

# HR Disciplines

## TRADE UNIONS ACT AND STATE LAWS PROVIDE LEGAL PROTECTIONS TO TRADE UNIONS IN INDIA

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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 labour 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 labour 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 labour unions in the current sense.

The Madras Labour Union, set up in 1918, is considered the first trade union in India to be formed systematically. Since then, the labour union movement has spread to almost all industrial centres 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 Labour 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 labour 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 Labour 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 non-statutory 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 labour 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)).

A registered trade union assumes more importance because other labour laws such as the Industrial Disputes Act, 1947 (IDA), and the Industrial Employment (Standing Orders) Act, 1946 (IESOA), define a labour 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 Labour 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 labour 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 labour practice" as provided under the IDA and would be punishable with imprisonment and/or a fine (see Section 25-U of the IDA).

### **Unfair Labour Practices**

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