INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 10 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

THE ESCAPE CLAUSE: UNGUIDED DELEGATION, EXECUTIVE DISCRETION AND THE CONSTITUTIONAL LIMITS OF SECTION 2(P) OF THE INDUSTRIAL RELATIONS CODE, 2020

AUTHOR – PURVESH KOTHEKAR, STUDENT AT NALSAR UNIVERSITY OF LAW

BEST CITATION – PURVESH KOTHEKAR, THE ESCAPE CLAUSE: UNGUIDED DELEGATION, EXECUTIVE DISCRETION AND THE CONSTITUTIONAL LIMITS OF SECTION 2(P) OF THE INDUSTRIAL RELATIONS CODE, 2020, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR),* 6 (10) OF 2026, PG. 181-187, APIS – 3920 – 0001 & ISSN - 2583-2344. DOI - https://doi.org/10.65393/IJLRV6I1023

ABSTRACT

Section 2(p)(iv) of the Industrial Relations Code, 2020 permits the Central Government to notify any activity out of the statutory definition of "industry," removing the workforce engaged in that activity from every protection the Code provides, including trade union recognition, collective bargaining, dispute resolution, standing orders, and retrenchment compensation. This paper argues that the provision is unconstitutional on three cumulative grounds. First, it violates the doctrine against unguided delegation. Parliament codified the Triple Test from Bangalore Water Supply & Sewerage Board v. A. Rajappa *as the governing definition of "industry," then delegated to the executive an unqualified power to override that definition for any activity, without criteria, standards, or procedural preconditions. Applying* In Re Delhi Laws Act, Hamdard Dawakhana v. Union of India*, and* Vasu Dev Singh v. Union of India*, the paper shows that this exceeds the constitutional limits on delegated legislation. Second, the provision violates Articles 14, 19(1)(c), and 21. It is manifestly arbitrary under the* Shayara Bano *standard, destroys the collective bargaining infrastructure that gives effect to Article 19(1)(c), and removes the statutory conditions that make the Article 21 right to livelihood operative. Third, the provision subverts the Directive Principles-based welfare state mandate under Articles 38, 39, and 43A by enabling deregulation through executive notification rather than legislative amendment, bypassing the parliamentary accountability that the constitutional scheme requires. The paper concludes that Section 2(p)(iv) delegates the declaration of legislative policy rather than its implementation, and proposes reforms including criteria-governed exclusions, time-bound notification powers subject to parliamentary approval, and mandatory statements of reasons.*

INTRODUCTION

The Industrial Relations Code, 2020 ("IRC") consolidates three statutes of collective labour law: the Industrial Disputes Act, 1947 ("IDA"), the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946.[500]

Section 2(p) of the IRC defines "industry," which is the threshold concept determining whether the IRC's protective framework applies to any given workforce. The definition substantially codifies the Triple Test laid down by a seven-judge constitutional bench in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, confirming that systematic activity carried on through employer-worker cooperation for the production or distribution of goods and services constitutes "industry," irrespective of profit motive or capital investment. Sub-clauses (i), (ii), and (iii) carve out principled exclusions: charitable institutions, sovereign governmental functions, and domestic service.[501]

[500] Industrial Relations Code, 2020, Statement of Objects and Reasons.

[501] *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, (1978) 2 SCC 213.

Sub-clause (iv) is of a different character. It provides that the definition of "industry" does *not* include "any other activity as may be notified by the Central Government." This provision transforms the IRC from a statute of fixed definitional scope into an instrument of executive discretion. When a notification is issued, the establishment ceases to be an "industrial establishment" under Section 2(r), the persons employed in it cease to be "workers" under Section 2(zr), and they lose access to every protective mechanism the IRC provides, including trade union recognition, collective bargaining, industrial dispute resolution, standing orders, retrenchment compensation, and protection against unfair labour practices.[502]

This paper argues that Section 2(p)(iv) is unconstitutional on three cumulative grounds. Part II situates the definitional stakes by tracing the evolution of "industry" from the IDA through *Bangalore Water Supply* to the IRC. Part III maps the structure of the Escape Clause and the legal consequences its exercise triggers. Part IV analyses the Escape Clause against the doctrine of unguided delegation, drawing on *In Re Delhi Laws Act* (1951), *Hamdard Dawakhana v. Union of India*(1960), and *Vasu Dev Singh v. Union of India* (2006). Part V examines the Fundamental Rights violations under Articles 14, 19(1)(c), and 21. Part VI addresses the Directive Principles and the welfare state mandate. Part VII considers exemption clause jurisprudence. Part VIII advances the structural argument. Part IX proposes reforms.

WHAT "INDUSTRY" MEANS FOR WORKERS

The concept of "industry" is the threshold criterion determining whether the protective apparatus of collective labour law applies to a given body of workers. Under Section 2(j) of the IDA, "industry" was defined to encompass "any business, trade, undertaking, manufacture or calling" on the employer side and "any calling, service, employment, handicraft, or industrial occupation or avocation" on the workmen side.[503] That width generated decades of litigation.

The Supreme Court's resolution in *Bangalore Water Supply* settled the question. The Triple Test requires: first, a systematic activity; second, carried on through cooperation between employer and employee; third, for the production, supply, or distribution of goods or services to satisfy human wants. Neither profit motive nor capital investment is a prerequisite. The nature of the activity, not the identity of the actor, is the determinative criterion.[504]

The IRC codified the Triple Test directly into Section 2(p). The definition mirrors the *Bangalore Water Supply* framework, systematic activity, employer-worker cooperation, production, supply or distribution, and satisfaction of human wants. Sub-clauses (i) and (ii) expressly confirm that capital investment and profit motive are irrelevant. This legislative crystallisation of the constitutional bench's framework was, in principle, a sound exercise of Parliament's power to declare legislative policy.[505]

Sub-clause (iv) contradicts this design. Parliament codified the Triple Test as the governing policy, then delegated to the Central Government the power to override it for any activity it chooses, without providing any criteria. The legislature must retain the essential function of declaring the legislative policy and laying down the standard; sub-clause (iv) abandons this function for the most consequential definitional question in Indian labour law.[506]

ANATOMY OF SECTION 2(P)

Section 2(p)(iv) has five structural features that distinguish it from a valid delegation. First, the subject-matter of the power is unlimited. "Any activity" encompasses manufacturing, banking, healthcare, education, information technology, and logistics alike. No activity is beyond the reach of a single notification. Second, the power is vested exclusively in the Central Government,

[502] Industrial Relations Code, 2020, ss. 2(p)(iv), 2(r), 2(zr).
[503] Industrial Disputes Act, 1947, s. 2(j).
[504] Bangalore Water Supply, at 248.
[505] Industrial Relations Code, 2020, s. 2(p)(i)(ii)
[506] In Re Delhi Laws Act, AIR 1951 SC 332, at 366 (Mukherjea J.).

not in the "appropriate Government" as defined by Section 2(b). A single notification can therefore deprive workers of "industry" status across all States without any State legislative input.[507]

Third, there are no procedural preconditions. Section 5 of the Factories Act, 1948, examined by the Supreme Court in *Gujarat Mazdoor Sabha v. State of Gujarat*, required the objective existence of a "public emergency" before any exemption notification could be issued; the Court held that the precondition had to be demonstrated as an objective fact. Section 2(p)(iv) imposes no precondition whatsoever. Fourth, there is no temporal limit; notifications are permanent by default. Fifth, no statement of reasons is required.[508]

The downstream consequences of a Section 2(p)(iv) notification are total. When an activity is notified out of the definition of "industry," the establishment ceases to be an "industrial establishment or undertaking" within Section 2(r), which defines that term by reference to establishments "in which any industry is carried on." The persons employed in it cease to be "workers" within Section 2(zr). The effect is comprehensive, no trade union recognition under Chapter III, no standing orders under Chapter IV, no industrial dispute reference under Chapter V, no protection against unfair labour practices, and no retrenchment compensation, lay-off benefits, or closure notice requirements under Chapters VIII and IX. One notification effects the total exclusion of an entire workforce from the IRC.[509]

Constitutional Limits on Delegated Legislation

The constitutional foundation for challenging Section 2(p)(iv) on delegation grounds is settled. In *In Re Delhi Laws Act*, a seven-judge bench established that Parliament may delegate powers to subordinate authorities but cannot abdicate its essential legislative functions. Kania CJ held that the determination of legislative policy and its formulation as a rule of conduct are the essential elements of the legislative function that cannot be delegated. Mukherjea J. was more categorical, he said that the legislature must declare the policy and lay down the standard, it may delegate the task of filling in details, but it cannot create a parallel legislature. Fazl Ali J. warned against Parliament effacing itself by delegating power so wide as to make the delegate a legislature in all but name.[510]

The standard for invalidity was articulated in *Hamdard Dawakhana v. Union of India*. The Court struck down the portion of Section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, that empowered the Government to specify "any other disease or condition" without criteria, holding that Parliament had established no criteria, no standards, and had not prescribed any principle on which a particular disease or condition was to be specified, and that the power must therefore be held to go beyond the permissible boundaries of valid delegation.[511]

Vasu Dev Singh v. Union of India adopts the *Hamdard Dawakhana* formulation and extends it to hold that a delegatee cannot virtually repeal a welfare statute through an exemption notification. The Court declared that a change of legislative policy is the sole prerogative of the legislature and that a statute can be amended or repealed only by the legislature, the delegatee cannot exercise the power to modify the essential features of the legislative scheme. The Court additionally held that the Administrator had no jurisdiction to issue a notification with a permanent impact.[512]

Section 2(p)(iv) fails every dimension of this test. There are no criteria. There are no standards. There is no principle. There are no procedural safeguards. There is no temporal limit. What Parliament has delegated is not the power to fill

[507] Industrial Relations Code, 2020, ss. 2(b), 2(p)(iv).
[508] Gujarat Mazdoor Sabha v. State of Gujarat, (2020) 14 SCC 232; Factories Act, 1948, s. 5.
[509] Industrial Relations Code, 2020, ss. 2(r), 2(zr), chs. III, IV, V, VII, VIII, IX.
[510] In Re Delhi Laws Act, AIR 1951 SC 332, at 347 (Kania CJ), 366 (Mukherjea J.), 413 (Fazl Ali J.).
[511] Hamdard Dawakhana v. Union of India, AIR 1960 SC 554, para. 28.
[512] Vasu Dev Singh v. Union of India, (2006) 5 SCC 709, paras. 112, 117–18.

in administrative details within a declared policy; it is the power to determine the scope of the IRC's application. That is a legislative function. The sub-clause confers uncontrolled power, and it is therefore constitutionally void.[513]

The contrast with valid notification powers reinforces this conclusion. In *Basant Kumar Sarkar v. Eagle Rolling Mills*, the Supreme Court upheld Section 1(3) of the Employees' State Insurance Act, 1948 on two grounds: the law was complete and the executive merely determined the timing of operationalisation (conditional legislation), and even if treated as delegated legislation, the statute's preamble, definitions, and benefit provisions supplied sufficient guidance.[514] Section 2(p)(iv) satisfies neither condition. It does not operationalise a complete law; it modifies the definitional scope of the IRC itself, and the IRC supplies no guidance on which activities may be excluded or on what criteria.

FUNDAMENTAL RIGHTS

Article 14

The arbitrariness analysis under Article 14 proceeds from the principle laid down in *E.P. Royappa v. State of Tamil Nadu* that equality is antithetic to arbitrariness, and where an act is arbitrary, it is implicit that it is unequal both according to political logic and constitutional law.[515] *Shayara Bano v. Union of India* extended this doctrine to legislation, holding that a statutory provision is constitutionally invalid if it is manifestly arbitrary, that is, capricious, irrational, or disproportionate without an adequate determining principle.[516]

Section 2(p)(iv) confers power to exclude "any activity," a phrase incapable of meaningful limitation. A power exercisable by notification alone, without criteria, standards, reasons, or review triggers, is not the exercise of a determinative legislative principle, it is the conferral of legislative power on the executive without the discipline of criteria. This satisfies the *Shayara Bano* test for manifest arbitrariness. The provision also lacks intelligible differentia between included and excluded activities: sub-clauses (i), (ii), and (iii) carry identifiable rationales, sub-clause (iv) excludes whatever the Central Government happens to notify, which is by definition incapable of providing an intelligible principle of classification.[517]

Article 19(1)(c)

The Article 14 analysis establishes that the power itself is arbitrary. The consequences of its exercise engage the more specific guarantee under Article 19(1)(c). Workers' right to form associations and unions is meaningful only if the legal framework conferring collective bargaining rights remains in place. As the Supreme Court recognised in *All India Bank Employees' Association v. National Industrial Tribunal*, the right of collective bargaining is implicit in Article 19(1)(c).[518] A notification under Section 2(p)(iv) removes workers from the IRC's collective bargaining architecture entirely. The right to form a union becomes formally available but practically hollow: the union exists but has no collective bargaining rights, no right to recognition under Chapter III, and no access to industrial dispute machinery under Chapter V.[519]

Article 21

The combined effect of arbitrariness under Article 14 and the destruction of associational infrastructure under Article 19(1)(c) culminates in a violation of Article 21. In *Gujarat Mazdoor Sabha*, the Supreme Court held that a worker's right to life cannot be deemed contingent on the mercy of the employer or the State.[520] The right to livelihood, part of Article 21 since *Olga Tellis v. Bombay Municipal Corporation*,[521] is engaged when workers lose access to retrenchment compensation, standing orders, and dispute

513 Hamdard Dawakhana, AIR 1960 SC 554, para. 28; accord Dwarka Prasad Laxmi Narain v. State of U.P., AIR 1954 SC 224, at 231.
514 Basant Kumar Sarkar v. Eagle Rolling Mills, (1964) 6 SCR 913, at 20–21; Employees' State Insurance Act, 1948, s. 1(3).
515 E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555, at 583.
516 Shayara Bano v. Union of India, (2017) 9 SCC 1, paras. 101–04 (Nariman J.).
517 *Id.* at para. 101; *see also* State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75, at 80.
518 All India Bank Employees' Association v. National Industrial Tribunal, AIR 1962 SC 171, at 182.
519 Industrial Relations Code, 2020, chs. III, V.
520 Gujarat Mazdoor Sabha, (2020) 14 SCC 232.
521 Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545, at 572.

resolution by executive notification. Workers stripped of "industry" status do not merely lose procedural protections; they lose the substantive security that those procedures protect. The right to fair conditions of labour, recognised under Article 21 in *Consumer Education & Research Centre v. Union of India*,[522] is rendered inoperative by a notification that removes workers from the only statutory framework designed to give it effect.

Directive Principles and the Welfare State Mandate

The constitutional welfare state argument rests on *Minerva Mills Ltd. v. Union of India*. Chandrachud CJ, for the majority, held that Parts III and IV of the Constitution are like two wheels of a chariot, one no less important than the other, and that the harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure.[523]

Bhagwati J., concurring, held that the Directive Principles are not excluded from the court's cognisance; they are merely made non-enforceable by a court of law. Article 37 imposes a positive constitutional obligation on the State to apply these principles in making laws.[524]

Articles 38, 39, 41, and 43A of the Constitution impose obligations on the State in the labour context. Article 38 requires the State to strive to promote the welfare of the people by securing a social order in which justice, social, economic, and political, shall inform all the institutions of national life. Article 39 requires, among other things, that the State direct its policy towards ensuring adequate means of livelihood. Article 43A mandates the participation of workers in the management of undertakings. Section 2(p)(iv) creates a mechanism by which the Central Government can remove any workforce from the statutory framework designed to implement these obligations.[525]

The Ambedkar materials relied upon in *Gujarat Mazdoor Sabha* are significant here. The Court cited Ambedkar's Constituent Assembly speech, noting that the word "strive" in Article 38 was chosen deliberately to foreclose the argument that financial or economic exigency prevents compliance with the welfare state mandate.[526] The Central Government's power under Section 2(p)(iv) to exclude activities from "industry" status is precisely such an escape route: it allows deregulation by notification whenever economic flexibility is preferred, without the accountability that legislative amendment would require and without the judicial scrutiny that a criteria-governed exclusion would invite.

Jurisprudence on Exemption Clauses in Beneficial Statutes

Exemption clauses in welfare legislation must be construed strictly against the party claiming the benefit of the exemption, and such clauses cannot be so wide as to negate the legislative purpose of the statute.[527] The Supreme Court in *Vasu Dev Singh* held that the power of exemption cannot be exercised so as to virtually repeal the statute, just as a donee of a limited power cannot convert it into an unlimited one.[528]

Section 2(p)(iv) fails this test for a reason more fundamental that it is not an exemption power in the conventional sense. A true exemption power operates within an established statutory framework, removing specific entities or transactions from otherwise applicable obligations. Section 2(p)(iv) operates at the definitional level, it removes activities from the concept of "industry" upon which the IRC is built. It does not exempt a notified activity from particular IRC obligations; it extinguishes the legal relationship between the IRC and all workers in that activity. This distinction carries constitutional weight, because the definitional

[522] Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42, para. 24.
[523] Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625, at 667.
[524] *Id.* at 703–04 (Bhagwati J., concurring); INDIA CONST. art. 37.
[525] *Id.* arts. 38, 39(a), 41, 43A.
[526] Gujarat Mazdoor Sabha, (2020) 14 SCC 232 (citing 7 Constituent Assembly Debates (Nov. 19, 1948)).
[527] P.J. Irani v. State of Madras, AIR 1961 SC 1731, at 1738.
[528] Vasu Dev Singh, (2006) 5 SCC 709, paras. 110–11, 143.

scope of a welfare statute is its legislative core, not an administrative detail.[529]

The comparison with Section 5 of the Factories Act confirms this. The Supreme Court in *Gujarat Mazdoor Sabha* struck down notifications issued under Section 5 even though that provision contained a "public emergency" threshold, required objectively demonstrable conditions, and limited each notification to three months.[530] Every constraint that Section 5 of the Factories Act possesses, Section 2(p)(iv) lacks. If the narrower power was struck down for want of jurisdictional preconditions, the broader power with no preconditions at all is constitutionally indefensible *a fortiori*.

Deregulation by Notification

The above doctrinal analysis, unguided delegation, fundamental rights, directive principles, and exemption clause jurisprudence converge on a structural concern. Section 2(p)(iv) enables a migration of decision-making authority from Parliament to the executive on questions that go to the legislative core of the IRC. This migration is constitutionally significant for reasons distinct from the doctrinal grounds already discussed.

Workers' access to the legislative process, through parliamentary representation, trade union lobbying, and public discourse, is the counterweight to executive power that the constitutional design provides. When decisions about the scope of labour protection migrate from Parliament to the executive, that counterweight is removed. A notification under Section 2(p)(iv) is not preceded by parliamentary debate, is not subject to a vote, and need not be laid before Parliament for approval or rejection. The decision to exclude an entire workforce from statutory protection is taken administratively, below the threshold of democratic deliberation.[531]

The IRC was enacted as part of four labour codes presented under the "ease of doing business" agenda. The Escape Clause received little scrutiny in the legislative process. Its function is to allow adjustments to the scope of labour protection to occur without the political costs that legislative amendment would entail. The *Minerva Mills* vision of Parts III and IV as two wheels of a constitutional chariot requires that the rights of labour, like the rights of capital, be subject to constitutional discipline. Section 2(p)(iv) exempts the executive's labour-deregulatory decisions from that discipline.[532]

Conclusion and Proposals for Reform

Section 2(p)(iv) of the Industrial Relations Code, 2020, is constitutionally void on three grounds. It violates the doctrine against unguided delegation: Parliament has established no criteria, no standards, and no principle to govern the Central Government's power to exclude "any activity" from the definition of "industry." It violates Articles 14, 19(1)(c), and 21, the power is manifestly arbitrary for want of any determinative principle; its exercise destroys the collective bargaining infrastructure that makes Article 19(1)(c) effective, and it deprives workers of the conditions that make the Article 21 right to livelihood operative. It subverts the Directive Principle-based welfare state mandate under Articles 38, 39, and 43A, by enabling deregulation by notification, it creates the executive escape route from the commitment to labour welfare that the constitutional design forecloses.

The failure is, at bottom, a single failure: the failure to recognise that definitional scope in a welfare statute is legislative policy, and that the power to declare legislative policy belongs to Parliament, not to the executive. The Escape Clause does not delegate the implementation of a declared policy, it delegates the declaration of the policy itself. That is abdication, not delegation.

[529] *Cf.* Basant Kumar Sarkar, (1964) 6 SCR 4, at 22; Vasu Dev Singh, (2006) 5 SCC 709, para. 111.
[530] Gujarat Mazdoor Sabha, (2020) 14 SCC 232; Factories Act, 1948, s. 5.
[531] *Cf.* Jyoti Pershad v. Administrator for the Union Territory of Delhi, AIR 1961 SC 1602, at 1611; State of Punjab v. Khan Chand, AIR 1974 SC 543, paras. 18–21.
[532] Minerva Mills, (1980) 3 SCC 625, at 667; Gujarat Mazdoor Sabha, (2020) 14 SCC 232.

Three reforms follow from the analysis. First, Parliament should delete Section 2(p)(iv) and replace it with a list of criteria-governed exclusions, each with a rationale analogous to those in sub-clauses (i) through (iii). Second, if a residual notification power is retained, it should be limited to time-bound notifications not exceeding two years, subject to parliamentary approval or rejection within sixty days, and exercisable only after tripartite consultation between the Central Government, representative employer organisations, and recognised trade union bodies. Third, any notification under a reformed provision should be required to contain a statement of reasons addressing the criteria prescribed by Parliament, creating a record amenable to judicial review.[533]

Deregulation by legislation is constitutionally permissible. Deregulation by notification is not.

[533] *See* Jyoti Pershad, AIR 1961 SC 1602, at 1611; Khan Chand, AIR 1974 SC 543, paras. 18–21.