



Origin and Development of Trade Unions in India – A Review on Problems and Weaknesses

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Abstract

In this paper, thoroughly discussed the origin and development of trade unionism in the world generally and in India particularly. Historically, the origin of labour unions dates back to the eighteenth century and the industrial revolution in Europe, where during this time there was a huge surge of new workers into the workplace that needed representation. The word labour or trade union movement is used synonymously. However, there exists slight difference. Frequently, one can find confusion on the use of the word 'labour movement' and 'trade union movement'. However, there is a slight distinction between the two. Trade unions in India have come a long way since the first organized trade union - the Madras Labour Union, one of the earliest unions, was formed in 1918. India now has more than 84,642 registered trade unions along with an unaccounted number of unregistered trade unions scattered across a large spectrum of industries in India.

Keywords: Constitution, disputes, labour, strike, trade unions

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I. Introduction

At the beginning of the last century, a few groups were formed amongst workers in India so as to improve their bargaining power with respect to their service conditions and wages. These were akin to trade unions of the present day India. The earliest known of such unions were the Printers' Union formed in Calcutta in 1905 and the Bombay Postal Union formed in 1907.

The trade union movement in India began after the end of First World War due to the need for coordination of activities of individual unions. The movement, over a period of time, systematically spread to almost all industrial centres and became an integral part of the industrial process in India. Various trade unions were formed during such period, such as the Madras Labour Union in 1918, the All India Trade Union Congress ("AITUC") in 1920, the Bengal Trade Union Federation in 1922 and the All India Railwaymen's Federation in 1922.

In March 1921, Shri N.M. Joshi, the then General Secretary of the AITUC, recommended through a resolution that the Government should introduce legislation for the registration and protection of trade unions in India. Eventually, the Trade Unions Act, 1926 ("TU Act") was enacted for the purpose of ensuring governance and protection of trade unions.

Today, the Bharatiya Mazdoor Sangh ("BMS"), the Indian National Trade Union Congress ("INTUC") and the AITUC are considered to be the largest trade unions in India. Also, the country's manufacturing sector in particular, is heavily unionized.

Laws Governing Trade Unions in India

In India, the right to form and join a trade union, and engage in collective bargaining is provided for under national and state-specific legislations. Time and again, the courts have upheld the right of workers to form or join a trade union in India.

I. Constitution of India, 1950

Article 19(1)(c) of the Constitution of India, 1950 ("Constitution") which envisages fundamental right to freedom of speech and expression also guarantees the country's citizens the right "to form associations or

unions” including trade unions. The SC has held that the right guaranteed in Article 19(1) (c) also includes the right to join an association or union. This right carries with it the right of the State to impose reasonable restrictions.

Furthermore, it has been established that the right to form associations or unions does not in any manner encompass the guarantee that a trade union so formed shall be enabled to engage in collective bargaining or achieve the purpose for which it was formed. The right to recognition of the trade union by the employer was not brought within the purview of the right under Article 19(1)(c) and thus, such recognition denied by the employer will not be considered as a violation of Article 19(1)(c).

The various freedoms that are recognized under the fundamental right, Article 19(1)(c), are

- i. The right of the members of the union to meet,
- ii. The right of the members to move from place to place,
- iii. The right to discuss their problems and propagate their views, and
- iv. The right of the members to hold property.

II. Trade Unions Act, 1926

The Trade Unions Act, 1926 provides for formation and registration of trade unions and in certain respects to define the law relating to registered trade unions. The Trade Union Act defines a trade union as “any combinations, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation or two or more trade unions.”

All workmen have the right to form a union or refuse to be a member of any union. However, not all workers’ organizations are considered trade unions. For example, the Madras High Court has held that an association of sub-magistrates of the judiciary, tahsildars, etc., is not a trade union because the members are engaged in sovereign and regal functions of the government.

A. Recognition and Registration

Although no specific right is granted to any trade union with respect to the right to be recognized, it has become crucial in India to develop a mechanism wherein a trade union is recognized formally by the employer. Recognition is the process through which the employer accepts a particular trade 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. This process is important so as to ensure smooth collective bargaining and stability of industrial relations.

On the other hand, registration of a trade union carries certain inherent benefits with it. A registered trade union is deemed to be a body corporate, giving it the status of a legal entity that may, inter alia, acquire and hold property, enter into contracts, and sue others. A registered trade union is also immune from certain contractual, criminal and civil proceedings. However, registration is optional and not mandatory.

Generally, registration of trade unions under the Trade Union Act does not automatically imply that a particular trade union has gained recognition status granted by the employer. Unless different Indian states have specific legal provisions pertaining to recognition of trade unions, it is generally a matter of agreement between the employer and trade union.

Ideally, a trade union must obtain legitimacy through registration under the TU Act and then seek recognition as a sole bargaining agent either under the appropriate law or an employer-employee agreement.

B. Registration Process

The Trade Union Act provides for the registration of trade unions with the Registrar of Trade Unions in the concerned territory (“Registrar”) but such registration is not compulsory. It is also possible for more than one trade union to be registered in relation to the same employer. Registration requires that at least seven members subscribe to the union rules.

In addition, at least 10% of the workforce or 100 workers, whichever is less, engaged or employed in the establishment, must be members of the trade union connected with such establishment at the time of application. Registration of a trade union is subject to the Registrar’s satisfaction that all primary requirements of the TU Act have been complied with. The Registrar, in deciding whether to grant registration, must base its decision on whether the technical requirements of registration are being fulfilled, and not whether the trade union could be described as lawful. If the Registrar fails to register a trade union within three months of application, an appeal can be made to the High Court under Article 226 of the Constitution.

C. Process of Recognition of Trade Unions

Some Indian states have enacted legal provisions setting forth rules and principles for the recognition of trade unions, each with their own criteria. It is pertinent to note that there is no law at the national level for recognition of trade unions in India. Although there is a proposal in the pipeline which will allow trade unions to make an application for being recognized by the central or state governments. The various state legislations governing trade unions are as follows

- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971
- West Bengal Trade Unions Rules, 1998
- Kerala Recognition of Trade Unions Act, 2010
- Orissa Verification of Membership and Recognition of Trade Union Rules, 1994

Generally, these rules provide that a union shall be recognized by the employer as the sole bargaining agent of a group of workers if it receives a specified minimum percentage (usually a majority) of these workers' votes via secret ballot, organized by the Registrar. However, every trade union receiving a smaller minimum percentage of votes (fifteen or ten percent, depending on the type of industry) shall also be recognized as constituents of a joint bargaining council as in the case of Kerala trade unions.

At present, recognition of trade unions functioning in industrial establishments is regulated under the provisions of the voluntary 'Code of Discipline' ("Code") and the 'Criteria for Recognition of Unions' appended to the Code adopted by the Standing Labour Committee in its 16th Session in 1957 and subsequently ratified by the representatives of Employers and CTUOs at the 16th Session of the Indian Labour Conference, held in 1958. The Code is a set of guidelines mutually and voluntarily accepted by all parties to maintain discipline in industry, both in public and private sectors. Clause III (vii) of the Code states that the management agrees to recognize the Union in accordance with the criteria evolved in the Code. A copy of the Code is annexed to this research paper as Annexure II.

III. Industrial Disputes Act, 1947

The Industrial Dispute Act also deals with trade unions in the manner that it regulates the rights of employers and employees in the investigation and settlement of industrial disputes. It provides for collective bargaining by negotiation and mediation and, failing that, voluntary arbitration or compulsory adjudication with the active participation of trade unions. As per the Industrial Dispute Act, a settlement arrived at through collective bargaining is binding. Two types of settlements are recognized

i. Those reached in the course of conciliation proceedings before the authority - such settlements bind members of the signatory union as well as non-members and all present and future employees of the management.

ii. Those reached outside the course of conciliation proceedings, but signed independently by the parties to the settlement - such settlements bind only those members who are a signatory or a party thereto.

Furthermore, the Industrial Employment (Standing Orders) Act, 1946 ("IESOA") also contains certain provisions pertaining to trade unions. The IESOA regulates and codifies the conditions of service for an industrial establishment employing at least 100 workmen. As per the IESOA, an employer to which the IESOA applies is required to draft and adopt standing orders defining its employees' conditions of employment. As per the IESOA a registered trade union (or worker, if no registered union exists) must review and may object to the draft standing orders before it is certified by an officer.

The potential for growth in trade union represented workers is huge given the fact that India is likely to have a working population of more than 64% by the year 2021.

Recent Trade Union Activities in India

In recent times, trade unions have been engaging in aggressive collective bargaining tactics by staging strikes. The Indian automotive industry has seen considerable number of strikes backed by trade unions that have caused major slump in the earnings of the various companies. For instance, Honda Motorcycle and Scooter India lost a total of Rs. 1.2 billion as three thousand workers and supporters went on strike against the company. Even Maruti Suzuki faced a fall in their production capacity and huge losses in 2012 due to trade union backed violence at one of their plants that consequently led to shutting down of the plant temporarily. The company was only able to reach 10% of their original production capacity after reopening of the plant.

There has also been a great amount of unrest due to the labor reforms that have been introduced by the government in various industries such as the coal and insurance.

This is mainly due to the ordinances that have been issued by the Indian government pertaining to de-nationalization and privatization of these sectors in various ways.

For instance, the government passed the Coal Ordinance (Special Provisions) Bill, 2014, which focuses on reallocating the various coal blocks through e-auction process. This caused various trade unions of Coal India Ltd. and Singareni Collieries Company Ltd. to initiate a five day strike that is said to have a future impact

on the power sector despite these various companies having stepped up their supplies of coal to the various sectors so as to limit disruption of work. Furthermore, it appears that the trade unions in the Insurance sector are preparing for strikes on similar lines due to the reforms pertaining to the hike in FDI and disinvestment in the Insurance sector.

Trade unions also seem to be seeping into the information technology sector / services sector and are predicted to gain a strong foothold in the sector. Traditionally, the services sector has remained untouched by any trade union activity. Tata Consultancy Services Ltd., recently, met with great opposition from various central trade unions such as CITU and INTUC with respect to their move to terminate the employment of a number of their employees.

The proposed recent amendments to the various labor laws by the central government and the state governments, more specifically, the government of the state of Rajasthan, are said to impact workers immensely. The proposed amendments mainly pertain to (i) allowing industrial establishments employing up to 300 workmen (which threshold is 100 workmen currently) to terminate workmen without availing the prior permission of the government (ii) raising the threshold of number of workmen as contract labour for the purpose of applicability of the Contract Labour (Regulation and Abolition) Act, 1970 from 20 to 50 (iii) raising the threshold of number of employees for the purposes of applicability of the Factories Act, 1948 from 10 to 20 (in factories where work is being carried out with the aid of power) and from 20 to 40 (in factories where work is being carried out without the aid of power) (iv) raising the minimum membership from 10% to 30% with respect to registration as a trade union under the Trade Unions Act, 1926 (v) introducing a limitation period of 3 years with respect to raising industrial disputes.

The abovementioned proposed reforms are said to encourage strikes by the various trade unions since workers may be adversely affected by these reforms. In fact, various trade unions have already engaged in opposition and nationwide protests against these reforms. It is yet to be seen whether these reforms will continue to be implemented or will succumb to the demands of the trade unions

There are twelve Central Trade Union Organizations (“CTUO”) recognized by the Ministry of Labour

S.No.	Name of Trade Union	Political Affiliation
1.	Bharatiya Mazdoor Sangh (BMS)	Bharatiya Janata Party
2.	Indian National Trade Union Congress (INTUC)	Indian National Congress
3.	All India Trade Union Congress (AITUC)	Communist Party of India
4.	Hind Mazdoor Sabha	None. Independent Socialist Organization
5.	Centre of Indian Trade Unions (CITU)	Communist Party of India (Marxist)
6.	United Trade Union Congress (Lenin Sarani) (UTUC (LS))	Socialist Unity Center of India Political Party
7.	United Trade Union Congress (UTUC)	Revolutionary Socialist Political Party
8.	Trade Unions Co-Ordination Centre (TUCC)	All India Forward Bloc Political Party
9.	Self-Employed Women’s Association (SEWA)	None. Independent.
10.	Labour Progressive Front (LPF)	Dravida Munnetra Kazhagam Political Party
11.	All India Central Council of Trade Unions (ICCTU)	Communist Party of India (Marxist-Leninist) Liberation Group
12.	Indian National Trinamool Trade Union Congress (INTUC)	All India Trinamool Congress Political Party

Collective Bargaining in India

Collective bargaining has been defined by the Supreme Court (“SC”) as “the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion”. It is a process of discussion and negotiation between employer and workers regarding the terms of employment and working conditions. Workers are generally represented by trade unions with respect to expressing their grievance concerning service conditions and wages before the employer and the management. Refusing to bargain collectively in good faith with the employer is considered to be an unfair labour practice as per the provisions of the Industrial Disputes Act, 1947 (“IDA”) . This is generally an effective system as it usually results in employers undertaking actions to resolve the issues of the workers. However, the legal procedure for pursuing collective bargaining in India is complicated.

Landmark Cases Pertaining to Trade Unions

There are various cases that have played a major role in interpreting and shaping the law on trade unions in India. A few of these cases have been mentioned below

1) The case of All India Bank Employees’ Association v. N.I.Tribunal laid down the rights of the members of the trade unions that are encompassed within the fundamental right to freedom of expression and speech, i.e. Article 19(1)(c)

- The right of the members of the union to meet,
- The right of the members to move from place to place,
- The right to discuss their problems and propagate their views, and
- The right of the members to hold property,

However, the case held that Article 19(1)(c) does not account for a right pertaining to the achievement of the all the objectives for which the trade union was formed. Say for example, if one of the objectives for formation of trade union was to push the employer for raising the wages, the trade union cannot, as a matter of right, ask the employer to fulfil the objective of increasing wages of the workers. The case also stated that strikes by trade unions may be controlled or restricted by appropriate industrial legislation.

2) Another case which is of much importance is the case of *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association* wherein it has been held that an unregistered trade union or a trade union whose registration has been cancelled has no rights either under the TU Act or the IDA. This case highlights the importance with respect to registration of trade unions.

3) In the case of *B.R Singh v. Union of India* the court has recognized "strike" as a mode of redress for resolving the grievances of workers.

4) In *MRF United Workers Union rep. by its General Secretary v. Respondent Government of Tamil Nadu rep. by its Secretary, Labour and Employment Department and Ors.*,⁶² the court has highlighted the validity of procedure for recognition of a trade union. When the State government accepts a particular procedure for recognition, it shall direct the Labour Commissioner to call upon two unions to submit their membership details as per the Code of Discipline. Subsequently, the Labour Commissioner shall decide as to which Union is a true representative union of workmen and give it a genuine recognition. Further, the court cannot permit management to claim that the Union which shows larger membership after recognition will not be recognized by management.

Right to Strike

The IDA defines a "strike" as "a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment".

In India, there is no specific right to strike. Instead such right flows from the fundamental right to form a trade union contained in Article 19(1)(c) of the Constitution, which, like all fundamental rights, is subject to reasonable restrictions. In *All India Bank Employees Association v. N.I. Tribunal 68*, the SC held, inter alia, that "the right to strike or right to declare lockout may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 of the Constitution but by totally different considerations."

Therefore, legislation can and does restrict the right to strike by deeming certain strikes illegal. The IDA restricts strikes and lockouts equally. Various restrictions are contained in sections 22, 23, 24, 10(3) and 10A(4A) of the IDA. Furthermore, the IDA also lays down certain activities that may be deemed as "unfair labour practices of workers or workers' trade unions pertaining to strikes such as advising or actively supporting or instigating any illegal strike or staging demonstrations at the residence of the employers or managerial staff members.

It should be noted that a strike that was in existence at the time of reference to a board, arbitrator, court or tribunal may be continued, provided it was legal at the time of its commencement. Furthermore, a strike staged in response to an illegal lockout shall be legal.

A worker who is involved in an illegal strike may be penalized with imprisonment of up to a month and/or fine. As per the IDA, no person shall provide any sort of financial aid to any illegal strike. Any person who knowingly provides such a help in support of any illegal strike is punishable with imprisonment up to six months and/or fine.

Another consequence of an illegal strike is the denial of wages to the workers involved. Furthermore, the SC has held that workers shall only be entitled to wages during a strike which is not only legal, but also "justified".

A strike shall be deemed unjustified where "the reasons for it are entirely perverse and unreasonable...[which is] a question of fact, which has to be judged in the light of the fact and circumstances of each case... the use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would [also] disentitle them to wages during the strike period." The SC has also held that whether or not a strike is "unjustified depends on such factors as "the service conditions of the workmen, the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the IDA or the contract of employment or the service rules and regulations etc."

Problems and Weaknesses of Trade Unions in India

Trade union movement in our country suffers from the following weaknesses

1. Uneven Growth

Trade unions are concentrated in large scale industry sector and in big industrial centers. There is very little

trade union activity in small sector, agricultural labour and domestic sector. Trade unionism has touched only a portion of the working class in India.

2. Small Size

Most of the unions have low membership though the number of unions and union membership are increasing, average membership is inadequate to be effective.

3. Weak Financial Position

The average yearly income of unions is very low and inadequate. The subscription rates are low and many members do not pay the subscription in time. Due to their financial weakness, most of the unions are not in a position to undertake welfare programmes for workers.

4. Political Leadership

Trade unions are under the leadership and control of political parties and outsiders. Politicians exploit unions and workers for their personal and political gains. Thus, this sort of leadership is very harmful to the trade union movement in India.

5. Multiplicity of Unions

There exist several unions in the same establishment or industry. The existence of rival unions with conflicting ideology is greatly responsible for unhealthy growth of trade union movement in India. In some cases, employers encourage split in unions to undermine their bargaining power.

6. Problem of Recognition

Employers are under no obligation to give recognition to any union.

7. Absence of Paid Office-Bearers

Most of the unions do not have paid office-bearers. Union activists working on honorary basis devote only limited time and energy to union activities. Union officers lack adequate knowledge and skill due to lack of proper training, weak financial position and political leadership are the main reasons for this state of affairs.

8. Apathy of Members

Majority of workers do not take keen interest in union activities. The attendance at the general meetings of unions is very poor.

9. Opposition from Employers

Trade unions in India have to face opposition from employers. Many employers try to intimidate or victimize labour leaders, start rival unions and bribe union officials; thus, defeating the very objectives of their formation.

10. Inter-Union Rivalry

Multiple unions create rivalry. Unions try to play down each other in order to gain greater influence among workers. Employers take advantage of infighting. Inter-union rivalry weakens the power of collective bargaining and reduces the effectiveness of workers in securing their legitimate rights.

II. Conclusion

The trade unions are organizations of all categories of employees and are registered as per the provisions of the Indian Trade Union Act of 1926 to secure their common interests and well-being; and to ensure the safety, security and welfare of the members. Historically, in India, the function of the trade unions was limited largely to collective bargaining for economic considerations. However, trade unions now play a major role in employee welfare activities, cultural programs and banking and medical facilities and by creating awareness through training and educating the members of the trade union. On the other hand, the dominant managerial objectives in collective bargaining in recent years owing to heightened competition have been to reduce labour costs, increase production or productivity, flexibility in work organization (multi-skilling /multi-functioning, changes in worker grades etc.), increase in work time, reduction in regular staff strength via VRS, stress on quality and so on. Despite certain recent developments which may be largely considered as one-off incidents, most trade unions have managed to foster an environment so as to enable a healthy discussion between the workers and employers with respect to any demands the workers may have. Furthermore, trade unions in India have, over the period of time, ensured to provide a forum to facilitate better industrial relations, industrial growth and improve productivity. However, the trade unions in India have been facing many problems and weaknesses, which are counterproductive to their effectiveness vis-a-vis the Rights and Liabilities of a Registered Trade Union.

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