

# India: Trade Unions and Collective Bargaining

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# 1. Introduction

Trade unions in India have come a long way since the first organized trade union - the Madras Labour Union, one of the earliest unions, was formed in 1918. India now has more than 84,642 registered trade unions<sup>1</sup> along with an unaccounted number of unregistered trade unions scattered across a large spectrum of industries in India.<sup>2</sup>

The potential for growth in trade union represented workers is huge given the fact that India is likely to have a working population of more than 64% by the year 2021.<sup>3</sup>

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1. [http://mospi.nic.in/Mospi\\_New/upload/SYB2014/CH-41-TRADE%20UNIONS/Trade%20Unions.pdf](http://mospi.nic.in/Mospi_New/upload/SYB2014/CH-41-TRADE%20UNIONS/Trade%20Unions.pdf) (Accessed on January 22, 2015)

2. *Ibid*

3. [http://articles.economictimes.indiatimes.com/2014-07-09/news/51248148\\_1\\_national-skill-development-corporation-india-october-economic-survey](http://articles.economictimes.indiatimes.com/2014-07-09/news/51248148_1_national-skill-development-corporation-india-october-economic-survey) (Accessed on January 22, 2015)

## 2. History of Trade Unions in India

At the beginning of the last century, a few groups were formed amongst workers in India so as to improve their bargaining power with respect to their service conditions and wages. These were akin to trade unions of the present day India. The earliest known of such unions were the Printers' Union formed in Calcutta in 1905 and the Bombay Postal Union formed in 1907.<sup>4</sup>

The trade union movement in India began after the end of First World War due to the need for coordination of activities of individual unions.<sup>5</sup> The movement, over a period of time, systematically spread to almost all industrial centres and became an integral part of the industrial process in India.<sup>6</sup> Various trade unions were formed during such period, such as the Madras Labour Union in 1918, the All India Trade Union Congress ("AITUC")

in 1920, the Bengal Trade Union Federation in 1922 and the All India Railwaymen's Federation in 1922.

In March 1921, Shri N.M. Joshi, the then General Secretary of the AITUC, recommended through a resolution that the Government should introduce legislation for the registration and protection of trade unions in India. Eventually, the Trade Unions Act, 1926 ("TU Act") was enacted for the purpose of ensuring governance and protection of trade unions.<sup>7</sup>

Today, the Bharatiya Mazdoor Sangh ("BMS"), the Indian National Trade Union Congress ("INTUC") and the AITUC are considered to be the largest trade unions in India. Also, the country's manufacturing sector in particular, is heavily unionized.<sup>8</sup>

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4. See footnote 1

5. *Ibid*

6. Vikram Shroff and Akshay Bhargav, Trade Unions Act And State Laws Provide Legal Protections To Trade Unions In India, SHRM Legal Report, March 2010. A copy of the article is annexed to this research paper as Annexure I.

7. See footnote 1

8. See footnote 6

### 3. India's Central Trade Union Organizations

There are twelve Central Trade Union Organizations (“CTUO”) recognized by the Ministry of Labour<sup>9</sup>:

S.No.	Name of Trade Union	Political Affiliation
1.	Bharatiya Mazdoor Sangh (BMS)	Bharatiya Janata Party
2.	Indian National Trade Union Congress (INTUC)	Indian National Congress
3.	All India Trade Union Congress (AITUC)	Communist Party of India
4.	Hind Mazdoor Sabha	None. Independent Socialist Organization
5.	Centre of Indian Trade Unions (CITU)	Communist Party of India (Marxist)
6.	United Trade Union Congress (Lenin Sarani) (UTUC (LS))	Socialist Unity Center of India Political Party
7.	United Trade Union Congress (UTUC)	Revolutionary Socialist Political Party
8.	Trade Unions Co-Ordination Centre (TUCC)	All India Forward Bloc Political Party
9.	Self- Employed Women's Association (SEWA)	None. Independent.
10.	Labour Progressive Front (LPF)	Dravida Munnetra Kazhagam Political Party
11.	All India Central Council of Trade Unions (ICCTU)	Communist Party of India (Marxist-Leninist) Liberation Group
12.	Indian National Trinamool Trade Union Congress (INTTUC)	All India Trinamool Congress Political Party

As is evident from the above table, many Indian trade unions have an affiliation with a political party. In addition to the interference of political leaders, such affiliation has also led

to multi-unionism which has created various complexities for the employers especially during the collective bargaining process.

9. International Labour Organization, “The growth and decline of political unionism in India: the need for a paradigm shift” at p. 9, online: <[http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-bangkok/documents/publication/wcms\\_143481.pdf](http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-bangkok/documents/publication/wcms_143481.pdf)>. See also “Trade Unionism in India” online: <<http://industrialrelations.naukrihub.com/trade-unionism.html>> (Accessed on January 22, 2015)

## 4. Collective Bargaining in India

Collective bargaining has been defined by the Supreme Court (“SC”) as “the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion”.<sup>10</sup> It is a process of discussion and negotiation between employer and workers regarding terms of employment and working conditions. Workers are generally represented by trade unions with respect to expressing their grievance concerning service conditions and wages before the employer and the management. Refusing to bargain collectively in good faith with the employer is considered to be an unfair labour practice as per the provisions of the Industrial Disputes Act, 1947 (“IDA”). This is generally an effective system as it usually results in employers undertaking actions to resolve the issues of the workers. However, the legal procedure for pursuing collective bargaining in India is complicated.

### I. Stages of Collective Bargaining in India

#### A. Charter of Demands

Typically, the trade union notifies the employer of a call for collective bargaining negotiations. However, in certain cases the employer may also initiate the collective bargaining process by notifying the union(s). The representatives of the trade union draft a “charter of demands” through various discussions and consultations with union members. The charter typically contains issues

relating to wages, bonuses, working hours, benefits, allowances, terms of employment, holidays, etc. In an establishment with multiple unions the employer generally prefers a common charter of demands, but in principle, all unions may submit different charters.

#### B. Negotiation

As a next step, negotiations begin after the submission of the charter of demands by the representatives of the trade union. Prior to such negotiations, both the employer and the trade unions prepare for such negotiations by ensuring collection of data, policy formulation and deciding the strategy in the negotiations.<sup>13</sup>

After such preparation, the negotiations take place wherein the trade unions and the employer engage in debates and discussions pertaining to the demands made by the trade unions.<sup>14</sup> In the event that such demands are rejected, the trade union may decide to engage in strikes.

The collective bargaining process obviously takes long where the employer has to engage with multiple unions. In the public sector, it may take months or even years. For example, the Joint Wage Negotiating Committee for the Steel Industry, covering workers in four large unions, took more than three years from the date of the submission of the charter of demands to the Steel Authority of India Ltd. (SAIL).<sup>15</sup>

10. Karol Leather Karamchari Sangathan v. Liberty Footwear Company, (1989) 4 SCC 448

11. Section 18 of the IDA

12. See footnote 9 at p.60

13. R. Sivarethinamohan, Industrial Relations and Labour Welfare: Text and Cases, page 286, Available at [https://books.google.co.in/books?id=OBu-Lap\]UAcC&printsec=frontcover](https://books.google.co.in/books?id=OBu-Lap]UAcC&printsec=frontcover) (Accessed on January 22, 2015)

14. *Ibid*

15. P.D. Shenoy, Voluntary bipartite approaches towards industrial peace: Indian experience (Bangkok, ILO, 1991), pp. 17-26

## C. Collective Bargaining Agreement

Next, a collective bargaining agreement will be drawn up and entered into between the employer and workmen represented by trade unions. These may be structured as bipartite agreements, memorandum of settlements or consent awards. For more details on the same please refer to section III below.

## D. Strikes

If both parties fail to reach a collective agreement, the union(s) may go on strike. As per the IDA, public utility sector employees must provide six weeks' notice of a strike, and may strike fourteen days after providing such notice (a 'cooling off period').<sup>16</sup> Under the IDA, neither side may take any industrial action while the conciliation proceeding is pending, and not until seven days after the conclusion of conciliation or two months after the conclusion of legal proceedings.<sup>17</sup>

## E. Conciliation

A conciliation proceeding begins once the conciliation officer receives a notice of strike or lockout. During the 'cooling off period', the state government may appoint a conciliation officer to investigate the disputes, mediate and promote settlement.<sup>18</sup> On the other hand, it may also appoint a Board of Conciliation which shall be appointed in equal numbers on the recommendation of both parties, and shall be composed of a chairman and either two or four members.<sup>19</sup> No strikes may be conducted during the course of the conciliation proceeding.<sup>20</sup>

Conciliation proceedings are concluded with one of the following recommendations: (i) a settlement, (ii) no settlement or (iii) reference to a labour court or an industrial tribunal.<sup>21</sup>

## F. Compulsory Arbitration or Adjudication by Labour Courts, Industrial Tribunals and National Tribunals

When conciliation and mediation fails, parties may either go for voluntary or compulsory arbitration. In the case of voluntary arbitration, either the state or central government appoints a Board of Arbitrators, which consists of a representative from the trade union and a representative from the employer. In the case of compulsory arbitration, both parties submit the dispute to a mutually-agreed third party for arbitration, which is typically a government officer. Arbitration may be compulsory because the arbitrator makes recommendations to the parties without their consent, and both parties must accept the conditions recommended by the arbitrator.<sup>22</sup>

Section 7A of the IDA provides for a labour court or industrial tribunal within each state government consisting of one person appointed to adjudicate prolonged industrial disputes, such as strikes and lockouts. Section 7B provides for the constitution of national tribunals by the central government for the adjudication of industrial disputes that involve questions of national interest or issues related to more than two states. In such a case, the Government appoints one person to the national tribunal and can appoint two other advisers.

16. Section 22 of the IDA

17. Section 23 of the IDA

18. Section 4 of the IDA

19. Section 5 of the IDA

20. Section 22 and 23 of the IDA

21. Section 20 of the IDA

22. See footnote 9



If a labour dispute cannot be resolved via conciliation and mediation, the employer and the workers can refer the case by a written agreement to a labour court, industrial tribunal or national tribunal for adjudication or compulsory arbitration. A final ruling on the industrial dispute must be made within six months from the commencement of the inquiry.<sup>23</sup> A copy of the arbitration agreement signed by all parties is then forwarded to the appropriate government office and conciliation officer pursuant to which the government must publish the ruling in the Official Gazette within one month from receipt of the copy.<sup>24</sup>

## II. Levels of Collective Bargaining in India

In India, collective bargaining typically takes place at three levels<sup>25</sup>:

- i. **National-level industry bargaining** is common in core industries such as banks, coal, steel, ports and docks, and oil where the central government plays a major role as the employer. In these industries, the CTUOs<sup>26</sup> do not typically provide any guidelines on a charter of demands, including an increase of wage or improvement of working conditions; instead, both sides – the government and trade unions – set up a “coordination committee” to engage in the collective bargaining proceedings. Collective bargaining in the public sector generally suffers if the position of the state government is different from that of the central government.
- ii. **Industry-cum regional bargaining** is peculiar to industries where the private sector dominates, such as cotton, jute, textiles, engineering, tea plantation, ports and docks. Bargaining generally occurs in two stages: company-wide agreements are formed, which are then supplemented with regional (i.e. plant-level) agreements. Basic wage rates and other benefits are usually decided at the company level, while certain allowances, incentives etc., are decided at the regional or plant level, taking into account the particular circumstances, needs etc., of the employees.<sup>29</sup> However, such regional agreements are only binding on company management if the employers’ association authorizes it in writing to bargain on its behalf.

23. Govt. of India: Section 36 of the Industrial Dispute Act, 1947 (New Delhi, Govt. of India, 1947), at p. 22

24. Ibid at p. 18 and p. 22

25. See footnote 9 at p.63

26. For a list of recognized CTUOs, see above at p. 4

27. “National Wage Boards for Working Journalists and Other Newspaper Employees” online: < <http://labour.gov.in/content/KNWageBoard/aboutus.htm>>

28. Livemint, “SC upholds Majithia wage board recommendations” 7 Feb 2014, online: <<http://www.livemint.com/Consumer/PMBDNjXi6e2ovpvss2SQoN/SC-upholds-validity-of-Majithia-wage-board.html>>

29. Thomas Kochan et al. “Employment Relations in the Growing Asian Economies” online: <[http://books.google.co.in/books?id=K5MLn6k9N5oC&pg=RA2-PT150&lpg=RA2-PT150&dq=industry+cum+regional+bargaining+india&source=bl&ots=nmZADkoE\\_7&sig=05-EloHLJ4sgNgGOMgT5Tw4c-4o&hl=en&sa=X&ei=fZNoU\\_K8Oszk8AWM7YK4BA&ved=0CckQ6AEwAA#v=onepage&q=industry%20cum%20regional%20bargaining%20india&f=false](http://books.google.co.in/books?id=K5MLn6k9N5oC&pg=RA2-PT150&lpg=RA2-PT150&dq=industry+cum+regional+bargaining+india&source=bl&ots=nmZADkoE_7&sig=05-EloHLJ4sgNgGOMgT5Tw4c-4o&hl=en&sa=X&ei=fZNoU_K8Oszk8AWM7YK4BA&ved=0CckQ6AEwAA#v=onepage&q=industry%20cum%20regional%20bargaining%20india&f=false)> (Accessed on January 22, 2015)

iii. **Enterprise or plant-level bargaining** practices differ from case to case because there is no uniform collective bargaining procedure. Typically, the bargaining council (or negotiating committee) is constituted by a proportional representation of many unions in an establishment. It is therefore easier for the management to negotiate with one bargaining agent if multiple unions at the company can form such a single entity. If not, the management will then have to negotiate individually with each registered union. In the private sector, employers generally press for plant-level bargaining because uniformity of wage negotiation can be ignored and the bargaining power of trade unions can be reduced. Also, trade unions insist on plant-level bargaining because the payable capacity of the company is much higher and because labour issues can be resolved more quickly and easily. Trade unions can typically face a dilemma in decentralized plant-level bargaining if the business is having a managerial crisis from market failures or the management is reluctant to negotiate with the unions.

- i. **Bipartite (or voluntary) agreements** are drawn up in voluntary negotiations between the employer and the trade union. As per the IDA<sup>31</sup>, such agreements are binding. Implementation is generally non-problematic because both parties reached the agreement voluntarily.
- ii. **Settlements**<sup>32</sup> are tripartite in nature, as they involve the employer, trade union and conciliation officer. They arise from a specific dispute, which is then referred to an officer for reconciliation. If during the reconciliation process, the officer feels that the parties' viewpoints have indeed been reconciled, and that an agreement is possible, he may withdraw himself. If the parties finalize an agreement after the officer's withdrawal, it is reported back to the officer within a specified time and the matter is settled. However, it should be noted that the forms of settlement are more limited in nature than bipartite agreements, because they must relate to the specific issues referred to the conciliation officer.
- iii. **Consent awards** are agreements reached while a dispute is pending before a compulsory adjudicatory authority, and incorporated into the authority's award. Even though the agreement is reached voluntarily, it becomes part of the binding award pronounced by the authority constituted for the purpose.

### III. Collective Bargaining Agreements in India

#### A. Types of Collective Bargaining Agreements

In India, collective bargaining agreements are divided into three classes<sup>30</sup>:

#### B. Contents of Collective Bargaining Agreements

As a part of collective bargaining mechanism, employers and workmen represented

30. Nirmal Singh, "Industrial Relations" at p. 119, online: <<http://books.google.co.in/books?id=glotzPYgko8C&pg=PA119&lpg=PA119&dq=India+three+types+collective+bargaining+agreement,+settlement,+consent+award&source=bl&ots=loASB2mYdB&sig=jFY7BoPzBzZcx9PuXzofK80OXtU&hl=en&sa=X&ei=oJRoU6CPH5Ck8AXdt4GwCw&ved=oCDAQ6AEwAQ#v=onepage&q=India%20three%20types%20collective%20bargaining%20agreement%20%20settlement%20%20consent%20award&f=false>>

31. Section 18 of the IDA

32. As per section 2 (gg) (p) of IDA, a "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

by trade unions enter into collective bargaining agreements typically structured as memorandum of settlements which enumerate the various clauses that govern the relationship between the workmen represented by trade unions and employers. The IDA, under section 18(1) of the IDA, provides that such settlements entered into between workmen represented by trade unions and employers would be binding upon the parties.

Typically, clauses in the memorandum of settlement pertain to the following:

- Term / Duration of the memorandum of settlement as may be agreed between the parties
- Settlement terms which, typically, may be with respect to wages, benefits, allowances, arrears with respect to payment to workers, concessions, works hours, overtime etc.
- Conditions with respect to strikes and lockouts by trade unions and employers respectively
- Obligations of workmen
- Obligations of employer
- Penalties with respect to non-compliance of the obligations of workmen and employers
- Dispute resolution
- Miscellaneous clauses including severability, notice, etc.

## 5. Laws Governing Trade Unions in India

In India, the right to form and join a trade union, and engage in collective bargaining is provided for under national and state-specific legislations. Time and again, the courts have upheld the right of workers to form or join a trade union in India.<sup>33</sup>

### I. Constitution of India, 1950

Article 19(1)(c) of the Constitution of India, 1950 (“**Constitution**”) 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.<sup>34</sup> The SC has held that the right guaranteed in Article 19(1)(c) also includes the right to *join* an association or union.<sup>35</sup> This right carries with it the right of the State to impose reasonable restrictions.<sup>36</sup>

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.<sup>37</sup> 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)<sup>38</sup>.

The various freedoms that are recognized under the fundamental right, Article 19(1)(c), are<sup>39</sup>:

- i. The right of the members of the union to meet
- ii. The right of the members to move from place to place
- iii. The right to discuss their problems and propagate their views
- iv. The right of the members to hold property

### II. Trade Unions Act, 1926

The Trade Unions Act, 1926 (“**TU Act**”) provides for formation and registration of trade unions and in certain respects to define the law relating to registered Trade Unions. The TU Act defines a trade union as “any combinations, 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 or two or more trade unions.”<sup>40</sup>

All workmen have the right to form a union or refuse to be a member of any union.<sup>41</sup> However, not all workers’ organizations are considered trade unions. For example, the Madras High Court has held that an association of sub-magistrates of the judiciary, tahsildars, etc., is not a trade union because the members are engaged in sovereign and regal functions of the government.<sup>42</sup>

33. All India Bank Employees’ Association v. N.I.Tribunal, AIR 1962 SC 171

34. *Ibid*

35. Damyanti v. Union of India (AIR 1971 S.C. 966)

36. Article 19(4) of the Constitution

37. See footnote 33

38. Raghubar Dayal Jai Prakash v. Union of India, AIR 1950 SC 263

39. See footnote 33

40. Section 2, Trade Union Act, 1926

41. O.K.Ghosh v. Joseph, AIR 1963 SC 812

42. Tamil Nadu NGO Union v. Registrar, Trade Unions (AIR 1962 Mad High Court)

## A. Recognition and Registration

Although no specific right is granted to any trade union with respect to the right to be recognized, it has become crucial in India to develop a mechanism wherein a trade union is recognized formally by the employer. Recognition is the process through which the employer accepts a particular trade union as having a representative character and hence, will be willing to engage in discussions with the union with respect to the interests of the workers.<sup>43</sup> This process is important so as to ensure smooth collective bargaining and stability of industrial relations.

On the other hand, registration of a trade union carries certain inherent benefits with it. A registered trade union is deemed to be a body corporate, giving it the status of a legal entity that may, inter alia, acquire and hold property, enter into contracts, and sue others.<sup>44</sup> A registered trade union is also immune from certain contractual, criminal and civil proceedings.<sup>45</sup> However, registration is optional and not mandatory.

Generally, registration of trade unions under the TU Act does not automatically imply that a particular trade union has gained recognition status granted by the employer.<sup>46</sup> Unless different Indian states have specific legal provisions pertaining to recognition of trade unions, it is generally a matter of agreement between the employer and trade union.<sup>47</sup>

Ideally, a trade union must obtain legitimacy through registration under the TU Act and then seek recognition as a sole bargaining agent either under the appropriate law or an employer-employee agreement.<sup>48</sup>

## B. Registration Process

The TU Act provides for the registration of trade unions with the Registrar of Trade Unions in the concerned territory (“**Registrar**”) but such registration is not compulsory.

It is possible for more than one trade union to be registered in relation to the same employer. Registration requires that at least seven members subscribe to the union rules.<sup>49</sup> In addition, at least 10% of the workforce or 100 workers, whichever is less, engaged or employed in the establishment, must be members of the trade union connected with such establishment at the time of application.<sup>50</sup> Registration of a trade union is subject to the Registrar’s satisfaction that all primary requirements of the TU Act have been complied with. The Registrar, in deciding whether to grant registration, must base its decision on whether the technical requirements of registration are being fulfilled, and not whether the trade union could be described as lawful.<sup>51</sup> If the Registrar fails to register a trade union within three months of application, an appeal can be made to the High Court under Article 226 of the Constitution.<sup>52</sup>

43. Singh et al., *Employee Relations Management*, p. 110, Available at <https://books.google.co.in/books?id=vkQ7BAAAQBAJ&printsec=frontcover> (Accessed on January 22, 2015)

44. Section 13 of the TU Act

45. Sections 17, 18 and 19 of the IDA

46. R. Sivarethinamohan, *Industrial Relations and Labour Welfare: Text and Cases*, page 62, Available at <https://books.google.co.in/books?id=OBuLapJUAcC&printsec=frontcover> (Accessed On January 22, 2015)

47. R. Sivarethinamohan, *Industrial Relations and Labour Welfare: Text and Cases*, page 62, Available at <https://books.google.co.in/books?id=OBuLapJUAcC&printsec=frontcover> (Accessed On January 22, 2015)

48. R. Sivarethinamohan, *Industrial Relations and Labour Welfare: Text and Cases*, page 62, Available at <https://books.google.co.in/books?id=OBuLapJUAcC&printsec=frontcover> (Accessed On January 22, 2015)

49. Section 4, Trade Unions Act, 1926

50. *Ibid*

51. *Re India Steam Navigation Workers Union* (AIR 1936 SC)

52. *ACC Rajanka Limestone Quarries Workers’ Union v Registrar of Trade Unions* (AIR 1958)

## C. Process of Recognition of Trade Unions

Some Indian states have enacted legal provisions setting forth rules and principles for the recognition of trade unions, each with their own criteria. It is pertinent to note that there is no law at the national level for recognition of trade unions in India. Although there is a proposal<sup>53</sup> in the pipeline which will allow trade unions to make an application for being recognized by the central or state governments. The various state legislations governing trade unions are as follows:

- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971
- West Bengal Trade Unions Rules, 1998
- Kerala Recognition of Trade Unions Act, 2010
- Orissa Verification of Membership and Recognition of Trade Union Rules, 1994

Generally, these rules provide that a union shall be recognized by the employer as the sole bargaining agent of a group of workers if it receives a specified minimum percentage (usually a majority) of these workers' votes via secret ballot, organized by the Registrar. However, every trade union receiving a smaller minimum percentage of votes (fifteen or ten percent, depending on the type of industry) shall also be recognized as constituents of a joint bargaining council as in the case of Kerala trade unions.<sup>54</sup>

At present, recognition of trade unions functioning in industrial establishments is regulated under the provisions of the voluntary 'Code of Discipline' ("Code") and the 'Criteria for Recognition of Unions' appended

to the Code adopted by the Standing Labour Committee in its 16th Session in 1957 and subsequently ratified by the representatives of Employers and CTUOs at the 16th Session of the Indian Labour Conference, held in 1958. The Code is a set of Guidelines mutually and voluntarily accepted by all Parties to maintain discipline in Industry, both in public and private sectors. Clause III (vii) of the Code states that the management agrees to recognize the Union in accordance with the criteria evolved in the Code. A copy of the Code is annexed to this research paper as Annexure II.

## III. Industrial Disputes Act, 1947

The IDA also deals with trade unions in the manner that it regulates the rights of employers and employees in the investigation and settlement of industrial disputes. It provides for collective bargaining by negotiation and mediation and, failing that, voluntary arbitration or compulsory adjudication with the active participation of trade unions. As per the IDA<sup>55</sup>, a settlement arrived at through collective bargaining is binding. Two types of settlements are recognized:

- i. Those reached in the course of conciliation proceedings before the authority - such settlements bind members of the signatory union as well as non-members and all present and future employees of the management.
- ii. Those reached outside the course of conciliation proceedings, but signed independently by the parties to the settlement - such settlements bind only

53. Trade Union (Amendment) Bill, 2018. Please see: <https://labour.gov.in/sites/default/files/The%20Trade%20Unions%20Amendment%20Bill%202018.pdf>

54. Section 5 of the Kerala Recognition of Trade Unions Act, 2010

55. Section 18 of the IDA

those members who are a signatory or a party thereto.

Furthermore, the Industrial Employment (Standing Orders) Act, 1946 (“**IESOA**”) also contains certain provisions pertaining to trade unions. The IESOA regulates and codifies the conditions of service for an industrial establishment employing at least

100 workmen. As per the IESOA, an employer to which the IESOA applies is required to draft and adopt standing orders defining its employees’ conditions of employment. As per the IESOA<sup>56</sup> a registered trade union (or worker, if no registered union exists) must review and may object to the draft standing orders before it is certified by an officer.<sup>57</sup>

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56. Section 3 of the IESOA

57. The IESOA provides for model standing orders that may be adopted by employers to whom the IESOA applies. If the employer makes any changes to the model standing orders before adopting them then the same need to be certified by a certifying officer.

## 6. Landmark Cases Pertaining to Trade Unions

There are various cases that have played a major role in interpreting and shaping the law on trade unions in India. A few of these cases have been mentioned below:

- i. The case of *All India Bank Employees' Association v. N.I.Tribunal*<sup>58</sup> laid down the rights of the members of the trade unions that are encompassed within the fundamental right to freedom of expression and speech, i.e. Article 19(1)(c)<sup>59</sup>:
  - The right of the members of the union to meet
  - The right of the members to move from place to place
  - The right to discuss their problems and propagate their views
  - The right of the members to hold property

However, the case held that Article 19(1)(c) does not account for a right pertaining to the achievement of the all the objectives for which the trade union was formed. Say for example, if one of the objectives for formation of trade union was to push the employer for raising the wages, the trade union cannot, as a matter of right, ask the employer to fulfil the objective of increasing wages of the workers. The case also stated that strikes by trade unions may be controlled or restricted by appropriate industrial legislation.

- ii. Another case which is of much importance is the case of *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage*

*Board Employees' Association*<sup>60</sup> wherein it has been held that an unregistered trade union or a trade union whose registration has been cancelled has no rights either under the TU Act or the IDA. This case highlights the importance with respect to registration of trade unions.

- iii. In the case of *B.R Singh v. Union of India*<sup>61</sup> the court has recognized "strike" as a mode of redress for resolving the grievances of workers.
- iv. In *MRF United Workers Union rep. by its General Secretary v. Respondent: Government of Tamil Nadu rep. by its Secretary, Labour and Employment Department and Ors.*<sup>62</sup> the court has highlighted the validity of procedure for recognition of a trade union. When the State government accepts a particular procedure for recognition, it shall direct the Labour Commissioner to call upon two unions to submit their membership details as per the Code of Discipline. Subsequently, the Labour Commissioner shall decide as to which Union is a true representative union of workmen and give it a genuine recognition. Further, the court cannot permit management to claim that the Union which shows larger membership after recognition will not be recognized by management.
- v. In *Balmer Lawrie Workers' Union, Bombay and Anr. v. Balmer Lawrie & Co. Ltd. and Ors.*<sup>63</sup> the underlying assumption made by the Supreme Court was that a recognised

58. *All India Bank Employees' Association v. N.I.Tribunal*, AIR 1962 SC 171

59. Constitution of India

60. *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association*, (2006) 11 SCC 731 (2)

61. *B.R Singh v. Union of India*, (1989) 4 SCC 710

62. [2010(124)FLR386], (2009)IVLLJ685Mad, 2009WritLR881

63. AIR1985SC311, [1985(50)FLR186], (1985)ILLJ314SC



union represents all the workmen in the industrial undertaking or in the industry. This case was also referred to in the *MRF United Workers case*.

- vi. *In Kalindi and Others v. Tata Locomotive and Engineering Co. Ltd*<sup>64</sup> the Supreme Court held that there is no right to representation as such unless the company, by its standing orders, recognizes such right. The decision was reiterated in *Bharat Petroleum Corporation Ltd. v. Maharashtra General. Kamgar Union & Ors.*<sup>65</sup>

- vii. *In Food Corporation of India Staff Union vs. Food Corporation of India and Others*<sup>66</sup>, the Supreme Court laid down norms and procedure to be followed for assessing the representative character of trade unions by the 'Secret Ballot' system.

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64. AIR1960SC914, 1960(1)FLR23, (1960)ILLJ228SC, [1960]3SCR407

65. AIR1999SC401, 1999(1)ALLMR(SC)249, 1999(81)FLR358

66. AIR 1995 SC 1344

## 7. Right to Strike

The IDA<sup>67</sup> defines a “strike” as “a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment”.

In India, there is no specific right to strike. Instead such right flows from the fundamental right to form a trade union contained in Article 19(1)(c) of the Constitution, which, like all fundamental rights, is subject to reasonable restrictions. In *All India Bank Employees Association v. N.I. Tribunal*<sup>68</sup>, the SC held, *inter alia*, that “the right to strike or right to declare lockout may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 of the Constitution but by totally different considerations.”

Therefore, legislation can and does restrict the right to strike by deeming certain strikes illegal. The IDA restricts strikes and lockouts equally. Various restrictions are contained in sections 22, 23, 24, 10(3) and 10A(4A) of the IDA. Furthermore, the IDA also lays down certain activities that may be deemed as “unfair labour practices of workers or workers’ trade unions pertaining to strikes such as advising or actively supporting or instigating any illegal strike or staging demonstrations at the residence of the employers or managerial staff members.”<sup>69</sup>

It should be noted that a strike that was in existence at the time of reference to a board,

arbitrator, court or tribunal may be continued, provided it was legal at the time of its commencement.<sup>70</sup> Furthermore, a strike staged in response to an illegal lockout shall be legal.

A worker who is involved in an illegal strike may be penalized with imprisonment of up to a month and/or fine. As per the IDA<sup>71</sup>, no person shall provide any sort of financial aid to any illegal strike. Any person who knowingly provides such a help in support of any illegal strike is punishable with imprisonment up to six months and/or fine.

Another consequence of an illegal strike is the denial of wages to the workers involved. Furthermore, the SC has held that workers shall only be entitled to wages during a strike which is not only legal, but also “justified”. A strike shall be deemed unjustified where “the reasons for it are entirely perverse and unreasonable...[which is] a question of fact, which has to be judged in the light of the fact and circumstances of each case... the use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would [also] disentitle them to wages during the strike period.”<sup>72</sup> The SC has also held that whether or not a strike is “unjustified depends on such factors as “the service conditions of the workmen, the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the IDA or the contract of employment or the service rules and regulations etc.”<sup>73</sup>

67. Section 2(gg)(q) of the IDA

68. *All India Bank Employees Association v. N.I. Tribunal* (1962 AIR 171) at para 292

69. Fifth Schedule of the IDA

70. Section 24(2) of the IDA

71. Section 25 of the IDA

72. *Crompton Greaves Ltd. v. Its Workmen* (AIR 1978 SC 1489) at para 4

73. *Syndicate Bank v. K. Umesh Nayak* (1995 AIR 319) at para 27

## 8. Recent Trade Union Activities in India

In recent times, trade unions have been engaging in aggressive collective bargaining tactics by staging strikes. The Indian Automotive Industry has seen considerable number of strikes backed by trade unions that have caused major slump in the earnings of the various companies. For instance, Honda Motorcycle and Scooter India lost a total of Rs. 1.2 billion as three thousand workers and supporters went on strike against the company.<sup>74</sup> Even Maruti Suzuki faced a fall in their production capacity and huge losses in 2012 due to trade union backed violence at one of their plants that consequently led to shutting down of the plant temporarily.<sup>75</sup> The company was only able to reach 10% of their original production capacity after reopening of the plant.<sup>76</sup>

There has also been a great amount of unrest due to the labor reforms that have been introduced by the government in various industries such as the Coal and Insurance.<sup>77</sup> This is mainly due to the ordinances that have been issued by the Indian government pertaining to de-nationalization and privatization of these sectors in various ways.<sup>78</sup> For instance, the government passed the Coal Ordinance (Special Provisions) Bill, 2014, which focuses on reallocating the various

coal blocks through e-auction process.<sup>79</sup> This caused various trade unions of Coal India Ltd. and Singareni Collieries Company Ltd. to initiate a five day strike that is said to have a future impact on the power sector despite these various companies having stepped up their supplies of coal to the various sectors so as to limit disruption of work.<sup>80</sup> Furthermore, it appears that the trade unions in the Insurance sector are preparing for strikes on similar lines due to the reforms pertaining to the hike in FDI and disinvestment in the Insurance sector.<sup>81</sup>

Trade unions also seem to be seeping into the Information Technology sector / services sector and are predicted to gain a strong foothold in the sector. Traditionally, the services sector has remained untouched by any trade union activity.<sup>82</sup> Tata Consultancy Services Ltd., recently, met with great opposition from various central trade unions such as CITU and INTUC with respect to their move to terminate the employment of a number of their employees.<sup>83</sup>

The proposed recent amendments to the various labor laws by the central government and the state governments, more specifically, the government of the state of Rajasthan, are said to impact workers immensely. The

74. Martin Murray, "Industrial Action in the Indian Automotive Industry" online: <<http://logistics.about.com/od/industryfocus/a/Industrial-Action-In-The-Indian-Automotive-Industry.htm>>

75. Maruti Manesar unrest: 100 arrested, plant shut down, July 9, 2012, Available at [http://www.moneycontrol.com/news/business/maruti-mansar-unrest-100-arrested-plant-shut-down\\_732607.html](http://www.moneycontrol.com/news/business/maruti-mansar-unrest-100-arrested-plant-shut-down_732607.html) (Accessed on January 22, 2015)

76. Ronojoy Banerjee, All eyes on Maruti as Manesar plant sets to reopen today, August 21, 2012, Available at [http://www.moneycontrol.com/news/cnbc-tv18-comments/all-eyesmaruti-as-mansar-plant-sets-to-reopen-today\\_747287.html](http://www.moneycontrol.com/news/cnbc-tv18-comments/all-eyesmaruti-as-mansar-plant-sets-to-reopen-today_747287.html) (Accessed on January 22, 2015)

77. Trade unions slam coal, insurance ordinance; threaten strike, December 28, 2014, Available at <http://economictimes.indiatimes.com/news/politics-and-nation/trade-unions-slam-coal-insurance-ordinance-threaten-strike/articleshow/45665291.cms> (Accessed on January 22, 2015)

78. CIL trade unions caution against de-nationalisation of mines, October 24, 2014, Available at <http://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/cil-trade-unions-caution-against-de-nationalisation-of-mines/articleshow/44925847.cms> (Accessed on January 22, 2015)

79. Coal India staff on five-day nationwide strike from today , January 6, 2015, Available at <http://businesstoday.intoday.in/story/coal-india-staff-on-5-day-nationwide-strike-from-tuesday/1/214249.html> (Accessed on January 22, 2015)

80. *Ibid*

81. See footnote 71

82. Moulisree Srivastava, *Are trade unions gaining a foothold in IT sector?*, LIVEMINT, January 6, 2014, Available at <http://www.livemint.com/Industry/niEiLE4J9rb53vz3FVAQFP/Are-trade-unions-gaining-a-foothold-in-IT-sector.html> (Accessed on January 22, 2015)

83. <http://www.newindianexpress.com/states/kerala/TCS-Lay-off-Minister-Seeks-Report/2015/01/09/article2610864.ece> (Accessed on January 22, 2015)

proposed amendments mainly pertain to (i) allowing industrial establishments employing up to 300 workmen (which threshold is 100 workmen currently) to terminate workmen without availing the prior permission of the government (ii) raising the threshold of number of workmen as contract labour for the purpose of applicability of the Contract Labour (Regulation and Abolition) Act, 1970 from 20 to 50 (iii) Raising the threshold of number of employees for the purposes of applicability of the Factories Act, 1948 from 10 to 20 (in factories where work is being carried out with the aid of power) and from 20 to 40 (in factories where work is being carried out without the aid of power) (iv) raising the minimum membership from 10% to 30% with respect to registration as a trade union under the Trade Unions Act, 1926 (v) introducing a limitation period of 3 years with respect to raising industrial disputes.<sup>84</sup>

The abovementioned proposed reforms are said to encourage strikes by the various trade unions since workers may be adversely affected by these reforms. In fact, various trade unions have already engaged in opposition and nationwide protests against these reforms.<sup>85</sup> It is yet to be seen whether these reforms will continue to be implemented or will succumb to the demands of the trade unions.

## Trade Unions in the Information Technology Sector

On November 7, 2017, the Labour Department of the State of Karnataka registered the first trade union in the State which exclusively caters to the interests of technology sector employees. The trade union has been registered under the provisions of the TU Act and the Karnataka Trade Union Regulations, 1958. In early 2018, another trade union for technology sector employees was registered in the State of Maharashtra.

Presently, out of approximately 4 million technology sector employees spread across the country, Bangalore (city in Karnataka) houses approximately 1.5 million employees in the technology sector.<sup>86</sup> Pune (city in Maharashtra) also has offices of most of the major technology sector players. Accordingly, the formation and registration of sector-specific employee trade unions in these technology hubs is a significant development in the sector. Up until now, unionization in India was largely limited to traditional sectors, especially the manufacturing sector. With this development, technology sector employees are likely to have assistance of unions to voice their concerns over various issues like, wages, termination of employment, conditions of work etc. To that extent, employers in the technology sector will need to be careful in devising and more importantly implementing their HR policies.

84. Vaidyanathan Iyer, *Rajasthan shows way in labour reforms*, INDIAN EXPRESS, June 8, 2014, Available at <http://indianexpress.com/article/india/india-others/rajasthan-shows-way-in-labour-reforms/> (Accessed on January 22, 2015)

85. *Trade Unions oppose Rajasthan's Labour reforms*, Business Standard, June 11, 2014, Available at [http://www.business-standard.com/article/economy-policy/trade-unions-oppose-rajasthan-s-labour-reforms-114061001116\\_1.html](http://www.business-standard.com/article/economy-policy/trade-unions-oppose-rajasthan-s-labour-reforms-114061001116_1.html) (Accessed on January 22, 2015)

86. <https://www.techgig.com/tech-news/Karnataka-may-soon-see-India-039-s-first-dedicated-IT-employee-union-140747>

## 9. Conclusion

Historically, in India, the function of the trade unions was limited largely to collective bargaining for economic considerations. However, trade unions now play a major role in employee welfare activities, cultural programs and banking and medical facilities and by creating awareness through training and educating the members of the trade union. On the other hand, the dominant managerial objectives in collective bargaining in recent years owing to heightened competition have been to reduce labour costs, increase production or productivity, flexibility in work organization (multi-skilling /multi-functioning, changes in worker grades etc.),

increase in work time, reduction in regular staff strength via VRS, stress on quality and so on.<sup>87</sup>

Despite certain recent developments which may be largely considered as one-off incidents, most trade unions have managed to foster an environment so as to enable a healthy discussion between the workers and employers with respect to any demands the workers may have. Furthermore, trade unions in India have, over the period of time, ensured to provide a forum to facilitate better industrial relations, industrial growth and improve productivity.

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87. Krishna Murthy, R. (2006), *Negotiating Wage Settlements Experiences of Innovative Managements*, Indian Industrial Relations Institute, Mumbai and Venkata Ratnam, C.S. (2003), *Negotiated Change: Collective Bargaining, Liberalization and Restructuring in India*, Response Books, New Delhi

# Annexure I

## 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,

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

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.

## Trade Unions Act and State Laws Provide Legal Protections

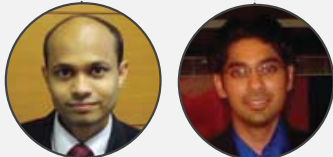
### Currency of TU Act Questioned

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).

By Vikram Shroff and Akshay Bhargav,  
Nishith Desai Associates,  
Published in SHRM Legal Report, March 2010



## Annexure II

### Code of Discipline

- i. To maintain Discipline in the Industry (both in public and private sectors) there has to be (i) a just recognition by employers and workers of the rights and responsibilities of either party, as defined by the laws and agreements (including bipartite and tripartite agreements arrived at all levels from time to time) and (ii) a proper and willing discharge by either party of its obligations consequent on such recognition.

The Central and State Governments, on their part, will arrange to examine and set right any shortcomings in the machinery they constitute for the administration of labour laws.

To ensure better Discipline in Industry

**ii. The Management and Union(s) agree -**

- a. that no unilateral action will be taken with any company matter and that disputes will be settled at appropriate level;
- b. that the existing machinery for settlement of disputes would be utilized with the utmost expedition;
- c. that there would be no strike or lockout without notice;
- d. that affirming their faith in democratic principles, they bind themselves to all future differences, disputes and grievances by mutual negotiations, conciliation and voluntary arbitration;
- e. that neither party will have recourse to (a) coercion, (b) intimidation, (c) victimization or (d) go-slow;
- f. that they will avoid, (a) litigation, (b) sit down and stay in strikes and (c) lock outs;

- g. that they will promote constructive co-operation between their representatives at all levels and as between workers themselves and abide by the spirit of agreements mutually entered into;
- h. that they will establish upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement;
- i. that they will abide by various stages in the grievance procedure and to take no arbitrary action which would bypass this procedure; and
- j. that they will educate the management personnel and workers regarding their obligations to each other.

**iii. The Management agrees-**

- a. Not to increase work loads unless agreed upon or settled otherwise;
- b. not to support or encourage any unfair labour practice such as (a) interference with the right of employees to enroll or continue as union members, (b) discrimination restraint or coercion against any employee because of recognised activity or trade unions and (c) victimization of any employee and abuse of authority in any form;
- c. to take prompt action for (a) settlement of grievances and (b) implementation of settlements, awards, decisions and orders;
- d. to display in conspicuous places in the undertaking the provisions of this code in the local language (s)
- e. to distinguish between actions justifying immediate discharge and those where discharge must be preceded

by warning, reprimand, suspension or some other form of disciplinary action and to arrange that all such disciplinary action should be subject to an appeal through normal grievance procedure;

- f. to take appropriate disciplinary action against its officers and members in cases where enquiries reveal that they were responsible for precipitated action by workers leading to indiscipline; and
  - g. to recognize the union in accordance with the criteria (Annexure I) evolved at the 16th Session of the Indian Labour Conference held in May, 1958
- iv The Union(s) agree:**
- a. not to engage in any form of physical duress;
  - b. not to permit demonstrations which are not peaceful and not to permit rowdyism in demonstrations;
  - c. that their member will not engage or cause other employees to engage in any union activity during working hours, unless as provided by law, agreement of practice;
  - d. to discourage unfair labour practices such as (a) negligence of duty (b) careless operation, (c) damage to the property, (d) interference with or disturbance to normal work and (e) insubordination;
  - e. to take prompt action to implement awards, agreements, settlements and decisions;
  - f. to display in conspicuous places in the union offices, the provisions of this code in the local language (s); and
  - g. to express disapproval and to take appropriate action against office-bearers and members for indulging in action against the spirit of this code.

## Criteria for Recognition of Unions

### (Clause III (vii) of the Code of Discipline)

- i. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply.
- ii. The membership of the union should cover at least 15% of the workers in the establishment concerned. Membership would be counted only to those who had paid their subscription for at least three months during the period of six months immediately preceding the reckoning.
- iii. A union may claim to be recognized as a representative union for an industry in a local area if it has a membership of at least 25% of the workers of that industry in that area.
- iv. When a union is recognized, there should be no change in its position for a period of two years.
- v. Where there are several unions in an industry or establishment, the one with the largest membership should be recognized.
- vi. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50% or more of the workers of that establishment, it should have the right to deal with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All workers who are not members of that union might either operate through representative union for the industry or seek redress directly.

- vii. In the case of trade union federations, which are not affiliated to any of the four central organisations of labour, the question of recognition would have to be dealt with separately.
- viii. Only unions, which observe Code of Discipline, would be entitled for recognition.

# Annexure III

## A New Challenge For India's Technology Sector: Trade Union Registered in Bangalore

- Trade union exclusive to the technology sector registered in Bangalore
- Letter issued by Labour Department of Chennai in May, 2016 clarified that technology sector employees are free to form trade unions
- Greater involvement of trade unions in the technology sector is likely to curb the flexibility of employers in terms of dealing with employee issues

The first trade union dedicated to technology sector employees in India has been registered recently. On November 7, 2017, the Labour Department of Karnataka approved the application for registration of a trade union which exclusively caters to the interests of technology sector employees, under the provisions of the Trade Unions Act, 1926 (“**TU Act**”) and the Karnataka Trade Union Regulations, 1958 (“**KTU Regulations**”). As per available statistics, out of approximately 4 million employees across the country, Bangalore has approximately 1.5 million employees in the IT and IT-enabled services sectors<sup>88</sup> and accordingly, the formation and registration of the first sector-specific employee trade union is a significant development in the technology industry.

### I. Laws Governing Trade Unions In India

Please refer to our research paper titled ‘**India: Trade Unions and Collective Bargaining**’ for elaborate information on the laws governing trade unions in India. A brief snapshot is as follows:

In the Indian context, the right to form and join a trade union and engage in collective bargaining is provided under national legislations such as the Industrial Disputes Act, 1947 (“**IDA**”), TU Act and the Industrial Employment (Standing Orders) Act, 1946 (“**Standing Orders Act**”) and state-specific legislations such as KTU Regulations. Time and again, courts in India have upheld the right of workers to form or join trade unions in India<sup>89</sup>.

Article 19(1)(c) of the Constitution of India, 1950 which envisages the fundamental right to ‘*freedom of speech and expression*’ also guarantees the citizens the right “*to form associations or unions*” including trade unions. Accordingly, there is no prohibition or restriction on employees (including in the technology sector) to form trade unions within the establishment or joining external trade unions, subject to applicable laws. This was also reiterated in a clarification issued by the Labour Department in Chennai in May 2016.

88. <https://www.techgig.com/tech-news/Karnataka-may-soon-see-India-039-s-first-dedicated-IT-employee-union-140747>

89. All India Bank Employees' Association v. N.I.Tribunal, AIR 1962 SC 171

A registered trade union is deemed to be a body corporate, giving it the status of a legal entity that may, *inter alia*, acquire and hold property, enter into contracts, and sue others.<sup>90</sup> A registered trade union is also immune from certain contractual, criminal and civil proceedings. As opposed to an un-registered trade union, a registered trade union enjoys greater bargaining power. If the registered trade union is a 'recognized'<sup>91</sup> trade union (by the employer/under law), such trade union enjoys even greater benefits. In fact, the IDA states that failure on the part of the employer to bargain collectively in good faith with a recognized trade union will amount to an 'unfair labour practice' which would be punishable with imprisonment and/or a fine.

## II. Analysis

Up until now unionization in India was largely limited to traditional sectors, especially the manufacturing sector. For the last few years, trade unions were trying to get a foothold in the US\$ 118 billion Indian information technology sector, though with little success.<sup>92</sup> However, with the registration of the first trade union in the technology sector in Bangalore, employees may now seek assistance from such unions to voice their concerns. Greater involvement of trade unions in the technology sector is likely to curb the flexibility of employers in terms of dealing with employee issues. To that extent, employers will now need to be careful in devising and more importantly implementing their HR policies. Employers may also need to revisit their existing practices, especially with respect to sensitive issues like termination of employment.

– **Preetha S & Ajay Solanki**

You can direct your queries or comments to the authors

90. Section 13 of the TU Act

91. 'Recognition' is the process through which a particular trade union is accepted as having an authority and representative character and, therefore, the employer is legally bound to engage in discussions with such trade union with respect to the interests of its workers.

92. <http://www.livemint.com/Industry/niEiLE4J9rb53vz3FVAQFP/Are-trade-unions-gaining-a-foothold-in-IT-sector.html>

## About NDA

At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm – and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarium *Aligunjan*, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bangalore, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India's regulatory environment, we at NDA, have the expertise and more importantly – the VISION – to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

As a firm of doyens, we pride ourselves in working with select clients within select verticals on complex matters. Our forte lies in providing innovative and strategic advice in futuristic areas of law such as those relating to Blockchain and virtual currencies, Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Ed-Tech, Med-Tech & Medical Devices and Nanotechnology with our key clientele comprising of marquee Fortune 500 corporations.

The firm has been consistently ranked as one of the Most Innovative Law Firms, across the globe. In fact, NDA has been the proud recipient of the Financial Times – RSG award 4 times in a row, (2014-2017) as the **Most Innovative Indian Law Firm**.





We are a trust based, non-hierarchical, democratic organization that leverages research and knowledge to deliver extraordinary value to our clients. Datum, our unique employer proposition has been developed into a global case study, aptly titled 'Management by Trust in a Democratic Enterprise,' published by John Wiley & Sons, USA.

A brief chronicle our firm's global acclaim for its achievements and prowess through the years -

- **AsiaLaw 2019:** Ranked 'Outstanding' for Technology, Labour & Employment, Private Equity, Regulatory and Tax
- **RSG-Financial Times:** India's Most Innovative Law Firm (2014-2017)

- **Merger Market 2018:** Fastest growing M&A Law Firm
- **IFLR 1000 (International Financial Review - a Euromoney Publication):** Tier 1 for TMT, Private Equity
- **IFLR:** Indian Firm of the Year (2010-2013)
- **Legal 500 2018:** Tier 1 for Disputes, International Taxation, Investment Funds, Labour & Employment, TMT
- **Legal 500 (2011, 2012, 2013, 2014):** No. 1 for International Tax, Investment Funds and TMT
- **Chambers and Partners Asia Pacific (2017 – 2018):** Tier 1 for Labour & Employment, Tax, TMT
- **IDEX Legal Awards 2015:** Nishith Desai Associates won the “M&A Deal of the year”, “Best Dispute Management lawyer”, “Best Use of Innovation and Technology in a law firm” and “Best Dispute Management Firm”

The following research papers and much more are available on our Knowledge Site: [www.nishithdesai.com](http://www.nishithdesai.com)

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# Research @ NDA

**Research is the DNA of NDA.** In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our "Anticipate-Prepare-Deliver" research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparalleled mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to *Intellectual Property*.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular "Hotlines", which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. **Imaginarium AliGunjan** is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness – that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear your suggestions on our research reports. Please feel free to contact us at [research@nishithdesai.com](mailto:research@nishithdesai.com)

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