

**LABOURS, HUMAN RIGHTS, AND INDIAN CONSTITUTION: ANALYSING OFFENCES
AND PENALTIES UNDER IR CODE 2020**

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VOLUME 1, ISSUE 2 (JULY- DECEMBER 2025)

ABSTRACT

From the beginning of mankind till this present century of AI and digital technology, the labour community are continually subjected to various human rights violations not only in terms of gender or caste, but also with the influence and power of law and law-making bodies, and there is a subsequent peril of violations and infringements over their human dignity and basic expression. The new labour codes introduced in India, specifically the Industrial Relations (IR) code in 2020, which seeks to replace and consolidate existing labour laws have dealt with unethical and illogical means and methods of new classification of various offences and penalties in the code in such a way that it goes against the violation of the social, political, and economic rights of the labour community and provides unnecessary categorization and violation to the basic fundamental rights of the labour community under part III of the Indian constitution. The various provisions under this code tries to instill fear and bring a criminal nature of punishment with an increased number of months in terms of imprisonment and increased penalty rates extending to lakhs as these stringent laws not only restrict labour freedom and movements, but moreover, it is a threat to the democratic and socialist structure of our nation, which of the finest example that how law can go against the fundamentals of the identity of our nation as prescribed in the preamble of Indian constitution.

Keywords- Constitution, Labour Freedom, Rights, Preamble

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INTRODUCTION

Labors are the backbone of every society. In fact, every human being in or other way are labors who are associated in any specific occupation in a particular area or across diverse group of occupational areas². Workers' rights encompass a large array of human rights from the right to decent work and freedom of association to equal opportunity and protection against discrimination. Specific rights related to the workplace include health and safety in the workplace and the right to privacy at work, amongst many others. In history, labors are called with nickname of "slaves" in which the Europeans buy and brought humans in African continent and always considered them as only 'second class's citizens with extreme violations of basic human rights, leading to an undignified life. The labors were organized and formally associated as a group during the industrial revolution of 18th and 19th CE as a response towards extreme exploitation of workers in industries of England. In the year 1890, Lokhande founded the Bombay Mill Hands Association as which was the beginning of the labour union movement in India.

Even during pre-independence struggle, the Indians who worked for the Britishers were also treated with extreme violations of dignity causing extreme tortures to live a dignified life. In the independence era, it falls under the Concurrent List of the Constitution. Therefore, both Parliament and state legislatures can make laws regulating labour. The Minimum Wages Act 1948, the Payment of Wages Act 1936, The Factories Act 1948, The Industrial Disputes Act 1948, etc, are some of the major and earlier laws which deal with security, wages, terms and conditions, penalties, forming associations, etc. of the laborers and labour groups. The ruling NDA regime in India pushed through three labour codes in September 2020 namely the Code on Social Security; Occupational Safety, Health and Working Conditions Code; and the Industrial Relations Code to replace to existing and old labour laws. This study is an endeavor towards a critical examination of the offences and Penalties under the Industrial Relations Code, 2020 and The Industrial Disputes Act of 1948.

INDIAN CONSTITUTION AND LABOUR RIGHTS

The Indian Constitution enshrines several fundamental rights and directive principles of state policy that protect the rights of laborers. Some of the key constitutional provisions for labour rights in India are:

² Rina Agarwalla, *Informal Labor, Formal Politics and Dignified Discontent in India* (Cambridge Univ. Press 2013).

- Right to Equality (Article 14): Article 14 of the Constitution guarantees the right to equality before the law and equal protection of laws to all citizens, including workers. The said provision guarantees that employees are treated fairly and without bias in all employment-related matters and are not subjected to discrimination on the basis of race, religion, caste, gender, or any other factor. In the case of *Randhir Singh*³ ², the Supreme Court of India held that the principle of equal pay for equal work is a constitutional right.
- Right to Freedom (Article 19): Article 19 guarantees certain freedoms, such as the freedom of speech and expression, assembly, and association, which are necessary for labour rights. This provision empowers workers to form trade unions and engage in collective bargaining to protect their interests and improve their working conditions.
- Right to Life and Personal Liberty (Article 21): The Indian Constitution guarantees the Right to Life and Personal Liberty, which has been interpreted by the judiciary to include the right to work with dignity and in a safe and healthy environment. In the case of *Charan Lal Sahu*⁴, the Supreme Court of India held that the right to health and safety at the workplace is a fundamental right of workers. The court emphasised that any violation of this right can be challenged under Article 32 of the Constitution, which guarantees the right to constitutional remedies, and that it is the duty of the employer to provide a safe working environment. This case brought to light how important it is to safeguard employees' health and safety as a crucial component of their right to life and personal freedom.
- Right against Exploitation (Article 23 and 24): Article 23 prohibits trafficking and forced labor, and Article 24 prohibits the employment of children below the age of 14 in any hazardous industry. These provisions seek to protect workers' rights to safe and healthy working conditions and to stop the exploitation of workers, especially vulnerable groups like children and trafficked individuals. In the case of *Bandhua Mukti Morcha*⁵, the Supreme Court of India recognized the right to live with dignity as a fundamental right, and held that bonded labour or child labour is a form of modern-day slavery and is thus unconstitutional for violating the fundamental rights of workers.

³ *Randhir Singh v. Union of India*, (1982) 1 SCC 618 (India).

⁴ *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 (India).

⁵ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (India).

- The Directive Principles of State Policy contained in Part IV of the Constitution provide for the protection of workers' interests and rights. Article 39 of the Constitution outlines various principles, such as the right to work, just and humane conditions of work, equal pay for equal work, and protection against unemployment and exploitation. Article 39(a) directs the State to ensure that the citizens, men, and women equally have the right to an adequate means of livelihood. Article 39(b) directs the State to ensure that there is no concentration of wealth and means of production in a few hands, thereby promoting a more equitable distribution of resources. Article 38 and 41 of the Constitution highlight the state's duty to promote social justice and ensure the well-being of workers. Article 38 directs the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 41 requires the state directs the state to secure the right to work, education and public assistance in certain cases such as unemployment, old age, sickness and disablement. Though not enforceable by courts, these principles guide the state in formulating policies and laws related to labour rights. The Constitution also provides for the establishment of labour courts and tribunals for the speedy resolution of labour disputes.

Article 323A provides for the establishment of administrative tribunals for the adjudication of disputes related to recruitment and conditions of service of persons appointed to public services and posts.

A COMPARATIVE STUDY OF OFFENCES AND PENALTIES OF IR CODE AND INDUSTRIAL DISPUTES CODE

1. The Industrial Disputes (ID) Act of 1948-

The Chapter VC of the ID act titled “UNFAIR LABOUR PRACTICES” particularly comprises of two sections namely-

- Section 25T. Prohibition of unfair labour practice- Prohibits no employer or workman or a trade union to be involved in unfair labour practice.
- Section 25U. Penalty for committing unfair labour practices- It provides punishment with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

The major offences of the act can be defined and derived from “unfair labour practice” means

any of the practices specified in the Fifth Schedule as defined in section 2 (ra) of the ID act. The fifth Schedule contains following practices namely-

- a. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union.
- b. To dominate, interfere with or contribute support, financial or otherwise, to any trade union.
- c. To establish employer sponsored trade unions of workmen.
- d. To encourage or discourage membership in any trade union by discriminating against any workman.
- e. To recruit workmen during a strike which is not an illegal strike.
- f. Failure to implement award, settlement or agreement.
- g. To indulge in acts of force or violence.
- h. To refuse to bargain collectively, in good faith with the recognised trade unions. i. Proposing or continuing a lock-out deemed to be illegal under this Act.

The following table shows the various offences and the punishments listed for it under

Chapter VI ‘Penalties’ from Section 26 to 31.

Section	Offence	Punishment
26	Illegal strikes	<ul style="list-style-type: none">• Imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both
	Lock Outs	<ul style="list-style-type: none">• Imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both
27	Instigation	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both
28	Giving financial aid to illegal strikes and lock-outs	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

29	Breach of settlement or award	E punishable with imprisonment for a term which may extend to six months, or with fine, or with both or compensation
30	Penalty for disclosing confidential information	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both
30 a	Penalty for closure without notice	Imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both
31	Penalty for other offences	Imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both
31 a	Compounding of offences	Differs from amount and wage according to different offences.

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— WHERE MINDS MEET LAW —

As per sec 32, in order to establish a person or authority as an offender under this act, it must be proved that the offence was committed with his knowledge or consent and shall be deemed to be guilty of such offence.

2. Industrial Relations Code 2020- The chapter 7 of the IR code under sec 84 shall define ‘unfair labour practice’ as specified in the Second Schedule. They are-

- a. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union.
- b. To dominate, interfere with or contribute support, financial or otherwise, to any trade union.
- c. To establish employer sponsored trade unions of workmen.
- d. To encourage or discourage membership in any trade union by discriminating against any workman.
- e. To recruit workmen during a strike which is not an illegal strike.
- f. Failure to implement award, settlement or agreement.
- g. To indulge in acts of force or violence.
- h. To refuse to bargain collectively, in good faith with the recognised trade unions. i.

Proposing or continuing a lock-out deemed to be illegal under this Act.

The section 85 and 86 of chapter 8 of the IR Code provides, power of officers of Appropriate Government to impose penalty in certain cases. They are-

Section	Offence	Punishment
85(2)	Person has committed any offence under the provisions referred to in sub- section (1), of section 85	The officer may impose such penalty as he thinks fit in accordance with such provisions.
85(3)	Person fails to pay the penalty referred to in section 85 (2) within a period of ninety days	Punishable with fine which shall not be less than fifty thousand rupees but may extend up to two lakh rupees.
86(1)	Provisions of section 78 or section 79 or 80	Punishable with fine which shall not be less than one lakh rupees, but which may extend to ten lakh rupees.
86(2)	Again, commits the same offence under section 78 or section 79 or section 80	Be punishable with fine which shall not be less than five lakh rupees, but which may extend up to twenty lakh rupees or with imprisonment for a term which may extend to six months, or with both.
86(3)	Contravenes the provisions of section 67 or section 70 or section 73 or section 75	Be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.
86(4)	Again, commits the same offence under section 67 or section 70 or section 73 or Section 75	Be punishable With fine which shall not be less than one lakh rupees, but which may extend to five lakh Rupees or with imprisonment for a term which may extend to six months, or with both.

86(5)	Commits any unfair labour practice as specified in the Second Schedule	Be punishable with fine which shall not be less than ten thousand rupees, But which may extend to two lakh rupees.
86(6)	After conviction for any unfair labour practice again commits the same offence,	Be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees or with imprisonment for a term which may extend to three months, or with both.
86(7)	If default is made on the part of any registered Trade Union in giving any notice or Sending any statement	Shall be punishable with fine which shall not be less than one thousand rupees, but which may extend to ten thousand rupees and any continuing default shall be punishable with an additional penalty of fifty rupees per day so long as the default Continues.
86(8)	Wilfully makes, or causes to be made, any false entry in, or any omission from sec 26.	Be punishable with Fine which shall not be less than two thousand rupees, but which may extend to twenty thousand rupees.
86(9)	Any person who, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or making alterations	Punishable with fine which shall not be less than five thousand rupees, but which may extend to twenty thousand rupees.
86(10)	An employer who fails to submit draft standing orders as required by section 30	shall be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees and in the case of a continuing offence with an additional fine of two thousand rupees per day till the offence continues.

86(11)	An employer who does any act in contravention of the standing orders	Punishable with fine which shall not be less than one lakh rupees, but which may extend to two lakh rupees.
86(12)	Any person who after conviction under sub-section (11) again commits the same offence	Punishable with fine which shall not be less than two lakh rupees, but which may extend to four lakh rupees
		or with imprisonment for a term which may extend to three months, or with both.
86(13)	Strike which is illegal under this Code	Punishable with fine which shall not be less than one thousand rupees, but which may extend up to ten thousand rupees or with imprisonment for a term which may extend to one month, or with both.
86(14)	Lock Out	Shall be punishable with fine which shall not be less than ten thousand rupees, but which may extend to fifty thousand rupees or with imprisonment for a term which may extend to one month, or with both.
86(15)	Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal	Be punishable with fine which shall not be less than ten thousand rupees, but which may extend to fifty thousand rupees or with imprisonment for a term which may extend to one month, or with both.

As per sec 88 (Offences by companies) -In order to establish a person or authority as an offender under this act, it must be proved that the offence was committed with his knowledge or consent and shall be deemed to be guilty of such offence.

OBSERVATIONS AND INFERENCES

- Increased Amount of Fine and Imprisonment- As compared with the punishments under ID Act and IR code, the IR code has increased its amount of penalty and years of imprisonment considerably in a large number, from thousands of rupees and a maximum of six-month imprisonment (as mentioned in the ID act) to an increased number of ten thousand rupees to five lakh rupees as the maximum amount of fine and with a minimum 1-month imprisonment for all offences.
- Penalties for Compounding Offences- The new IR code has brought a significant change in its terms of punishments relating to compound offences as it prescribes new modes of punishments under section 85 & 86 for repeating the previous offences that have been committed and the fine and imprisonment
- Severe Punishments and Restrictions- As similar to the ID Act, the new IR code has also made lockouts and strikes as illegal, as it erodes the notions of democratic speech and expression in the labour movements. The new code has also made mandatory imprisonment of 1 month or a fine or both in all offences, which were limited to only fines for various offences under the previous ID act.
- Financial constraints on laborers- The increased number of the maximum amount of fines to 5 lakh rupees will negatively affect the economic status of laborers as the labour community who are mostly focused on the unorganized sector will salaries taken in dependency of daily wages and work will be affected negatively due to a hike in the increasing number of amount of penalties.
- Increased number of offences- In the ID Act of 1948, it consisted of offences less than 10 with prescribed penalties as comparing it with the new IR code, it can be easily understood that the total number of offences have increased to nearly 20, which is almost double than the number of offences mentioned in the previous ID act and restricts labour movements with unethical shades of law.
- Complicated and formal Procedures- The new IR code is more procedural and lengthiest as compared with the previous labour laws as it creates confusion regarding the technicalities of various subject matters that the code deals as it includes offences, penalties etc. as the labour community may find it all complicated as it will causes issues for them to connect with the various aspects of law.

CONCLUSION

The provisions of the IR Code are aimed at incentivizing employers to increase the size of their undertakings, in turn increasing the employment opportunities for workers. The recent economic survey, 2019-20, too had indicated that greater flexibility in labour laws leads to a higher quintile of entrepreneurial activity. However, in past experience, various reports over the pro-employer amendments made by Rajasthan and other states had indicated that similar labour reforms did not result in boosting industrialization or job creation owing to reasons specific to the particular states. Nonetheless, the scale of amendments is substantially different this time and thus, it remains to be seen whether these reforms will be able to contribute to our economy's revival or not. It would also be interesting to see how the government handles the enforcement of these labour reforms, checks evasion by employers and breaks the shackles of poor implementation and administrative hurdles. Nevertheless, it's now time for establishments to start preparing for the enforcement of this new regime.

In recent years, welfare boards have multiplied in several states. However, they are limited because many are not tripartite and lack defined funding sources. Nevertheless, informal workers' organisations across sectors remain committed to demanding and implementing welfare boards to consolidate informal workers' identity, provide a forum for their concerns, and provide an institutional mechanism for the delivery of worker identity cards and benefits. Labour rights are human rights. They protect against unjust and hazardous conditions of work that harm not only the workers, but their families, employers and members of local communities⁶.

⁶ Int'l Labour Org., *Labour Rights Are Human Rights for All Workers*, <https://www.ilo.org/resource/article/labour-rights-are-human-rights-all-workers> (last visited Nov. 15, 2025).