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Collective Bargaining in India Under the Industrial Relations Code 2020

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ABSTRACT

Collective bargaining is a critical process in maintaining industrial harmony and ensuring workers' rights are upheld. This paper examines the concept of collective bargaining and the significant changes introduced by the Industrial Relations (IR) Code 2020. It highlights the importance of collective bargaining in empowering workers, preventing industrial disputes, and fostering workplace stability. Furthermore, it compares the IR Code 2020 with the Trade Unions Act, 1926, emphasizing the advancements made in recognizing trade unions and addressing unfair labour practices. The paper concludes by underlining the progressive steps taken by the IR Code 2020 in enhancing the collective bargaining framework in India.

Keywords: *Industrial relations Code 2020, Collective bargaining, Recognition.*

I. INTRODUCTION

Collective bargaining is an indispensable mechanism in modern industrial relations, serving as a bridge between employers and workers to negotiate equitable terms of employment. Rooted in the principles of dialogue and mutual respect, it plays a pivotal role in fostering industrial harmony, enhancing workplace productivity, and safeguarding workers' rights. The legal framework governing collective bargaining in India has historically been fragmented and limited in scope.

The Industrial Relations Code 2020 marks a significant reform by introducing progressive changes, such as the formal recognition of trade unions. These provisions aim to rectify longstanding challenges in the collective bargaining process, offering a more structured framework. This paper delves into the concept and significance of collective bargaining, highlighting the legal advancements brought by the IR Code 2020 and their implications on industrial relations. Additionally, it examines how these reforms compare to the provisions of the Trade Unions Act, 1926.

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II. MEANING AND CONCEPT

Collective bargaining is the negotiation between the representatives of workers and the employer with respect to the terms and conditions of work. Collective bargaining plays a very important role in maintaining the harmony and good relations between the employer and workers. It also prevents any industrial dispute. The object of collective bargaining is to provide a means by which the workers are in a position to bargain with the employers about their wages, bonus, hours of work, facilities or any other terms and conditions of employment. Therefore, we can say that collective bargaining is the first step by which a dispute can be averted and can be resolved by voluntary negotiation between the workers and employer amicably.

According to ILO Convention No. 154, it defines collective bargaining as referring to:

“all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for:

- (a) Determining working conditions and terms of employment; and/or
- (b) Regulating relations between employers and workers; and/or
- (c) Regulating relations between employers or their organisations and a workers' organisation or workers' organisations.”² (Article 2)

The term “collective bargaining” is not explicitly used in the Industrial Relations (IR) Code 2020, nor is it defined under any of its provisions. However, the term “settlement” is used, which refers to an agreement made between the employer and workers with respect to terms and conditions of work.³

III. IMPORTANCE OF COLLECTIVE BARGAINING

Collective bargaining is a cornerstone of industrial democracy, and a fundamental right recognized under international labour standards. The International Labour Organization (ILO) considers it essential for promoting fair and productive industrial relations. Collective bargaining is not only a mechanism to negotiate wages, benefits, and working conditions but also a means to foster workplace harmony, reduce conflicts, and encourage mutual trust between employers and workers. It is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Collective bargaining is a key

²International Labour Organization, < [³ The Industrial Relations Code 2020, s. 2 \(zi\)](https://www.ilo.org/global/topics/collective-bargaining-labour-relations/WCMS_244362/langen/index.htm#:~:text=154%20defines%20collective%20bargaining%20as,terms%20of%20employment%3B%20and%20> accessed 26th February 2020.</p></div><div data-bbox=)

means through which employers and their organizations and trade unions can establish fair wages and working conditions. It also provides the basis for sound labour relations.⁴ Typical issues on the bargaining agenda include wages, working time, training, occupational health and safety and equal treatment. The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment. Collective agreements may also address the rights and responsibilities of the parties thus ensuring harmonious and productive industries and workplaces.⁵

The ILO has consistently emphasized the importance of collective bargaining through its conventions and recommendations. The ILO Convention No. 98 (Right to Organize and Collective Bargaining, 1949) obliges member states to take measures to promote voluntary negotiations between employers and workers. India has not ratified this convention. Additionally, ILO Convention No. 154 specifically outlines collective bargaining as an essential tool for improving working conditions and achieving social justice. According to the ILO, collective bargaining enhances economic development by improving workplace relations and fostering stable labour markets. It promotes social justice by ensuring that workers have a voice in decisions affecting their employment. It is a vehicle for reducing inequality and ensuring fair distribution of economic gains.⁶

In the Indian context, collective bargaining remains a critical instrument for addressing the diverse challenges of industrial relations. However, historical gaps in recognizing trade unions and the absence of structured frameworks have hindered their potential. The Industrial Relations Code 2020 bridges several of these gaps, making the process more effective and legally enforceable.

IV. LEGAL FRAMEWORK OF COLLECTIVE BARGAINING IN INDIA

The provisions relating to Collective bargaining agreement or settlement is provided under Ss. 14, 57, 58 of the Code 2020. However, before discussing the laws, it is pertinent to understand the essential ingredients of collective bargaining, which are as follows:

a. Association of Workers or a Trade Union:

The first essential ingredient of collective bargaining is the presence of an organized group of workers, typically represented through a trade union. This association ensures that workers have

⁴ International Labour Organization, available at <https://www.ilo.org/topics-and-sectors/collective-bargaining-and-labour-relations>. (Last visited on Nov. 20, 2024)

⁵ *Ibid.*

⁶ International Labour Organization, available at <https://www.ilo.org/topics-and-sectors/collective-bargaining-and-labour-relations>. (Last visited on Nov. 20, 2024).

a unified voice to present their concerns, negotiate terms, and advocate for their rights. Trade unions play a pivotal role in empowering workers, especially those in the unorganized sector, by providing them with a platform to collectively bargain with the employer. Without such an association, the bargaining power of individual workers remains limited, often leaving them vulnerable to exploitation. Article 19 of the Indian Constitution provides a fundamental right to form association.

b. Recognition of a Trade Union:

Recognition of the trade union by the employer is critical for effective collective bargaining. Without formal recognition, the union lacks legitimacy and cannot function as a representative body for negotiations. Historically, the absence of specific provisions for trade union recognition under the Trade Unions Act, 1926 or any other central labour laws was a significant obstacle, as recognition was at the discretion of the employer. The trade unions were at the mercy of the employer to recognize them. This was a hurdle in achieving the objectives of collective bargaining.

The Industrial Relations Code 2020 addresses this gap by mandating the recognition of a trade union, thereby ensuring that workers have a legally acknowledged entity to negotiate on their behalf. The Code has introduced the concept of negotiating union and negotiating council.⁷ *Section 14 provides:*

“(1) There shall be a negotiating union or a negotiating council in an industrial establishment having 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 recognize such Trade Union as sole negotiating union of the workers.

(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 recognized by the employer of the industrial establishment, as the sole negotiating union of the workers.

(4) If more than one Trade Union of workers registered under this Code are functioning in an

⁷ Section 14, the Industrial Relations Code 2020.

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.”

c. Negotiation

The third essential ingredient is the actual process of negotiation between the employer and the representatives of workers. This involves discussions on various aspects of employment, such as wages, working hours, bonuses, and workplace facilities. The goal of these negotiations is to arrive at a mutually acceptable agreement that addresses the interests of both parties. The process fosters trust, reduces the likelihood of disputes, and contributes to a harmonious working environment.

Each of these components is integral to the success of collective bargaining. The absence of any one element can undermine the process, leading to unresolved grievances and potential industrial unrest. The IR Code 2020 strengthens these foundations by addressing longstanding challenges and aligning collective bargaining practices with international standards.

The collective bargaining agreement/settlement is binding on the parties as per the provisions of Industrial Relations Code 2020, i.e., Ss. 57 (1) and 58, which is similar to the provisions contained in the earlier Act.⁸

(A) Reforms brought by IR Code on Collective bargaining

The changes introduced with respect to Collective Bargaining can be summarized as:

⁸Corresponding provisions as per the Industrial Disputes Act 1947, S.18 provides:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.” Similarly, S.19 of the Act, provides:

“Period of operation of settlements and awards.—(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months 4[from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.”

1. Problem of Recognition Resolved:

The Code has added the provision for recognition of Trade Unions, which provides for the recognition of negotiating union/negotiating council to negotiate with the employer on matters prescribed under Ss. 14 and 27, which has been discussed. The trade unions recognized u/s. 14, shall be the negotiating union for 3 or 5 years, to be decided by the employer and the Trade Union. However, the recognition is mandatory only if the trade union is registered under the IR Code 2020. Employer is not bound to recognize a unregistered trade Union.

2. The issue of rivalry amongst trade unions:

The Code has also tried to deal with one of the prominent issues which every industry faces, i.e., the rivalries among different trade unions. Now, in cases where there are more than one trade union connected to industry, only one trade union shall be recognized, which secures 51 per cent support of the workers. Also, in cases where there are two or more trade unions, and none of the TU secures the 51% votes of workers, then a negotiating council shall be formed. The Negotiating Union shall have representatives from each of the trade union provided that such trade union shall at least have not less than 20 per cent of the workers support.⁹ The recognition of trade unions shall be valid for three years or for a period not exceeding five years as the case may be, which will be mutually by the employer and the trade union.¹⁰ S. 27 of the Code also provides for the recognition of the Trade Unions at the central and state level. It provides that when the central or state government believes that it is necessary or expedient to recognize a trade union or federation of unions, it may recognize such trade union.

Thus, we have seen that the Industrial Relations code 2020 has brought important changes in the collective bargaining process. This step of statutory recognition of trade union was very much required. It will now mandate the employer to negotiate with the workers, which will help in maintaining the industrial peace in the society as the workers will now try to bargain with the employer and shall not resort to strike at the first place. They will go for strikes only when negotiation does not result into any settlement.

Under the Trade Unions Act, 1926, there was no mandatory provision for recognizing trade unions, leaving unions at the mercy of employers. This lack of recognition was a major impediment to effective collective bargaining. Moreover, unfair labour practices were inadequately addressed, allowing employers to undermine the bargaining process through coercive tactics.

⁹ The Industrial Relations Code 2020, Ss. 14 (3), 14 (4)

¹⁰ The Industrial Relations Code 2020, s. 14(5)

In contrast, the IR Code 2020 rectifies these issues by:

- Mandating recognition of trade unions as negotiating agents or councils.
- Prohibiting unfair labour practices, ensuring a level playing field for both employers and workers.
- Providing legal enforceability to settlements, reducing the scope for disputes.

V. RECENT CASE: SAMSUNG WORKERS' PROTEST HIGHLIGHTING THE IMPORTANCE OF COLLECTIVE BARGAINING¹¹

A noteworthy case that underscores the critical role of collective bargaining is the protest held by workers at a Samsung manufacturing unit in Tamil Nadu. Around 1,500 contractual workers engaged in demonstrations to demand fair wages, better working conditions, and equitable treatment. Despite their collective efforts to voice grievances, the protest revealed a significant gap: the workers were not formally recognized as part of the collective bargaining framework.

Contractual workers, although integral to operations, often lack the legal safeguards and representation that permanent employees enjoy. In this case, the absence of recognition hindered meaningful dialogue between the workers and management, prolonging the conflict. The protest gained media attention, highlighting the vulnerabilities of contractual labour in India and the pressing need for reforms that extend collective bargaining rights to all categories of workers.

This situation highlights a key limitation in the implementation of labour laws. While the Code has made reforms in recognizing trade unions and formalizing settlements, it is, however, not into force.

The Samsung case serves as a reminder that robust collective bargaining mechanisms are essential to prevent unrest, ensure industrial harmony, and safeguard workers' rights. It reinforces the importance of implementing the IR Code 2020's provisions to empower all workers, irrespective of their employment status, thereby aligning industrial practices with global labour standards.

VI. CONCLUSION

The Industrial Relations Code 2020 represents a progressive step towards strengthening collective bargaining in India. By addressing long-standing issues such as trade union

¹¹ BBC, Cherylann Mollan, Samsung India workers end strike after more than a month, Oct. 16, 2024, *available at* <https://www.bbc.com/news/articles/cy4dk4gny8mo>.

recognition and unfair labour practices, the Code empowers workers and fosters a conducive environment for industrial harmony. While the absence of an explicit definition for “collective bargaining” is notable, the provisions under the Code effectively address its essence and objectives. In comparison to the Trade Unions Act, 1926, the IR Code 2020 provides a more robust and comprehensive framework, reflecting the evolving needs of industrial relations in modern India.

The importance of collective bargaining lies in its ability to harmonize conflicting interests between employers and workers. It ensures equity, stability, and economic efficiency in industrial relations. With the IR Code 2020 addressing historical limitations, collective bargaining in India will have stronger legal foundation to promote fair negotiations, reduce industrial conflicts, and uphold workers’ rights once the Code is notified. The recognition of trade unions, combined with provisions against unfair labour practices, marks a significant step toward realizing the ILO’s vision of dignified and just labour relations globally.
