

AN ANALYTICAL STUDY OF RECENT TRENDS IN TRADE UNIONISM

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The present phase of globalisation is marked by the introduction of the new economic policy in India in July, 1991. It resulted into the emergence of the state with an investor-friendly face, pro-employer posture and reduced role in industrial relations. Public sector which had been happy hunting ground of the trade unionists had now fallen from commanding heights and public employment has become scarce. At present the market in India, as in many other countries, is going through an uneasy phase of recession.¹

Introduction

The new emerging economic environment revolves around the concepts of liberalisation, privatisation, globalisation, flexibility and reorganisation of work, along with stiff economic competitiveness and free interplay of market forces at national and international levels. This phenomenon saw increasing linkages between markets across countries and across regions as result of which workers and enterprise in the remote rural areas of the developing countries were affected.²

The last few years have witnessed much advancement in labour and employment practices in India, especially in the fields of trade unions, telecommunicating and contract labour regulation among others. The growth and development of trade unions has been a major factor in changing the labour scenario and the trade union movement has leapfrogged from the periphery to the centre-stage in a remarkable manner thereby affecting the decision-making of potential investors. Similarly, the telecommunicating practice, even though in its embryonic stage in India, has been rapidly gaining momentum and is definitely an example of adaptation of the 'best from the west'. While some feel that there is still a long way to go before telecommuting is widely accepted, others believe that it has the potential of altering the pattern of urbanisation in India.³

In India, trade unionism is over a century old. Although Mahatma Gandhi advocated trusteeship based trade unionism, it did not emerge that way in India, where the twin aspects of the Indian trade union movement, labour organisations for industrial bargaining and its ideological orientation and heavily patronised by the political parties. The first four

¹ Mukherjee Debabrata, Globalisation and Trade-Unionism in India Today

² Bhangoo Kesar Singh, Trade Unions in Globalised Economy of India, IJIR, Vol. 41 No. 4, April 2006, p.398

³ Supra note 2

decades in the post-independence pre-liberalisation period were marked by a social cohesion between the state and the trade unions to improve the conditions of the working class. The arm of the state was in favour of the working class. However, the economic reform process has led to a pro-management environment, weakening the labour class.

1. Constitutional Provisions and Trade Unions

With respect to the liberties of individual workers and trade unions, the most significant rights are those enumerated in Article 19(1) which includes the 'freedom of speech and expression', the 'freedom to assemble peacefully without arms', the 'right to form associations or unions' and the 'freedom to pursue a livelihood'. While 'freedom of speech and expression' is usually understood as a guarantee against the curtailment of citizens' rights by the State, it is also possible to describe the methods adopted by trade unions such as demonstrations, picketing and strikes as forms of expression which can be subjected to 'reasonable restrictions' by the State.⁴

Right to demonstrate: The question of the 'right to demonstrate' can be understood both in light of Article 19(1) (a) as well as Article 19(1) (c) in the Indian context. At one level the right to demonstrate can be understood as a form of expression since it draws attention to the grievances of workers and can facilitate 'collective bargaining' with the employers. Peaceful and orderly demonstrations enable workers to effectively communicate their demands not only to the employers but also to governmental agencies as well as the general public. The right to demonstrate can also be viewed as part of the 'right to form associations or unions' since such activities aid unionisation by way of drawing more members into the fold of the agitating union. Quite clearly, the government is within its powers to impose restraints on demonstrations, picketing and strikes with respect to the grounds enumerated in Article 19(2), 19(3) and 19(4).

It is quite understandable that for a demonstration to be effective it ordinarily has to be conducted in close proximity to the workplace. In *Kannan v. Superintendent of Police Cannanore*,⁵ it was observed that a lawful demonstration or 'satyagraha' would lose all significance if workmen are asked to choose a place far away from the business premises of the employer. In *Kameshwar Prasad v. State of Bihar and Others*,⁶ it was observed that to ban every type of demonstration would be a breach of the freedom of expression. However, reasonable restrictions can be imposed to prevent such demonstrations as would cause breach of public tranquility. It must also be borne in mind that such activities can directly interfere with the employer's business, especially when the workplace is a location for commercial exchanges. For example, when employees' unions engage in picketing in a shopping area, they directly discourage potential customers thereby affecting the employers' business. In the context of a manufacturing unit, a demonstration conducted

⁴ Dr. B.R. Ambedkar Foundation lecture on Constitutional values and the promotion of labour welfare by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India (New Delhi – November 30, 2009)

⁵(1975) 1 LLJ 83 (Kerala HC)

⁶ (1962) 1 LLJ 294 (SC)

within working hours would obviously lead to loss of profits for the employers. Such a situation clearly involves a consideration of the employer's right to conduct and continue trade or business, which is constitutionally protected under Article 19(1) (g).

As far as the 'right to strike' is concerned, it should not be understood as an absolute right which is an extension of Article 19(1) (c) since it is subject to statutory controls. Section 22 of the Industrial Disputes Act, 1947 lays down a prohibition against strikes in public utility services, except in circumstances where statutory notice has been given.⁷ Section 23 of the same legislation prescribes a general prohibition of strikes in all industries, during the pendency of conciliation proceedings, arbitration or litigation between the workers and the management, concerning the issue at hand.

Right to form associations or unions: The 'right to form associations or unions' has several dimensions, such as an individual worker's right to join or leave an association, the freedom for a group of workers to organise and that of an existing trade union to expand its membership or dissolve itself. At the same time, the exercise of Article 19(1) rights by the workers' are to be scrutinised and balanced with their impact on the employer's right to conduct business or trade which is protected under Article 19(1) (g).

It was the Trade Unions Act, 1926 which was the first legislation to recognize the workers' right to organise and it immunised the office-bearers of trade unions from exposure to charges of 'criminal conspiracy' and civil liability that could arise as a result of collective action. The procedure for registration of unions and the grant of 'legal personality' was laid down to enable the exercise of the 'Right to form associations or unions'. However, a significant question which remains outside the statutory purview till date is that of how to ensure the 'recognition of unions' by employers. In order to ensure that workers' interests are protected and pursued where there is a 'multiplicity of unions' in the same establishment, it is desirable for the employer to engage with a union that is truly representative of the workforce.⁸

In industrial relations, it is a usual ploy for managements to follow a 'divide and rule' policy by conferring benefits on one union and extending 'step-motherly' treatment to others. The provision of basic facilities to unions can be seen as an essential limb of the 'right to form associations or unions' since the same enables unions to expand or 'unionise' further by enrolling more members. In the English decision in *Crouch v. The Post Office and Another*,⁹ it was held that a smaller union should not be denied facilities by an employer, since granting exclusive privileges to larger unions creates an environment where the leaders of the recognised union can dictate terms to the rest of the workforce. This problem can become magnified if the leaders of the recognised union are outsiders who are likely to push their own agenda at the expense of the legitimate interests of the workers. The

⁷ Section 22 (1), Industrial Disputes Act, 1947

⁸ Supra note 7

⁹ Colin Gonsalves, Ramesh Bhat and Francis Lewis, *Cases on Indian Labour Laws-Volume II* (New Delhi: Friedrich-Ebert-Stiftung, 1996) at p. 145-149

dilemma from the standpoint of an individual worker seems to be that even though it is desirable for an employer to recognise one representative union to ensure effective 'collective bargaining', there is also a need to ensure a level-playing field among unions in order to protect the diverse interests present in the workforce.¹⁰

In the past, there have been several legislative attempts such as In the Pre-Constitutional era, the recommendation of the Royal Commission on Labour (1929) for granting recognition to unions was sought to be implemented by the Trade Unions (Amendment) Act, 1947 which was never brought into force. Subsequently, the Trade Unions Bill introduced in Parliament in 1950 proposed a mechanism for recognition, but the bill lapsed. Another failed attempt was made in the form of the Trade Unions and Industrial Disputes (Amendment) Bill, 1988 which proposed the creation of industry-level bargaining councils whose membership would be proportionate to the relative strength of various trade unions to incorporate provisions for the recognition of unions, but barring the exception of a few State-level legislations, there is no central legislation which lays down definitive criterion for granting recognition to a union such as Some States have enacted law on the point such as the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 which provides for the recognition of trade unions for certain undertakings and confers certain rights and obligations upon recognised trade unions while at the same time conferring certain powers on unrecognised trade unions as well. In the absence of any Central legislation on the point, employers have traditionally refused to recognize trade unions mainly on five grounds:

- (i) Cases where office-bearers of the union were outsiders
- (ii) Trade Unions involved in political activities and with ex-employees and outsiders who are disapproved of by the management
- (iii) Unions that consist of only a small segment of the workforce in a particular industry and are hence unrepresentative
- (iv) Existence of several rival unions, i.e. the problem of 'multiplicity of unions'
- (v) Non-registration of Trade Unions under the Trade Unions Act, 1926.

The distinction between the fundamental right 'to form associations or unions' given by Article 19(1)(c), and the concomitant right to attain the objectives of forming such a union can be discussed in the matter of *All India Bank Employees Association v. National Industrial Tribunal*.¹¹ In this case, the appellant union had argued that they had a fundamental right to compel the employers (Banks) to disclose the status of 'undisclosed reserves' whose secrecy was protected by Section 34A of the Banking Companies Act, 1949. The employees' union argued that knowledge of these reserves was needed to make a case for better wages for the bank employees. It was argued that the attainment of the

¹⁰ Supra note 7

¹¹ AIR 1962 SC 17; (1961) 2 LLJ 385 (SC)

legitimate objectives of a union such as bargaining to ensure better wages was a constitutionally protected right under Article 19(1) (c). The Supreme Court rejected this contention and held that while the 'right to form unions' was constitutionally protected, the attainment of the union's objectives was a concomitant right, which could not be enforced by disregarding statutory provisions. In other words, workers have the constitutionally protected freedom to form a union, but no such right exists to compel the employer to recognise the union and engage in 'collective bargaining' with the same.

However, with the evolution of industrial jurisprudence, it is incumbent upon employers to ensure effective and genuine communications with the employees on the situation of the undertaking and about decisions which may affect their interests. This position is also in consonance with Article 43-A in the Directive Principles of State policy which emphasizes the need to secure the participation of workers in the management of undertakings. In *National Textile Workers' Union v. P.R. Ramakrishnan*,¹² the Supreme Court had relied on this provision to uphold the right of workers to be heard in the winding up proceedings of a company.

2. International Conventions and Recent Trends on Trade Unionism in India:

All human rights are universal, indivisible, interdependent and interrelated. However, some of these rights are of special importance for the workers. Major human rights documents like **Universal Declaration of Human Rights (1948)**, **International Covenant on Economic, Social and Cultural Rights (1966)**, **International Covenant on Civil and Political Rights (1966)**, **Convention on the Elimination of All Forms of Discrimination Against Women (1979)**, etc. contain a series of rights which can be termed as human rights of workers such as right to form trade union, right to work, right to humane conditions of work, right to equal pay for equal work, right to fair wage, right to decent living for workers and their families, right to equal opportunity for promotion subject to no consideration other than those of seniority and competence, right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays, etc.¹³

3. Liberalization and Impact of International Aspects in the Organized and Unorganized Sector

During 2001 the Labour movement celebrated 100 years of its existence in India. However, the ground realities show that in the years following India's independence, the Indian Trade Union Movement has remained stagnant, if not declining. Its activities have been more or less confined to the organized sector, more so to the public sector enterprises. Further the state ownership on the one hand and trade unions closeness to political parties made not only the unionization work but also made easier securing non productivity related financial benefits in the public sector establishments. With the onset of the liberalization

¹² AIR 1983 SC 75

¹³ Meenu Paul, Labour and Industrial Law

process that included disbanding of the public sector and the coalition form of government, the Indian Trade Union Movement capacity to influence political leadership in securing undue demands weakened, causing the labour movement to move from on stage of marginalization to the other. Since the focus of Indian Trade Union Movement was the workers in the organized sector, more so those employed in the government-owned establishments, the mass of workforce engaged in the unorganized sector remained not covered by the trade union movement.¹⁴

The labour laws in India do not make a distinction between the organized and unorganized sector, yet the resources of the government and trade unions are directed mainly towards this section of workforce. The real exploitation of the worker and his/her family takes place in the unorganized sector where unions are conspicuously absent. Of recent, the international pressure and the shift of workforce from the organized to the unorganized sector, etc., have generated renewed interest in the unorganized sector. The government has repeatedly made announcements about its intention to shift the focus of its activities towards workers in the unorganized sector.¹⁵

4. Globalization and its impact on Trade Unionism

The term globalization can be used in different contexts. The general usages of the term globalization can be interactions and interdependence among countries, integration of world economy, deterritorialisation etc. By synthesising all the above views globalization can be broadly defined as a process whereby there are social, cultural, technological exchanges across the border.¹⁶

The term globalization was first coined in 1980's. But even before this there were interactions among nations. But in the modern days globalization has touched all spheres of life such as economy, education, technology, cultural phenomenon, social aspects etc.¹⁷ The term "global village" is also frequently used to highlight the significance of globalization and with the advent of globalization and liberalization, there has been a major policy shift in India from import substitution to export-oriented growth and from a mixed economy to corporate-led economic growth. These policies of liberalization are meant to remove all barriers in all possible ways to exploit nature and human labour and to promote easy transfer and the centralization of ownership of natural resources and other means of production in corporate hands. Privatization of the public sector, the opening of the economy to foreign capital, liberalization of trade, the transfer of vast tracts of agriculture land to industrialists by uprooting hundreds of thousands of people, and efforts to amend the labour laws to make hiring and firing smoother and easier are all parts of the policies of liberalization.¹⁸

¹⁴ www.iariw.org. accessed on 19.10.2014

¹⁵ *ibid*

¹⁶ www.ilo.org. accessed on 18.10.2014

¹⁷ eujournal.org. accessed on 18.10.2014

¹⁸ *ibid*

5. Role of NGOs and their Effect towards Trade Unionism

NGO's are important partners and collaborators of government. The partnership should not be symbolic and ritualistic but one that flows naturally and easily from both sides. There should be an open-minded dialogue between the government and non-governmental organisations to plan out a strategy and methodology of partnership.¹⁹

Non-governmental organizations may play an important role in the enforcement of the laws. They can provide assistance to the government by supplementing and complementing governmental action in areas of social concern.

The role of trade unions in the era of globalization should be to protect and provide assistance to workers to the extent of entire basic material and other requirements of human dignity including human rights, eradication of poverty. But it has been observed in the recent time that NGO's have stepped in where trade unions have proved unsuccessful. Even there are cases where public spirited citizens had to step in.²⁰

Non-governmental organisations and trade unions are different and have roles that competent each other but they should not stop at their differences but start with their complementarities. NGOs and trade unions need to identify their good and bad practices and set up joint activities on all grounds of discrimination and on strategic proposals. Similarly it is essential for both to work together with the national equality bodies at local, regional and national level.²¹

An efficient way of making antidiscrimination rights effective is litigation. Although NGOs and trade unions are often best placed to initiate complaints of discrimination, they are very often not able to do so because they lack human or financial resources. Also, in order to be able to litigate, both NGOs and trade unions must have legal standing, the right to initiate a law suit in court.²²

In addition to initiating and supporting individual complaints in court, trade unions and NGOs can make use of other procedural tools to advance non-discrimination rights, such as collective action and class action. In order to help clarify concepts deriving from anti discrimination law, trade unions and NGOs should also become more strategic in their casework and cooperate on strategic litigation.²³

Conclusion

With the rise in informalisation of the workforce in India, workers are increasingly realizing from their own experiences that only by forming trade unions and compelling

¹⁹ Mishra Lakshnidhar, (2000); Child Labour in India, Oxford University Press, Delhi, p. 271

²⁰ *ibid*

²¹ www.globallabour.info. Accessed on 18.10.2014

²² *ibid*

²³ *ibid*

factory management to provide space for collective bargaining they can convert informal employment to formal employment and insure better wages and working conditions.

In this environment, a new wave in the labour movement in India is emerging from below for unionization. All demands of regularization of the workforce and better wages are now always linked with the larger issue of the formation of a trade union and its recognition. This is also reflected in the rise of independent trade unions in India.

On the other hand, industrialists are not ready to accept trade unions in their factories. They are unleashing unimaginable repression on workers and trade union leaders when the efforts to form trade unions are uncovered in their factories. Even after the trade unions are formed, managements are not ready to recognize them and deny them space for collective bargaining. Trade union leaders and workers associated with them are facing intense and large scale of victimization by managements. Multinationals seems to be at the forefront in exercising repression of trade unions and their members.

It is clear that the entire machinery of government, the labour departments and police are largely acting in favour of managements and against the workers.

In such an environment, only the united action of trade unions in different industrial centres can guarantee the security of trade union leaders and success of the workers struggles in individual factories. Therefore, from their own experience, the trade unions in different industrial centres are forming joint trade union committees and councils. There are such joint committees and councils in Gurgaon, Faridabad and Rudrapur-Pantnagar of Uttaranchal and other manufacturing centres.²⁴ These joint trade union committees ensure collective protest of workers in the entire industrial -region when the workers or trade union leaders of any individual factory face any kind of repression or victimization.

²⁴ *ibid*