THE INDUSTRIAL RELATIONS CODE, 2020 VS. EMPLOYERS – A CRITICAL ANALYSIS OF THE SOCIAL LEGISLATION

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ABSTRACT

This paper shall explore the impact of the recently enacted, Industrial Relations Code, 2020, upon employers and businesses. This new Code along with three other legislations, creates the four-pronged labour laws framework of India; which act as more of a consolidation of the approximately 29 legislations they are overwriting, but significant changes are being incorporated in the provisions contained therein. As the name suggests, the underlying tone of the legislation is completely adverse to the interests of the employers, bordering on unabashed opposition. While critiquing the adverse impact the provisions of this Code, impose upon employers, the paper shall also identify the important, albeit few benefits derived from the new legislation. The overall and long-term impact of these provisions on the big picture of economic development shall be highlighted to emphasise the importance of having well-drafted and reasonably equitable labour laws. Labour laws are generally accepted as social legislations aimed at public welfare; however, it must be remembered that the purpose of labour laws is to regulate the interaction between employer and employees for mutual benefit, without bias to one side over the other; and therefore, this paper focuses on the minority of those whom such laws impact – the employers. The paper identifies and explains the impassable maze of compliance requirements and bureaucratic hurdles, which create unimaginable complications for employers to the extent of severe disincentivising for enterprise. While critiquing the bias and unfairness in the provisions contained therein, this paper shall also attempt to offer alternative provisions to overcome the specific disparities and bias present in this Code.

Keywords: Labour Laws; Industrial Relations Code, 2020; Employer; Strike; Retrenchment; Lay Off.

Introduction

Labour laws, as the name suggests, are primarily for the benefit of the labour; however, the labour, industry and the economy as a whole are entirely dependent on businesses as employers, without which, there would be no labour force to protect. Therefore, while aiming to protect the interest of the prima facie weaker parties in this interaction, the laws should also benefit and protect the interests of the employers to promote a healthy and profitable economy.

In line with the changing market scenarios and dynamic circumstances, as well as a result of complications, rigidity and repetitive redundancies in the vast web of prior legislations, four new codes were legislated by the government which combined the key provisions of the numerous existing legislations concerning labour in India.

This paper shall focus on the impact of the Industrial Relations Code, 2020 (hereinafter also referred to as the Code / this Code). This code aims at regulating the relationship between employers and employees, particularly in regard to industrial actions such as strikes, lay – offs and closures. It also lays down guidelines and restrictions in regard to the retrenchment of workers in order to protect the interests of those retrenched. Further, it creates dispute redressal mechanisms to allow for the speedy redressal of industrial disputes and the prevention of economic wastage of time, money and opportunities.

The paper shall explore the adverse impact of this Code on employers, through an in-depth analysis and criticism of the key chapters / provisions of the Code including the material changes as compared to the previous legislations regulating the subject matter of this Code.

1. Changes in Definitions

1.1. Employer

The first prominent change reflected in the Industrial Relations Code, 2020, is in the definition of employer. The earlier definition as per the Industrial Disputes Act, 1947 was rather limited in its scope of the definition of ‘employer’, by only covering the prescribed authority or the head of the department under the ambit of the term employer.[1] However, under the Industrial Relations Code, 2020, the term employer has a broader definition which includes any person who directly or indirectly (through an intermediary or on behalf of another) employs any other person, the head of the department or chief executive officer of a government body, the

[1] The Industrial Disputes Act, 1947, S.2(g)

occupier or manager of a factory, any person having ultimate control over the affairs of the establishment, contractors and legal representatives of deceased employers.[2]

By virtue of this broader definition, a vast array of people are now governed by the provisions set forth in these labour laws, thereby imposing liabilities upon them while also awarding certain privileges and protections. This new extensive definition of employer expands the set of subjects of these laws and hence the restrictive provisions contained therein, may now act as a curb on the powers and free will of more people engaged in business. On the flip side, it also results in the provisions protecting the interests of employers becoming applicable on a larger set. However, keeping in mind that the labour laws are social legislations inherently biased in favour of the workers, the liability created by a more inclusive definition is likely to outweigh the protection offered to the employers.

1.2.Industry

Similarly, the definition of 'industry' under the Industrial Disputes Act, 1947 was fairly narrow[3] in its scope as per the market situation at the time of its drafting. This allowed many businesses to escape the application of the earlier legislations by exploiting the loopholes in the narrow ambit of the term 'industry'; however, under the Industrial Relations Code, 2020, the definition of 'industry' is extensively inclusive[4] and thereby enforces the provisions of the labour laws on virtually all businesses, having the same impact as the redefinition of the term 'employer'.

1.3.Worker

Furthermore, the definition of the term worker has been reworked under the Industrial Relations Code, 2020. While it does include more categories of employees under its ambit, such as journalists and sales promotion employees, it has also excluded apprentices / interns[5] from the definition and has raised the exclusion threshold for supervisors from Rs. 10,000/- per month[6] to Rs. 18,000/- per month[7]; thereby imposing a level of restrictions on the liability of the employer towards these classes of employees.

[2] The Industrial Relations Code, 2020, S.2(m)
[3] The Industrial Disputes Act, 1947, S.2(j)
[4] The Industrial Relations Code, 2020, S.2(p)
[5] The Industrial Relations Code, 2020, S.2(zr)
[6] The Industrial Disputes Act, 1947, S.2(s)
[7] Supra Note 5

These exclusions are reasonable as it is unjust to expect an employer to provide interns with the same quantum of rights and entitlements as that of actual employees. Further, the increase in the monetary threshold for the exclusion of supervisors is sound as it accurately reflects the current market scenario of supervisors' remuneration and rightfully excludes them from being considered in the same category as workers. That being said, there is an increase in the liability in reference to those employing journalists and sales promotion employees, which has the same impact as discussed hereinabove.

Additionally, the Industrial Relations Code, 2020 introduced the formal construct creating rights of workers under fixed-term employment contracts, at par with those of permanent workers. Fixed-term employment contracts refer to employment for a pre – defined period with a stipulated end date for the services of the worker. While fixed-term employees are not entitled to retrenchment compensation, they are entitled to all other benefits due to permanent employees including statutory benefits such as employee provident fund; allowances and gratuity etc.[8] Therefore, this imposes an additional financial and administrative burden on employers as they have to process fixed-term employees in the same way as temporary employees and pay them in the same manner as they would a permanent employee which undermines one of the basic purposes of a fixed term employee; that is, the benefit of the simplicity and reduced cost of hiring someone for a particular short term job / assignment without having to undergo the complexity and burden of regular recruitment.

2. Creation of Grievance Redressal Committee

the Industrial Relations Code, 2020 provides for the mandatory constitution of Grievance Redressal Committees for establishments employing 20 or more workers, with equal representation of the employer and the employees, for the purpose of addressing and mitigating specific disputes that may arise in the workplace.[9] This body acts as the advanced forum to address issues if the works committee is unable to prevent or resolve workplace issues. The primary functions of the works committee are to promote good relations between the employer and employees including having a healthy working environment and ensuring that common interests are met.[10] In the situation where the establishment does not have a works committee

[8] The Industrial Relations Code, 2020, S.2(o)
[9] The Industrial Relations Code, 2020, S.4(1); The Industrial Relations Code, 2020, S.4(2)
[10] The Industrial Relations Code, 2020, S.3(3)

(i.e., has less than 100 workers but more than 20 workers), the grievance redressal committee is responsible for all issues that may arise.

There are benefits and drawbacks to this new mechanism. Firstly, by providing a legally mandated internal forum to resolve disputes, the possibility of the dispute snowballing into large-scale issues and conflict is greatly reduced. Also, the number of disputes being taken to tribunals and courts is likely to decrease, which not only works towards a better working environment but also saves both parties the time and money investment required in litigation. The requirement of having proportionate female representation on the panel[11] is a much-needed beneficial move as it ensures the concerns and interests of all workers are fairly represented and there is no sexism or gender bias / influence in the decision making. The equal number of representatives from the employer's and the employees' sides prima facie presents an equal footing and fair playing field in the decision making.

However, it is indisputable that the formation of such a committee, over and above the works committee wherever applicable, does put an additional strain on resources. Workers and management are tied up in the formation and running of these committees, conducting meetings and negotiations etc. which can be seen as an unproductive use of time and therefore, an expensive loss of productivity. It can be argued that these committees are needed to ensure the smooth operations of the business, but it cannot be denied that it would impose heavy costs on the employer.

Furthermore, the ease of access to the GRC would also increase the number of frivolous complaints filed by workers as it is a free and easy method of raising disputes as compared to approaching the Tribunals or Courts. Especially as the limitation period for filing such complaints is one year from the cause of action[12], thereby enabling workers to abuse the system if they wish to and file frivolous and unjust complaints just to impact productivity or serve some other ulterior motive.

Additionally, the rules of majority in the decision-making are heavily biased in the favour of the workers as decisions are to be made on the basis of majority votes in the committee, which is capped at 10 people[13], with the caveat that the general majority must more than half of the

[11] The Industrial Relations Code, 2020, S.4(4)
[12] The Industrial Relations Code, 2020, S.4(5)
[13] Supra Note 11

worker representatives, without which, the matter is deemed not decided[14] and then moves to the Conciliation Officer of the Trade Union[15].

Assuming a full panel of 10 members on the GRC, as per the rule of equal representation 5 members are from the side of the employer and 5 are from the side of the worker. For any decision to be made, there needs to be a general majority of 6 members for the motion, but as per the rule concerning worker representative majority, 3 of those 6 need to be worker representatives or else the matter is deemed to have not been decided. Therefore, the balance of power lies entirely in the hands of the worker representatives. Realistically, to pass any decision, atleast 3 of the 5 worker representatives have to support it but there is no such qualifier on the part of the employer, simply one of the 5 employer representatives supporting the worker representatives is enough to pass a decision. This is clearly unfair and unjust as it allows the workers to dominate the GRC.

In the event of a no-decision situation, or if a worker is aggrieved by the decision of the GRC, the matter is referred to the Conciliation Officer of the Trade Union. Realistically, the worker is unlikely to ever be aggrieved as the workers dominate the decision-making in the GRC, and in the likely situation of no decision, the Conciliation Officer of the Trade Union is likely to be biased in the favour of the workers as Trade Unions are before anything else, created for the support and welfare of the workers.

Therefore, the worker representative at the Trade Union is very unlikely to rule against the will of the workers; which once again creates a bias in this appellate authority in the favour of the workers.

The next stop in the line of action is the Industrial Disputes Tribunal, which the employee or employer can approach in case or rather when he is aggrieved by the decision of the Conciliation Officer of the Trade Union.[16] But again, the Industrial Relations Code, 2020 is a social legislation and therefore, it is likely that the Tribunal will favour the workers, though, unlike the previous forums, the bias is not definitive but is possible; which means employers rarely reach this stage in the grievance redressal process.

It is the limit of impracticality and injustice, that an employer can have virtually no say in the

[14] The Industrial Relations Code, 2020, S.4(7)
[15] The Industrial Relations Code, 2020, S.4(8)
[16] The Industrial Relations Code, 2020, S.4(10)

decision-making in the case of a dispute in his business; despite going through the four stages of dispute redressal, one is likely to be met with unwavering bias grandfathered into the system at every level. This goes beyond the façade of a social legislation or worker benefit and borders on employer suppression which indirectly acts as an artificial barrier to economic growth and progress by discouraging people with resources to enter industries, employ workers and grow beyond a certain level.

3. Negotiating Union / Council

One of the employer – benefiting new provisions in the labour laws, is the introduction of the concept of negotiating councils. A negotiating council comprises representatives of multiple registered trade unions having members employed in a particular establishment. Each trade union included in the negotiating council must have atleast 20% of the establishment's workforce as supporters, with one representative appointed for every 20%.[17] Therefore, the maximum number of members in the negotiating council can be deduced to be 5; and the vote of the majority of the representatives is considered the deciding factor in negotiations[18]. In the circumstances where one trade union has more than 1 representative, on account of representing more than 20% of the workforce[19], each representative has their own vote and therefore, one trade union may effectively exercise 2 votes in the negotiating council.

However, if any one trade union has the support of 51% or more of the establishment's workforce, it is deemed to be the sole negotiating union in itself[20] and in the event of there being only one registered trade union, it shall be the sole negotiating union.[21]

The negotiating council or negotiating union as the case may be, shall remain in force for a minimum period of 3 years extending to a maximum of 5 years[22], therefore insulating the mechanism from chaos and confusion arising out of regular changes in the membership of the negotiating council or any political power strategies deployed by any trade union. This provision helps maintain the sanctity of the forum and ensures the focus remains on employee benefit and conflict mitigation.

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[17] The Industrial Relations Code, 2020, S.14(4)
[18] The Industrial Relations Code, 2020, S.14(5)
[19] Supra Note 17
[20] The Industrial Relations Code, 2020, S.14(3)
[21] The Industrial Relations Code, 2020, S.14(2)
[22] The Industrial Relations Code, 2020, S.14(6)

The main benefit of this new framework is that it provides for easier negotiations between the employer and the workers in the event of a dispute. Earlier, the employer would have to negotiate and satisfy multiple trade unions in the event of a dispute, each of which may have its own set of demands and requirements, usually creating a chaotic, complex and costly affair for the employer. Under this new system, by dealing with all major trade unions (if there are multiple and none of which have an absolute majority) as one body, the negotiations are simplified and accelerated which not only provides speedier mitigation of any conflict but also reduced the economic wastage involved in carrying out multiple lengthy negotiations.

4. Standing Orders

Standing Orders refer to the set of general instructions and conditions / procedures of service of the employees. These include the rules and regulations for working hours[23], registering attendance,[24] procedures for leave[25], conditions for termination[26] and liability of workers for search upon arrival[27] amongst several other matters.

The provisions in relation thereto were previously contained in the Industrial Employment (Standing Orders) Act, 1946;[28] which was subsumed into the Industrial Relations Code, 2020. One of the notable changes in the provisions relating to Standing Orders is the applicability threshold, which has been raised from 100 workers under the previous legislation[29], to 300 workers under the Industrial Relations Code, 2020[30]. This increase in the threshold is largely beneficial to employers as it excludes many establishments from the applicability, hence saving them the time, resources and complexities involved in drafting, negotiating and certifying Standing Orders and it protects them from unnecessary disputes with workers over the contents and enforcement of the Standing Orders. However, it can also be viewed as a disadvantage to employers, as Standing Orders essentially lay down the rules of the workplace and give them the sanction, authority and power of statutory provisions. Without which, there is a possibility of conflict or blatant disregard / flouting of norms by the employees, which not only detrimentally affects the establishment's operations but also creates complications for

[23] The Industrial Relations Code, 2020, The First Schedule, S.1
[24] The Industrial Relations Code, 2020, The First Schedule, S.4
[25] The Industrial Relations Code, 2020, The First Schedule, S.5
[26] The Industrial Relations Code, 2020, The First Schedule, S.8
[27] The Industrial Relations Code, 2020, The First Schedule, S.6
[28] The Industrial Employment (Standing Orders) Act, 1946, S.3; S.4; S.5; S.6
[29] The Industrial Employment (Standing Orders) Act, 1946, S.1(3)
[30] The Industrial Relations Code, 2020, S.28(1)

employers as any disciplinary action they wish to take against rule breakers can be opposed and challenged before the concerned Industrial Tribunal or any other authority having competent power.

While the other provisions remain largely similar, there is a certain seemingly unfair obligation imposed upon the employer in regard to the certification of Standing Orders. While it is fair to involve the employees via the Trade Unions or Negotiating Union / Council, in the drafting process of Standing Orders[31]; the provision stating that upon submission of the Draft Standing Orders to the Certifying Officer, the Certifying Officer will reapproach the employees via the Trade Union or Negotiating Union / Council for their approval[32] appears to be unfairly biased towards the employees. Only with the approval of the employees or after incorporating the changes put forth by the employees, will the Standing Orders be certified. The same process applied to the amendments in the Standing Orders.[33]

It essentially means that the employees have more power in the determination of the general rules for employees of the establishment (Standing Orders) than the employers who own and run the establishment. If the employees disagree with the Draft Standing Orders, for any reason including simply finding the terms contained therein unfavourable or strict, they can stop the certification of such Draft Standing Orders and the employer can be bullied into accepting the employees' terms.

These provisions give the employee the power to dictate the terms of their service to the employer, which is rather unjust because it takes away from the employer, the power and authority to run their own establishment at their terms. It is fair to mandate a discussion with the employees during the drafting of the Standing Orders but to give them the ultimate authority and more say than the employer is vastly unjust.

An employer aggrieved with the decision of the Certifying Officer / the modified Standing Order, does have the option of preferring an appeal before the appellate authority[34], which is the Central Labour Commissioner or the concerned Industrial Tribunal, however this again forces the employer to endure tedious and expensive litigation / evaluation in order to be able

[31] The Industrial Relations Code, 2020, S.30(2)
[32] The Industrial Relations Code, 2020, S.30(5)
[33] The Industrial Relations Code, 2020, S.35(3)
[34] The Industrial Relations Code, 2020, S.32

to run their own establishment as they see fit and enforce the rules and regulations which they deem necessary.

As the Code is a public welfare legislation, it is biased in favour of the employees and hence the authorities under this Code are also likely to be biased in the favour of employees. Therefore, in the likely scenario wherein the Certifying Officer approves the Draft Standing Orders which are not acceptable to the employees, they too can prefer an appeal before the appellate authorities[35], which again are likely to be biased in the favour of the employees. Hence, it is fair to state that the deck is heavily stacked in favour of the employees offering little or no real power and authority to the employers.

Further, the bias in favour of the employees continues, where in the event that the employer contravenes the Standing Orders, he is liable for a fine of Rs. 1,00,000/- extending upto Rs.2,00,000/-[36] whereas there is no penalty of any sort for contraventions by the employees. While the employer may take disciplinary action against the employee, the same can be made subject to proceedings before the Industrial Tribunal, which again has the balance of favour tilting towards the employees from inception. This boils down to the simple fact that an employer can be made liable for a substantial fine if they do anything in contravention of the rules of their organisation, which their employees had more control in laying down, whereas the punitive consequences for an employee contravening the Standing Orders are not so straightforward.

While there is the option of mediation and mutual agreement between the employer and employees in the event of such dispute, pragmatically, in a situation wherein the matter does escalate to a dispute and the employees are dictating terms unreasonable for the employer, a discussion or mediation is unlikely to yield any results.

While the provisions detailed hereinabove do suggest a bias against employers, there have been judicial pronouncements on the predecessor Act, i.e., The Industrial Employment (Standing Orders) Act, 1946; which has provided relief for the employers. In the case of *S.K. Seshadri v. H.A.L & Ors.,* wherein the dispute arose in regard to the Standing Orders in the concerned establishment containing additional provisions not contained in the Model Standing Orders stated in the statute; the Supreme Court affirmed the authority of the employer to frame their

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[35] Ibid

[36] The Industrial Relations Code, 2020, S.86(11)

own Standing Orders. The fact that certain provisions are beyond the Model Standing Orders does not invalidate the Standing Orders as *ultra vires* as the Model Standing Orders are as the name suggests, models, which are intended to guide the framing of Standing Orders and are not to be considered statutory provisions which are binding and enforceable. Employer's Standing Orders need not be in strict adherence with the Model Standing Orders as long as they are in compliance with the statutory requirements for framing the Standing Orders.[37]

5. Industrial Action

5.1.Strikes

The most advantageous change for employers brought in by the Code is in relation to strikes. Strikes refer to the refusal to work by a group of workers. the Industrial Relations Code, 2020 has redefined strikes to include concerted casual leave in addition to the combined decision, concerted action and refusal to work under a common understanding, within the definition of a strike.[38] Through this modified definition, employers are better protected against strikes as workers can no longer go on strike under the façade of concerted casual leave, without attracting the provisions relating to the prohibition of strikes.

There have also been imposed strict restrictions on strikes, which mandate a minimum of a fourteen-day notice period for a strike[39] as well as a mandate that a strike must be carried out within the period of the notice itself and cannot exceed the period mentioned therein[40]. Therefore, workers cannot paralyse the establishment with a sudden strike and have to inform the employer of the dates of the strike starting and ending, well in advance.

This notice period allows the employers to address the issue at hand in time, before facing the losses associated with a strike as well as enables them to strategically plan their operations during the period of the strike, in the situation where the dispute cannot be resolved before the date of the strike. For example, employers can plan for low or no output during the period of strike and accordingly inform customers of delays or their inability to process orders during that period, therefore preventing the financial and reputational losses of a sudden strike which can severely hamper output, meeting of deadlines for deliverables etc.

[37] S.K. Seshadri v. H.A.L & Ors. (ILR 1983 KAR 634)
[38] The Industrial Relations Code, 2020, S.2(zk)
[39] The Industrial Relations Code, 2020, S.62(1)(b)
[40] The Industrial Relations Code, 2020, S.62(1)(c)

Furthermore, workers cannot go on strike during the pendency of any dispute redressal proceedings. In the circumstances of proceedings before a conciliation officer, the embargo on strikes continues throughout the pendency of the proceedings and 7 days after its conclusion.)[41] When the proceedings are pending before an arbitrator, the embargo remains in force during the pendency of the entire proceedings and 60 days after its conclusion.[42] When the proceedings are pending before an Industrial Tribunal or the National Industrial Tribunal, the embargo is applicable throughout the pendency of such proceedings and for 60 days after its conclusion.[43] Neither can the workers go on strike during the period of operation of an award or settlement on the same subject matter / concern as the intended strike.[44]

This ensures the efficacy of the enforcement of an award / settlement while also ensuring that the workers are bound by ongoing proceedings, preventing them from taking arbitrary action while the matter is sub judice. This not only upholds the sanctity of the law and due process but also protects the interest of employers in all fairness by prohibiting a strike if the parties have referred their dispute to an appropriate authority in an endeavour to resolve the matter lawfully and in a binding nature.

For example, the workers are legally prohibited from going on strike if they are unhappy with the direction in which the proceedings are going, or if they are dissatisfied with the award / settlement of the adjudicating authority; thereby upholding the adherence to the law and the benefit rightfully due to the employer in such situations.

The prohibition of illegal strikes has been given the sanction of punitive effects for all the offenders. A worker who commences, continues or acts in furtherance of an illegal strike is liable to a fine of Rs.1,000 extending upto Rs. 10,000/- and / or imprisonment for a term extending upto one month.[45] These penal provisions further enhance the enforcement of the law by instilling fear in the workers for contravening the prohibition of illegal strikes. The severe repercussions for acting in contravention of the provisions of this Code are what is required to prevent such unlawful practices.

Additionally, the instigation or incitement of an illegal strike is also punishable with a fine of

[41] The Industrial Relations Code, 2020, S.62(1)(d)
[42] The Industrial Relations Code, 2020, S.62(1)(f)
[43] The Industrial Relations Code, 2020, S.62(1)(e)
[44] The Industrial Relations Code, 2020, S.62(1)(g)
[45] The Industrial Relations Code, 2020, S.86(13)

Rs. 10,000/- extending upto Rs. 50,000/- and / or imprisonment for a term of upto one month.[46] Also, the funding of an illegal strike is also prohibited[47] and punishable in the same manner as stated hereinabove in reference to instigating an illegal strike.[48]

These penalties create a further safeguard for employers by taking away the possibility of a strike being encouraged by monetary support or otherwise by a competitor or by any other party wishing to cause damage to the establishment, such as political groups or activist organisations, unlawfully wielding their power for the purpose of visibility, threats or extortion. These provisions hold accountable those causing and backing the strike from behind the scenes in a manner more severe than that of the workers participating in the strike.

Overall, the new provisions in relation to strikes are likely to be an ironclad mechanism preventing such actions, especially as without the comfort / fallback of monetary support, workers are far less likely to go on an illegal strike, thereby strengthening the framework prohibiting strikes. Therefore, this is a major backing and supporting factor in favour of the employers.

While strikes are strictly regulated under the Industrial Relations Code, 2020 and thereby protect employers from the adverse effects of strikes; so was not the case under the predecessor legislation, The Industrial Disputes Act, 1947. The Supreme Court has repeatedly reaffirmed the right of workers to strike to force the employer to meet their demands, as a legal and constitutional one.

In the Supreme Court judgement on *Crompton Greaves Ltd. v. Workmen,* the Supreme Court remarked that strikes are the legal weapons of workers and even illegal strikes can be deemed legal depending on the facts and circumstances of the case.[49] The Delhi High Court, in *Indian Express Newspapers Bombay Pvt. Ltd. v. T. M. Nagarajan,* stated that workers have the right to conduct peaceful strikes to force the employer to meet their demands.[50] 'Force' is the operative word, which displays the ideology of the judiciary that workers can pressurise employers and can refuse to adhere. In the case of *B.R. Singh v. Union of India,* the Supreme Court held that workers can use agitation methods such as strikes to ensure sufficient

[46] The Industrial Relations Code, 2020, S.86(15)
[47] The Industrial Relations Code, 2020, S.64
[48] The Industrial Relations Code, 2020, S.86(16)
[49] Crompton Greaves Ltd. v. Workmen (AIR 1978 SC 1489)
[50] The Indian Express Newspapers Bombay Pvt. Ltd. v. T.M. Nagarajan (1987 (15) DRJ 212)

membership in trade unions.[51] Insufficient trade union membership is technically not the fault or responsibility of the employer as the whole point of trade unions is to be independent of the employer where the employer should have no influence or control. Despite this, the Supreme Court ruled it just to strike and cause damages to the employer if trade union membership is insufficient.

Therefore, even though the ambit of legal strikes has been reduced and the ambit of illegal strikes has been increased under the Industrial Relations Code, 2020; the judicial precedents set by the courts can invalidate the protection granted to employers under the new code and still enable workers to contravene the legislation and stage illegal strikes without repercussions. While employers have been protected from the adverse effects of strikes by the legislature under the Industrial Relations Code, 2020; the judiciary has repeatedly expressed unwavering support for workers on strike, to the disadvantage of employers, thereby taking away their protection and power.

5.2.Lock – Outs

A lock – out refers to a situation wherein an employer temporarily shuts down the place of work and / or refuses to allow workers to work.[52] A lock – out could be due to various factors such as retaliation for a strike, the extensive conflict between the employer and the workers, financial crisis, external influence and pressure such as from political or activist organisations.[53] A lock – out in response to an illegal strike is permitted under the Code[54], which though fair, may just escalate the conflict between the employer and workers, which is detrimental to the interests of both parties. This provision is reciprocal insofar as it grants authorisation to strikes in response to illegal lock – outs.[55] Therefore, both parties are made equally responsible and liable toward each other in this regard.

The provisions in regard to lock – outs are entirely equivalent to that of strikes, under the Code. Therefore, the employer is restricted in the same manner from imposing lock – outs, as workers are restricted from imposing strikes.[56] This is a reasonably fair condition, as it recognises the

[51] B.R. Singh v. Union of India (1990 AIR, 1 1989 SCR Supl. (1) 257)
[52] The Industrial Relations Code, 2020, S.2(u)
[53] Shawkat Jahan, 'Lockouts', (*Human Resources Management Practice*), https://hrmpractice.com/lockouts/ , accessed 18 March 2023
[54] The Industrial Relations Code, 2020, S.63(3)
[55] Ibid
[56] The Industrial Relations Code, 2020, S.62(2)

importance of and enforces healthy employee – worker relations with uninterrupted operations for the benefit of all parties.

However, the punitive effect of contravention of these provisions is more severe for the employer imposing an illegal lock – out as compared to anyone involved in an illegal strike. The fine for an employer imposing an illegal lock – out ranges from Rs.50,000/- upto Rs. 1,00,000/- and / or imprisonment for a term of upto one month.[57] The logical justification behind this could be the fact that the employer is likely to be in a better financial position than workers and hence the penalty needs to be higher to create a realistic incentive to abide by the laws.

6. Lay – Off, Retrenchment and Closure

6.1. Continuous Service

In order to analyse the provisions in regard to lay – offs, retrenchment and closure, it is imperative to understand the concept of continuous service. the Industrial Relations Code, 2020 continues the provisions of the Industrial Disputes Act, 1947 in regard to the calculation of continuous service.[58]

One year of continuous service is calculated as 240 days for all industries except mines wherein 190 days counts as one year of continuous service.[59]

Six months of continuous service is calculated as 120 days for all industries except mines wherein 95 days counts as six months of continuous service.[60]

This calculation includes the period of any authorised leave on account of sickness, accident, pregnancy etc.; as well as the period of a lawful strike, lock – outs due to no fault of the worker and the period when the worker has been laid off.[61]

6.2. Lay – Off

The term lay – off refers to the employer being unable to provide employment to their workers who have not been retrenched, due to factors beyond the employer's control such as shortage

[57] The Industrial Relations Code, 2020, S.86(14)
[58] The Industrial Disputes Act, 1947, S.25B
[59] The Industrial Relations Code, 2020, S.66 Explanation 1(a)
[60] The Industrial Relations Code, 2020, S.66 Explanation 1(b)
[61] The Industrial Relations Code, 2020, S.66; S.66 Explanation 2

of resources, breakdown of machinery, accumulation of stocks or a natural calamity.[62]

The provisions of the Code in relation to lay – offs are applicable to all establishments having an average of at least 50 workers employed during the preceding calendar month, ergo, it applies to most industries, except those which have operations of a seasonal nature.[63]

Employers, employing 300 or more workers on average in the preceding 12 months, are expressly prohibited from laying – off workers[64] without the specific permission of the appropriate government; with an exception for a shortage of power or a natural calamity or disaster of any kind.[65] Employers are mandated to make an application seeking approval to lay off workers from their own establishment, which is then subjected to enquiry and hearings from all interested parties.[66] The appropriate government has sixty days to reply to such application and upon expiry of the sixty days, if no response is received by the establishment, the application is deemed to have been permitted.[67]

This is one of the key instances of gross injustice in the Code. If an employer decides there is a need to lay – off workers in his own establishment, he has to approach a separate body and go through an approval process of a few months at best, before he is allowed to take action in his own business. In the interim, he is forced to continue employing and paying the workers he intended to lay – off full wages.

It is a fair assumption that no employer would want to lay – off workers without just cause as it hampers the productivity / output of their establishment and hurts employee morale hence if they do decide there is a need for a lay – off, it is bound to be on just grounds such as a shortage of raw material or a downfall in demand. However, under the provisions of this Code, the employer is forced to continue employing such workers and paying them full wages even if they may not be productive which ultimately threatens the survival of the establishment in the long run and the financial impact of this could lead to a failure of the business and closure of the establishment which would amount in retrenchment of the workers. This amount of government intervention and forced control is entirely unjust and against the better interests of

[62] The Industrial Relations Code, 2020, S.2(t)
[63] The Industrial Relations Code, 2020, S.65(1)
[64] The Industrial Relations Code, 2020, S.77(1)
[65] The Industrial Relations Code, 2020, S.78(1)
[66] The Industrial Relations Code, 2020, S.78(4)
[67] The Industrial Relations Code, 2020, S.78(5)

the economy and therefore by extension, the workers.

In the event that the employer is permitted to lay – off workers, their liability and hardships yet do not come to an end. Workers having completed one year of continuous service, laid off, are entitled to compensation amounting to 50% of their wages including any dearness allowance, for the working days when the worker is laid off, upto a maximum of 45 days in a period of 12 months, if so stipulated in an agreement.

After the expiry of 45 days of lay off, the worker can be retrenched and the compensation paid during the period of lay – off can be set off against the retrenchment compensation.[68]

The worker can be excluded from the right to compensation if the worker refuses to accept alternate employment under the same employer in the same establishment or another establishment within an 8km radius of the original workplace, in a similar role not requiring any additional special skills or past experience; provided that the wages payable in the alternate employment are at least equivalent to that of the original employment.[69] Further, if the worker is involved in a strike or any other industrial action by workers in another department of the same establishment, they can be precluded from receiving lay – off compensation.[70]

While these provisions do seem reasonably fair keeping in mind the daily needs of a worker needing to be met, it can be argued that in the event of a lay – off due to lack of resources, breakdown of machinery or a natural calamity, the employer is facing losses too as operations would have slowed down or come to a halt. Therefore, it is likely that the employer would also be cash – strapped and hence imposing the burden of compensating workers laid off due to no fault of the employer, can be unjust and may even be impossible if the financial situation of the employer is so dire that he cannot afford to pay the compensation due.

The proviso in relation to alternate employment is not a realistic way out because if the employer has another establishment within an 8km radius and has a job description identical or similar to that of the workers being laid off, it is highly likely that the other establishment would also be in the same predicament as the first establishment and would be facing the same challenges in regard to raw materials shortage, resources deficiency or a natural calamity.

[68] The Industrial Relations Code, 2020, S.67
[69] The Industrial Relations Code, 2020, S.69(i)
[70] The Industrial Relations Code, 2020, S.69(iii)

The most suitable example of this is the Covid 19 pandemic; when the lockdown was announced, all establishments were equally affected and all operations came to a standstill. Logically employers were forced to lay off the workforce and would have been unable to offer alternate employment and neither would they have the cash flow to pay compensation as the business itself would have ceased.

Though the Industrial Relations Code, 2020 was not in force at the time, the Industrial Disputes Act, 1947 was, and it presented similar provisions which were a major cause of concern in most industries. Government advisory at the time of imposing the lockdown suggested overruling the provisions of the Industrial Disputes Act, 1947 and requested establishments to continue paying workers their full wages[71], which could impose extensive liabilities upon the employer which they may not be able to afford.

The global economy had come to a standstill and all establishments' operations had ceased, hence with no income whatsoever and incredible uncertainty regarding the future, employers were expected to pay not just 50% of the wages as per The Industrial Disputes Act, 1947 but the entire amount of wages. It is also relevant to note that the employer was and is responsible for the health and safety of the workers at the workplace as well as any customers visiting the establishment and hence, they could not bring workers in to work even if there were no movement restrictions imposed.[72]

Therefore, while on humanitarian and social welfare grounds, workers should be entitled to compensation for being laid off, from an economic standpoint there may be situations where this may not be possible, which the Code does not provide for.

6.3.Retrenchment

Retrenchment refers to the termination of the worker's service by the employer for any reasons other than as punishment, upon retirement or upon expiry of the contract/ fixed term of employment.[73] In the case of establishments with less than 300 workers employed on average per day in the preceding 12 months[74]; workers in continuous service of atleast a year, are to be

[71] IANS, COVID-19 Lockdown: Employers Can Layoff, Retrench Workers During Natural Calamity, (*www.india.com,* 6 April, 2020), https://www.india.com/business/covid-19-lockdown-employers-can-layoff-retrench-workers-during-natural-calamity-3992529/, accessed 19 March 2023.
[72] Ibid
[73] The Industrial Relations Code, 2020, S.2(zh)
[74] The Industrial Relations Code, 2020, S.77(1)

given one month's notice prior to retrenchment or be paid wages for that period in lieu of notice[75].

For establishments having 300 or more workers employed on average per day in the preceding 12 months[76], the notice period to workers extends to three months[77] which is an absolutely unreasonable condition merely on the basis of the size of the establishment. the Industrial Relations Code, 2020 does not provide any distinguishing factors for classes of workers but instead mandates different conditions / procedures on the basis of the size of the organisation. For example, a line manager employed in a smaller establishment need get only one month's notice period whereas a simple packaging worker in a larger establishment is entitled to three months' notice or wages paid in lieu of such notice. Not only is this unjust to the employers but is exceedingly unfair to the workers as well. The conditions precedent to retrenchment should be distinguished upon the basis of the class / position / role of the worker instead of the arbitrary determining factor of the size of the establishment.

However, even more unjust than this provision is the requirement from establishments employing 300 or more workers, to obtain prior permission from the appropriate government before the employer can retrench a worker[78] in their own establishment. Not only does an application have to be made to the appropriate government[79], but the appropriate government is also required to conduct an enquiry and hear both the employer and the worker[80] before the employer is permitted to retrench the worker or a group of workers.

Reiterating what has been stated hereinabove several times, as the Code is a social legislation, the bias is tilted towards the workers and hence an application and enquiry in this regard is rarely likely to go in favour of the employer retrenching the worker. Furthermore, the employer is mandated to wait a minimum of 60 days after making an application to the appropriate government seeking permission for retrenchment, and only if the appropriate government does not respond within 60 days is the application deemed to have been accepted[81].

As is the case with any action taken against a worker, the worker always has the option of

[75] The Industrial Relations Code, 2020, S.70(a)
[76] Supra Note 74
[77] The Industrial Relations Code, 2020, S.79(1)(a)
[78] The Industrial Relations Code, 2020, S.79(1)(b)
[79] The Industrial Relations Code, 2020, S.79(2)
[80] The Industrial Relations Code, 2020, S.79(3)
[81] The Industrial Relations Code, 2020, S.79(4)

appealing the retrenchment before an Industrial Tribunal[82], in the unlikely event that the employer is actually able to retrench the worker, and the Tribunal, once again, is more likely to rule in favour of the workers.

The entire construct is so deeply flawed that it completely takes away control of the establishment from the employer, and places them entirely at the mercy of the workers and the appropriate government. It is completely against the interest of justice, to levy so many restrictions and conditions on an employer in regard to handling the affairs of their own establishment. These outrageous covenants act as a major disincentive for establishments to expand and recruit more workers and in all honesty, dissuade enterprise altogether. In fact, smaller establishments with fewer workers have their rights better protected and hence the construct surrounding inter – alia retrenchment, encourages establishments to remain smaller or indulge in illegal practices to make the workforce seem smaller on paper by employing workers off the books.

Unlawful practices like these harm not just the economy and government but also the workers themselves because undocumented workers are not awarded even the most basic rights, all because the system strips the employer of their basic and logical rights if they expand their operations.

The above discussion highlights the prejudice against employers in regard to notice period and approvals for retrenchment, however, there is another aspect in regard to retrenchment which can impose a heavy burden on the employer. Workers being retrenched are entitled to compensation amounting to 15 days average wages for every year of continuous service to the employer and for any part thereof in excess of 6 months.[83]

As discussed hereinabove in regard to compensation for lay – offs, this is a sound policy socially, but economically speaking, it may not be feasible and may prove very expensive for the employer. Especially if a significant number of workers are being laid off and / or the workers being laid off have served for an extended period of time. In a situation where the employer is forced to retrench workers due to financial constraints, business downturn etc. the purpose of the retrenchment is being unable to pay the workers their wages, and that is being defeated by mandating the employer to not only continue paying wages for atleast one month

[82] The Industrial Relations Code, 2020, S.79(6)
[83] The Industrial Relations Code, 2020, S.70(b); The Industrial Relations Code, 2020, S.79(9)

after deciding to retrench a worker but to also pay retrenchment compensation which could sum up to a figure much higher than the cost of retaining the labour, essentially making the entire establishment unprofitable and potentially forcing complete closure.

the Industrial Relations Code, 2020 also directs that establishment must follow a last in first out policy in the case of retrenchment, meaning workers recently recruited / having the least time served in continuous employment, should be the first to be retrenched and those with the longest tenures should be the last to be retrenched.[84] While this does seem fair prima facie, as it appears to imbibe and reward loyalty, it does not consider the situation wherein newer workers are possibly more valuable to the establishment due to their skillset being advanced or more relevant, or their productivity and expertise being higher as compared to older workers.

In situations such as the one highlighted, it is economically unsound and impractical to be forced to retrench the workers contributing more to the establishment simply because they were recruited later than the less productive and less contributing workers.

Furthermore, if the employer has managed to pass the endless hurdles and actually retrench a worker, their responsibility towards that worker does not end there. As per the Code, if the employer intends to recruit a new worker within one year of such retrenchment, the retrenched workers are to be offered that role first and be given preference in the recruitment process.[85] Once again, restricting the control of the employer over his own establishment and giving the workers more power over the employer even if they are retrenched.

The Industrial Relations Code, 2020 does provide for the waiver of these intensely restrictive provisions in exceptional circumstances such as the death of the employer[86]; and the system of last in first out can be bypassed by mutual agreement[87], however in reality, these exceptions do not circumvent the vastly biased framework surround retrenchment.

In addition, thereto, the Industrial Relations Code, 2020 provides for the creation of a 'Worker Re – Skilling Fund' for retrenched workers.[88] The fund shall derive its funding primarily from the employer, who is mandated to contribute an amount equivalent to the wages for the last 15

[84] The Industrial Relations Code, 2020, S.71
[85] The Industrial Relations Code, 2020, S.72
[86] The Industrial Relations Code, 2020, S.79(8)
[87] Supra Note 84
[88] The Industrial Relations Code, 2020, S.83(1)

days the worker was employed, to the said fund[89], which is over and above the required retrenchment compensation when applicable.

This contribution does not have the qualifying factor of atleast one year of continuous service as is there for retrenchment compensation, therefore, this amount is due from the employer for every worker retrenched. Subsequent thereto, the worker shall have that amount credited to his account within 45 days of such retrenchment[90]. Hence, this increases the monetary burden forced upon employers in the event of retrenchment.

In the case of *Armed Forces Ex Officers Multi Services Cooperative Society Ltd. v. Rashtriya Mazdoor Sangh (INTUC),* the dispute arose regarding the terms of employment of drivers employed by the petitioner. The drivers then resorted to violent protests outside the premises of the petitioner, which led to the petitioner terminating their service. However, the petitioner did pay compensation as mandated by the Industrial Disputes Act, 1947, for the retrenchment of workers. The petitioner when dismissing the workers stated that they were being retrenched as the establishment was closing, however, this was not the case. After a series of appeals, the final ruling of the Supreme Court was to reinstate such workers with 75% back pay. It is important to note that dismissal on grounds of disciplinary action is excluded from the ambit of retrenchment under the previous legislation and the new legislation. Despite the dismissal in this case, being due to disciplinary action for violent strikes, the Supreme Court considered this a retrenchment and deemed it to be malafide and therefore directed reinstatement and payment of back wages.[91] Even though the petitioner was legally justified in dismissing the workers for violent protests, and still paid them compensation, due to the technicality that the stated reason for dismissal was retrenchment on grounds of closure, was not actually true, the Supreme Court ruled in favour of the workers. This displays the bias against employers, where even if they are exercising their legal rights, a small technicality is all it takes for the system to nullify their rights and support the workers who were in the wrong.

The entire construct of retrenchment under the Industrial Relations Code, 2020, is so intensely biased towards the worker and aggressively detrimental to the employer, that it does not even feign the presentation of a fair legislation. Firstly, it is made near impossible for the employer to retrench a worker, and if through some stroke of luck, the employer navigates the maze of

[89] The Industrial Relations Code, 2020, S.83(2)
[90] The Industrial Relations Code, 2020, S.83(3)
[91] Armed Forces Ex Officers Multi Services Cooperative Society Ltd. v. Rashtriya Mazdoor Sangh (INTUC) (CIVIL APPEAL No. 2393 of 2022)

restrictions successfully, the financial burden levied on them is so heavy so as to make the entire concept of retrenchment tedious and expensive and hence redundant; the brunt of which is ultimately borne by the industry and the economy as a whole.

Instead of levying such cumbersome restrictions, if the Code provided for assistance in re – employment, it would go a much longer way in worker welfare in addition to benefitting the establishment, industry and economy. The torturous government interference and red – tape bureaucracy should be largely swept out, in order to truly have an impactful social and commercial legislation.

6.4.Closure

Closure refers to the permanent shutting down of an establishment or a part thereof.[92] The restrictions imposed on employers in regard to closure are largely similar to those of lay – offs and retrenchment.

For establishments with 50 to 299 workers[93], the employer is required to submit notice to the appropriate government 60 days prior to the date of intended closure[94]; and workers who have been in continuous employment for atleast 1 year prior to the date of closure, are entitled to compensation in the same manner as if they were retrenched[95]; that is, 15 days average pay for every year of continuous service and any part thereof in excess of 6 months.[96]

In the event of closure due to unavoidable circumstances, which do not include financial constraints, accumulation of unsold stock, expiry of the period of lease / license or exhaustion of resources; the retrenchment compensation is capped at the average pay of three months[97], which indirectly means 6 years of continuous employment.

In the case of exceptional circumstances like the death of the employer or a natural calamity, the notice period requirement can be waived by the appropriate government[98], however, the compensation requirement stands regardless of any exceptional circumstances.

While these provisions in regard to smaller establishments are reasonable, the requirements for

[92] The Industrial Relations Code, 2020, S.2(h)
[93] The Industrial Relations Code, 2020, S.74; Proviso (i) The Industrial Relations Code, 2020, S.77(1)
[94] The Industrial Relations Code, 2020, S.74(1)
[95] The Industrial Relations Code, 2020, S.75(1)
[96] The Industrial Relations Code, 2020, S.70(b)
[97] The Industrial Relations Code, 2020, S.75(1) Proviso
[98] The Industrial Relations Code, 2020, S.74(2)

larger establishments tilt the scale of reasonableness in the opposite direction, similar to the discussion hereinabove in regard to the unjustly stricter provision with regard to retrenchment in larger establishments. Establishments employing 300 or more workers[99] are required to submit an application to the appropriate government, seeking permission for closure of the establishment, atleast 90 days prior to the intended closure.[100]

As is the procedure for all such applications under the Industrial Relations Code, 2020, the appropriate government would then conduct an enquiry and hear all concerned parties, which include the employer, the workers and any other party having an interest, with the aim to determine the adequacy and genuineness of the reason of closure and determining whether or not it will serve the interests of the general public to authorise such closure.[101]

Again, this displays the forceful snatching of power and control of one's establishment from the owner of the establishment. The employer is not even permitted to close down their establishment without government intervention and approval. The establishment is owned by the employer and hence the employer should have control over whether or not they wish to continue to run the establishment.

The notice period requirement is fair as workers need to be given time and opportunities to find alternate employment, but requiring government approval to shut down is completely unjust. The appropriate government is unlikely to ever find it in the interest of the workers or of the general public, to authorise the closure of an establishment, and ergo, that would mean forcing the employer to run the establishment against his will.

There could be various reasons for the closure, failure of the business, retirement of the owner, redundancy of the output, expiry of permissions / licenses to manufacture certain goods etc. If the owner is unwilling to continue the establishment, or if the establishment is no longer profitable, the appropriate government should not be able to force the owner to keep the establishment operational.

While the owner may have the option of selling the establishment, practically, if the owner wanted to close the establishment, there are unlikely to be any buyers for the business. No employer / owner would want to shut down the establishment unless absolutely necessary as

[99] The Industrial Relations Code, 2020, S.77(1)
[100] The Industrial Relations Code, 2020, S.80(1)
[101] The Industrial Relations Code, 2020, S.80(2)

they lose their income stream and have to bear the costs and procedures associated with closure, therefore, requiring approval from the appropriate government to shut down the establishment is an entirely baseless mandate.

As with lay – offs and retrenchment, the appropriate government has 60 days to respond to the application, after which it is deemed to have been accepted if there is no response.[102] Also, as is the case for any order under the Code, it can be referred to the concerned Industrial Tribunal by any party for appeal.[103] This means that if the appropriate government does in fact grant permission for closure, the workers can stop the employer from shutting down their own business by going to the Tribunal on appeal.

Additionally, if the employer is successful in being able to shut down the establishment, all workers are entitled to compensation amounting to 15 days average pay for every year of continuous employment or any part thereof, in excess of 6 months.[104] This is an added burden as compared to that of smaller establishments shutting down, as for smaller establishments, there is a qualifying factor of at least one year of continuous employment before compensation for closure is awarded[105]; whereas, for larger establishments employing 300 or more workers, every worker is entitled to compensation upon closure. This is another example of the unjust distinction created between workers' rights on the basis of the size of the establishment rather than any characteristics of the workers.

The appropriate government can waive the provision of notice and permission in exceptional circumstances like the death of the employer, which is one of the few fair provisions from the perspective of the employer.[106]

Analysis and Conclusion

The extensive analysis of the Industrial Relations Code, 2020 through this paper highlights the absolute imbalance of favour and extreme bias in favour of the workers, detrimental to the interests of the employer. The restrictions and roadblocks forced in at every step create an extremely difficult environment for business owners. the Industrial Relations Code, 2020 gives

[102] The Industrial Relations Code, 2020, S.80(3)
[103] The Industrial Relations Code, 2020, S.80(5)
[104] The Industrial Relations Code, 2020, S.80(8)
[105] Supra Note 95
[106] The Industrial Relations Code, 2020, S.80(7)

way too much control to the workers and the appropriate government, over the affairs of the establishment which is against the principles of justice, fairness and reasonableness.

While it is undisputed that the workers are an economically and socially weaker class as compared to employers, and do need social legislations to protect their interests, the degree of power handed to the workers under the guise of protection is severely detrimental to employers. It is the employers who create employment and production in the economy, and hence it is they who generate income for the workers and revenue as well as goods and services for the economy.

Therefore, imposing such stringent norms stripping them of control and power over their own affairs, is against the interests of the economy and the country as a whole on account of the fact that it creates a disincentive for business. It not only demotivates people from setting up establishments but also encourages them to remain small so as to avoid the unfair complications, restrictions and costs imposed by the Industrial Relations Code, 2020.

The provisions of legislation regulating the relationship between employers and workers need to be fairer and more unbiased in order to promote a healthy relationship between these entities and promote economic development and social upliftment. The provisions of this code, however, are likely to create a hostile working environment and encourage complacency and insubordination by workers as they have been awarded so much control and power, which would ultimately negatively affect the industry and the economy.

A more balanced framework in the form of less government interference, bureaucracy and approvals would go a long way in achieving an ideal employer – worker relationship. Furthermore, the legislation needs to understand the importance of the employer in the big picture and not treat them like adversaries, which means there needs to be better consideration of their interests and concerns, and proper provisions ensuring they have the required power and control over their establishment. the Industrial Relations Code, 2020 should provide for the complicated situations which the employer could be in, which could prevent him from adhering to the strict requirements of this code, without terming their actions illegal and imposing punitive consequences such as hefty fines and possible imprisonment for being unable to comply.

While the Code has not yet come into force, it is in the process of phased implementation across India, with government directives to start framing Rules and preparing for its implementation.

There is resistance and protest from Trade Unions creating roadblocks for its full enforcement, as the few provisions in the Code which do benefit the employer are being challenged by these bodies alleging that the Code takes away their power.[107]

While this paper does focus on the adverse impact of the Code upon employers, the benefits highlighted hereinabove, though advantageous for employers, can be seen as unjust to workers as it does take away the strongest weapon in their arsenal which is a strike. This proves that the Industrial Relations Code, 2020 fails to provide the framework and structure for a healthy working environment and a conducive relationship between employers and workers, which is supposed to be the ultimate aim of this legislation.

Furthermore, it is likely that this legislation will pave the way for more unlawful and underhanded practices such as bribery and falsified record keeping etc. as employers and workers (including bodies and associations of workers) attempt to circumvent the curbs imposed on them or take undue advantage of the power bestowed upon them. This would in fact lead to less worker welfare as discussed hereinabove, and cause increased expenditure for employers in terms of bribery for the privilege of exercising what should be their right.

In summation, the Industrial Relations Code, 2020 does need a thorough rework, as even though it has effectively combined multiple legislations and with its 3 sister legislations, has subsumed the 29 legislation large complex framework which was the predecessor to this new system, the provisions of this code are likely to create severe complications and turmoil in industries, encourage more industrial disputes and discourage enterprise while also enabling a larger volume of unlawful practices by employers and workers alike, attempting to circumvent the restrictions and hurdles imposed by this code.

[107] Saubhadra Chatterji, 'Govt's pending agenda on labour reforms set to get a fresh impetus', (*Hindustan Times,* 19 January 2023), https://www.hindustantimes.com/cities/delhi-news/govts-pending-agenda-on-labour-reforms-set-to-get-a-fresh-impetus-101674151898388.html accessed 22 March 2023