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LABOUR CODES AND THE FUTURE OF TRADE UNIONISM IN INDIA

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Abstract

The enactment of India's four consolidated Labour Codes comprising the Code on Wages (2019), the Industrial Relations Code (2020), the Code on Social Security (2020), and the Occupational Safety, Health and Working Conditions Code (2020) marks a historic paradigm shift in the nation's post-colonial industrial jurisprudence. Consolidating 29 legacy central statutes, the legislative reform aims to streamline regulatory compliance, foster industrial growth, and extend social safety nets to informal workers. However, this critical legal and economic analysis reveals that the new statutory framework significantly recalibrates shop-floor power dynamics toward management, systematically compromising traditional trade union leverage. Focusing primarily on the Industrial Relations Code, 2020, this study evaluates key statutory modifications, including the mandatory 14-day advance strike notice across all industrial establishments, elevated thresholds for retrenchment permission (300-worker rule), and high membership prerequisites for sole negotiating union recognition. Furthermore, the institutionalization of Fixed-Term Employment (FTE) and the statutory exclusion of gig and platform workers from core industrial relations protections present structural challenges for collective bargaining and union membership retention. Grounded in constitutional guarantees under Article 19(1)(c) and International Labour Organization (ILO) standards, this paper highlights policy recommendations to foster balanced social dialogue and sustainable labour-management relations.

NEW LABOUR CODES AND THEIR IMPACT ON TRADE UNIONS IN

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INDIA: A CRITICAL LEGAL AND ECONOMIC ANALYSIS

1. INTRODUCTION

1.1 BACKGROUND AND CONTEXT OF LABOUR REFORMS IN INDIA

India's legislative framework surrounding industrial relations, working conditions, wages, and social security has historically been characterized by extreme multiplicity, fragmentation, and regulatory complexity. Following independence in 1947, India adopted a state-regulated industrial relations architecture designed to protect labour from unfair exploitation while promoting social justice within a developing post-colonial economy. However, over decades, this architecture expanded into a labyrinth of over 40 central statutes and upwards of 100 state-level legislations. This regulatory proliferation created substantial administrative friction, regulatory arbitrage, high compliance burdens for industrial enterprises, and significant informalization of the workforce.

The imperative for comprehensive labour law reform in India was formally highlighted by the *Second National Commission on Labour (2002)*. The Commission recommended that existing central labour laws be rationalized and consolidated into broader, cohesive legal codes to enhance ease of doing business, boost domestic production, attract foreign direct investment, and ensure uniform social protection across formal and informal sectors. Recognizing that the legacy legal framework derived from pre-independence statutes such as the Trade Unions Act, 1926, and the Industrial Disputes Act, 1947 was increasingly out of alignment with modern economic models, digital labour markets, and flexible manufacturing requirements, the Government of India initiated an ambitious consolidation process.

Between 2019 and 2020, Parliament enacted four consolidated Labour Codes: *The Code on Wages, 2019*; *the Industrial Relations Code, 2020*; *the Code on Social Security, 2020*; and *the Occupational Safety, Health and Working Conditions Code, 2020*. These four codes repealed and subsumed 29 central labour enactments. While the reforms were positioned by policymakers as a transformative step toward simplifying labour compliance and extending social safety nets to informal workers, they simultaneously sparked fundamental debates regarding the balance of power between capital and organised labour. Central to this debate is the impact of the new legal

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architecture on trade unionsthe institutional entities traditionally responsible for safeguarding worker rights through collective bargaining, dispute settlement, and industrial action.²

1.2 HISTORICAL EVOLUTION OF TRADE UNIONISM IN INDIA

The institutional development of trade unions in India is deeply intertwined with the freedom movement and industrial development. The establishment of the *Bombay Millhands Association* by N.M. Lokhande in 1890 laid the preliminary groundwork for organized worker solidarity. However, modern trade unionism assumed formal legal structure with the enactment of the Trade Unions Act, 1926. This landmark statute provided legal recognition, registration mechanisms, and crucial civil and criminal immunities to registered trade unions, enabling them to conduct legitimate trade disputes without fear of prosecution for conspiracy or illegal restraint of trade.

Post-1947, Indian trade unions underwent structural politicization, aligning closely with major political parties. Organizations such as the *All-India Trade Union Congress (AITUC)*, *Indian National Trade Union Congress (INTUC)*, *Bharatiya Mazdoor Sangh (BMS)*, *Centre of Indian Trade Unions (CITU)*, and *Hind Mazdoor Sabha (HMS)* emerged as central trade union organizations (CTUOs). Under the framework of the Industrial Disputes Act, 1947, trade unions exercised significant leverage in medium and large industrial establishments. Collective bargaining was reinforced by legal protections against arbitrary lay-offs, retrenchments, and closures, alongside statutory mechanisms for conciliation, adjudication, and the right to strike.

Despite these formal legal protections, the Indian trade union movement faced structural limitations. The benefits of unionization remained largely confined to a small, organized segment of the workforce, which accounts for less than 10 percent of India's total labour force. The vast majority of workers remained in the informal or unorganized sector, lacking formal contracts, social security, and collective representation. Furthermore, economic liberalization in 1991 accelerated the trend toward contractualization, outsourcing, and informalization within the formal sector itself. Employers increasingly relied on contract labour to bypass rigid statutory protections, gradually eroding the membership base and bargaining power of traditional trade unions.

² Mishra A and Dwivedi A, "Labour Laws in India: History, Evolution and Critical Analysis" (2023) 65 Labor History 678 <https://doi.org/10.1080/0023656x.2023.2280051>

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1.3 STATEMENT OF THE PROBLEM

The enactment of the four Labour Codes and specifically the Industrial Relations Code, 2020 represents a paradigm shift in Indian labour jurisprudence. While the new architecture introduces statutory recognition for negotiating unions and extends basic social security concepts to gig and platform workers, it introduces structural changes that fundamentally restrict traditional union activities. Higher thresholds for employer compliance, stringent procedural prerequisites for declaring legal strikes, statutory recognition of fixed-term employment, and increased executive powers to modify standing orders directly challenge trade union efficacy.

The core academic and legal problem examined in this project is whether the new Labour Codes promote genuine social dialogue and balanced labour-management relations, or whether they systematically disempower trade unions under the imperative of flexibility and ease of doing business. By examining the statutory changes across the codes, this study evaluates the legal, economic, and institutional consequences for organized labour in India.³

1.4 RESEARCH OBJECTIVES AND METHODOLOGY

This study is structured around the following central objectives:

1. To examine the legal structure and substantive statutory provisions of the four Labour Codes enacted between 2019 and 2020.
2. To analyze the specific statutory modifications introduced by the Industrial Relations Code, 2020, regarding trade union registration, strike notice requirements, standing orders, and negotiating bodies.
3. To evaluate the impact of these legislative changes on collective bargaining dynamics, worker mobilization, and industrial action.
4. To assess the constitutional validity and international labour standards compliance of the new statutory framework, specifically with reference to fundamental rights under the Indian Constitution and International Labour Organization (ILO) conventions.

The methodology employed in this study is doctrinal, analytical, and socio-legal. The research

³Srivastava, V., & Pandey, V. (2026). *International Journal of Advanced Legal Research India's new labour codes: A critical legal analysis*. <https://ijalr.in/wp-content/uploads/2026/07/CRITICAL-ANALYSIS-OF-NEW-LABOUR-CODE.pdf>

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relies on primary legal sources, including the published texts of the four Labour Codes, constitutional provisions, legacy labour statutes, parliamentary committee reports, and judicial precedents from the Supreme Court of India and High Courts. Secondary sources comprise peer-reviewed legal and economic journals, books, policy papers, reports by international organizations (such as the ILO), and analytical statements issued by central trade union organizations and industry bodies.

2. OVERVIEW OF THE FOUR NEW LABOUR CODES

The consolidation of 29 *central labour statutes* into four comprehensive codes represents a structural overhaul of Indian labour law. This codification project was initiated to simplify a legacy framework characterized by regulatory multiplicity, conflicting statutory definitions, high administrative compliance overhead, and significant informalization of the workforce. To understand the specific, multi-layered impact of these legislative changes on trade unions and collective bargaining, it is necessary to examine the core architecture, statutory mechanics, and policy objectives of each individual code.

2.1 THE CODE ON WAGES, 2019

Enacted in August 2019, the Code on Wages was the first of the four reform enactments passed by Parliament. It consolidates *four fundamental statutes*: the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. The primary objective of the Wage Code is to standardize wage definitions, eliminate gender-based remuneration discrimination, and ensure universal minimum wage coverage across all employment sectors.

Key structural elements and statutory innovations of the Code on Wages include:

1. **Universal Statutory Coverage:** Under the legacy Minimum Wages Act, 1948, statutory minimum wages applied primarily to workers engaged in "scheduled employments" listed by central or state governments, leaving millions of unorganized workers without statutory wage protection. The Wage Code dismantles this distinction, extending minimum wage coverage universally to all employees and workers across both organized and unorganized sectors.
2. **The Floor Wage Mechanism:** The Code empowers the Central Government to fix a

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statutory "Floor Wage" based on minimum living standards across distinct geographical regions. State governments are statutorily required to align their respective minimum wage rates above this central floor wage, preventing regional wage degradation and regulatory arbitrage between states.

3. **Standardized Definition of "Wages":** The Code establishes a uniform three-part definition of "wages" across all four Labour Codes, replacing fragmented definitions under legacy laws. Under this definition, basic pay, dearness allowance, and retaining allowance form the primary core. Crucially, statutory allowances (such as HRA, conveyance, and bonus payments) are capped at a maximum of 50 percent of total employee remuneration. Any allowance payout exceeding this 50 percent ceiling is automatically reclassified as wages, directly increasing employer and employee contributions toward provident fund, gratuity, and overtime obligations.

2.2 THE INDUSTRIAL RELATIONS CODE, 2020

The Industrial Relations (IR) Code, 2020 consolidates and replaces *three pivotal laws*: the Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946; and the Industrial Disputes Act, 1947. This Code serves as the primary statutory framework governing collective labour-management relationships, dispute settlement procedures, trade union registration and recognition, and employment protection regulations.

The IR Code fundamentally restructures the operational and legal environment for organised labour:

- **Statutory Recognition of Bargaining Bodies:** It establishes clear statutory criteria for recognizing a "Sole Negotiating Union" (requiring at least 51 percent worker support) or a multi-union "Negotiating Council" (requiring at least 20 percent support), addressing a historic statutory gap in Indian labour law.
- **Procedural Bans on Industrial Action:** Section 62 mandates a 14-day advance strike notice across all industrial establishments and imposes automatic strike stays during conciliation proceedings, eliminating spontaneous or flash strikes.
- **Employment Protection Thresholds:** The threshold requiring industrial establishments to obtain prior government permission for lay-offs, retrenchments, or unit closures is elevated threefold, from 100 to 300 workers, providing enterprise management with

increased operational flexibility.

- **Formalization of Fixed-Term Contracts:** The Code formally recognizes Fixed-Term Employment (FTE), enabling employers to engage workers on direct individual written contracts without using third-party contractors, while exempting contract non-renewals from statutory retrenchment rules.

2.3 THE CODE ON SOCIAL SECURITY, 2020

The Code on Social Security, 2020 amalgamates nine distinct social welfare statutes, including the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; the Employees' State Insurance Act, 1948; the Payment of Gratuity Act, 1972; the Maternity Benefit Act, 1961; and the Unorganised Workers' Social Security Act, 2008. The overarching intent is to create an integrated social protection system leveraging digital registration platforms like the *e-Shram portal*.

Crucially for evolving labour markets, the Code on Social Security expands statutory coverage beyond traditional employment models by introducing legal definitions for "*gig workers*," "*platform workers*," and "*unorganized workers*." It empowers the Central and State Governments to frame welfare and social security schemes for these categories, funded through mandatory aggregator contributions (ranging between *1 to 2 percent* of annual turnover, capped at *5 percent* of amounts paid to gig/platform workers), state allocations, and corporate social responsibility initiatives. However, because these workers are defined under the Social Security Code but excluded from core worker definitions in the Industrial Relations Code, they receive social safety net benefits without access to statutory collective bargaining machinery.

2.4 THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

The Occupational Safety, Health and Working Conditions (OSH) Code, 2020 consolidates *13 sector-specific labour statutes*, including the Factories Act, 1948; the Mines Act, 1952; the Contract Labour (Regulation and Abolition) Act, 1970; and the Inter-State Migrant Workmen Act, 1979.

The OSH Code simplifies administrative compliance by replacing fragmented, multi-statute licensing regimes with a single national registration mechanism for establishments employing 10

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or more workers. It sets statutory limits on daily working hours, mandates annual health examinations for specified employee categories, and mandates safety committees in larger enterprises. However, the Code simultaneously raises applicability thresholds:

- The statutory definition of a "factory" increases from *10/20 workers (with/without power)* to **20/40 workers**.
- The threshold for regulating contract labour increases from 20 to **50 contract workers**.

By elevating these thresholds, the OSH Code exempts smaller enterprises and medium-sized contract arrangements from statutory inspection regimes, narrowing the operational scope of shop-floor health and safety monitoring conducted by trade unions.⁴

2.5 COMPARATIVE OVERVIEW OF LEGACY ACTS AND CONSOLIDATED CODES

Consolidated Code	Legacy Acts Subsumed	Primary Focus & Trade Union Relevance
Code on Wages, 2019	• Payment of Wages Act, 1936 • Minimum Wages Act, 1948 • Payment of Bonus Act, 1965 • Equal Remuneration Act, 1976	Establishes a universal floor wage and standardized wage definition, reducing enterprise-level dispute litigation over wage components.
Industrial Relations Code, 2020	• Trade Unions Act, 1926 • Industrial Employment (Standing Orders) Act, 1946 • Industrial Disputes Act, 1947	Directly regulates trade unions, strike conditions, standing orders, collective bargaining mechanisms, and retrenchment thresholds.

⁴Maniyar Z and Maniyar Z, "Critical Examination of India's New Labour Codes" (*CJP*, December 18, 2025) <https://cjp.org.in/critical-examination-of-indias-new-labour-codes/>

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Code on Social Security, 2020	• EPF Act, 1952 • ESI Act, 1948 • Payment of Gratuity Act, 1972 • Unorganised Workers' Social Security Act, 2008 (+5 others)	Extends formal social security framework to gig, platform, and contract workers, shifting safety-net bargaining to statutory schemes.
OSH Code, 2020	• Factories Act, 1948 • Contract Labour Act, 1970 • Mines Act, 1952 (+10 others)	Modifies threshold applicability for factories and contract labour, altering the scope of shop-floor union health and safety oversight.

3. LEGAL ANALYSIS OF THE INDUSTRIAL RELATIONS CODE, 2020 & TRADE UNIONS

The Industrial Relations Code, 2020 contains the definitive legal rules governing trade unions in India. A section-by-section analysis reveals systemic shifts in trade union registration, collective recognition, industrial action rights, and employment security safeguards.

3.1 REGISTRATION AND DISSOLUTION REQUIREMENTS FOR TRADE UNIONS

Under *Section 6* of the IR Code, the threshold requirement for registering a trade union remains structurally similar to the Trade Unions Act, 1926. A minimum of seven members can apply for registration. However, to maintain registration, a trade union must continuously represent *at least 10 percent of the workers or 100 workers* (whichever is less) engaged in the establishment or industry.

A significant statutory alteration introduced under *Section 9 and Section 10* of the IR Code is the expanded administrative discretion granted to the Registrar of Trade Unions. The Registrar is empowered to cancel the registration of a trade union if it fails to maintain the statutory minimum membership threshold, fails to submit annual financial returns, or violates its own

constitution. Furthermore, the IR Code introduces stricter internal governance norms and auditing requirements for trade union funds. While intended to curb unrepresented "*paper unions*" and financial irregularity, trade union leaders argue that increased regulatory power in executive hands creates opportunities for administrative interference, delayed registration approvals, and selective deregistration of non-cooperative unions.

3.2 INSTITUTIONALIZATION OF THE SOLE NEGOTIATING UNION AND COUNCIL

One of the long-standing deficits of Indian labour jurisprudence under the legacy Trade Unions Act, 1926 was the absence of a central statutory mechanism for recognizing a trade union as the *sole collective bargaining agent* in an establishment. This lack of statutory obligation enabled employers to manipulate multiple competing unions or refuse to bargain altogether.

Section 14 of the Industrial Relations Code, 2020 addresses this historical gap by introducing a formal statutory framework for recognizing a "*Negotiating Union*" or "*Negotiating Council*":

1. **Sole Negotiating Union:** Where there is only one trade union operating in an industrial establishment, the employer must recognize that union as the sole negotiating union. If multiple trade unions exist, a union that secures the support of at least *51 percent or more* of the workers on the muster roll (verified through prescribed modes) is recognized as the sole negotiating union for collective bargaining.
2. **Negotiating Council:** If no single trade union meets the 51 percent threshold, the employer must constitute a "Negotiating Council." This council consists of representatives from registered trade unions that have secured the support of at least *20 percent* of the total workforce. Each union receives one seat for every 20 percent of support it commands.

While industry analysts view Section 14 as a positive structural development that eliminates bargaining fragmentation, it alters inter-union dynamics. Raising the single-union threshold to *51 percent* imposes a formidable requirement in multi-union workplaces. In establishments where membership is distributed among rival unions (e.g., 40%, 35%, and 25%), no single union qualifies as the sole bargaining agent. The resulting Negotiating Council must operate collectively, which can lead to inter-union rivalries, procedural deadlocks, and reduced

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bargaining effectiveness against management.

3.3 RESTRUCTURING THE RIGHT TO STRIKE: NOTICE REQUIREMENTS AND BAN ON FLASH STRIKES

The right to strike is universally recognized as a fundamental instrument of trade union leverage in collective disputes. Under the legacy Industrial Disputes Act, 1947 (Section 22), workers in "*public utility services*" (such as water, power, railways, and sanitation) were required to give a *14-day advance notice* before striking. Workers in non-public utility establishments, however, were not subject to mandatory advance notice requirements, allowing them to engage in lawful flash strikes or immediate work stoppages during acute disputes.

Section 62 of the Industrial Relations Code, 2020 fundamentally alters this paradigm by eliminating the distinction between public utility services and non-public utility establishments. Section 62 mandates that no person employed in any industrial establishment shall go on strike without giving to the employer a notice of strike within six weeks before striking, or within fourteen days of giving such notice. Furthermore, no strike can take place during the pendency of conciliation proceedings before a conciliation officer, nor within seven days after the conclusion of such proceedings.

This statutory change effectively renders all flash strikes, spontaneous protests, and immediate walkouts illegal across all sectors of the Indian economy. Because the institution of conciliation proceedings automatically triggers a statutory ban on strikes, an employer can defer or neutralize a planned strike by submitting a dispute to the conciliation officer. Consequently, trade unions face significant procedural hurdles when organizing legal strikes, diminishing their ability to leverage immediate industrial action during negotiations.⁵

3.4 THRESHOLD REVISIONS FOR LAY-OFFS, RETRENCHMENT, AND CLOSURE (300-WORKER RULE)

Chapter V-B of the legacy Industrial Disputes Act, 1947 mandated that industrial establishments employing 100 or more workers obtain prior approval from the appropriate government before

⁵JusCorpus, "COMPARATIVE ANALYSIS OF TRADE UNION AND INDUSTRIAL RELATIONS: FROM THE TRADE UNIONS ACT 1926 TO THE" (*Jus Corpus*, July 17, 2026) <https://www.juscorpus.com/comparative-analysis-of-trade-union/>

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laying off workers, retrenching employees, or closing down operations. This provision was long cited by employers as a key structural rigidity that discouraged large-scale employment generation in formal manufacturing.

Section 77 of the Industrial Relations Code, 2020 increases this threshold threefold. Under *Section 77*, prior governmental permission for lay-offs, retrenchment, and closure is required only for industrial establishments employing *300 or more workers*. Furthermore, *Section 77(1)* empowers the appropriate government to raise this threshold higher by executive notification, without requiring parliamentary amendment.

This threshold expansion fundamentally alters job security dynamics in India's formal manufacturing sector. Industrial data indicates that over *80 to 90 percent* of manufacturing units in India employ fewer than *300 workers*. By raising the threshold, the IR Code removes prior governmental scrutiny for retrenchment in a vast majority of registered factories. Trade unions lose a major legal mechanism used to contest arbitrary down-scaling or enterprise closures, reducing their institutional leverage to defend member employment stability.

3.5 STANDING ORDERS AND FLEXIBILITY IN EMPLOYEE STATUS

Under the Industrial Employment (Standing Orders) Act, 1946, industrial establishments employing *100 or more workers* were required to formally define and register working conditions including classification of workers, shift schedules, attendance rules, misconduct classifications, and disciplinary procedures via certified Standing Orders. This framework limited unilateral management modifications to service conditions.

Under *Section 28* of the IR Code, the threshold for mandatory application of certified Standing Orders is raised to *300 or more workers*. Establishments with under 300 employees are exempt from statutory Standing Order certification, giving employers broader discretion to alter working rules, duty hours, and disciplinary terms without prior regulatory review or union consultation.⁶

4. IMPACT ON TRADE UNION DYNAMICS AND COLLECTIVE BARGAINING

⁶Juslextra, "INDUSTRIAL RELATIONS CODE, 2020: TRADE UNION LAW EXPLAINED" (*Juslextra*) <https://juslextra.in/f/industrial-relations-code-2020-trade-union-law-explained>

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4.1 SHIFT IN COLLECTIVE BARGAINING POWER STRUCTURES

The consolidated effect of the Labour Codes is a recalibration of industrial power dynamics toward management. Collective bargaining relies on balanced counter-vailing power between organized labour and enterprise management. By combining a *51 percent membership* threshold for sole negotiating rights with advance strike notice requirements and elevated retrenchment thresholds, the IR Code modifies the statutory foundation of this balance.

Employers gain greater operational flexibility to adjust labour inputs to market demand, modify production structures, and restructure operations without compulsory union negotiation or state intervention. Conversely, trade unions face operational constraints. With strike actions bound by mandatory *14-day notice* periods and potential conciliation stays, unions have fewer immediate legal measures to exert pressure during contentious negotiations. As a result, collective bargaining shifts from bilateral negotiation backed by protected industrial action toward administrative dispute resolution within state-managed conciliation frameworks.

4.2 INSTITUTIONALIZATION OF FIXED-TERM EMPLOYMENT (FTE) AND UNIONIZATION CHALLENGES

A major structural reform introduced in *Section 2(o)* and Section 14 of the Industrial Relations Code, 2020 is the formal legal recognition of *Fixed-Term Employment (FTE)* across all industry sectors. Under the FTE framework, employers can hire workers directly on fixed-duration written contracts without using third-party contractors. FTE workers are entitled to statutory parity with permanent workers regarding wages, allowances, statutory benefits, and pro-rata gratuity (after completing one year of service).

While FTE offers advantages over third-party contract labour by ensuring wage parity and direct employment relationships, it poses structural challenges for trade union membership and longevity:

1. **Precarity of Tenure:** Fixed-term contracts expire automatically by efflux of time. Non-renewal of an FTE contract does not constitute statutory "retrenchment" under *Section 2(zh)* of the IR Code, meaning employers can choose not to renew contracts without providing retrenchment compensation or showing cause.
2. **Erosion of Permanent Worker Core:** As enterprises transition toward FTE models for

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operational roles, the proportion of permanent workers with long-term tenure is likely to decrease. Trade unions traditionally rely on a stable, permanent core workforce for leadership, membership contributions, and active mobilization.

3. **Disincentive for Worker Participation:** Workers on short-term fixed contracts face economic disincentives to join trade unions, participate in collective disputes, or challenge management actions due to concerns regarding future contract renewals.⁷

4.3 GIG AND PLATFORM WORKERS: INCLUSION WITHOUT STRUCTURAL COLLECTIVE REPRESENTATION

The Code on Social Security, 2020 introduces statutory definitions for "*gig workers*" and "*platform workers*," acknowledging the growth of digital platform labour in urban service economies. *Section 114* of the Social Security Code outlines social security boards and welfare funds funded through aggregator contributions (ranging from 1 to 2 percent of annual turnover).

However, an institutional oversight exists across the four codes regarding gig and platform labour representation:

1. **Exclusion from the Definition of "Worker":** The Industrial Relations Code, 2020 maintains traditional definitions of "workman" and "employee" based on formal contract-of-service and control frameworks. Gig workers are generally classified as independent "partners" or "contractors" rather than traditional employees.
2. **Absence of Bargaining Frameworks:** Because gig and platform workers fall outside the operational scope of the IR Code, they lack statutory collective bargaining rights, negotiating council representation, and formal dispute resolution pathways against platform aggregators.
3. **Organizational Fragmentation:** Gig labour is geographically dispersed, digitally managed through algorithms, and subject to high turnover. Without statutory protection for gig worker trade unions, organizing efforts remain informal, fragmented, and limited in their ability to negotiate core algorithmic management and piece-rate commission terms.

⁷Sharma S and Vivekananda Institute of Professional Studies, "IMPACT OF REGISTERED TRADE UNIONS IN COLLECTIVE BARGAINING," vol VI (2021) journal-article <https://ijrl.com/wp-content/uploads/2026/03/IMPACT-OF-REGISTERED-TRADE-UNIONS-IN-COLLECTIVE-BARGAINING.pdf>

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4.4 THE STATE, EMPLOYERS, AND THE DISEMPOWERMENT OF TRADE UNIONS

The structural changes introduced by the Labour Codes reflect a clear policy shift. Central and State policy agendas have prioritized improving labour market flexibility, lowering enterprise compliance costs, and rationalizing dispute resolution to support macroeconomic growth and manufacturing competitiveness under initiatives such as 'Make in India'.

While these policy choices aim to reduce informalization by encouraging formal business registration, they modify the institutional role of trade unions. Rather than serving as primary co-determinants of shop-floor workplace standards and employment stability, trade unions are repositioned within a tightly regulated framework focused on formal negotiation and conciliation. The broader political economy reflects an emphasis on enterprise flexibility, leaving trade unions to adapt their organizational strategies to remain relevant in a modernizing labour market.⁸

5. CONSTITUTIONAL AND INTERNATIONAL LABOUR STANDARDS PERSPECTIVE

5.1 ARTICLE 19(1)(C) AND JUDICIAL INTERPRETATION OF UNION RIGHTS

The constitutional foundation of trade unionism in India rests primarily on *Article 19(1)(c)* of the Constitution of India, which guarantees all citizens the fundamental right "*to form associations or unions.*" This constitutional guarantee acknowledges the collective power of working-class organization as an indispensable element of democratic governance and socio-economic justice. However, Indian constitutional jurisprudence has consistently maintained a strict legal distinction between the fundamental right to form an association or trade union and the ancillary statutory rights, privileges, or operational powers that flow from unionization once an organization is established.

In the landmark case of *All India Bank Employees' Association v. National Industrial Tribunal (AIR 1962 SC 171)*, the Supreme Court of India established a fundamental constitutional

⁸Ved, V. (2023, April 22). *Collective bargaining by labour unions and its impacts on industrial relations*. unknown. ResearchGate. https://www.researchgate.net/publication/370205523_Collective_Bargaining_by_Labour_Unions_and_its_Impacts_on_Industrial_Relations

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principle regarding labor rights. The Apex Court held that while the right to form a trade union is a fundamental right under Article 19(1)(c), this fundamental guarantee does not carry with it a concurrent fundamental right to effective collective bargaining or an absolute right to strike. The Court clarified that the right to strike is a statutory right created and regulated by parliamentary enactmentssuch as the legacy Industrial Disputes Act, 1947, and the contemporary Industrial Relations Code, 2020rather than an inherent constitutional right. Consequently, statutory rights like striking remain subject to reasonable restrictions imposed by the state under *Article 19(4)* of the Constitution on grounds of public order, morality, or the general public interest.

This restrictive judicial approach was further reinforced in *T.K. Rangarajan v. Government of Tamil Nadu (2003) 6 SCC 641*, where the Supreme Court ruled that government employees possess no fundamental, statutory, or equitable right to engage in strikes. The Court emphasized that industrial action in public service disrupts administrative functioning, harms public convenience, and threatens economic stability, reaffirming that state intervention to preserve industrial peace supersedes unbridled collective protest.

Based on this established judicial precedent, the procedural limitations introduced under *Section 62* of the Industrial Relations Code, 2020including the *mandatory 14-day advance strike notice*, the six-week validity window, and automatic strike stays during conciliation proceedings—are legally structured to withstand constitutional challenges under Article 19(1)(c). While these procedural barriers meet the constitutional standard of "reasonable restrictions" under Article 19(4), trade unions contend that this formal legal validity disarms organised labour in practice. By converting every industrial sector into a de facto public utility service regarding strike notices, the IR Code dilutes the practical leverage of trade unions during acute labour disputes.⁹

5.2 COMPLIANCE WITH ILO CONVENTIONS 87 AND 98

India is a founding member of the *International Labour Organization (ILO)* and has ratified numerous fundamental international labour conventions. However, India has notably abstained from ratifying two seminal, core ILO conventions that define international trade union rights:

⁹Ahmad W, "Labour Rights in the Indian Constitution and Beyond: Challenges and Reforms" [2026] International Journal of Law Management & Humanities <https://ijlmh.com/article/view/labour-rights-in-the-indian-constitution-and-beyond-challenges-and-reforms>

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- *ILO Convention No. 87: Freedom of Association and Protection of the Right to Organise Convention, 1948.*
- *ILO Convention No. 98: Right to Organise and Collective Bargaining Convention, 1949.*

The official justification maintained by successive Indian governments regarding non-ratification centres on domestic administrative rules governing civil servants. Under *various Central and State Civil Services (Conduct) Rules*, government employees are statutorily restricted from joining politically affiliated trade unions, raising political funds, or engaging in strikes or industrial walkouts. Because ratifying *Conventions 87 and 98* would require granting full freedom of association and strike rights to public sector workers, the state has refrained from formal ratification.

Despite non-ratification, the principles embodied in ILO Conventions 87 and 98 represent global benchmarks for evaluating the quality of domestic labour legislation and social dialogue. When evaluated against these international standards, several key provisions of the Industrial Relations Code, 2020 highlight noticeable compliance gaps:

- **Restrictions on Industrial Action and Autonomy:** ILO Convention No. 87 establishes that worker and employer organizations must have the *right to organize* their administration, formulate their programs, and take collective action without state interference. The universal application of 14-day strike notices and automatic conciliation stays *under Section 62* of the IR Code allows administrative machinery to delay or neutralize lawful industrial actions, conflicting with international standards on organizational autonomy.
- **Bargaining Autonomy and Representation:** ILO Convention No. 98 stresses voluntary collective negotiation between independent worker organizations and employers. While *Section 14* of the IR Code introduces long-overdue statutory recognition for bargaining agents, setting a strict 51 percent threshold for "Sole Negotiating Unions" creates high numerical barriers. In competitive multi-union establishments, this high threshold risks excluding minority unions representing *20 to 50 percent* of the workforce from direct social dialogue, limiting broad-based workplace representation.
- **Exclusion of Non-Traditional Workers:** International labour standards advocate for

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universal coverage of freedom of association rights across all economic sectors. By maintaining a traditional definition of "worker" based on formal employer control, the IR Code leaves gig, platform, and independent contract workers without formal collective bargaining machinery, creating a gap between modern employment reality and international labour standards.¹⁰

6. CONCLUSION AND FINDINGS

6.1 SUMMARY OF MAJOR FINDINGS

This comprehensive analysis of the new Labour Codes and their impact on trade unions in India yields the following primary findings:

1. **Statutory Rationalization vs. Rights Contraction:** The consolidation of 29 legacy labour statutes into four Labour Codes achieves significant administrative rationalization, standardizes definitions, and reduces compliance complexity. However, this statutory modernization occurs alongside a contraction of traditional trade union leverage.
2. **Shift in Industrial Action Dynamics:** Section 62 of the Industrial Relations Code, 2020 removes the distinction between public utility and non-public utility services, imposing mandatory 14-day advance strike notices and automatic conciliation stays across all industrial sectors. This effectively eliminates flash strikes and procedural flexibility for union actions.
3. **Institutionalization of Negotiating Bodies:** Section 14 introduces a clear statutory mechanism for recognizing a sole Negotiating Union (51% membership threshold) or a Negotiating Council (20% threshold). While this streamlines collective bargaining, it imposes high union membership demands in competitive multi-union workplaces.
4. **Reduction in Employment Protection Thresholds:** Elevating the prior government permission threshold for lay-offs, retrenchments, and closures from 100 to 300 workers (Section 77) removes statutory retrenchment scrutiny across 80 to 90 percent of manufacturing enterprises, reducing union capacity to contest workforce reductions.

¹⁰Journal I, "ILO Conventions and India's Labour Law Evolution: Balancing Global Standards and Domestic Challenges" (*IJLLR Journal*, May 12, 2025) <https://www.ijllr.com/post/ilo-conventions-and-india-s-labour-law-evolution-balancing-global-standards-and-domestic-challenges>

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5. **Precarity via Fixed-Term Employment:** Formal statutory recognition of Fixed-Term Employment (FTE) across all operational sectors provides direct hiring flexibility but creates a more transient workforce core, presenting long-term structural challenges for sustained trade union membership and leadership development.
6. **Representation Gaps for Gig/Platform Workers:** While the Code on Social Security, 2020 introduces social safety net provisions for gig and platform workers, the Industrial Relations Code, 2020 omits these non-traditional workers from its core definitions of "worker," leaving them without statutory collective bargaining and dispute resolution frameworks.¹¹

6.2 POLICY RECOMMENDATIONS

To establish a balanced, sustainable industrial relations framework that fosters economic growth while respecting organized labour rights, the following legal and policy adjustments are recommended:

1. **Calibrate Negotiating Union Thresholds:** Consider reducing the single-union recognition threshold under Section 14 of the IR Code from 51 percent to a more accessible percentage (e.g., 40 percent), or introduce proportional representation rules to ensure minority unions retain a structured voice in shop-floor safety and welfare discussions.
2. **Refine Strike Notice Protocols:** Introduce expedited, time-bound conciliation mechanisms for urgent workplace grievances, ensuring that statutory strike notices under Section 62 do not result in indefinite procedural delays that prevent lawful union representation.
3. **Extend Bargaining Frameworks to Gig Workers:** Amend the Industrial Relations Code to provide a recognized legal pathway for gig workers and independent platform contractors to organize, form certified associations, and participate in structured tripartite bargaining with digital platform aggregators and state welfare boards.
4. **Protections for Fixed-Term Employees:** Establish regulatory safeguards against the systematic displacement of permanent roles by continuous fixed-term renewals, ensuring

¹¹“India’s New Labour Codes: Recognition of Trade Unions” <https://prod-bo.ibanet.org/India-new-Labour-Codes-recognition-of-trade-unions>

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that core, perennial operational activities maintain a minimum proportion of permanent employment options.

5. **Strengthen Tripartite Consultation:** Revitalize regional and national tripartite forums—including the Indian Labour Conference to ensure trade unions are actively consulted during the drafting of state-level rules and enforcement guidelines under the four Labour Codes.

The enactment of India's four consolidated Labour Codes most notably the Industrial Relations Code, 2020 represents a historic shift in post-colonial industrial jurisprudence. While the unification of 29 legacy statutes achieves crucial administrative rationalization, standardizes wage definitions, and reduces regulatory overhead for enterprises, it simultaneously recalibrates shop-floor power dynamics in favour of management. By elevating retrenchment permission thresholds to 300 workers, instituting a universal 14-day advance strike notice with mandatory conciliation stays, and formalizing Fixed-Term Employment without retrenchment protections, the new legal framework systematically constrains traditional trade union leverage. Furthermore, while the Code on Social Security acknowledges gig and platform workers, their exclusion from core collective bargaining rights under the Industrial Relations Code leaves a substantial segment of the modern workforce without structural representation.

Ultimately, the new statutory regime repositions trade unions from active co-determinants of workplace standards into a tightly constrained administrative conciliation framework designed to prioritize economic flexibility and market competitiveness. For organized labour to retain institutional efficacy in this evolving landscape, unions must adapt their organizational strategies beyond traditional manufacturing to encompass contract, service, and platform workers. Achieving a sustainable industrial relations ecosystem will depend on future policy recalibration such as lowering sole negotiating union thresholds, enforcing safeguards against the arbitrary misuse of fixed-term contracts, and revitalizing genuine tripartite dialogue to ensure economic modernization does not come at the cost of equitable worker rights and constitutional guarantees.¹²

¹²George DrAS, "India's New Labor Codes a Critical Analysis of Promise, Peril, and the Path Forward" [2025] Zenodo (CERN European Organization for Nuclear Research)

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