

EXPLORING THE TERRAIN: A STUDY ON CHALLENGES IN RECOGNISING TRADE UNIONS

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ABSTRACT

This study delves into the multifaceted challenges encountered in the recognition of trade unions across diverse industries and global contexts. Through a comprehensive examination of legal frameworks, employer attitudes, workforce demographics, and evolving labor dynamics, it uncovers the complex landscape within which trade unions operate. Recognition of trade unions is the backbone of the collective bargaining. Though there is government's states policy to encourage trade unions, there is no central legislation. Drawing on empirical evidence and case studies, the research illuminates the barriers that hinder union recognition and offers insights into potential strategies for overcoming these obstacles. By navigating this terrain, the study contributes to a deeper understanding of the complexities surrounding trade union recognition and advocates for the advancement of workers' rights worldwide. In this study the researcher attempts to give a clear picture about the need for compulsory recognition of trade union, the rights and privileges which will be obtained by the union on its recognition and stresses on the "One industry and One union" concept.

KEYWORDS: Trade unions, Recognition, Labor rights, Legal frameworks, Employer resistance, Workforce diversity.

INTRODUCTION

India has the largest number of trade unions. But they have developed very slowly. The unions are getting smaller in size. Their finances are generally bad in shape. Freedom of association is a fundamental right given under Article 19(1)(c) of the Indian Constitution, 1950 and it is a statutory obligation on the part of trade union to register its trade union with the registrar of trade unions. But, on the other hand, there is no obligation on the part of management to recognize the trade union though it is registered or not. Trade unions play a vital role in advocating for workers' rights, promoting fair labor practices, and improving working conditions across various industries and sectors. Central to the effectiveness of trade unions is their recognition by employers and authorities, which grants them the legitimacy and authority to represent workers in collective bargaining and labor disputes. The recognition of trade unions is essential for ensuring that workers have a collective voice in the workplace, enabling them to negotiate fair wages, benefits, and working conditions. This study seeks to explore the complex terrain surrounding the recognition of trade unions, examining the diverse challenges encountered by unions in different industries and global contexts.

OBJECTIVES OF THE STUDY

1. To find out the challenges in recognizing the trade unions in India.
2. To find out the reasons for the non-implementation of Trade Union Amendment Act.
3. To examine the need for compulsory recognition of trade unions.
4. To suggest the importance, need and benefits of the recognition of trade unions.

REVIEW OF LITERATURE

“Industrial Relations and Labour Laws¹” for reference of the Trade Union Act, 1926, as well as an overview of trade union, historical perspectives of trade union in India, and the growth of Collective Bargaining in the Industry. This material also provides the need and gives the suggestions for the importance of the Recognition of trade unions in India.

“Labour Industrial Laws²”. In this book the Trade Union Act was briefly discussed with the suitable case laws and the problems of non-recognition and the lack in it were discussed by the author.

Abishek Gupta and Neetu Gupta³, has made a study in their article “The 21st Century Trade Union Challenges in India”, had discussed about the problems which have been faced by a trade union in India.

G. Gopalakrishnan and Dr. G. Brindha⁴, in their Article “A study on Recognition of Trade Union and its Necessity”, examined about the importance and need for recognition of trade unions in India. And also made a discussion as a comparative overview with other countries where recognition is mandatory.

First and Second Labour Commissioner Reports, for the reference of recognition of trade union. In these Reports, it has been suggested to make the trade union of recognition as a mandatory one, as it would help to maintain peace and harmony between employer and employee relationship.

METHODOLOGY

The research work is predominantly doctrinal in nature. To comply with this kind of research, the researcher has collected data from the secondary sources. Legislations concerning Trade Unions and industrial disputes, notifications issued by the Government of India, data collected from reports such as National Commission on Labour (1st& 2nd Report), and various articles has been collected from the reputed journals. Historical method has also been included to trace out the origin and development of the concept of trade union movements in India. Further an analytical method and case law method has also been used for the present doctrinal research.

RECOGNITION OF TRADE UNIONS

A critical issue in labour legislation involves trade union recognition. This is because under

¹ Suresh C Srivastava, “Industrial Relations and Labour Laws”, 57-165, (Vikas Publishing House Pvt. Ltd., New Delhi, 6th Edition, 2015)

² Dr. V. G. Goswami, “Labour Industrial Laws” 184-244, (Central Law Agency, Allahabad, 2010.)

³ Abishek Gupta and Neetu Gupta, “The 21st Century Trade Union Challenges in India”, ISSN: 2168 - 9601JAMK, Vol 2, Issue 1 (2003).

⁴ G. Gopalakrishnan and Dr. G. Brindha, “A Study on Recognition of Trade Union and its Necessity”, International Journal of Civil Engineering and Technology, Vol. 8, Issue. 6, (2017)

some federal labour law there is no requirement for the employer to accept trade unions. The basic problem concerns the way the negotiating agent is decided. The Trade Unions Federation is split over whether to follow the verification or the secret ballot process. There have certainly been many legislative attempts, but there is no overarching law to deal with trade union recognition to date except in some states.

LEGISLATIVE MEASURES

The right to give recognition to trade unions within the scope of the Indian Constitution, Article 19(1)(c) is a fundamental right or is not addressed in a negative manner since the right to form an association does not include the concomitant right which the employers must recognize. Thus, neither the removal of the union's reconditions nor the discontinuation of recognition infringe the constitutional rights granted by Article 19(1)(c) of the Constitution.

TRADE UNIONS ACT, 1926

The Trade Unions Act makes no allowance for the union to be recognized. Any union recognition, even though it is a union relating to Central Government workers, is regulated by some departmental circulars. Those circulars are administrative in nature and not legislative. Such circulars are also therefore not enforceable in a formal petition.

TRADE UNIONS (AMENDMENT) ACT, 1947

In India, it was observed earlier that there is no central enactment governing the recognition of 'trade unions.' However, the Trade Unions (Amendment) Act, 1947 provided for the recognition of unions: (i) by agreements, and (ii) by a court order to satisfy the conditions set out in the relevant sections of the Act. But the Act was not implemented as mentioned earlier.

Machinery for Determination of Representative Unions: Section 28E of the Trade Unions (Amendment) Act, 1947, authorizes the labour court to award recognition if a registered trade union that has applied for an employer's recognition fails to secure the same within 3 months.

Conditions for Recognition: Section 25D specifies that, by order of a labor court, a trade union shall not be entitled to recognition under Section 25E unless it meets the following requirements, namely:

1. That all of its ordinary members are workers working in the same establishment or in establishments closely connected with or related to others,
2. That it is symbolic of all the employees employed by the employer in, or in, the sector,
3. That its rules do not provide for the exclusion from membership of any class of workmen referred to in clause (b),
4. That its rules provide for the procedure for declaring a strike,
5. That its regulations allow for an executive meeting to be held at least once in every six months,
6. That it is a registered trade union and that it has complied with all provision of this Act.

Rights of Recognized Trade Unions: The recognized trade unions have been conferred the right to negotiate with employers with regard to employment, non-employment, the terms of employment or the conditions of labour.

Withdrawal of Recognition of Trade Unions: Under Section 28G of the Trade Unions (Amendment) Act, 1947, the registrar or employer is entitled to request the removal of recognition by the labor court in writing on any of the following grounds:

- (a) That the executive or the members of the trade union have committed any unfair practice set out in Section 28J within 3 months prior to the date of the application,
- (b) The trade union has refused to make any return referred to in Article 281,
- (c) The trade union shall cease to serve the workers referred to in point (b) of Article 28D.

The labour court is required upon receipt of the application to serve a show cause notice on the trade union in the specified manner as to why its approval should not be revoked. If the court is satisfied that the trade union did not meet conditions for the recognition grant, it will issue an order declaring the recognition withdrawal.

The foregoing provisions raise the question whether trade union recognition can be withdrawn on the ground that recognized trade unions have lost their status as representative unions.

Re-recognition of Trade Unions: Article 28H of the Trade Unions (Amendment) Act, 1947 allows a registered trade union whose recognition is withdrawn pursuant to subparagraph (3) of Section 28 G to apply for re-recognition after 6 months from the date of withdrawal of recognition.

TRADE UNIONS BILL, 1950

Trade Unions Bill, 1950 was introduced in the Parliament. The bill was largely a consolidating measure but several additional provisions were introduced:

- (a) A trade union of civil servants shall not be entitled to recognition by the appropriate government if it does not consist entirely of civil servants or if the trade union is affiliated with a trade union of members other than civil servants.
- (b) A trade union shall not be allowed, by order of a labor court, to accept an employer in respect of any hospital or educational institution if it does not consist entirely of workers of any hospital or educational institution, as the case may be.
- (c) A trade union consisting partly of a supervisor and partly of other employees or partly of watch and dog staff and partly of other employees shall not be entitled, by order of a labor court, to recognize an employer.

The bill also provided for the recognition of Trade Unions where more than one union had applied for recognition. The Union which has the highest membership is granted priority over others. Recognized unions are given rights such as subscription collection, meeting on the grounds of the employer and collective bargaining. Within the legislation the labor court is empowered to order union recognition. However, the bill could not be brought in the form of the Act, due to many quarters' opposition. The bill lapsed when the legislature disbanded.

CHALLENGES IN RECOGNIZING TRADE UNIONS

The workers have a fundamental right to form association and unions under the Constitution of India. The Trade Unions have links with political parties.

1. MULTIPLICITY OF TRADE UNIONS

In India multiplicity of Trade Unions is a reality and will continue to be so. The multiplicity of Trade Unions affects the interests of labour, employer and society. The very philosophy and

purpose of workers unions is to have unity and solidarity of workers. Multiplicity of Trade Unions is opposed to the very philosophy of unionization.

There are three methods suggested by different Unions and Committees for recognition of Trade Unions. They are, verification of membership method, secret ballot, and check-off method.

The first two methods were the suggestions made in the 15th Session of Indian Labour Conference in 1956. The check off method was recommended by the Sanath Mehta Committee in 1982. In the 15th Session of the Indian Labour Conference the INTUC took the stand that the recognition of a union must be based on its membership.

2. SMALL SIZE OF UNIONS

While labour unions with thousands of members are of varying sizes, but most unions are still distinguished by their small size and limited membership. In India, the total membership per union is less than 800, compared to the USA (9,500) in the UK (17,600)⁵. The limited size of the unions is due to the following factors as the fact that any seven workers are entitled to enter a union under the Trade Union Act has resulted in a large number of small unions, the structure of the trade union organization in the country is, in most cases, the factory or the employment unit.

3. FINANCIAL WEAKNESS

Labour unions are suffering from financial instability as the Unions' gross annual profit was very poor and insufficient.⁶ The average income was small, not because of the workers' poverty, but because of some reasons, namely, workers are apathetic to labour unions and don't want to contribute their hard-earned money. Under multiplicity of unions circumstances, a union that is interested in increasing its membership usually keeps its subscription rate unduly small and does not frequently receive even that subscription. The best way to boost the financial; the unions' situation would be to eradicate trade union competition by adhering strictly to the "one union in one sector" theory⁷.

4. INTRA-UNION RIVALRY

Another vexing issue is competition within the Union. Rivalry between the trade unions is acute and pervades India's entire industrial scene. Sometimes rival unions go so far as to obstruct even the normal conduct of Union trade activities on different pleas. A union on various grounds opposes strike by a rival, the strike is unnecessary, uncalled for against the workers' interests and anti-national.

5. LEADERSHIP ISSUE

Another troubling characteristic of the trade unions is outside leadership, i.e., the leadership of

⁵ Cornfield D, Mc Cannon H (2003) Labour Revitalization: Global Perspectives and New Initiatives, JAI Press, London, U.K.

⁶ Freeman RB (2005) What Do Unions Do? The 2004 M-Brave Strin twister Edition, National Bureau of Economic Research, Massachusetts, U.S.

⁷ Gopal Ghosh: Indian Trade Union Movement. (The Peoples History Publication, US, 2005)

labour unions by people who are professional politicians and lawyers and who have no actual job experience in the industry. This is "intellectual democracy" rather than workers' leadership. It is applicable both locally and nationally. The National Labour Commission has given much attention to the question of whether external leadership should be retained. This felt that, which would be a very drastic measure, there would be one of the non-employees holding roles in the unions' Executive Body. The commission referred to freedom of association and defense of the right to organize, as well as to the right of workers' groups to elect their members in complete democracy.

6. POLITICALISATION

In a democracy, it is difficult to escape the political power of trade-unionism. In India, however, the revolutionary growth of the trade-union movement was intermingled inseparably with the political movement through the struggle for liberation. It enabled union to record rapid growth in the initial stages, and gain significant influence with the government in power. Over the long run, the solidarity of the working class has become a curse for undoing the very purpose of trade unionism. The disadvantages are dependence on external leadership that is not committed to the organization, exploitation of trade unions and the strength of the workers by political parties to achieve their political goals, multiplicity of trade unions due to the existence of multiple political parties.

7. DEMOCRACY AND LEADERSHIP

The advancement of industrial democracy is one of the fundamental goals of trade unionism. This goal is accomplished because in reality trade union is a workers' organisation, this rarely occurs and then less involvement, accountability and transparency. Decision making is centralized Elections are frequently delayed and vacancies are constantly filled with appointments, rank and file are pampered with commitments and seldom get close to top decision-making. Positions get worse when unions are controlled by external representatives and governed by the political parties or policies. The lack of democratic leadership reduces the productivity of trade unions and hinders the growth of trade unions among the workers in the industry⁸.

8. MANAGEMENT ATTITUDE

Management takes an unhelpful approach, on the whole. Unionism is seen as an anathema by them. Union members are troublemakers according to the administrators. They are there to break the peace between workers and the management. We limit managers; we have the ability to make decisions, challenge their judgment and wisdom, and hinder their "right to control." In view of this mindset, they also find fault with union for all the difficulties that management faces; be it low efficiency, low quality, low competitiveness or consumer lack of goodwill.

⁸ The Challenge of employment in India. An informal economy perspective (National Commission for Enterprises in the Unorganized Sector, India, 2009)

9. STATUTORY SUPPORT

Indian constitution recognizes association building as a constitutional right. The Indian Trade Union Act allows any seven workers to form a trade union and join together. They build a file for the creation of several labour unions that run contrary to the very idea of unionism-the unit workers. There is now no central legislation which makes it compulsory for management to recognize more than one union or not to recognize anybody. This further debilitated the labour union and its bargaining power. Furthermore, the Indian Trade Union Act allows 50% of officer-bearers from outside the organization and 10% of outside leadership. This policy resulted in politicalisation and centralized control from outside the institutions of union operations. Only the "code of conduct" advocates only trade union recognition as voluntary action. Trade union recognition causes rivalry on the part of others not recognized. This problem can be addressed by introducing comprehensive central legislation covering all aspects like Recognition, Multiplicity and External Leadership etc.

10. ILLITERACY AND IGNORANCE

Many Indian labourers are illiterate, ignorant, and weak. They are manipulated by unscrupulous leaders of the trade unions which lead to the following problems. Such workers are quickly brain-washed to become political party cardholders and work for certain parties at the cost of profit and unity in the working clause. Workers are divided on caste a line of faith, ethnicity and creed which runs counter to unity and identity trade union goals. Illiteracy and ignorance are also exploited by outside leaders who preclude leaders from within the organization from developing.

SUGGESTIONS

1. Unions should be free from Casteism, Communalism, Provincialism and Politicalism to attain the goals of the Trade Unions. The current situation calls for Unions which are sustainable, efficient and accountable.
2. Conducting workshops, training programs in which workers should be taught the right of trade unions and the art of debate so that they can deal with their own issues, with their own actions, the issues resulting from economic reforms are addressed from time to time in order to identify remedial steps.
3. After 5 years from the date of the founding of a Trade Union, the outside members will be excluded.
4. The Unions must avoid political association at the plant or industry level. They must however be affiliated with national and, in effect, with international federations in order to achieve a safety net.
5. Trade unions raise funds by raising subscriptions and also collecting donations to allow the trade unions to organize educational and technical training themselves to match current situations.
6. It is highly desirable to create one business and one union although it is very complicated in practice. In this case, however, one union in one sector is required in order to prevent inter-union rivalries and improve the mechanism of collective bargaining.
7. One of the Trade Union's main duties is protecting the workers from oppression.

Labor unions are supposed to act mainly as opposition. The position of the trade unions is now cooperative to the mutual benefit of both employees and employers.

CONCLUSION

The subject "In the light of economic reforms, ties between labor unions and politics" is somewhat contentious in nature. The study is gaining considerable importance as Trade Unions in India were founded, nurtured and led by the freedom movement's political leaders. They have been governed and regulated by political leaders since the date of formation of the Trade Unions. There is a concern that Trade Unions are interested more in political than economic issues. The Trade Unions Act of 1926 is intended primarily to govern relations between employers and employees, by means of which industrial harmony can be strengthened and worker prosperity achieved. By current legislation, all employers' and employees' unions are included in the term Trade Union. The foundation of the collective bargaining depends on the extent of workplace solidarity.

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