

# THE INDUSTRIAL RELATIONS CODE, 2019

Relevant for: Indian Economy | Topic: Issues relating to Growth & Development - Industry & Services Sector incl. MSMEs and PSUs

## Highlights of the Bill

- The Code provides for the recognition of trade unions, notice periods for strikes and lock-outs, standing orders, and resolution of industrial disputes. It subsumes and replaces three labour laws: the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act, 1946.
- Trade unions that have a membership of at least 10% of the workers or 100 workers will be registered. The union with 75% of workers in an establishment will be the sole negotiating union. Otherwise, a negotiating council of unions will be formed.
- An employee cannot go on strike unless he gives notice for a strike within six weeks before striking, and within 14 days of giving such notice. Similar provisions exist for lock-out of workers.
- Industrial establishments with 100 workers must prepare standing orders on matters listed in a Schedule and have them certified.
- Factories, mines or plantations in which 100 or more workers are employed are required to take prior permission of the central or state government before laying off or retrenching their workers.
- The Code provides for the constitution of Industrial Tribunals for the settlement of industrial disputes. Each Industrial Tribunal will consist of a Judicial member and an Administrative member.

## Key Issues and Analysis

- The Code prohibits strikes or lock-outs in any establishment unless a prior notice of 14 days is provided. Similar provisions existed in the Industrial Disputes Act, 1947 for public utility services (such as, railways and airlines). The Code expands these provisions to apply to all industrial establishments. This may impact the ability of workers to strike and employers to lock-out.
- The Code permits the government to defer, reject or modify awards passed by Industrial Tribunals and the National Industrial Tribunal. A similar provision in the Industrial Disputes Act, 1947 was struck down by the Madras High Court in 2011, as it violated the principle of separation of powers by allowing the government to change the decision of a Tribunal through executive action.
- The Code requires the employer of establishments with at least 100 workers to obtain permission from the appropriate government prior to the retrenchment of a worker. The government may increase or decrease this threshold through a notification. The question is

whether the power to determine such a threshold should be specified by Parliament or whether it should be delegated to the government.

## PART A: HIGHLIGHTS OF THE BILL

### Context

In India, labour falls under the Concurrent List of the Constitution. Therefore, both Parliament and state legislatures can make laws regulating labour. Currently, there are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages.<sup>[1]</sup> The Second National Commission on Labour (2002) found existing legislation to be complex, with archaic provisions and inconsistent definitions. To improve ease of compliance and ensure uniformity in labour laws, the National Commission recommended that existing labour laws should be consolidated into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.<sup>[2]</sup>

With regard to a law on industrial relations, the Commission recommended the consolidation of existing labour laws into two laws; one which would apply to establishments employing 20 or more workers, and another law which would apply to establishments employing 19 or lesser employees. The law applicable to establishments with 20 or more workers would: (i) apply uniformly to all such establishments regardless of the nature of activity, (ii) seek to reduce government intervention in employer-worker relations by encouraging collective negotiation between trade unions and management, and (iii) recognize negotiating agents to represent the concerns of workers in labour disputes. The other law would contain less stringent provisions on industrial relations, social security, health and safety, and wages (to reduce the compliance burden on small scale industries).

In this context, the Industrial Relations Code, 2019 was introduced in Lok Sabha by the Minister of Labour and Employment, Mr. Santosh Kumar Gangwar, on November 28, 2019. It was referred to the Standing Committee on Labour on December 23, 2019.

### Key Features

The Bill applies to all establishments except those engaged in charitable and philanthropic work, domestic work, sovereign functions of the state and any notified activity. It provides for the recognition of trade unions, notice periods for strikes and lock-outs, standing orders, and resolution of industrial disputes. It replaces the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act, 1946.

### Trade Unions

- **Registration:** Seven or more members of a trade union can apply to register it. Trade unions that have a membership of at least 10% of the workers or 100 workers, whichever is less, will be registered. The overall membership cannot go below seven workers. Only one-third of the total number of office bearers of the union or five office bearers, whichever is lower, can be from outside the industry with which the union is connected.
- **Recognition:** The central or state government may recognise a trade union or a federation of trade unions as Central or State Trade Unions respectively.

- **Negotiating union and council:** The trade union with at least 75% of the workers as members will be considered the sole negotiating union, for the purpose of negotiating with the employer of the establishment. In case no union has at least 75% of the workers as members, a negotiating council shall be formed consisting of representatives of unions that have at least 10% of the workers as members. One representative shall be included for each 10% of the total workers on the rolls as members.

### Strikes and lock-outs

- In all industrial establishments, an employee cannot go on strike: (i) unless he gives notice for a strike within 60 days before striking, and (ii) within 14 days of giving such notice. Similar notice provisions exist for lock-out of workers. Lock-out refers to the following actions by an employer: (i) temporary closure of an establishment, (ii) suspension of work, or (iii) refusal to continue employing workers.

### Lay-off and retrenchment

- **Lay-off and retrenchment:** The Code defines lay-off as the inability of an employer, due to shortage of coal, or power, or breakdown of machinery, from giving employment to a worker. Retrenchment refers to the termination of service of a workman for any reason other than disciplinary action. It does not include retirement, non-renewal of contract, or completion of tenure of fixed term employment.
- Establishments in which at least 50 workers are employed, are required to give to every worker who has completed at least one year of continuous service: (i) 50% of basic wages and dearness allowance if he is laid off, and (ii) one month's notice (or equivalent wages) and 15 days' wages for every year of continuous service for such period to a worker who has been retrenched.
- Further, if the establishment has at least 100 workers, prior permission of the central or state government must be obtained before lay-off or retrenchment. In case of retrenchment, the notice requirement is extended to three months (or equivalent wages). The central or state government can modify this threshold by notification.
- The provisions on lay-offs only apply to factories, mines or plantations. The provisions on retrenchment apply to all establishments.
- **Worker re-skilling fund:** The fund will be set up by the appropriate government. It will consist of contributions from employers equal to 15 days (or as specified by the central government) of the last drawn wages of every retrenched worker. Contributions from other sources may be prescribed by the appropriate government. Funds must be utilised within 45 days of retrenchment as may be prescribed.

### Dispute Resolution

- **Bi-partite Fora:** The appropriate government may require employers in establishments with 100 or more workers to constitute a Works Committee. The Committee will help resolve conflicts between workers and employers. It will be

composed of representatives of workers and employers. The number of representatives of workers cannot be less than the number of representatives of employers. Further, every establishment with 20 or more workers must constitute a Grievance Redressal Committee. The Committee will resolve disputes related to grievances of individual workers on non-employment, terms of employment or conditions of service. It will consist of equal representatives of the employer and workers up to a maximum of ten workers.

- **Arbitration:** The Code allows for industrial disputes to be referred to arbitration by the employer and workers if both parties agree to do so. Industrial disputes refer to disputes between: (i) employers and employers, (ii) employers and workers, or (iii) workers and workers, on the employment or non-employment, terms of employment, conditions of labour, or disputes between an employer and worker on discharge, dismissal, or retrenchment of the worker.
- **Resolution of industrial disputes:** The central or state governments may appoint conciliation officers to mediate and promote settlement of industrial disputes. These officers will investigate the dispute and hold conciliation proceedings to arrive at a fair and amicable settlement of the dispute. If no settlement is arrived at, then either party to the dispute can make an application to an Industrial Tribunal.
- **Industrial Tribunals:** Industrial Tribunals may be set up for settling industrial disputes. An Industrial Tribunal will consist of two members: (i) a Judicial Member, who is a High Court Judge or has served as a District Judge or an Additional District Judge for a minimum of three years; and (ii) an Administrative Member, who has over 20 years of experience in the fields of economics, business, law, and labour relations.
- The central government may also constitute National Industrial Tribunals for settlement of industrial disputes which: (i) involve questions of national importance, or (ii) could impact industrial establishments situated in more than one state. Members of the National Tribunal will include: (i) a Judicial Member, who has been a High Court Judge, and (ii) an Administrative Member, who has been a Secretary in the central government.
- The award of the Tribunal will be enforceable within 30 days. However, the government may decide to defer the enforcement of an award in certain cases on public grounds (affecting national economy or social justice).

### Standing Orders

- **Standing orders:** All industrial establishments with 100 workers or more must prepare standing orders on matters listed in a Schedule to the Code. The central government will prepare model standing orders on such matters, based on which industrial establishments are required to prepare their standing orders. These matters relate to: (i) classification of workers, (ii) manner of informing workers about work hours, holidays, paydays, and wage rates, (iii) termination of employment, and (iv) grievance redressal mechanisms for workers.
- **Notice of change:** Employers who propose changes in the conditions of service are

required to give a notice to the workers. The conditions of service for which a notice is required to be given are listed in a Schedule to the Code and include wages, contribution, and leave.

- **Unfair labour practices:** The Code prohibits employers, workers, and trade unions from committing unfair labour practices listed in a Schedule to the Code. These include: (i) restricting workers from forming trade unions, (ii) establishing employer-sponsored trade unions, and (iii) coercing workers to join trade unions.

### Offences and Penalties

- The Code specifies various offences. If an employer employing 100 or more workers does not take prior permission from the appropriate government for lay-off, retrenchment and closure, he may be punished with a fine between one lakh rupees and ten lakh rupees. Further, an illegal strike may be punished with a fine between one thousand rupees and ten thousand rupees, or with imprisonment up to one month, or with both. Similarly, an illegal lock-out by an employer may be punished with a fine between fifty thousand rupees and one lakh rupees, or imprisonment for one month, or both. For the violation of provisions where the offence is not specified, the penalty may be a fine up to one lakh rupees.
- The Code allows for compounding (settling) of offences not punishable with imprisonment, subject to certain conditions. Compounding may be allowed for a sum of 50% of the maximum fine provided for the offence.

## PART B: KEY ISSUES AND ANALYSIS

### Strikes and lock-outs may become difficult for for all establishments

The Code requires all persons to give a prior notice of 14 days before a strike or lock-out. This notice is valid for a maximum of 60 days. The Code also prohibits strikes and lock-outs: (i) during and up to seven days after a conciliation proceeding, and (ii) during and up to sixty days after proceedings before a tribunal. This may impact the ability of workers to strike and employers to lock-out workers.

The Code requires prior notice before a strike or a lock-out, which has to be shared with the conciliation officer within two days. Conciliation proceedings will start immediately and strikes or lock-outs will be prohibited during this period. If the conciliation is not successful and there is an application to a Tribunal by either party, the period of prohibition on strikes or lock-outs will be further extended. This time could extend the beyond the 60-day validity of the notice.

Therefore, these provisions may impact the ability of a strike or lock-out on the appointed date given in the notice.

The Industrial Disputes Act, 1947 contains similar provisions for public utility services. A public utility service includes railways, airlines, and establishments that provide water, electricity, and telephone service. However, the National Commission on Labour (2002) had justified the rationale of treating such industries differently, considering their impact on the lives of a vast majority of people.<sup>2</sup> The rationale for extending the provisions on notice to all establishments is unclear.

### Power to government to modify or reject tribunal awards

The Code provides for the constitution of Industrial Tribunals and a National Industrial Tribunal



to decide disputes under the Code. It states that the awards passed by a Tribunal will be enforceable on the expiry of 30 days. However, the government can defer the enforcement of the award in certain circumstances on public grounds affecting national economy or social justice. These circumstances are when: (i) the central or state government is a party to the dispute in appeal, or (ii) the award has been given by a National Tribunal. The appropriate government can also make an order rejecting or modifying the award. The notification and the order will be tabled in the legislature. The question is whether such a provision would violate the principle of separation of powers between the executive and the judiciary, since it empowers the government to change the decision of the tribunal through executive action. Further, it raises the question of whether there is a conflict of interest, as the government may modify an award made by the Tribunal in a dispute in which it is a party.

The Industrial Disputes Act, 1947 had similar provisions. In 2011, the Madras High Court (affirming a 1997 Andhra Pradesh High Court judgement) struck down these provisions on constitutional grounds and held that the power to the executive to decline enforcing an award or to modify it, allows the executive to sit in appeal over the decision of the Tribunal, and therefore violates the separation of powers between the executive and the judiciary, which forms a part of the basic structure of the Constitution.<sup>[3]</sup><sup>[4]</sup> This provision has been replicated in the Code.

Therefore, it may violate the principle of separation of powers between the executive and the judiciary.

### Threshold for provision on retrenchment left to delegated legislation

The Code defines retrenchment as the termination of employment of a permanent worker, except for certain reasons such as retirement of the worker. The Industrial Disputes Act, 1947 requires the employer of factories, mines and plantations with at least 100 workers to obtain permission from the appropriate government prior to the retrenchment of a worker. The Code retains this provision. However, it allows the central or state government to change the threshold (in either direction) for this provision through a notification. Under the 1947 Act, this power could only be exercised through amendment of the Act by the Parliament or state legislature. Any upward revision in the threshold by the state legislature additionally needed the assent of the President of India (since labour is a subject under the Concurrent List of the Constitution). The question is whether the power to determine such a threshold should be retained by the legislature or whether it should be delegated to the government.

### Provisions on fixed term employment

The Code introduces provisions on fixed term employment. Fixed term employment refers to workers employed for a fixed duration based on a contract signed between the worker and the employer. Provisions for fixed term employment were introduced for central sphere establishments in 2018.<sup>[5]</sup> We discuss below the pros and cons of introducing fixed term employment.

Fixed term employment may allow employers the flexibility to hire workers for a fixed duration and for work that may not be permanent in nature. Further, fixed term contracts are negotiated directly between the employer and employee and reduce the role of a middleman such as an agency or contractor. They may also benefit the worker since the Code entitles fixed term employees to the same benefits (such as medical insurance and pension) and conditions of work as are available to permanent employees. This could help improve the conditions of temporary workers in comparison with contract workers who may not be provided with such benefits.

However, unequal bargaining powers between the worker and employer could affect the rights

of such workers since the power to renew such contracts lies with the employer. This may result in job insecurity for the employee and may deter him from raising issues about unfair work practices, such as extended work hours, or denial of wages or leaves. Further, the Code does not restrict the type of work in which fixed term workers may be hired. Therefore, they may be hired for roles offered to permanent workmen. In contrast, under the Contract Labour (Regulation and Abolition) Act, 1970 the government may prohibit employment of contract labour in some cases including where: (i) the work is of a perennial nature, or (ii) the work performed by contract workers is necessary for the business carried out by the establishment, or (iii) the same work is carried out by regular workmen in the establishment. Note that the 2<sup>nd</sup> National Labour Commission (2002) had recommended that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than two years.<sup>2</sup>

The ILO (2016) noted that several countries restrict use of fixed term contracts by: (i) limiting renewal of employment contracts (e.g., Vietnam, Brazil and China allow two successive fixed term contracts), (ii) limiting the duration of contract (e.g., Philippines and Botswana limit it up to a year), or (iii) limiting the proportion of fixed term workers in the overall workforce (e.g., Italy limits fixed term and agency workers to 20%).[\[6\]](#)

Table 1 below compares the provisions of fixed term employment, permanent employment and contract labour.

**Table 1: Comparison between fixed term employment, permanent employment and contract labour**

Feature	Fixed Term Employee	Permanent Employee	Contract Labour
<b>Type of employment</b>	<ul style="list-style-type: none"> <li>■ Employment under written contract. No contractor or agency is involved.</li> <li>■ On the payroll of the establishment.</li> </ul>	<ul style="list-style-type: none"> <li>■ Employment directly under a written contract.</li> <li>■ On the payroll of the establishment.</li> </ul>	<ul style="list-style-type: none"> <li>■ Engaged in an establishment through a contractor or agency.</li> <li>■ Not on the payroll of the establishment.</li> </ul>
<b>Term</b>	<ul style="list-style-type: none"> <li>■ Stipulated fixed term.</li> <li>■ Employment lapses on completion of term, unless renewed. No notice is required to be given for retrenchment.</li> </ul>	<ul style="list-style-type: none"> <li>■ Employed on a permanent basis</li> <li>■ Notice has to be given for termination of employment.</li> </ul>	<ul style="list-style-type: none"> <li>■ Based on terms negotiated with the contractor.</li> </ul>
<b>Nature of work</b>	<ul style="list-style-type: none"> <li>■ Not specified.</li> </ul>	<ul style="list-style-type: none"> <li>■ Hired for routine work.</li> </ul>	<ul style="list-style-type: none"> <li>■ Employment may be prohibited in certain cases, e.g., if similar work is carried out by regular workmen.</li> </ul>

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

**Certain terms not defined in the Code**

The Code defines a ‘worker’ as any person who work for hire or reward. It excludes persons employed in a managerial or administrative capacity, or in a supervisory capacity with wages

exceeding Rs 15,000. However, it does not define the terms ‘manager’ or ‘supervisor’ in this context. These terms are also used in the remaining three labour Codes, i.e., the Occupational Safety, Health and Working Conditions Code 2019 (OSH Code), the Code on Wages, 2019 and the Industrial Relations Code, 2019. The Standing Committee which examined the OSH Code recommended that the terms ‘supervisor’ and ‘manager’ be clearly defined in the Code as it determines the categories of persons who would be excluded from the definition of ‘workers’.

Further, the Code uses the term ‘contractor’ while defining certain terms. For example, ‘employer’ is defined to include a contractor. However, the Code does not define the term ‘contractor’. Note that the remaining three Codes define the term to include persons who deliver work using contract labour, or supply manpower through contract labour. Similarly, the Code defines the term “industrial establishment” to mean an establishment in which industry is carried on. However, it does not define the term ‘establishment’. The remaining three Codes define the term to refer to any place where an industry, trade, business, manufacture or occupation is carried on.

### Annexure: Comparison of the Code with the laws being subsumed

Table 1 compares the provisions of the Code with the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947.

**Table 1: Comparison of existing laws with the Code**

Provision	Current laws	Industrial Relations Code, 2019
Definitions	<ul style="list-style-type: none"> <li>■ <b>Industrial Disputes Act, 1947 (IDA): ‘Strike’ refers to the stoppage of work by persons employed in any industry acting jointly, or a refusal to continue to work or accept employment.</b></li> <li>■ ‘Industry’ means any business, trade, undertaking, manufacture or calling of employers, and includes any service, employment or industrial occupation of workers.</li> <li>■ ‘Retrenchment’ is the termination of service of a worker for any reason other than disciplinary action. It does not include certain grounds, such as retirement, or termination due to ill-health.</li> <li>■ ‘Workman’ refers to any person (including an apprentice) employed in any industry to do work for hire or reward. Excludes certain categories of workers including persons in a managerial or advisory role, or persons employed in a supervisory role earning wages of more than Rs 10,000 per</li> </ul>	<ul style="list-style-type: none"> <li>■ Retains the definition for ‘strike’ but also includes casual leave on a given day by 50% or more workers as a strike.</li> <li>■ Defines “Industry” as any systematic activity for the production, supply or distribution of goods and services. The definition excludes: (i) sovereign functions of the government, (ii) domestic services, (iii) charitable services, and (iv) other notified activities.</li> <li>■ Retains the definition of ‘retrenchment’ but termination due to ill-health is not considered retrenchment.</li> <li>■ Retains the definition of ‘worker’ but excludes apprentices. Also changes the wage ceiling of supervisory workers from Rs 10,000 per month to Rs 15,000 per month.</li> <li>■ ‘Wages’ refers to any remunerations including; (i) basic pay, (ii) dearness allowance, and (iii) retaining allowance. Bonus, conveyance allowance, and overtime pay, etc. not included.</li> </ul>



month.

- 'Wages' refers to monetary remuneration including; (i) dearness allowance, (ii) value of house accommodation, and (iii) travel concession. Excludes bonus, gratuity, and contributions for benefits.

### Registration of Trade Unions

- **Trade Unions Act, 1926: A union will be registered only if at least 10% of all the workers or 100 workers, whichever is less, are members of the Union on the date of the application.**

### Negotiating Union/Council

- No provision.

### Strikes and lock-outs

- **IDA: For *public service utilities*, strikes or lock-outs cannot be conducted unless a notice of 14 days is provided. The notice is valid for a maximum of six weeks.**

### Lay-off, retrenchment

- **IDA: Factories, mines or plantations in which 100 or more workers are employed are required to take permission of the central or state government before laying off or retrenching workers.**

### Worker re-skilling fund

- No provision.

### Model standing orders

- **Standing Orders Act, 1946: Applies to establishments employing 100 or more workers. The appropriate government may specify model**

- Definition of 'fixed term employment' introduced. It refers to workers hired for a fixed period who enjoy the same entitlements and benefits as are available to permanent workers.

- Same criteria and conditions continue to apply for trade unions.

- Trade Union with at least 75% of the workers as members will be the sole *negotiating union*. In case no Union has at least 75% of workers as members, a *negotiating council* will be formed consisting of representatives of Unions that have at least 10% of workers as members. For every 10% of total workers as members, one representative will be included.

- The same provisions on strikes and lock-outs have been extended to *all establishments*. The validity period of the notice has been amended from six weeks to 60 days.

- Same provision retained but the appropriate government may change this limit (of 100) by notification.

- The fund will consist of contributions from employers equal to the 15 days' wages of every retrenched worker, and contributions from other sources prescribed by the appropriate government. It shall be utilised as prescribed, within 45 days of retrenchment.

- Applies to establishments employing 100 or more workers. Central government will draft model standing orders. Employers must consult the

**standing orders. Employers will submit draft standing orders to the certifying officer based on the model orders.**

trade unions or negotiating union/council before submitting the orders to the certifying officer.

**Bodies dealing with Industrial Disputes**

- **IDA: Provides for Courts of Enquiry, Labour Courts, Industrial Tribunals and National Industrial Tribunals. Tribunals to consist of judicial member.**
- Only the appropriate government can make a reference to a Labour Court or Tribunal, and the central government to the National Tribunal.

- Provides for Industrial Tribunals and National Industrial Tribunals. Industrial Tribunals to consist of a Judicial member and an Administrative member.
- Either party to a dispute can approach the Tribunal. However, only the central government can make a reference to the National Industrial Tribunal.

**Sources: The Trade Unions Act, 1926; The Industrial Employment (Standing Orders) Act, 1946; The Industrial Disputes Act, 1947; The Industrial Relations Code, 2019; PRS.**

[1]. "List of Central Labour Laws Under Ministry of Labour and Employment", Ministry of Labour and Employment, [https://labour.gov.in/sites/default/files/Central%20Labour%20Acts\\_0.pdf](https://labour.gov.in/sites/default/files/Central%20Labour%20Acts_0.pdf).

[2]. Report of the 2nd National Commission on Labour, Ministry of Labour and Employment, 2002, <https://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.

[3]. Union of India vs. Textile Technical Tradesmen Association (2014), Madras High Court, 2014 (6) CTC 427.

[4]. Telugunadu Work charged Employees State Federation vs. GOI, Andhra Pradesh High Court, 1997 (3) ALT 492.

[5]. Notification GSR 235(E), Ministry of Labour and Employment, March 16, 2018 <https://labour.gov.in/sites/default/files/FTE%20Final%20Notification.pdf>.

[6]. "Non-Standard Employment Around the World", 2016, International Labour Organisation, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_534326.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_534326.pdf).

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