

**RECONFIGURING REPRESENTATION: THE NEGOTIATING COUNCIL MODEL AND
COLLECTIVE BARGAINING JURISPRUDENCE IN INDIA**

Dr. Sheema S. Dhar¹

ABSTRACT

Collective bargaining is widely recognized as a cornerstone of industrial democracy and a fundamental labour right under international labour standards, anchored in the ILO constitution and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. It operates not only as a mechanism for determining wages, benefits and working conditions, but also as an institutional process for fostering cooperation, reducing conflict and building mutual trust in the workplace. ILO Conventions No.98 and No. 154 conceptualise collective bargaining as a primary means through which employer's organizations and worker's representatives establish fair terms of employment, promote social justice and secure stable labour relations even though, India has not ratified Convention No.98. Typical bargaining agendas cover wages, working time, training, occupational health and safety and equality at work with collective agreements regulating employment conditions and delineating rights and responsibilities so as to support harmonious and productive workplaces. At a systemic level, better bargaining arrangements are linked to more stable labour markets and a fairer distribution of economic gains. In India however the transformative potential of collective bargaining has historically been limited by weak statutory recognition of trade unions, fragmented and largely voluntary bargaining practices and the absence of a coherent, enforceable framework. The Industrial Relations Code 2020 seeks to address these gaps by defining collective bargaining in statutory terms and introducing structured mechanisms of representation most notably the "negotiating council" under Section 14. This article evaluates the effectiveness of that model as a vehicle for functionalizing the international promise of collective bargaining within India's evolving industrial relations regime.

KEY WORDS: Negotiating Council, Recognition, Tripartite consultation, Rights Based Architecture

¹ Associate Professor of Law, Government Law College, Thiruvananthapuram, Kerala 26

INTRODUCTION

Workers voice is central to industrial relations because it shapes how conflicts are managed, how labour standards are monitored and enforced and how power is balanced or rebalanced between workers and management in both national and transnational settings². A good worker voice method is necessary to make this influence real. It must give workers a protected, collective and empowered channel to raise concerns, negotiate changes and secure remedies especially in complex supply chains where traditional union representation is constrained³. In industrial relations workers voice is treated as a core dimension of the employment relationship alongside exit and loyalty, affecting efficiency, equity and voice outcomes at the workplace and beyond. Voice allows workers to flag problems in working conditions, health and safety and rights compliance early which improves decision making quality and reduces the likelihood that grievances escalate into open conflict or turnover⁴. Worker voice is also relevant for democratic governance within firms; it supports more balanced power relations, reinforces freedom of association where unions are weak or restricted and contributes to more legitimate and sustainable regulatory outcomes. Empirical and theoretical work in industrial relations links effective voice with better dispute resolution, higher productivity and improved worker welfare indicating that voice is not only normatively desirable but instrumentally valuable for employers and regulators. In supply chain and transnational governance contexts institutionalized worker voice becomes a mechanism through which international labour standards and national labor law are translated into factory level practice. These participation bodies create enabling conditions for workers to bring forward violations of codes of conduct and labour standards that might otherwise remain invisible under buyer driven compliance models. Not all voice mechanisms are equally effective; their design determines whether they actually enhance workers capacity to influence outcomes. Where voice structures are purely consultative, management dominated or disconnected from enforcement of labour standards they risk becoming symbolic and may even displace stronger forms of representation such as unions.

FOUNDATION OF AN EFFECTIVE WORKER REPRESENTATION MECHANISM

^{2*} Associate Professor of Law, Government Law College, Thiruvananthapuram, Kerala
U.S. Department of Labor, *Worker Voice: A Literature Review* (2024), available at <https://www.dol.gov/> (Last visited at Feb. 27, 2026)

³ MARK ANNER, WORKER VOICE AND LABOR STANDARDS 10-13 (ILO Research Repository, 2021)

⁴ John W. Budd et al., “Worker Voice, Power and Well Being” (2024) (Policy Report)

The three vertices of the triangular employment relationship are equity, efficiency and voice⁵. The Better Work participation committees studied in the ILO discussion paper illustrates that effective mechanisms are collective, democratic, empowered, protected, inclusive and enabled⁶. This implies several design requirements for a good worker voice method in industrial relations. It includes the following:

- Workers must be able to elect their representatives freely and hold them accountable, rather than having them appointed by management.
- The body must have clear, institutionalized access to information, regular dialogue with management and structured procedures for raising and resolving issues.
- There must be credible links between voice and remedy: issues raised through the committee should feed into compliance assessments, corrective action plans and where necessary, external enforcement.
- Workers representatives must enjoy protection from retaliation including confidentiality guarantees where appropriate and legal or contractual safeguards against discrimination or dismissal.
- The mechanism should not undermine freedom of association but rather coexist with or channel toward independent unions and collective bargaining where possible.

A well designed worker voice method integrates participatory structures into the wider industrial relations system so that workplace-level dialogue, collective bargaining and public regulation reinforce each other in securing compliance with labour standards⁷.

RECOGNITION OF TRADE UNION: CONCEPTUAL FRAMEWORK AND HISTORY

⁵ John W. Budd, *Employment with a Human Face: Balancing Efficiency, Equity, and Voice* (Cornell University Press, 2004) <https://books.google.com/books?hl=en%7B%5C%7Dlr=%7B%5C%7Ddid=%7B%5C%7Dhkaauqwcqc%7B%5C%7Ddoi=fn%7B%5C%7Dpg=PR9%7B%5C%7Ddq=Budd+2004+voice%7B%5C%7Ddots=Hj%7B%5C%7D7DTiHo%7B%5C%7Dsig=6EeWAlbvlluhxguJ5r1gi5QNdg%7B%5C%7Dv=onpage%7B%5C%7Dq=Budd%202004%20voice%7B%5C%7Ddf=false>. (Last visited at Feb. 28, 2026)

⁶ *Supra* note 2

⁷ Alan Bogg, 'It's Oh So Quiet?' *Employee Voice and the Enforcement of Labour Standards* https://www.researchgate.net/publication/290010875_It's_Oh_So_Quiet_Employee_Voice_and_the_Enforcement_of

The Recognition of trade unions in India prior to the Industrial Relations Code 2020 represented a complex landscape marked by the absence of a comprehensive central statutory framework, reliance on voluntary mechanisms and patch work state legislation.

Recognition means the expressed recognition of a registered trade union by an employer or by an employers' association for the purpose of collective bargaining⁸. Recognition is fundamentally different from registration under the Trade Unions Act 1926. While registration is a procedural formality completed with the Registrar of Trade Unions⁹ conferring corporate legal personality and certain immunities¹⁰, recognition is the substantive acknowledgement by the employer that a particular union has representative character and the authority to negotiate on behalf of workers.

It is the employer and only the employer who awards recognition to one or more unions or refuses such recognition. This employer discretion became the defining characteristic of pre Code recognition practice leaving the union with limited legal recourse when faced with management refusal.

Recognition is provided to that union which comprises of more than 50 percent of the employees¹¹ in that establishment as its members though this threshold varied across different state laws and voluntary codes¹².

The Trade Union Act 1926 was enacted to provide for the registration of trade unions and to define the law relating to registered trade unions. The Act's primary focus was on registration, not recognition for collective bargaining purposes. Recognition remained a matter of industrial practice, voluntary codes, state legislations and judicial intervention rather than central statutory right.

The need for statutory recognition was recognized early in India's labour law development but multiple attempts to create a central framework failed:

⁸ See Recognition of Trade Union, LawBhoomi (Dec. 30, 2024) *available at* <https://lawbhoomi.com/recognition-of-trade-unions/> (Last visited at Feb.28, 2026)

⁹The Trade Union Act, No. 16 OF 1926, §§ 3, 4,5,6,7,8,9 (Ind.)

¹⁰The Trade Union Act, No. 16 OF 1926, §§ 17, 18 (Ind.)

¹¹The Trade Union Act, No. 16 OF 1926, Chapter IIIA (Ind.) (Deleted)

¹²See Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. I of 1972, (Ind.)

- Royal Commission of Labour (1929): Recommended compulsory recognition mechanism to strengthen collective bargaining.
- Trade Union Amendment Bill 1943: Proposed compulsory recognition provisions but was not enacted due to strong employer opposition.
- Trade Union Amendment Bill 1947: Actually passed provisions for compulsory recognition but these provisions never came into force due to continued resistance from employer federation and lack of political will.
- First and Second National Labour Commissions: Both recommended statutory mechanisms with time limits for recognition, but their proposals remained largely unimplemented at the central level.

This pattern of legislative failure meant that for seven decades after independence, India lacked a binding central framework for trade union recognition leaving workers collective bargaining rights vulnerable to managerial discretion.

The judiciary reinforced employer discretion in the pre-code era through landmark decisions. In *Kalindi & Ors v. Tata Locomotive & Engineering Co.Ltd*¹³ The Supreme Court held that workers had no inherent or fundamental right to representation by a trade union unless such right was specifically conferred by standing orders or agreement. The three judge bench observed¹⁴:

“....a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union: though of course an employer in his discretion can and may allow his employee to avail himself of such assistance.”

Reiterating the employer’s discretion in the matter in *Bharat Petroleum v. Maharashtra General Kamgar Union*¹⁵ The court observed that employers could not be compelled to recognize a union in the absence of statutory mandate. It was observed¹⁶:

“There appears to be some logic behind this as a co-employee would be fully aware of the

conditions prevailing in the parent establishment, its Service Rules, including the

¹³ AIR 1960 SC 914

¹⁴ *Ibid*

¹⁵ AIR 1999 SC 401

¹⁶ *Ibid*

Standing Orders, and would be in a better position, than an outsider, to assist the delinquent in the domestic proceedings for a fair and early disposal.”

Employers commonly refused recognition on grounds like presence of outsiders in union leadership; union not being registered under the Trade Union Act; inclusion of dismissed or suspended workers in membership; alleged past misconduct by union office bearers and multiplicity of unions in the establishment. These refusals were rarely subject to effective legal challenges in the absence of statutory recognition provisions.

METHODS OF RECOGNITION IN PRE-CODE ERA

Voluntary Recognition: When an employer voluntarily recognizes a trade union without using any legal procedures. This form was depending entirely on industrial relations climate, union strength and employer philosophy. Such a type of recognition could be withdrawn at management discretion unless protected by collective agreements.

Statutory Recognition: If an employer and trade union do not come to a voluntary recognition agreement a trade union can make an application for statutory recognition. Statutory recognition was available in certain states that had enacted their own legislation.

THE MRTU & PULP ACT 1971

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 created a comprehensive scheme for statutory recognition of trade unions alongside a codified regime on unfair labour practices. In terms of recognition it requires that a union claiming representative status must have at least 30% of the employees in the establishment as members and must have been in existence for at least six months¹⁷. A union meeting these basic thresholds may apply to the Industrial court for recognition triggering a quasi judicial process in which the employer is obliged to respond and cooperate with membership verification.

Verification is carried out through objective methods such as scrutiny of membership records, check off statements showing deduction of union dues from wages and where necessary a secret ballot among employees to determine which union commands majority support¹⁸. Once

¹⁷ Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. I of 1972, §. 11(Ind.)

¹⁸ Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act No. I of 1972, §§ 12, 13, 19 (Ind.)

recognized the union acquires the status of sole bargaining agent in the defined undertaking or industry and this status is protected against challenge for a specified stability period.

On the prevention of unfair labour practice side the Act goes further than earlier general labour laws by enumerating in detail Schedules, unfair labour practices attributable both to employers and to trade unions¹⁹. These include employer interference with union formation and functioning, victimization or discrimination against union members refusal to bargain in good faith with a recognized union as well as union side coercion or workers, use of violence or intimidation and other forms of irresponsible industrial action. Complaints regarding such practices are adjudicated by Labour and Industrial Courts, which may issue cease and desist orders, direct affirmative remedial action and impose penal consequences²⁰. Breach of recognition related obligation or engagement in unfair labour practices is punishable under the Act's penal provisions giving the Act a dual character of institutionalizing recognition as a legal right and backs it with enforceable sanctions to uphold genuine collective bargaining.

THE KERALA RECOGNITION OF TRADE UNION ACT 2010

The Kerala Recognition of Trade Union Act 2010 is a state statute designed to facilitate collective bargaining and curb union multiplicity by creating a formal system for recognizing trade unions as bargaining agents in industrial establishments employing 50 or more workers in Kerala²¹. It prescribes conditions for applying for recognition and empowers the Registrar to conduct an enquiry²² and where there are rival unions to hold a secret ballot to ascertain which union secures more than 51% of votes cast as the sole bargaining agent, unions with lower vote threshold may be recorded as constituents of joint bargaining council and one may be designated as principal bargaining agent. Recognized trade unions enjoy specific statutory rights including being treated as the sole or principal bargaining agent for settlements, being recognized by

federations and employers associations in the same industry²³, collecting membership dues on the premises, maintaining notice boards, holding discussions with management for dispute prevention or settlement and nominating representatives to non statutory bipartite committees²⁴.

¹⁹ Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. I of 1972, §. 26 (Ind.)

²⁰ Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, No. I of 1972, §. 28 (Ind.)

²¹ Kerala Recognition of Trade Union Act, No. 16 of 2010 §. 5 (Ind.)

²² Kerala Recognition of Trade Union Act, No. 16 of 2010 §. 5(5) (Ind.)

²³ Kerala Recognition of Trade Union Act, No. 16 of 2010 §. 9 (Ind.)

²⁴ Kerala Recognition of Trade Union Act, No. 16 of 2010 §. 10 (Ind.)

Their recognition can be withdrawn or cancelled²⁵ by the Registrar following due notice and hearing with a right of appeal thereby embedding both status and accountability within the state's industrial relations framework.

NEGOTIATING COUNCIL IN THE POST CODE ERA

The Industrial Relations Code 2020²⁶ creates a statutory negotiating union or negotiating council framework in section 14 that gives formal recognition and exclusive bargaining rights to worker representatives in an establishment. This significantly advances collective bargaining jurisprudence by moving from fragmented, voluntary recognition practice to a clear, majoritarian model though it also raises concerns about inclusivity of minority unions and the overall balance of bargaining power in a liberalized labour market.

As per the code every industrial establishments with a registered trade union must have either negotiating union or negotiating council for bargaining with the employer on matters to be prescribed namely wages, service conditions, working hours, benefits etc²⁷. Where only one registered trade union exists the employer is required subject to prescribed criteria to recognize it as the sole negotiating union. If multiple unions are present the union with at least 51% support of workers on the muster roll verified as per rules is recognized as the sole negotiating union with statutory bargaining rights. In no union crosses 51% the employer must constitute a negotiating council composed of representatives of all registered unions having at least 20% support; representation is proportionate ie., one representative for each 20% of the total workers²⁸. For negotiations with a negotiating council an agreement is deemed concluded if a majority of the council's union representatives agree thereby giving legal force to majority decisions within the council. The Collective Bargaining Jurisprudence in the Code includes:

Clarifying the bargaining agent

Unlike in Trade Union Act that did not provide for an all India statutory mechanism for recognition of a bargaining agent, the code introduces for the first time a uniform statutory scheme that identifies a single bargaining representative or a structured council thereby reducing

²⁵ Kerala Recognition of Trade Union Act , No. 16 of 2010 §. 6(Ind.)

²⁶ The Industrial Relations Code, No. 35 of 2020 (Ind.)

²⁷ The Industrial Relations Code, No. 35 of 2020 §. 14 (Ind.)

²⁸ *Ibid*

fragmentation and giving clearer locus standi for collective bargaining²⁹. This witnesses a shift from multiplicity and conflict to majoritarian representation.

Strengthening exclusive bargaining rights

The statutory recognition of a negotiating union vests it with exclusive rights to bargain with the employer or specified subjects thereby aligning Indian law more closely with classic majoritarian models of collective bargaining and ILO informed conceptions of representative trade unionism³⁰. The resulting concentration of representational authority can improve bargaining effectiveness by articulating a unified worker voice, limiting employer's capacity to engage in forum shopping among rival unions and providing a more secure foundation for binding collective agreements at the establishment level³¹.

Embedding bargaining in the statutory architecture

The Code's policy discourse explicitly presents the negotiating union and negotiating council as instruments to strengthen workers voice and promote industrial harmony through structured negotiation rather than episodic agitation or recourse to adjudication³². By systematically linking recognition, collective bargaining procedures, grievance redressal machinery and formal dispute resolution institutions, the code signals a jurisprudential reorientation in which collective bargaining is positioned as central rather than ancillary modality of labour governance³³.

Standardizing issues and procedures for bargaining

The delegated authority to prescribe bargaining subjects and verification procedures enables the

construction of a quasi codified bargaining agenda namely covering wages, working time, leave, retrenchment terms and related conditions of employment thereby contributing to doctrinal clarity on the proper scope of collective bargaining in Indian establishments. Moreover, statutory

²⁹ Cf. Bhatt & Joshi Associates, *Trade Union Recognition: Single Negotiating Union Concept under the Industrial Relations Code, 2020* Bhatt & Joshi Assocs. (Nov.27, 2025) <https://bhattandjoshiassociates.com/> (Last visited at Mar. 3, 2026)

³⁰ Nipasha Mahanta, *India's New Labor Codes: Concept of Negotiating Union*, 16 *Nat'l L Rev.* (2026), <<https://natlawreview.com/>> (Last visited at Mar. 3, 2026)

³¹ Ayushi Maggon, *Industrial Relations Code 2020: From Fragmentation to Integration*, <https://taxguru.in/company-law/industrial-relations-code-2020-fragmentation-integration.html> (Last visited at Mar. 3, 2026)

³² Cf. Taxmann, *The Industrial Relations Code 2020 – Key Provisions*, (Nov.28, 2025) <https://www.taxmann.com/> (Last visited at Mar. 3, 2026)

³³ Lawrbit, *The Industrial Relations Code, 2020*, (Nov.16, 2020) <https://www.lawrbit.com/> (Last visited at Mar. 3, 2026)

provision for facilities to negotiate unions and councils reflects comparative labour jurisprudence which recognizes that effective bargaining requires positive state support in the form of information, access and time off and not merely a posture of regulatory abstention.

Majoritarianism versus pluralism

Critical scholarship has underscored that while the code mandates recognition of a single trade union as the sole negotiating agent wherever it attains the prescribed majority this design risks marginalizing minority unions and dissenting worker constituencies particularly in politically fragmented workplaces, thereby raising concerns about internal democratic legitimacy³⁴. The requirement of 51% support is comparatively demanding in sectors characterized by precarious, fissured or fixed term employment, it may in practice restrict the emergence of recognized unions, weakening collective bargaining outcomes even as the legal framework appears to strengthen them in principle³⁵.

Power imbalance and the broader design of the code

Commentators further contend that the Code's parallel tightening of strike regulation and elevation of thresholds for employer permissions in matters such as lay off and retrenchment reveal an overarching orientation towards managerial flexibility which may dilute the transformative potential of negotiating councils by constraining unions' industrial leverage³⁶. From a jurisprudential perspective recognition of bargaining agents, in the absence of established

guarantees for industrial action and freedom of organization does not necessarily translate into meaningful collective bargaining, a disjuncture repeatedly highlighted in critical analyses of the new regime³⁷.

BALANCED ASSESSMENT FOR JURISPRUDENTIAL ANALYSIS

On the affirmative side, the provisions on negotiating union and councils represent a significant movement towards a rights based and statutorily grounded system of collective bargaining

³⁴ Divya Zone & P.Jain, *A Study with Special Reference to the Industrial Relations Code, 2020*, IJEDR 415, 421 (2026)

³⁵ Rohit Mani Tiwari, *Trade Union rights under the industrial relations code: Myth and realities*, <https://government.economictimes.indiatimes.com/blog/understanding-trade-union-rights-implications-of-the-industrial-relations-code-2020/125742034> (Last visited at Mar. 3, 2026)

³⁶ Varghese S., *Imbalancing Act: India's Industrial Relations Code, 2020*, 65 IJLE 821, 827–832 (2022)

³⁷ *Ibid*

representation, furnishing clearer norms on the identity of bargaining agents, the catalogue of negotiable issues and the internal decision making rules such as majority voting within representative bodies. This architecture potentially enhances legal certainty and strengthens the conceptual centrality of collective bargaining in Indian labour law.

Concurrently the wider configuration of the code most notably its approach to strikes, the raising of protective thresholds and its stated emphasis on ease of doing business has prompted apprehension that the new structures may operate primarily as devices for orderly consultation rather than as vehicles of substantive worker empowerment. In this sense, the jurisprudential innovation of recognized negotiating agents risks being circumscribed by a broader regulatory environment that continues to privilege managerial prerogative and macro-economic objectives over strong industrial citizenship’.

NEGOTIATING COUNCIL MODEL IN DIALOGUE WITH SINGAPORE AND UK PRACTICE

Singapore

In Singapore trade union recognition operates as a tightly integrated component of a broader tripartite industrial relations regime in which the state, employers and unions jointly structure

worker voice. Before a trade union may engage in collective bargaining it must be accorded recognition by the employer under procedures set out in the Industrial Relations (Recognition of a Trade Union of Employees) Regulations 1966, administered within the framework of Industrial Relations Act³⁸. Once recognized the union becomes the sole negotiating body for the employees it represents and is legally entitled to receive notices³⁹ to commence negotiations on industrial matters, including the conclusion or renewal of collective agreements; the receiving party is obliged to accept⁴⁰ such an invitation and negotiations are expected to begin as early as possible with unresolved disputes channeled to conciliation by the Ministry of Manpower (MOM) and where necessary, arbitration. The Trade Unions Act provides the registration framework and empowers unions to represent members in industrial disputes while the dominance of the National Trade Union Congress (NTUC) as the single national centre combined with tripartite

³⁸ Industrial Relations Act, 30 No. of 2024 §. 87 (SG)

³⁹ Industrial Relations Act, 30 No. of 2024 §§. 17, 18 (SG)

⁴⁰ Industrial Relations Act, 30 No. of 2024 §§. 19, 20(SG)

guidelines formulated by NTUC, MOM and Singapore National Employers Federation⁴¹ ensures that recognition, bargaining and dispute management are embedded in cooperative, state-orchestrated structures designed to maintain industrial peace and to institutionalize trade unions as an effective mechanism of worker voice rather than as adversarial outsiders.

Unlike the Singapore's highly coordinated tripartite system the Indian model remains primarily legalistic with weaker institutional support for consensus building and more limited integration between recognition to lock unions into a cooperative, state steered framework of obligatory bargaining and conciliation that consistently channels worker voice through a single majoritarian standard still carries the legacy of discretionary recognition, union multiplicity and less dense tripartite infrastructure which may constrain its capacity to deliver comparably stable and influential mechanisms of worker representation.

Across Europe recognition of trade unions and the conduct of collective bargaining are organized through a variety of institutional models that combine representative unions with workplace participation bodies and strong legal support for multi-employer bargaining⁴². In many EU member states⁴³ The capacity of a union to bargain collectively depends on its status as a “representative” organization, determined by statutory criteria such as membership share,

electoral support in workplace elections, or affiliation to nationally representative confederations and this status often confers exclusive or predominant bargaining rights at sectoral or company level. Collective bargaining coverage in the EU averages around 60% of employees but several countries with sectoral or national level bargaining reach 80%⁴⁴ or more largely due to legal frameworks that facilitate or mandate the extension of sectoral agreements to non signatory employers and require regular negotiations on pay and working time. Many European systems operate “dual-channel” representation where trade unions negotiate collective agreements while statutory works councils or similar bodies automatically established above workforce-size thresholds exercise information, consultation and co-determination rights at workplace level; in other systems, unions themselves constitute the primary workplace representative body. The EU

⁴¹ Available at <https://www.mom.gov.sg/employment-practices/trade-unions/industrial-relations> (Last visited at on 3 March 2026)

⁴² Eurofound, “*Collective Bargaining in Europe*” (2025) available at <<https://www.eurofound.europa.eu/>> Last visited at on 4 March 2026)

⁴³ Eurofound, *Unions Jostle for Position in Representativeness Race*, (May 22, 2013) <<https://www.eurofound.europa.eu/>> (Last visited at Mar.4, 2026)

⁴⁴ *Supra* note 41

Adequate Minimum Wage Directive obliges member states with bargaining coverage below 80% to adopt national action plans and enabling measures such as extension mechanism, support for employer organization and promotion of sectoral bargaining, signaling a clear policy commitment to reinforcing collective bargaining as a cornerstone of European social democracy⁴⁵.

The Indian model though is closer to European notions of “representative” trade unionism by clarifying who has standing to bargain yet it does not provide for sectoral or multi-employer bargaining nor for automatic extension of agreements. So overall bargaining coverage depends heavily on union density at the establishment level rather than on institutional mechanisms that generalize negotiated standards across industries. Moreover, whereas many European countries buttress collective bargaining with statutory works councils and co-determination rights that guarantee information and consultation for all employees, India's code offers no parallel second channel of workplace representation relying instead on the recognized negotiating union or council and on traditional dispute resolution bodies. Finally in several EU systems the state plays an active role in promoting broad coverage through extensive policies, mandatory bargaining obligations and the new EU level requirement for action plans while Indian reforms place greater

emphasis on internal recognitions rules alongside tighter regulation of strikes and higher thresholds for job security protections, a configuration that may enhance procedural order but is less likely than European models to deliver wide ranging sector wide improvements in labour standards.

UNITED KINGDOM

Collective bargaining in the UK has traditionally been largely voluntary with recognition and bargaining procedures usually agreed directly between employers and trade unions without state prescription of detailed machinery. Employers recognize a union when they agree to negotiate collectively over terms and conditions and most recognition agreements and bargaining structures are tailor made at enterprise or sectoral level subject to general duties such as disclosure of information to recognized unions but without any obligation to reach agreement or follow a particular bargaining model. Since the Employment Relations Act 1999⁴⁶ unions have

⁴⁵ Oesingmann, *Extension of Collective Agreements in Europe* (2016) ifo DICE Report 3–8

⁴⁶ UK Public General Acts 1999 c.26

additionally had access to a statutory recognition route through the Central Arbitration Committee (CAC)⁴⁷ which can declare a union recognized if a majority membership or ballot thresholds in a defined bargaining unit are met, but even here the expectation is that the parties will normally agree their own bargaining procedure once recognition is in place.

The Trade Union Recognition (Method of Collective Bargaining) Order 2000⁴⁸ (The Order) did not replace this voluntary system but added a tightly structured, legally enforceable “fall-back” method that applies only in the limited class of cases where following statutory recognition, the parties cannot agree or fail to operate a bargaining procedure. The Order requires the CAC, when it has to impose a method to use the specified model as a template: it creates an exclusive Joint Negotiating body⁴⁹, confines bargaining to pay, hours and holidays⁵⁰, sets time bound stages⁵¹ for claims and responses and makes the procedure enforceable in court as if contractual while leaving voluntary recognition elsewhere untouched. In practice, therefore, the instrument incrementally “juridifies” a small corner of UK collective bargaining by giving statutory recognition cases a default, binding procedure but it does not fundamentally transform the wider landscape where voluntary and often less formal bargaining arrangements still predominate.

Compared to the UK's specified method, which intervenes mainly at the level of procedure once a union is already recognized, the Indian Relations Code 2020 regulates primarily the issue of “who” bargains and with what representational mandate. In the UK, the Order presupposes a recognized union and then imposes a detailed legally enforceable Joint Negotiating Body with parity of representation, a closed list of bargaining topics and a step-by-step, time bound process as a backstop where the parties cannot agree their own machinery; the representativeness question is addressed upstream by the CAC's tests and ballots rather than by the Order itself. By contrast section 14 of the IRC 2020 seeks to resolve chronic problems of multiplicity and inter-union rivalry by designating a “sole negotiating union” where one union has 51% or more membership and failing that constituting a negotiating council including all registered union with at least 20% support, allocated representative roughly proportionate to their membership share, while leaving the detailed conduct and timetable of bargaining largely to the parties, subject only

⁴⁷ Employment Relations Act 1999, c.26) §. 24 (U.K.)

⁴⁸ Trade Union Recognition (Method of Collective Bargaining) Order 2000, SI 2000/1300 ⁴⁹ Trade Union Recognition (Method of Collective Bargaining) Order 2000, SI 2000/1300, art.2, sch.1.4 (U.K.) ⁵⁰ Trade Union Recognition (Method of Collective Bargaining) Order 2000, SI 2000/1300, art.2, sch.1.3 (U.K.) ⁵¹ Trade Union Recognition (Method of Collective Bargaining) Order 2000, SI 2000/1300, art.2, sch.1.15 (U.K.)

to broad guidance on facilities and unfair labour practice constraints on refusal to bargain. Structurally therefore the UK instrument is a narrow procedural default designed to standardize how bargaining proceeds in exceptional deadlock cases, whereas the Indian model is a general representational default intended to identify a legitimate bargaining agent in all eligible establishments with relatively light statutory prescription of process.

CONCLUSION

Negotiating councils and unions mark a genuine doctrinal advance by answering to the long standing question of “who speaks for labour?” at the establishment level replacing the largely voluntary and fragmented recognition practices. The framework strengthens collective bargaining in many ways. It reduces inter-union rivalry and employer forum shopping and creates a more coherent interface between management and labour. It embeds bargaining in the statutory architecture signaling a shift from purely adjudicatory to negotiation centered labour governance. Recognition is no longer a matter of employer grace but a legal obligation that ties into grievance

redress mechanisms and the broader dispute resolution system. The enabling power to prescribe bargaining subjects, verification procedures and facilities offers the possibility of developing a quasi-codified bargaining agenda and a jurisprudence of proper collective bargaining practice at the workplace

However there are several design and implementation issues that risk limiting the effectiveness of negotiating councils and unions. The 51% requirement for recognition, coupled with a 20% entry bar for councils is too demanding for fragmented, multi-union workplaces and sidelines smaller unions. An establishment centered design without multi employer mechanisms confines bargaining gains to a narrow formal segment. The absence of strong tripartite structures and detailed rules on facilities and information leaves negotiating unions and councils without the institutional support needed for effective bargaining. Tight strike procedure and broad “public utility” classification erode unions’ ability to apply economic pressure, risking the reduction of councils to merely consultative bodies. A rigid majoritarian model with few safeguards for minority unions or internal dissent weakens union democracy and the perceived legitimacy of collective agreements.

SUGGESTIONS

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Drawing on comparative practice and the identified flaws, several reforms could strengthen negotiating council and union as instruments of collective bargaining:

- Lower the recognition bar from 51% to a substantial but more attainable level and admit smaller unions into councils while retaining majority based decision making
- Create legal avenues for federations to negotiate sectoral or regional agreements and extend them to non-signatory employers
- Build national tripartite bodies and guarantee unions minimum facilities, information and training so that councils can bargain on a more equal institutional footing with employers
- Ease strike related constraints where recognized bargaining agents exist and pair mandatory, time bound conciliation with a preserved right to take industrial action if negotiation fail
- Grant minority unions defined consultative roles and information rights and incentivize democratic practices

- Design simplified recognition and bargaining procedures for small and informal establishments.

Industry requires a model that combines clear representation through negotiating councils and unions with expanded coverage, stronger institutional support and a better balanced regime of industrial power. By engaging seriously with the European emphasis on sectoral frameworks and the Singaporean emphasis on coordinated tripartism, India could transform negotiating councils from a predominantly procedural innovation into a cornerstone of meaningful industrial democracy.