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Research Article

Security of Employment Under Theindustrial Relations Code, 2020

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Abstract

Industrial Relations Code, 2020, encompasses important laws concerning the field of industrial relations in India, and it has substantial ramifications for the employment security of Indian workers. This paper provides an evaluation of how the employment security of Indian workers is affected through the analysis of provisions of the Code pertaining to retrenchment, fixed-term employment, standing orders, grievance redressal, and collective bargaining. This evaluation also considers the comparison of these reforms with the previous laws and judgments thereunder. The evaluation will further take into account the Code from the perspective of the fundamental right to livelihood enshrined in Article 21 of the Constitution.

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INTRODUCTION

The Industrial Relations Code, 2020 represents one of the most far-reaching reforms of India's labour law framework since Independence.[1]The Parliament established a consolidated legislation by combining the three acts into one. These three acts are: the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946. This was an effort to streamline the cumbersome process of labour law legislation because of many amendments made to these laws over the years.[2]Prior to the process of consolidating labour legislation, many National Commissions on Labour had considered the matter and recommended the need for a more unified legislative framework governing the employer-employee relationship in the organised industrial sector.[3]

Employment security, which ensures the protection of employees from unfair, unjust, or arbitrary termination of employment, has always been a major goal of Indian labor laws. The establishment of the framework for the protection of employees was done by the Industrial Disputes Act, 1947 by providing statutory regulation to retrenchment, lay-off, closure, and mass termination of employment. Although the new labor law, the Industrial Relations Code, 2020 provides for most of the provisions under the existing labor law, it brings about some changes that have caused much controversy in the academic world and among labor organizations.

1. Historical and Constitutional Foundations of Employment Security

The notion of employment security arose in India owing to the peculiarities of its socio-economic conditions after it gained independence. Mass unemployment, the imbalance between employer and employee, and the state's duty to build a welfare state as mentioned in the Constitution have greatly impacted the emergence of labor rights. This has been achieved because of the inclusion of provisions in the Constitution that promote social justice. The judiciary has further widened the ambit of Article 21, which provides for life and liberty, and has acknowledged that the right to livelihood is one of the most crucial elements of human dignity.[4]There is an obligation cast on the State under the Directive Principles of State Policy for promotion of employment and securing work for individuals. These principles also stress the importance of providing fair wages that help maintain a good standard of living and dignified working conditions.

In the landmark case of Olga Tellis v. Bombay Municipal Corporation, the Supreme Court enlarged the ambit of the right to life by holding the right to livelihood to be an integral part of the right to life. It held that denial of the means of livelihood to any individual without due process of law will violate constitutional rights.[5]Constitutional principles emerging from judicial interpretations had a considerable effect on laws governing termination of employment and retrenchment. The Constitution made it mandatory for both public authorities and private employers, to a certain extent, to act in a manner where any adverse decision against the employees was made after due consideration, based on reasonableness and rationality. In the context of organised industrial employment, these aspects were incorporated in the law by virtue of the Industrial Disputes Act, 1947.

The Industrial Disputes Act, 1947 established a comprehensive set of measures to deal with industrial disputes in the form of conciliation, arbitration, and adjudication. It also incorporated significant protective provisions against lay-offs, retrenchments, and closures. The provisions regarding the compensation to be paid, prior notice period, last hired-first fired principle, and government sanction in case of retrenchments of considerable size combined together to promote security of employment.[6]Although the Industrial Relations Code, 2020 retains in large part the prevailing framework, it introduces a number of adjustments that together improve the necessary concerns about their general impact and implications.

2. The Definitional Framework of the Code and its Implications

An analysis of the employment security regime as provided under the Industrial Relations Code, 2020 necessarily has to commence by addressing the conceptualisation of the terms that determine the extent of legal protection provided. While the Code continues to adopt a somewhat similar understanding of the term “worker,” there have been some modifications that expand its meaning, albeit to some degree. Specifically, people employed in supervisory capacities with salaries of up to ₹18,000 per month fall under the ambit of this definition and thus qualify as workers, but only in so far as their monthly remuneration does not exceed that amount – a much lower limit than that found under the Industrial Disputes Act, 1947. Workers engaged in managerial and administrative responsibilities continue to be excluded from the regime as defined by the code.

[1] Industrial Relations Code, 2020, No. 35, Acts of Parliament, 2020 (India).

[2] The Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India); the Trade Unions Act, 1926, No. 16, Acts of Parliament, 1926 (India); the Industrial Employment (Standing Orders) Act, 1946, No. 20, Acts of Parliament, 1946 (India).

[3] Second National Commission on Labour, Report of the National Commission on Labour 148-52 (Ministry of Labour and Employment, Govt. of India, 2002).

[4] INDIA CONST. art. 21).

[5] Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545.

[6] Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate, AIR 1958 SC 353.

The term "industry" is another important definition in the context of employment security.[7]Through the retention of the meaning that was held in Bangalore Water Supply and Sewerage Board v. A. Rajappa, the Code adheres to the extensive judicial interpretation of the word "industry" that has been established in case laws over time. It becomes imperative to consider the fact that the interpretation of the word "industry" had always been one of the major contentious areas in Indian labour jurisprudence.

One of the major features of the Code is its threshold-based regulation approach. Compliance with several of the measures outlined in the Code can only be required where the number of people working in an establishment exceeds 300. It should be noted that such threshold requirement is higher compared to the 100-worker threshold requirement set by the Industrial Disputes Act of 1947.[8]Since most of the industries in India employ less than 300 workers, the change in threshold makes sure that a smaller number of industrial units come under the ambit of the best provisions of the Code.

3. Retrenchment, Lay-Off, And Closure Provisions

A. The Retrenchment Regime

The provisions governing retrenchment under Chapter X of the Code represent the most directly contested dimension of the Code's approach to employment security.[9]There is an increased emphasis on the need for seeking permission from the government prior to retrenchment, with an increased limit from 100 people to 300 workers under the IDA, 1947, besides permitting the concerned government to increase the number through notification. It is believed that this amendment represents a move away from India's labor laws in their earlier form, which were quite protective, especially when it comes to restrictions on retrenchment due to economic reasons.

Section 25 N of the Industrial Disputes Act, 1947 made provision for the condition of prior permission despite some inherent shortcomings in the process.[10]An elevation of the applicability threshold to 300 employees in the Code, combined with the ability of the executive to raise this threshold even higher, has greatly weakened the current protections in favor of the worker. This move has been heavily criticised as one that favors management and makes job security very precarious, especially in light of the constitutional commitment to guaranteeing the right to decent work.

At the same time, however, it is important to note that some critical measures to protect workers from retrenchment remain intact in the Code.[11] The 'last in, first out' principle, which requires that workers who were most recently employed are retrenched first and have the right of preference in re-employment, is also codified.[12]The payment for retrenchment continues to be a legal entitlement and is based on the calculation of fifteen days' pay on average per annum of uninterrupted employment. This legal provision is significant in guaranteeing the protection of workers against being left without basic financial provision. On the other hand, the change in the existing limit for the necessity of obtaining prior government consent is indicative of an important change in the balance of power between employers and employees.

B. Lay-Off and Closure

The relevant provisions concerning lay-off under the Code have continued to maintain much of the position that existed prior to the formulation of the Code as per the provisions contained within the Industrial Disputes Act, 1947. This continues to ensure that an employee maintains the right to receive compensation to the extent of fifty per cent of his/her total wages and dearness allowance but for the situation of lay-off. In similar vein, the reasons for allowing lay-off remain unaltered such as shortage of raw materials, coal, or power, excess accumulation of stock, machinery breakdown or natural calamities.

Again, much of the regulatory regime governing closure of industrial establishments remains intact, despite some threshold changes in consideration of the structural reorganization in the Code. Moreover, the entire legal landscape needs to be considered in the light of the influence of natural justice considerations through judicial intervention.[13]The Supreme Court has time and again stressed that any process which entails either retrenchment or termination should necessarily conform to the dictates of natural justice and this would include giving the concerned employee a fair hearing prior to taking any such step against him. Nevertheless, while the Code does not specifically provide for this protection in every case, the applicability of this principle remains contingent upon the judiciary's construction of its provisions.

4. Fixed-Term Employment: Flexibility or Insecurity?

The introduction of a statutory framework for fixed-term employment under Section 62 of the Code is one of its most structurally novel features.[14]Fixed term employees are defined as those individuals who are appointed on the basis of a written agreement or contact for a certain period of time, and the benefit that these employees can enjoy depends upon the length of their employment period. Under the Code, it is stated that fixed term employees should not be discriminated against when compared to the permanent employees doing similar job, and that they get the right of gratuity in proportion to their one year of service period.[15]

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[7] IRC 2020, s. 2(s). See also Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213).

[8] IRC 2020, s. 77(1).

[9] IRC 2020, ss. 77-80.

[10] The Industrial Disputes Act, 1947, s. 25N.

[11] IRC 2020, s. 86(1).

[12] IRC 2020, s. 82.

[13] D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259.

[14] IRC 2020, s. 62.

[15] IRC 2020, s. 62(2).

The introduction of fixed-term employment as a separate category under the law is an important change in the overall structure of employment in India. Backers of this structure argue that it allows companies to better deal with the ups and downs of seasonal or project-based demand than to resort to informal or even contractual solutions. Meanwhile, it is maintained that fixed-term workers enjoy formal legal status which generally does not exist for informal employees, which may contribute to the security and working lives of informal workers.

However, there are major employment issues raised through the provision. Fixed-term contracts come to an end at the end of the period and there is no obligation to give notice, pay compensation or seek approval, therefore employers may be tempted to not create permanent positions as fixed term ones will simply expire at the end of the term. This means that there is a systemic risk of permanent jobs being replaced by always temporary contracts.[16]Since there is no legal stipulation regarding the frequency of renewability or the proportion of the workforce allowed to be employed through this method, it leaves open the door for a massive exploitation of such a scheme in replacing secure jobs with insecure ones. In doing so, the significance of judicial review as a tool in checking exploitations in contractual labour becomes questionable especially since the very statute allows the use of fixed-term contracts.

5. Standing Orders and the Contractual Foundation of Employment

The standing orders framework is an important contractual mechanism used in the employment relationship in Indian industries, which was introduced by the Industrial Employment (Standing Orders) Act 1946. It sets out conditions of work, including the length of the working day/week, leave provisions, disciplinary guidelines and procedures, and termination procedures, giving workers clarity and protection against arbitrary decisions made by the employer. This model is continued in the Industrial Relations Code 2020, but for the first time, the threshold for mandatory standing orders has been raised from 100 workers in an establishment (under the 1946 Act) to 300 workers and over.

The Code still requires covered establishments to develop and have in place standing orders on topics like worker classification, dismissal procedures and grievance resolution processes. These requirements remain an important safeguard for employees, where applicable. By making the minimum requirement higher, businesses with 100-299 employees will be exempt from the need for certified standing orders, however. This shift will push a major share of workers in the organised sector outside the ambit of protected formal service arrangements and formal safeguards, as provided by standing orders in the past.

[16]Mahindra Holidays and Resorts India Ltd. v. Regional Director, ESIC, (2019) SCC OnLine Mad 3281.

6. Collective Bargaining, Dispute Resolution, and the Limits of Worker Voice

A. The Recognition Framework and Negotiating Unions

This is the first time that India has a formal statutory regime for the recognition of trade unions for the purpose of collective bargaining, which is laid down in the Code. Under Section 14, if one trade union gets 51 per cent or more of people in an establishment, that trade union will be recognised as the exclusive negotiating union. If no union achieves this 20 per cent majority, a negotiating council will be established with representatives of all unions that have at least 20 per cent of their membership. This had frequently led to union rivalry, to recognition struggles, to the fragmentation of bargaining power, and to a decline in collective bargaining representation.

Further, the Code establishes a number of institutional bodies focused on further developing participatory labour governance. IRCs at both national and State level are intended to be tripartite committees to discuss the wider concerns of labour policy which involve employment security. Concerning the establishment, Works Committees under Section 53 are established for the purpose of consultation in matters related to employment, and Grievance Redressal Committees under section 55 are established to facilitate the determination of grievances of individual employees including grievances arising out of the disciplinary action and termination. These bodies collectively improve the participative aspect of employment relations and to the overall structure of workplace dispute resolution and employee security.

B. Strike Restrictions and the Right to Collective Action

Provisions in relation to strikes and lockouts in the Code represent a marked departure from the legal regime for collective industrial actions, and it appears to be disadvantageous to the workers. Firstly, according to Section 22, notice must be served fourteen days in advance, while the law limits strike during the period when there are pending conciliation, arbitration, or adjudication proceedings. Secondly, as per Section 23, even more severe constraints apply to public utility services. The combination of these constraints makes the conduct of a legal strike not only difficult but also restricted by stringent criteria.

Since the threat of industrial action constitutes an essential ingredient of workers' bargaining power, these limitations have serious consequences for the latter. The result is that the diminished right to strike weakens the bargaining process itself and the prospects for better terms of employment.

C. Adjudication and the Limitation Regime

Under the Code, there are provisions for setting up the Industrial Tribunals and the National Industrial Tribunals for handling cases involving retrenchment, dismissal, layoffs, and other matters connected with employment security. Nevertheless, the inclusion of a provision for a limitation period of two years with regard to the referral of cases to these tribunals may greatly hinder access to justice by the workers. It is a fact that workers working under informal and semi-informal conditions face great difficulties when seeking to enforce their rights within the required period, including lack of knowledge about their rights, fear of reprisal, and lack of legal aid.

7. Constitutional Dimensions of Employment Security under The Code

Constitutional analysis of the provisions relating to employment security under the Industrial Relations Code, 2020 involves analysing two inter-related but distinct matters. Firstly, it is necessary to determine whether the scheme prescribed by the statute satisfies the minimal constitutional standard of providing sufficient protection based on the right to livelihood under Article 21. Secondly, it is necessary to ascertain whether some provisions under the Code amount to being unreasonable or arbitrary, which would be a violation of the constitutional guarantee of equality under Article 14[17].

In Olga Tellis v. Bombay Municipal Corporation, the Supreme Court has developed the concept of right to livelihood and held that if anyone is taken away from his livelihood, then there must be a fair and just procedure followed. The expansion of the thresholds of retrenchment and the watering down of the standing orders mechanism in the Code raise issues on the compliance with the constitution's fairness rules in the procedure of deprivation of employment security in this context.

There is also a question of constitutionality in relation to Section 11 of the Code which provides for the exemption of any industrial establishment or class of establishments from the operation of the provisions of the Code. With the sweeping breadth of this discretion, much of it contained in conditions that the executive sets, there is a danger that employment security protections can be effectively displaced, on a sweeping basis, via executive action without any useful legislative oversight, or judicially tested standards. The delegation of this kind may be subject to constitutional scrutiny on the issue of excessive delegation, which could affect the constitutional balance between the legislature and the executive.

8. Critical Reflections and Proposals for Reform

The Industrial Relations Code, 2020 is based on two seemingly contradictory principles of employment security. It consolidates much of the existing fragmented labour legislation into one single legislation, extends the application of the existing protections and adds new protections for fixed-term workers with proportional gratuity benefits. These measures are tangible corrective steps for addressing the deficiencies in the previous legislation.

Conversely, the Code's several important provisions will drastically alter the rights of protection and managerial discretion. Striking the balance between employer flexibility and employment security, the higher threshold for retrenchment approval, along with the imposition of fixed-term employment with weak protective measures, the increased threshold for the use of standing orders and the stricter conditions for strike action all have a positive effect on employer flexibility and a negative effect on employment security. Such policy changes can be discussed on economic grounds, but it is definitely a departure from the previously protective stance of Indian labour law.

There are several specific changes that could enhance the job security provisions of the Code. The prior notification, by government, for retrenchment should be eased, or, if it is not, there should be a compulsory parliamentary hearing for any alteration in the threshold by executive notification. The regulation of fixed-term employment should be tightened to reduce the use of such contracts and the term contracts should not be used as a substitute for permanent employment, such as through limitations on the percentage of employees on fixed-term contracts, or on the number of times a fixed-term contract might be renewed for the same worker. Standing orders must be lowered to align with the international labour standards and extended to more establishments than those with 300+ staff. There should be a longer limitation period for raising industrial disputes, and a discretionary power to condone the delays in appropriate cases. Finally, the exemption power under Section 11 should be placed under parliamentary oversight to ensure it is not exercised in a manner that undermines the core protections relating to employment security.

9. CONCLUSION

The recent Code of Industrial Relations, 2020 can be described as one of the most significant changes to the Indian labour law and carries important implications for employment security. Even though the code has retained a number of protections from the Industrial Disputes Act and has introduced some positive changes, structural changes in the code in terms of threshold levels for retrenchment, an increase in the scope of fixed-term employment, as well as some changes in the standing order procedure seem to make the overall structure less protective of employment for a large part of organised employees.

Security of employment goes beyond individual concerns and should be seen as a public good, which is protected by the Constitution. Employment security and the right to livelihood are associated with each other and have socio-economic meaning under the Directive Principles of State Policy. Any legal change, which undermines such protections may go beyond the realm of mere legislative discretion and should be subject to judicial review. From the results of this study, it is clear that certain sections of the code can be challenged due to their arbitrary nature[18].

Reforms in Indian labor law are not only necessary but also justified since there is a definite need to bring about improvements in the existing laws. Yet, reforms that place efficiency of administration above the protection of the rights

[17]Haryana v. Tilak Raj, (2003) 6 SCC 123.

[18]Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

of workers will do nothing but destroy the very purpose behind labor laws. What needs to be done is that all the three stakeholders – legislators, judges, and members of civil society – ensure that the new law of Industrial Relations Code, 2020, is interpreted and implemented in such a way that it aligns with the Constitution's vision of economic justice and decent work.

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