as a result of completion of tenure of fixed term employment would not fall in the category of retrenchment {2(zc) and First Schedule item 1 in the Code}

- Fixed term employment may allow employers the flexibility to hire workers for a fixed duration and for work that may not be permanent in nature

- Since the Code entitles fixed term employees to the same benefits and conditions of work as are available to permanent employees, this could help improve the conditions of temporary workers in comparison with contract workers who may not be provided with such benefits

A comparison between different types of employments

Feature	Fixed Term Employee	Permanent Employee	Contract Labour
Type of employment	▪ Employment under written contract. No contractor or agency is involved. ▪ On the payroll of the establishment.	▪ Employment directly under a written contract. ▪ On the payroll of the establishment.	▪ Engaged in an establishment through a contractor or agency. ▪ Not on the payroll of the establishment.
Term	▪ Stipulated fixed term. ▪ Employment lapses on completion of term, unless renewed. No notice is required to be given for retrenchment.	▪ Employed on a permanent basis ▪ Notice has to be given for termination of employment.	▪ Based on terms negotiated with the contractor.
Nature of work	▪ Not specified.	▪ Hired for routine work.	▪ Employment may be prohibited in certain cases, e.g., if similar work is carried out by regular workmen.

Sources: Contract Labour Act, 1970; Industrial Disputes Act, 1947; Notification GSR 976(E), Ministry of Labour and Employment, October 7, 2016, Notification GSR 235(E), Ministry of Labour and Employment, March 16, 2018; 2019 Code; PRS.

Provision of Negotiating Union and Council

- The trade union with at least 51% of the workers as members will be considered the sole negotiating union, for the purpose of negotiating with the employer of the establishment.

- In case no union has at least 51% of the workers as members, a negotiating council shall be formed consisting of representatives of unions that have at least 20% of the workers as members.

- One representative shall be included for each 20% of the total workers on the rolls as members.

- In addition, an enabling clause has been added to prescribe through Rules matters on which negotiations will take place, manner of verification of membership and facilities which will be provided at establishment level to the Negotiating Union/ Council by an establishment (Section 14 in the Code)

Changing of the Threshold for the Purpose of Seeking Permission Before Closure, etc.

- The previously existing threshold of workers for the purpose of seeking permission before closure, retrenchment and lay-off by establishments has been increased to 300.

- In some States (such as Andhra Pradesh, Assam, Haryana, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand and Uttar Pradesh), this threshold was already enhanced from 100 to 300

Provision of Workers' Re-skilling Fund

- The fund will be set up by the appropriate government. It will consist of contributions from employers equal to 15 days (or as specified by the central government) of the last drawn wages of every retrenched worker. This provision is also applicable in case of closure

- Contributions from other sources may be prescribed by the appropriate government. Funds must be utilized within 45 days of retrenchment as may be prescribed (Section 83 in the Code)

Dispute Resolution

Strengthening of GRC

- Every establishment with 20 or more workers is obligated to constitute a Grievance Redressal Committee. The role of the Committee is resolve disputes related to grievances of individual workers concerning non-employment, terms of employment or conditions of service. It will consist of equal representatives of the employer and workers

- With a view to strengthen the Grievance Redressal Committee (which is one of the bi-partite forums of settlement of disputes and grievances), the maximum number of members in the GRC has been increased from six to ten in an industrial establishment employing 20 or more workers {Section 4(4) in the code}

Reducing Multiplicity of Adjudicating Bodies

- In place of multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts under the Industrial Disputes Act 1947, only Industrial Tribunals have been envisaged as the adjudicating body to decide appeals against the decision of the conciliation officer

Dispensing with the Requirement of Reference by the Government for Adjudication

- At present there is a system of reference of the industrial disputes to the Labour Court-cum-Tribunal by the appropriate Government under the Industrial Disputes Act, 1947. In the draft IR Code, the reference by the Government will not be required for the Industrial Tribunal, except for the National Tribunal (Section 54 in the Code)

Strengthening of Industrial Tribunals

- Constitution of two members industrial tribunal with second member from administrative side, in place of single member Labour Court/Industrial Tribunal, at present
- In view of the large number of pending cases due to vacancies in the Industrial Tribunals arising out of leave/resignation/transfer/death of the single member leading to delay in disposal of cases and having adverse impact on the labour welfare
- Presently about 23000 cases are pending in 22 Central Government Industrial Tribunals (CGITs) which include about 5000 cases which were transferred after merger of two Employees Provident Fund Appellate Tribunals with CGITs

- A bench consisting of two members i.e. Judicial and Administrative shall adjudicate cases relating to discharge, dismissal, retrenchment, closure, strike, application and interpretation of standing orders
- The remaining cases can be decided either by a Judicial Member or an Administrative member of the Tribunal in the manner as prescribed. This flexibility has been provided to ensure speedy disposal of cases by the tribunal {Section 44 in the Code)
- The disputes of the registered trade unions have also been included within the jurisdiction of Industrial Tribunal {Section 22 in the Code}

Empowering the government officers to impose penalty in certain cases

- Where the punishment is exclusively fine, such fine shall be imposed by an officer, not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government appointed by the appropriate Government

- Such Officer has been provided with the necessary power for holding inquiry and imposing the fine after hearing. This would reduce litigation in the court and ensure speedy redressal of cases (Section 85 in the Code)

Rationalization of Penalties

- The penalties under this Code for different types of violations have been rationalized to be commensurate with the gravity of the violations. For example, Section 86 in the Code provides that an employer who contravenes the provisions of section 78 (prohibition of lay-off), 79 (conditions precedent to retrenchment of workers to which Chapter 10 applies), or 80 (procedure for closing down an undertaking) shall be punishable with fine which shall **not be less than INR 1,00,000, which may extend to INR 10,00,000 for the first offence** {Section 86(1)}

- In case of the **second and subsequent offences** relating to the above mentioned sections, the penalty shall not be less than **INR 5,00,000, which may extend to INR 20,00,000 or with imprisonment which may extend to 6 months**

Provision of Compounding of Offences

- On the application from an accused person, in respect of any offence punishable under this Code, which is not punishable with imprisonment, it may be compounded by a Gazetted Officer to be notified by the appropriate Government

- The process of composition of offence can be done either before or after the institution of any prosecution, for a sum of fifty per cent of the maximum fine provided for such offence

- However, no offence shall be compounded, if it has been repeated within a period of five years from commission of same offence, which was compounded on first occasion or for such person was convicted for the same offence earlier

- Any person, who fails to comply with an order made by the officer competent to compound shall be liable to pay additional penalty equivalent to 20% of the maximum fine for such compounded offence (Clause 89 in the Code)

Implications of the IR Code for Industry and the Workers

- The code by defining employee and worker differently has deprived a substantial proportion of those who practically may be doing the work very much identical to that of the workers of making use of the dispute resolution mechanism

- Scheme workers which constitute a substantial proportion in the workforce have been totally neglected by this code

- Excluding the institutions owed or managed by organisations engaged in charitable, social or philanthropic services out of the scope of the industry would make the situation quite worse for all those engaged in such situations, and it may lead to increase in exploitation of the employees engaged in such institutions

- The requirement of giving 14 days of notice prior to strike and lock-out also in non-public utility services may help in resolution of disputes by third party intervention (i.e. conciliation) and thus reducing the chances of improving industrial relations

- The definition of retrenchment as provided in the code also includes termination of the services of worker on the ground of continued ill health which may provide relief to workers in such situations

- The introduction of fixed term employment (FTE) as one of the categories of permissible employment without any objective criteria, minimum and maximum period and without any ceiling on successive use of FTCs may in the long run give scope to the employers to shift many of the works and activities from permanent to fixed term and thus adversely affecting the employment security

- The issue of multiplicity of unions, which is one of the important issue pertaining to effective collective bargaining and healthy industrial relations, has again been left untouched by not making any change in the requirement of the membership of 10 percent of the workers or 100 whichever is less for the purpose of registration

- The trade union movement in the country at present is already quite weak as hardly 7-8 percent of the workers are organised. As it is well-known that it is only the registered trade unions which are immune from civil and criminal liabilities for actions in furtherance of trade union activities. In a situation like this non-providing any time limit for registration may lead to weakening the formation of trade unions further difficult by the delay tactics

- Though the concept of negotiating union as introduced in the code is a welcome step but the requirement of 51 percent of the membership on the muster-roll of the establishment may be a difficult proposition

- As per the present scheme of the code, the provisions concerning to standing orders (which pertains to as important an aspect as regulation of service conditions) being made applicable only to establishments engaging 300 or more employees. It leaves a large proportion of the employees in establishments having less than 300 employees


THANK YOU