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Harmonizing International Labour Definitions and Domestic Legislation: A Comprehensive Approach to Enhance Worker Protections and Business Efficiency

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"The true measure of any society can be found in how it treats its most vulnerable members."

-Mahatma Gandhi

ABSTRACT:

This paper explores the harmonization of international labor definitions with domestic legislation to enhance worker protections and business efficiency in India. It examines the historical significance of the Trade Union Act 1926 and the Labour Law Code, which aim to safeguard workers' rights and streamline labor laws into comprehensive codes. The international perspective, including comparisons with ILO and UN conventions, highlights the need for India to align its definitions with global standards. Judicial and legislative analyses underscore the challenges and reforms necessary to modernize these laws. The paper concludes by advocating for a unified legislative framework that consolidates various labor statutes, ensuring clarity, accessibility, and effective legal compliance. This approach seeks to foster a harmonious industrial environment while protecting workers' welfare and addressing contemporary labor market challenges.

INTRODUCTION AND IMPORTANCE OF THE LEGISLATION:

The Trade Union Act of 1926 and the labor law code are two important milestones in the history of labor legislation in India that reflect the commitment of the nation to ensure the welfare and dignity of its workers.

The Trade Union Act of 1926 was implemented with the objective of facilitating the registration of trade unions and establishing the legal framework governing registered trade unions in India.[1] The primary objective of the Act was to safeguard the rights and welfare of workers, while also fostering the practice of collective bargaining and facilitating harmonious industrial relations. The legislation also established guidelines and provisions pertaining to the

[1] Nitya Nand Pandey, Trade Union Act,1926, Slide Share, (July 20, 2024, 9:29 P.M), https://www.slideshare.net/slideshow/complete-notes-on-the-trade-union-act-1926/64704791

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establishment, operation, termination, and consolidation of labor unions, along with their entitlements and obligations.

The Labour Law Code represents a recent endeavor by the Government of India to consolidate and streamline the prevailing labor laws into four distinct codes. These codes include the Code on Wages 2019, the Industrial Relations Code 2020, the Occupational Safety, Health and Working Conditions Code 2020, and the Code on Social Security 2020[2]. The objective of the labor law code is to establish a comprehensive framework that ensures the provision of minimum wages, social security, and occupational safety and health measures for workers across all sectors, including both the organized and unorganized sectors. The primary objective of the labor law code is to enhance the efficiency of corporate operations, alleviate the burden of regulatory compliance, foster a harmonious industrial environment, and allow the implementation of labor-related changes.

INTERNATIONAL PERSPECTIVE:

An international perspective of the Trade Unions Act, of 1926 and the labor code can be obtained by comparing them with the international history, ILO, UN conventions, current global updates, and new ideologies of the trade union in today's world. Some of the points of comparison are:

International History:

The history of trade unionism can be traced back to the 18th century in Europe and America, where workers formed associations to demand better wages and working conditions[3]. The trade union movement gained momentum in the 19th and 20th centuries with the rise of industrialization, capitalism, socialism, and communism. The Trade Unions Act, of 1926 was enacted in India during the colonial period when the trade union movement was influenced by nationalist and socialist ideologies. The labor code is a contemporary reform that reflects the changing economic and social realities of globalization, liberalization, digitalization, and informalization.

[2] The Occupational Safety, Health and Working Conditions Code, No. 37, Acts of Parliament, 2020 (India).
[3] Vansh Ved, Collective Bargaining by Labour Unions and its Impacts on Industrial Relations, Research Gate (July 20, 2024, 10:09 PM), https://www.researchgate.net/publication/370205523_Collective_Bargaining_by_Labour_Unions_and_its_Impacts_on_Industrial_Relations

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ILO:

The International Labor Organization (ILO) is a specialized agency of the United Nations that sets international labor standards and promotes social justice[4] and decent work for all. The ILO has adopted 190 conventions and 206 recommendations on various aspects of labor rights and welfare. The Trade Unions Act, of 1926 is compatible with some of the ILO conventions, such as Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective Bargaining. However, it also has some limitations, such as the lack of recognition of trade unions by employers, the absence of collective bargaining machinery, and restrictions on the political activities of trade unions. The labor code is expected to align with more ILO conventions, such as Convention No. 100 on Equal Remuneration, Convention No. 102 on Social Security (Minimum Standards), Convention No. 155 on Occupational Safety and Health, and Convention No. 189 on Domestic Workers.

UN Conventions:

The United Nations (UN) has adopted several conventions and declarations on human rights that are relevant to labor rights and welfare. Some of these are Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), International Covenant on Economic[5], Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of Persons with Disabilities[6] (2006), etc. The Trade Unions Act, of 1926 is consistent with some of these UN conventions, such as Article 23 of UDHR which recognizes the right to form and join trade unions. However, it also falls short of some other UN conventions, such as Article 8 of ICESCR which guarantees the right to strike. The labor code is likely to comply with more UN conventions, such as Article 7 of ICESCR which ensures fair wages and equal remuneration for work of equal value.

Current Global Updates:

The current global updates refer to the recent developments and trends in the labor market that affect the trade union movement. Some of these are the COVID-19 pandemic that has disrupted

[4] Mingst Karen, "International Labour Organization", Encyclopedia Britannica, (July 20, 2024, 10:30 PM), https://www.britannica.com/topic/International-Labour-Organization

[5] Human Right Explained, https://humanrights.gov.au/our-work/education/human-rights-explained-fact-sheet-5-international-bill-rights, (last visited July 20, 2024)

[6] UN Women, https://www.un.org/womenwatch/daw/cedaw/cedaw.htm, (last visited July 20, 2024)

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economic activities and livelihoods; digital transformation that has created new forms of work and challenges; climate change that has increased environmental risks and opportunities; migration that has diversified the workforce; inequality that has widened the gap between rich and poor; etc. The Trade Unions Act, of 1926 is outdated in addressing these current global updates as it was framed in a different socio-economic context. The labor code is more responsive to these current global updates as it incorporates provisions for gig workers, platform workers, inter-state migrant workers, fixed-term employment, reskilling funds, etc.

New Ideologies of the Trade Union:

The new ideologies of the trade union refer to the emerging perspectives and strategies of the trade union movement that aim to adapt to the changing labor market and society. Some of these are social movement unionism that links labor issues with broader social and political causes; networked unionism that connects workers across sectors, regions, and countries; inclusive unionism that embraces diversity and representation of marginalized groups; democratic unionism that fosters participation and accountability of members; transformative unionism that advocates for systemic change and alternative development models; etc. The Trade Unions Act, of 1926 is restrictive in allowing the trade unions to adopt these new ideologies as it imposes legal and administrative barriers on their functioning. The labor code is more conducive to these new ideologies as it provides more autonomy and flexibility to the trade unions in terms of registration, recognition, amalgamation, dissolution, etc.

To summarize, the Trade Unions Act, of 1926 and the labor code can be compared with the international history, ILO, UN conventions, current global updates, and new ideologies of the trade union in today's world to understand their similarities and differences. The Trade Unions Act, of 1926 is a legacy of the colonial era that has some merits but also many drawbacks. The labor code is a modern reform that has some challenges but also many benefits. The trade union movement in India needs to evolve with the times and adopt a progressive and proactive approach to protect and promote the interests of the workers.

JUDICIAL AND LEGISLATIVE ANALYSIS:

The Trade Union Act of 1926 and the Labour Law Code are two important laws in India that spell out the rights and duties of both workers and bosses. However, they've been criticized for being out of date, rigid, and not in line with international labor norms.

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Judicial Analysis:

During labor disputes, strikes, lockouts, layoffs, retrenchments, and business closures, the courts have interpreted and applied the Labour Law Code and Trade Union Act. Some noteworthy case laws are mentioned as follows:

The **1958 Dimakuchi Tea Estate Workmen v. Management** case: The Supreme Court defined "industry" as any organized effort by an employer and his workers to produce or sell things or services that people demand. This modern and wide vision considered the economic and social value of diverse sorts of work. It also made it difficult to determine which labor laws applied to certain workers and companies.

In **Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978**), the Supreme Court expanded "industry" to include any activity analogous to creating or selling commodities or services. This covers education, healthcare, legal services, and more. This judgment meant many people who didn't before might benefit from labor rules, which was major news. It was also criticized for being unclear and too exhaustive. For instance, it didn't distinguish between profit- and welfare-oriented activities or structured and disorganized areas.

The **Supreme Court ruled in 2003's T.K. Rangarajan v. Government of Tamil Nadu** that the right to strike is a legal right that might be curtailed. The Court also ruled that government workers can't strike because it harms society. Because it reduced public sector workers' group work, this move was controversial. It also contradicted past rulings that the freedom to strike was crucial to trade unionism and problem-solving.

The Supreme Court ruled in **National Thermal Power Corporation Ltd. v. Chander Bhan (2006)**[7] that the Labour Law Code does not preclude an employer from firing a worker without an inquiry if he pays him his wages for one year. Common sense guided this conclusion, which benefited all parties. It made the boss's job easier and paid the worker properly. But it also raised concerns about how fair and straightforward these firings are and whether dishonest supervisors might take advantage.

In 2005, the Supreme Court ruled in **Bharat Forge Co. Ltd. v. Uttam Manohar Nakate**[8] that an employer can fire a person who is medically unable to work if they take the appropriate

[7] National Thermal Power Corporation Ltd. v. Chander Bhan, AIR (2006) 11 SCC 605
[8] Bharat Forge Co. Ltd. v. Uttam Manohar Nakate, AIR (2005) 2 SCC 489

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steps and receive a medical certificate. The judge honored the worker's rights and honour by requiring him to agree and be examined by a different doctor. But it also indicated that medical unfitness should be defined and decided more clearly and consistently across positions and organizations.

Legislative Analysis:

The government has diligently pursued various endeavours to amend and fortify both the Labour Law Code and the Trade Union Act, with the ultimate objective of rendering them more attuned to the evolving demands and challenges of the labor market, a comprehensive compilation of the most notable amendments and suggestions that have been put forth below:

The Industrial Disputes (Amendment) Act of 2010 brought about a series of regulations that impacted various aspects of labor conflicts, such as lockouts, strikes, layoffs, retrenchments, closings, arbitration, mediation, and other related matters. The objectives of this initiative encompass a range of crucial goals, such as expediting the resolution of disputes, safeguarding the fundamental rights of workers, cultivating an atmosphere of tranquillity and concord in the workplace, and pursuing numerous other significant objectives. However, it is important to note that employer groups and labor unions have expressed their opposition to the proposed policy, citing concerns regarding its perceived lack of stringency or overly relaxed approach to addressing various issues.

The Trade Union Act, 1926, section 14(3) does not necessitate any preliminary endorsement or notification to the Registrar or any other governing body prior to modifying the name of a duly registered trade union. The potential ramifications of this decision cannot be understated, as it has the potential to sow discord and distort the perceptions of those involved, including members, employers, and various stakeholders.

In a stunning display of political prowess, the user has presented a concise and thought-provoking statement. In analysing the intricacies of **Section 14(4)** under the act, it becomes apparent that a notable absence exists in terms of delineating a specific procedure or formalities for the amalgamation of multiple registered trade unions. This omission raises important questions regarding the regulatory framework surrounding such a significant process. The lack of explicit guidelines may potentially lead to ambiguity and uncertainty, thereby necessitating a closer examination of the legislative intent and potential implications for trade union

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amalgamations[9]. The potential consequences of this situation could give rise to intricate legal entanglements and contentious disagreements between the unified trade union, its constituents, and various other stakeholders. This crucial requirement mandates that companies seek the prior approval of their workforce before undertaking significant actions such as layoffs, retrenchments, or closures. Furthermore, it is imperative to acknowledge that the aforementioned policy necessitated the inclusion of prerequisites such as prior notification and the involvement of a mediator whenever workers sought to exercise their right to strike. This particular provision undeniably limited their capacity to engage in such actions

The Trade Unions (Amendment) Bill, introduced in 2018, sought to strategically modify various provisions within the Trade Union Act. In order to enhance the efficacy of trade unions, a proposed measure would have raised the threshold for registration. Specifically, it aimed to elevate the minimum requirement from **7% to 10% or a maximum of 100 workers**, whichever was the lesser of the two. At present, it is imperative to consider that the minimum threshold for trade union registration necessitates a membership base comprising no less than 7% of the relevant workforce. One of the key provisions of this proposed legislation would have bestowed upon the government the power to acknowledge labor unions at both the national and state levels, with the specific aim of facilitating collective bargaining. Additionally, it would have enabled the government to establish criteria for the recognition of these unions. The proposed measure aims to streamline and consolidate trade unions, fostering greater cohesion and accountability among them. Additionally, it seeks to enhance their representativeness and facilitate their active engagement in social discourse. However, it is important to consider the perspective of labor unions, who argue that the current method of union recognition is inherently unfair and lacks transparency. They contend that this approach curtails their autonomy and undermines their authority, while also favouring select unions over others.

SUGGESTIONS AND CONCLUSION:

In light of the above concerns, the government must thoroughly and consultatively evaluate the current legislation and propose fair and equitable changes to address the issues. The following sections suggest ways to improve the Trade Union Act and the Indian Labour Code based on

[9] Lukundo Nanyangwe, Amalgamation and Dissolution of Trade Union, Legal Vidhya Blog (July 20, 2024, 10:30 PM), https://legalvidhiya.com/amalgamation-and-dissolution-of-trade-union/

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current events, judicial decisions, and ideologies. The legislation shall ensure the insertion of international definitions of relevant terminology like employees, employers, industries, trade unions, and others that match sector and legislation requirements. Example: include informal, contract, domestic, and migratory labourers in the definition of "worker" without excluding them based on wage levels or work hours. In addition to middlemen and contractors, "employers" should include major employers that ensure labor law compliance. Trade unions should be defined as any association or federation of workers meeting specific criteria, such as membership, representation, and registration, without imposing arbitrary limits. Implementing techniques from countries with thorough and exact definitions of important concepts in their labor laws. The International Labour Organization (ILO) has conventions and standards that define and categorize labor law topics such as collective bargaining, economic activity, employment relationships, and social dialogue. India can use these to ensure its definitions match global norms. In order to enhance the clarity and accessibility of our legislative framework, it is also imperative to consolidate various pertinent statutes such as the Code on Industrial Relations Bill, the Labour Law Code, and the Trade Union Act into a unified code. This consolidation endeavour will streamline the comprehension of these laws, ensuring a more efficient and effective legal landscape for all stakeholders involved. The primary objective of this initiative was to streamline operational processes for businesses, fostering a conducive and harmonious work environment. Additionally, it aimed to prioritize the protection of employees' financial and physical welfare, while also addressing a range of other pertinent matters. Labor unions, in their steadfast commitment to safeguarding the rights and protections of workers, expressed opposition to the proposed measure. Their concerns centered on the potential diminishment of these crucial rights and protections. Furthermore, the 30% threshold established by the Draft Recognition Rules for single union-based industrial establishments is insufficient for recognition[10]. The neutrality of the secret ballot procedure, which is proposed in Rule 5, is subject to criticism due to its inherent flaws. The substantial bar of 51% imposed on industries reliant on multiple unions presents both pragmatic and constitutional complexities. **Southern Mazdoor Railway Sangh vs. Union of India[11], the Writ Petition**, contends that it is irrational and in violation of **Article 14** to demand **51%** of the muster register

[10] Krishna Ravishankar, Trade Union Recognition Under The Industrial Relations Code 2020, Live Law, (July 20, 2024), https://www.livelaw.in/columns/trade-union-recognition-under-the-industrial-relations-code2020-needs-introspection-221772

[11] Southern Mazdoor Railway Sangh vs. Union of India, AIR (1964) 5 SCR 200

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strength for a secret ballot election. The existing threshold limits are unattainable on account of unreasonableness and uncertainty.

In summary, the harmonization of diverse labor legislation into a cohesive code represents a substantial stride towards streamlining and logically organizing the legal structure that regulates worker welfare and working conditions in India.

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