INDUSTRIAL RELATIONS CODE, 2020 AND THE NEO-LIBERAL RECONSTITUTION OF LABOUR GOVERNANCE IN INDIA: A CONSTITUTIONAL AND GENDERED CRITIQUE

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ABSTRACT

The Industrial Relations Code, 2020 consolidates the Industrial Disputes Act, 1947; the Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946. It is part of the greater labour law reforms of 2020 and aims to make doing business easier, reduce the compliance burden and stimulate industrial growth. Nonetheless, its design is open to the scrutiny of a neo-liberal perspective. This paper claims that Code marks a movement from a welfare oriented labour system to market centre regulatory system. By increasing the threshold for government approval of layoffs and retrenchments, formalisation of fixed term employment and limitations on strike rights, the Code favours managers. The new "negotiating union" mechanism has centralised bargaining to the extent that it may sideline smaller trade unions. Using doctrinal and theoretical tools which are embedded in the fields of political economy and constitutional law, this study examines whether the Code is in consonance with the social justice commitments of India under Article 14, Article 19(1)(c), Article 21 and the Directive Principles of State Policy. It argues that although the reform makes the regulatory process easier and more flexible, it also risks job precariousness, undermines collective bargaining, and undermines worker protections. The paper concludes with a discussion on the necessity of the Industrial Relations Code, 2020, and whether it signifies necessary modernisation, or neo-liberal change in favour of capital mobility over substantive labour rights.

Keywords: Industrial Relations Code, 2020; Labour Law Reforms; Neo-liberalism; Labour Market Flexibility; Trade Unions; Collective Bargaining; Right to Strike; Fixed Term Employment; Retrenchment Social Justice; Constitutionalism; Informalisation of Labour; Industrial Dispute; Ease of Doing Business.

1. Introduction

The Industrial Relations Code, 2020 was passed along with three other labour codes, and is the largest restructuring of Indian industrial law since independence. It brings together three basic laws which historically shaped industrial relations in India.[1]

Post-independence labour law in India was embedded very much into constitutional aspirations of social justice. The Directive Principles of State Policy contained in Articles other 38 and 43 envisioned and egalitarian social order in which labour will not be treated as mere commodity.[2] The Industrial Disputes Act, 1947 institutionalised state intervention in industrial conflict, and this recognised structural inequality between labour and capital.[3]

However, starting from the onset of economic liberalisation in 1991, labour regulation has been redefined in the language of competitiveness. Labour protection began to be seen more and more as regulatory rigidity. The Industrial Relations Code, 2020, must therefore be located in this larger ideological shift.[4]

This paper argues that the Code does not simply make the law simpler; it changes the philosophy of labour governance. The Code adjusts the asymmetry in bargaining in favour of capital by increasing retrenchment levels (100 to 300 workers), making employment fixed-term contracts, and increasing sector-wide terms of trade union recognition, and centralisation of trade union recognition. More critically, it is not gender-neutral how these reforms impact. Women workers in India are over-represented in the sectors of precarious employment, such as the textiles, electronics, domestic work and services sectors. Labour flexibilisation therefore runs the risk of exerting further dimensions of gendered economic vulnerability.[5]

The central research questions which this paper follows are: Does the Industrial Relations Code, 2020, indicate a move from welfare constitutionalism to neo-liberal labour governance? How does the Code shift the balance of power between the labour and the capital? Can the reforms be constitutionally sustainable by Articles 14, 19(1)(c) and 21? What are the gendered implications of these reforms to women workers?

[1] Industrial Relations Code, 2020, No. 35 of 2020, India Code
[2] INDIA CONST. arts. 38,43
[3] Industrial Disputes Act, 1947, No. 14 of 1947.
[4] T.S. Papola, Labour Regulation and Economic Reforms, 39 Econ. & Pol. Wkly. 2403 (2004).
[5] Periodic Labour Force Survey, Govt. of India (2002).

2. Theoretical Framework

2.1 Neo-Liberal Political Economy

Neo-liberalism explained by David Harvey is a political project aimed at restoring class power. It is doing this by means of de-regulation, privatisation and institutional change.[6] In labour law that means more flexible employment relations, less strong collective bargaining and a focus on investor confidence.[7]

Labour law used to be a protection against market inequality. Under neo-liberal reform, however, labour is treated more and more as a commodity and regulations are changed so as to give managers more autonomy. The Industrial Relations Code represents these characteristics.

2.2 Feminist Labour Theory

Feminist critiques of political economy highlight the way that labour markets are organised around gender.[8] Women are overrepresented in the low-wage, informal and precarious jobs. This is because of unpaid care work, occupational segregation and discriminatory practices.[9] Reforms that are supposed to be gender-neutral tend to reproduce inequality because they ignore these differences. Therefore, any neo-liberal adjustment of labour policies must be seen in terms of gender.

3. Historical Evolution of Indian Industrial Jurisprudence

In order to understand the changes brought by Industrial Relations Code of 2020, we need to study the development of Indian industrial law in its philosophical approach.

3.1 Colonial Foundations and Post-Independence Reconstruction

Colonial labour legislation in India was largely concerned with the goal of industrial peace, not labour justice.[10] However, in the post independence, lawmakers have reworked the concept of labour law as an instrument of distributive justice. State mediated adjudication mechanisms, conciliation processes and retrenchment safeguards were introduced into the wrong by the

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[6] David Harvey, *A Brief History of Neoliberalism* 19 (2005).
[7] Kahn-Freund, Labour and the Law (1972).
[8] Naila Kabeer Gender, Labour Markets and Globalization, 39 Econ. & Pol. Wkly. 469 (2004).
[9] V.V. Giri Nat'1 Labour Inst., Women and Informal Employment Report (2021).
[10] Sabyasachi Bhattacharya, *Colonialism and India Economy* (2005).

Industrial Disputes Act, 1947.[11]

The Indian model was that of a social democratic compromise between capital and labour. Unlike laissez - faire regimes, Indian industrial law institutionalised: -

- Compulsory conciliation
- Adjudicatory tribunals
- Procedural rights of discharge
- Collective bargaining recognition

The Supreme Court gave a new booster to this welfare orientation. In Workmen v. Meenakshi Mills Ltd., the Court held the government's role in retrenchment as constitutionally valid in view of the objectives of social justice.[12]

3.2 Labour Protection as Embedded in the Constitution

The Constitution of India incorporates labour protection in Directive Principles of State Policy. Article 38 provides to promote social, economic and political justice and Article 43 provides to live wage and decent conditions of work.[13]

These principles were spread over time using judicial interpretation into enforceable rights. In Olga Tellis v. Bombay Municipal Corporation, the Court said that the right to livelihood is an integral component of Article 21.[14]

Thus, labour protection in India developed in a right based framework as opposed to that in a contractual one.

4. Liberalization and the New Paradigm of Flexibility

4.1 The "Rigidity Thesis"

Following economic reforms in 1991, labour regulation began to be seen more as a constraint on industrial growth. The "rigidity thesis" held that stringent rules of retrenchment discouraged

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[11] Industrial Disputes Act, 1947, No. 14 of 1947.
[12] *Workmen v. Meenakshi Mills Ltd.,* A.I.R 1994 S.C. 2696 (India).
[13] INDIA CONT. arts. 38,43.
[14] *Olga Tellis v. Bombay Mun. Corp.,* (1985) 3 S.C.C. 545.

investment and the expansion of formal employment.[15]

Policy discourse began to frame the need for labour flexibility as key for competitiveness, foreign direct investment and to economic dynamism.[16]

Nonetheless, this curriculum-based research opposes this narrative on an empirical basis. Studies have shown that informality in India is not only due to labour protection but also due to structural economic dualism and weak capacity to enforce.[17]

4.2 Codification as Ideological Reform

The codification exercise that resulted in the four Labour Codes (including the Industrial Relations Code) was presented as simplification.[18] Submit codification made restructuring of labour rights substantively possible, too.

Increasing the level of retrenchment, fixing the term-employment, and increasing strike-notice presupposition all represent a readiness to conclude more than procedural rationalisation, and they appeal to a normative change.

5. Retrenchment Threshold and Job Security Convolutions

The Industrial Relations Code raises the size of the scale of operations from 100 to 300 workers for prior government approval for retrenchment, layoff and closure.[19]

5.1 The transfiguration of Protective Oversight into Managerial Bad Character.

Before the change, any company with 100 or more employees had to get governmental permission to retrench employees. This rule was a safety net in case of arbitrary dismissals. Raising the threshold to 300 employees greatly reduces regulatory oversight for medium scale firms. Although states are allowed to manipulate the threshold they have the flexibility to revise in order to give managers more flexibility.

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[15] Bibek Debroy, Labour Market Reform Debate (2001)
[16] World Bank, *Doing Business* Reports (various years).
[17] Anushree Sinha, Labour Law Reform and Industrial Performance, 47 Econ. & Pol. Wkly. 56 (2012).
[18] Ministry of Labour & Employment, Statement of Objects and Reasons (2020).
[19] Industrial Relations Code, 2020, § 77.

5.2 Constitutional Analysis

Article 14 prohibits arbitrary state action.[20] In situations whereby virtue of a law one group of workers becomes disproportionately vulnerable without meaningful reason that such action is necessary, then this raises matters of equality. Furthermore, Article 21 requires procedural fairness before taking away someone's livelihood.[21] Even though it is never guaranteed that someone will be employed, relaxing protective oversight has to pass a reasonableness test. In Modern Dental College v. State of Madhya Pradesh, the proportionality doctrine states that the action of a state to restrict rights must be necessary and proportionate.[22] Whether raising the retrenchment threshold meets such a test is still uncertain.

5.3 Gendered Consequences

Women workers are often employed in sectors which are vulnerable to restructuring processes such as the garment industry and electronics assembly.[23] During downsizing processes, women are frequently employed in these industries first, due to gendered ideas about second earnership.[24] So increasing retrenchment flexibility without gender safeguards risks indirect gender discrimination.

6. Precarity as Institutionalised in Fixed-Term Employment

The Code formally recognises fixed term employment in all sectors.[25] Although these workers have a right to receive equal salaries and benefits that are provided by the statutory law, they do not have a high degree of tenure security.

6.1 Commodification of Labour

In a neo- liberal labour system, the relationship of employment is more and more transactional. Fixed-term contracts enable employers to change workforce without long-term commitments.

In the analysis on the precariat given by Guy Standing, precarity is found to instigate no

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[20] INDIA CONT. art 14.
[21] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.
[22] *Modern Dental College v. State of MP*, (2016) 7 S.C.C. 353.
[23] V.V. Giri Nat'l Labour Inst., Women in Manufacturing Report (2022)
[24] Naila Kabeer, supra note 8
[25] Industrial Relations Code, 2020, § 2(o).

security, disjointed sense of place and causes a weakened collective voice.[26]

6.2 Women Workers and Contracting Insecurity

Women are not holding permanent jobs and occupy temporary and short- term jobs disproportionately.[27]

Fixed-term contracts result in:

- Internationally interrupted career paths
- Decreased continuity of maternity benefits
- Decrease in union membership participation

Even the statutory entitlements are often not renewed, so workers often face the fear of non-renewal, which can give them a disincentive to assert their rights. Hence, flexibility can result in silent exclusion.

7. Limitation of the Industrial Action

The Code makes it a requirement for employers to provide a notice in advance for a strike to occur at any establishment. It also prohibits strikes during the conciliation proceedings.[28] In *All India Bank Employees' Association v. National Industrial Tribunal*, the Supreme Court made it clear that the right to strike is not a fundamental right of Article 19(1)(c).[29] Collective bargaining is nevertheless a central part of associational freedom. Excessive procedural burdens may effectively neutralise collective action.

Gender and Group Mobilisation

Women led labour movements - particularly in the informal sectors - depend a great deal on collective mobilisation to win the battle for recognition. Provide procedural barriers that disproportionately disadvantage those worker groups that are vulnerable because of their limited legal literacy and organisational resources. In this way, the regulation of strike should

[26] Guy Standing, *The Precariat* (2011).
[27] Periodic Labour Force Survey, Govt. of India (2022).
[28] Industrial Relations Code, 2020, § 62.
[29] *All India Bank Employees'Ass'n v. Nat'l Indus. Tribunal*, A.I.R. 1962 S.C. 171.

not be considered as the promotion of the industrial peace and other interim solutions but as the redistribution of the bargaining power.

8. Conclusion

The Industrial Relations Code, 2020 represents far more than a technical consolidation of pre-existing labour laws; it marks a paradigmatic shift in the philosophy of labour governance in India. This study has demonstrated that the Code must be understood within the broader trajectory of post-1991 economic liberalisation, where regulatory frameworks are increasingly shaped by the imperatives of market efficiency, investment facilitation, and global competitiveness. While the Code is projected as a reform aimed at simplification and ease of doing business, its substantive provisions reveal a recalibration of the balance of power between labour and capital in favour of the latter.

Through a doctrinal and theoretical analysis grounded in neo-liberal political economy and feminist labour theory, the paper has argued that the Code dilutes foundational principles of welfare constitutionalism. Key provisions—such as the enhancement of retrenchment thresholds, legitimisation of fixed-term employment, restrictions on the right to strike, and centralisation of trade union recognition—collectively contribute to the institutionalisation of labour market flexibility. However, such flexibility is not normatively neutral; rather, it produces conditions of precarity, weakens collective bargaining structures, and erodes long-standing worker protections.

From a constitutional perspective, these shifts raise significant concerns. The dilution of procedural safeguards and collective rights calls into question the compatibility of the Code with Articles 14, 19(1)(c), and 21 of the Constitution, as well as the Directive Principles of State Policy that envision a just and equitable social order. The proportionality and reasonableness of these reforms remain contestable, particularly when assessed against the State’s obligation to protect the right to livelihood and ensure substantive equality.

Importantly, the paper highlights that the impact of these reforms is deeply gendered. Women workers, who are disproportionately represented in precarious and informal sectors, are likely to bear the brunt of labour flexibilisation. The expansion of fixed-term employment and ease of retrenchment risk reinforcing existing structural inequalities, disrupting employment continuity, and limiting access to social security and maternity protections. Thus, reforms that

appear formally neutral may, in practice, exacerbate gendered vulnerabilities.

In conclusion, the Industrial Relations Code, 2020 reflects a transition from a rights-based, protective labour regime to a market-oriented regulatory framework. While some degree of reform may be necessary to address economic realities, the current trajectory risks subordinating social justice to economic efficiency. A more balanced approach is required—one that harmonises flexibility with fairness, preserves the dignity of labour, and remains faithful to the constitutional vision of social and economic justice. Future policy interventions must therefore incorporate stronger safeguards, inclusive labour institutions, and gender-sensitive measures to ensure that reform does not come at the cost of equity and human dignity.