

Impact Of The Industrial Relation Code 2020 On The Trade Union In India: A Critical Study

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Abstract

In 2020, India implemented a complete overhaul of its labour laws concerning trade unions, industrial discourse, and employees' rights with the Industrial Relation Code. The purpose of this research paper is to critically analyze the most significant elements of the Code, as they pertain to: recognizing trade unions; providing fixed terms to employment contracts; establishing standing orders; defining what constitutes unfair labour practices; providing workers with the right to strike; and providing a requirement of social dialogue within the provisions of the Drafting Legislation. The study will examine how these provisions will impact the registration of trade unions, the ability of trade unions to collectively bargain, the nature of contractualisation in the workforce and how flexible the labour market can be. The decline in political representation by employees and the increasing power imbalance between employers and employees is evident by the rising number of informal employees and the declining participation of developing groups in trade unions. For these reasons, the recommendations provided to Central, State and Employers' Representatives include increasing membership of informal workers in trade unions; improving grievance resolution systems; and increasing the use of employment generation skills training programs. These measures will act to improve the partnership between employers and employees, while also being in addition to the Industrial Relation Code.

Keywords: The industrial relations code 2020, Labour law reform, Trade union

Introduction

The code comprised in the industrial relations code 2020 (IRC 2020) is one of India's most significant legislative consolidations within India's contemporary labour law framework. The code was created through a broader labour-law reform initiative undertaken by the Indian government. Through its enactment, three existing labour-related statutes were merged into one streamlined, holistic, and comprehensive instrument: trade unions act 1926 and the industrial employment (standing orders) act 1946, and, the industrial disputes enactment 1947. As well as being single document with a clearly defined objective (enhancing clarity, reducing compliance burden), the IRC 2022 is also intended for the modernization of India's industrial relations ecosystem.¹

India's labour laws have been fragmented and inconsistent with rigid procedures for many years. Labour scholars have raised multiple concerns regarding the complexity of the authority that can take action on workers' claims; the large number of groups involved in handling labour disputes, the slow process of resolving disputes, and the lack of effective enforcement of labour rights; all resulting in uncertainty as to whether workers' rights would

¹ Ministry of Labour and Employment, Government of India, *The Industrial Relations Code, 2020: An Overview* (2020).

be enforced, leading to frequent litigation by workers seeking justice.² The IRC 2020 consolidates a number of laws that govern how unions will be created, how unions will create rules for themselves, how employees negotiate their pay, how employers and employees resolve workplace disputes, and how employees and employers relate to one another.³

The National Labour Policy 2020 is intended to bring the Indian labour market into line with international labour standards by encouraging flexibility for businesses, promoting confidence among investors, and creating a predictable dispute resolution mechanism.⁴ Industry groups have consistently said that the complicated compliance requirements of the previous system prevent companies from growing and investing and limit their flexibility to change their labour force during downturns in the economy.⁵ Meanwhile, trade unions and labour rights groups have expressed concern that giving employers greater flexibility will weaken workers' protections and weaken collective negotiating structures.⁶

The IRC 2020 includes many new and important components. These include the establishment of a statutory "single negotiating union" or negotiating council, new thresholds that determine whether standing orders apply to your company, stricter procedural rules that are required for a strike or lockout, and the establishment of new specialized industrial tribunal systems to expedite the resolution of disputes between employees and employers.⁷ These New provisions also formally recognize fixed-term employment. The IRC 2020 has created a balance between the operational requirements of the employer and the social security entitlement for a worker with a fixed-term employment contract.⁸

Finally, the IRC 2020 seeks to unify the structure of India's dispute resolution processes by enhancing the conciliation process, creating a formal structure for arbitration, and introducing electronic methods of filing documents and registering trade unions.⁹ According to government reports, the above-mentioned provisions will help reduce pendency, enhance transparency, and create an environment that is conducive to industrial peace and economic growth.¹⁰

Subject to achieving a fair and balanced set of regulations, the Code does not, as some labour economists argue, produce a favourable environment for employers. By increasing the number of employees that employers must meet before laying off any employee, limiting

² S.C. Srivastava, *Industrial Relations and Labour Laws* 15 (Vikas Publishing, New Delhi, 7th edn., 2021).

³ V.G. Goswami, *Labour and Industrial Laws* 248–252 (Central Law Agency, Allahabad, 12th edn., 2020).

⁴ International Labour Organization, *India Labour Market Update* (ILO, New Delhi, 2020).

⁵ Confederation of Indian Industry (CII), *Towards Labour Law Reforms: Industry Perspective* (CII, New Delhi, 2019).

⁶ K.R. Shyam Sundar, "Impact of Labour Law Reforms on Industrial Relations in India," 55(1) *Indian Journal of Labour Economics* 35 (2019).

⁷ The Industrial Relations Code, 2020 (Act 35 of 2020), ss. 14, 28, 62, 44–50.

⁸ O.P. Malhotra and K.M. Malhotra, *The Law of Industrial Disputes* 112 (LexisNexis, Gurgaon, 7th edn., 2015).

⁹ PRS Legislative Research, *The Industrial Relations Code, 2020: Bill Summary* (PRS, New Delhi, 2020).

¹⁰ Standing Committee on Labour, Ministry of Labour and Employment, *Report on the Industrial Relations Code, 2020* (2020).

workers from striking over non-collective agreements, and taking away a percentage of the bargaining power of small unions.¹¹ Critics have also expressed that without implementing the provisions in a strong manner, informal workers will not gain the advantages from formalising their workspace, bargaining collectively with their employers, or having a way to address grievances.¹²

To gain a greater understanding of the industrial relations system in India, this report will critically analyse the major provisions of the IRC 2020, determine how they will impact the rights of trade unions, collective bargaining, workforce contractualisation, industrial stability and the future of industrial relations. The analysis combines law and economics to provide an accurate report of how the IRC 2020 reshapes industrial relations and the role, power and influence of trade unions in modern India.

Special Features Of The Industrial Relations Code, 2020

The introduction of the Industrial Relations Code 2020 enhances and updates the way Industrial Relations are regulated in India and has some very important features to support those objectives. The Code will bring together three major Labour Laws (the Industrial Relations Act, the Industrial Disputes Act and the Trade Union Act) into one unified framework to make compliance more efficient and to reduce confusion about how to interpret the requirements of all three Acts.¹³ The following subsections elaborate on the key features of the Code.

- i. **Simplification and Consolidation:** The IRC 2020's most significant attribute is the merging of three major labour laws into a single unified statute - the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders), Act 1946. The intent of this merger was to achieve uniformity, eliminate duplication, and provide greater administrative efficiency.¹⁴ Experts have raised concerns about the many pieces of legislation covering different aspects of employment law in India resulting in inconsistencies in their implementation by various jurisdictions as well as delays or confusion over when GBS applies.¹⁵ The combination of three separate laws into one comprehensive labour type legislation will provide clarity to all employers as to how they must comply with their employment obligations
- ii. **Enhanced Flexibility for Employers:** The new IRC has increased the number of workers that businesses may need to seek government permission for prior to layoff, retrenchment, or closure from 100 to 300 within industrial establishments. This increase to 300 was endorsed by multiple committees and associations representing the industry as a means of allowing for flexibility in operations, thus making them more competitive.¹⁶ Some

¹¹ G.K. Roy & Amaresh Dubey, "A Note on the Industrial Relations Code, 2020," 65(3) *Indian Journal of Labour Economics* 425 (2022).

¹² K.V. Ramaswamy, "Informal Employment and Labour Market Policies in India," 39(29) *Economic and Political Weekly* 3317 (2004).

¹³ V.G. Goswami, *Labour and Industrial Laws* 248–252 (Central Law Agency, Allahabad, 12th edn., 2020).

¹⁴ PRS Legislative Research, *The Industrial Relations Code, 2020: Bill Summary* (PRS, New Delhi, 2020).

¹⁵ S.C. Srivastava, *Industrial Relations and Labour Laws* 15 (Vikas Publishing, New Delhi, 7th edn., 2021).

¹⁶ Confederation of Indian Industry, *Towards Labour Law Reforms: Industry Perspective* (CII, New Delhi, 2019).

labour scholars believe that the introduction of these minimum figures may result in reduced job security for the many smaller businesses in India, which account for a significant portion of the total workforce.¹⁷ The report from the Standing Committee also pointed out the potential harmful impact that failure to implement proper protective measures may have on job stability.¹⁸

- iii. **Strengthened Dispute Resolution Mechanisms:** Significant priority has been placed on conciliation, arbitration, and adjudication through specialized tribunals under IRC Section 44-50 Streamlined Processes and two-member tribunal processes for faster decision-making.¹⁹ The overall goal of this is to eliminate backlog and speed up resolution of the continuously persistent issue of Industrial Disputes in India. According to Malhotra (2010), who commented on the establishment of Professionalized Dispute Resolution Mechanisms to eliminate chronic delay within the former framework.²⁰ Additionally, both strikes and lockouts are prohibited when conciliation or tribunal proceedings are in process, as the Code is intended to promote Industrial Peace through these actions.²¹ However, many argue that as the conciliation process becomes professionalized, prolonged proceedings can have an indirect effect on the rights of workers to strike.²²
- iv. **Digital And Transparent Processes:** The Code encourages the use of Digital Services to register Trade Unions, submit statutorily required Returns, and File documents related to disputes with the requirement that the Ministry of Labour reduce paperwork, increase transparency, and expedite Administrative Processes.²³ Digitalization will provide substantial increases to access and availability of Grievance Mechanisms and to ensure Compliance Procedures are consistent and standardised between States.⁴
- v. **Workers' Rights And Protections:** The Code offers businesses more flexibility but also includes provisions that protect workers. Some examples of protections are:
 - Mandatory separation payment upon termination
 - Provision of a Fund to provide support to help displaced workers improve their skills;
 - Equal recognition of fixed-term contracts with permanent workers, (including pro-rata payment of Gratuities).²⁴

¹⁷ K.R. Shyam Sundar, "Impact of Labour Law Reforms on Industrial Relations in India," 55(1) *Indian Journal of Labour Economics* 35 (2019).

¹⁸ Standing Committee on Labour, Ministry of Labour and Employment, *Report on the Industrial Relations Code, 2020* (2020).

¹⁹ The Industrial Relations Code, 2020 (Act 35 of 2020), ss. 44–50

²⁰ O.P. Malhotra & K.M. Malhotra, *The Law of Industrial Disputes* 112 (LexisNexis, Gurgaon, 7th edn., 2015).

²¹ The Industrial Relations Code, 2020 (Act 35 of 2020), s. 62.

²² G.K. Roy & Amaresh Dubey, "A Note on the Industrial Relations Code, 2020," 65(3) *Indian Journal of Labour Economics* 425 (2022).

²³ Ministry of Labour and Employment, *Overview of Labour Codes* (Government of India, 2020).

²⁴ The Industrial Relations Code, 2020 (Act 35 of 2020), s. 2(o).

ILO experts have observed that combining social protection with flexibility is becoming more common in modern economy labour markets.²⁵

- vi. **Collective Bargaining Structure:** The Code sets up a procedure for the identification of a Recognized Negotiation Union or a Negotiating Council. If the union represents 51 % of the workforce, that union is the single negotiation representative. If there is no dominant union representing the majority of the workforce, a negotiating group shall be designated, based on the membership of each bona-fide union.²⁶ This approach intends to limit the number of unions competing for members and provide a viable venue to promote effective bargaining. However, some labour economists believe this approach could negatively impact minority unions and limit the ability of diverse worker groups to be represented.²⁷

Implications Of The Industrial Relations Code, 2020

The Industrial Relations Code (2020) has made significant changes to how workers, employers, and trade unions are treated. The Industrial Relations Code (2020) also impacts many different aspects of Industrial Relations, including Dispute Resolution, Employment Security, and Collective Bargaining and Regulation of the Workforce. Each of these major provisions has the potential to benefit Industrial Relations in India while, at the same time, pose some level of risk to the current way Industrial Relations operate in India.

- i. **Notice For Strikes and Lockouts (Section 62):** Section 62 of the Industrial Relations Code (IRC) provides for a notice period of 14 days before the commencement of any strike or lockout, after which such notice continues to be valid for a period of 60 days and applies to all industrial establishments.²¹ This provision is to ensure that there is no premature interruption to production and give both parties an opportunity to negotiate or conciliate before taking industrial action.²⁸ Stability of the Industrial Manufacturing Sector from Unannounced Strikes. However, labour law experts contend that unless the IRC increases procedural requirements, workers' rights to strike are likely to be significantly impeded, as this is one of the principal aspects of collective bargaining.¹⁷ Strike activity will be unlawful during conciliation, arbitration or tribunal hearings; therefore, the IRC creates an extended period of time in which workers have no legal capacity to take industrial action.²¹ Because many of these processes can take months to complete, the leverage that workers and trade unions hold is likely to weaken.²²
- ii. **Standing Orders (Section 28 / 30):** The IRC will amend the requirement for standing orders to only apply to shops with 300 or more employees.³⁴ This is consistent with the longstanding requests of those in industry for relief from compliance obligations for small businesses.⁷ Standing orders govern the conditions under which workers will work, including classification of employment, leave, termination, grievance procedures and punishable acts.¹⁶ Raising the minimum number of employees may result in a reduction of regulatory clarity and transparency for employers with fewer than three hundred employees and could expose

²⁵ International Labour Organization, *World Employment and Social Outlook* (ILO, Geneva, 2020).

²⁶ The Industrial Relations Code, 2020 (Act 35 of 2020), s. 14.

²⁷ K.V. Ramaswamy, "Labour Market Institutions in India," 39(29) *Economic and Political Weekly* 3317 (2004).

²⁸ Standing Committee on Labour, Ministry of Labour and Employment, *Report on the Industrial Relations Code, 2020* (2020). Supra note 18.

employees working at these establishments to arbitrary employee policies and practises.²⁸ According to labour economists, this reallocation of workforce employment due to the implementation of flexible/workforce adjustment policies may be accelerating the in formalisation or contract-based employment in the smaller industries which, as of now, represent more than half of all workers in India.²⁸

iii. Dispute Resolution Mechanisms (Sections 44 and 50): The Industrial Relations Code (IRC) has established a streamlined mechanism for resolving disputes by creating a framework of:

- Industrial Tribunals that are comprised of a judicial member as well as an administrative member,
- A National Industrial Tribunal that will hear and adjudicate all matters of national importance,
- A new system of more structured conciliation and arbitration between employers and employees.¹⁹

This institutional restructuring is a direct response to the massive backlog of cases that are currently in the adjudication process and to increase the amount of time that arbitrators have to render their decisions.²⁰ Malhotra has indicated that historically, the delays caused by disputes would often cause a remedy to be ineffective and therefore, required structural reform to be effective.²⁰ Critics, however, believe that as a result of the increase in the number of members of unions that are being sought for union representation and the narrowed scope of Article 10 regarding strikes, the dispute resolution mechanism will result in limiting the ability of workers to respond spontaneously to employer unfairness and encouraging unions to rely heavily on the legal system and not collective response.²²

iv. Layoffs, Retrenchments, and Closures (Section 77): Section 77 elevates the threshold of when an employer must obtain government prior approval for layoffs, retrenchment and closing of business from 100 workers to 300.²⁹ Industry representatives support this threshold elevation or increase, since it will provide employers with greater flexibility to react to both positive and negative economic changes within their business.¹⁶ Studies that compare labour markets on a global basis have illustrated that flexibility with regard to adjusting the workforce will provide employers with greater opportunities to invest, improve their competitive advantage, and create sustainable business models.²⁶ Labour unions contend that by increasing the threshold, there is greater risk of decreasing the stability of employment for those workers within firms that fall within the middle-sized range, as many of these workers have limited union referral services available to them.¹⁷

v. Fixed-Term Employment (Section 2(O)): The IRC provides for statutory recognition of fixed-term employment as well as creation of parity of benefits a temporary worker receives with a permanent employee, including an employee's eligibility to receive gratuity benefits on a prorata basis after one year of employment.²⁵ These provisions are in line with ICCPCS international labour standards that promote equality between a temporary or fixed term employee and a permanent employee.²⁶ However, some scholars argue that if fixed term contracts are widely adopted for employment, it will result in fewer long-term

²⁹ The Industrial Relations Code, 2020 (Act 35 of 2020), s. 77.

contracts which would lead to a decline in union membership as the workers under fixed term contracts generally are reluctant to join or lead efforts to unionize.³⁰

Table 1: Key Features of Fixed Term Employment Contracts

Parameter	Provisions in law
Duration	Up to maximum tenure stipulated for the job
Working condition	Cannot be discriminatory compared to permanent workers.
Gratuity	Pro-rata basis after 1 year of service.

vi. **Regulation Of Contract Labour (Section 45):** Section 45 of the IT Code allows for the licensing of contractors to ensure contractors meet their obligations to provide employment records and welfare facilities to those employees who are on contract.³¹ While this has been established to reduce the abuse of vulnerable contract employees by contractors, it ultimately will depend on the effective implementation of such a requirement.¹³ Historically, there has not been sufficient oversight of compliance with these contract employment laws and regulations, which has negated the protective purpose of the laws for contract workers.²⁰

vii. **Grievance Redressal Committee (Section 4):** The Code requires all industrial enterprises that employ an aggregate of 20 or more workers to create a Grievance Redressal Committee (GRC).³² The GRC is intended to help resolve issues at establishment level in an informal and timely manner. A number of earlier studies cite evidence to support the conclusion that functional grievance procedures can improve the relationship between management and workers, thus lowering industrial unrest.¹⁵ However, without adequate representation and training, these committees run the risk of becoming a "paper exercise" instead of a viable means in which members can participate.⁴

viii. **Negotiating Union and Negotiating Council (Section 14):** The Code sets forth a systematic structure for negotiating between management and unions in the follow manner:

➤ A designated negotiating union will be a union with greater than or equal to 51% total members' support

➤ In cases of no unions meeting the 51%, a negotiable union council shall be established with proportional representation. The goal of the above is to limit the amount of rivalry between unions and to provide a streamlined process to enable negotiations to proceed as quickly as possible. Government documentation indicates that many workplaces within India are plagued by multiple unions, which impede the ability of employers and unions to conduct coherent collective bargaining.⁷

Nonetheless, minority unions may be scared to become marginalised due to a system that could potentially limit the number of voices of varying types of workers at the table and to weaken union organising on a sector-specific basis or on a basis of caste.²³ However, minority unions fear marginalization under this model, as the 51% rule may limit diverse worker voices and weaken sector-specific or caste-based union mobilizations.²⁷

Trade Union

³⁰ K.R. Shyam Sundar, *Reforming Labour Markets in India* 141 (Routledge, London, 2021).

³¹ The Industrial Relations Code, 2020 (Act 35 of 2020), s. 45.

³² The Industrial Relations Code, 2020 (Act 35 of 2020), s. 4.

Introduction

Trade unions have played a significant role in creating and preserving workers' rights, fair working conditions and providing for the means of collective bargaining for those working in the industrial sector. Trade unions in India came to be strong contenders within the labour movement because of their ability to organise workers for improved employment terms and through legislation, as well as impact on developments in socioeconomics. The Industrial Relations Code Number 2020, alters how several aspects of the way unions function in India, such as registration, recognition of unions and the collective bargaining procedure

According to Section 2(zz) of the Industrial Relations Code, 2020, a "trade union" is defined as:

“A trade union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers, or between workers themselves, and includes any federation of two or more trade unions.”³³

Scholars contend that Trade unions' roles sometimes go beyond those of a workplace. Many scholars, in addition to the authors cited in the bibliographies of the textbooks provided, have identified unions as organisations that advocate, create laws and provide social services to protect the interests of workers.⁶ Historically, such roles have influenced the labour relations landscape throughout India and continue to grow and develop with the implementation of new regulations.

Historical Background

The beginning of Trade Union development in India can be traced back to the late 19th century when the Industrial Revolution brought about massive changes in working conditions and terms of employment for many people which resulted in difficult workplaces with poor working conditions, long hours for low pay, and many more workers having to leave their home countries to find employment in other countries where they could find work. What is known as the "modern" Trade Union Movement (i.e., AITUC) has been attributed to a single trade union activity from Bombay Mill Hands Association organised by N.M. Lokhande in 1890.¹⁵

The early years of the 20th Century were characterised by a large increase in the Trade Union Movement in India, culminating with the establishment of AITUC (All India Trade Union Congress) in 1920, which was the first all-India Trade Union Congress at national level.³⁴ AITUC was instrumental in promoting workers' rights and campaigning for legal regulation of the relationship between workers and employers.

The Trade Union Act of 1926 was the first comprehensive law to recognize trade unions as legitimate entities that could negotiate collectively and participate in labour conflicts.³⁵ The Industrial Disputes Act of 1947 established formal procedures for resolving disputes through compliance, legal determination, and arbitration.³⁶

After India gained its independence, numerous unions began to be formed, reflecting a range of political philosophies, leading to a growing number of labour organizations with active membership and rivalry.¹² The changes in India's economy that occurred due to the liberalization of the economy in the 1990s introduced additional fragmentation of the labour

³³ The Industrial Relations Code, 2020 (Act 35 of 2020), s. 2(zz).

³⁵ The Trade Unions Act, 1926 (Act 16 of 1926), s. 13.

³⁶ The Industrial Disputes Act, 1947 (Act 14 of 1947), ss. 3–11.

force caused by privatization, contract arrangements, and informal jobs. Unions found it challenging to negotiate stable conditions for employment in increasingly flexible labour markets.³⁷

The Industrial Relations Code of 2020 introduced more structural changes, including the additional requirement of a notice period of 14 days before an employee can go on strike and more formal recognition of unions that represent the interests of negotiating stakeholders.²¹ Although the Industrial Relations Code was created to simplify industrial relations for unions, some critiques have questioned whether the provisions in the Code will enhance or diminish labour's ability to negotiate collectively with employers.²²

Historically, the trajectory of Trade Unionism in India has evolved from grassroots organizing to an intricate structure established through the continually evolving economic, social and political environment. It is through this path of evolution, Trade Unions in India have increased their role in the establishment and preservation of worker's protection and influencing Industrial Relations.

Key Provisions Regarding Trade Unions

For the first time in India, the Industrial Relations Code (IRC) of 2020 offers a single and modernised framework for the Registration, Recognition, Rights and Duty of Trade Unions. The provisions of the IRC are designed to bring uniformity to the various processes currently followed, while also providing a clearer understanding of Collective Bargaining and the resolution of Industrial Disputes. The principal provisions of the IRC are set forth below.

- i. **Registration of Trade Unions:** Sections 5 through 9 of the IRC provide for the Registration of Trade Unions. To apply for Registration, a Trade Union must have at least seven workers continuing with the same requirement set forth in the Trade Unions Act, 1926.³⁸ an application for Registration shall include the Constitution or Rules of the Union setting forth criteria for membership, rates of subscriptions, and procedures for handling the funds of the Union. Upon receiving approval for Registration, the Trade Union shall be known as a Body Corporate (perpetual succession and common seal) with the Right to Enter into Contracts and hold Property.³⁵ Legal scholars indicate that the formalisation of Union Status creates greater transparency and accountability, this may hinder smaller Unions where the administrative capacity to comply with the terms of the IRC is absent.¹⁵
- ii. **Recognition of Negotiating Union / Negotiating Council:** Section 14 sets out a consistent method for establishing which union or council of unions will participate in collective bargaining at an establishment. Where there is only one union, the union is designated as the only negotiating union. Where there are two or more unions operating at the same establishment, the union with at least 51 per cent of members becomes the only negotiating union.¹⁹ In instances where no union has 51 per cent of members, a Negotiating Council is to be formed comprising representatives from unions representing an aggregate of 20 per cent of members at the establishment in question.³⁹ The rationale for these provisions is to limit the range of negotiating representatives and to promote effective collective

³⁷ Debashish Bhattacharya, "Trade Unions in India: Past, Present and Future," 38(52) *Economic and Political Weekly* 5485 (2003).

³⁸ The Industrial Relations Code, 2020 (Act 35 of 2020), ss. 5–9.

³⁹ Ibid.

bargaining; however, some commentators are critical as unions with a smaller membership will have less representation, and certain groups of workers may have no representation.²²

iii. Rights and Duties of Trade Unions: Sections 20 to 22 identify the functions and obligations of all recognised trade unions; these are as follows:

- Represent workers during the process of collective bargaining
- Assist with resolving disputes as they develop
- Maintain order and transparency within their organizations
- Provide an annual financial report to the Registrar.⁴⁰

The emphasis on internal governance parallels the international principle of a participatory and transparent approach to trade union activity.⁴¹

iv. Strikes and Lockouts: Section 62 establishes strict requirements regarding procedures for strikes and lockouts. Any individual or group that is planning to strike or lockout must notify their employer of the intention to strike or lockout at least 14 days before the intended action, and strikes may not occur.

- During the conciliation process
- During proceedings before a tribunal of adjudication
- Within a seven-day period after the conclusion of the proceedings.²¹

A breach of these requirements renders any strike illegal, and the workers and union(s) may be exposed to penalties.³⁹ Researchers state the above provisions may have a significant negative impact on workers' ability to take collective action during critical time periods related to Industrial conflicts.⁶

v. Standing Orders and Conditions of Service: With Section 28, standing orders will now apply to those establishments with at least 300 employees.⁷ Standing orders will now contain specific conditions of employment related to worker classification, working hours, wage rate, job misconduct and termination procedures.¹³ While providing flexibility to employers, experts within the labour community caution that the increase in the threshold for the standing orders may result in a lesser degree of formal procedure and protections being available to workers within the smaller size businesses.⁴

vi. Recognition of Central and State Trade Unions: Both the Central government and State government will now can recognise trade unions at their respective levels for purposes of participating on Tripartite bodies as well as the formation of policy.⁴² This will benefit the institutionalisation of being represented as workers in governance of labour in relation to the Federal and State levels. Historical research has also shown that recognised union groups have been instrumental in creating labour welfare policies.³⁷

Impacts Of Key Provisions On Trade Unions In India

⁴⁰ The Industrial Relations Code, 2020 (Act 35 of 2020), ss. 20–22.

⁴¹ International Labour Organization, *Freedom of Association and Collective Bargaining: ILO Standards* (ILO, Geneva, 2018).

⁴² The Industrial Relations Code, 2020 (Act 35 of 2020), s. 27.

The new Industrial Relations Code; 2020 still provides for several structural changes, which will continue to affect the way trade unions in India operate, the level of autonomy allowed to unions, as well as capacity to negotiate better terms for the workers. Although modernisation of labour regulations has been a focus for the Industrial Relations Code, it also has implications regarding the existing power structure of labour-management relations.

i. Registration and Legal Status (Sections 5–9): The reduced complexities associated with registration as a trade union should increase the likelihood of setting up a unionised workforce in some new sectors.³⁸ Corporate status provides Unions with an administrative and financial advantage. Nevertheless, small Unions and Unions with financial resources of a lesser nature may find that compliance with the following obligations creates a burden, such as maintaining comprehensive records, submitting Annual Audited Financial Statements, and filing Annual Returns.¹⁵ Academics have documented that the process of formalization favours larger coordinated Unions while at the same time making it more difficult for Unions made up of Grassroots or Informal Workers to organize and benefit from Collective Bargaining.³⁷

ii. Recognition: Negotiating Union and Negotiating Council (Section 14): When the 51% majority rule is applied in regard to negotiating unions, it centralises the power of Bargaining to a single Union wherever this is technically feasible.²⁶

Positive impacts include:

- The reduction of rivalry between Unions.
- The increased clarity of negotiations by Employers; and
- The establishment of structure in Collective Bargaining.

Potential adverse impacts include:

- The potential marginalization of smaller Unions or Minority Worker Groups;
- The concentration of power by the principal politically dominant Unions; and
- The limitation in representation of the interests of a diverse Workforce.²²

Labour Economists indicate that the proportional representation model as established by the Negotiating Councils may decrease the collective bargaining power of workers in Industries that are organized by more than one Union due to a fragmented Union System.¹⁷

iii. Strike and Lockout Restrictions (Section 62): The time requirements of a mandatory 14-day notice before union members may commence engaging in spontaneous collective action is hindered by numerous prohibitions on Union's ability to participate in Collective Action during conciliation and Adjudication Processes.²¹

The implications of the above restrictions on the collective action process will be:

- Reduce the immediacy of Industrial Action;
- Reduce the Union's bargaining leverage in cases of Urgent Disputes; and
- Develop a greater reliance on protracted legal processes.

Critics claim that the long periods of limitation on strike action undermine the fundamental power of Unions to engage in negotiations based on the collective pressure imposed by the Membership.¹⁷

iv. Standing Orders Threshold (Section 28 / 30): Raising the threshold of mandatory standing orders from 100 to 300 workers will remove many of the smaller and medium-sized businesses from formal scrutiny as to service conditions.⁷

Consequences for unions include:

- The cessation of many statutory means by which to challenge arbitrary employment practices,
 - A lack of enforcement for the establishment of uniform service rules for all establishments,
 - Increased segments of informal employment where the presence of unions is weak.⁴
- This is significant because 99% of India's workforce is employed in establishments with fewer than 300 workers.²⁸

v. Layoff, Retrenchment, and Closure Procedures (Sections 77–78): By raising the threshold for prior governmental permission to 300 workers, it will afford businesses more flexibility to reorganize their operations.²⁹

Implications:

- The ability to substantially reduce their workforce without statutory oversight,
- A substantial reduction in job security for employees of mid-sized businesses, and
- Continued erosion of unions' ability to prevent arbitrary dismissals.

Unions argue that this provision tilts the scales in favour of employers and, thus, leads to more precarious employment situations.⁴³

vi. Fixed-Term Employment (Section 2(O)): The formal recognition of fixed-term employment reinforces and enhances trends of contractualization. Employers can hire for a particular time without providing long-term stability for any worker.²⁴

Impacts on unions:

- A reduction in the number of permanent employees (traditionally the core constituencies of unions),
- Fewer workers are members of a union, and unions have less bargaining strength,
- Unions will increasingly have difficulty mobilizing temporary workers and would thus be less effective because of these mobilization difficulties.

According to research conducted by the ILO, the widespread use of fixed-term employment generally leads to weakened union density and reduced capacity to negotiate collectively for the long-term.²⁵

vii. Regulation of Contract Labour (Section 45) Section 45 of the Industrial Relations Code (IRC) seeks to ensure better regulations of contract labour, but its actual effect is determined by the enforcement of these regulations. In the past, gaps in enforcement have resulted in the failure of the protections provided for contract labour.⁸

Union challenges are:

- Difficulties in continuing to organize contract workers.
- Challenges of representing disparate groups of workers employed in different jobs, with different contract arrangements, for the same employer.¹³

viii. Grievance Redressal Committee (Section 4): Grievance Redressal Committees promote cooperative dispute resolution; however, they may diminish the importance of unions in resolving workplace grievances, a core function of unions in the past.³² The effectiveness of a Grievance Redressal Committee is determined by how many workers are active members, whether management is neutral during the processing of an employee's grievance, and the effectiveness of procedural training provided to committee members.¹⁵

- ix. Representation at Central and State Levels (Section 27):** The recognition of trade unions, and their representatives, on a national and state level is increasing the voice of trade unions in tripartite institutions and in decision-making bodies.⁴² The increased power of unions to shape labour policy may also increase the power of unions over similar activities on behalf of non-union members. However, independent/unaffiliated unions are generally not included when unions represent employees.³⁷

Recommendations For Effective Implementation Of The Industrial Relations Code, 2020

A coordinated approach between Government, Employers, Trade Unions and Labour Enforcement Agencies will enable effective implementation of December 2020 IR Code. These recommendations facilitate industrial flexibilities while ensuring worker protections, enhancing collective bargaining structures and providing clarity in regulation through transparency in regulation

- i. Strengthening Tripartite Consultation Mechanisms:** Tripartite bodies consisting of representatives from government, employers and trade unions should be established and strengthened at both the national and state levels to create opportunities for worker participation in the decision-making process.²⁵ 107. The Code establishes the basis for creating unions at both the national and state levels under Section 27, with the outcome of this process providing unions with meaningful representation only if there are regular consultations on rule-making, compliance frameworks, and dispute resolution processes.⁴² According to the International Labour Organization, social dialogue helps maintain stable industrial relations and reduces the likelihood of strikes and lockouts.⁴
- ii. Enhancing Transparency in Union Recognition Procedures:** The way in which negotiation unions/councils are determined under Section 14 must be done in a transparent, impartial manner and with regular reviews throughout the process.²⁶
Recommended Measures Include:
- Adopting a secret ballot verification process for membership.
 - Digital verification platforms for reduce manipulation.
 - Clearly defining how disputes related to union recognition are resolved.
- Empirical Research Studies have shown that when there are transparent recognition processes, inter union rivalry is less likely to exist and bargaining outcome is more favourable.⁶
- iii. Strengthening Enforcement of Contract Labour and Fixed-Term Provisions:** Section 45 (contract labour regulation) and Section 2(o) (fixed-term employment) require an improved labour inspection system for effective enforcement of these regulations.²⁴
Recommended Actions:
- Use Risk-Based Digital Based Inspections
 - Require Employers to Report On Contract Labour
 - Impose Penalties for Repeat Offenders
- According to ILO Research, countries with Strong Labour Inspection Systems Have Higher Rates of Compliance with Labour Standards.²⁵
- iv. Capacity-Building for Trade Unions and Worker Representatives:** Trade Unions Need Training and Support from Institutions in Order to Adjust to Regulatory Environment.¹⁵
Building capacities includes aiding around:
- Training on negotiation techniques

- Legal literacy around the I.R.C. provisions
 - Digital tools for memberships & grievance filing etc.
- Capacity building initiatives enable Unions to effectively represent workers in the growing sectors where the labour market is dominated by 'contract' or 'gig' employees.³⁷

v. Revisiting Thresholds for Standing Orders and Retrenchment Permissions:

Reconsidering the revised thresholds established by the Ministry of Labour around 300 workers for Standing Orders (Section 28) and the requirement for employer permission to carry out Lay-offs and Retrenchment (Section 77) will ensure the integrity of worker protection is maintained and not diluted.⁷

Recommendations:

- Each industry should undertake Impact Assessments on a sector-by-sector basis
- adopt a tiered threshold - e.g., Semi Mandatory (100 to 300 Employees).
- Incentives for Voluntary Compliance by Smaller Establishments.

Labour economists contend that flexibility should not come at the cost of Employment Security and Strength of Collective Bargaining Rights.¹²

vi. Promoting Collective Bargaining in the Informal Sector: A significant portion of the workforce in India is engaged in small or informal establishments. Therefore, collective representation must be promoted for workers in these sectors.⁴

Possible approaches to increase collective representation include:

- Facilitating Sectoral Level Bargaining
- Supporting Worker Cooperative Formation
- Utilising Social Security Organisations to assist with representation.³⁹

vii. Digitalization of Compliance and Grievance Systems: Digital Platforms will be created for submission of Return Lodging Avoidance Deadlines to HMRC, Filing of Grievances, Monitoring of Compliance, and Status Tracking of Disputes.²³ Digital Platforms will lessen the administrative burden and create greater transparency. The recent establishment of digital compliance portals (as part of the Government of India, Ministry of Labour's 'Shram Suvidha' initiative) will create a platform to enable better working conditions for the workers in 'Contract' employment within India.⁴⁴

viii. Awareness and Dissemination of New Labour Codes: Mass outreach initiatives are needed to target employees, small enterprises, HR managers, and trade unions alike to make sure that the transition is smooth.⁴⁵ Training modules, multilingual user guidebooks, and workplace seminars will allow stakeholders to get ready for the new Code.¹³

Conclusion

The Industrial Relations Code 2020 is arguably the most important event in the evolution of labour law in India since our nation achieved independence. This new Code is an effort to bring together the three main support statutes that currently regulate industrial relations (Industrial Disputes Act 1947, Trade Union Act 1926, Industrial Employment Standing Orders Act 1946) and therefore modernise the industrial relations system through one

⁴⁴ Ministry of Labour & Employment, *Shram Suvidha Portal: A Unified Labour Portal* (Government of India, 2021)

⁴⁵ Indian Labour Conference, *Report of the 47th Session* (Government of India, 2015).

integrated regulatory framework.²³ The Code's provisions serve two purposes: providing employers with greater flexibility within the labour markets and at the same time providing all employers and employees with more ways to settle disputes efficiently and clearly.

However, whether the Code enhances the position of trade unions and the level of protection afforded to workers has been debated vigorously. The introduction of more stringent procedural requirements for strike action under Section 62, raising the threshold at which a standing order or retrenchment is required, and formally recognising fixed term employment create a greater imbalance in favour of increased flexible employment for employers.⁷ These actions may enhance productivity and thus increase the amount of capital invested; Nevertheless, the establishment of these types of regulations is a major concern of diminishing the collective bargaining capabilities of employees and reducing job security, especially for employees employed by small and medium sized businesses who are the base of the Indian labour force.²⁷

In addition to the above, the Code also establishes several new initiatives that may further enhance the quality of Industrial Relation (IR) and Collective Bargaining (CB). The legal (or recognised) framework for Union/Negotiating Councils, the establishment of Grievance Redressal Committees and rationalising Alternative Dispute Resolution (ADR) mechanisms will provide more opportunities for both organised CB and quicker ADR.²⁷ Thus, if effective implementations occur, these avenues will aid in establishing Industrial Harmony, if there is good faith negotiations and Compliance on the part of all stakeholders.

Within both Serializable and Social Literature, a common theme among the authors is that successful labour reform depends not only upon statutory frameworks but enforcement, capacity-building, and Social Dialogue.⁴⁵ As demonstrated by the experience of other Countries, labour law Reform will not provide sustained benefits to societies unless there are strong systems of Inspection, inclusive tripartite consultation processes, and the empowerment of worker organisations.²⁶

To that end, a balanced approach is needed for any future regulation that provides for Economic Flexibility, Competition, and Worker Security [trade union rights], and a degree of democratic participation in IR. The Industrial Relations Code has a structural framework to achieve all of these, but its long-term sustainability and success is dependent upon careful implementation through continued stakeholder Dialogue and periodic Reviews to ensure that Worker Protection and Industrial Peace remain cornerstone elements within India's Labour Governance Framework.⁶

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