Innovations

Transition in Labour Law Regimes and Its Effectiveness in Dispute Resolution in India: A Study

S. Sangeetha [1*], Dr. P. Ravisekhararaju [2*]

[1*]Ph.D. Candidate, Assistant Professor, School of Law, SASTRA Deemed University, India

[2*]Dean, School of Law, SASTRA Deemed University, India (Co-author)

Corresponding author: **S. Sangeetha**

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Abstract

The Industrial Disputes Act, 1947 is the primary legislation which covers the various aspects of dispute resolution mechanisms inclusive of alternative dispute resolution mechanism and adjudicatory mechanism in the arena of industrial relations. More than seven decades in India, the Industrial Disputes Act, 1947 promotes industrial harmony through several dispute resolution forums which is inclusive of preventive as well as curative by its features, like Conciliation Machinery, Labour Court, Industrial and National Tribunal and Arbitration. The challenges posed by these dispute resolution forums are that these are disjointed and are with overlapping of powers for which reason the industrial laws of the territory is not fitting in the requirement of the current global scenario. Any developing country aspiring for economic growth shall have its policy decisions both economic policies and industrial polices finetuned together for promoting industrial relations which would attract more foreign investments in order to boost the economic progress of the country. The significance of recent developments in the global phase of industrialisation and in the wake of the new Economic Policy in the year 1991, India felt the need of reforming its labour law regime and after one decade and years of continuous efforts India was able to codify nearly 29 central laws of the territory into four Codes on the basis of the recommendation made by the Second National Commission of Labour. The Industrial Relations Code, 2020 consolidates and amends the provisions of the Industrial Disputes Act, 1947, Trade Unions Act, 1926 and the Industrial Employment Standing Orders Act, 1946 and is the concluding code of 4 code series. The objective of the Industrial Relations Code is to consolidate and amend the laws relating to trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto. The implementation of Industrial Relations Code, 2020 received the assent of the President on 28th September, 2020 and is yet to be notified in the territory. In this paper the author wants to shed light on the significant impact of the transition from the old and existing labour law regime to the new labour law regime which is yet to be notified and implemented in the territory with respect to dispute resolution processes. Since the new Code is yet to implemented, it is not possible to understand the challenges which may be posed by the new labour law regime when it is enforced in the territory, hence the author has critically compared and analysed only the legislative framework of both Industrial Disputes Act, 1947 and the new Industrial Relations Code, 2020 with respect to the industrial dispute resolution process to come out with the findings as to whether this transition from old labour regime to the new labour regime will take forward India in the graph of economic progress in tune with industrial relations.

Key words: *1. Industrial Disputes Act, 1947, 2. Industrial Relations Code, 2020, 3. Dispute Resolution Mechanisms, 4. Industrial Dispute Resolution, 5. Conciliation Mechanism*

Introduction

The new Industrial Relations Code, 2020 is mandatory for all industrial establishments employing twenty or more workers. But under the Industrial Disputes Act, 1947, there is a leverage which could be availed by any employer wherein they have a substituted mechanism in the place of Grievance Redressal Committee. Though both under the Industrial Disputes Act, 1947 and Industrial Relations Code, 2020 the

Alternative Dispute Resolution mechanism has its place more specifically the Arbitration and Conciliation but it is only formally recognised and applied only in the case of absence/failure of the other mechanism in the industrial dispute resolution mechanism. The evolution or transition shall happen in such a way that the mechanism appreciates minimal intrusion and necessitates minimal occasions for complex formal interventions. Policies governing dispute resolution form an essential part of the labour law framework of the nation. Conflicts are inevitable in any workplace relationship. The objective of the State authorities shall be to promote industrial harmony which is possible only when the conflicts are resolved by the application of dispute resolution mechanisms. Negotiation, Conciliation, Mediation and Arbitration are the various alternative dispute resolution mechanisms. The application of such voluntary dispute resolution mechanisms has become central to any dispute resolution policy.

Three-tier architecture in industrial dispute resolution

The Industrial Disputes Act, 1947 is one of its own kind, a primary legislation governing dispute resolution in India in the current scenario and until it is repealed by the new Industrial Relations Code, 2020. Under the new labour law regime especially under the legislative framework of the Industrial Relations Code a three-tier system is present in the dispute resolution process. In the first tier, which is considered to be a preventive forum is a bi-partite forum wherein the dispute between the employer and employee is settled at the budding stage itself by the parties themselves by having a negotiation. In the second tier, when the concerned parties fail in their negotiation, then official intervention is requested by approaching a third party called the Conciliator who mediates between both the parties and facilitates amicable talks and decision. In the third tier, judicial intervention is sought by adopting to adjudicatory mechanism for resolving the disputes. The author has highlighted the significant reformative changes which has been made under the new Industrial Relations Code at all three levels of the industrial dispute resolution process.

First tier set up – negotiation (bi-partite forum)

India's labour regime is influenced by the British model inherited on independence in the case of its factory's legislation, but for the most part of it the common law principles has been repudiated. British model was aimed at the voluntary trade union organisations which had immunity from civil liability in relation to collective bargaining and of industrial action, while under the Industrial Disputes Act, 1947, we introduced the concept of collective bargaining within the regulatory framework and basic labour standards to set a floor of rights.

Works Committee and Grievance Redressal Committee are the bi-partite forums available under both the labour law regimes. Under the basic tier set up, provisions relating to the constitution of the Works Committee and its application remains the same. The main objective for the constitution of the Works Committee is to maintain a cordial relationship between employer and employees. The primary responsibility of the Works Committee is to maintain amity and goodwill amongst the employer and employees. But surprisingly, the constitution of the Works Committee is itself made by Government order ruling out the possibility of maintenance of amicable and cordial relationship between the employers and employees. As far as the constitution, objectives and functions of the Works Committee is concerned no changes has been made in the new Industrial Relations Code, 2020. Hence the author has focussed on the Grievance Redressal Committee and highlighted the reforms made in this bi-partite forum.

Grievance redressal committee: Under the new Industrial Relations Code, certain attempts have been made to make this bi-partite forum a successful one so that at the budding stage itself industry is able to resolve the disputes relating to individual grievances of the workers. Also, a connecting link is established between the bi-partite and tri-partite forum i.e, between Grievance Redressal Committee and Conciliation forum which is missing in the existing labour law regime.

There are similarities between the Industrial Disputes Act and Industrial Relations Code when it comes to Grievance Redressal Forum which comprises of representatives from both employers and employees. Not only that equal representation has been mandated under both the legislations, yet another similarity between the two Acts is that the mandate on proportionate representation to women in the deciding body.

When compared Industrial Relations Code provisions relating to this mandate is much wider than Industrial Disputes Act. Section 4 of the Industrial Relations Code makes it very specific by mandating that the proportionate representation for women shall not be less than the proportion of women to the total number of employees in that industrial establishment. (Proviso to Section 4(4) of the Industrial Relations Code, 2020).

Under the new Industrial Relations Code, there is a time limit fixed for making an application before the Grievance Redressal Committee. As per the provision, an application can be made before the Grievance Redressal Committee within one year from the date on which the cause of action of such dispute arises which is not the case in the existing labour law regime.

Yet another improvement over the provisions under the old labour law regime is that under Industrial Disputes Act it was mandatory that if any employee is aggrieved by the order of Grievance Redressal Forum, then they can go for appeal before the employer under this basic tier set up. In general, the aggrieved parties move from a single person's decision to a balanced body seeking for remedy in the dispute resolution process. But under Industrial Disputes Act, it was the reverse, wherein the aggrieved employees move in from a balanced body of decision makers to a single person that is the employer. This has been done with under the new Industrial Relations Code wherein the aggrieved employee can approach the Conciliator and enter into conciliation proceedings when they do not receive a satisfactory order from the Grievance Redressal Forum or the Grievance Redressal Forum fails in delivering redressal or the Grievance Redressal Forum is unable to complete the proceedings in 30 days. In any case, they now need not go before the employer on appeal but enter the second tier set up ie., the Conciliation. (Section 4(8) of Industrial Relations Code).

The employers are not fine with Section 4(7) of Industrial Relations Code for the reason that under this provision, if any decision is taken by Grievance Redressal Forum that must be a majority decision also it has been mandated that more than half the number of employees representatives must favour the decision thereby causing insecurities for the employers since they fear that the employees will try to use the provision to unnecessarily annoy or trouble the employer.

Yet another significant reform introduced by the new Industrial Relations Code is if the employee is more inclined towards adjudicatory system, it has been facilitated by providing that now the employee can approach Industrial Tribunal directly for adjudication of the dispute referred to therein without going through the conciliation procedure provided the employee need to wait for the expiry of 45 days from the date he has made the application to the Conciliation Officer of the appropriate Government for the conciliation of the dispute.

In a summary, not much transition occurred between the two labour law regimes when it comes to first tier set up. But the author finds that the streamlining of the dispute resolution process serves the purpose of the objective of the reforms.

Second tier set up – conciliation (tripartite forum) and voluntary arbitration

One of the finest efforts which deserves appreciation in this process of transition promoting industrial harmony and relations is that in the new Industrial Relations Code an attempt has been made to join or streamline the dispute resolution process at all three levels which is a missing factor and the main lacuna prevailing under the existing labour law regime which is a total disjoint between all three levels.

In the second tier, under the Industrial Disputes Act, two statutory bodies are constituted – Conciliation Officer and Board of Conciliation. There is no unique difference in the functions and powers of these two statutory bodies. When the Conciliation Officer files a failure report to the appropriate Government, then the Government may decide and make a reference to the Board of Conciliation, Labour Court or Industrial Tribunal. The powers and functions of the Board of Conciliation is similar to that of the Labour Court, Industrial Tribunal and National Tribunal shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code. The Board and the adjudicatory set up (Courts) have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. Now in the new labour law regime, under the Industrial Relations Code, 2020 now that Board of Conciliation has been removed completely. Removing the Board of Conciliation with marginal differences in the functions and

powers when compared to Conciliation will not serve the purpose unless and until, the new Code streamline the Conciliation process. The author opines that the removal of the Board of Conciliation is required for the reason that too many forums in the industrial dispute resolution process doesn't serve the purpose. Once the bi-partite forum fails in resolving the industrial dispute then it must move on to the next phase of dispute resolution, thereby application of Conciliation mechanism in a tripartite set up is the legal requirement. But under the tripartite model with the objective of promoting settlement of industrial disputes yet another forum having similar format with the only difference being made in constitution of the Board really doesn't serve the purpose when the urgency in the scenario has not been addressed in a very similar model.

Conciliation process – old & new labour law regime

With regard to the constitution of the body i.e, Conciliation Officer and the powers and functions exercised by that body is similar in both the regimes. On a detailed analysis, the new Industrial Relations Code, 2020 has made significant changes when it comes to Conciliation process. As per Section 60(1) of the new Industrial Relations Code, 2020, the Conciliation officer shall have to commence the first meeting of the conciliation proceeding, once he is in receipt of the notice of strike served by the employees or lock-out by the employer and this marks the commencement of the conciliation proceedings with regard to that industrial dispute. This provision results in two legal implications when compared to the provisions under the existing regime.

Under Section 12(1) of the Industrial Disputes Act, 1947, the Conciliation officer shall conduct the conciliation proceedings in a matter relating to industrial dispute in a public utility service only after a notice as provided under Section 22 of the Act has been received by the Conciliation Officer and with regard to other non-public utility services if there is any apprehension about any industrial dispute or an existing industrial dispute, the Conciliation Officer shall hold the proceedings immediately. Strikes without notice are prohibited for the public utility services under the Industrial Disputes Act, 1947 but under the new Industrial Relations Code, 2020 this blanket ban on strike has been expanded to all the sectors regardless of public utility services or non-public utility services. The author opines that the labour legislations shall balance both the employers and employees' objectives and, in any case, when structuring the reforms shall be focussed towards the statutory recognition of strike but instead the new Code is taking away the distinction between essential and non-essential services and place both the workers at par and uncovers their right to strike. The complete oversight of the category of the public utility services from the Industrial Relations Code is a mistake.

As given under the various clauses of Section 62 of the new Industrial Relations Code, there are certain restrains placed for the workers to go on a strike. Once the conciliation proceedings have commenced and seven days from the conclusion of the same, workers are not allowed to go on a strike. Likewise, when any matter is pending before the arbitrators, Tribunals or National Tribunals, then in that case, sixty days from the conclusion of the proceedings in the respective forum, the workers are not permitted to go on a strike. It is understandable that the proceedings before any forum though there are prescribed time limits, goes on for years then the workers will not be able to protest until it gets over. Given the constitutional guarantee for right to freedom of association and right to peaceful assembly in India, the various curbs on strikes under the provisions of the new Code is a violation of the guarantee given by the Constitution.

Yet another feature added under the new code is that the Conciliation Officer is not allowed to hold the conciliation proceedings relating to the industrial dispute after 2 years from the date on which such industrial dispute arose. This is appreciable for the reason that there is no possibility of permanent solutions for any kind of issues between employer and employee relationship. Hence if no such limit has been prescribed there is every possibility that workers or even the employers may dig upon the old issues which in their perception was not a right solution at that point of time. The binding effect of settlements and such time restrictions has a fair play in the arena of labour-management disputes.

As per Section 60(2) of the Industrial Relations Code, 2020, a conciliation proceeding shall be deemed to have concluded under three circumstances: (i) where the conciliation officer is able to bring about a

settlement and the parties have signed the memorandum of settlement; (ii) where the conciliation officer was unable to promote settlement between the parties and the failure of conciliation has been recorded by such conciliation office; and (iii) where a reference has been made to the National Industrial Tribunal during the pendency of the conciliation proceedings.

Under the existing labour law regime, within 14 days of commencement of the conciliation proceedings or within such shorter date as prescribed by the appropriate Government, a report shall be submitted by the Conciliation Officer to the appropriate Government and the concerned parties. But under Section 53(5) of the new Industrial Relations Code, 2020, a distinction has been made with regard to the industrial disputes wherein a strike notice was served and the other cases of industrial disputes. When the conciliation proceedings commenced with the receipt of strike or lock-out notice, then in that case, the report must be submitted within 14 days of the commencement of the conciliation proceedings. But if it is relating to other matters of industrial dispute, then within 45 days, the conciliation officer has to file a report to the appropriate Government and the concerned parties.

Now under the existing Industrial Disputes Act, 1947, when a failure report is made to the appropriate Government by the Conciliation Officer, then the Government may decide to refer the dispute for adjudication. But now under the new Code, the party themselves can directly approach the Industrial Tribunal by making an application in the prescribed form within 90 days from the date on which the report is received by the concerned party from the Conciliation Officer. By this provision under the new Code, it is very clear that Government intervention in matters of referring any industrial dispute to the Board, Labour Court, Industrial Tribunal and National Tribunal has been almost curtailed under the new Code. The parties are given the liberty to approach the next forum in the industrial dispute resolution process within the prescribed time limit. This is a welcoming approach when looking from the perspective of labour in the industrial relations.

An analysis of the foregoing provisions will make it very clear that under the Industrial Relations Code, the requirements of the current scenario has been addressed wherein it is not advisable to prolong the dispute between the parties when it involves the essential interests of the public. Also, now our nation is stepping up towards strengthening of manufacturing sector the base of which lies in the industrial harmony of the nation. The biggest effort taken by the legislators under the Industrial Relations Code is to reduce the number of forums in the dispute resolution process.

Also, yet another lacuna which is still persisting is that in India we have a statutory mechanism for Conciliation but unfortunately such forum is not presided over by well-trained conciliators. It is the responsibility of the State to bring in uniform eligibility criteria for the appointment of Conciliation Officer and it shall be the mandate of the State to train them by having structured programmes to be conducted by experts having decades of experience. In the current scenario, they act as a middleman finally ending up in major cases by referring to adjudication.

In the global scenario, online dispute resolution is gaining momentum, and in India also, it is emerging but comparatively out of all the Alternative Dispute Resolution mechanism this new age phenomenon is not that much successful when it comes to Conciliation. The State shall take efforts to strengthen online conciliation.

Arbitration mechanism – old and new regime

In the case of Arbitration under Industrial Disputes Act, 1947, the matter can be referred to arbitration only when there is no reference to Labour Court, Industrial or National Tribunal. But under Industrial Relations Code, 2020, no such deterrence is provided under the Act and the parties if they mutually agree can refer the dispute to arbitration.

The other rules remain the same but under Industrial Relations Code, 2020, a distinction has been made between industrial dispute and individual dispute as to representation part. If it is the case of the industrial dispute then in the first place, recognised negotiation union or negotiating council shall represent the matter or if there is neither the negotiation union nor the negotiating council then the existing trade union of that industrial establishment or if the industrial establishment does not have a proper trade union, then also the representation can be made by the workers themselves. But in the case

of an individual dispute, the concerned party shall be represented by the trade union of that industrial establishment.

Third tier set up – adjudication (industrial tribunal)

Under Industrial Disputes Act, 1947, two judicial bodies were constituted for industrial dispute resolution – the Labour Courts and Industrial Tribunals. Each body will have a presiding officer to conduct the proceedings. But in Industrial Relations Code, 2020, the concept of Labour Courts has been completely ruled out and instead only one body has been constituted which is the Industrial Tribunal which will have all the functionalities of both Labour Courts and Industrial Tribunals as under the Industrial Disputes Act of 1947. Also, it has been mandated under the Industrial Relations Code, 2020 that the workers disputes shall be resolved within a year in the Industrial Tribunal to ensure faster justice to the workers through the Tribunal. But the author finds that ground realities are different wherein by the abolition of labour Courts at the district level, the workers will be denied access to justice owing to the lesser number of Industrial Tribunals in each State. This will cost heavily on the workers.

With regard to constitution of the Industrial Tribunal it is of two types – it may be either a one-member bench (which comprises of one judicial member) or a two-member bench (which comprises of one judicial member and one administrative member)

As per Section 49 of Industrial Relations Code, 2020, the Government has the power to appoint two assessors to assist the Industrial Tribunal. In the old regime, under the Industrial Disputes Act, the court and the Government had the power to appoint assessor who had specialised knowledge in the pertaining matter. Where the ultimate objective of Industrial Relations Code, 2020 is to reduce the Governmental intervention in dispute resolution, giving such power solely to the hands of the Government is not appreciable.

Under the old regime, both the Labour Courts and the Industrial Tribunal had jurisdiction only when matters were referred for adjudication by the Government under Section 10 of the Industrial Disputes Act, 1947. The matters listed under Schedule II will be taken up by the Labour Court and the matters listed under Schedule III will be taken up by the Industrial Tribunal. Item 6 of Schedule II pertains to matters not specified under the Schedule III which will be taken up by the Labour Court under reference which gives us an understanding that the residuary power is in the hands of the Labour Court. Under the new Industrial Relations Code, 2020, the matters relating to industrial dispute which shall be handled by the two-member bench has been specifically listed namely matters pertaining to Standing Orders, Discharge, Dismissal, Strikes, Lock outs, Retrenchment, Closure and Trade Union. It gives the legal implication that One-member bench will have jurisdiction over the remaining matters. This in a way simplifies the jurisdictional issues by having specified list of matters only for a two-member bench and leaving the rest to the jurisdiction of One-member bench.

Section 47 of the new Industrial Relations Code, 2020 also states that if a two-member bench is unable to reach a consensus when they have a split opinion, then under this provision the appropriate Government is having the authority to appoint yet another member (judicial member) to the bench and then the matter can be decided by a majority. This is regressive rather than progressive when we are moving forward after the transition in the labour law regime aiming towards economic progress and industrial harmony in the territory. Such type of changes, instead of facilitating dispute resolution will be a root cause for inordinate delays in the matters of industrial disputes which is not appreciable in the current scenario when our nation if focussing more on productivity and the baseline of it lies in industrial harmony.

In the old regime, under Section 10 of Industrial Disputes Act, 1947 the jurisdiction of the Labour Courts and the Industrial Tribunal arises only when the matter has been referred by the Government and is confined only to the terms of reference made by the Government in that matter relating to industrial dispute. The Labour Courts and the Industrial Tribunals is not allowed to go beyond the terms of reference which if done will be void. When the appropriate Government is given the sole discretion to decide the terms of reference when it decides to refer the matter for adjudication, in many instances, it causes inordinate delays and not only that it imposes limitations upon the judiciary to leave even relevant

matters when it is outside the terms of reference. This in a way acts as a barrier in resolving the issue on a permanent basis creating a space for inordinate delays even after the proceedings are over by following the terms of reference. In the new regime, under the provisions of Industrial Relations Code, 2020, the discretion given to the appropriate Government to refer the dispute for adjudication under the terms of reference has been completely ruled out. There is no such limitation under the Industrial Relations Code, 2020, and the judiciary is allowed to handle the issues pertaining to all relevant aspects of disputes. This also to some extent lessen inordinate delays in matters of adjudication pertaining to dispute resolution.

Section 55(4) of Industrial Relations Code gives the power to the appropriate Government to reject or modify the awards given by the Industrial Tribunal. This is dead against the Doctrine of Separation of Powers since here the Executive is taking up the role of the Judiciary when it comes to rejection or modification of the award passed by the judicial body. When the constitutional provisions under the Constitution of India strongly ensures that independence of judiciary is maintained, this is a blow on the Indian legal system and also blatantly disrespectful of the basic principles enshrined under the Constitution of India. Such a provision was available in the previous regime also. But, Section 17A of the Industrial Disputes Act, 1947 was struck down by the Madras High Court and the Andhra Pradesh High Court on two different occasions citing the same. Making a replica of the disputable provisions in the new regime is not appreciable and doesn't serve any purpose. The legislators should have refrained from doing so. The author finds that instead of deviating from the basic principles of separation of powers and giving ample powers to appropriate Government (i.e., majorly the Central Government) under the new Industrial Relations Code, 2020, it would be advisable and appreciable if there is a representation from the side of the workers who can best present their interests which is lacking in the code.

Yet another unique feature of the new Code is that when implemented in the territory the new Code facilitate the taking over of the current proceedings pending before the existing Labour Courts and Industrial Tribunals in accordance with Section 51 of the Industrial Relations Code, 2020. It is provided under this section that the pending matters shall be transferred to the Tribunals which will be constituted under the new Code and such matters shall be dealt with by the newly established Industrial Tribunals from the stage at which they were pending before the courts and tribunals of the previous regime.

The appropriate Government or the Central Government has been empowered to make an order rejecting or modifying the award made by the respective dispute resolution forums and shall lay it before the house of the respective legislatures whether State or Central, on the first available opportunity as per the provisions of the Industrial Relations Code, 2020, (Section 55(4)). But this power shall be exercised within 90 days from the date of communication of the award. An interesting aspect of the Code is that the power to exercise veto on the enforcement of any award has been given to the hands of the appropriate Government on "public grounds affecting the national economy or social justice" which shall be followed by the approval of the State Legislature or Parliament as the case may be. Empowering the Central Government with more powers flouts the federal fabric of the Indian democracy. Labour is a subject matter in which both the State Legislatures and the Parliament can pass laws since it is placed in the concurrent list of the Indian Constitution. India is diverse in its very nature by reason of several factors like language, religion, culture etc., hence it is not possible for us to have uniform labour legislations across the States for the reason of regional disparities of the territory. It shall be the responsibility of the Centre to have a consultation with the States before bringing reforms in the subject matter of Labour.

Conclusion

On a comparative scale, the new Industrial Relations Code, 2020, has taken very significant and bold steps towards the strengthening of dispute resolution processes in matters relating to industrial disputes in India. Industrial Relations Code has removed the multiple set up of dispute resolution bodies and introduced a new structural set up creating a link between various phases of dispute resolution processes and forums. As every emerging idea will have inbuilt lacunae Industrial Relations Code, 2020, also have such pertinent issues which has been discussed elaborately in this paper. In my view any progressive development shall happen gradually only after understanding the lacunae behind every significant step and trying to overcome the challenges posed by such lacunae and as a last resort repeal the barriers

which are stopping the dynamic transition in the real sense. The efficacy of the Industrial Relations Code, 2020, is yet to be tested in real waters after the provisions of the new Code are put in force in the territory.

References:

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Corresponding Email: sangeetha@law.sastra.edu