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## ROLE OF TRADE UNIONS IN INDIA – A LEGAL ANALYSIS

By

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### 1. Introduction:

Trade Union is an association of workers established for the purpose of protecting and promoting economic and social interest of its members through its collective efforts. Trade Unionism is the organised expression of the aspirations, needs and attitudes of all the workers. Trade Unions are considered to be a major and important component of the modern industrial relations. All the trade unions have objectives or goals to achieve, which are provided in their constitutions and each trade union has its own method and strategy to achieve those goals. The workers associations and also the employers associations are called as trade unions according to the law. Both of the trade unions will have to work to achieve their benefits, the workers associations will have to pressurize the employers in improving their working conditions, increasing their wages and for the welfare of the workers relating to the health and safety *etc.*, whereas the employers associations which are also called trade unions will have to bargain very systematically for reducing the cost of expenditure on workers wages, bonus and welfare *etc.*, to achieve the goal of earning more profits for their investment of the capital.

The struggles between these workers unions and the employers unions are going on consistently since a long time. It has traditionally ascribed to worker's organisations a particularly philosophy and function – collective representation to protect and promote the interest of the workers within a given socio-economic system. In earlier days there was more exploitation of workers by the employers by which the workers suffered a lot. India being an agricultural country predominantly all the people were engaged in the agriculture. Due to the establishment of East India Company the Britishers having acquired power in India and established number of factories and employed the Indian workers, engaging them in production of the goods. At that time the Indian workers were not having the knowledge of factories system and many of them are exposed to exploitation by the employers and also because of poverty, illiteracy and ignorance. The working hours of the factory workers were very hazardous and also the employers use to dominate the workers by not allowing them to form a union of the workers. Due to the efforts of some leaders like *N.M. Joshi* and other social workers the British Government passed and enactment in the year 1926 called as the Trade Union Act. The Trade Union Act allowed the workers to register the Trade

Unions and they were permitted to represent their grievances to the employers. After the Independence many trade unions came into existence by making affiliations to many of the political parties in India. At the National level four major federations have been established and have a national network of federal unions. They are the (i) All India Trade Union Congress (AITUC), (ii) Indian National Trade Union Congress (INTUC), (iii) United Trade Union Congress (UTUC) and (iv) Hind Mazdoor Sabha (HMS). The UTUC has to a certain extent merged with the Centre of Indian Trade Unions (CITU). Thus there are number of Union established affiliating to many different political parties. The objectives of these unions are different but ultimately their goal is to work for the welfare of the workers. The multiplicity of the unions and political affiliations to different political parties has created a havoc in the field of industrial relations and which affected the industrial peace and production. Therefore the Report of the National Commission on Labour (1969) headed by Justice *Gajendra Gadkar* has recommended to have only one union for one industry. But, this recommendation has not been implemented scrupulously in many of the industries.

## 2. Definition of Trade Union:

According to the Trade Union Act, 1926 the term (Trade Union) means any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between the workmen and employers or workmen and workmen, or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions: provided that this Act shall not effect (i) any agreement between partners as to their own business, (ii) any agreement between an employer and those employed by him as to such employed; or (iii) any agreement in consideration of the sale of the good will of business or of

instruction in any profession, trade or handicraft.

The main object of the Trade Union Act provides for the registration of Trade Union of employers and workmen. The Act has defined the terms such as Executive, Trade Disputes, Trade Union, Registered Trade Union, Registered Office *etc.*, and also the term 'appropriate Government'. A federation which is not a registered body under the Trade Union Act, 1926 is not a registered trade union with in the meaning of Section 2(b) of the Act<sup>1</sup>.

## 3. Registration of Trade Unions:

The Chapter II of the Trade Unions Act, 1926 provides the procedure and mode for registration of trade unions. The Section 3 prescribes a system for appointment of Registrars who are empowered for the registration of Trade Unions and Section 4 prescribes a method for the registration and Section 5 deals with regard to the application for registration of Trade Unions. The Section 6 says that certain provisions are to be included in the rules of trade union and Section 4 provides that in case of doubts the Registrar is having power to call for further particulars and to require the alteration of the name of trade unions, Sections 8 and 9 specifies the system about the registration and issue of a certificate of registration for trade unions. It is to be specifically mentioned that the Section 9(a) prescribes minimum requirement about the membership of a trade union. And after registration and with regard to the issue of a certificate if any thing goes wrong the registration can be cancelled further, it can be said that there is a provision for making an appeal against the decision of the Registrar of Trade Unions if the registration is not done properly as per the prescribed rules *i.e.*, under Section 6 of the Act. The Section 12 provides that all

1. *National Organisation of Bank Workers Federation of Trade Unions v. Union of India*, 1993 (2) LLJ 537.

communication and notices to a registered trade union may be addressed to the office specified. And in case of any change in the address it will have to be recorded in the registered certificate under Section 8. Section 13 of the Act provides for the incorporation of a registered trade union which says that every registered trade union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued. It is further mentioned that according to the Section 14 certain acts shall not apply to any registered trade union and the registration of any such union under any such act shall be void such as (a) The Societies Registration Act, 1860, (b) The co-operative Societies Act, 1912, (c) The Companies Act, 1956.

#### ***4. Important Cases decided by the Courts pertaining to the Trade Union Act:***

In the case of *V.N.N. Sinha v. Bihar Generals Ltd.*<sup>2</sup>, it was held that the Assistant Editor of a News Paper is not a workman, as in doing the editorial works he has to display qualities of initiatives and independence. In the case of *Registrar of Trade Union v. Government Press Employees Union*<sup>3</sup>, it was held that the workmen of a Government of Press carrying on printing business or persons employed in trade or industry within the meaning of Section 2(g) and their Trade Union shall be entitled to registration under the Act.

In the case of *S.P. Majarkar v. Registered, Trade Unions, Nagpur*<sup>4</sup>, it was held that the occupation of primary school teachers cannot be said to be 'employment' in any trade or industry. The definition of 'Trade' given in 'Oxford Dictionary' as some practice or

some occupation or business or profession as a means of 'livelihood or gain', is much wider than what it means under the Act. In these Act the word 'Trade' has been used by legislature in the connotation of a Mercantile occupation or a skilled handicrafts as distinct from profession. So a federation of Teachers seeking registration could not be deemed to be a Trade Union.

In the case of *Board of Trustees for the Court of Calcutta v. Haldia Calcutta – Port Dock Shramik Union*<sup>5</sup>, it was held that the formation of a Trade Union is a Fundamental Right, but not its recognition by the employer. Cancellation of registration of Trade Union will not be proper, unless there was willful default in filling of returns<sup>6</sup>, Registrar of Trade Unions is not obliged to here the existing Unions before registering another Trade Union<sup>7</sup> cancellation of Registration of Trade Union by Registrar of Trade Union without hearing the Union will be violative of principle of natural justice<sup>8</sup> cancellation of a Trade Unions Registration for delayed submission of Annual returns will not be justified.

#### ***5. Objects on which General Funds may be Spent (Section 15):***

It is very important to note that the funds of the Trade Unions can be collected from the members by the way of membership fee, the funds will have to be utilized for the benefit of members very scrupulously and honestly. The Act says that the general funds of the registered trade unions shall not be spent other than the objects specified in the Section 15.

2. AIR 1954 Pat. 1.

3. 1976 Lab IC 280 Mad.

4. 1957 Nag. LJ (Notes) 155 (Nag.)

5. 1994 LLR 880.

6. *Leather and Leather good Democratic Labour Union v. 1st Addl. Registrar of Trade Union/Deputy Commissioner of Labour, Madras*, 1994 LLR 776. (Mad. High Court).

7. *Nagde Rashtra SEvak Karmachari Congress v. Industrial Court*, 1997 (77) FLR 139 (MP High Court SC).

8. *Tata Memorial Hospital Workers Union v. Madbukar S Vani*, (1998) 79 FLR 225.

In the case of *Mario Raposo v. H.M. Bhandarkar*<sup>9</sup> it was held that no provision of the Trade Union allows the Trade Union to spend on speculative activity purchase of shares which is being floated and is in existence in the current share market cannot be termed as an 'investment'. It is undoubtedly the speculative activity, bristles against the industrial jurisprudence and the philosophy of the Trade Unions Act.

The Trade Unions will have to work sincerely in representing their grievances to the employers and other authorities concerned and also they will have to work for the welfare of their members such as health safety in the Industry and for social security benefits provided under various labour enactments. It is specified here that "the Trade Union Leaders will have to make study for Industrial safety measures which has been decided by certain Trade Union Leaders". The Labour Law Reporter, July 2011 states that about 30 Trade Union Leaders the Textile, foundry, diamond and cement industry in Coimbatore and Kovilpatti will learn more about industrial health and safety and soon tried to initiate measures in their respective units and they have participated in a four day workshop organised in Coimbatore by the Indian National Trade Union Congress (INTUC) and Japan International Labour Foundation (JILAF).

The Trade Union Act provides that any seven persons can form a Trade Union and get it registered, the Constitution of India also recognizes the Right of a Citizen to form a Union and project their grievances to the authorities concerned and if the demands are not solved by the authorities the Trade Unions can organised demonstrations in a peaceful manner. The question whether the members and office bearers of a Trade Unions can stage demonstration at the premises of an

employer and their rights and restrictions was examined in the case of *Kali Prasad Majumdar v. Brook Bond India Ltd.*<sup>10</sup> and said that a demonstration is a visible manifestation of the feelings of sentiments of an individual or a group and is thus a communication of one's ideas to others to whom it is intended to be conveyed. Though the employees have got the fundamental right to demonstrate yet it is not necessary in the exercise of that right that the demonstration should be at the work place. In first place the work premises are owned by the employer and, therefore the employees have no right to use those premises for the purposes of their own. The property rights are themselves fundamental right under the Indian Constitution. Secondly any demonstration at the work place is likely to disturb the orderly working of the business of the employer. The High Court of Delhi has held that where the workers indulged in violent demonstration, the civil Courts can entertain the suit for perpetual injunction as it became a matter of civil nature and the Court can take cognizance of the same. The balance of convenience lies in favour of employer, as the employer will not be able to carry on his business if the workers staged at the premises. However, while striking a balance between the Fundamental Right of the workers and that of the employer, the Court has held that the slogan shouting has to be at a place 50 meters away from the place of business of the employer.

It is to be observed that recently in the State of Andhra Pradesh many demonstrations have been organized by many of the Trade Unions in the Telangana region by going on strike for more than forty days, demanding for bifurcation of State and establishment of a separate State as Telangana. It is found that all the Trade Unions connected to the organized and unorganized workers have given notices to their employers that they will be going on

9. 1994 (2) LLJ 680 (Bom.).

10. 1954, 2 LLJ 63

strike specifying the date of commencement of the strike called as 'Sakala Jannula Samme'. During this period the entire administrative systems have been failed, the Government employee also participated in this very historical strike. It is pointed out here the demand of the workers of various organisations specified many of the injustices faced by them with regard to the employment and for social security benefits *etc.* Generally whenever a strike notice is given by the Trade Unions the employers will have to take immediate steps calling the representatives and discuss the problems relating to their grievances and try to prevent the strike as far as possible by way of negotiations *etc.*, in the interest of the industrial peace and industrial production. Many efforts have been made by the Governments to prevent and stop the strikes but the efforts of the employers and Governments failed miserably because the demand is political one and which is within the purview of the Central Government and State Government. Whatever may be the reason the many of the people suffered a lot getting many inconveniences which cannot be imagined and examined.

#### **6. Constitution of a Separate Fund for Political Purposes (Section 16):**

The Section 16 of the Act provides that the Trade Unions are having the power to constitute a separate fund for the promotion of civic and political interest of its members in furtherance of any of the objects specified in it. The objects are for the payment of expenses incurred by any candidate for election as a member of any legislative body or Local Authority and also holding of any meeting in support of a candidate by way of distributing literature or documents *etc.* the section also specifically mentions that political fund can be spent for holding of political meetings of any kind. However, no member shall be compelled to contribute to the political fund and if any member is not contributing to this fund shall not be

excluded from any benefits of the Trade Union. This section directly encourages the Trade Unions to participate in the activities of the political parties and any registered Trade Union can affiliate to any of the political party with a view to pressurize the employers and the Governments for achieving their demands with regard to the increase of wages, payment of bonus and taking suitable steps for the welfare of the workers. The allowing of the trade unions by the law to participate in the political activities encourage to declare strike recently by the employees of trade unions working in the Telangana region, with a feeling that their genuine grievances will be solved in the New Telangana State if it is to be formed. This approach of the trade unions which are in majority affiliated to almost all the political parties appears to be genuine and justified.

#### **7. Immunities from Criminal Conspiracy and from civil suits in certain cases (Sections 17 & 18):**

The Section 17 of the Trade Union Act says that no Office Bearer or Member of a Registered Trade Union shall be liable to punishment under Section 120B of the Indian Penal Code in respect of agreement made between the members for the purpose of furthering such object of the trade union unless the agreement is an agreement to commit an offence. Section 18 of the Act says that no suit or legal proceeding shall be maintainable in any civil Court against any Registered Trade Union or any Office Bearer or member thereof in respect of any act done in contemplation or furtherance of a Trade Dispute to which a member of Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of its capital or of his labour as his wills. The Section 18 also projects that a Registered

Trade Union shall not be liable in any suit or other legal proceeding in any civil Court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instruction given by, the executive of the trade union. There are many cases decided by the Courts in granting immunities to the trade union members and office bearers from criminal conspiracy and from civil suits. The following are the few cases specified briefly:

In the case of *Abmedabad Textile Research Association v. ATIRA Employees Union*<sup>11</sup> it was held that it is not within the purview of the civil Court to prevent or interfere with the legitimate rights of the workmen to pursue their demands by means of strike or otherwise as also acts done in furtherance of a trade dispute. In the case of *West India Steel Company Ltd. v. Azeez*<sup>12</sup> it was held that the immunity to a trade union leader (such as the President) is not available when he is discharged after holding an enquiry into his misconduct.

In the case of *Jay Engineering Works*<sup>13</sup> the question was involved whether a Trade Union official or member has immunity from criminal action for conspiracy such as resorting to strike and it was held that the exemptions provided in the Act apply only to peaceful strikes. If the strike is accompanied by violence, no such exemption is available. In another important case *i.e., Burn and Company v. Their Workmen*<sup>14</sup> a question was examined that whether a Union Leader can claim immunity from punishment because of his association with the union. The Court held that a Union leader cannot claim immunity from punishment for breaking discipline any more than any other worker.

Where a Union Secretary absented from duty without permission and without application which amounted to gross violation of discipline, entailing dismissal from service and if such a worker is dismissed by his employer, the Supreme Court has held that the industrial Tribunal should not order his re-installment since a union leader would not claim immunity to break discipline.

The Section 19 deals with regard to the enforceability of agreements, and the Section 20 provides about right to inspect a Books of Trade Unions, the Section 21A prescribes disqualification of office-bearers of trade unions which says that a person shall be disqualified for being chosen as, and for being member of the Executive or any other office bearer of a registered trade union if (i) he has not attained the age of 18 years; and (ii) he has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his released.

#### **8. Proportion of Office Bearers to be Connected with the Industry:**

The Section 22 has been added in the year 2002 which provides that not less than one-half of the total number of office-bearers of every registered trade union in an unrecognized public sector shall be persons actually engaged or employed in an industry with which the trade union is connected; provided that the appropriate Government may, by special or general order, declare the provisions of this section shall not apply to any trade union or class of trade unions specified in the order. The Clause 2 of the Section 22 says that all office bearers of a registered trade union, except not more than one-third of the total number of the office-bearer or five, whichever ever is less shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected. Another important point is also mentioned that the Clause 3 of

11. 1995 LLR 91 (Guj.) DB.

12. 1990 LLR 142 (Ker.)

13. AIR (1968) Cal. 407.

14. AIR 1959 SC 529.

Section 22 says that no member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the trade union is connected), in the union or a state, shall be a member of the executive or other office bearer of a registered trade union. The Trade Union Act contains many of the other provision relating to the change of name (Section 23), amalgamation of trade union (Section 24) and submission of returns annually to the Registrar (Section 28) *etc.*

### 9. Conclusion:

In view of above discussion relating to the various provisions of the Trade Union Act it is to be mentioned that this Act is very important piece of labour legislation which provides to form the trade unions by the workers especially in industries and establishments, factories, plantations *etc.*, where there is a chance of more exploitation by the workers. In India before Independence the workers have struggled for the formation of trade unions but the British Government refused in allowing the workers to form the unions saying that it is an illegal and conspiracy against the employers and Governments due to the efforts of Mr. B.P. Wadia, Mr. N.M. Joshi and other important leaders the Trade Union Act came into existence in the year 1926 which provides freedom to form the trade unions and also to have immunities from civil and criminal actions for the furtherance of the Trade Unions. The majority of workers in the country due to their poverty illiteracy and ignorance they are not in a position to take the membership in the trade unions and represent their grievances to the employers unitedly, always the employers and their unions, which are also regarded as trade unions working against the interest of the workers and exploit the trade unions with a view to earn huge profits. It is observed further that Inter-Union and Intra-Union rivalries are also affecting the growth of trade

union movement in India, and another important reason for affecting the trade union rights is interference of political parties unnecessarily damaging the interest of the workers and consumers.

Therefore, suitable Labour Laws will have to be framed for the elimination of political parties in the interference of the trade union activities and their should be strictly the system of one union for one industry will have to be introduced. Multiplicity of unions affiliated to different political parties is causing much harm to the industrial peace and industrial production. The employers too will have to come forward in solving the problems of the workers amicably without causing any effect on the livelihood of the workers and they have to work honestly, scrupulously for maintaining good labour management relations. The conflicts between the capital and labour is existed since immorial. Always capital is trying to earn more profits at the cost of labour, the labour is also a very good investment like capital. Therefore the capital and labour should work together for earning more profits and also wholeheartedly work for the welfare of the people in selling the goods and services.

It is appropriate to mention about the declaring of strike by the trade unions for better labour laws. The Labour Law Reporter, January 2012 mentioned that "for the first time in the history of the Country's Trade Union movement, all the Central Trade Unions (CTUs) are slated to hold a joint strike country wide. The demands behind the proposed agitation on February 28th, 2012 are better labour laws and there more effective implementation. The decision comes on the heels of a united show by CTUs on November 8th, 2012. That time, though it was only a protest-against rising food prices. The proposed strike is, thus expected to affect the normal functioning of major public sector banks and insurance companies besides both Central and State

Government offices. Trade Union Leaders of Public Sector banks confirmed the move, but refused to make a statement before the CTUs make a formal announcement. The February 28th stir is also likely to have an affect on the port traffic, as senior trade union leaders confirm that talks were on to bring on Board Port and Dock leaders across all the major Port of the Country. The leaders said the coming together of the Unions was part of a grant strategy to put pressure on the Government. It is another matter that differences exist within the trade unions on various issues. This includes the recent cabinet decision to permit foreign direct investment in retail, which all left-backed trade unions have opposed even as the ruling congress-backed INTUC has put its wait behind the Government”.

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## **CIRCUMSTANTIAL EVIDENCE AND JUDICIAL ADVENTURISM**

By

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In a recent judgment it was observed by the Supreme Court (Justices *G.S. Singvi* and *A.K. Ganguli*) that ‘when a murder charge is to be proved solely on the Circumstantial Evidence, presumption of innocence of the accused must have a dominant role’. The Dictum of Criminal Law is that “Every accused person must be presumed to be innocent until he is proved to be guilty.”

In appreciating the weight of Evidence, there is a fundamental difference between the Civil and the Criminal Proceedings. Whereas in Civil Cases “a mere preponderance of Evidence” is sufficient to establish a fact, in criminal matters, however, the evidence adduced by the prosecution should not only make the guilt of the

accused “highly probable”, but any alternative hypothesis in favour of the accused must be extremely improbable. As pointed out in *Guab Chand v. Kudilal*<sup>1</sup> “the prosecution must prove its case beyond all reasonable doubt” in Criminal proceedings.

In recent times, however, the Supreme Court diluted the application of Proof beyond reasonable doubt doctrine to show its sensitivity towards societies needs to ensure the punishment of guilty. In *Bhagwan Din v. State of Madhya Pradesh*<sup>2</sup> the Supreme Court confirming death sentence on several members of MCC for murdering 35 people

1. (1966) 3 SCR 623

2. (2002) 4 SCC 85