

Trade Unions Act and State Laws Provide Legal Protections to Trade Unions in India

By Vikram Shroff and Akshay Bhargav

The Constitution of India guarantees the country's citizens a fundamental right “to form associations or unions.” The Constitution was adopted in 1951, but the concept of collective bargaining and the development of labor unions (known as trade unions in India) dates back to the time when the foundations of modern industrial enterprises were being laid in the early 1900s. The original act related to labor unions—the Trade Unions Act—was enacted in 1926.

History of Trade Unions

Prompted by poor working conditions under British imperialism, workers and social reformers began protesting for the betterment of the state of affairs, which then gradually led to the formation of workers' unions wherever common interests were involved. However, these organizations were mostly ad hoc in nature and lasted as long as the pressing issue did. They could hardly be considered labor unions in the current sense.

The Madras Labor Union, set up in 1918, is considered the first trade union in India to be formed systematically. Since then, the labor union movement has spread to almost all industrial centers and has become an integral and powerful part of the industrial process in India. The reach of trade unions has also expanded significantly. In addition to influencing the nitty-gritty and the course of action in various industrial sectors, trade unions now influence government policies, the allocation of economic resources and the very nature of economic and social life.

Today, there are more than 75,000 registered and an unaccounted number of unregistered trade unions scattered across a large spectrum of industries in India.

The Bharatiya Mazdoor Sangh (BMS), the Indian National Trade Union Congress (INTUC) and the All India Trade Union Congress (AITUC) are considered the largest trade unions in India. The country's manufacturing sector in particular is heavily unionized.

Federal Law for Trade Unions

Trade unions in India are governed by the Trade Unions Act (TU Act). The TU Act legalizes the formation of trade unions and provides adequate safeguards for trade unions' activities. It defines a “trade union” 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 employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more trade unions.”

The TU Act is administered by the Ministry of Labor through its Industrial Relations Division (IRD) as well as by state governments. The IRD is concerned with improving the institutional framework related to settlement of disputes and amendment of labor laws regarding industrial relations; state governments are concerned with monitoring adherence to the law by all involved parties.

State-Specific Laws

In addition to the TU Act, certain state governments have enacted legal provisions concerning the recognition of trade unions. However, each state has its own set of criteria, including minimum requisite membership. For instance, in the State of Maharashtra, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Practices Act, 1971, governs the aspects related to the recognition of trade unions that have not been specifically covered by the TU Act. Similar laws have been enacted in the states of West Bengal, Rajasthan, Andhra Pradesh and Madhya Pradesh. The states of Bihar and Orissa have specific nonstatutory provisions setting forth rules and principles for the recognition of trade unions.

Registration and Recognition

The TU Act provides for the registration of trade unions with the Registrar of Trade Unions in their respective territory, but it does not make registration mandatory. Registration is, however, beneficial as it leads to certain privileges. A registered labor union is deemed to be a body corporate, thus giving it the status of a legal entity. As a result, a registered trade union has perpetual succession and a common seal with the power to acquire and hold property and to enter into contracts. It also has the power to sue and, consequently, be sued as well. An unregistered trade union, on the other hand, would not be considered a juristic entity (see *National Organization of Bank Workers' Federation of Trade Unions v. Union of India* (1993) 2 LLJ 537).

A registered trade union assumes more importance because other labor laws such as the Industrial Disputes Act, 1947 (IDA), and the Industrial Employment (Standing Orders) Act,

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1946 (IESOA), define a labor union to mean a union that has been registered under the TU Act. The IDA, a law that to a certain extent is similar to the U.S. National Labor Relations Act of 1935 (NLRA), provides for investigation and settlement of industrial disputes and contains provisions with respect to *inter alia* layoff, employment termination, strikes, lockouts and closure of establishment.

The IESOA, on the other hand, provides guidelines to define employment conditions. Registration would allow the trade union to, for instance, refer disputes with the employer to labor authorities.

To be registered under the TU Act, a trade union is required to have a minimum of seven members subscribing their names to the rules of the trade union. Furthermore, a minimum of 10 percent of the workforce or 100 workers, whichever is less, engaged or employed in the establishment are required to be members of the trade union, connected with such establishment, at the time of application.

The registration would, however, be subject to the registrar being satisfied with the compliance of all the primary requirements of the TU Act by the trade union. It must be noted that the certificate of registration may be withdrawn by the registrar in certain cases.

Considering the prevalence of a large number of trade unions in the country, some of the state-specific enactments set forth the criteria by virtue of which a particular trade union may become entitled to represent employees. Furthermore, such representative trade unions may have the preferential right to hold discussions with employers to resolve disputes, while an unrecognized trade union may not.

Inability to Prevent Union's Formation

The formation of a trade union, being a fundamental right of workers, cannot be prevented by an employer. Neither can an employer prevent the registration of such a trade union under the TU Act.

Any form of interference, restraint or coercion by the employer in an attempt to prevent a worker or workers from joining a trade union would amount to an "unfair labor practice" as provided under the IDA and would be punishable with imprisonment and/or a fine (see Section 25-U of the IDA).

Unfair Labor Practices

The IDA, similar to the NLRA, sets forth the practices of employers, workers and their trade unions that would be considered "unfair labor practices."

Some of the practices prohibited with respect to employers are as follows:

- Interfering with or restraining workers in the exercise of their right to organize, form, join or assist a trade union.
- Threatening a worker with discharge or dismissal if the worker joins a trade union.
- Threatening a lockout or closure if a trade union is organized.
- Granting wage increases to workers at crucial periods of trade union organization, with a view to undermine the efforts of such organization.
- Establishing employer-sponsored trade unions of workers.
- Encouraging or discouraging membership in any trade union by discriminating against any worker by discharging or punishing the worker for urging other workers to join a trade union.
- Changing the seniority rating of, refusing to promote or giving unmerited promotions to workers because of trade union activities.

For workers and trade unions, any act employed to coerce workers in the exercise of their right to self-organization or to join trade unions amounts to an unfair labor practice.

Evolving Role of Trade Unions

Traditionally, the function of trade unions in India was limited largely to collective bargaining for economic considerations. However, over time, trade unions have begun to play various other roles as well.

Besides aiming to improve the terms and conditions of employment, trade unions now play a critical role in employee welfare activities, such as through organization of cooperative credit societies, cultural programs, and banking and medical facilities and by creating awareness through education of members and publication of periodicals and newsletters.

Trade unions provide a forum to help facilitate better industrial relations and improve productivity.

Certain trade unions also have political affiliation. For instance, the INTUC is affiliated with the Congress Party, whereas the AITUC is affiliated with the Communist Party of India. In addition to the interference of political leaders, such affiliation has, at times, led to multi-unionism (i.e., multiple unions in the same organization), which creates complexities for the employer especially during the collective bargaining process.

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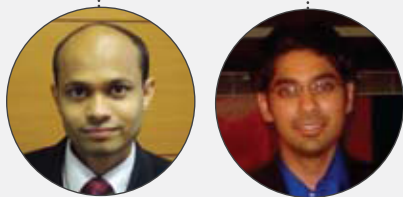
Currency of TU Act Questioned

Trade unions in India have provided a powerful mechanism for collective bargaining and proactive communication between an employer and its employees. At the same time, disputes between employers and trade unions continue to be litigated. The cost of disruption in production is constantly rising, raising questions about the role of trade unions and the efficacy of the TU Act.

Some relatively new sectors in India—for example, the software services sector—attribute their success partly to the absence of large-scale trade union movements having vested interests.

Call for Reform

The Supreme Court, during a recent hearing of an inter-trade union dispute, remarked that the provisions of the TU Act were archaic and needed to be amended. Whether the new government is able to bring about any policy changes to promote better industrial relations remains to be seen. Nonetheless, trade unions in India continue to play a significant role in industrial relations and are expected to maintain that role in the foreseeable future.



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Introduction To Mexican Labor Law

By Ernesto Velarde-Danache

Mexico is our neighbor to the south, one of our two North American Free Trade Agreement (NAFTA) partners. Mexico also now is the United States' third most important trade partner—right after Canada and China.

We enjoy Mexican food, and many of us are familiar with Mexico's main tourist destinations. The U.S. president, no matter what his political affiliation, celebrates on the White House grounds “el Cinco de Mayo.” In these and other ways, we appear to be close to Mexicans. But in many aspects, we remain distant—despite our proximity—and different. One significant difference is our employment laws.

Mexico's current Federal Labor Law was enacted in 1970 and has not undergone a major reform since then. Ideally, the labor laws of any country should be drafted with the unequivocal intention of regulating employer-employee relations, establishing fair rights and obligations for all parties, and identifying sensible disciplinary measures for those that choose not to comply. Most business leaders and owners, however, believe that the Federal Labor Law overprotects the Mexican labor force and makes it difficult for employers to control operations, production and even management. This is particularly true when a collective bargaining agreement has been executed with a local or national labor union.

None of the rights recognized or granted by the Federal Labor Law may effectively be waived. In most instances, when recognizing or granting rights the Federal Labor Law establishes the minimum amount for every benefit allowed. Employers may voluntarily choose, or be “forced” by union or individual employees to agree to, compensation that is higher than the statutory minimums.

Wage and Hours

In Mexico, a shift may not exceed eight hours for the daylight shift, seven and a half hours for the mixed shift and seven for the night shift. At least one rest day a week is to be enjoyed. (Literal translation: An employer is not penalized if the employee has a bad day.) Employers are encouraged to make that day Sunday. If an employee performs services on a Sunday, he or she is entitled to a bonus equivalent to 25 percent of his or her daily pay. The seventh, or rest, day is paid in Mexico; in other words, the maximum weekly shift is 48 hours but employers pay for 56 hours.

After a year of service, employees are entitled to a six-day vacation period with pay. This period increases by two days per every additional year of service until the end of the fourth year. The vacation period then increases by two days per every additional five years of service. Employers also must pay a 25 percent vacation premium. A Christmas bonus of no less than 15 days' salary must be paid to all Mexican employees before Dec. 20. This payment is, however, proportional to the number of days worked in the year (e.g., six months of service means seven and a half days of bonus).

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