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## **A STUDY OF DISPUTE RESOLUTION MECHANISMS UNDER THE INDUSTRIAL RELATION CODE, 2020**

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Monika Shokeen, Research Scholar, School of Law, Sushant University, Gurugram,  
Haryana.

Dr. Sulakshana Banerjee Mukherjee, Associate Professor, School of Law, Sushant  
University, Gurugram, Haryana.

### **ABSTRACT**

The Industrial Relation Code 2020 is a significant reform in labour law in independent India, which merges and revamps the large and unwieldy group of laws relating to the regulation of industrial disputes. An up-to-date, agile legal framework for dispute resolution should make it easier to reform the institutions involved in this mechanism, streamline the procedures and include provisions to bring about internal grievance settlement mechanisms. But how successful these reforms are in reaching their desired aims is a subject of academic and policy debate. This paper is an attempt to analyse the dispute resolution framework adopted by Industrial Relation Code 2020 and the changes in the structure, procedure and concept of the same when compared with the provisions of IDA 1947. The new system, through structural and dynamic analysis, internalizes the desirable features, identifies the important weaknesses and critically analyses the likely impact of the same on the harmony of the industries, workers' rights and the overall industrial relations climate in India. The Industrial Relation Code 2020 (IRC) has several positive aspects, including the procedural ease of use, the institutions of workers and employers, and the establishment of grievance procedures, but its effectiveness will depend on its implementation, the level of administrative capacity, state alignment, and worker/employer adaptation to the new regulatory landscape.

## INTRODUCTION

In India, for decades the labour-management and industrial relations have been marked by the use of state intervention to solve the dispute through conciliation. Dispute resolution is a fundamental and complex issue in India's labour market which is highly heterogeneous, shows a marked difference between the formal and informal sectors, and has many political actors. Since its inception, the IDA had encountered serious problems in the establishment of its institutional structure for the resolution of industrial disputes. These inefficiencies comprised procedural fluctuation, arm's length contradictory decisions between adjudicators; elaborate waste of court resources caused by undue litigation; long delays in hearing appeals and failure by adjudicating bodies in collaboration. Context of the Industrial Relation Code relating to other laws: The Industrial Relation Code 2020 was not an independent act but was part of an act that merged several labour-related laws, such as the IDA 1947, Trade Unions Act 1926 and Industrial Employment (Standing Orders) Act 1946 into a single industrial relation code.<sup>1</sup>

One of the most crucial sectoral overhauls brought in under the Industrial Relation Code 2020 is to the system for dispute resolution. The Code overhauls disbursement authorities, establishes grievance redressal committees and changes conciliation procedures to try and simplify the multi-layered structure of the previous system. But these changes have raised questions such as the independence of adjudicating bodies and whether justice is accessible for workers (especially those in smaller businesses), and whether the Code is merely changing the architecture of the institutions or only making a modest effort to change the structures.<sup>2</sup>

The paper take a critical and multi-dimensional approach to analyse the Industrial Relation Code in the broader context of the theoretical industrial relations and the extent to which it provides any added value for the efficiency, equity and industrial peace.

## HISTORICAL AND THEORETICAL BACKGROUND

To understand the development of industrial dispute resolution, the historical background of the evolution of labour law in India cannot be overlooked. In the wake of the colonial era, there was the IDA 1947, after which the industrial disputes were mainly controlled by the Trade

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<sup>1</sup> Shardul Amarchand Mangaldas & Co, "*Employment Law - The Industrial Relations Code 2020*",(2020).

<sup>2</sup> The Industrial Relations Code, 2020, No. 35 of 2020, Gazette of India, Ministry of Law and Justice, September 28, 2020.

Disputes Act 1929. The 1947 Act was passed to curb the escalating numbers of strikes, lockouts and industrial disputes and to empower various machinery like the Works committee, Conciliation Officer (C.O.), Board of Conciliation (B.O.C), court of inquiry, labour courts, industrial tribunals and national tribunals.<sup>3</sup> The design of this system was to include a number of layers of dispute resolution from voluntary mediation to mandatory arbitration.<sup>4</sup>

Theoretically, the Indian system was greatly influenced by the pluralist approach to industrial relations that was popularised by scholars like Allan Flanders and John Dunlop, which emphasised interest mediation among the three parties of labour, employers and state. The state was felt to be essential in settling conflicts and ensuring industrial peace. However, it was observed over time that the dispute-resolution machinery in India was institutionally very rich, yet it did not work effectively<sup>5</sup>. Delays were rampant, cases lingered around for years and rates of successful conciliation fell to the ground; so did administrative inconsistencies that made it ineffective.

Towards the beginning of the 21st century, there was an increasing need for harmonisation and clarification of labour laws, both from the side of policy makers as well as from academics. The IRC, 2020 was born in this backdrop, with the objective to improve ease of doing business and reduce avoidable litigation, as well as make the dispute resolution mechanism more efficient. But the new Code's structural logic is one of compromise between conflicting imperatives: flexibility for industry versus access to justice for workers. This is the analytical focus of this paper.<sup>6</sup>

## **DISPUTE RESOLUTION REGIME UNDER THE IRC, 2020**

### **Grievance Redressal Committees (section 4)**

A major alteration in Section 4 of the Industrial Relations Code, 2020 involves establishing and strengthening internal grievance resolution systems. Under this Code, industrial companies that have at least 20 employees are required to create a Grievance Redressal Committee. Such

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<sup>3</sup>The Industrial Dispute Act, 1947 (Act 14 of 1947)

<sup>4</sup> Ummul Waraah, "A brief study on the industrial dispute act." *International Journal of Innovative Research in Engineering and Management (IJIREM)*, January 2022

<sup>5</sup> O.P. Malhotra and K.M. Malhotra, *The Law of Industrial Disputes* 112 (LexisNexis, Gurgaon, 7th edn., 2015).

<sup>6</sup> Tyagi, Shruti, and Tanya Babbar. "Industrial Relations Code, 2020: The Dawn of the Reformation." *Issue 5 Int'l JL Mgmt. & Human.* 3 (2020): 1358.

committees shall consist of an equal number of members from the employer's side and the employees' side, and in addition, there shall be one woman member if any women workers are employed. The IRC also imposes a time limit, mandating that grievances are to be decided within thirty days.<sup>7</sup>

At first glance, this reform may appear to be a step in the right direction for the formalisation of domestic dispute settlement mechanisms. The Code is an attempt to reduce, by systematising internal fora, disputes which lead to external litigation. But the success of GRCs relies on power dynamics in the office. In many workplaces in India, notably small ones, workers might not want to bother with a complaint due to fear of retribution, or simply lack collective bargaining leverage, or legal awareness. However, not much is said about how these committees are to operate in an independent and fair manner or in a way that workers have confidence in them. In such cases, the GRCs will more easily be paper tiger mechanisms of compliance without strong trade unions or other external monitoring.<sup>8</sup>

### **Conciliation Officers (Section 43)**

At the heart of the principles under the IRC 2020 is amicable settlement, which is the traditional approach of India and not based on adversarial litigation. All disputes between an employee and his employer, while in employment, will also be mediated by the conciliation officer appointed by the appropriate government on this behalf as per the Code. It is expected that a conciliation should lead to a settlement report or failure report within the time period allocated, based on which parties can apply before the Industrial Tribunal.<sup>9</sup>

The IRC is designed to make the conciliation process easier by setting out time limits and outlining the roles of conciliating officers. But critics argue that the effectiveness of conciliation is not so much dependent on the law as on the independence, training and professional competence of the conciliators. Conciliation officers are in many places overworked, underfunded, and tied to bureaucratic structures. Furthermore, conciliators are not allotted quasi-judicial powers by the Code, and the Code limits their powers to having an on-deck employer first agree to participate meaningfully in the conciliation. The going rate,

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<sup>7</sup> The Industrial Relations Code, 2020 (Act 35 of 2020), s.4

<sup>8</sup> *Ibid*

<sup>9</sup> The Industrial Relations Code, 2020 (Act 35 of 2020), s.43

therefore, of conciliation may be constrained even if the conciliation structure continues, without a corresponding increase in institutional investment and capacity building.

### **Industrial Tribunals (section 44)**

One of the key institutional changes, adopted in IRC 2020, is the reorganisation of the adjudicating authorities' court. The Code introduces two new members of the Industrial Tribunal (one judicial and one administrative) that replace labour courts and industrial tribunals across the country. The reform aims to avoid its fragmentation, to increase legal consistency and to quicken the decision-making process.

The two-member tribunal model is a direct result of criticisms of the previous model, which largely centred on the lack of uniformity arising from fragmented adjudication. The Administrative Members have experience in labour administration and industrial relations, while the Judicial Members have legal knowledge. A two-member structure has its disadvantages, however. If it is necessary for both arbitrators to attend a hearing, for instance, the resolution process could be delayed if one is unavailable. Additionally, there have been accusations of bias of tribunal members relative to appointment procedures, duration of tenure and executive branch control over administration.<sup>10</sup>

In the world of Industrial Relations, especially where large and powerful companies are involved and a politically sensitive situation exists, the independence of the judicial system becomes extremely important. The perception of fairness and impartiality will be a critical factor; if the various courts are perceived as less than fair, workers will lack confidence in the fairness and thus the value of the judicial process.<sup>11</sup>

### **National Industrial Tribunal (section 46)**

The NIT is held in the IRC to resolve disputes that may impact the entire nation or an industry that operates in more than one state. The NIT is supposed to be an important instrument for parity of jurisdictions, but so far, delays in approval and lack of consistent interpretation have limited its use. IRC is not an indication of significant (beyond IDA 1947) restructuring of NIT. The absence of this is an opportunity lost; at the national level, there are national level issues

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<sup>10</sup> The Industrial Relations Code, 2020 (Act 35 of 2020), s.44

<sup>11</sup> International Labour Organization, *India Labour Market Update* (ILO, New Delhi, 2020).

that require a body which is efficient, independent and can provide a speedy decision, such as transport, telecom and banking.<sup>12</sup>

### **Voluntary Arbitration (section 42)**

To this day, the IRC still favours privately negotiated arbitration as an ADR method. Although arbitration has been advertised as an effective method of resolving industrial strife worldwide, in India, it is not really resorted to. For workers, they seldom have the bargaining power and/or means to pay for arbitration, while employers favour tribunals. But the IRC also makes only minimal attempts to open up arbitration, failing, for example, to advocate a more flexible and speedy mechanism to settle disputes.<sup>13</sup>

### **Comparative Analysis: The Industrial Relations Code (IRC) 2020 vs The Industrial Disputes Act (IDA) 1947**

With the introduction of Industrial Relations Code 2020 there are numerous modifications to resolving workplace disputes compared to Industrial Disputes Act 1947 (IDA) which was applicable before. One of the primary features is the vastly simplified mechanism used to resolve disputes. IDA created multiple bodies for resolving workplace disputes in a hierarchical sequence of authority (Works Committees, Conciliation Officers, Boards of Conciliation, Labour Courts, Industrial Tribunals, National Tribunals).<sup>14</sup> There were many benefits from having a variety of ways to resolve disputes; however, there was also unnecessary complexity in the dispute resolution process, confusion regarding where disputes could be resolved, and the lengthy time associated with resolving workplace disputes.<sup>15</sup>

By creating centralised Industrial Tribunals made up of two members that are both legally trained (judicial members) and have administrative experience (administrative members), the IRC 2020 made the resolution of disputes simpler than IDA.<sup>16</sup> Centralised Industrial Tribunals reduce the number of disputes being processed by the tribunal system (i.e. centralisation

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<sup>12</sup> The Industrial Relations Code, 2020 (Act 35 of 2020), s.46

<sup>13</sup> The Industrial Relations Code, 2020 (Act 35 of 2020), s.42

<sup>14</sup> M. Zamroni, "Misconceptions On The Concept Of Mediation And Conciliation In The Act On Industrial Relations Disputes Settlement," *Yust. J. Huk.*, 2021, doi: 10.20961/yustisia.v10i2.48667

<sup>15</sup> G. Senthil Kumar and S. Chandrachud, "A study on labour laws with special reference to Industrial Dispute Act, 1947," *Indian J. Public Heal. Res. Dev.*, 2019, doi: 10.5958/0976-5506.2019.03543.5

<sup>16</sup> Ministry of Labour and Employment, Government of India, *The Industrial Relations Code, 2020: An Overview* (2020).

reduces fragmentation) and result in similar outcomes for the resolution of similar disputes. Under IRC 2020, there is a defined time limit within which disputes will be resolved including the timeline for completion of each process in dispute resolution; therefore, employees and employers have much more certainty surrounding the resolution of disputes in comparison with the IDA system. IRC created Internal Mechanisms to encourage the speedy resolution of disputes at work before having to use formal litigation such as Grievance Resolution Committees (GRC's).<sup>17</sup>

Nevertheless, there are still a number of issues. The true-life performance of GRCs depends on the awareness and empowerment of workers. In non-unionised workplaces, or where employees are not well-informed, GRCs can be more of a formality. Furthermore, because India is a federal state, there will be differences amongst the various states in all of the areas of administrative capability (e.g., resources, uniform personnel), the distribution of resources, and the uniformity in how narrow and central tribunals operate within each state.<sup>18</sup> The currently implemented IRC system (IRC 2020) is more user-friendly than its predecessor (i.e., IRC 2014). However, it has its own set of operational limitations.

**Table 1: Comparative Features of IRC 2020 and IDA 1947**

Feature	IDA 1947	IRC 2020	Improvement/Change
<b>Dispute Resolution Mechanisms</b>	Multi-tiered (Works Committees, Conciliation, Tribunals)	Consolidated Tribunals + GRCs	Reduced complexity, unified framework
<b>Tribunal Composition</b>	Labour Courts and Industrial Tribunals (single-member)	Two-member Industrial Tribunals (Judicial + Administrative)	Balanced expertise, improved decision consistency
<b>Internal Complaint Handling</b>	Limited, informal	Mandatory GRCs for establishments with ≥20 employees	Encourages early grievance resolution, formalised process
<b>Timeframe for</b>	Flexible, often prolonged	Standardised timelines for GRCs,	Reduces delays, provides clarity to stakeholders

<sup>17</sup> The Industrial Relations Code, 2020, No. 35 of 2020, Gazette of India, Ministry of Law and Justice, September 28, 2020.

<sup>18</sup> Ministry of Labour and Employment, Government of India, *The Industrial Relations Code, 2020: An Overview* (2020).

<b>Resolution</b>		conciliation, and tribunal hearings	
<b>National-level Disputes</b>	National Tribunals with limited restructuring	NIT preserved, limited structural change	Continuity is maintained, but efficiency gains are minimal
<b>Worker Awareness &amp; Participation</b>	Varied, dependent on unions	Dependent on education and empowerment programs	Potential improvement requires active support and monitoring

## IMPLEMENTATION CHALLENGES

### Resource Constraints

Limited resources are one of the biggest problems with the effective implementation of the IRC 2020. The structural transformation of labour courts and industrial tribunals for the reduction of duplication, however, has not been matched by a commensurate increase in staffing, infrastructure and funding<sup>19</sup>. There is potential for bottlenecks in the processing of caseloads, there are delays in scheduling hearings and the length of time it takes to resolve disputes will increase. Without such resources as judges, additional administrative support, and better facilities, the objective of increasing the rate and efficiency of resolving disputes will likely not be achieved.<sup>20</sup> Additionally, staff may have too much to do and may rush and make poor decisions, even if they are fair, due to the strain placed on them. Thus, we need to ask if the streamlined tribunal structure will accomplish the desired result, considering good resource allocation is critical to achieving this.

### Worker Awareness

Another major challenge for workers is that they are unaware of their rights or the avenues available to them to resolve disputes or problem situations they encounter during the course of work. This is particularly true of many of the employees in informal employment, as well as employees in micro, small and medium businesses (MSMEs) who may often work without signed formal contracts or be unable to access trade unions. Many workers do not realise that

<sup>19</sup> PRS Legislative Research, The Industrial Relations Code, 2020: Bill Summary (PRS, New Delhi, 2020).

<sup>20</sup> Standing Committee on Labour, Ministry of Labour and Employment, Report on the Industrial Relations Code, 2020 (2020).

Grievance Redressal Committees (GRCs) exist, that there are conciliation processes, or that they can bring a case to a tribunal.<sup>21</sup> If there are no targeted education campaigns, workshops and easily available informational materials, workers may not take advantage of the protections the IRC provides. Low awareness levels can further contribute to power imbalance between employers and employees, grievances not being addressed, and the effectiveness of the internal and external dispute resolution framework being undermined.<sup>22</sup>

### **Employer Control**

One hindrance to successful implementation is employee control at work. In some cases, employees are afraid to complain because of reprisals from employers (this is particularly true when they do not belong to a union). If the workplace has a structure in place for handling complaints (e.g., GRC), then the lack of outside supervision can allow the employer to exert control over the employees and diminish trustworthiness and credibility in dispute resolution processes<sup>23</sup>. It is necessary to provide employees with encouragement (through legal protections) to utilize dispute resolution through internal mechanisms, provide protections against retaliation, and provide outside monitoring of internal resolution processes as needed.

### **Regional Variability**

India's federal framework creates a lot of regional differences in the implementation and interpretation of labour laws. States' implementation of IRC provisions can vary, and the results of dispute resolution can differ from state to state. For example, the process of appointing tribunals and the work of conciliation officers and the monitoring of internal grievance mechanisms can differ significantly from state to state. These inconsistencies might cause confusion for workers and employers, lower trust in the dispute resolution system, and help to lead to unequal justice. To reduce the negative impacts of regional disparities, procedures and clear and standard guidelines between states are needed.<sup>24</sup>

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<sup>21</sup> V.G. Goswami, *Labour and Industrial Laws* 248–252 (Central Law Agency, Allahabad, 12th edn., 2020).

<sup>22</sup> S.C. Srivastava, *Industrial Relations and Labour Laws* 15 (Vikas Publishing, New Delhi, 7th edn., 2021).

<sup>23</sup> K.V. Ramaswamy, “Informal Employment and Labour Market Policies in India,” 39(29) *Economic and Political Weekly* 3317 (2004).

<sup>24</sup> *Ibid.*

## Conciliation Limitations

Lastly, the effectiveness of conciliation in IRC 2020 is constrained by poor training, poor incentives and poor independence of conciliators. Conciliation officers frequently work in a bureaucratic structure and have limited powers to ensure the employers' good-faith participation.<sup>25</sup> Lack of professional development and lack of motivation can impede their effectiveness as mediators. Furthermore, it is unclear how these quasi-judicial powers can be used effectively to secure compliance or accountability for parties in the conciliation process. Without concrete steps to enhance the skills, powers and autonomy of conciliation, it can remain a formality to resolve conflict instead of a reality.<sup>26</sup>

## SUGGESTIONS

### Strengthen Conciliation

While conciliation is an important pillar of industrial dispute resolution, the effectiveness of conciliation under IRC 2020 is going to be largely influenced by the capacity and authority of conciliation officers. Comprehensive training programmes for officers on negotiation techniques, labour laws and conflict management are crucial to strengthen conciliation. In addition to training, officers need proper administrative assistance and resources – such as trained officers and access to relevant legal databases – to facilitate rapid and well-informed mediation. In addition, if conciliation officers were granted quasi-judicial powers, this would allow them to force employer participation in good faith, allowing the conciliation process to be not just advisory but also to achieve enforceable results.<sup>27</sup> This would be efficient and more believable in achieving a resolution of the dispute between the employee and the employer without litigation, and would encourage greater utilization of conciliation to resolve disputes.

### Digitalization

Digital dispute resolution methods will provide access, transparency and speed. Online grievance submission portals allow employees to file grievances without physically going to a physical office and without having geographical barriers such as distance or logistics, particularly for employees who work in non-metropolitan towns or are remote or rural. Virtual

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<sup>25</sup> Dr. Balwinder Kaur, "A Critique of the Industrial Relations Code 2020" *Labour Law Reforms* (2021).

<sup>26</sup> O.P. Malhotra & K.M. Malhotra, *The Law of Industrial Disputes* 112 (LexisNexis, Gurgaon, 7th edn., 2015).

<sup>27</sup> The Industrial Relations Code, 2020 (Act 35 of 2020), S.43

hearings and e-conciliation can also greatly improve the speed with which cases are processed and can reduce the backlog of administrative delays as well as provide continuity when it is difficult to attend a hearing or a conciliation in person. Digital systems can also improve case tracking, automatically remind people of deadlines and time constraints, and help centralize document databases to improve accountability and to limit loss or delay of documentation. The IRC 2020 has the opportunity to use technology to enhance its business model and deliver effective solutions to the needs of India's vast labour force spread across various parts of the country.<sup>28</sup>

### **Worker Education**

Ensuring that workers are aware of their rights, and what options are available for them to lodge a grievance is vital to the proper operation of GRCs and conciliations. The digitalization of dispute resolution processes can enhance accessibility, transparency and timeliness. For workers, submitting grievances via online portals has done away with the need to come into office or travel, or geographical issues or logistical challenges (especially important for workers who are remote or rural).<sup>29</sup> Virtual hearing and e-conciliation platforms can shorten case processing time, save time and administrative delays, and continue with cases where it is challenging for user to attend in person. Digital systems can improve case management, give automated reminders for deadlines and timelines, and act as a "hub" for records, thus boosting accountability and minimizing lost or delayed documents. The IRC 2020 has the potential to leverage technology to augment and transform its operations and better serve the needs of India's vast and geographically scattered workforce.<sup>30</sup>

### **Judicial Independence**

To ensure that industrial tribunals' credibility and effectiveness, they must have independent tribunal members. Independent decisions will be made with the assistance of independent members of the tribunal and there will be transparency within the decision making. These are essential to build trust between employees and employers that will be enhanced by appointment procedures, long-term security, and an independent administrative structure. Also, members of

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<sup>28</sup> Tyagi, Shruti, and Tanya Babbar. "Industrial Relations Code, 2020: The Dawn of the Reformation." *Issue 5 Int'l JL Mgmt. & Human.* 3 (2020)

<sup>29</sup> A. Bhattacharjea, "Labour market regulation and industrial performance in India: A critical review of the empirical evidence," *Indian Journal of Labour Economics.*(2006)

<sup>30</sup> S.C. Srivastava, *Industrial Relations and Labour Laws* 15 (Vikas Publishing, New Delhi, 7th edn., 2021).

the Tribunal must be protected from the influence of politics and executive power, in order to make fair and objective decisions if the case concerns a corporation or employer with close ties to the government.<sup>31</sup> Clear rules for selection, professional qualifications and performance monitoring increase the likelihood of being independent, and protection of tenure and administrative independence from reprisals increases the likelihood of being independent. India's industrial dispute settlement system will gain in credibility and judges will gain in legitimacy as a result.

### **Promote Voluntary Arbitration**

Voluntary Arbitration, although an effective alternative to litigation, has not been widely known and has been struggling in India due to its cost. The IRC 2020 may provide tax breaks, a lower cost or relaxed procedures to increase the ease with which arbitration options become available to employers and employees.<sup>32</sup> The system can be streamlined and private arbitration encouraged by streamlining the procedures in formal tribunals. In cases where there is a need to keep the employment relationship going, arbitration may provide a more flexible and confidential forum for resolving disputes. Voluntary arbitration support and incentives by the institutions would thus be a helpful addition to existing mechanisms and would help create a more balanced and efficient dispute resolution environment.<sup>33</sup>

### **CONCLUSION**

The Industrial Relations Code, 2020, is a huge restructuring of the industrial dispute resolution system in India. It offers some clear recommendations for improvement, such as better internal complaints procedures, "simplification" of conciliation processes and the harmonisation of adjudicative forums, but how effective these recommendations will be in altering the nature of industrial relations in Australia is debatable. How implementation is done, capacity building, and the level of State endorsement for IRC will all be major factors in the effectiveness of IRC.<sup>34</sup>

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<sup>31</sup> Dr. Balwinder Kaur, "A Critique of the Industrial Relations Code 2020" *Labour Law Reforms* (2021).

<sup>32</sup> G.K. Roy & Amaresh Dubey, "A Note on the Industrial Relations Code, 2020," 65(3) *Indian Journal of Labour Economics* 425 (2022).

<sup>33</sup> K.R. Shyam Sundar, "Impact of Labour Law Reforms on Industrial Relations in India," 55(1) *Indian Journal of Labour Economics* 35 (2019).

<sup>34</sup> Sneha Varghese, "The Industrial Relations Code, 2020: Legislative Commentary" *International Journal of Law Management & Humanities*, 2022.

At least in principle, the IRC is also a step towards modernising India's labour governance, but whether the institutional reforms translate to accessible, timely and fair dispute resolution for India's diverse and manifold workforce will be what counts.

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