

LAW RELATING TO TRADE UNION IN INDIA

Historical aspects: Master and Slave Relationship

Since the Industrial Revolution, the law and practice of capital-labour relationship which is the most important aspect of master and servant relationship have undergone a great evolution and for the proper understanding of the significance and development of industrial Jurisprudence, a resume of this evolution is very essential.

During the early stage of capitalism, the relationship between the capitalist and the labourer was governed by the principle of master and slave. According to this principle, the capitalist was a man and the labour was a thing. The former, therefore, could not confer on the latter nor could the latter contract from the former any rights. The capitalist did not employ the labourer; either he bought him or got him. The relationship between them was based on coercion and not on free will. In the language of law, it was status and not contract that determined their.

Later on, when the labourer's position improved from slave to serf, he could contract few rights. But even then, the capitalist retained most of his unrestricted coercive powers over him. As a serf, the labourer was neither an unfree slave nor a free servant; he was rather a half slave and half servant. It was predominantly status, again, that determined the relationship between the labourer as a serf and the capitalist.

In the next stage, the capital-labour relationship came to be based on contract instead of on status. The relationship between the capitalist and the labourer was now that of master and servant. They were, at least in theory, free to acquire rights from and impose duties upon each other by voluntary mutual contract; though in practice the freedom was false. The then prevailing state of policy of laissez faire i.e. of letting the bargain between the capitalist and the labourer be what they liked in combination with the superior social and economic position of the capitalist, rendered the freedom of contract meaningless.

In an industrial era, now the evolution of capital labour relationship is marked by the recognition of two aspects, namely-

- (i) The existence of two distinct social groups or classes i.e. Capitalist and Labourers, each possessing a different social and economic position; and
- (ii) The necessity of State intervention in capital-labour relationship for protecting and balancing the contracting claims of these group.

The enhancement of industrial laws in particular, and State support to trade unionism and collective bargaining in general, are the important characteristics of the new basis of capital-labour relationship. The new capital-labour relationship is still that of master and servant and is based on the freedom of contract, but unlike in the past, the freedom is now no more the individual freedom of a labourer, but is the collective freedom of a group or union of labourers and the contract is no more an individual contract between the capitalist and the labourer

but is 'collective agreement' between a group or class or union of labourers on the one hand and the capitalist or group of capitalists on the other. In short, the labourer is now no more a condemned slave, neither an unfree serf nor a submissive servant, but is a free member of a group or class or union of labourers now known by the name 'employee' or 'worker'. However, this recognized right assuming different dimensions with the changing needs of the State and employer.

Trade Union Growth and Evolution

Growth of Trade union movement in India was an organic process. It started towards the end of the nineteenth century and continues to date. It closely follows the development of Industry in India.

Pre-1918: the genesis of the labour movement in India

Though the origin of labour movements was traced to the 1860s, first labour agitation in the history of India occurred in Bombay, 1875. It was organised under the leadership of S.S Bengalee. It concentrated on the plight of workers, especially women and children. This led to the appointment of the first Factory commission, 1875. Consequently, the first factories act was passed in 1881.

In 1890, M.N Lokhande established Bombay Mill Hands Association. This was the first organised labour union in India.

Following this, different organisations were established across India.

Features of the labour movements in this era:

Leadership was provided by social reformers and not by the workers themselves.

The movements in this era mainly concentrated on the welfare of workers rather than asserting their rights.

They were organised, but there was no pan India presence.

A strong intellectual foundation or agenda was missing.

Their demands revolved around issues like that of women and children's workers.

1918-1924: The early trade union phase

This period marked the birth of true trade union movement in India. It was organised along the lines of unions in the industrialised world.

The deteriorated living conditions caused by the first world war and the exposure with the outside world resulted in heightened class consciousness amongst the workers. This provided fertile ground to the development of the movement. This period is known as the early trade union period.

Important unions: Ahmedabad Textile Labour Association (1917) led by Smt. Anasuyaben Sarabhai, All India Postal and RMS Association, Madras Labour Union led by B.P Wadia etc.

AITUC, the oldest trade union federation in India was set up in 1920. It was founded by Lala Lajpat Rai, Joseph Baptista, N.M Joshi and Diwan Chaman Lall. Lajpat Rai was elected the first president of AITUC.

1925-1934: Period of left-wing trade unionism

This era was marked by increasing militancy and a revolutionary approach. It also saw multiple split-ups in the movement. Leaders like N.M Joshi and V.V Giri was instrumental in moderating the movement and further integrating it with the nationalist mainstream.

AITUC split up multiple times paving way for the formation of organisations like National Trade Union Federation (NTUF) and All India Red Trade Union Congress (AIRTUC). However, the need for unity was felt and they all merged with the AITUC in the next phase.

The government was also receptive to the trade union movement. Legislations like the Trade Unions Act, 1926 and the Trade Disputes Act, 1929 gave a fillip to its growth. It bestowed many rights to the unions in return for certain obligations. This period was marked by the dominance of the left. Hence, it may be referred to as the period of left-wing trade unionism.

1935-1938: The Congress interregnum

This phase was marked by greater unity between different unions. Indian National Congress was in power in most of the provinces by 1937. This led to more and more unions coming forward and getting involved with the nationalist movement. In 1935, AIRTUC merged with AITUC. Different legislations were passed by provincial governments that gave more power and recognition to the trade unions.

The approach of Congress ministries was that of promoting worker interests while protecting industrial peace. Reconciliation of labour with capital was seen as an aim, with ministries working towards securing wage rise and better living conditions. However, many ministries treated strikes as law and order issues. They used colonial machinery to suppress it. This led to considerable resentment from the unions.

1939-1946: Period of labour activism

The Second World War lowered standard of living for the workers further and this led to the strengthening of the movement. The question of war effort created a rift between the Communists and the Congress. This, coupled with other issues, led to further split in the movement. However, the movement as a whole got stronger due to the compounding issues. This included mass entrenchment post-war and the massive price rise that accompanied it.

Legislations like Industrial Employment Act, 1946 and Bombay Industrial Relations Act, 1946 contributed to strengthening the trade union movement. In general, the movements got more vocal and involved in the national movement.

1947-present: Post-independence trade unionism

It was marked by the proliferation of unions. INTUC was formed in May 1947 under the aegis of Sardar Vallabhbhai Patel. Since then, the AITUC has come to be dominated by the Communists. Hind Mazdoor Sabha was formed in 1948 under the banner of Praja Socialist

Party. Later on, it came under the influence of Socialists. Bharatiya Mazdoor Sangh was founded in 1955 and is currently affiliated to the BJP.

Post-independence, trade unions became increasingly tied with party politics. Rise of regional parties has led to a proliferation in their numbers with each party opting to create its trade union. However, their influence has been somewhat reduced after the liberalisation post-1991. Issues like labour code reforms and minimum wage remains a political hot potato due to the opposition from the trade union leadership.

Post-independence, India has also witnessed different unions coming together to address a common issue. These include the crippling railway strike of 1974 and the Great Bombay textile strike, 1982. However, such strikes are seen to get less public support post-1991. There is also an increased focus on informal labour. This is due to the particularly vulnerable situation of unorganised labour. All major trade unions have registered an increase in their membership from the unorganised sector.

Constitutional Development of Trade Union

Freedom of Association and Constitution of India: Article 19(1)(c) of the Constitution of India, 1950 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 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

1. The right of the members of the union to meet,
2. The right of the members to move from place to place,
3. The right to discuss their problems and propagate their views, and
4. The right of the members to hold property.

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management.

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

The extent of state control or intervention is determined by the stage of economic development. In a developed economy, work stoppages to settle claim may not have much impact, unlike in developing economy. Countries like the U.S. and England, etc. with advanced and free market economy only lay down bare rules for observance of employers and workers giving them freedom to settle their disputes. In the U.S., State's intervention in industrial dispute is eliminated to actual or threatened workers' stoppages that may imperil the national economy, health or safety.

However, in a developing economy, the States rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules. This is emphatically so in developing countries with labour surplus. It is a concern of the state to achieve a reasonable growth rate in the economy and to ensure the equitable distribution thereof. This process becomes more complex in a country with democratic framework guaranteeing fundamental individual freedoms to its citizens. Hence, the State in a developing country concerns itself not only with the content of work rules but also with the framing of rules relating to industrial discipline, training, and employment.

The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Entries about labour relations are represented in all the three lists in the Constitution. Yet most important ones come under the Concurrent list. These are industrial and labour disputes, trade unions and many aspects of social securities and welfare like employer's liability, employees' compensation, provident fund, old age pensions, maternity benefit, etc. Thus, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent list. Some States have enacted separate amendment Acts to some of the above legislations to meet local needs. Such amendments are recommended either with the assent of the President of India or by promulgating rules pursuant to the powers delegated by the Central Act. Under the rule making powers delegated by the Centre, the States have often been able to adopt Central Act to local needs without the President's assent. The Central acts often delegate such powers. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective.

Similarly, Section 29 and Section 30 of the Minimum Wages Act and Section 26 of the Payment of Wages Act delegated the rule making power to the State. In pursuance to this, several States have promulgated separate minimum wages rule payment of wage rules. The Factories Act also contains similar provisions and they have been similarly availed of.

Further, the goals and values to be secured by labour legislation and workmen have been made clear in Part IV, Directive Principles of the State Policy of the Constitution. Thus, the State shall secure a social order for the promotion of welfare of the people and certain principles of policy should be followed by the State towards securing right to adequate means of livelihood, distribution of the material resources of the community to subserve the common good, prevention of concentration of wealth via the economic system, equal pay for equal work for both men and women, health and strength of workers including men, women and children are not abused, participation of workers in management of industries, just and humane conditions of work and that childhood and youth are protected against exploitation against exploitation and against moral and material abandonment.

By and large industrial and labour legislations have been directed towards the implementation of these directives. Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 regulate wage payment. Payment of

Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. However, the directives relating to distribution of wealth, living wages, equal pay for equal work, public assistance, etc. have not been generally implemented as yet.

ILO Conventions relating to trade Unions and Constitutional Provision:

International Labour Organisation (ILO) is the most important organisation in the world level and it has been working for the benefit of the workers throughout the world. It was established in the year 1919. It is a tripartite body consisting of representatives of the Government, Employer, workers. It functions in a democratic way by taking interest for the protection of working class throughout the world.

It is also working at the international level as a 'saviour of workers' 'protector of poor' and it is a beacon light for the change of social justice and social security. The I.L.O examines each and every problem of the workers pertaining to each member country and discusses thoroughly in the tripartite body of all the countries. The I.L.O passes many Conventions and Recommendations on different subjects like Social Security, Basic Human Rights, Welfare Measures and Collective Bargaining. On the basis of Conventions and Recommendations of I.L.O. every country incorporates its recommendations and suggestions in its respective laws.

The idea of protecting the interest of the labour against the exploitation of capitalists owes its origin to the philanthropic ideology of early thinkers and philosophers, and famous among them is "Robert Owen" who being himself an employer took interest in regulating hazardous working conditions of the workers and also in human conditions under which the workers were being crushed underneath the giant wheels of production.

Aims of the International Labour Organisation:

The principle aim of the I.L.O is the welfare of labour as reaffirmed by the Philadelphia Conference of 1944 under the Philadelphia Declaration, on which the I.L.O. is based-

1. Labour is not a commodity;
2. Freedom of expression and of association are essential to sustained progress;
3. Poverty anywhere constitutes danger to prosperity everywhere; and
4. The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, employing equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

1. Freedom of Association and Protection of the Right to Organize Convention, 1948: This Convention provides that workers and employers shall have the right to establish and join organizations of their own choosing without previous authorization. The public authorities are to refrain from any interference which would restrict the right to form organization or impede its lawful exercise. These organizations shall not be liable to be dissolved or suspended by administrative authority. It also provides protection against act of anti-union discrimination in respect of their employment. This convention has been ratified by Albania, Argentina, Austria, Belgium, Brazil, Byelorussia, Cuba, Denmark, Dominican Republic, Finland and France. Federal Republic of Germany and India have not ratified this particular convention.

2. Right to Organize and Collective Bargaining Convention, 1949 This fundamental convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination, including requirements that a worker not join a union or relinquish trade union membership for employment, or dismissal of a worker because of union membership or participation in union activities. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or employers' organizations, or the support of workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. The convention also enshrines the right to collective bargaining.

3. Workers' Representatives Convention, 1971 Workers' representatives in an undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. Facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

4. Rural Workers' Organizations Convention, 1975 All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations, of their own choosing without previous authorization. The principles of freedom of association shall be fully respected; rural workers' organizations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. National policy shall facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers as an effective means of ensuring the participation of these workers in economic and social development.

Definition of Trade Union, workman, Trade Dispute.

Sec 2 (h) states that "Trade Union" means 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 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.

Important elements of Trade Union:

1. There must be combination of workmen and employers;
2. There must be trade or business; and
3. The main object of the Union must be to regulate relations of employers and employees or to impose restrictive conditions on the conduct of any trade or

In *Rangaswami V. S Registrar of Trade Unions, in the Raj Bhavan at Guindy*, a number of persons are employed in various capacities such as household, staff, peons, chauffeurs, tailors, carpenters, maistries, gardeners, sweepers etc. There are also gardeners and maistries employed at the Raj Bhavan at Ootacamund. Those persons are employed for doing domestic and other services and for the maintenance of the Governor's household and to attend to the needs of the Governor, the members of his family, staff and State guests. When employees applied for the registration of trade union, the registrar had rejected their application on the ground that, Raj Bhavan not comes under the meaning of trade and business. The petition has been filed seeking to set aside the order of the

Registrar of Trade Unions, Madras refusing to register the union of employees of the Madras Raj Bhavan as a trade union under the Trade Unions Act.

Supreme Court rejecting the petition, held that, even apart from the circumstance that a large section of employees at Raj Bhavan are Government servants who could not form themselves into a trade union, it cannot be stated that the workers are employed in a trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would not come within the scope of the Act, so as to entitle it to registration there under.

The term "trade union" as defined under the Act contemplates the existence of the employer and the employee engaged in the conduct of a trade or business. The definition of the term "workmen" in Sec. 2 (g) would prima facie indicate that it was intended only for interpreting the term "trade dispute". But even assuming that that definition could be imported for understanding the scope of the meaning of the term "trade union" in S. 2 (h), it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking. So much is plain from the definition of the term "trade union", itself. I say this because the definition of "industry" in the Industrial Disputes Act is of wider significance. Section 2 (j) of the Industrial Disputes Act which defines "industry" states its meaning as "any business, trade undertaking, manufacture or calling of employers and includes any calling, services, employment, handicraft or industrial occupation or avocation of workmen."

In Tamil Nadu NGO Union v. Registrar, Trade Unions, in this case Tamil Nadu NGO Union, which was an association of sub magistrates of the judiciary, tahsildars, etc., was not a trade union because these people were engaged in sovereign and regal functions of the State which were its inalienable functions. In GTRTCS and Officer's Association, Bangalore and others vs Asst. Labor Commissioner and another, in this case the definition of workmen for the purpose of Trade Unions is a lot wider than in other acts and that the emphasis is on the purpose of the association rather than the type of workers and so it is a valid Trade Union.

Definition of Trade Dispute: "trade dispute"

Means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labor, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

Procedures for the Registration of Trade Unions:

The main object of the Trade Unions Act, 1926 is to provide machinery for registration and regulation of Trade Unions. Although registration of a trade union is not mandatory, it is advisable to register the trade unions as the registered trade unions are entitled to get several benefits, immunities and protection under the act. There are specific rights and privileges conferred on the members of the registered trade unions. The members of the registered trade unions are entitled to get protection, immunity and certain exceptions from some civil and criminal liabilities. A trade union can only be registered under the Trade Unions Act, 1926.

Trade union Act, 1926 not provides compulsory registration. However, there are certain disadvantages of non-registration. Therefore, it is better to register the trade union. The following is the procedure for registration of trade union.

Appointment of Registrar:

Section 3 of the Trade Union Act, 1926 empowers the appropriate Government to appoint a person to be a registrar of Trade Unions. The appropriate Government is also empowered to appoint additional and Deputy Registrars as it thinks fit for the purpose of exercising and discharging the powers and duties of the Registrar. However, such person will work under the superintendence and direction of the Registrar. He may exercise such powers and functions of Registrar with local limit as may be specified for this purpose.

Mode of registration:

Sec 4 of the Act states that, any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act. However, no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration

No Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Where an application has been made under sub-section (1) of Sec 4 for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.

The Supreme Court in Tirumala Tirupati Devasthanam held that, any group of employees may be registered as a trade union under the Act for the purpose of regulating the relations between them and their employer or between themselves. It would be apparent from this definition that any group of employees which comes together primarily for the purpose of regulating the relations between them and their employer or between them and other workmen may be registered as a trade union under the Act.

Application for registration:

Application for registration must be submitted in the prescribed format. Sec 5 provides that, every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:

1. the names, occupations and addresses of the members making the application;
2. in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
3. the name of the Trade Union and the address of its head office; and
4. the titles, names, ages, addresses and occupations of the 4 office-bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

Registration:

As per sec 8 of the Act, the Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Certificate of registration:

Sec 9 of the Act empowers the Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

Amalgamation of Trade Unions:

Amalgamation of trade union means merger of two or more trade unions into one trade union. Section 24 to 26 of the Trade Unions Act, 1926 provides for amalgamation of trade unions.

Amalgamation can be as follows:

Amalgamation with dissolution of trade unions,

Amalgamation without dissolution of trade unions,

Amalgamation with the division of funds of trade unions, and

Amalgamation without division of funds of trade unions.

According to Section 24 of the Trade Unions Act, 1926, two or more registered trade unions may amalgamate together as one trade union with or without dissolution or division of the funds of such trade unions or either or any of the trade unions.

For the amalgamation to be valid, the following conditions must be satisfied:

At least 1/2 of the members of the concerned trade unions must participate and vote for amalgamation; and

At least 60% of the votes recorded are in favor of the amalgamation.

Section 25 of the Act lays down the procedure for amalgamation for the trade union. A notice in writing as to the change of the name of the trade union after amalgamation must be served by the Secretary and seven members of the trade union to the Registrar of the Trade Unions. If the head office or any other office of the amalgamating trade unions is located in other states, notice is to be served to the Registrar of Trade Unions in such other state/states. The Registrar of Trade Unions on being satisfied with the fulfilment of conditions registers the trade union by posting an entry in the Register and issues a certificate to that effect. The amalgamation comes into force with effect from the date of registration.

Section 26 of the Trade Unions Act, 1926 gives provision for the change of name of a registered trade union. Change of name does not affect the rights and liabilities of the trade union or does not render any defect to the legal proceedings by or against the trade union. Similarly, amalgamation of

registered trade union shall not prejudice any right of the trade unions or any right of a creditor to the trade union.

Sec 24 provides that, any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.

Notice of change of name or amalgamation:

Sec 25 provides that, notice in writing of every change of name and of every amalgamation signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar and where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State.

Immunities/Privileges of a Registered Trade Union:

1. Immunity from Criminal Conspiracy Section 17 of the Trade Unions Act, 1926

seeks to insulate trade unions activity from liability for criminal conspiracy. It states that, no office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section 15, unless the agreement is an agreement to commit an offence.

The immunity is, however, available only:

- (i) to office-bearers and members of registered trade unions;
- (ii) for agreement;
- (iii) which further any such trade union object as is specified in section 15 of the Act; and
- (iv) which are not agreements to commit

2. Immunity from Civil Action.

No suit or other 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 the 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 his capital or his labour as he wills.

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 instructions given by the executive of the trade unions.

3. Enforceability of Agreements:

Section 19 grants protection to the agreements (between the members of a registered trade union) whose objects are in restraint of trade notwithstanding anything contained in any other law for the time being in force declaring such agreements to be void or voidable

Rights of a registered trade union:

- **Right of Admission:** Admission as a member of trade union is not an absolute right. A registered trade union may impose certain qualifications and restrictions for admissions subject to the provisions of the Trade Unions Act and Rules as well as any other law in force.
- **Right of Representation:** A trade union can represent the employees in any industrial dispute and in case of individual dispute, with the written authorization of the employee. With such authorization, a trade union can represent before any conciliation officer, industrial tribunal, labour courts etc.
- **Right to Contract:** A registered trade union, being a legal person, can enter into agreements and contracts on its own name.
- **Right to own property:** A registered trade union can purchase and own movable and immovable property in its own name.
- **Right to Sue:** A trade union is a juristic person. It can sue, argue before any labour courts, authorities and other courts on behalf of itself, and on behalf of its members.
- **Right to inspect books:** Section 20 confers an important right to the members of the trade union. The office bearers or the members can inspect the books of account at such time as may be provided for in the rules of the trade union. The members, however, have no right to take copies of such books of account.
- **Right to Amalgamate:** According to Section 24 of the Trade Unions Act, 1926, two or more registered trade unions may amalgamate as one trade union with or without dissolution or division of funds of such unions.

Duties and Liabilities:

- A registered trade union has a duty to inform the Registrar of Trade Unions by sending a notice to that effect as to the change of address of the registered trade union.
- The Act imposes on the registered trade union, duty to spend the funds (general fund, political fund), specifically allotted for the purposes as stated in the provisions of the act.
- A registered trade union is under a duty to see that not less than 1/2 of the total number of its office bearers in the case of unorganized sector and 1/3 or 1/5 whichever is less in other sectors (according to amendment in 2001) must be persons actually engaged or employed in an industry with which the trade union is connected with. Appropriate governments by an order (general or special order) exempt a trade union from this provision.
- Every registered trade union must submit every year, to the registrar of trade unions, a) a general statement, audited in the prescribed manner of all receipts and expenditures during the year ending 31st December, b) an audited statement of its assets and liabilities as on 31st December, c) a statement showing change of office bearers made by the trade union during that year and, d) a copy of the rules of the trade union amended up to date.
- Whenever any alteration is made in the rules of the registered trade union, a notice regarding the altered rules must be submitted to the registrar of trade unions within 15 days of such alteration.
- Failure to submit the above said returns, or give notice of alterations, shall make every office bearer or other persons who are responsible for such submission of particulars, liable to pay fine which may extend to Rs.5 and in case of continuing default additional fine of Rs. 5 for each week not exceeding Rs. 50 in total.

- Any person who gives false information to any member of the registered trade union with an intention of deceiving him is liable to be punished with fine which may extend to Rs.200.
- While electing a person as a member of the executive committee or for any other office as office bearer must be confirmed that such person has completed the age of 18 and such person is not convicted of any offence involving moral turpitude. (In case of any conviction and a period of 5 years has elapsed since his release then he is qualified to be elected for these posts.)
- A minister or a person holding an office of profit in the Union or State shall not be elected as a member of executive or other office bearer of a registered trade union (according to amendment in 2001).

Dissolution of Trade Union:

Section 27 of the Trade Unions Act 1926 deals with the dissolution of a registered trade union. For a registered trade union, the rules of such a registered trade union under Section 6 (j) of the act must make provisions for the dissolution of that trade union. A registered trade union may be dissolved at any time. Notice of such dissolution signed by the Secretary and any other 7 members of the trade union must be submitted to the Registrar of Trade Unions within 14 days of such dissolution. The registrar on being satisfied that the dissolution was effected in accordance with the rules of the trade union, will register the fact of dissolution in the register. The dissolution will come to effect from the date of such registration of dissolution by the Registrar of Trade Unions in the register. In case of the rules of the registered trade union do not have any provisions for the distribution of funds of the trade union on dissolution, the Registrar of Trade Unions may divide the funds among its members in such manner as he thinks fit. In case the rules of the registered trade union have provision for division of funds, the division of funds will be done in accordance to the provisions in the rules. In case of unregistered trade union, and the rules do not have provisions for dissolution, then such trade union may be dissolved with the consent of all the members of the trade union, or by an order of competent court.

Multiplicity of Unions and trade rivalry

Management(employers)and trade unions are two main parties in collective bargaining. Collective bargaining is a method by which trade unions negotiate for protected and improved working conditions for and to secure welfare of their employees. Trade Unions raise the collective voice of workers which is heard and considered by the management while taking policy decisions.

In India, the law permits that any seven persons can form a union under the Trade Unions Act, 1926. Such unions, under the Act, are allowed to raise disputes, file suits and even bargain with employers. Therefore, small sections of workers are encouraged to form separate Unions. There is no restriction on the number of unions to be registered in one establishment.

Though strong trade unions help in securing workers' interests as well as organizational stability and growth, however existence of many trade unions in the same establishment is a major hurdle in collective bargaining and hampers organization's and workers' growth.

The multiplicity of trade unions is a major problem among the trade unions. These multiple trade unionism is seen mainly because of the political outsiders wanting to establish their unions for their own view of increasing their political influence although in the urban areas. The existence of different

conflicting or rival organizations, with divergent political views, is greatly responsible for inadequate and unhealthy growth of the movement. Within a single organization one comes across a number of groups comprising or insiders and outsiders, new-comers, and old-timers, moderates and radicals, and high and low caste people. This develops small size unions which are not helpful for the workers or employees and creates problems such as:

- Rivalry between the unions
- Lack of ability among the leaders and members.
- Low bargaining power.
- Lack of funds to help its members.
- Lack of unity among workers.

Trade Union Rivalry

India has the largest number of Trade Unions in the world but the rivalry between the unions or the inter-union rivalry is a nagging problem. Inter-union and intra-union rivalry undermines the strength and solidarity of the workers in many ways. An Inter-union rivalry is mainly because of the multiplicity of unions which ultimately cuts at the very root of unionism, weakens the power of collective bargaining, and reduces the effectiveness of workers in securing their legitimate rights. Therefore, there should be One union in one Industry'. Practically in every important industry, there exists parallel and competing unions, e.g. on the Indian Railways, there are two parallel Federations

1. the Indian Railway Men's Federation and
2. Indian National Federation of Railway-men.

The same case could be seen in the Textile Industry in Bombay, where there are two unions the Girni Kamgar Union (controlled by the CPI) and the Rashtria Mazdoor Sangh (controlled by the INTUC). As the trade unions are functioning from the plant level, there is room for disagreement within the democratic structure of trade union. Even the absence of any legal requirements in the greater part of the country to recognize any union as the sole bargaining agent is a major factor which generates the wide-spread and a bitter trade union rivalry. This problem may lead to Industrial Unrest, strikes, gheraos etc in the organization.

closed shop and union shop

- **Closed Shop**

Closed shop, in union-management relations, an arrangement whereby an employer agrees to hire—and retain in employment—only persons who are members in good standing of the trade union. Such an agreement is arranged according to the terms of a labour contract. A company that only employs union members and requires them to secure and maintain union membership as a condition of employment.

- **Union Shop**

A company that doesn't require employees to join a union in order to be hired, but they must join within 30 days of employment. A *closed shop* is a workplace

with a contract requiring that only people who are already members of a labor union be hired by an employer.

- **Open Shop**

A company that may have a union, but hires both union and non-union employees, and union membership is not a requirement for continued employment. An *open shop* is a workplace where workers are represented by a labor union, but are not required to join the union.
