

Proposed Developments In India's Law On Labor Unions

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In March 2021, the United States House of Representatives passed a pro-union bill, called Protecting the Right to Organize Act of 2021 (PRO Act). If enacted, the PRO Act shall amend several provisions of the National Labor Relations Act (NLRA) to provide new rights for labor unions and restrict certain existing rights for employers.[1]

In India, the new labor codes are awaiting a notification on their effective date. Once effective, the labor codes introduce certain critical provisions in relation to labor unions (known as trade unions in India).

Law in relation to labor union in India

Article 19(1)(c) of the Constitution of India, 1950 (Constitution) envisages the fundamental right to 'freedom of speech and expression' and guarantees the right 'to form associations or unions' including unions.

Consistent with the Constitution, the labor laws in India enumerate the right of employees to form and join a labor union and engage in collective bargaining in national legislations including the Trade Union Act, 1926 (TU Act) and the Industrial Disputes Act, 1947 (ID Act), besides certain state-specific legislations. Courts in India have previously upheld the right of workers to form or join a union in India.[2]

Recognition of labor union

The concept of 'recognition' of a labor union is currently missing in our federal laws. Some Indian states such as Maharashtra and Kerala have implemented laws on recognition of unions, being the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and the Kerala Recognition of Trade Unions Act, 2010.

Recognising a labor union means that the employer accepts a particular labor union as having a representative character and hence, will be willing to engage in discussions with the union with respect to the interests of the workers.[3] Labor unions believe that recognition of labor union is necessary to ensure collective bargaining and stability of industrial relations.

In fact, the proposed PRO Act states that employers no longer can withdraw recognition of a union without a decertification election.[4]

Negotiating Union under the Industrial Relations Code, 2020

On September 29, 2020, the Industrial Relations Code, 2020 of India (IR Code) was enacted which subsumes and replaces certain laws including the TU Act. While yet to be made effective, the IR Code introduces the concept of 'negotiating union' in an industrial establishment having one or more registered labor unions.

A negotiating union or council is a labor union which is recognized for negotiating with the employer of the industrial establishment, on certain prescribed matters.[5] The IR Code provides that once a labor union is recognised by the employer, such recognition would stay valid until three years from the date of recognition or constitution or such further period up to five years, in total, as may be mutually decided by the employer and the labor union(s).

If there is a single registered labor union in an industrial establishment, the employer is required to recognise such union as the sole negotiating union of the workers. In case there are multiple labor unions registered under the IR Code, the labor union which has at least 51% membership of workers on the muster roll of the industrial establishment should be recognized as the negotiating labor union by the employer. However, in case there are multiple labor unions where none of them are meeting the above 51% membership criteria, the employer should constitute a negotiating council, consisting of representatives of such registered labor unions which have the support of at least 20% of the total workers on the muster roll of that industrial establishment and such representation should be of one representative for each 20% and for the remainder after calculating the membership on each 20%.

As per the IR Code, if the central government considers that it is necessary that a labor union or federation of labor unions is to be recognised as central labor union at the central level, it may recognise such labor union as such, in such manner as may be prescribed in the rules.

Proposed Central rules on recognition of negotiating union and adjudication of disputes relating to labor unions (draft)[6]

On May 4, 2021, the central government issued the draft of the proposed central rules called the Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021 ("**Trade Union Rules**") under the IR Code.

The Trade Union Rules provide a list of matters in relation to workers which the negotiating union or negotiating council shall negotiate with the employer of the establishment. This includes classification of grades of workers, their wages and other allowances, leave entitlements, disciplinary procedures and safety, health and working conditions of the workers. It also provides that the criteria for recognising a single registered labor union as the sole negotiating union of workers is that the single registered labor union should have at least 30% percent of the total workers employed in the industrial establishment as its members. Further, it provides the mechanism for verification of the membership of the labor unions and recognition of the labor union as the sole negotiating union or council.

What lies ahead?

The new labor codes in India are yet to be enacted although it currently appears only a matter of time. The proposed reforms in labor union law suggest the Indian government's intent towards empowering the labor unions, some of whom have a large number of members. It remains to be seen whether some of these developments will trigger more employees in India to become unionized. Only time will tell.

[1] <https://www.jdsupra.com/legalnews/why-employers-need-to-pay-special-7392319/>

[2] Damyanti Naranga and Ors. vs. Union of India (UOI) and Ors. AIR 1971 SC 966

[3] Singh et al., Employee Relations Management, p. 110, Available at <https://books.google.co.in/books?id=vkQ7BAAQBAJ&printsec=frontcover>

[4] Section 104(g) of the PRO Act

[5] Section 14 of IR Code & Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Labor Unions Rules, 2021

[6] <https://egazette.nic.in/WriteReadData/2021/226832.pdf>

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