A Note on Industrial Relations Code, 2020

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Abstract
In this note, we assess the newly introduced Industrial Relations Code (IRC) 2020. First, we compare the provisions in IRC 2020 with its predecessor, Industrial Disputes Act (IDA) 1947, and the amendments to IDA 1947 in 1976 and 1982 regarding the employment protection provisions against layoffs, retrenchments, and closures. We find that IRC 2020 merely restored the factory-size threshold to the initial IDA amendment 1976 level of 300 or more workers to which IDA 1947 originally applied from 100 or more workers as notified in the 1982 IDA amendment. We calculate the effect of the threshold-size change on the workers and factories on the firms registered under the Factories Act 1948 2(m). We find from the ASI 2017–2018 data that an estimated 7.07% of the factories and 15.97% of the workers will be affected due to the change in the threshold size introduced through IRC, 2020. Finally, we conclude by discussing the current relevance of the employment protection legislation during the pandemic time and the need for discretionary usage and temporary expansion of coverage of employment protection provisions under the IRC if warranted.

Keywords Industrial relations · Labour law · Labour policy · Organised manufacturing · India

JEL Classification J08 · J53 · J58 · K31 · L52

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1 Introduction

Since the economic reforms initiated in India for fostering growth in the 1990s, the industry and employers’ associations have been advocating to bring in the labour reforms that would add flexibility in the labour market that would boost job creation and growth. Accordingly, the Indian Parliament on 23 September 2020 passed a set of three labour reforms bills, namely, the Industrial Relations Code (IRC), 2020; the Occupational Safety, Health and Working Conditions Code (OSHWCC), 2020; and the Social Security Code (SSC), 2020. Along with the Code on Wages, introduced in 2019 by the Ministry of Labour, Government of India, these four bills form the much-demanded labour-laws reform by the industry bodies and investors. These labour reforms aim to decongest and simplify India’s otherwise multitudinous and complex structure of labour laws. Broadly, the Code on Wages, 2019, amends and consolidates the existing central legislation regulating minimum wage, payment of wages, bonus, dues, claims, etc. (GOI 2019). The SSC, 2020, amends and consolidates the existing central laws on social security, targeting the expansion of social security provisions to all employees and workers in all sectors of the economy (GOI 2020a). The OSHWCC, 2020, amends and consolidates the existing central laws related to occupational safety, health, working conditions, and related matters of employees working in various establishments (GOI 2020b). Finally, the IRC, 2020, amends and consolidates the existing central laws regulating trade unions, employment conditions, and industrial disputes resolution (GOI 2020c).

Before the IRC 2020 got passed, the COVID-19 pandemic brought the abrupt disruption of the economic activities during the lockdown in early 2020. The looming economic crisis led several state governments to propose sweeping changes in the labour laws through ordinances as labour is in the Concurrent List. These states claimed that the proposed labour law changes are a remedial measure to kickstart the economy. However, few states even revoked most of the existing laws, including the various provisions under the Industrial Disputes Act (IDA), 1947 and its amendments in 1976 and 1982. Madhya Pradesh showed moderation in its decision to abrogate most of the provisions under IDA exclusively for the new firms established in the state over the next three-year period while continuing to commit to addressing the industrial disputes appropriately. Gujarat too abrogated the applicability of the existing provisions of the IDA for the new firms for the next little more than three years. However, Uttar Pradesh took the extreme step of revoking IDA altogether, not just on the new firms but also on the existing ones for the next three years. The labour organisations across the board, by and large, criticised these changes by various states which have not received the Presidential Assent yet. The state-level changes in the labour laws in the wake of the Covid-19 pandemic coincides with the passing of the four labour reforms bills by the central government mentioned earlier. However, the four labour bills introduced by the central government were under formulation much before the pandemic. Hence, it is crucial to distinguish these from the State-level attempts in amending labour laws.

The industry bodies have supported the labour reform bills passed by the Parliament that has received the President’s assent as these labour reforms were long
overdue. However, the labour reform bills invited intense criticism from all the trade unions, arguing that the new labour codes are disproportionately pro-employer. One controversy is centred around the new provisions in the IRC 2020 governing industrial disputes resolution and employment protection in relatively big firms. These new provisions replaced and diluted the existing provisions brought through Chapter VB in IDA 1947 in 1976 and 1982. The new provisions in IRC 2020 relaxed the threshold size of firms from less than 100 workers introduced in IDA 1982 to less than 300 workers by allowing them the flexibility to initiate layoffs, retrenchments and closures without prior approval from the appropriate government agencies. In this note, we analyse the implications of the provisions of employment protection under IRC, 2020.

The rest of the note is organised in the following fashion. Section 2 discusses the origins of the controversy related to employment protection legislation in India and surveys the existing evidence on the effects of labour market flexibility regarding layoffs, retrenchments, and closures regulations on employment dynamics. Next, in Section 3, we present the (estimated) number of factories and workers affected due to the change in threshold size in the IRC 2020. In Section 4, we examine the current relevance of the employment protection legislation during the Pandemic and what aspects of industrial relations could be the future focus of reform. Finally, Section 5 concludes the note.

2 Origin of the Controversy and Supporting Evidence

Our primary focus in this note is to examine the evolution of the employment protection legislation under IDA, 1947. The IDA 1947 did not initially contain the provisions for employment protection as such but dealt exclusively with the provisions for investigation and settlement of industrial disputes. Prior to 1976, in the matters related to layoffs, retrenchments and closures, the Act restricted the role of the government only to the standard practices of prescribing appropriate compensation and specifying notice period to be served by the employers. There were no provisions prohibiting layoffs, retrenchments, or closures until as late as 1976 when the central government introduced Chapter VB through an amendment in the IDA, 1947. The Chapter VB appended to the IDA, 1947 in 1976 laid down special provisions relating to layoffs, retrenchments and closures in certain establishments. Specifically, Chapter VB made it mandatory for the firms employing 300 or more workers to obtain prior permission from the appropriate government to initiate layoffs, retrenchments and closures. The addition of the employment protection legislation could have been a result of the unprecedented job losses in the economy following the declaration of emergency in 1975. Shyam Sundar (2005) argues that the government implemented the 1976 IDA amendment during the emergency period in the wake of an unprecedented rate of mass layoffs, retrenchments, and closures by employers that affected more than half a million workers. The economic crisis that gripped the country during the first half of the 1970s prompted these mass layoffs, retrenchments, and closures.
The IDA amendment of 1982, which came into effect in 1984, reduced the employment-size threshold to 100 workers from the existing 300 workers. It implied that firms employing 100 or workers were required to have prior permission of the concerned departments of the government before initiating layoffs, retrenchments and closures. Post-1982 amendment in the IDA, the employers have been arguing that getting approval for layoffs etc., has become extremely tedious. While the 1976 amendment in the IDA was a desperate intervention by the government to contain the rising unemployment and job losses in the organised industrial sector, the 1982 amendment appears to have been guided by the political economy considerations. Shyam Sundar (2005) notes that despite the trade unions opposition and criticism to the emergency, the job security provisions of IDA (an emergency era regulation) became highly popular with the trade unions. Employers often point out that most emergency era regulations were withdrawn but not the IDA (Shyam Sundar 2005). Although the Indira Gandhi led Congress government fell in 1977 in the aftermath of the emergency, the first-time elected Janata Party government, which got support from several trade unions, also did not recall the restrictive provisions of IDA. During the 1970s and 1980s, trade unions formed a powerful political entity in India. A move to recall the chapter VB of IDA would have been politically risky and met with strong resistance from the trade unions. The decision by the Indira Gandhi led Congress government, after being re-elected to power in 1980, to further amend the chapter VB of IDA in 1982 to make it more pro-workers was likely a move to woo the trade unions.

Since 1984, the regulation has attracted enormous criticism for its seemingly anti-employer stance. Researchers, e.g., Fallon and Lucas (1993) and Besley and Burgess (2004), blamed these IDA amendments as the prime reason for the slow industrial and employment growth in the country. Roy et al. (2020), on the other hand, found evidence of a weaker employment performance as reflected from the employment elasticity of growth in India’s organised manufacturing sector in states with relatively flexible labour adjustment mechanisms through less stringent employment protection legislation than the rigid ones. ILO (2015), in a cross-country study of 63 advanced and emerging economies, found no evidence in support of a positive impact of weaker or relaxed employment protection on employment growth. On the contrary, the study concluded that weaker employment protection legislation is likely to adversely affect employment growth in both the short run and long run. In a review of the studies on IDA and its adverse effect on the Indian economy, Bhattacharjua (2006, 2020) shows that the methodology and interpretation of results of these studies have shortcomings and the empirical evidence on the adverse impact of the employment protection provisions under IDA remains inconclusive. Furthermore, a growing body of literature investigating the effect of employment protection legislation on firm-level productivity (Dougherty et al., 2014) and innovation (Acharya et al., 2013) also points to unsettled empirical evidence.
3 Coverage (or Lack Thereof) Under IRC 2020

As discussed in the last section, the IRC, 2020 does not entirely revoke the employment protection provisions brought in the IDA 1982. The IRC 2020 restore the threshold from 100 or more workers in IDA 1982 to 300 or more workers as in IDA 1976 to obtain prior permission from the appropriate government agency to initiate layoffs, retrenchments and closures. Labour is a subject in the concurrent list of the Constitution of India, which allows both the central as well as state governments to regulate and pass legislation in matters related to labour welfare. The state governments of Rajasthan, Madhya Pradesh, Jharkhand, Andhra Pradesh, Haryana, and Assam had already brought amendments to IDA 1982 in 2014, 2015, 2016, 2015, 2016, and 2017, respectively, to relax the threshold from 100 or more workers to 300 or more workers. Uttar Pradesh has its own Industrial Disputes Act, which requires prior permission in case of closures of establishments employing 300 workers or more and not for layoffs and retrenchments (Upadhyaya and Kumar 2017). Therefore, the factories and workers in these seven major states remain unaffected by the introduction of the IRC 2020.

Chapter IX of the IRC, 2020, which lays down the rules on layoffs, retrenchment and closures, applies to establishments registered under section 2(m) of the Factories Act, 1948, Mines Act, 1952, and Plantations Labour Act, 1951. It is to be noted that IRC, 2020, like its predecessor IDA, 1947 is not applicable to all the employees within the organised industrial sector. Both these Acts cover only the workers and exclude managerial, administrative and supervisory staffs drawing salary in excess of the minimum wages for labour as notified by the central government. We present state and size-wise estimates of the number of operating factories and workers employed from 2017 to 2018 Annual Survey of Industries (ASI) data (most recent available).

The Ministry of Statistics and Programme Implementation, Government of India through ASI collects industrial statistics in India. The coverage of ASI is limited to the establishments registered under section 2(m) of the Factories Act, 1948. The estimates provided here are meant to serve as an estimate to understand the number of factories and workers that will potentially be affected post-IRC 2020. The actual figures are likely to be higher if the establishments registered under the Mines Act and the Plantations Labour Act are taken into account.

Table 1 presents the distribution of operating factories in three categories based on the number of workers employed, i.e., less than 100 workers, between 100 and 299 workers, and 300 or more workers across the states in India. As evident from Table 1, in 2017–2018, a majority share of 81.80% of total operating factories in the organised industrial sector in India employed less than 100 workers and was already outside the purview of IDA. 9.3% of the factories employ between 100–299 workers, and 8.9% employ 300 or more workers. Among the factories employing 100 to 299 workers, 4344 (23.90% in the category) are located in Haryana, Rajasthan, Uttar Pradesh, Assam, Madhya Pradesh, Jharkhand, and Andhra Pradesh. Thus, 23.90% of the factories employing 100 to 299 workers have already been out of the purview of the IDA 1982 at the time IRC 2020 got legislative assent.
| States       | Total operating factories | No. of factories by employment size | Percentage of factories by employment size |
|-------------|---------------------------|----------------------------------|------------------------------------------|
|              |                           | < = 99 Workers | 100–299 Workers | > = 300 Workers | < = 99 Workers | 100–299 Workers | > = 300 Workers |
| Punjab      | 10,767                    | 9519          | 763           | 485          | 88.4          | 7.1            | 4.5            |
| Haryana     | 7136                      | 5656          | 840           | 639          | 79.3          | 11.8           | 9.0            |
| Delhi       | 2480                      | 2253          | 163           | 65           | 90.8          | 6.6            | 2.6            |
| Rajasthan   | 8375                      | 7189          | 610           | 576          | 85.8          | 7.3            | 6.9            |
| Uttar Pradesh | 12,824                   | 10,805        | 1290          | 729          | 84.3          | 10.1           | 5.7            |
| Bihar       | 2881                      | 2568          | 246           | 67           | 89.2          | 8.5            | 2.3            |
| Assam       | 4299                      | 3638          | 533           | 128          | 84.6          | 12.4           | 3.0            |
| West Bengal | 8340                      | 7159          | 576           | 605          | 85.8          | 6.9            | 7.3            |
| Jharkhand   | 2366                      | 2059          | 126           | 181          | 87.0          | 5.3            | 7.6            |
| Orissa      | 2670                      | 2280          | 146           | 244          | 85.4          | 5.4            | 9.2            |
| Chhattisgarh | 2976                      | 2623          | 185           | 168          | 88.1          | 6.2            | 5.6            |
| Madhya Pradesh | 4099                     | 3487          | 335           | 277          | 85.1          | 8.2            | 6.8            |
| Gujarat     | 20,577                    | 17,353        | 1808          | 1416         | 84.3          | 8.8            | 6.9            |
| Maharashtra | 20,151                    | 16,174        | 2478          | 1499         | 80.3          | 12.3           | 7.4            |
| Andhra Pradesh | 13,308                   | 11,883        | 610           | 815          | 89.3          | 4.6            | 6.1            |
| Karnataka   | 10,787                    | 8373          | 1172          | 1241         | 77.6          | 10.9           | 11.5           |
| Kerala      | 6848                      | 5868          | 472           | 507          | 85.7          | 6.9            | 7.4            |
| Tamil Nadu  | 32,014                    | 25,316        | 3731          | 2967         | 79.1          | 11.7           | 9.3            |
| Telangana   | 11,987                    | 7468          | 589           | 3931         | 62.3          | 4.9            | 32.8           |
| Rest of India | 10,699                    | 8273          | 1500          | 925          | 77.3          | 14.0           | 8.6            |
| All India   | 195,584                   | 159,945       | 18,172        | 17,466       | 81.8          | 9.3            | 8.9            |

Rest of India include the remaining states and UTs namely, Jammu & Kashmir, Himachal Pradesh, Chandigarh, Uttarakhand, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Tripura, Meghalaya, Daman & Diu, Dadra & Nagar Haveli, Goa, Pondicherry, and Andaman & Nicobar Islands

Source: Author’s Calculation from ASI 2017–2018
Hence, the employment protection provisions under IDA 1982 were applicable to 31,294 factories (16.00%) in the organised sector. After the implementation of IRC, 2020, an additional 13,828 factories employing between 100 and 299 workers will not be required to comply with legislation regulating layoffs, retrenchment and closures. These factories amount to 7.07% of the total operating factories, which are getting affected due to IRC 2020. The most affected states after the implementation of IRC 2020 are Tamil Nadu, Gujarat, Maharashtra, and Karnataka, which together contained around 66.45% of the factories employing between 100 and 299 workers covered under IDA 1982. An estimated 8.9% (or 17,466) of the remaining large factories will continue to be under the purview of employment protection legislation in IRC 2020.

In Table 2, we present the distribution of total workers employed in factories in the three size classes, namely factories employing less than 100 workers, between 100 and 299 workers, and 300 or more workers across the states in India. Table 2 shows that, at the aggregate level, factories in the size-class 300 or more workers account for more than half of the total employment in the organised industrial sector. Factories in the size class of less than 100 workers and between 100 and 299 workers account for 26.4% and 21.3% employment, respectively. Hence, a majority of workers (52.3%) will remain unaffected even after IRC 2020 is implemented, i.e., will continue to be covered under various provisions restricting layoffs, retrenchments and closures. A significant share of around 31.75% of the workers employed in factories of size less than 100 workers and between 100 and 299 workers in the seven states that amended IDA before IRC 2020 have been out of the purview of the employment protection provisions. Overall, around 1.95 million workers (15.97% of total workers) will be affected in the industrial sector due to the change in threshold factory-size from 100 to 300 workers to which the revised employment protection legislation applies. However, some states will be affected more than others, e.g., Kerala, where 6.9% of total factories employing between 100 and 299 workers accounted for almost a quarter (24.5%) of overall industrial workers employed. Similarly, in the states of Bihar, Maharashtra, and Tamil Nadu, where around a quarter of the total employment is concentrated in factories of size class 100–299 workers. The least affected states from shift to IRC, 2020 are Odisha, West Bengal, and Telangana, where less than one-sixth of workers are employed in the factories of size-class 100–299 workers.

4 Current Relevance of Employment Protection and Future Reform Directions

In the last section, it has been shown that a relatively small fraction of factories and workers are affected because of the IRC 2020 as far as various provisions of layoffs, retrenchment etc., are concerned. However, the disruption in the economic activities that the Covid-19 pandemic has brought across the globe, the employment scenario is likely to worsen in India too. Relaxing employment protection during a pandemic and an impending recession may destroy more jobs than it creates by removing the safety net in the industrial sector. Hence, close monitoring of the labour markets and
Table 2  Distribution of Workers in factories of various size classes across States in India

| States         | Total workers | No. of workers employed in factories of various size-classes | Percentage of workers employed in factories of various size-classes |
|----------------|---------------|-------------------------------------------------------------|----------------------------------------------------------------|
|                |               | < = 99 Workers | 100–299 Workers | > = 300 Workers | < = 99 Workers | 100–299 Workers | > = 300 Workers |
| Punjab         | 569,266       | 215,734       | 118,427        | 235,104        | 37.9          | 20.8          | 41.3          |
| Haryana        | 674,373       | 143,429       | 133,779        | 397,165        | 21.3          | 19.8          | 58.9          |
| Delhi          | 68,630        | 35,690        | 13,897         | 19,043         | 52.0          | 20.2          | 27.7          |
| Rajasthan      | 432,434       | 136,335       | 83,101         | 212,998        | 31.5          | 19.2          | 49.3          |
| Uttar Pradesh  | 839,121       | 246,943       | 204,850        | 387,328        | 29.4          | 24.4          | 46.2          |
| Bihar          | 104,057       | 61,089        | 29,172         | 13,796         | 58.7          | 28.0          | 13.3          |
| Assam          | 180,489       | 84,586        | 74,082         | 21,820         | 46.9          | 41.0          | 12.1          |
| West Bengal    | 516,740       | 138,316       | 79,184         | 299,240        | 26.8          | 15.3          | 57.9          |
| Jharkhand      | 153,026       | 39,667        | 20,746         | 92,614         | 25.9          | 13.6          | 60.5          |
| Orissa         | 229,036       | 31,235        | 20,985         | 176,816        | 13.6          | 9.2           | 77.2          |
| Chhattisgarh   | 147,310       | 40,036        | 28,095         | 79,178         | 27.2          | 19.1          | 53.7          |
| Madhya Pradesh | 281,063       | 68,770        | 47,655         | 164,638        | 24.5          | 17.0          | 58.6          |
| Gujarat        | 1,403,204     | 338,724       | 277,115        | 787,365        | 24.1          | 19.7          | 56.1          |
| Maharashtra    | 1,414,565     | 376,003       | 364,002        | 674,561        | 26.6          | 25.7          | 47.7          |
| Andhra Pradesh | 486,846       | 139,678       | 92,753         | 254,416        | 28.7          | 19.1          | 52.3          |
| Karnataka      | 828,689       | 173,876       | 149,101        | 505,711        | 21.0          | 18.0          | 61.0          |
| Kerala         | 241,789       | 95,703        | 59,268         | 86,818         | 39.6          | 24.5          | 35.9          |
| Tamil Nadu     | 2,095,223     | 523,532       | 488,435        | 1,083,256      | 25.0          | 23.3          | 51.7          |
| Telangana      | 669,220       | 125,654       | 86,219         | 457,347        | 18.8          | 12.9          | 68.3          |
| Rest of India  | 889,342       | 210,280       | 238,374        | 440,687        | 23.6          | 26.8          | 49.6          |
| All India      | 12,224,421    | 3,225,280     | 2,609,241      | 6,389,900      | 26.4          | 21.3          | 52.3          |

Source: Author’s Calculation based from ASI 2017–2018
organised sector firms is essential for avoiding mass layoffs, retrenchments, and closures through discretionary usage and temporary expansion of coverage of employment protection provisions under the IRC if warranted. Such a clause for discrete and temporary recall of the restricting provision of the chapter VB is explicitly mentioned in the IDA amendments by some states, e.g., Haryana and Jharkhand amendments to the IDA in 2016, relaxing the threshold to firms employing three hundred workers to which the provisions applied. An explicit clause in the IRC regarding the same would be suitable and assuring for employees and unions.

A crucial aspect of industrial relations that is neglected in the IRC, 2020 is simplification and up-gradation of dispute resolution mechanisms. A peaceful industrial relations climate and an efficient mechanism to ensure industrial harmony are equally desirable from the viewpoint of employers and investors. The importance of building an efficient dispute resolution mechanism is well appreciated in the findings of Ahsan and Pagés (2009). They found that the laws that increase the cost of dispute resolution have a more significant detrimental effect on India’s manufacturing output compared to employment protection legislation. Amirapu (2020) finds that state-level court efficiency is positively associated with the future of firms’ growth in India’s organised manufacturing sector. He further argues that efficient formal judicial institutions help boost economic growth. The IRC 2020 seems to fall short in introducing significant improvements over IDA towards dispute resolution mechanisms and industrial relations. The direction of future reforms under IRC should focus on improving the efficiency of dispute resolution mechanisms, especially ensuring the timely disposal of cases and settlement of disputes.

5 Conclusion

In this note, we examined the provisions of layoffs, retrenchments, and closures in the IRC, 2020 in relation to IDA 1947, IDA 1976 and IDA 1982. The IDA, 1947, originally did not contain any such provisions for employment protection. The IRC, 2020 merely restored the factory-size threshold from the IDA 1982 level of 100 or more workers to the IDA 1976 level of 300 or more workers to which the provisions related to layoffs, retrenchments, and closures applied. There is inconclusive evidence on the adverse or positive impact of employment protection legislation on industrial performance.

A majority share of 83.99% of total operating factories and a significant percentage of around 31.75% of the workers in the organised industrial sector in India was already outside the purview of job security provisions of IDA before the introduction of IRC, 2020. The implementation of IRC, 2020 will affect only 7.07% of operating factories and 15.97% of total workers employed in the organised industrial sector nationwide. A majority of workers (52.3%) concentrated in the large factories will continue to be covered against layoffs, retrenchments, and closures. Hence, the decision of the central government to relax the threshold from 100 or more workers under the 1982 IDA amendment to the 1976 level of 300 or more workers under IRC 2020 is a well-calculated and balanced move. The IRC, 2020 sheds away the image of a highly regulated labour market regime and displays a pro-business mindset.
to attract investment without being anti-labour. Moreover, the act will serve as a step towards uniformity and regional parity in employment protection laws in the country.

However, it is crucial for the government to closely monitor the organised labour market and keep a policy option of discretionary usage and temporary expansion of the coverage of IRC open if warranted by a threat of mass job losses. Initially, the employment protection provision under IDA through the 1976 amendment was introduced as the last resort remedy to contain mass job losses. These provisions should continue to be practised with the same purpose of restraining mass job losses and not encourage more red tape. Since a significant proportion of the workers covered under the IRC comprise of low- and semi-skilled workers, the government and trade unions need to take adequate measures and investments towards up-skilling and re-skilling of these workers to minimise the severity of job losses. The government needs to strike a middle ground in pursuing industrial relations reforms—neither anti-employers nor anti-labour, balance is the key.

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