

LL.B IV SEMESTER

THE TRADE-UNION ACT 1926

Introduction:

Though labour organisations came into existence in India in the last decade of the 19th century, it was only after the outbreak of the First World War in 1914 that they appeared in the form of modern Trade-Unions. Subsequently, as their numbers increased, membership expanded and they became active in seeking to promote and safeguard the interests of workers, they had to face the open hostilities of the employers and the public authorities. In the absence of any special legislation protecting their status, they received the same set-back under the Common Law as their British counterparts did much earlier. Thus, the interpretations given to Section 120 (B) of the Indian Penal Code dealing with criminal conspiracy, raised considerable doubts regarding the legality of Trade-Unions. Besides, their activities could also be considered in restraint of trade under Section 27 of the Indian Contract Act, which provided, —every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void.

The legal position of Trade-Unions under the existing statutes and the Common Law became clearer following a decision of the High Court of Madras in 1921. In a case between *Messrs. Binny and Company* (Managing Agents of the Bukingham Mills) Vs the *Madras Labour Union*.² The court, basing its

decision on the Common Law of England, considered the Trade-Unions as illegal conspiracy and issued injunctions on the leaders of the Madras Labour Union restraining them from instigating workmen to break their contracts with their employer, and ordered them to imprisonment. Though the case was withdrawn, the attitude of the courts towards Trade-Unions became obvious. The decision aroused considerable resentment amongst the unionists, and it was rightly apprehended that the history of legal prosecution of the British Trade- Unions during their early days would be repeated in India, also, if the Common Law was not adequately amended by a specific statute guaranteeing to the workers the right to organise. Strong demands were made for a legislation recognising workers' right to organise and to engage in concerted activities.

The same year, the Legislative Assembly adopted a resolution moved by N.M. Joshi, the then general secretary of the AITUC urging immediate steps for registration of Trade-Unions and protection of the legitimate Trade-Union activities. Subsequently, the local governments were requested to ascertain the view of public bodies and private persons on certain connected issues such as the principle of proposed legislation, recognition of strikes, protection of Trade-Unions from civil and criminal liabilities. management of unions, and others. After receiving the view of the local governments, the Government of India drew- up a Bill which was introduced in the Legislative Assembly on 31 August 1925. The Bill was passed the next year as the Indian Trade-Unions Act, 1926. The Act with subsequent amendment is still in the force in the country.

-This Assembly recommends to the Governor General in council that he should take steps to introduce as soon as practicable in the Indian Legislature such legislation as may be necessary for the registration of opinion received a draft bill was prepared and published in Sept. 1924

After some modification the Indian Trade-Union Bill have been passed by the

legislature received its assent on 25th March 1926, it came into force on 1st June 1927, by Act. 3 of the Indian Trade-Unions Act 1926 the word 'Indian' has been omitted and now it stands The Trade-Union Act 1926

Trade-Union Act

Trade-Unions in India are governed by the Trade-Union Act, 1926, which is the main legislation that provides various rules, regulations and controlling mechanism related to Trade-Unions. The Act provides for Registration of Trade-Unions and certain respects to define the law relating to the registered Trade-Unions.

Until 1926 no legislative attempt was made in India to delineate the contours of the expression 'Trade-Union' or any of its synonyms. In 1926 section 2 (h) of the Trade-Union Act 1926, inter alia, defines a Trade-Union to mean 's. Any combination, whether temporary or permanent formed primarily for the purpose of regulating the relation between workmen and employers or between workmen and workmen or between employer to employers' or for imposing restrictive conditions on the conduct of any Trade or business and includes any federation of two or more Trade-Union

The Analysis of the above definition reveals that the Trade-Union:

1. Must be a combination.
2. Such-combination should be either temporary or permanent
3. It should include any federation two or more federation of Trade-Union's
4. Further the definition recognizes that the objectives under its constitutions are or more of the following:
 - a. To regulate, relation 1. Between workmen and employer, 2. between workmen to or between employer.
 - b. To impose restrictive condition on the conduct of any trade of business, but it is not effect to (1) an agreement between own parties sown business.

Provision of the Trade-Union Act, 1926:

In pursuit of the primary objective, the Act contains 33-section's. The provision's can broadly divided into eight section namely

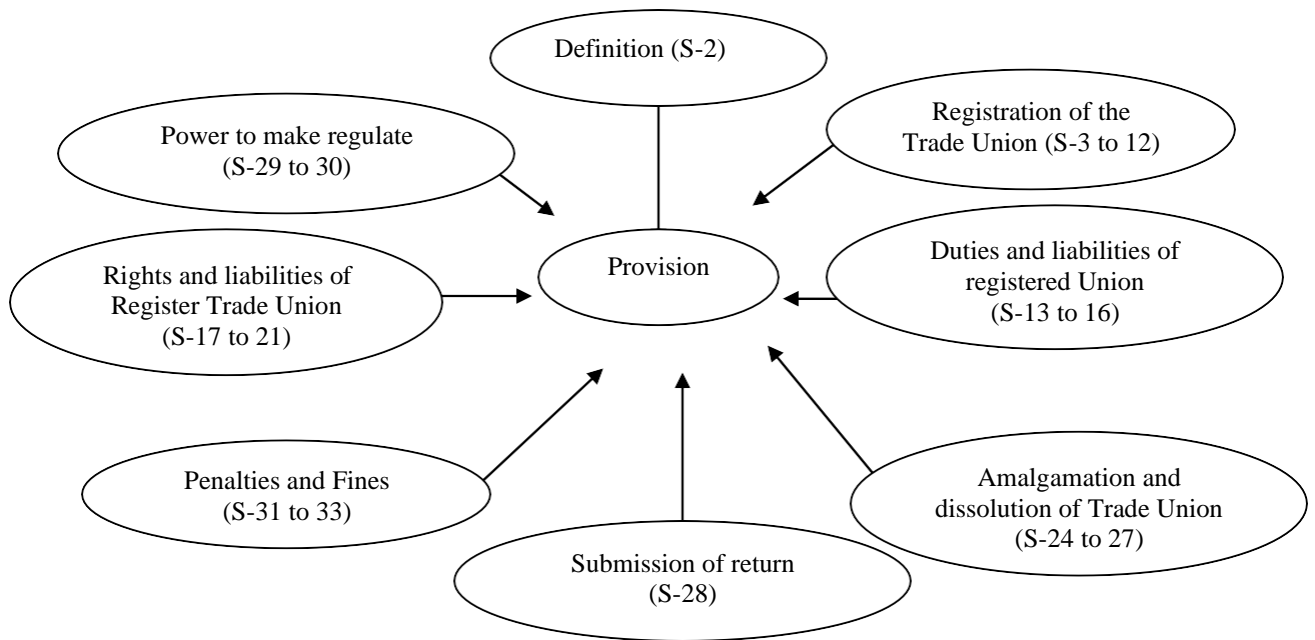


Fig. Provision of the Trade-Union Act, 1926

Legal Status of Trade-Union:

Is registered Trade-Union a legal person? The Answer may be given in affirmative in view of the provisions of the section 13 of the Trade-Union Act 1926. It may pointed out that only a Trade-Union which has been thereby become, legal person and not un-registered Trade-Union, receiving a legal status and advantages and rights emanate from the registration of a Trade-Union under the provision of Trade-Union Act, when a Trade is registered all communications and the notices to a registered Trade-Union may be addressed to its registered office. The registered office means that office of a Trade-Union which is registered under the Act as the head office thereof.⁹ Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing and the changed address shall be recorded in the register of the Trade-Unions to be maintained in the Registrar's office. In order to encourage registration a legal status was given to registered unions, conferring certain powers and advantages. The Trade-Unions Act, 1926, grant a legal personality authority to spend fund on Trade Disputes for accomplishing its objectives, protection from criminal prosecution. Immuniting from civil action and validity to the agreement between its members from challenge that its objects are in restraint of trade.¹⁰ Thus the Trade-Unions after registration under the provisions of this Act are granted various rights so.

Definition of Trade-Union:

The Trade-Union Act, 1926 – provide for registration of the Trade-Union with the registrar of Trade-Unions of their territory any seven or more member's of the Trade-Union by submitting their names to the registrar of Trade-Unions and other wise applying with provision's of the Act with respect to the registration may apply Union Act gives protection to registered Trade-Union in certain cases against civil and criminal action.

The definition of the Trade-Union as contained in Section 2(h) of the Trade-Unions Act, 1926 indicates that it is any combination or association of persons based on mutual confidence, understanding and co-operation for safeguarding common interests. It may be any association of workmen or employers. It need not be permanent combination, it can be formed even for a shorter period. The definition itself indicates statutory primary purposes of Trade-Union. As such the Trade-Union is formed primarily for the following two purposes;

Firstly, for regulating the relations between:

- (a) workmen and employers; or
- (b) workmen and workmen; or
- (c) employers and employers

Secondly, for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade-Unions.¹²

The analysis of the definition of the Trade-Union clearly shows that the purpose of Trade-Union is to maintain balance harmony and proper adjustments in the relations of the persons involved in industrial process and production.

The purpose of the Trade-Union is not to secure harmony between the employers and workmen only, but it is intended to secure peaceful relations between workmen and workmen and between employers and employers also. In the definition of Trade-Union the regulation of relationship contemplated is in regard to the conditions of service of the employees, which postulates the existence of an employer, who is concerned with the business, trade or industry. Another primary object of the Trade-Union is the imposition of restrictive conditions on the conduct of any trade or business of its members. However, the use of the word 'primarily' in the Trade-Union Act suggests that Trade-Unions can have other secondary objectives as well. A Trade-Union may provide for other objectives also and it cannot be refused registration simply on this ground. As long as the primary objectives are those that are mentioned in the Act, any Trade-Union can claim registration in spite of certain secondary objectives in its constitution. All that we can say is that the secondary and ancillary objectives should not be inconsistent with the primary objects. These objects, of course, must not be opposed to any law or opposed to public policy. We can distinguish three classes of objectives, which a Trade-Union can have. The first may be classified as purely economic objectives, i.e., those which relate to questions concerning wages, hours of work, working and living conditions. The second one viz., benefit purpose which includes dispensation of various benefits like sickness and unemployment. The third group consists of social and political objectives.

The model constitution and rules of Trade-Unions cover these three classes of objectives. The Act simply emphasis the supreme importance of the

first type viz., the purely economic objectives. It does not debar Trade-Unions from having others. The registration of any union shall be void if any of its objectives are unlawful.

The Trade-Unions Act, 1926, in its Section 15 specifically mentions certain objects on which the general funds of the Trade-Union may be spent. It shows that, not only the Trade-Union may be validly constituted for these purposes but the funds may be utilized for the achievement of these purposes. The Trade-Union may validly take necessary and proper steps for attainment of these objects. The most important objects contained in Section 15 of the Act may be listed as below:

- (i) The prosecution or defense of any legal proceeding to which the Trade-Union or any member thereof is a party, when such prosecution or defense is undertaken for the purpose of securing or protecting any rights of the Trade-Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
 - (ii) The conduct of trade disputes on behalf of the Trade-Union or any member thereof;
 - (iii) The compensation of the members for loss arising out of trade disputes;
 - (iv) The allowances of members or their dependents on account of death, old age, sickness, accidents or unemployment of such members.
 - (v) The provision of educational, social or religious benefits for members including the payment of the expenses of funeral or religious ceremonies for deceased members or for the dependents of members;
-

- (vi) The upkeep of a periodical published mainly for the purpose for discussing questions affecting employers or workmen as such,¹⁶
- (vii) The Trade-Union may have political purpose and it may constitute a separate fund, from contributes separately levied for or made to that fund commonly known as ‘Political Fund’ from which payments may be made for the promotion of the civil and political interests of its members such as the payment of any expenses incurred either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority before, during or after the election in connection with his candidature or election.

Thus the Trade-Union may take necessary and proper steps to conduct trade disputes. The expression ‘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 labour 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

The Trade-Unions function as guardians of the workmen and in order to provide security, safety, welfare and healthy conditions under which the workmen may be placed for performance of their duties take steps and fight for better conditions and, if necessary they start legal proceedings in this regard.

The matters for which the Trade-Unions adopt effective measures are concerned with the employment or non-employment or the terms and conditions of employment or the working conditions of any person who may be called workman within the meaning of this Act.

It indicates that the Trade-Union may have primary objects as specified in its definition as contained in Section 2 (h) of the Act and many other secondary objects as discussed above. What required is that the objects must not be inconsistent with the provisions of the Trade-Unions Act or opposed to any other law in force for the time being.

It would be desirable to search out certain criterion on the basis of which an association of persons may be determined whether it falls within the meaning and definition of Trade-Union or not. In view of this, it would be fruitful to discuss connotation and denotation of the expression ‘workmen’ which has been defined under the provision of the Trade-Unions Act, 1926. The expression ‘workmen’ means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

The expression, ‘trade’ and ‘industry’; have not been defined under this Act. In the absence of the definition of these expressions the normal meaning should be attached. In the Industrial Disputes Act, 1947, the expression ‘industry’ means any business, trade, undertaking, manufacture, or calling of employers and includes calling, service, employment, handicraft or industrial occupation or avocation of workmen. This definition of ‘Industry’ as contained in Section 2 (j) has been widely interpreted by the Supreme Court in

~~Bangalore Water Supply and Sewerage Board V.A. Rajappa~~ laying down triple tests in accordance with which all the institutions, undertakings or organizations where a systematic activity organized by co-operation between employer and employee for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious) but inclusive of material things or services geared to celestial bliss, i.e., making on a large scale Prasad or food, prima facie there is an industry in that enterprise. Consequently professions, clubs, co-operatives, educational institutions, research institutes, charitable projects and hospitals have been covered under the purview of industry. The Supreme Court in this case observed that Government might restructure this definition by suitable legislative measures. Under these circumstances the Industrial Disputes Act has been amended in 1982 and the definition of industry has been restructured on the basis of the principles laid down by the Supreme Court, however, at the same time exemption clauses have also been added to exclude any agricultural operation, hospitals and dispensaries, educational, scientific research or training institutions and institutions engaged in charitable, social and philanthropic services, etc. The amendments were to be enforced from the date to be notified. It may be pointed out that the Central Government has appointed the 21st day of August 1984 on which certain provisions have come into force. But the definition substituted by the amendment has not been enforced so far. There would be no effect or exclusion clauses so added unless a date is notified for enforcement of Section 2(j) as amended by the Industrial Disputes (Amendment) Act, 1982. The definition is very exhaustive and it includes any business, trade, etc. The most important

question is whether the definition of industry can be utilized to interpret the expression ‘Trade-Union’. There is a difference of opinion on this point. However, this definition may be taken to understand the meaning of Trade-Union probably because both the enactments i.e., Trade-Unions Act and Industrial Disputes Act are intended to benefit workmen or the labour class.²³ Thus the associations of persons who are engaged in any establishment which carries on any industry may be treated as Trade-Unions within the meaning of this Act, and if they are registered in accordance with the provisions of the Trade-Unions Act, 1926 they cannot be denied privileges and immunities available to them under this Act.

It may not be irrelevant to mention that definition of Trade-Union as contained in Section 2(h) of the Trade-Unions Act, 1926 is wide enough to cover associations of employers. It has been rightly observed that employers can form organizations much more easily than the workers. They are better educated and can realize the potency of collective and concerted action. Their number is small and hence employers in every country have considerable facilities for formation of association. In our country too, employer’s organizations were founded quite early. Thus as early as 1875 the Bombay Mill Owners Association was organized for their common good. Another such old organization is the Indian Jute Mills Association which was organized in 1887. Later on employers organizations were also established in respect of other important industries.

Employers, representatives have taken active part in the International Conferences, Industrial Committees of the ILO, Economic Commission for Asia and the Far East. At home they have taken due share in the Indian Labour Conference, the Standing Labour Committee, Minimum Wages Central Advisory Board, Joint Consultative Board of Industry and Labour, Employees' State Insurance Corporation and the Medical Benefit Council and similar other bodies appointed by the Central and State Governments.

The different employer's organizations in India have formed two national federations, viz., The Employers Federation of India and the All India Organization of Industrial Employers. These two federations cover almost all the entire labour force in the organized industries between them. The Government has recognized these two federations as representative of employers in India. Both of these federations are affiliated to the International Organization of Employers, Brussels and have been taking an active interest in its proceedings.

The Trade-Union Act, expressly excludes such combination of persons from the purview of the expression Trade-Union. In view of the above discussion, the following factors may be taken into consideration, while determining the question whether a particular combination of persons is Trade-Union or not:

- (1) The existence of employers and employees, engaged in the conduct of a trade or business. The combination may be formed by the employers or the employees.
- (2) The persons concerned must be engaged in industry, trade or business.

- (3) The activity in which they are engaged must be organized by co-operation between employer and employees for the production and/or distribution of goods and services intended to satisfy human material want and wishes.
- (4) The combination or association must be primarily formed for the purposes of collective action to secure improvement in working conditions by imposing restrictive conditions on the conduct of any trade or business or for the purpose of regulating the relations between the workmen and employers and between employers and employers and between workmen and workmen.
- (5) The members of association must be workmen or employers engaged in trade, business or industry.
- (6) The combinations or associations of persons must not be such expressly excluded from the application of the Trade-Unions Act, 1926.

It may be submitted that voluntary associations or combinations or unions of persons who are engaged in the industrial process formed for the purpose of regulating their relations with a view to maintain adjustment and harmony and for the betterment of working conditions may be called Trade-Unions. Thus the Trade-Unions are mass organizations voluntarily formed by working class or capital class.

Although any federation of two or more Trade-Unions is covered under the expression ‘Trade-Union’ but the Act expressly adds a proviso that this Act shall not affect:—

- (1) Any agreement between partners as to their business;
- (2) Any agreement between an employer and those employed by him as to such employment;

(3) Any agreement in consideration of the sale of goodwill of a business or of instruction in any profession, trade or handicraft.

These three categories of agreement apparently seem to be a basis of combination or an association of persons but such agreements are excluded from the effect of the Trade-Unions Act, 1926, for such agreements are business contracts and objects of which are quite different from that of Trade-Unions.