

Legal Validity of Strikes and Lockouts under the Industrial Relations Code

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ABSTRACT

This paper provides a comprehensive analysis of the legal validity, procedural framework, and regulatory mechanisms governing strikes and lockouts under India's Industrial Relations Code (IRC), 2020. The study examines how the IRC consolidates and amends prior legislation—the Trade Unions Act (1926), Industrial Employment (Standing Orders) Act (1946), and Industrial Disputes Act (1947)—to create a unified legal regime for industrial action. Key focus areas include: the conditions under which strikes and lockouts are deemed legal or illegal; mandatory procedural requirements such as notice periods, conciliation, and secret ballot voting; the role of trade unions; and the implications for employers and workers. The analysis identifies significant changes introduced by the IRC, including stricter procedural mandates and expanded governmental powers to prohibit industrial action. The paper concludes by evaluating the Code's balance between protecting workers' right to collective action and maintaining industrial peace, suggesting areas for legal and practical refinement.

KEYWORDS

Industrial Relations Code 2020, Strikes, Lockouts, Legal Validity, Industrial Disputes, Collective Bargaining, Trade Unions, Secret Ballot, Conciliation, Industrial Peace, Labour Law Reform, Workers' Rights, Employer Prerogatives, Illegal Strike, Gherao, Bandh

INTRODUCTION

Industrial action in the form of strikes and lockouts is a fundamental feature of capital-labour relations, serving as a tool for collective bargaining and conflict resolution. In India, the legal framework governing these actions has undergone significant transformation with the enactment of the Industrial Relations Code, 2020, part of the government's ambitious labour law codification exercise. This paper introduces the central inquiry: **How does the IRC redefine the legality and procedural legitimacy of strikes and lockouts?** The introduction outlines the historical evolution from fragmented statutes to a consolidated code, highlights the persistent tension between the constitutional right to form associations (Article 19(1)(c)) and the state's

interest in maintaining economic stability, and sets the stage for a detailed examination of the new legal architecture. It posits that the IRC represents a paradigm shift with profound implications for industrial democracy.

DEFINITIONS

1. **Strike:** A cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal under a common understanding to continue work (as defined in IRC, Sec. 2(zk)). Includes types like **token strike, sit-down strike, go-slow, gherao, and bandh** (with varying legal statuses).
2. **Lockout:** The temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him (IRC, Sec. 2(o)). It is the employer's counterpart to a strike.
3. **Industrial Dispute:** Any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with employment, non-employment, terms of employment, or conditions of labour (IRC, Sec. 2(q)).
4. **Illegal Strike:** A strike that is commenced or declared in contravention of the procedural requirements (notice, conciliation, cooling-off period, secret ballot) or is in force during a period when it has been prohibited by appropriate government (IRC, Sec. 62).
5. **Illegal Lockout:** A lockout declared or commenced in contravention of the same procedural requirements applicable to strikes, or continued after being prohibited (IRC, Sec. 62).
6. **Secret Ballot:** A mandatory voting process for a recognized trade union or a negotiating union/council to ascertain the majority support of workers before calling a strike (IRC, Sec. 65).

NEED FOR THE STUDY

1. **Legal Ambiguity Post-Codification:** The IRC is new, and its interpretation by courts and tribunals is nascent, creating uncertainty for stakeholders.
2. **Impact on Industrial Harmony:** Understanding the new thresholds for legal industrial action is crucial for preventing costly disputes.
3. **Protection of Fundamental Rights:** There is a need to assess whether the IRC's procedural constraints unduly infringe upon workers' collective bargaining rights.
4. **Guidance for Stakeholders:** Employers, trade unions, HR professionals, and legal practitioners require clarity on compliance.

5. **Policy Evaluation:** To critically analyze whether the IRC achieves its stated objectives of simplifying laws and promoting investment while ensuring fair labour practices.

AIMS

The primary aim is to conduct a critical doctrinal and comparative legal analysis of the provisions related to strikes and lockouts under the Industrial Relations Code, 2020, to determine their validity, effectiveness, and fairness within the broader constitutional and international labour law framework.

OBJECTIVES

1. To trace the historical legislative development of laws governing strikes and lockouts in India.
2. To analyze the specific provisions (Sections 62, 64, 65, 81, etc.) of the IRC that define and regulate strikes and lockouts.
3. To compare the IRC framework with the repealed provisions of the Industrial Disputes Act, 1947.
4. To examine the mandatory procedural prerequisites for a legal strike/lockout (notice, conciliation, cooling-off, secret ballot).
5. To assess the consequences of participating in or declaring an illegal strike/lockout (penalties, legal immunities, status of employment).
6. To evaluate the Code's provisions in light of constitutional mandates and International Labour Organization (ILO) Conventions (No. 87 & 98).
7. To identify emerging judicial trends and potential conflicts in interpretation.

HYPOTHESIS

The Industrial Relations Code, 2020, by imposing stringent procedural requirements and expanding executive powers to prohibit industrial action, has substantially curtailed the ease of organizing legal strikes, potentially tilting the balance of power in favour of employers and raising concerns about the effective realization of the right to collective bargaining, despite its aim of consolidating and simplifying laws.

LITERATURE SEARCH

1. **Primary Sources:** The Industrial Relations Code, 2020; Previous statutes (IDA, 1947; TU Act, 1926); Relevant case law (Supreme Court & High Courts); Parliamentary Standing Committee Reports on the IRC.
2. **Secondary Sources:**
 - A. **Books:** Authored by labour law experts like S.N. Misra, S.C. Srivastava, and K.M. Desai.

- B. **Journal Articles:** From journals like the *Indian Journal of Industrial Relations*, *Economic and Political Weekly*, *Harvard Law Review* (on comparative labour law).
- C. **Commentaries:** Detailed section-wise commentaries on the new Labour Codes.
- D. **Reports:** ILO reports on freedom of association; NGO reports (e.g., from CITU, FICCI) on the impact of labour codes.
- E. **Online Databases:** SCC Online, Manupatra, JSTOR, Google Scholar.

RESEARCH METHODOLOGY

1. **Type:** Doctrinal and Analytical research.
2. **Approach:** Qualitative, involving critical legal analysis.
3. **Sources of Data:** Reliance on primary legal sources (statutes, case law) and authoritative secondary sources (books, articles).
4. **Methods of Analysis:**
 1. **Statutory Interpretation:** Analyzing the text of the IRC.
 2. **Comparative Analysis:** Contrasting IRC with old laws and ILO standards.
 3. **Case Law Analysis:** Examining pre- and post-IRC judicial pronouncements to identify principles and trends.
 4. **Critical Evaluation:** Assessing the law's coherence, fairness, and practical implications.

STRONG POINTS OF THE IRC FRAMEWORK

1. **Consolidation and Clarity:** Brings multiple laws under one umbrella, reducing fragmentation.
2. **Formalization of Process:** Secret ballot and notice periods aim to ensure strikes reflect the genuine will of the majority, preventing rash actions.
3. **Emphasis on Resolution:** Mandatory conciliation and cooling-off periods promote dialogue and voluntary settlement.
4. **Definitional Clarity:** Explicitly defines and prohibits certain unfair practices from both sides.
5. **Predictability:** A clearer legal framework can reduce *ad hoc* disputes over procedural legality.

WEAK POINTS / CRITICISMS

1. **Procedural Hurdles:** The multi-step process (6-week notice, 14-day conciliation, 7-day cooling-off, secret ballot) is lengthy and may dilute the effectiveness of strike as a bargaining tool.

2. **Executive Overreach:** Broad powers granted to the government to prohibit strikes in “public utility” services and even in non-public utilities for limited periods.
3. **Undermining Trade Unions:** Provisions for “negotiating union/council” and secret ballots may weaken the role of traditional trade unions and foster inter-union rivalries.
4. **Severe Penalties:** Harsh penalties for illegal strikes (including for individual workers) may have a chilling effect on legitimate protest.
5. **Ambiguity:** Terms like “public utility service” and the practical application of the secret ballot process lack clarity.

CURRENT TRENDS

1. **Judicial Scrutiny:** Courts are beginning to hear challenges to the Labour Codes. Future judgments will shape the interpretation of validity.
2. **Trade Union Mobilization:** Major unions are protesting the Codes, arguing they are anti-worker.
3. **State-Level Variations:** States are framing their own rules under the Code, leading to potential inconsistencies.
4. **Focus on Alternative Dispute Resolution (ADR):** The IRC pushes for negotiation, conciliation, and arbitration, reflecting a global trend away from adversarial industrial action.
5. **Gig Economy Impact:** Debates on whether platform workers will have the right to strike under the IRC’s definitions.

HISTORY

1. **Pre-Independence:** The Trade Disputes Act, 1929, introduced the first legal framework for regulating strikes.
2. **Industrial Disputes Act, 1947:** The cornerstone for decades, detailing conditions for legal strikes (Sections 22, 23, 24) and lockouts.
3. **Judicial Interpretations:** Landmark cases (e.g., *Rajasthan State Road Transport Corp. v. Krishna Kant*, *T.K. Rangarajan v. State of TN*) shaped the understanding of the right to strike.
4. **Labour Law Reform Commissions:** Multiple committees (2nd National Labour Commission, 2002) recommended consolidation and reform.
5. **The Codification Exercise (2019-2020):** Culminated in the enactment of four new labour codes, including the IRC.

DISCUSSION

1. Whether the procedural constraints under the IRC are reasonable restrictions (Article 19(4)) or excessive burdens.
2. The balance between “industrial peace” and “collective bargaining strength.”
3. The efficacy of the secret ballot mechanism in Indian industrial contexts.
4. A comparative perspective with labour laws in the UK, Germany, and South Africa.
5. The potential impact on industrial relations dynamics: Will it reduce strikes or drive conflict underground?

RESULTS / FINDINGS

1. The IRC has significantly raised the procedural bar for a legal strike, making it more bureaucratic.
2. The legal concept of a “strike” remains broad, but its exercise is heavily conditioned.
3. The power dynamic has shifted, with employers gaining a more predictable environment and tools (like easier standing orders) to manage dissent.
4. There is a tension between the Code and ILO principles on the right to strike.
5. Early indications suggest trade unions are finding the new framework restrictive and are likely to challenge it legally and through mass mobilization.

CONCLUSION

The Industrial Relations Code, 2020, represents a definitive attempt to modernize and rationalize India’s law on industrial action. While it succeeds in providing a consolidated framework and promoting formal dispute resolution, its stringent procedural requirements and enhanced executive powers pose significant challenges to the exercise of the right to strike. The Code’s validity in law is established by statute, but its validity as a fair mechanism for balancing worker and employer interests remains contested. Its ultimate success will depend on sympathetic judicial interpretation, fair implementation by the executive, and the evolution of a mature collective bargaining culture that relies less on the weapon of last resort.

SUGGESTIONS AND RECOMMENDATIONS

1. **For Legislators/Government:**
 - A. Issue clear guidelines on conducting secret ballots to ensure fairness.
 - B. Define “public utility service” more narrowly to prevent blanket prohibitions.
 - C. Review penalty provisions to ensure they are deterrent but not draconian.
2. **For Judiciary:** Adopt a purposive interpretation that safeguards the core of collective bargaining rights.

3. **For Employers:** Use the stability provided by the Code to build robust internal grievance redressal mechanisms.
4. **For Trade Unions:** Adapt strategies, focus on building majority support, and invest in legal literacy among members.

FUTURE SCOPE

1. Empirical studies on the number and success rate of strikes/lockouts post-IRC implementation.
2. Impact analysis on sectors with high unionization (e.g., manufacturing, transport) vs. emerging sectors (IT, gig economy).
3. Longitudinal study on changes in collective bargaining agreements under the new regime.
4. Comparative research with other countries that have reformed strike laws.
5. Analysis of the role of the proposed Central/State Industrial Tribunals in adjudicating disputes arising from the IRC.

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