



A Critical Analysis Of The Law Of Recognition Of Trade Union In India

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ABSTRACT :

Recognition of trade unions occupies a central place in the law and practice of industrial relations in India, since it determines which organisation is entitled to represent workers in collective bargaining with an employer. This paper examines the concept and historical development of trade unions in India, the absence of a uniform central legislation on recognition, and the resulting patchwork of state legislations, voluntary codes, secret ballot procedures, check-off methods and verification of membership that have been used to determine bargaining agents. The paper further analyses the framework for recognition of a negotiating union or negotiating council introduced under the Industrial Relations Code, 2020, together with the procedural mechanism proposed under the Draft Recognition Rules, 2021, and evaluates these provisions against the principles on freedom of association and collective bargaining developed by the International Labour Organisation. The study finds that while the Code represents a significant step towards a statutory recognition mechanism at the central level, inconsistencies between the Code and the Draft Rules, and the absence of an independent verification authority, continue to undermine the twin objectives of representativeness and independence. The paper concludes with suggestions aimed at strengthening the recognition framework and aligning it more closely with India's international labour obligations.

Key Words: Trade Union Recognition; Collective Bargaining; Industrial Relations Code, 2020; Negotiating Union; Secret Ballot; International Labour Organisation; Industrial Democracy; Representativeness.

Introduction

For quite some time, one of the major concerns in Industrial Relations that trade unions, the government, and employers have been grappling with is finding a satisfactory and widely accepted method to resolve the competitive claims of rival unions vying to be recognized as bargaining agents. In the context of industrial democracy, it is essential that the majority union in an industry or undertaking is authorized to represent and speak on behalf of all workers and negotiate agreements with employers that not only benefit them but also promote healthy industrial relations.

The concept of “collective bargaining” is a crucial aspect of the relationship between employers and employees. However, not all trade unions have the right to engage in collective bargaining - this right is granted only to those trade unions that are recognized. It is important to distinguish between the registration of a trade union and its recognition as the sole bargaining agent for collective bargaining purposes. Many industrial strikes have arisen due to disagreements over the recognition of unions. In practice, management only allows recognized trade unions to engage in negotiations and collective bargaining. Therefore, the recognition of a trade union is essential for successful collective bargaining.

The topic of whether or not a trade union should be recognized has been the subject of debate for some time. The absence of enforced central legislation on this subject has contributed to this debate. In the case of *Kalindi and Others v. Tata Locomotive and Engineering Co. Ltd.*, the Supreme Court ruled that the right to representation does not exist unless the company's standing orders recognize it.

The issue assumes greater importance where several unions operate in the same establishment. In such a situation, competing claims may arise regarding membership, bargaining rights and the authority to conclude collective agreements. A legally defined method of determining the negotiating union can provide certainty to both employers and employees. It can also strengthen industrial democracy by ensuring that collective bargaining is conducted through a union whose support can be objectively established. The present study consequently examines the historical development of trade unions, the existing legal framework, the concept and methods of recognition, the Industrial Relations Code, 2020, and the principles developed by the ILO.

Recognition is therefore not merely a formal acknowledgement of a trade union; it determines the institutional channel through which workers participate in collective bargaining. A clear recognition mechanism can reduce rivalry between unions, prevent fragmented negotiations and provide employers with a definite bargaining counterpart. At the same time, the process must protect workers from domination by the employer and must ensure that the union selected is genuinely representative of the workforce. Thus, recognition has two connected dimensions: representativeness and independence.

The underline idea of forming trade union is to negotiate and bargain with employers to improve the service and employment conditions of workers on their behalf. This collective bargaining process can be possible only when employer recognises a trade union as bargaining agent and agree to negotiate with it because it is difficult to negotiate with multiple trade unions in a single organisation.

Despite attempts made to include compulsory recognition of trade unions in the Trade Union Act in 1947, 1950, 1978, and 1988, the only Central Law regulating the functioning of unions does not have any provision for recognition of trade unions. However, some states like Maharashtra, Madhya Pradesh, Gujarat, Andhra Pradesh, and Orissa have recently introduced state legislations, such as the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 and the Madhya Pradesh Industrial Relations Act 1960, to address this issue.

Recognition of union plays a very vital role in the promotion of healthy industrial relations directly and indirectly in the establishment of successful industrial democracy. The aim of this present project is to delve into the concept of recognition of trade union and to analyse the lacunas in the current law.

Understanding Trade Unions in India

I. Background on Trade Unions in India

The development of trade unions in India should be understood against the background of industrialisation and the emergence of organised wage employment. Individual workers generally possess limited bargaining power in comparison with an organised employer. Collective organisation therefore became a means through which workers could present common demands concerning wages, working hours, safety, welfare and other conditions of employment. Trade unions gradually developed from associations concerned mainly with immediate employment grievances into institutions participating in collective bargaining and broader industrial relations.

The early trade union movement also developed in response to economic and social changes following the First World War. Rising prices and disputes concerning wages and working conditions encouraged workers to organise collectively. The formation of the International Labour Organisation in 1919 also contributed to the international development of ideas relating to freedom of association and collective bargaining. In India, these developments were followed by increasing governmental recognition of the need to regulate industrial relations through legislation.

After independence, trade unions became an established feature of Indian industrial relations. Their role was not confined to strikes or wage negotiations; they increasingly participated in welfare activities, dispute resolution and representation of workers before employers and authorities. Economic liberalisation after 1991 further changed the industrial environment. Changes in the structure of employment and the growth of a market-driven economy created new challenges for traditional union organisation, making effective collective representation increasingly significant.

Trade Unions are bodies formed voluntarily of workers to protect and promote the rights and interest of its members. In India, the growth of trade unions started at the end of 19th century when the realisation began that there was a need of an organization which will represent the concerns of workers. The growth of trade unions in India was a consequence of the rapid industrial development in India. The workers came together to have their voice heard. Coming together improved their bargaining power against the employers.¹

The first organized trade union in India was named as the Madras Labour Union and it was formed in 1918.² 1918 to 1924 was the early trade union phase. The workers started coming together as a class and being conscious about their deteriorating conditions. This was also a result of the global outrage that had followed the First World War. After the First World War, the prices of basic necessities had spiralled this led to the increase in the conflicts between employers and workers primarily surrounding wages and working conditions.³ A global movement had begun because of the increasing industrial disputes, the Russian revolution as well as the formation of the Indian Labour Organisation (ILO) in 1919. The global movement gave rise to the growth of the trade union movement in India as well.⁴ With several trade unions like the Ahmedabad Textile Labour Association, RMS Association, All India Postal Association and others becoming organized, the government also started being more receptive to these organizations. Legislations like the Trade Unions Act, 1926 and the Trade Disputes Act, 1929 were brought into effect.⁵

Post the Second World War, there was a repeat of events and the living conditions of workers deteriorated even further. This led to legislations like the Industrial Employment Act, 1946 and the Bombay Industrial Relations Act, 1946 to be brought into effect. The trade unions started to get tied into party politics. Some chose to be tied in with the Congress, while some chose to be tied in with the Communist party. The political influence on trade unions started reducing after India became a liberalised economy in 1991.⁶ The importance of trade unions also increased in 1991 as the economy started becoming more capitalist and market driven. This could have led to policies in disfavour of the workers in lieu of encouraging the growth of industries. Today, there are more than 75,000 registered and many unregistered trade unions across many states of India.⁷ Their functions have expanded to include

¹ Josh Bivens, 'How today's unions help working people' (*Economic Policy Institute*, 24 August 2017) <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>

² Crouch Harold, *Trade Unions and Politics in India* (Cambridge University Press 2008).

³ Gerhard Bry, *Wages during War, Inflation and Dictatorship* (Princeton University Press 1960) ("Gerhard Bry")

⁴ Ministry of Statistics and Project Implementation (MoSPI), *Chapter on Trade Unions* (2013) http://mospi.nic.in/sites/default/files/Statistical_year_book_india_chapters/Trade_Union.pdf

⁵ *Textiles Labour Association v. Padmaben Manilal Parmar*, (2007) 1 GLR 527.

⁶ Gerhard Bry (n 3).

⁷ Vikram Shroff and Akshay Bhargav, 'Trade Unions Act and State Laws Provide Legal Protections to Trade Unions in India' (*Nishith Desai & Associates* 2015)

health measures, welfare activities, banking facilities and others.

II. Laws Regulating Trade Union in India

It is important to distinguish three different legal ideas: formation, registration and recognition. Formation concerns the workers' decision to create an organisation. Registration gives the union statutory status subject to the requirements of the applicable law. Recognition, on the other hand, concerns the authority of a union to represent workers for collective bargaining. The absence of a uniform central recognition mechanism under the framework described in this project has historically resulted in different approaches across States. This distinction is central to understanding why a registered union is not automatically the sole bargaining agent.

The legal framework governing trade unions in India has historically operated at more than one level. Constitutional protection of the freedom to form associations provides the broad legal foundation, while the Trade Unions Act, 1926 supplies the principal statutory framework for registration and functioning of trade unions. Industrial disputes legislation and industrial employment legislation have also influenced the practical relationship between unions, workers and employers. In addition, certain States have enacted specific laws dealing with recognition and collective bargaining.

The Constitution of India, 1950 under Article 19 provides for the freedom to form associations or unions. The formation of trade unions however dates back before independence and the legislation that governs it is the Trade Unions Act, 1926 ("Trade Unions Act").⁸ The Trade Unions Act defines what a trade union is, provides for its registration, legalises its formation, and safeguards its activities. According to section 2 (h) of the Act, "*Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions*".⁹

Other than the Trade Unions Act, which is a central legislation, there are also state legislations in some states. These state legislations deal with the recognition of trade unions within their state. They provide for minimum criteria to that effect.¹⁰ I will be dealing with recognition of trade unions in India in more depth in the coming parts of the project.

Recognition Of A Trade Union

I. The Concept of Recognition

The legitimacy of recognition depends upon the method used to determine representativeness. A system based only on employer preference may create doubts about independence, while a system based on transparent membership verification or an impartial election can provide a more objective basis. Recognition should therefore balance two interests: the need for an effective single bargaining channel and the need to protect the rights of workers who belong to minority unions. The negotiating arrangement should not unnecessarily suppress the existence or lawful activities of other unions.

Recognition may be understood as the formal or legally accepted determination that a particular trade union is entitled to represent workers in negotiations with the employer. Its practical purpose is to identify a legitimate bargaining counterpart. Where several unions exist, recognition prevents the employer from having to negotiate separately with every organisation on the same subject and provides greater certainty regarding the authority of the bargaining representative.

Recognition means the mechanism through which the employer considers one particular trade union as being a representative of its employees. Once a trade union is recognised, the employer will enter into discussions and negotiations in the interest of its employees with this recognised trade union only. Instead of negotiating with multiple trade unions, one recognised trade union will be considered to be a representative body of all the employees.¹¹ When there are more than one trade union, the employer may choose to negotiate with one trade union while not negotiating with another.

The concerns of some of the employees will be taken care of, while others will be left un-remedied. Many a times, the employers will consider only that trade union as a sole bargaining agent which has a political backing of a political party. When a trade union is negotiating with an employer, the employer can ask the trade union if it represents majority of its employees. This is to ensure that the agreement that is entered into after the negotiation is amiable to most of the employees. It is in this light that recognition of trade unions has become important. This ensures that the agreement that is entered into after the negotiation, is collectively and mutually agreed to. This will ensure that all the employees follow it.

Collective agreements between the employer and the employee can be reached either by conciliatory measures or otherwise.¹² Assuming conciliation is the method through which the agreement is reached, the agreement will bind all the employees as under Section 18 of the Industrial Disputes Act, 1947.

https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Trade_Unions_Act_and_State_Laws_Provide_Legal_Protections_to_Trade_Unions_in_India.pdf

⁸ *ibid.*

⁹ The Trade Unions Act, 1926 (16 of 1926) s 2(h).

¹⁰ Nishith Desai Associates, 'India: Trade Unions and Collective Bargaining',

https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/India-Trade-Unions-and-Collective-Bargaining.pdf ("NDA Trade Union & Collective Bargaining")

¹¹ Government of UK, nidirect government services, 'Introduction to Trade Unions', <https://www.nidirect.gov.uk/articles/introduction-trade-unions>

¹² International Labour Organization, 'History of the ILO', <https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>

But if an agreement is reached without recourse to conciliation, then the bi-party agreement between one trade union and the employer will not bind the employees who are members of another trade union. So the agreement will bind only the direct parties to that agreement. The other employees are free to not comply with that agreement¹³.

II. Recognition of trade unions in India

The principal challenge is to ensure that the recognition process is both representative and independent. A union that represents only a small section of workers may find it difficult to claim authority to speak for the entire establishment, while an employer-controlled process may undermine the independence of the union. Consequently, objective membership figures, transparent verification, fair elections and an impartial authority are important safeguards in determining the representative union.

The Indian position has historically been characterised by a distinction between registration at the central level and recognition at the bargaining level. Registration establishes the legal existence of a trade union, but it does not by itself determine which union has the authority to negotiate on behalf of the workforce. Where State legislation provides a recognition mechanism, the criteria may include secret ballot, membership verification or other prescribed methods. In establishments without a statutory mechanism, recognition may depend upon voluntary arrangements, applicable standing orders, judicial directions or the circumstances of the particular dispute.

In India, when there are multiple trade unions, the employer voluntarily may or may not recognise a trade union as a bargaining agent for the employees. The trade unions do not have a right, in statute or even under common law to be recognised. Although there is no right to be recognised, the recognition of trade unions is crucial. The present scenario gives rise to inconsistencies and anomalies as some employees' voices are heard while the others are ignored.¹⁴ The agreements not being collective in nature may also lack compliance from all employees. It is for this reason that recognition of trade unions becomes crucial.

Under the Trade Unions Act, which is the central legislation governing trade unions in India, there is no concept of recognition. But the Trade Unions Act does provide for registration. However, registration of trade unions is not mandatory. There can be more than one registered trade union for an industry, or none at all. Some state legislations provide for recognition of trade unions. I will deal with the position under the central legislation and the state legislations below:

Under the Trade Unions Act:

Under the Trade Unions Act, there is a method to register a trade union. Registration of a trade union is not mandatory. As per the Trade Unions Act, for registering a trade union, seven or more members have to fill in and submit an application as prescribed to the 'Registrar of Trade Unions' set up in that state. A pre-requisite for applying for registration as a Trade Union is that it must have at least 10% or 100 persons engaged or employed in the establishment or industry to which it is connected, whichever is lesser.¹⁵ The application has to be given along with the rules of the trade union.

Once the Registrar is satisfied with the information provided, the Registrar will register the trade union by issuing a certificate of registration. The certificate of registration can also be withdrawn if it is issued due to fraud or mistake.¹⁶

Under State legislations:

Some states in India have brought into effect laws that govern the recognition of trade unions in their state. Thus, while there is no central legislation to recognize trade unions, some states have specified mechanisms to recognize trade unions. The basic and common rule that can be derived from these state laws is that a trade union will be recognized as a sole bargaining agent for a industry, if it receives a specified minimum percentage of the employee's votes via a secret ballot that will be organised by the 'Registrar of Trade Unions' set up in that State. In some state legislations like in Kerala, every trade union which receives a smaller minimum percentage of the votes (fifteen percentage or ten percentage) i.e. not the majority of the votes but a minimum percentage as provided for in the state legislation will also be recognized as a constituent of a joint bargaining council.¹⁷

Under the Code of Discipline

The Code of Discipline is a voluntary code which provides for the recognition of trade unions that function in industrial establishments. The Criteria for Recognition of Unions is annexed to this Code. The Code was adopted by the Standing Labour Committee in its 16th Session in 1957. Subsequently, it was ratified by the representatives of Employers and Central Trade Unions at the 16th Session of the Indian Labour Conference which was held in 1958. The Code is in the nature of guidelines that can be adopted by all parties in an industrial establishment in the public sector or in the private sector. The

¹³ The Industrial Relations Code, 2020 (35 of 2020), s 18.

¹⁴ *NDA Trade Union & Collective Bargaining* (n 10).

¹⁵ The Trade Unions Act, 1926 (16 of 1926) s 4.

¹⁶ The Trade Unions Act, 1926 (16 of 1926) s 10.

¹⁷ The Kerala Recognition of Trade Unions Act, 2010 (16 of 2010) s 5.

guidelines help in ensuring discipline in the establishment.¹⁸ As per Clause III (vii) of the Code, by adopting the Code, the management agrees to recognize the Union as per the criteria provided in the Code, This criteria is the Criteria for Recognition of Unions as mentioned above. The Code of Discipline is not binding and is not mandatory for industrial establishments. The Code is in the form of guidelines.

The Code has no statutory force. However, in the *Hind Mazdoor Kisan Panchayatt Vasavadatta Cement Workers Union v. The Commissioner of Labour and Registrar of Trade Union in Karnataka*, the Karnataka High Court observed that even though the Code of Discipline does not have any statutory force, it must be applied, observed and followed by both, the employer and the employee. This will ensure industrial peace. The Karnataka High Court refused to accept the contention that since the Code has no statutory force, it does not have to be complied with. The dispute in this case was about holding an election for deciding which union will be a sole bargaining agent. The Karnataka High Court held that¹⁹:

“The code of discipline was accepted by all employers' and workers' organisations at the 16th Session of the Indian Labour Conference held at Nainital in May 1958. No doubt, the code of discipline has no statutory force. But, this code of discipline has to be observed, applied and followed both by the employer and the employees in order to have industrial peace”

It is important here to note that the *Hind Mazdoor Kisan Panchayatt Vasavadatta Cement Workers Union v. The Commissioner of Labour and Registrar of Trade Union in Karnataka* case is the only case that enforces the Code. Many other High Court have recognised that the Code has no statutory force and therefore, does not have to be complied with.²⁰ There is no enforcement mechanism in this Code and therefore, the breaches of the Code are very common. There were almost 11,000 breaches of the Code reported between 1960 and 1970, which is a testament to the fact that the lack of an enforcement mechanism in the Code has reduced its effectiveness.²¹

EXISTING LAW

Different recognition methods also have different practical consequences. Secret ballot directly records the choice of eligible workers but requires an impartial election process. The check-off method provides documentary evidence of membership but depends upon reliable membership records and safeguards against manipulation. Verification of membership through an independent labour authority can provide an objective membership count. Voluntary recognition by management is comparatively simple, but its legitimacy may be questioned where competing unions exist. A coherent legal framework should therefore clearly identify the applicable method, the authority responsible for verification, the eligibility of voters or members, the tenure of recognition and the procedure for resolving disputes.

The existing framework therefore presents a mixed legal picture. The Trade Unions Act, 1926 provides a framework for registration, but recognition as the bargaining agent has historically been dealt with through State laws, voluntary arrangements and judicial approaches. The Code of Discipline provides another mechanism based on voluntary acceptance, but its non-statutory character limits uniform enforcement. This fragmented structure can create uncertainty for employers and workers, particularly where more than one union claims bargaining rights.

As can be seen from the above discussion, there are different legislations in different states for the recognition of trade unions. Some states do not have a legislation for recognition of trade unions. There is no provision in the central legislation for recognition of trade unions. The Code of discipline is a voluntary code of guidelines, which in most cases is not enforced. The modes to determine which trade union will be the representative union are different in all these legislations. In the state legislations of Andhra Pradesh, Orissa and West Bengal, the mode used is secret ballot. In some other states, the mode used is the check off system. The ILO recommends the mode of membership verification. As a result, at present, there are several modes of determining the representative union used in India.

RECOGNITION BY SECRET BALLOT

Under this system, elections are conducted by a neutral agent. Usually, the agent is the Registrar of Union in that state. The eligible employees of the establishment will then cast their vote by secret ballot for their chosen trade union. The tenure of the trade union chosen as the representative union will generally be for 2 years. After which, again, an election is called. The Supreme Court has laid down guidelines and norms that have to be followed in the conduct of general elections by secret ballot to determine the representative trade union in the *Food Corporation of India Staff Union v. Food Corporation of India and others*²².

¹⁸ ILO, Q&As on Business and Collective Bargaining, https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm (“ILO Q&A”)

¹⁹ *Hind Mazdoor Kisan Panchayatt Vasavadatta Cement Workers Union v. The Commissioner of Labour and Registrar of Trade Union in Karnataka*, 2001 LIC 3260 (Karn).

²⁰ *MRF United Workers Union v. Government of Tamil Nadu*, 2009-IV-LLJ 685 (Mad).

²¹ *ILO Q&A* (n 18).

²² *Food Corporation of India Staff Union v. Food Corporation of India and Others* AIR 1995 SC 1344.

RECOGNITION BY CHECK-OFF METHOD

Under this method, an employee will give in writing to the management of his establishment that he would want his wages to be deducted for trade union fees for his chosen union. The written letter or email will include the name of the trade union towards which the employee wants to pay his trade union fees. This method ensures that the establishment has concrete evidence about the number of employees who are members of each trade union. This ensures that the trade union with the majority of the employees as its members will be selected as the chosen representative union.²³ However, the criticism against this method is that the management of an industry and a union of the management's choice may collude and the results of the chosen union may be manipulated. It is also crucial that all unions cooperate with this method.

RECOGNITION BY MANAGEMENT

This kind of recognition is voluntary recognition by the management. In this method, the management enters into negotiations and collective bargaining with one union and considers it to be the representative union. However, this is an informal method. Other trade unions may not comply with what the management favours. It is a procedure which is unregulated and can be easily manipulated.²⁴

Some states do not have a legislation for recognition of trade unions. In such states, where there is no decided method, there is a divergence on which mode should be used to decide the representative union. The judiciary has faced this challenge. In the event where the unions and management agree, the judiciary has allowed a recognition by management.²⁵ As per the Supreme Court, the determining mode for recognition has to be decided as per the facts and circumstances of the case. The merits of each case have to be looked into to choose between the different modes available. If there is a consensus between the management and all the unions, then the court will respect that consensus on the representative union.²⁶

RECOGNITION BY VERIFICATION OF MEMBERS

This process is conducted by the labour directorate. Each trade union who wants to be recognised as a sole bargaining agent has to submit their claim to the directorate, with a list of members, books of account, fee books, and other membership records. On the basis of these books, the directorate will check for any double membership and scrutinise the union. A final verified list of members in each union is drawn up. On the basis of this final verified list prepared for the employer, all the unions and the government, the majority union is decided who becomes the sole bargaining agent.²⁷

III. Recognition of A Negotiating Union Under The Industrial Relations Code, 2020

The Draft Recognition Rules discussed in this project raise additional questions concerning the administration of recognition. These include the role of the employer in verification, the threshold for recognition, the eligibility of workers to vote, the treatment of temporary and casual workers, and the meaning of a majority of representatives in a negotiating council. Clear rules on these matters are important because procedural uncertainty can affect the credibility of the recognition process even where the substantive statutory framework is clear.

The negotiating union model also attempts to accommodate pluralism where no single union commands the prescribed majority. The negotiating council mechanism allows unions meeting the minimum support requirement to participate through representatives. This approach seeks to avoid a situation in which a minority union is treated as the sole representative despite substantial support for other unions. At the same time, the effectiveness of such a council depends upon clear rules concerning representation, voting, decision-making and the settlement of disagreements among participating unions.

Section 14 of the Industrial Relations Code, 2020 represents an attempt to create a uniform statutory approach to collective bargaining at the establishment level. Instead of leaving the identity of the bargaining representative entirely to voluntary recognition or State-specific arrangements, the provision establishes thresholds based on the support enjoyed by registered trade unions. The central idea is that bargaining authority should correspond to demonstrable support among workers on the muster roll.

As can be understood from the discussion of the extant law, there is no central legislation that governs the recognition of trade unions. Therefore, some states that have state legislations will comply with their own criteria to determine the representative union. States that do not have a state legislation change their criteria as per facts and circumstances. There is no one uniform law that governs recognition at the national level.

However, the Industrial Relations Code, 2020 which has not yet been brought into effect includes provisions for recognition of a representative union. It has the feature of what is named "Recognition of Negotiating Union". As per the provisions of the Industrial Relations Code, 2020, if there is only one registered trade union for an industrial establishment, it will be recognised as the sole negotiating union. This is provided under Section 14 as follows:

“(1) There shall be a negotiating union or a negotiating council, as the case may be, in an industrial establishment having

²³ Ministry of Labour, Recognition of Union under the Code of Discipline, (1958) <https://labour.gov.in/sites/default/files/Code%20of%20Discipline.pdf>

²⁴ *ibid.*

²⁵ Ramaswamy, E A and Uma Ramaswamy, *Industry and Labour* (Oxford University Press 1981).

²⁶ *Visakhapatnam Port & Dock Workers Union v. Board of Trustees, Visakhapatnam Port Trust* 1999 (82) FLR 929.

²⁷ All India Congress Committee, *Report of Sub-Committee on Democracy and Socialism* (Government of India, 1964) 21.

registered Trade Union for negotiating with the employer of the industrial establishment, on such matters as may be prescribed.

(2) Where only one Trade Union of workers registered under the provisions of this Chapter is functioning in an industrial establishment, then, the employer of such industrial establishment shall, subject to such criteria as may be prescribed, recognise such Trade Union as sole negotiating union of the workers.”

If there is more than one registered trade union for an industrial establishment, then the trade union which receives the support of 51% or more of the workers on the muster rolls in an establishment will be the sole negotiating unit. This is provided under Section 14(3) of the Industrial Relations Code, 2020 as follows:²⁸

“(3) If more than one Trade Union of workers registered under this Code are functioning in an industrial establishment, then, the Trade Union having fifty-one per cent or more workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade Union shall be recognised by the employer of the industrial establishment, as the sole negotiating union of the workers.”

Where there is no trade union which satisfies the criteria of 51% or more support from workers on the muster roll, then a council will be created which will act as the sole negotiating council for the establishment. The negotiating council will include the representatives of the registered trade unions which have the support of not less than 20% of the workers on the muster roll in the establishment.²⁹ Section 14(4) of the Industrial Relations Code, 2020 which deals with the recognition of a trade union is laid down here.

“(4) If more than one Trade Union of workers registered under this Code are functioning in an industrial establishment, and no such Trade Union has fifty-one per cent or more of workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade union, then, there shall be constituted by the employer of the industrial establishment, a negotiating council for negotiation on the matters referred to in sub-section (1), consisting of the representatives of such registered Trade Unions which have the support of not less than twenty per cent of the total workers on the muster roll of that industrial establishment so verified and such representation shall be of one representative for each twenty per cent and for the remainder after calculating the membership on each twenty per cent.”

Section 14 of the Industrial Relations Code, 2020 further goes on to say that the tenure of the sole negotiating union or the negotiating council will be for a minimum period of 3 years and may increase to 5 years, as mutually decided between the Trade Union and the management.

A. Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021 (“Draft Recognition Rules”)

Along with the Industrial Relations Code, 2020, the Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021 also provide for the recognition of negotiating unions. Therefore, when read together, they comprehensively lay down the law on recognition. The Draft Recognition Rules provide for:

- i. criteria for recognition of a union in a single-union context,
- ii. the method for determining the negotiating agent/council and its procedures,
- iii. scope of collective bargaining
- iv. facilities to be provided to the negotiating agent/council, and
- v. the trade union disputes.

As per the Draft Recognition Rules, the process for constituting a negotiating union or negotiating council has to commence at least three months prior to the expiry of the tenure of the existing recognized trade union. It is also required under the Draft Recognition Rules that the trade unions meet conditions like providing “copy of registration certificate, copy of list of members, details of membership subscription and copy of the latest annual return submitted to the Registrar of Trade Unions”.³⁰

The Draft Recognition Rules have chosen recognition by way of the secret ballot, despite the judiciary showing its deference to it. Rule 4 of the Draft Rules provides that a trade union having “not less than 30%” of the total employees in an establishment can be recognized as the sole bargaining agent. This is different from Section 14(2) of the Industrial Relations Code, 2020 which provides that a union which has 51% of workers as members can be

²⁸ The Industrial Relations Code, 2020 (35 of 2020) s 14(3).

²⁹ The Industrial Relations Code, 2020 (35 of 2020) s 14.

³⁰ Indian Express, ‘Recognising trade union as negotiating council: Draft rules published’, <https://indianexpress.com/article/business/recognising-trade-union-as-negotiating-council-draft-rules-published/>

recognized. The 30% threshold under Rule 4 has been criticized as a very low and liberal standard for recognition.³¹ It is demanded that instead the threshold should be 51%. The ignoring of 70% of the workers is unacceptable as it serves no majority. The 30% criteria seems to be copied from the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 legislation.

The 30% criteria in this legislation is actually a percentage for eligibility to apply, and not for actual recognition of the union. This seems to have been misunderstood by the legislation. It is essential that the inconsistency between the percentages in the Industrial Relations Code, 2020 and the Draft Rules is resolved. Moreover, the percentage in the Draft Rules needs to be increased to ensure legitimacy of the trade union. The union needs to be in the true sense representative.

The Draft Recognition Rules provide for two conditions. Firstly, that the union must be a live registered trade union either under the Trade Unions Act, 1926 or the Industrial Relations Code, 2020. Secondly, the membership of the union must be confined to the particular industrial establishment only. The Draft Rules are not clear about whether multi-employer bargaining is pre-empted.³² States which have had legislations on recognition, in their rules specify whether the recognition will be limited to a local area, an industry or class of industries or establishment. The state regulations also specify other conditions like the trade union must allow membership of all workers in the industry and that the registration of the workers must be at least 6 months old. There is a lack of clarity in these aspects in the Draft Rules. The government must seek to clarify these aspects like whether the verification of members also includes temporary and casual workers.

The Draft Recognition Rules provides that all workers on the muster roll of the industrial establishment on the date of reckoning are eligible to vote. This does not clear whether or not non-standard and flexi-workers like casual and temporary workers or even trainees are eligible to vote in the secret ballot method.³³

Some states like Kerala and West Bengal, to provide legitimacy to the voting process and to ensure the credibility of the votes given, require that the workers who are employed for at least 120 days in the previous 12 months are eligible to vote. It is essential that the workers are aged 18 years minimum.³⁴

Under the Draft Recognition Rules, the Central Government has relied absolutely on the employer as the authority to initiate and conduct secret ballot procedures. The Draft Recognition Rule provides that the employers shall:

- i. appoint the “verification officer”
- ii. bear all expenses and make arrangements in connection with the verification;
- iii. receive the application for recognition from the trade union(s);
- iv. prepare the voter list.

As a result, the employer is responsible for the entire verification process under the Draft Recognition Rules. This is quite surprising. The employer is someone who wants a trade union who will cooperate completely with it. It can give rise to the problems of forming puppet unions and further malpractices in the voting process. To vest the employer with the full responsibility to carry out the process is ironic.³⁵

In different state legislations, like in West Bengal and Kerala, the Registrar is appointed as the regulatory authority and it is him who regulates the entire process of recognition. This includes appointing the Returning Officer. In the Supreme Court case of **Food Corporation of India Staff Union v. Food Corporation of India and others**³⁶, the Supreme Court decided that the Chief Labour Commissioner must be the authority who appoints the returning officer. The returning officer shall be a government official who will carry out the recognition procedure with the assistance of the company. Giving exclusive power to the employer to carry out elections is peculiar of the Draft Recognition Rules.

The secret ballot procedure usually involves various people like an assistant returning officer, a presiding officer, a polling officer, polling agents, counting agents, and so on. In the Draft Recognition Rules, it is the verification officer together with the employer who perform the

³¹ The Industrial Relations Code, 2020 (35 of 2020) s 14.

³² World Law Alliance, *Draft Trade Union Rules*, <https://worldlawalliance.com/draft-trade-unions-rules/>

³³ Indian Express (n 30).

³⁴ The Hindu, *Draft rules of Industrial Relations Code suggest changes in TU recognition*, <https://www.thehindubusinessline.com/news/draft-rules-of-industrial-relations-code-suggest-changes-in-tu-recognition/article34482550.ece>

³⁵ The Hindu (n 34).

³⁶ *Food Corporation of India Staff Union v. Food Corporation of India and Others*, [1995 (1) SCR 96].

responsibilities of all these people. The verification officer has an obligation to submit the result of the verification process to the employer. Relying on the result, the employer recognizes a trade union as the sole negotiating union or in the event where the requisite majority is not obtained, the negotiating council is established.³⁷

The Draft Recognition Rules therefore, have several inconsistencies and also do not clarify some important details. There is also misallocation of responsibilities to the employer which takes away from the credibility of the process. The verification officer is over burdened with responsibilities as he is taking over the responsibilities of more than 4 officials in other state regulations.

When a negotiating council is formed, there is a lack of clarity on what is meant by “a majority of representatives” needed to reach a collective agreement. Whether this means 51% or 66% has not been clarified. Most likely, it will mean a simple majority of 51%. But it is essential that the Draft Recognition Rules specify the percentage.³⁸

IV. ILO On The Recognition Of Trade Unions In India

The Committee on Freedom of Association provides an additional institutional mechanism for examining complaints concerning freedom of association. Although its recommendations are not enforced in the same manner as domestic judicial orders, its work contributes to the development of international principles concerning trade union rights. For India, the ILO framework therefore provides useful standards against which questions of representativeness, independence and collective bargaining can be examined.

The ILO principles also make independence an important consideration. A recognition procedure should not allow an employer to determine the bargaining representative in a manner that compromises the freedom of workers to organise. Where compulsory recognition exists, safeguards are required so that the process does not interfere with freedom of association. An impartial verification authority, transparent membership records and accessible procedures for challenging irregularities can therefore strengthen the legitimacy of recognition.

The ILO approach is relevant because recognition is closely connected with freedom of association and collective bargaining. The international framework does not prescribe one identical recognition procedure for every country. Instead, the emphasis is on establishing objective and pre-established criteria that are suited to national conditions and developed with consultation between representative workers' and employers' organisations. This approach recognises that industrial relations systems differ while still requiring fairness and objectivity in determining representativeness.

Two of the primary objectives of the ILO are the freedom of association and collective bargaining. Soon after the Convention on Freedom of Association and Protection of Right to be Organised (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98) were adopted, the ILO acknowledged that there is a need to regulate and govern the compliance with the principle of freedom of association particularly in nation states which had not ratified the Conventions. India is one of the countries which has not ratified the Conventions.³⁹

This makes it essential to see that there is an effective mechanism to ensure the adequate compliance with the freedom of association in India. Convention no. 98 is the convention of the ILO which deals with the recognition of trade unions. ILO acknowledges that there can be no one, uniform method to determine the representative trade union. Each state will require a different method. However, while there can be no straight jacket formula, the ILO Recommendations and Expert Committees have provided guidelines which help in regulating recognition of trade unions.

For instance, the Collective Bargaining Recommendation of 1981 i.e. the Recommendation no. 163⁴⁰ provides that each country should take appropriate measures as suited to the conditions in its country to determine recognition of trade unions. The recommendation further states that there needs to be objective and pre-established criteria to determine the representative union. The objective criteria has to be decided in consultation with representative employers and workers organisations.

Another instance can be culled out from the committee of experts. A committee of expert acknowledged that the system of compulsory recognition of trade unions by national legislations must carry some safeguards.

A. Committee on Freedom of Association

The guidelines that the ILO has given through its conventions and expert committees have been referred to and endorsed by the Committee on Freedom of Association to deal with the complaints concerning recognition of trade unions across the world. The Committee on Freedom of Association (CFA) was established by the ILO to examine complaints against violations of the principle of freedom of association. The CFA is a committee and is composed of 1 chairperson and 3 representatives, each of the government, employee and trade union. The CFA could accept complaints, whether or not the complaint

³⁷ *ILO Q&A* (n 15).

³⁸ *ibid.*

³⁹ International Labour Organization, 318th Report of the Committee on Freedom of Association, Document GB.276/1, Governing Body, 276th Session (November).

⁴⁰ Recommendation No. 163 (ILO, 1996d, p. 97, Paragraph 3).

was about a country which had ratified the relevant conventions that protected the principle of freedom of association.

The complaints could be brought to the CFA by the employees or the trade unions. If the CFA decides to go ahead with the case, it will consult with the concerned government to establish the facts of the matter.⁴¹ The CFA will draw out a detailed report to ascertain whether there was a violation of the principle of freedom of association. The CFA will also recommend measures that the government can take to resolve the issue. The CFA requests the government to send a report back on how the recommendations have been implemented. The CFA cannot enforce its decisions. There is no mandatory obligation on the government.

Conclusion And Suggestions

A well-designed recognition system should ultimately promote both representativeness and industrial peace. Recognition should not become a means of eliminating trade union pluralism; rather, it should provide a fair mechanism for determining which union or council is entitled to negotiate on behalf of workers for the relevant matters. Consistency between the Industrial Relations Code and the Rules, together with an independent verification process, would enhance confidence in the system and strengthen the role of collective bargaining in Indian industrial relations.

The following suggestions may strengthen the recognition framework: first, recognition should be determined by an impartial authority rather than being controlled exclusively by the employer; second, the criteria for recognition should be objective, transparent and consistently applied; third, the rules should clearly define voter eligibility and the treatment of temporary, casual and other categories of workers; fourth, membership verification and election procedures should contain safeguards against double membership, coercion and manipulation; fifth, the procedure for resolving disputes relating to recognition should be clearly prescribed; and finally, the framework should preserve the lawful existence and activities of minority unions while giving the recognised negotiating union or council an effective bargaining role.

The recognition framework contemplated by the Industrial Relations Code, 2020 is significant because it seeks to establish a statutory mechanism at the central level. The distinction between a sole negotiating union and a negotiating council attempts to balance majority representation with the participation of significant minority unions. Nevertheless, the procedural issues identified in the Draft Recognition Rules show that the effectiveness of the framework will depend not only on the statutory threshold but also on the independence and transparency of the recognition process.

Recognition of trade unions is an essential component of an effective collective bargaining system because it determines which organisation can speak for workers in negotiations with the employer. The historical absence of a uniform central mechanism resulted in a combination of State legislation, voluntary recognition, membership verification, secret ballot and judicial approaches. While these mechanisms addressed recognition in particular contexts, the lack of uniformity could produce uncertainty and competing claims.

For many years, India lacked a central law that governed the recognition of trade unions in India. This caused industrial unrest and instability. In a pluralistic democracy like ours, where several organisations exist, the recognition of one organisation as the sole bargaining agent becomes crucial. The Central Government realised the need for a law on recognition of trade unions in India and included provisions for recognition of a negotiating union in the Industrial Relations Code, 2020. The Code, 2020 has not yet been brought into effect. The Code seeks to serve the purpose of introducing a law of recognition at the central level in India. However, there are some shortcomings in the Code as well that need to be rectified. The provisions for recognition of a negotiating union in the Code need to be tested on the criteria of representativeness and independence.⁴²

India is a member of the International Labour Organisation and has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976. Therefore, India has an international obligation to provide for well demarcated, objective provisions for the recognition of trade unions. India is committed to formulate a framework that stands the test of independence and representatives. The following suggestions can be taken into consideration to resolve the shortcomings and inconsistencies in the present law on recognition in India.

1. The criteria for independence needs to be safeguarded in the procedure for secret ballot given under the Draft Recognition Rules:

There are several shortcomings in the secret ballot procedure given under the Draft Recognition Rules. Firstly, the employer is given the responsibility to conduct the secret ballot. This compromises the criteria of independence. To give this broad power to the employer, will lead to the problem of mushroom unions or puppet unions, corruption, misconduct in counting of votes, etc. The faith in the procedure will also reduce. In my opinion, the Registrar of Trade Unions can be the person who conducts the secret ballot procedure. The employer must not be given any authority in this procedure.

2. Inconsistency in the percentage in the Draft Recognition Rules and Industrial Relations Code, 2020 needs to be resolved:

The Draft Recognition Rules provide that for when there are no competitors, a trade union can be recognised as a sole bargaining agent if it receives 30% votes of the members. However, the Industrial Relations Code, 2020 provides for the percentage of 51% of votes for recognition of trade unions. This inconsistency needs to be taken care of. In my opinion, the Draft Recognition Rules must change the percentage to 51% as 30% is a very low threshold

⁴¹ ILO Report (n 40).

⁴² Centre for Education and Documentation, Remembering Manesar Notes on work, workers and workers organisations, http://doccentre.net/cc/cc_labour_strikes.pdf

that does not give the trade union as much legitimacy. Even if it is for when there is no competition, 30% percentage is very less a threshold to keep out all other trade unions from negotiating with the establishment for the specific duration. This will satisfy the criteria of representativeness. Therefore, the lawmakers must consider the change.

3. Addition of details in the Draft Recognition Rules:

There are some details that are missing in the Draft Recognition Rules. These include details like when will a worker be eligible to vote in a secret ballot. Many state legislations require that they are in the muster rolls of the establishment for a specific period of time. Similarly, the question of whether the secret ballot method has pre-empted multi-level bargaining for recognition is unanswered. In the event that a negotiating council is established, the Rules use the phrase “majority of representatives”. It is not clear whether this means a simple or a special majority. The lawmakers must include this detail. In my opinion, the percentage must be 51% to avoid the high threshold leading to everyone’s hands tied.

Therefore, as can be seen from the above analysis, the hypothesis is proved. The criteria of independence and representativeness need to be enforced better. Finally, it is important here to state that we have come a long way from not having a law on recognition at all to now developing rules under the Industrial Relations Code, 2020. By resolving the shortcomings highlighted, we will be able to make the law on recognition in India even more sublime.

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