

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 5 | Issue 1**

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**2022**

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# The Industrial Relations Code, 2020: Legislative Commentary

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## ABSTRACT

*Labour is the backbone of modern society. Developing countries like India require a systematic and transparent approach to the conduct of their workforce. The Industrial Relations Code, 2020 was introduced to provide single comprehensive legislation to tackle all the requisite requirements for the workforce of the country. In view of the evolving requirements of the workforce, the Code aims to benefit both companies and employees. It intends to streamline the dispute resolution process, protect fixed-term workers, mandate the implementation of standing orders by all big industrial enterprises, establish a re-skilling fund for retrenched workers, and increase fines to prevent non-compliance. This legislative commentary aims to interpret the nuances with respect to the inherent need for an articulate labour code in India as well as their implementation in practice.*

**Keywords:** Labour, social security, welfare, trade unions, industrial disputes

## I. INTRODUCTION

Labour and the workforce have always been an essential part of society. Thus, the need for regulating the industrial relations and labour sector in an articulate and decisive manner is imperative. In India, Labour falls under the Concurrent List of the Constitution, which allows both the Centre and State to make laws with regards to it. The existing laws prevalent prior to the introduction of the Industrial Relations Code of 2020 were considered archaic and had inconsistent definitions, as stated by the Second National Commission on Labour.<sup>2</sup> It was suggested that central labor regulations be consolidated into broader groups such as (i) industrial relations, (ii) pay, (iii) social security, (iv) safety, and (v) welfare and working conditions to make compliance easier and assure uniformity in labor laws. Initially, the bills were introduced in 2019 in adherence to the suggested bifurcation but were eventually replaced on September 28, 2020, when the government notified the Industrial Relations Code, 2020, with the goal of modernizing existing labor and employment legislation. The Code has not yet

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<sup>2</sup> Report of the National Commission on Labour, Ministry of Labour and Employment, 2002, <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>.

come into effect yet but has repealed the three fundamental labor laws which were prevalent: Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947. The new Code has 14 chapters, 104 sections, and three schedules in relation to labour and workforce.

### **(A) Scope and Analysis**

The need for an articulate code on labour was evident in India, and essentially this Code was introduced with the intention to harmonize and modernize the laws governing trade unions working conditions in industrial enterprises, along with the investigation and resolution of industrial disputes.

The Code has put forth a lot of important changes that were required with relation to strengthening the grievance redressal mechanism, benefits of permanent employees extended to more fixed-term workers, deterrence of arbitrary strikes, enhanced wage ceiling for coverage for supervisory employees under workers etc. to name a few. The Code has also changed the definition of Industry in consonance with the landmark case of Bangalore Water Supply and Sewerage Board v. R. Rajappa and Ors<sup>3</sup> which is now more exclusive in terms of the activities involved alongside changes in the wider interpretation of definitions of worker, employee and employer. Trade unions and their legal standing was also dealt with in this Code which was a required amendment.

## **II. TRADE UNIONS**

The ‘employer-employee’ connection, in which there is a ‘mutuality’ between employers and employees, is the foundation of trade unions. This traditional employment connection has weakened rapidly over the last few decades, owing to the emergence of novel types of employment that are characterized by contractual and casual labour. The evolution of trade unions in India goes back to the Independence era, which dealt with economic progress and where the importance of workers and trade unions were immensely valued to ensure the upliftment of the economy, which gave rise to legislation like the Industrial Relations Act and Trade Union Act to regulate the need of the hour. Upon liberalization and movement towards a free market and outsourcing trends had caused a decline for a collective workforce<sup>4</sup> where the alternate form of social action for workers was at a rise like NGOs, CSR initiatives by corporations and HR involvement in trade union activities. Thus, the need for an evolved

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<sup>3</sup> Bangalore Water Supply and Sewerage Board v. R. Rajappa and Ors 1978 AIR 548

<sup>4</sup> International Labour Organization, “*The future of work: Trade Unions in transformation*”, Volume 9, Issue 1-2, IJLR, 2019

perspective towards trade unions was required.

Article 19(1) of India's Constitution, which guarantees all citizens the fundamental right to freedom of speech, captures the core of unionism and bargaining. The freedom to form organizations or unions.<sup>5</sup> In the case of *All India Bank Employees v. National Industrial Tribunal*,<sup>6</sup> the Supreme Court expanded the definition of this right in a multitude of ways.

The Central Government has also submitted the Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021, with the implementation of the Industrial Relations Code, 2020, which will aid the central legislation.

Trade unions are addressed in Chapter III of the Code. The Code is the first central law to recognize trade unions as negotiating units. The field was covered by a non-statutory Code of Discipline as well as some state legislation that handled the matter all along because there was a statutory void at the federal level on the subject. The majority of the legislation relating to trade union organization, bylaws, registration, amendment, fund constitution, membership fee, and other features are retained. The old Trade Unions Act of 1926 did not feature any mandates with regards to recognition and registration for trade unions and just dealt with a framework on the registration and operation of the registered trade unions. The vacuum also carried forward with respect to the lack of framework for negotiating councils or unions as well. Maharashtra and Kerala, however, addressed this vacuum in an ad hoc manner. Thus, the federal level change was imperative, which was brought about by the 2020 Code.

The new provision recognizes a negotiating union or negotiating council as the exclusive and authorized bargaining entity for unionized personnel under Section 14 of the Code. When there is just one trade union in the workplace, the employer must recognize it as the bargaining union. However, if there are many unions, the one with at least 51 percent of the employees' support will be recognized. If no union has 51 percent of the workers' support, the employer must form a negotiating council made up of representatives from each union with at least 20 percent of the employees' support, followed by proportional representation from all other unions. It further stipulates that any agreement reached between the negotiating committee and the employer is binding on the employees.<sup>7</sup> The recognition given to a union that is prescribed as a negotiating union is valid for up to three years since the date of recognition, and the extension

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<sup>5</sup> Constitution of India, Article 19(1)(c)

<sup>6</sup> *All India Bank Employees v. National Industrial Tribunal* 1962 AIR 171

<sup>7</sup> Industrial Relations Code 2020, Section 14(3)

for the same is up to maximum 10 years, which is based on the union/employer's consent.<sup>8</sup> The introduction of the notion of a solo negotiating union is a positive step because, in many cases, the presence of many unions forces employers to negotiate employment terms and benefits with each one separately, and the creation of consensus is unlikely, making the collective bargaining process laborious and time-consuming.

The stance for the rights of unregistered trade unions remains the same with effect to the fact that they have no rights.<sup>9</sup> The Supreme Court had previously recognized the existence of many trade unions and, while noting the distinctions in rights between recognized and unregistered organizations, found that recognition of a trade union facilitates effective bargaining.<sup>10</sup>

The Code prescribes under Section 22 the jurisdiction over disputes arising between trade union members over management, administration or election matters as well as for disputes between two or more trade unions is with the Industrial Tribunal. As a result, once the Code takes effect, civil courts will no longer have jurisdiction over such issues.<sup>11</sup>

### III. CONCLUSION AND SUGGESTIONS

The expansion of an economy is dependent on the expansion of corporations, which in turn is dependent on the growth of its workers and employees. This is only conceivable in the context of an atmosphere that allows workers to air their grievances and express their thoughts on issues that directly or indirectly affect their jobs. Since power is typically concentrated in the hands of employers, it is critical to balance this by giving workers equal, if not greater, influence. This is where the significance of labor unions comes into play.

Digitalization and the rise of the gig economy, especially since the pandemic, maybe one of the most enduring reasons for the changing role of collective bargaining and trade unions.<sup>12</sup> In a heavily digitalized future dominated by the gig economy, the role of trade unions is critical. This future, marked by heterogeneity, individuality, and technology, appears to be at odds with traditional collective bargaining principles; nonetheless, the interplay between the gig economy and trade unions is unavoidable.

The opportunities for reviving the future of collective bargaining and trade union is in the

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<sup>8</sup> Industrial Relations Code 2020, Section 14(6)

<sup>9</sup> B Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees ASSN and Ors CA Appeal No. 3719 of 2006

<sup>10</sup> Balmer Lawrie Workers' Union, v. Balmer Lawrie And Co. Ltd. And Ors 1985 AIR 311

<sup>11</sup> Industrial Relations Code 2020, Section 22(2)

<sup>12</sup> Rao, E. M. "The Rise and Fall of Indian Trade Unions: A Legislative and Judicial Perspective." *Indian Journal of Industrial Relations*, vol. 42, no. 4, Shri Ram Centre for Industrial Relations and Human Resources, 2007, pp. 678–95, <http://www.jstor.org/stable/27768099>

process. Parallel events are taking place in the United States and the United Kingdom, both of which are likely to have an impact on the future of collective bargaining and trade unions. The importance and role of trade unions will undoubtedly continue as a result of reforms such as the recognition of bargaining unions and the streamlining of the grievance redressal process in the newly proposed Industrial Relations Code, 2020. Given that the Code has yet to be implemented, it is too early to state decisively what this means internationally and for India. These changes, on the other hand, unmistakably point to a comeback of collective bargaining and trade union activity in the country.

**(A) Suggestions**

1. More clarity on the criteria and procedure for the grant of recognition to the trade unions at the Central and State levels.
2. It is critical that the mode of verification has to be determined after extensive consultations with relevant workers' groups in order to ensure that the employer recognizes only unions that are truly independent and representative of the workers, which is not mandated in the Code and should be included
3. The Code does not specify whether the agreement negotiated with the negotiating union is obligatory on all unionized workers who are members of separate unions, which should be clarified.

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