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**TRADE UNION LAW IN TRANSITION: AN ANALYSIS OF THE 2020
INDUSTRIAL RELATIONS CODE**

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ABSTRACT

The Industrial Relations Code, 2020 represents a fundamental change in India's trade union legislation, merging the Trade Unions Act, 1926, Industrial Employment (Standing Orders) Act, 1946, and Industrial Disputes Act, 1947 into a cohesive structure aimed at promoting industrial peace, labour adaptability, and economic development. This analytical assessment examines the Code's transitional effects, emphasizing changes such as obligatory acknowledgement of sole negotiating unions or councils in organizations with more than 300 employees, online union registration, and increased limits for layoffs, retrenchment, and closures without prior government consent (from 100 to 300 workers), which facilitate compliance for MSMEs while encouraging fixed-term employment with proportional benefits. Essential clauses recharacterize "worker" (wages up to ₹18,000), require 14-day notices for strikes, expand grievance committees to include 10 members, and enumerate further unfair labour practices, including employer meddling in unions. Nonetheless, detractors criticize an employer partiality, such as weakened strike rights, absent "trade dispute" definitions complicating multi-union situations, and exclusions for new entities, which may undermine collective bargaining amidst increasing informalization and a decline in union density (from 33% in 1983 to 20% by 2020). The Code updates dispute resolution through tribunals but poses the risk of power imbalances without strong social dialogue, calling for changes to ensure inclusive thresholds, funds for migrant workers, and unemployment insurance. It precariously balances protection and flexibility, requiring careful execution to ensure worker rights are upheld in India's changing labour environment.

Keywords: *Industrial Relations Code 2020, trade union recognition, collective bargaining, fixed-term employment, strike rights, labour law reforms, unfair labour practices, negotiating council, retrenchment thresholds.*

1. INDIA'S TRADE UNION MOVEMENT: HISTORICAL AND LEGAL OVERVIEW

The origins of the trade union movement in India can be traced to the late nineteenth century, particularly to the year 1890, with the establishment of the Bombay Mill Hands Association under the leadership of N. M. Lokhande. The association sought to articulate and address the concerns of textile workers employed in the mills of Bombay. Although this initiative represented an important early attempt at worker organisation, it lacked several features of a contemporary trade union, as its organisational framework and functional mechanisms were relatively limited. Significant momentum was gained by the trade union movement in the period following the First World War. Escalating prices, deteriorating living standards, and the rise of nationalist opposition to colonial governance contributed to widespread economic dissatisfaction, especially within industrial centres. In response, workers increasingly resorted to collective action in the form of strikes, often organised through representative committees. Many of these movements proved effective, resulting in

tangible improvements in wages and working conditions.

The growing success of industrial action in India, together with international developments such as the global recognition of labour rights and the formation of the International Labour Organization, further reinforced the domestic trade union movement. Although progress during the colonial period remained limited, the years following independence witnessed substantial growth and institutionalisation of trade unions. At present, trade unions operate across almost all major industries and occupational groups in the country. From a legal standpoint, Indian labour law does not impose a statutory duty on employers to encourage the formation of trade unions, to accord formal recognition to any particular union, or to participate in collective bargaining. This legal position has been authoritatively clarified through judicial interpretation, most notably by the Supreme Court in *Workmen of Kampli Co-operative Sugar Factory Ltd. v. Management of Kampli Co-operative Sugar Factory Ltd.*

¹The Court held that in the absence of an explicit statutory provision requiring recognition, no enforceable legal right to such recognition can be claimed by a trade union. Prior conduct by an employer in recognising or negotiating with a union does not, by itself, create a permanent or constitutional entitlement, and the subsequent withdrawal of recognition does not amount to a violation of legally protected rights. While Article 19(1)(c) of the Constitution of India guarantees the fundamental right to form associations or trade unions, judicial pronouncements have consistently clarified that this freedom is limited to the formation and continuation of unions. It does not extend to a guaranteed right to employer recognition or mandatory collective bargaining. The constitutional protection primarily shields workers from overtly hostile or obstructive actions by employers that would undermine their ability to organise, rather than conferring an affirmative right to recognition or negotiation. The Court has drawn an analogy to taxation principles: Employers may adopt legitimate strategies to limit union influence (similar to lawful tax avoidance), but they cannot resort to outright illegal suppression or interference (akin to tax evasion). In essence, while workers enjoy the constitutional right to

organize, employers retain discretion over granting, withholding, or revoking recognition without breaching Article 19(1)(c).

2. TRADE UNION REGISTRATION

1) Section 6: Requirements for Registration

A trade union is eligible to seek registration under the Code provided it complies with the statutory registration criteria and has no fewer than seven members who have explicitly consented to be governed by its rules and regulations.

- 2) A workers' trade union may be granted registration only when, on the date of application, its membership includes not less than ten per cent of the total workforce, or one hundred workers, whichever figure is smaller, employed in or associated with the concerned industrial establishment or industry.
- 3) The mere fact that some applicants withdraw their membership or submit a written notice of withdrawal after the application is filed but before registration is

¹ (1995) 1 LLJ 727 (Karn)

granted does not render an application submitted in compliance with this provision invalid, as long as the withdrawal does not surpass 50% of all applicants.

- 4) A trade union of workers must continuously maintain its representative nature once it has been recognized. Because of this, it must constantly maintain a minimum strength of seven individuals involved in or connected to the industrial institution or industry in issue, or at least 10% of the workforce, whichever is lower.

2.2 Section 7: provisions that will be incorporated into the rules or constitution of the trade union.

Only when a trade union's executive body is established in compliance with the Code's provisions and its constitution or rules expressly contain certain fundamental elements are they eligible for registration under this Code. First and foremost, the laws must specify the Trade Union's official name and fully explain the reasons behind its formation. These objectives ought to be the legitimate justifications for industrial relations regulation. The purposes for which the Trade Union's general finances

may be spent must also be specified in the constitution, guaranteeing that such expenditures are strictly restricted to those authorized by this Code. Regulations governing membership, such as the admission of regular members who are actively involved or employed in the industrial establishment, undertaking, industry, or its branches or units to which the Trade Union is attached, must be included in the constitution. Additionally, it should permit honorary or temporary members to participate, provided that they are prohibited by law from serving on the executive body.

In compliance with the Code, the rules will outline the method and cost of subscription that members and other individuals must pay under addition, the constitution must outline the requirements for members to be eligible for trade union benefits as well as the circumstances under which fines, penalties, or forfeitures may be applied. An annual general body meeting must be scheduled, together with information on the type of business to be conducted there, such as the election of office holders. Additionally, the rules shall govern the election of members of the executive and other office-bearers, their removal from office, and the filling of any casual vacancies at intervals of no more than three years. Regarding financial management, the constitution must ensure

that the Union's finances be handled securely, require an annual audit of accounts in the appropriate way, and provide members and office-bearers enough time to review financial records. Lastly, the regulations must clearly specify how the Trade Union may be dissolved and how the constitution may be changed, amended, or repealed.

In *M.T. Chandersen v. Sukumaran*,² it was determined that those who have not paid their dues in accordance with the Trade Union's bylaws cannot be considered Union members. Subscriptions shouldn't be withheld under any circumstances, though, since this would result in membership rejection. The dispute between a factory's workers, represented by their union, and the company was brought before the Tribunal in *Indian Oxygen Ltd. v. Their labourers*.³ Only workers in manufacturing were allowed to join the union. The union's name was previously modified to reference, and the union's constitution was amended to include employees from the company's other factories. Nevertheless, the Act's criteria were not followed in the implementation of the change. It was decided that workers at other factories could not be covered by the Tribunal's ruling.

2.3 Section 8: Trade Union Registration and Name Change Procedure

- (1) An application for the registration of a trade union shall be accompanied by the prescribed documents, which may be submitted through an online platform or in such other manner as may be notified, to the Registrar. These documents include:
 - (a) a duly executed affidavit in the prescribed form;
 - (b) a copy of the trade union's rules or bye-laws, together with a written resolution approving the same;
 - (c) a copy of the resolution passed by the members authorising the formation and registration of the trade union; and
 - (d) in cases relating to the formation of a federation or a central organisation of trade unions, copies of resolutions independently passed and approved by the members of each constituent trade union supporting such formation.
- Explanation:** For the purpose of clause (d), a resolution shall be deemed to be duly approved only where, in the case of a federation or central trade union,

² AIR1974SC1789

³ AIR 1969 SC 306

each affiliated trade union has separately passed such resolution through its own members.

- (2) Where a trade union has been functioning for a period exceeding one year prior to the submission of the application, it shall also furnish a general statement of its assets and liabilities. Such statement must be prepared in the form prescribed and contain the particulars required under the applicable rules.
- (3) For the purpose of ascertaining compliance with the provisions of this Code and determining the eligibility of a trade union for registration, the Registrar may call upon the applicant to provide additional information or clarification as may be considered necessary.
- (4) If the proposed name of a trade union is identical with, or so closely resembles, the name of an existing registered trade union as to be likely to cause confusion, deception, or misunderstanding among the members of either union or the general public, the Registrar shall inform the applicants accordingly.

In *Tata Workers Union v. State of Jharkhand and Others*,⁴ the existence of

rival factions within the union led the Registrar of Trade Unions to issue an order regulating the conduct of elections for office-bearers. Upon challenge, the High Court held that the Registrar lacked the statutory authority to interfere in the internal electoral process of a trade union, including the election of its office-bearers.

2.4 Section 9: Trade Union Registration and Cancellation

- (1) Based on the information provided with the registration application, the Registrar will register a trade union by entering its details in a register kept in the prescribed form once he is satisfied that the union has met all the statutory requirements outlined in this chapter for registration.
- (2) The Registrar will provide the applicant Trade Union with a certificate of registration in the required format after approving registration. The Trade Union's proper registration under this Code will be conclusively demonstrated by this certificate.
- (3) Following the issuance of the certificate of registration, the Registrar will input the registered Trade Union's name and other pertinent information in the official.

⁴ (2002) III LLJ 474 (Jharkhand),

(4) Any trade union that was legally registered under the Trade Unions Act of 1926 and maintained such registration right before this Code went into effect would be considered registered under the current Code. However, such a trade union must provide the Registrar with modified regulations in accordance with Section 7 and a statement attesting to the fact that the composition of its executive satisfies the requirements of this Code. The Registrar will make the necessary changes to his records after receiving these documents.

(5) In the following situations, the Registrar may cancel or withdraw a Trade Union's certificate of registration:

- (i) after the Trade Union's application, thoroughly verified in the permitted manner;
- (ii) if the Trade Union transgresses the Code, its regulations, or its own.

The Registrar must give the Trade Union a written notice of at least sixty days outlining the reason for the planned termination, unless the Trade Union requests cancellation.

(6) The Registrar is required to annul a Trade Union's certificate of registration upon a Tribunal's order.

(7) The Registrar shall document the reasons for the cancellation of a registration and provide them in writing to the relevant Trade Union.

3. APPEAL

3.1 Section 10: Trade Union Registration Refusal or Cancellation Appeal

(1) Any person aggrieved by the Registrar's decision to refuse the registration of a trade union under Section 9, or by the cancellation of a certificate of registration under sub-section (5) of the same section, may prefer an appeal before the Tribunal within the prescribed period. Where the appeal is presented after the expiry of the limitation period, the Tribunal may nevertheless entertain it if the appellant is able to show that the delay resulted from sufficient cause or circumstances beyond their control.

(2) Upon affording the parties an adequate opportunity of being heard, the Tribunal may pass such orders as it considers appropriate. In exercise of its powers, the Tribunal may dismiss the appeal or issue directions to the Registrar to register the trade union and grant a certificate of registration.

In *Chemosyn (P) Ltd. and Others v. Kerala Medical and Sales Representatives Association*, the Kerala High Court ⁵held that a trade union constituted under the Act does not possess the character of a statutory body. The Court observed that such a union is neither created by legislation nor incorporated under statutory provisions, and that its functioning remains independent of governmental activities.

3.2 Exception Section 13

The following laws:

- a) the Societies Registration Act of 1860;
- b) the Co-operative Societies Act of 1912;
- c) the Multi-State Co-operative Societies Act of 2002;
- d) the Companies Act of 2013; and
- e) any other existing or upcoming legislation in any State that relates to or addresses the registration and management of cooperative societies. certain Acts are exempt from registered trade unions.

4. NEGOTIATING UNION

4.1 Section 14: Acknowledgment of the Council or Negotiating Union

- (1) Every industrial establishment in which registered trade unions

are functioning is required to have either a duly recognised negotiating union or, where the circumstances so demand, a negotiating council, for the purpose of conducting collective engaging in negotiations with the employer on issues expressly provided for under the Code.

- (2) In an industrial establishment where only one registered trade union is in existence, the employer shall, in accordance with the prescribed requirements, acknowledge that union as the exclusive representative of the workers for the purpose of collective negotiations.

- (3) In an industrial establishment where more than one registered trade union is functioning, the union that secures the support of at least fifty-one per cent of the workers whose names are entered on the muster roll, ascertained in the manner prescribed, shall be acknowledged as the recognised negotiating union.

⁵ (1998) II LLJ43 (Kerala),

- (4) Where several registered trade unions exist in an establishment and none attains the support of the required fifty-one per cent of the workers on the muster roll, the employer shall constitute a negotiating council. The council shall consist of representatives from those trade unions that have the backing of not less than twenty per cent of the workers, with representation being proportionately determined—one representative for every twenty per cent of support and proportionate representation for any remaining fraction. The recognition conferred upon a negotiating union under sub-section (2) shall be granted strictly in accordance with the procedure and conditions laid down under the Code.

4.2 Section 24: Legal Impact, Notice, Amalgamation, and Name Change

- (1) A trade union that is already registered may adopt a new name by complying with the procedure specified in the Code, so long as the change is authorised by a resolution receiving the consent of not less than two-thirds of its members.
- (2) More than one registered trade union may combine or merge into a single body, provided the process is carried out in accordance with the requirements and procedure prescribed by law.
- (3) If a trade union intends to adopt a new name, it must send a written communication to the Registrar that is duly signed by its secretary along with at least seven of its members. Likewise, when a merger between trade unions is contemplated, a written intimation signed by the secretary and seven members from each union taking part in the merger must be delivered to the Registrar of the State where the amalgamation is proposed to occur.
- (4) The Registrar is required to decline approval of a proposed change of name where the new name is the same as, or bears such close similarity to, the name of an already registered trade union that it is likely to mislead or confuse the public or the members of either organisation.

- (5) Once the Registrar is convinced that all legal conditions have been properly fulfilled, the change of name shall be entered in the register and shall become effective from the date on which it is so recorded.
- (6) When a merger takes place, the Registrar of the State where the main office of the newly formed trade union is located shall register it, and the merger shall take effect from the date of such registration, provided all the required conditions have been met.
- (7) The rights, duties, and obligations of a registered trade union shall remain enforceable and continue to operate as provided under the law.

5. SECTION 25: TRADE UNION DISSOLUTION

- (1) A formally recognised trade union must notify the Registrar of its dissolution within fourteen days by submitting a written notice signed by the secretary and at least seven members. The dissolution will take effect from the date of registration once the Registrar is satisfied that it

has been carried out according to the union's rules.

- (2) If the union's regulations do not specify how its assets should be managed upon winding up, and the dissolution has been properly recorded, the Registrar will allocate the remaining funds among the members in accordance with the prescribed legal procedure.

6. CONCLUSION

By clearly acknowledging labour unions and negotiating councils as legitimate negotiating organizations, the Code fortifies an established framework for collective bargaining. By creating the concept of "fixed-term employment" and updating key terms like the definition of a "strike," the Act seeks to provide greater clarity and uniformity to contemporary labour arrangements. Registration under the Trade Union framework is essential since it provides the union with legal status and enables it to benefit from statutory rights, protections, and immunities. The legal structure offers registered trade unions a vital role in protecting workers' rights by transforming individual complaints into recognized industrial disputes that may be settled collectively. Additionally, the legislative framework attempts to carefully strike a balance between collective

representation and individual working situations.

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