

# Trade Unions Act, 1926: A Comprehensive Analysis

## Introduction

Before the emergence of industrialization on a massive scale, there were personal contracts between the workers and employers. Therefore, no requirement for the evolution of any machinery governing the relationship between workers and employers arose until then. But after the establishment of modern factory system this relationship lost its significance due to large scale industrialization which enticed employers to reduce the cost of production in order to withstand the cut-throat competition in the market and maximize their profit by using technologically more sophisticated means of production which in turn resulted in the rise of a new class of workers who were completely dependant on the wages for their survival which changed the existing employer and employee relationship in which the employees were exploited by their employers. The conflict of interest between workers and employers and the distress of workers resulted in the growth of various trade unions.

A trade union is an organized group of workers who strive to help the workers in the issues relating to the fairness of pay, good working environment, hours of work and other benefits that they should be entitled to instead of their labour. They act as a link between the management and workers. In spite of being newly originated institutions, they have turned into a powerful force because of their direct influence on the social and economic lives of the workers. To control and manage the working of these trade unions different legislations regulating the same required. In India Trade Unions Act of 1926 is a principal Act for controlling and managing the working of trade unions. The present article aims at explaining and bringing forth various aspects of the Act.

## History of Trade Unionism in India

In India trade unions have developed into an important platform for putting up the demands of the workers. They have also turned into one of the most influential pressure groups, which is an aggregate seeking to influence the government in framing legislation in favour of workers without aspiring to become part of the government. As an organized institution, trade unionism took its concrete shape after the end of World War 1. The trade unions in India are essentially the product of modern large scale industrialization and did not grow out of any existing institutions in society. The need for an organized trade

union was first realized in 1875 by various philanthropists and social workers like Shri Sorabji Shapaji Bengali and Shri N.M. Lokhandey whose constant efforts resulted in the formation of trade unions like The Printers Union of Calcutta (1905), the Bombay Postal Union (1907).

The setting up of textile and mill industries at the beginning of the 19th century in the presidency towns of Bombay, Madras, and Calcutta gave impetus to the formation of industrial workforce association in India. The Bombay Mill-Hands Association, founded by [N.M. Lokhande](#) in 1890 is the first labour association of India. The following years saw the rise and growth of several other labour associations and unions in India like the Madras Labour Union which is the first properly registered trade-union founded by [B.P. Wadia](#) in the year 1918, in the year 1920 the country saw the growth of the Ahmedabad Textile Labourer's Association in Gujarat which turned into a union under the guidance of Mahatma Gandhi and is considered to be one of the strongest unions in the country of that time because of the unique method of arbitration and conciliation it had devised to settle the grievances of the workers with the employers. Since the union followed the ideals of truth and nonviolence laid down by Mahatma Gandhi it was able to secure justice to the workers in a peaceful manner without harming the harmony in the society. In the same year, the first trade union federation [All India Trade Union Congress](#) (AITUC) saw the light of the day, it was formed after the observations made by the International Labour Organization which highlighted the influence of politics on trade unions and associations and how the same is detrimental for any economy to prosper.

The importance of the formation of an organized trade union was realized by nationalist leaders like Mahatma Gandhi who to improve the employer and worker relationship gave the concept of trusteeship which envisaged the cooperation of the workers and employers. According to the concept, the people who are financially sound should hold the property not only to make such use of the property which will be beneficial for themselves but should make such use the property which is for the welfare of the workers who are financially not well placed in the society and each worker should think of himself as being a trustee of other workers and strive to safeguard the interest of the other workers.

Many commissions also emphasized the formation of trade unions in India for eg. The Royal Commission on labour or Whitley commission on labour which was set up in the year 1929-30 recommended that the problems created by modern industrialization in India are similar to the problems it created elsewhere in the world and the only solution left is the formation of strong trade unions to alleviate the labours from their miserable condition and exploitation.

## Development of Trade Union Law in India

Labour legislation in India has a key impact on the development of industrial relations. The establishment of social justice has been the principle of all the labour legislation in India. The establishment of the International Labour Organization to uplift the condition of labour all over the world gave further impetus to the need for well-framed labour legislation in the country. Several other internal factors like the Swaraj movement of 1921-24, the royal commission on labour also paved the way for various labour laws and also encouraged the framers of the constitution to incorporate such laws in the constitution which will benefit the labourers. Under the constitution, labour is the subject of the concurrent list and both centre and state can make laws related to the subject. The different legislation on labour in the country are as follows:

- **Apprentices Act, 1961:** The object of the Act was the promotion of new manpower at skills and improvement and refinement of old skills through practical and theoretical training.
- **Contract Labour (Regulation and Abolition) Act, 1970:** The object of the Act was the regulation of employment of contract labour along with its abolition in certain circumstances.
- **Employees' provident funds and misc. Provision Act, 1952:** The Act regulated the payment of wages to the employees and also guaranteed them social security.
- **Factories Act, 1948:** The Act aimed at ensuring the health of the workers who were engaged in certain specified employments.
- **Minimum wages Act, 1948:** The Act aimed at fixing minimum rates of wages in certain employments.
- **Trade Union Act, 1926:** The Act provided for registration of trade unions and defined the laws relating to registered trade unions.

## • Indian Trade Union (Amendment) Act, 1947

- The labours, especially the ones who work in the unorganized sectors lack the capacity to bargain and this becomes a major reason for their exploitation. The Right of collective bargaining is provided only to those trade unions which are registered but in India, there are legislations regarding the recognition of trade unions but there is no single legislation on registration of trade unions. Realizing the need of having central legislation for registration of trade unions, the parliament passed the Indian Trade Union (Amendment) Act in the year 1947. The said Act sought to introduce Chapter III-A into the Trade Union Act, 1926, which enumerated the conditions required for mandatory recognition of any

trade union. however, this Act was never brought to force Therefore, the mandatory recognition of trade unions is not present under any law in force in India.

## Registration of Trade Unions

The Trade Union Act of 1926 was passed in the year 1926 but it came into effect in the year 1927. The Act contains the provisions related to registration, regulation, benefits, and protection for trade unions. Section 3 to Section 14 of Chapter 2 of the Act deals with the registration of trade unions in the territory of India.

### Section 3: Appointment of Registrars

[Section 3](#) of the Act empowers the appropriate government to appoint a person as the registrar of a trade union. The appropriate government can also appoint as many additional and deputy registrars in a trade union as it deems fit for carrying on the purposes of the Act.

### Section 4: Mode of Registration

[Section 4](#) of the Act provides for the mode of registration of the trade union. According to the Section, any seven or more than seven members of a trade union may by application apply for the registration of the trade union subject to the following two conditions:

- At Least 7 members should be employed in the establishment on the date of the making of the application.
- At Least 10% or a hundred members whichever is less, are employed in the establishment should be a part of it on the date of making the application.

## Section 6: Provisions to be contained in the rules of a Trade Union

[Section 6](#) of the Act enlists the provisions which should be contained in the rules of trade union and it provides that no trade union shall be recognized unless it has established an executive committee in accordance with the provisions of the Act and its rules specify the following matters namely:

- Name of the trade union;
- The object of the establishment of the trade union;
- Purposes for which the funds with the union shall be directed;
- A list specifying the members of the union shall be maintained. The list shall be inspected by office bearers and members of the trade union;
- The inclusion of ordinary members who shall be the ones actually engaged or employed in an industry with which the trade union is connected;
- The conditions which entitle the members for any benefit assured by the rules and also the conditions under which any fine or forfeiture may be imposed on the members;
- The procedure by which the rules can be amended, varied or rescinded;
- The manner within which the members of the manager and also the alternative workplace bearers of the labour union shall be elective and removed;
- The safe custody of the funds of the labour union, an annual audit, in such manner, as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the workplace bearers and members of the labour union, and;
- The manner within which the labour union could also be dissolved.

## Section 7: Power to call for further particulars and require alteration of the name

[Section 7](#) of the Act furnishes upon the registrar power to call for information in order to satisfy himself that any application made by the trade union is in compliance with the Section 5 and 6 of the Act. in matters where the

discrepancy is found the registrar reserves the right to reject the application unless such information is provided by the union.

This Section also confers power to the registrar to direct the trade union to alter its name or change the name if the registrar finds the name of such union to be identical to the name of any other trade union or if it finds its name to so nearly resemble the name of any existing trade union which may be likely to deceive the public or members of either of the trade union.

## Section 8: Registration

According to [Section 8](#) of the Act, if the registrar has fully satisfied himself that a union has complied with all the necessary provisions of the Act, he may register such union by recording all its particulars in a manner specified by the Act.

## Section 9: Certificate of Registration

According to [Section 9](#) of the Act, the registrar shall issue a registration certificate to any trade union which has been registered under the provision of Section 8 of the Act and such certificate shall act as conclusive proof of registration of the trade union.

## Section 9A: Minimum requirement related to the membership of a Trade Union

[Section 9A](#) of the Act lays down the minimum number of members required to be present in any union which has been duly registered, the Sections mandates that a trade union which has been registered must at all times should continue to have not less than 10% or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or utilized in an institution or trade with that it's connected, as its members.

## Section 10: Cancellation of Registration

The registrar, according to [Section 10](#) of the Act has the power to withdraw or cancel the registration certificate of any union in any of the following conditions:

- On an application made by the trade union seeking to be verified in such manner as may be prescribed;
- If the registrar is satisfied with the fact that the trade union has obtained the certificate by means of fraud or deceit;
- If the trade union has ceased to exist;
- If the trade union has wilfully and after submitting a notice to the Registrar, has contravened any provision of the Act or has been continuing with any rule which is in contravention with the provisions of the Act;
- If any union has rescinded any rule provided under Section 6 of the Act.

## Section 11: Appeals

According to [Section 11](#) of the Act, any union which is aggrieved by a refusal to register or withdrawal of registration made by the registrar can file an appeal:

- In any High Court, if the head office of the trade union is located in any of the presidency towns;
- In any labour court or industrial tribunal, if the trade union is located in such a place over which the labour court or the trade union has jurisdiction;
- If the head office of the trade union is situated in any other location, an appeal can be filed in any court which is not inferior to the Court of an additional or assistant judge of a principal Civil Court of original jurisdiction.

## Section 12: Registered office

[Section 12](#) of the Act lays down that all communications and notices to any trade union must be addressed to its registered office. If a trade union changes the address of its registered office, it must inform the same to the registrar within the period of fourteen days in writing and the registrar shall record the changed address in the register mentioned under Section 8 of the Act.

## Section 13: Incorporation of Registered Trade Union

[Section 13](#) of the Act states that every trade union which is registered according to the provisions of the Act, shall:

- Be corporate by the name under which it is registered.
- have perpetual succession and a common seal.
- Power to contract and hold and acquire any movable and immovable property.
- By the said name can sue and be sued.

## Rights and Liabilities of Registered Trade Unions

Section 15 to Section 28 elucidates the rights which a registered trade union has and also the liabilities which can be imposed against it.

## Section 15: Objects on which general funds may be spent

[Section 15](#) of the Act lays down the activities only on which a registered trade union can spend its funds. These activities include:

- Salaries to be given to the office-bearers.
- The cost incurred for the administration of the trade union.
- Compensation to the workers due to any loss arising out of any trade dispute.
- Expenses incurred in the welfare activities of the workers.
- Benefits conferred to the workers in case of unemployment, disability, or death.
- The cost incurred in bringing or defending any legal suit.
- Publishing materials with the aim of spreading awareness amongst the workers.



- Education of the workers or their dependents.
- Making provisions for medical treatment of the workers.
- Taking insurance policies for the welfare of the workers.

The Section also provides that the reason of non-contribution to the said fund and also a contribution to the fund can not be made as a criterion for admission into the union.

## Section 16: Constitution of a Separate Fund for Political purposes

[Section 16](#) provides that a trade union, in order to promote the civic and political interests of its members can constitute a separate fund from the contributions made separately for the said purposes. No member of the union can be compelled to contribute to the fund.

## Section 17: Criminal conspiracy in Trade Disputes

[Section 17](#) of the Act states that no member of a trade union can be held liable for criminal conspiracy mentioned under subSection 2 of Section [120B](#) regarding any agreement made between the members of the union in order to promote lawful interests of the trade union.

## Section 18: Immunity from civil suits in certain cases

[Section 18](#) of the Act immunes the members of trade union from civil or tortious liabilities arising out of any act done in furtherance or contemplation of any trade disputes.

For example. in general, a person is subject to tortious liability for inducing any person to breach a contract. But, the trade unions and its members are immune from such liabilities provided such inducement is in contemplation or furtherance of any trade disputes. Further, the inducement should be lawful and should not involve any aspect of any violence, threat or any other illegal activity.

## Section 19: Enforceability of agreement

According to [Section 25](#), any agreement in restraint of trade is void. But under [Section 19](#) of the Trade Unions Act, 1926 any agreement between the members of a registered trade union in restraint of trade activities is neither void nor voidable. However such right is available only with the registered trade unions as the unregistered trade unions have to follow the general contract law.

## Section 20: Right to inspect the books of Trade Union

According to [Section 20](#) of the Act, the account books and the list of the members of any registered trade union can be subjected to inspection by the members of the trade union at such times as may be provided under the rules of the trade union.

## Section 21: Rights of minors to membership of Trade Union

[Section 21](#) provides that a person who is above 15 years of age can be a member of any trade union and if he becomes a member he can enjoy all the rights conferred upon the members of the trade union subject to the conditions laid down by the trade union of which he wants to be a part of.

## Section 21-A: Disqualifications of office-bearers of Trade Union

[Section 21A](#) of the Act lays down the conditions the fulfilment of which disqualifies a person from being a member of the trade union. The conditions laid down in the Act are as follows:

- If the member has not attained the age of majority
- If he has been convicted by any of the courts in India for moral turpitude and has been sentenced to imprisonment unless a period of five years has elapsed since his release.

## Section 22: Proportion of office-bearers to be connected with the industry

[Section 22](#) of the Act mandates that not less than half of the members of the trade union should be employed in the industry or work with which the trade union is connected. For example trade union is made for the welfare of the agricultural labourers then, as per this Section half of the members of such a trade union should be employed in agricultural activities.

## Section 23: Change of name

[Section 23](#) states that any registered union is free to change its name provided it does so with the consent of not less than 2/3rd of its members and subject to the fulfilment of the conditions laid down in Section 25 of the Act.

## Section 24: Amalgamation of Trade Unions

[Section 24](#) lays down that two or more trade unions can join together and form one trade union with or without dissolution or division of the fund. Such amalgamation can take place only when voting by half of the members of each trade union has been effectuated and that sixty per cent of the casted votes should be in favour of the proposal.

## Section 25: Notice of change of name or amalgamation

[Section 25](#) of the Act provides that:

- A notice in writing of every change of name and of every amalgamation which is duly signed by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, should be sent to the Registrar.
- If the Registrar feels that the proposed name is identical with the name of any other existing Trade Union or, it so nearly resembles such name as it is likely to deceive the public or the members of either Trade Union, the Registrar may refuse to register the change of name.

- If the Registrar of the State in which the head office of the amalgamated Trade Union is situated is satisfied that the provisions of this Act have complied with the amalgamation shall be given effect from the date of such registration.

## Section 27: Dissolution

[Section 27](#) of the Act talks about the dissolution of a firm as follows:

- If a registered trade union has been dissolved, a notice of such dissolution which must be signed by seven members and by the Secretary of the Trade Union should be served to the registrar within 14 days of such dissolution and if the registrar is satisfied that the dissolution has been effected in accordance with the rules laid down by the trade union may register the dissolution.
- Where a union has been dissolved but its rules do not lay down the way in which the fund is to be distributed after its dissolution, the registrar may distribute the funds in any prescribed manner.

## Section 28 : Returns

[Section 28](#) provides that each trade union should send the returns to the registrar annually on or before such a day as may be prescribed by the registrar. The return includes:

- General statement
- Audit report
- All the receipts and expenditure incurred by the trade union
- Assets and liabilities of the firm on the 31st day of December

Sub-Section 2 of the Section provides that along with the general statement a copy of the rules of the trade union corrected up to the date of dispatch thereof and a statement indicating all the changes made by the union in the year to which the statement is referred to be sent to the registrar.

Whenever any registered trade union alters its rules, such alterations should be conveyed to the registrar in a period of not less than 15 days from making such alterations.

# Regulations

Section 29 to Section 30 of Chapter 4 of the Act lays down the regulations which shall be imposed on the trade union.

## Section 29: Power to make regulations

[Section 29](#) of the Act confers the right on the appropriate government to make provisions in order to ensure that the provisions of the Act are fairly executed. Such regulations may provide for any or all of the matters, which are as follows:

- The manner in which a trade union or its rules shall be registered;
- The manner in which the registration of a trade union has to be transferred which has changed its head office;
- The manner of appointment and qualification of the person who shall audit the accounts of the registered trade union;
- Circumstances under which the documents kept by the registrar shall be allowed to be inspected and also the fees that shall be levied in lieu of the inspection so made.

## Section 30: Publication of Regulations

[Section 30](#) states that:

- The power of making regulations conferred to the government is subject to the condition that such regulation has been made after the previous publication.;
- The date from which the regulation shall be given effect shall be specified in accordance with clause (3) of Section 23 of the General Clauses Act, 1897, and the date should not be less than three months from the date on which the draft of the proposed regulations was published for general information;
- The regulations which are made must be specified in the official gazette of India and it shall have the effect of an enacted law.

# Penalties and Procedure

Section 31 to Section 33 of the Trade Union Act lays down the penalties and the procedure of its application upon a trade union which is subject to such penalty.

## Section 31: Failure to submit returns

[Section 31](#) states that:

- If any trade union was required to send any notice, statement or any document to the registrar under the Act and if the rule did not prescribe a particular person in the union to provide such information then in case of default each member of the executive shall be imposed with the fine extendible to five rupees. In case of continuing default, the fine may be extended to five rupees a week.
- If any person willfully makes or causes to be made any false entry or omission in the general statement required under Section 28 of the Act shall be punishable with fine extendible to 500 rupees.

## Section 32: Supplying false information regarding Trade Unions

[Article 32](#) states, the following:

- Any person who in order to deceive a member of any trade union or any other person who purports to be the part of the trade union,
- Gives a copy of the document with the pretext of it containing the rules of a trade union.
- Which he knows or has reason to believe that it is not a correct copy of such rules and alteration and,
- Any person with the like intent give the copy of any document purporting it to be a copy of the rules of a registered trade union which in reality is an unregistered union,
- Shall be imposed with fine which may extend to two hundred rupees.

## Section 33 : Cognizance of offences

[Section 33](#) contains the provisions with respect to the cognizance of offence. It says that no court which is inferior to presidency magistrate or magistrate of the first class shall try an offence under the Act. courts can take cognizance of the offences under the Act only in the following cases:

- When the complaint has been made with the previous sanction of the registrar
- When a person has been accused under Section 32 of the Act, he shall be tried within six months of the commission of the alleged offence.

## Collective Bargaining and Trade Disputes

When an organized body negotiates with the employer and fixes the terms of employment by means of bargaining is known as Collective Bargaining. The essential element of Collective Bargaining is that it is between interested parties and not from outside parties.

International labour organization in its manual in the year 1960 defined the meaning of collective bargaining as:

“Negotiations about working conditions and terms of employment between an employer, a group of employees or one or more employers organization on the other, with a view to reaching an agreement.” the terms of agreement are used to ascertain the rights and obligations by which each party is bound towards one another during the course of employment.

[Section 8](#) of the Industrial Relations Act 1990 define trade dispute, according to the Act, industrial dispute refers to any dispute which arises between the employers and the workers and it is usually in connection with any one of the following:

- employment or non-employment,
- the terms or conditions of the employment,
- Something which affects the employment of any person.

## Essential conditions for collective bargaining

- **Favourable political and social climate:** all the collective bargaining which took place in the past bears the testimony to the fact that favourable political and social climate is the prerequisite of collective bargaining. The reason for the same is quite obvious as almost all the trade unions in India subscribe to one or the other political view and therefore, trade unions usually favour the employees not on the basis of the merit of the issues they raise but on the basis of their political considerations.
- **Trade union:** in any democratic country like India which recognizes the right to speech as a fundamental right, the right to form a trade union is a direct consequence of it and so all the employers should recognize the trade unions and its representative.
- **Problem-solving attitude:** it means that both the parties while negotiating a bringing up their relative concerns should adopt a problem-solving attitude and should aim at amicably solving the problem without trying to put the opposite party into a loss.
- **Continuous dialogue:** the dialogue between the employer and the workers may sometimes end up without any fruitful negotiation or there may arise a bargaining impasse, in such a case the free flow of dialogue between the employer and employee should not be stopped and sometimes keeping aside the bone of contention helps bring up a better solution.

## Purposes of collective bargaining

- To provide an opportunity for the workers to voice their complaints and grievances regarding the working conditions.
- To pave the way for the employer and workers to reach an amicable solution peacefully without having any ill will towards one another.
- To sort out all the disputes and conflicts between the employer and worker.
- To prevent any dispute which is likely to take place in the future by mutually agreeing on the contract.
- To foster a peaceful and stable relationship between the workers and the organization.

## Position in India

In India, collective bargaining remained limited in its application and has been restricted by different labour legislations in India. Different labour laws made



different provisions with respect to the working conditions of the workers. Some of the labour legislation in India are as follows:

- The Factories Act, 1948 made provisions for the betterment of the workers in respect of their health, safety, welfare and other aspects while the workers are employed in factory work. However, all the provisions of the Act were not applicable in all the factories, for example, the provision for restroom will be applicable only if there are 150 or more workers.
- Employees Provident and Miscellaneous Provisions Act, Maternity Benefit Act and Payment of Gratuity Act.
- Industrial Disputes Act, 1947, lays down the procedures by which the settlement of industrial disputes has to be done. Its procedural aspects are applicable to all enterprises for the settlement of industrial disputes.

On a closer view of the labour laws in India indicate that mostly the workers who are employed in the organized sectors of the economy are protected under the various labour legislations. According to the Fifth Economic Census of 1999, it was revealed that more than 97 per cent of the enterprises employ less than ten workers, and most of these employ less than five workers. This clearly shows that labour laws apply to less than 3 per cent of enterprises.

Further, the acceleration of in formalization of the workforce with the onset of liberalization has changed the formal sector also in terms of shifting the jobs from formal to the informal sector and along with it in formalization of jobs. Today, in the formal sector, a number of formal workers are about 33.7 million and informal workers about 28.9 million (2004-05). Increase in the employment (in whatever amount) in the formal sector has largely been informal in nature. Which in turn has been reflected on the trade bargaining?

## Agreements for collective bargaining

In India, Following types of agreements are prevalent for collective bargaining:

- Bipartite agreement: These agreements usually result into voluntary negotiations between the employer and employees and are usually binding per se.
- Settlements: Settlements usually arise out of the conciliation process and they are usually tripartite in nature as they involve three parties which are employer, employee and conciliation officer.
- Consent awards: When the parties reach an agreement while the dispute between them is pending before the adjudicatory body. Such

agreements are incorporated in authority's award and are binding on the parties under the dispute.

## Conclusion

Trade Union Act of 1926 is welfare legislation that has been enacted to protect the workers in the organized and unorganized sector from inhuman treatment and protection of their human rights. As such the legislation contains the provisions for registration, regulation, benefits, and protection for trade unions. Thereby, benefitting the workers.

Trade unions are important organs for the democratic development of any country as it puts up the needs and demands of the workers by collective bargaining. Collective bargaining is an important aspect of the employer-employee relationship. However, collective bargaining is not provided to all the trade unions but is only provided to those trade unions which are recognized. Therefore, the demand for mandatory recognition of trade union which has not been provided under the Trade Union Act 1926 has been raised time and again by the workers. Today, the growth of media has resulted in the empowerment of trade unions and they have turned into influential pressure groups not only in industrial sectors but also in agricultural and other allied sectors.

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