
UNIT 13 THE TRADE UNIONS ACT, 1926

Objectives

After going through this unit you should be able to understand:

- Various provisions of Trade Unions Act, 1926
- Scope and Coverage of the Act
- Registration Cancellation, Dissolution etc. of Trade Unions
- Obligations of Trade Unions
- Rights of Registered Trade Unions
- Various Amendments which are required in the Act

Structure

- 13.1 Introduction
- 13.2 Scope and Coverage
- 13.3 Administration
- 13.4 Registration of Trade Unions
- 13.5 Cancellation of Registration
- 13.6 Dissolution of Trade Unions
- 13.7 Penalties
- 13.8 Obligations of Registered Trade Unions
- 13.9 Rights of Registered Trade Unions
- 13.10 General Remarks
- 13.11 Conclusion

13.1 INTRODUCTION

Beside the Bombay Industrial Relations Act, 1946, and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, Trade Unions Act, 1926 is the only legal framework for the trade unions by conceding to workmen their right of association and organising unions. It permits any seven persons to form their union and get it registered under the Act. Registration of unions is optional and not compulsory. The National Commission on Labour (1969) recommended compulsory recognition of trade unions, but this recommendation is still under the consideration of the Government. However, the (1982) amendment of the Industrial Disputes Act, 1947, makes registration compulsory virtually by defining the term "Trade Union", for the purposes of this Act, as a Union registered under the Trade Unions Act, 1926. This gives Unions certain rights and immunities which unregistered Trade Unions do not enjoy. Therefore, workers tend to be members of registered trade unions.

Besides specifying the procedure for registration of union, this Act lays down the guidelines for the day to day working of the registered unions. It also defines their rights and obligations, important of which are as follows:

Collective bargaining gave fillip to passing of the Trade Union Act, 1926.

13.2 SCOPE AND COVERAGE

The expression "Trade Union" under the Act includes both employers and workers organizations. Employers organisations also can be registered as trade unions. The intention is to place both on par in matters of rights and responsibilities. It is primarily the objective of an association or combination which determines whether it is a trade union or not.



The federation of two or more trade unions mentioned in the definition can be seen in shape of Industrial Federations of Trade Unions.

Bombay Industrial Relations Act, 1948 is the most important state enactment. The relevant features of the act are (a) compulsory recognition of union by employer, (b) giving the right to workers to get their case represented either through representative union or where there is no representative union in industry/centre/unit through elected representative of workers or through Government labour officer.

There is no provision in the Trade Unions Act, 1926 about sorting out inter or intra trade union disputes. In such eventuality, aggrieved party has to take recourse to common law of the land and redressal through courts.

This Act extends to the whole of India. Under the Act, the term "Trade Union" is defined as any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers, or between workmen and workmen, or between employer 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. In other words, a trade union is a combination or association of not only of workmen but also of the employers. The Act, therefore, applies not only to the unions of workers but also to the associations of employers. (Sec. 2h)

13.3 ADMINISTRATION

This Act is a Central legislation, but it is administered and enforced by the State Governments. They appoint Registrars of Trade Unions, and also Additional or Deputy Registrars who may exercise the functions of the Registrar. They have also the powers to make rules for giving effect to the provisions of the Act. (Sec. 3)

13.4 REGISTRATION OF TRADE UNIONS

This is really the main provision of the Act. Any seven or more members of the union can form a trade union and apply to the Registrar for its registration by subscribing their names to its rules. The application for registration should be accompanied by a copy of the rules of the union and a statement containing particulars, namely: (a) the names, occupations and addresses of the members making the application; (b) the name of the trade union and the address of its head office; and (c) the titles, names, ages addresses and occupations of the office bearers of the trade union; If the union has been in existence for more than a year before applying for registration, the Registrar should also be supplied a statement in the prescribed form showing the assets and liabilities of the union. The Registrar may not register the trade union unless its executive is constituted in accordance with the provisions of this Act, and its rules mentioned clearly the name and objects of the union, and the purpose for which its funds are to be used. Not more than 50% of members of the executive committee can be outsiders. The rules should also provide for the maintenance of a list of the membership of the union and adequate facilities for the inspection thereof by the officers and members of the union; procedure for the admission of ordinary, honorary or temporary members, rate of subscription not being less than 25 paise per month per member; the manner of amending, varying or rescinding rules; manner of appointing members of the executive committee and other officers of the trade union, safe custody of funds and their spending for the purpose specified in the Act; annual audit and inspection of account books by the officers and members; and the manner of dissolution of the trade union, or changing its name. The Registrar has the power to call for any further information, and also alter the name of the union, if it is identical with that of any other registered union. He registers the union by recording its particulars in a register and issuing a registration certificate. (Sec. 4 to 9)

The federation of trade unions also require registration. It was held in National Organisation of Bank Workers' Federation of Trade Unions Vs. Union of India and others (Bombay - 1993) that where a federation of Trade Unions is not registered, it is not a trade union under the Act. It is not a juristic person and it is not competent to raise a demand on behalf of employees which can fall in the ambit, of Industrial Disputes. It cannot file a writ petition.



13.5 CANCELLATION REGISTRATION

The Registrar can withdraw or cancel registration if it has been obtained by fraud or mistake, or the trade union has ceased to exist, or it has contravened any provision of the Act, or has deleted any rule providing any matter required under this Act. The trade union concerned has, however, to be given two months' previous notice specifying the reasons for withdrawal or cancellation of registration. The union can appeal in a Civil Court against the order of the Registrar either for refusing registration or withdrawing or cancelling registration certificate. (Sec. 10, 11)

13.6 DISSOLUTION OF TRADE UNIONS

When a registered trade union is dissolved, notice of dissolution signed by seven members and by the Secretary of the trade union has to be sent to the Registrar within fourteen days of the dissolution. The Registrar will register the notice if he is satisfied that the dissolution has been effected in accordance with the rules of the union. The dissolution will take effect from the date of such registration. The Registrar has also to divide the funds of the union among the members in a prescribed manner if the rules of the union do not provide the same. (Sec. 27)

13.7 PENALTIES

The Act provides penalty of fine upto Rs.500 for making any wilful false entry in or any omission from the general statement to be submitted to the Registrar, and upto Rs.200 for giving incorrect copy of the rule or any other document with the intent to deceive a member or a person intending to be a member. If any registered trade union defaults in giving any notice or sending any statement or other document as required under this Act, every officer or other person bound by the rules of the trade union to give or send the same, or, if, there is no such officer or person, every member of the executive of the trade union, is punishable with a fine upto Rs.5. If this default continues, an additional fine upto Rs.5 for each week after the first week during which the default continues, may be imposed subject to an aggregate fine of Rs.50. (Sec. 31, 32)

13.8 OBLIGATIONS REGISTERED TRADE UNIONS

Registration makes it obligatory for a trade union to:

- a) allow any person of the age of 15 years and above to be a member of the union' subject to any rules of the trade union to the contrary, and enjoy all the privileges attached to membership; (Sec 21)
- b) have 50% of the office bearers of the union from among the persons actually engaged or employed in industry with which the trade union is concerned, and the remaining 50% can be outsiders; say lawyers, politicians, social workers and others who are not in any way connected with the industry/undertaking, of which the workers are members of the union. A person is disqualified to be a member of the executive or any other office-bearer of registered trade union if he has not attained the age of 18 years, or if he has been convicted of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release; (Sec. 21-A, 22)
- c) keep account books and membership register available for inspection by any member or officer of the union; (Sec. 20)
- d) send to the Registrar on or before the prescribed date an annual statement of receipts and assets and liabilities of the union audited in the prescribed manner as on 31st December, together with the statement showing changes in the office bearers and rules of the union made during the year. (Sec. 28)



13.9 RIGHTS OF REGISTERED TRADE UNIONS

A Registered Trade Union has the right to:

- a) spend the general fund for payment of salaries, 'allowances and expenses to its office-bearers, prosecution or defense of any legal proceedings for securing or protecting any rights of trade union, conduct of trade disputes, compensation to members for any loss arising from trade disputes, provision of educational, social, or religious benefits for members, publication of periodicals on labour matters, issue of or undertaking of liability under policies of assurance on the lives of members or policies of members against sickness, accident or unemployment, contribution to any cause intended to benefit workmen in general upto 25% of the gross income accrued to the fund, and any other object notified by the appropriate Government; (Sec. 15)
- b) constitute a separate political fund for the promotion of civic and political interests of members. Contribution to this fund is, however, not obligatory for the members, or a condition for becoming member of the union. The political fund can be used for setting up candidates and meeting their election expenses, holding elections and political meetings and maintenance of members elected to the Parliament or State Assembly or any local authority; (Sec. 16)
- c) claim protection from being prosecuted under sub-section (2) of Sec. 120B of the Indian Penal Code for bona-fide trade union activities under Sec. 17 of the Act. The protection provided to the members and office-bearers of the Trade Union is partial in the sense that the immunity is available only in respect of agreements made between the members for the purpose of furthering any legitimate objective of the trade union as provided under section 15 of the Act. If the agreement is the agreement to do an act which is an offence, no immunity can be claimed in certain cases; (Sec. 17, 18)
- d) Sec. 18 of the Trade Union Act deals with immunity from Civil Proceedings. A person is liable in torts for deliberately bringing out a breach of contract of employment between the employer and employee. But a registered trade union, its members or office-bearers are protected from being sued for inducing a person to break his contract of employment or for interfering with the trade, business or employment of some other person provided such inducement is in contemplation or furtherance of trade disputes.
- e) change its name with the consent of two-third of the total number of its members under intimation to the Registrar of Trade Unions. The change takes effect from the date it is registered by the Registrar; (Sec. 23, 25) and
- f) amalgamate the union with any other union by recording votes of at least 50% of the members, of which 60% must be in favour of amalgamation. This must be intimated to the Registrar, as it can, take effect after he registers it. (Sec 24,25)

13.10 GENERAL REMARKS

The Trade Unions Act has made a valuable contribution towards the development of trade union movement in India by giving a formal recognition to the right of workers to organise themselves by forming trade unions and getting them registered under the Act. Registration ensures a trade union necessary legal status which gives the union and its office-bearers immunity from criminal prosecution and civil suit for any bonafide trade union activity. Section 22 of the Act which permits 50% of the office-bearers of the Union to be outsiders, is considered to be important as it protects the workers from being victimised for trade union activities. All attempts to amend the Act, for reducing this percentage have been resisted by the trade unions on the ground that the development of trade union movement will receive a great set-back. There is no provision in the Act for the recognition of a trade union by employers for purposes of collective bargaining. Some time back this Act was amended for making such a provision, but the amendment was not given effect to. Some of the amendments proposed to be made in the Act are:

- i) Increasing the minimum number of persons required to form a union and get it registered under the Trade Unions Act, from 7 to 10% of the persons employed in establishments with 100 or more workers subject to the minimum of ten employees.



- ii) Raising minimum monthly union membership subscription from 25 n.p. to Re 1.
- iii) Holding meeting of Executive Committee of the Union at an interval of not more than three months as may be specified, and recording of resolutions passed by the Committee in a Minutes Book in a specified manner.
- iv) iv Yearly appointment of union office bearers within a specified date.
- v) Registration of union by the Registrar within sixty days of receipt of application.
- vi) Obligation of employers to supply information required by the Registrar regarding the number of persons employed in his organisation.
- vii) Realisation of union subscription from the wages and salaries of employees if employer is authorised by the employees to do so,, and remission of collection to the union concerned.
- viii) Limiting the number of outsiders in the Executive Committee to two.
- ix) Settlement of union disputes by arbitration or Labour Court.
- x) Prohibiting Central and State Ministers from holding any office in the union including the membership of its Executive Committee. "
- xi) Cancellation of Registration of unions for organising, or conducting or sponsoring illegal strike.
- xii) Enhancement of penalties for violating or contravening any provisions of the Act.

13.11 CONCLUSION

In the present shape, the Trade Union Act, 1926 does not serve the purpose and requires immediate amendment to make it more useful. The non-existence of provisions on Recognition of Trade Unions makes the Collective Bargaining processes absolutely difficult and industry faces acute difficulties in shape of inter-union rivalry and multiplicity of trade unions, having no or negligible following. These conditions continue to be so despite S.C. (1995) judgement in Food Corporation of India Staff Union Vs. Food Corporation of India and others, where it was held that where more than one union claim representative character, the method of secret ballot should be adopted to ascertain the correct position as regards the membership of different Trade Unions. Many of the State Governments have gone for enacting legislation to determine representative character, but Central Government dithers to do so; obviously under the :pressure of vested interests.