
CRITIQUE OF THE INTERPLAY BETWEEN THE TRADE UNIONS ACT, 1926 AND THE LABOUR CODES

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Introduction To Contemporary Labour Laws

Parliament and state legislatures in India each have authority over labour-related concerns thanks to the complex network of labour laws that is firmly rooted in the Constitution's Seventh Schedule.¹ The complex web of over a hundred federal and forty state statutes governs this authority's wide-ranging jurisdiction over topics such as wage and social security policies, workplace safety, and dispute settlement.

Salient Features of the Trade Unions Act, 1926

- **Definition and Registration:** The Trade Unions Act provides a clear definition of a trade union as an organisation that is always evolving and whose main goal is to govern relations between employees, employers, or other employees.²
- A thorough memorandum outlining the trade union's name, objectives, regulations, and the details of its office-bearers is required for mandatory **registration**, which is a prerequisite for legal recognition.³
- **Minimum Membership Requirement:** An intentional provision was made to encourage grassroots engagement by setting the minimum membership criterion at seven members.⁴
- **Immunity:** The Act confers immunity upon registered trade unions and their members,

¹ INDIA CONST. Art 226.

² The Trade Unions Act, § 2(h), No. 16, Acts of Parliament, 1926.

³ Re India Steam Navigation Workers Union, AIR 1936 SC.

⁴ The Trade Unions Act, § 5, No. 16, Acts of Parliament, 1926.

shielding them from legal actions such as tort or conspiracy during trade disputes.⁵

- **General Funds:** Enumerating the purpose of general funds, the Act ensures a judicious allocation for salaries, allowances, dispute resolution, and unemployment benefits.⁶
- **Cancellation of Registration:** Registration may be cancelled under specific conditions, including the cessation of existence or violations of the Act's provisions.⁷
- **Rights and Liabilities:** Registered trade unions enjoy a spectrum of rights, including the right to sue and be sued, own property, and enter into agreements. Simultaneously, they bear liabilities, especially for the actions of their officials acting as union representatives.⁸
- **Recognition:** Recognition, unlike a compulsory mandate, is subject to negotiation between employers and trade unions, showcasing the dynamism inherent in industrial relations.⁹

Significance of Labour Legislation: Economic and Policy Analysis:

The impact of India's labour laws is seen across the country's economic and policy spheres, moulding the dynamics between employees and employers. The complex function of labour laws in promoting social and economic development, **protecting workers' rights**, and impacting the **nation's economic trajectory** is uncovered in this part through an in-depth examination of economic and policy factors.

1. Economic Impact of Labour Legislation

1.1 Formal Recognition of Trade Unions

An essential aspect of labour legislation is the **official recognition of trade unions**. This acknowledgement serves to facilitate the process of collective bargaining, which offers workers a **well-organized forum to express their concerns** and engage in negotiations aimed at improving

⁵ The Trade Unions Act, § 4, No. 16, Acts of Parliament, 1926.

⁶ The Trade Unions Act, § 17, 18, No. 16, Acts of Parliament, 1926.

⁷ The Trade Unions Act, § 15, No. 16, Acts of Parliament, 1926.

⁸ The Trade Unions Act, § 10, No. 16, Acts of Parliament, 1926.

⁹ The Trade Unions Act, § 13, No. 16, Acts of Parliament, 1926.

their working circumstances. The result is a more equitable employer-employee dynamic, which enhances workplace stability and overall economic efficacy.¹⁰

1.2 Capacity Enhancement for Union Formation

Labour legislation has a crucial role in strengthening the ability of workers to establish labour unions. These laws **enhance the ability of workers** to form collective organisations and increase their negotiating leverage by establishing legal structures and safeguards. The enhanced capacity allows individuals, especially those from **marginalised sectors**, to actively engage in decision-making processes that directly influence their welfare.¹¹

1.3 Collective Bargaining as an Empowerment Tool

Collective bargaining, a powerful means of empowerment allowed by labour laws, enables workers to directly negotiate terms and circumstances that have a **direct impact** on their livelihoods.

2. Policy Implications of Labour Legislation

2.1 Promotion of Authentic Unionism

Labour regulations play a crucial role in monitoring and differentiating between genuine unions and those motivated by deception or political agendas. These laws contribute to the **establishment of a valid and effective union environment** by setting requirements for union registration and specifying the **rights and obligations of registered unions**. Consequently, this promotes authentic portrayal and guarantees that unions are in accordance with the concerns of their members.

2.2 Regulating Labour Disputes

Regulating labour disputes is a crucial component of labour legislation. These regulations reduce

¹⁰ Sidhu, P. and Suman, P., 2021. How Impactful Trade Unions & Strikes In India in Present Time. Mathematical Statistician and Engineering Applications, 70(2), pp.991-998.

¹¹ Highlights of the Sixth Economic Census, 2013-14, National Statistics Commission, Government of India.

interruptions in the workplace and promote a stable industrial environment by establishing a **systematic framework for resolving disputes**. This not only confers advantages to workers and businesses, but also carries wider ramifications for **economic productivity and growth**.

2.3 Social Security and Economic Progress

Labour laws encompass social security provisions, which aim to address the welfare of workers during periods of joblessness. These rules **promote social stability** by specifying the permissible uses of the **general funds** of registered trade unions, such as paying benefits to members during periods of unemployment. Consequently, this has **favourable economic consequences** since a workforce that feels socially protected is more inclined to make meaningful contributions to the nation's economic advancement.

Challenges and Critiques

Impact on Small Enterprises

Labour laws are designed to safeguard the rights of workers, but they can provide difficulties, especially for **small businesses**. The apprehension of the requirement of obtaining prior authorization for **downsizing or shutting down** operations without a readily available alternative is seen as an obstacle to the expansion of small enterprises. The multitude of labour rules, encompassing **inspections, returns, and registrations**¹², imposes an **onerous administrative** burden on small firms, further exacerbating the issues they encounter. Striking a balance between ensuring worker **protection and promoting company growth** presents a complex policy dilemma.

Reduced Collective Bargaining efficiency due to multiplicity of trade unions

In 2015, India has **12,420 trade unions** with an average **membership of 1,883**. No rigorous eligibility standards exist for official management negotiations. Union settlements are only

¹² Rahul Kapoor, Trade Union in India, Object of the Trade Union Act, 1926 and Various Short Comings of the Trade Unions in India, 4 Supremo Amicus 393 (2018).

enforceable by unions. This affects **workers' collective bargaining**. The possibility of non-employees joining trade unions has also sparked worries.¹³

Informal Sector Dynamics

A substantial proportion of the Indian working force is engaged in the informal sector, which is predominantly exempt from official employment regulations. **The Economic Survey (2018-19)** emphasised that around **93%**¹⁴ of the entire labour force is engaged in **the informal sector**. Addressing the **disparity between formal labour regulations** and the ever-changing conditions of the informal sector presents a crucial policy dilemma. It is crucial to develop legislation that effectively tackles the **distinct requirements and difficulties** faced by informal workers in order to achieve comprehensive and inclusive labour regulation.¹⁵

Future Directions and Recommendations

Modernization and Consolidation

In response to the changing socio-economic environment, attempts have been made to update and streamline employment regulations. The proposal to merge central labour regulations, as suggested by the **2002 2nd National Commission on Labour**¹⁶, demonstrates a progressive perspective. The implementation of Bills addressing Wages, Industrial Relations, Social Security, and Occupational Safety, Health, and Working Conditions represents a shift towards a more cohesive and up-to-date labour legislative framework.

Recognition Criteria and Collective Bargaining

Stringent qualifying standards for official trade union-management negotiations are needed to improve labour regulations. **The National Commission of Labour's proposal** to offer a union **with 66% member support' recognition'** is a good start.¹⁷ Consistent union subscriptions as a

¹³ "Structural Changes in India's labour markets", Chapter 10, Economic Survey 2015-16.

¹⁴ Volume I, Annual Survey of Industries (2017-18), Ministry of Statistics and Programme Implementation.

¹⁵ G. Ramanujam, *The Honey Bee: Towards a New culture In Industrial Relations* 36(1985).

¹⁶ "Structural Changes in India's labour markets", Chapter 10, Economic Survey 2015-16.

¹⁷ Volume I, Annual Survey of Industries (2017-18), Ministry of Statistics and Programme Implementation.

foundation for recognition votes can also assess union power, encouraging accountability and legitimacy.

Smaller companies with less than 300 employees could benefit from inclusive union selection.

Labour Relations Commissions, secret votes, and safety from management can make decision-making more inclusive and democratic. The Standing Committee on Labour supports mandatory trade union recognition to promote diversity and representation. In **2019**, the Ministry of Labour and Employment introduced four Bills to unify **29 central labor laws**¹⁸, aiming to modernize and simplify labor regulation.

Inclusivity in Decision-Making

These Codes cover Wages, Industrial Relations, Social Security, and Occupational Safety, Health, and Working Conditions. The Code on Wages, 2019 passed in Parliament, while the other three Bills were referred to the **Standing Committee on Labor**. (*Refer: Table*)

¹⁸ “Summary of results for factory sector”, Annual Survey of Industries (2017-18), Ministry of Statistics and Programme Implementation.

THE CODE ON WAGES, 2019	THE CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS, 2020	THE SOCIAL SECURITY CODE, 2020
<i>1. The Payment of Wages Act, 1936</i> <i>2. The Minimum Wages Act, 1948</i> <i>3. The Payment of Bonus Act, 1965</i> <i>4. The Equal Remuneration Act, 1976.</i>	<i>1. The Factories Act, 1948</i> <i>2. The Plantations Labour Act, 1951</i> <i>3. The Mines Act, 1952</i> <i>4. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955</i> <i>5. The Working Journalists (Fixation of Rates of Wages) Act, 1958</i> <i>6. The Motor Transport Workers Act, 1961</i> <i>7. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966</i> <i>8. The Contract Labour (Regulation and Abolition) Act, 1970</i> <i>9. The Sales Promotion Employees (Conditions of Service) Act, 1976</i> <i>10. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979</i> <i>11. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981</i> <i>12. The Dock Workers (Safety, Health and Welfare) Act, 1986</i> <i>13. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.</i>	<i>1. The Employees' Compensation Act, 1923</i> <i>2. The Employees' State Insurance Act, 1948</i> <i>3. The Employees Provident Fund and Miscellaneous Provisions Act, 1952</i> <i>4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959</i> <i>5. The Maternity Benefit Act, 1961</i> <i>6. The Payment of Gratuity Act, 1972</i> <i>7. The Cine Workers Welfare Fund Act, 1981</i> <i>8. The Building and Other Construction Workers Welfare Cess Act, 1996</i> <i>9. The Unorganized Workers' Social Security Act, 2008.</i>
THE INDUSTRIAL RELATIONS CODE, 2020 <i>1. The Trade Unions Act, 1926</i> <i>2. The Industrial Employment (Standing orders) Act, 1946</i> <i>3. The Industrial Disputes Act, 1947.</i>		

Comparative Legislative and Judicial Analysis

The **Industrial Relations Code (IRC)**, a unifying force, **consolidates various acts** into a singular, streamlined statute. Addressing the inadequacies of the Trade Unions Act, it explicitly **prohibits**

strikes without advance notice. However, concerns linger about the perceived advantage given to companies in recruiting temporary workers during strikes.

Evolution of Labour Legislation

The ***Trade Unions Act of 1926***, which forms the basis of labour legislation in India, was influenced by the labour laws of the colonial period in England. Over the course of time, this Act has had multiple modifications, which mirror the evolving dynamics of industrial relations in **India after gaining independence**. Nevertheless, the Act is nevertheless based on the concepts of *laissez-faire* that were dominant at that time period. The necessity for reform became evident, leading to the **2002 2nd National Commission on Labour's recommendation** to consolidate central labour legislation.

Following the legislative process, **four Bills were introduced between 2015 and 2019** with the objective of **modernising and streamlining** labour regulation. The ***Code on Wages, 2019***, was successfully enacted by Parliament, signifying a noteworthy achievement. Nevertheless, the three remaining Bills, which pertain to Industrial Relations, Social Security, and Occupational Safety, Health, and Working Conditions, are currently being examined by the Standing Committee on Labour.

The Industrial Relations Code (IRC) proposes a **comprehensive and integrated approach**. The IRC is a significant legislation that combines the

- ***Industrial Disputes Act of 1947***¹⁹,
- the ***Trade Unions Act of 1926***²⁰, and
- the ***Industrial Employment (Standing Orders) Act of 1946***²¹.

This consolidation aims to simplify and unify different areas of industrial relations, providing a

¹⁹ The Industrial Disputes Act, No. 14, Acts of Parliament, 1947 (India).

²⁰ The Trade Unions Act, No. 16, Acts of Parliament, 1926 (India).

²¹ The Industrial Employment (Standing Orders) Act, No. 20, Acts of Parliament, 1946 (India).

more coherent legal structure.

The **IRC's approach to strikes** reaches a crucial turning point. The Trade Unions Act, which does not explicitly address the right to strike, has traditionally depended on the Industrial Disputes Act. The IRC, on the other hand, **implements a rigorous framework**. According to **Section 6(2)**²², workers are forbidden from engaging in strikes without providing prior notice, regardless of the type of services they provide. This measure seeks to introduce certainty to industrial actions but raises apprehensions regarding the potential asymmetry it generates, favouring employers in the hiring of temporary workers among strikes.

In the *Buckingham Mill Case*,²³ the Madras High Court emphasised the need for laws to protect trade unions, acknowledging the possible legal consequences that union leaders may face when carrying out lawful union activities. This judicial viewpoint emphasises the intricate equilibrium necessary in labour regulation to guarantee the safeguarding of both workers and union leaders.

The Supreme Court's statements regarding the freedom of workers to participate in strikes have exhibited subtlety within the legal domain. In the *Kameswar Prasad*²⁴ case, it was determined that the right to go on strike is not considered a fundamental right. This is in contrast to the *All-India Bank Employees' Association*²⁵ case, where it was upheld that workers have a constitutional right to form associations for mutual assistance and protection, as stated in **Article 19(1)(c)**.

The case of *Karol Leather Karamchari Sangathan v. Liberty Footwear Company*²⁶ acknowledged collective bargaining as a voluntary method for settling employment-related matters without the use of force. **Section 14**²⁷ of the IRC pertains to the function of a labour union as the exclusive representative for negotiation, provided it represents a **majority of 51 percent or more of the membership**. Curiously, the Trade Unions Act fails to formally acknowledge or endorse the practice of collective bargaining, revealing a significant deficiency in the legal

²² The Industrial Relations Code, 2020, § 62, Act No. 35 of 2020 (India).

²³ *Buckingham And Carnatic Co. Ltd vs Workers Of The Buckingham and Carnatic*, 1953 AIR 47

²⁴ *Kameswar Prasad and Ors. v. State of Bihar and Anr.*, AIR 1962 SC 1166.

²⁵ *All India Bank Employees' Association v. N.I.Tribunal*, AIR 1962 SC 171.

²⁶ *Karol Leather Karamchari Sangathan v. Liberty Footwear Company*, AIR 1990 SC 247.

²⁷ Industrial Relations Code, 2020, § 14, Act No. 35 of 2020 (India).

structure.

Global Perspective on Trade Unions

While India has not ratified the **Freedom of Association and Protection of the Right to Organise Convention, 1948**,²⁸ it aligns with global best practices for collective bargaining. Drawing inspiration from **Germany's co-determination model**, where workers find representation on company boards, India seeks to strike a balance between employer and employee interests.

Considering a worldwide perspective, India's position on the **Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention 87)**, becomes relevant. Although India has not officially approved this convention, it adheres to certain internationally recognised standards for collective bargaining. The lack of ratification raises important inquiries regarding the degree to which India integrates international labour standards into its own legal system.

Germany, renowned for its strong industrial relations, has implemented the practice of co-determination, which grants workers the right to be represented on business boards. This paradigm promotes employee engagement in decision-making processes, cultivating a collaborative partnership between employers and employees. The German method sharply contrasts with the current situation in India, leading to consideration of the possible advantages of introducing similar practices into the Indian context.

Recommendations on Policy

- I. The **vote for recognition** might be cast by considering a regular deduction from a worker's pay for **union subscription**. This subscription **payment model** would consistently evaluate the comparative influence of various labour unions.
- II. In establishments with **less than 300 employees**, the selection of the negotiating union may be determined by the **Labour Relations Commissions**. This process may include

²⁸ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), art. 3.

conducting a secret ballot to prevent any possible retaliation from the company's management.

III. The **Standing Committee on Labour (2009)** additionally endorsed the compulsory recognition of trade unions.

IV. The **National Commission of Labour** has recommended providing 'recognition' to a union that has the support of **66% of its members**. If a union fails to secure the backing of at least 66% of its members, then unions that have more than 25% support shall be given proportional representation on a bargaining committee.

Conclusion

The **primary objective** of the **Industrial Relations Code, 2020** was to enhance the working conditions for Indian labourers and foster the holistic progress of the country. The implementation of various regulations aimed at protecting workers' rights and reducing unjust terminations would lead to increased job security and stability. The code establishes rules to **promote collaboration between employees and management**, resulting in a more favourable work climate and increased production.

In order to enhance the protection of workers' rights and interests, it is essential to **formally acknowledge trade unions** and enable employees to engage in corporate decision-making. However, a significant obstacle arises from the **limited comprehension of the code's** requirements by both employees and employers. Furthermore, certain businesses and individuals may exhibit a **reluctance to comply with the newly enforced** legal obligations. Another hindrance arises from the limited availability of resources required for executing the code.

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