

“Critical Analysis of working of Trade Unions and their Co-relation with Works Councils”

Anuragsheel Gupta
School of Law,
CHRIST (Deemed to be university)

Abstract

A trade union is an association of workers forming a legal unit or legal personhood, usually called a "bargaining unit", which acts as bargaining agent and legal representative for a unit of employees in all matters of law or right arising from or in the administration of a collective agreement. works councils are committees of labour representatives within companies which consult with management and may even have certain decision-making powers. These two bodies can be seen to work in complement with each other in some countries but an independence in their working can be seen in others. Both these bodies have very different yet complementing functions. Every country has its individual system and the way these bodies work. Trade Unions are in place to collectively bargain and try to get the employer to agree to the demands of the workmen whereas the Works Councils on the other hand, try to represent the interests of the employees from within the management and maintain harmonious labour relations. This paper tries to analyse the role of both these bodies, their working, advantages and disadvantages and importance in safeguarding the interests of the workmen/employees. Further, this paper compares the structure of workmen representation in various countries and come to the conclusion as to which is a better body. Henceforth, the paper would then come up with the ideal way these bodies should work for the best safekeeping of the interests of the workmen.

Keywords

Bargaining, management, trade unions, workmen, labour legislation, industrial dispute, works councils

1. TRADE UNIONS

Trade unions or syndicates are employers' associations from related fields that advocate for their members' common interests.¹ They support workers in matters such as fair pay, a good working environment, working hours and benefits. They are a group of employees and a bridge between the management and the employees. The purpose of these unions is to discuss the disputes of the workers and to provide a collective voice to the administration. It therefore acts as a communication medium between employees and management. Certain basic roles of these unions include: management of ties, resolution of complaints, raising new demands on behalf of workers, collective bargaining and negotiations. The Indian Trade Union Act of 1926 is the main act that controls and governs the trade union system. Political lines and

¹ George Anderson, *Trade Unions*, The Annals of the American Academy of Political and Social Science, Vol. 158, An Economic Survey of Australia (Nov., 1931), pp. 148-155.

philosophies shape trade union movements in India.² This is why political parties today form and run such unions.

2. HISTORY OF TRADE UNIONS

The roots of the trade unions can be traced back to the 18th century in England, where women, children, rural workers and immigrants were drawn in large numbers and into new roles as the rapid expansion of industrial society then took place. In their early life, employees and government organisations faced extreme hostility; unions and unionists were routinely charged under various restrictions of corporate and conspiracy statutes. This unqualified and semi-skilled workforce was spontaneously mobilized and started at its beginning and would be later an important area of trade union growth. Trade unions have been frequently regarded as successors to the Medieval Europe guilds, but there is a dispute between the two since masters of guilds employed workers (apprentices and travellers) who were not allowed to organize.³

Trade unions and collective agreements were banned from the middle of the 14th century at the time when the Ordinance of Laborers had been enacted in the Kingdom of England but their way of thinking was the one which has been throughout the centuries. With the start of the Industrial Revolution, collective bargaining and early working-class organization developed, the government began to fight what it saw as the danger of common rebellion in the times of the Napoleonic War. In 1799 the Combination Act was passed, which banned British workers' trade unions and collective bargaining. Although the unions were repressed until 1824 often severely, they were already common in towns like London. Militancy at the workplace was also portrayed as Luddism and was popular in war, such as the 1820 Rising in Scotland where 60,000 workers went on a general strike which was soon crushed. Sympathies for the labouring conditions led to the abolition of the acts in 1824, although the 1825 Combination Act severely restricted their activity.⁴

In the 1810s, the first workers' unions were established, bringing together employees from different jobs. The General Union of Trades, known as the Philanthropic Society, founded in Manchester in 1818 was probably the first such union. The latter name was to hide the real intent of the association at a time when trade unions were still illegal.

2.1.NATIONAL GENERAL UNIONS

In the 1820s and 30s, the first attempts were made to establish a national general union. In 1830 John Doherty founded the National Association for the Protection of Labor after an

² N. R. Sheth, *Trade Unions in India—A Sociological Approach*, Sociological Bulletin, Vol. 17, No. 1 (March 1968), pp. 5-18.

³ *Legal History of Trade Unions*, Virginia Law Review, Vol. 6, No. 1 (Oct., 1919), pp. 47-53

⁴ V. Henry Rothschild, 2nd, *Government Regulation of Trade Unions in Great Britain: I*, Columbia Law Review, Vol. 38, No. 1 (Jan., 1938), pp. 1-48.

initially unsuccessful attempt to establish a similar national presence together with the National Union of Cotton Spinners. The Association soon registered about 150 trade unions, consisting mainly of textile affiliated unions but also mechanics, blacksmiths and other organisations. The number of people throughout Lancashire, Cheshire, Derbyshire, Nottinghamshire and Leicestershire rose to between 10,000 and 20,000 in one year.

In 1834 the Welsh socialist Robert Owen formed the Grand National Consolidated Trades Union to create awareness and legitimacy. The union published a weekly Voice of the Residents newsletter, which proclaimed its goal "to unite the active classes of the society in a common union bond." The group, which included a number of socialists from Owen to anarchists, took part in the demonstrations following the case of the Tolpuddle Martyrs, but soon collapsed.

More prosperous, often less militant, trade unions were established in the 1850s. Founded in 1860, the London Trades Council and the Sheffield Outrages led to the creation of the Trades Union Convention, the first long-lived national trade union centre, in 1868. At that time, the presence and demands of the syndicates were acknowledged by the moderate middle class opinion.⁵

2.2.LEGALIZATION AND EXPANSION

Trade unions were finally legalized in 1872, after a Royal Commission on Trade Unions in 1867 agreed that the establishment of the organizations was to the advantage of both employers and employees. This period also saw the growth of trade unions in other industrializing countries, especially the United States, Germany and France.⁶

In the United States, the first effective nationwide labour organization was the Knights of Labour, in 1869, which began to grow after 1880. Legalization occurred slowly as a result of a series of court decisions. The Federation of Organized Trades and Labour Unions began in 1881 as a federation of different unions that did not directly enrol workers. In 1886, it became known as the American Federation of Labour or AFL.

In Germany the Free Association of German Trade Unions was formed in 1897 after the conservative Anti-Socialist Laws of Chancellor Otto von Bismarck were repealed.

In France, labour organization was illegal until 1884. The Bourse du Travail was founded in 1887 and merged with the Fédération nationale des syndicats (National Federation of Trade Unions) in 1895 to form the General Confederation of Labour (France).

⁵ V. Henry Rothschild, 2nd, *Government Regulation of Trade Unions in Great Britain: II*, Columbia Law Review, Vol. 38, No. 8 (Dec., 1938), pp. 1335-1392.

⁶ TERI L. CARAWAY, *PATHWAYS OF DOMINANCE AND DISPLACEMENT: The Varying Fates of Legacy Unions in New Democracies*, World Politics, Vol. 64, No. 2 (April 2012), pp. 278-305.

In India, trade Unions are registered and file annual returns under the Trade Union Act (1926). According to provisional statistics from the Ministry of Labour, trade unions had a combined membership of 24,601,589 in 2002. As of 2008, there are 11 Central Trade Union Organisations (CTUO) recognized by the Ministry of Labour. The forming of these unions was a big deal in India. It led to a big push for more regulatory laws which gave workers a lot more power.

3. DISADVANTAGES OF TRADE UNIONS

If labour markets are competitive, and trade unions are successful in pushing for higher wages, it can cause disequilibrium unemployment. Union members can benefit from higher wages, but outside the union, there will be higher unemployment.

It is also argued that if unions are very powerful and disruptive, it can discourage firms from investing and creating employment in the jobs. If firms fear frequent strikes and a non-cooperative union, they may prefer to invest in another country with better labour relations. For example, in the 1970s, the UK experienced widespread industrial unrest and this is cited as a factor behind the UK's relative decline.

Trades unions only consider the needs of its members, they often ignore the plight of those excluded from the labour markets, e.g. the unemployed. If unions go on strike and work unproductively (work to rule) it can lead to lost sales and output. Therefore their company may go out of business and be unable to employ workers at all. In many industries, trade unions have created a situation of a confrontational approach.⁷

4. WORK COUNCILS

Work Councils of labour-related members in businesses that work with management and may even have some decision-making powers are an important feature in European labour-management ties. They take a number of forms, but they are generally regarded as representative bodies that communicate worker desires and concerns. Work Councils have codetermination powers with management in certain areas of corporate policy in their strongest form. In the broader context, works councils have been conventionally credited with minimizing labour disputes and fostering harmonious working practices, especially on organizational changes. Works Councils are an important characteristic of European labour relations and works councils are labour representatives' committees within companies which consult management and which may also have certain power of decision-making. They take a number of forms, but they are generally seen as democratic bodies that give voice to workers

⁷ Srivastava, Mitali, Trade Unions: A Legal Succor to the Deprived Masses or a Travesty of Social Compulsions? (September 26, 2011). Available at SSRN: <https://ssrn.com/abstract=2149893> or <http://dx.doi.org/10.2139/ssrn.2149893>

' interests and concerns. Work Councils in their strongest form have codetermination rights in some aspects of corporate policy. In a broader context, works councils are historically credited with reducing labour disputes and promoting harmonious work practices, especially in relation to job changes.⁸

According to the laws of the European Union since the mid-1990s, large multinational corporations in EU countries must usually be responsible for funding transnational committees or so-called European Works Councils, which bring together members of the staff of each organization in their respective countries.

Work Councils across Europe are usually independent and do not require wage negotiations, although measures taken in works councils will supplement collective bargaining efforts. Constitutionally, work councils ought to be constitutionally independent of industrial labour, establishing, at least symbolically, a dual labour structure. Across theory, syndicates should deal with issues such as wages and hours, while business councils deal with issues such as working conditions, safety and health and general policy communications. In fact, however, high percentages of workers who are members of work councils are also involved in trade unions (approaching three-quarters according to one study), and the interests of the two labour organizations are closely aligned.

5. GERMANY: WORK COUNCIL MODEL

Works councils have always been strongest in Germany. German industrial unions were first legally recognized in 1918 and works councils in 1920 under the Works Councils Act. After World War II, the legal foundation for works councils was re-established by the Works Constitution Acts of 1952 and 1972.

The 1972 act required all German firms with five or more permanent employees to set up a works council, although not all companies did in practice. Typically, councils were structured on a plant or facility basis. The number of the council members and their exact powers is determined by the size of the company. Council members served four years and all corporate elections were held simultaneously across the region. In addition, the works council operations were funded and carried out on company time.

The law also defined fields of workplace legislative, where boards have codetermination rights— the power to veto corporate policies proposed. If the council did not accept a management plan, a special committee consisting of an equal number of employees and managers would settle the issue. Eventually, it could be referred to a special labour court if the matter could not be resolved internally. The areas where works councils have codetermination powers included working hours (e.g. hours of work, overtime, leave), health

⁸ Steffen Mueller, *Works Councils and Establishment Productivity*, ILR Review, Vol. 65, No. 4 (October 2012), pp. 880-898.

and security and monitoring and assessment of results. Councils also had fewer rights in other policy areas (right of consent, right of consultation).⁹

At the same time, works councils were encouraged to assist them in cooperating with management to reach mutually beneficial disagreement solutions. For example, larger works councils formed economic commissions which regularly received management briefings and information on the sales, investment plans, marketing and other strategic concerns of the company. The councils had to keep this information confidential but used it to inform their position on company policy. In theory, if the data showed the company was in danger of losing money, board members would appreciate the reforms or other changes in management. Works councils were sometimes seen as a moderating influence on labour unions in this role.¹⁰

6. A COMPARISON OF INDIAN AND GERMAN MODEL: RECOMMENDATIONS

In India, under the Industrial Disputes Act, 1947, every establishment employing 100 or more workers is required to constitute a works committee. Such a committee consists of equal number of representatives from the employer and the employees. The main purpose of this committee is to provide measures for securing and preserving amity and good relations between the employer and the employees.¹¹ The Work Committees in India are relatively similar to the actual Councils in Germany but the powers and working is absent. They aren't able to work as a separate entity and thus are technically powerless and irrelevant. The Committees need to be more independent and that can help the Employers and Employees come to a peaceful outcome without strikes and lockdowns which cause loses to the industry. Further having more powerful Work Committees in India would help reduce the mischief caused by trade unions and keep them in check. Having the Work Committees actually work would eliminate the need for creating a stronghold by the trade unions and there could be peaceful collective bargaining that would actually concur with the premise of labour laws.

Therefore, analysing the German Model, it is clear that India needs to change the way the powers are given to the Work Committees in India and make them more independent in order to make them more effective. This would lead to reduction in the politicization of trade unions and them trying to put force on the employers to get their demands fulfilled. Further, if there is a stronger Works Committee and it works in correspondence with trade unions and employers, the demands and needs could be put across in a far more efficient way and make the labour laws in India thrive.

⁹ *Supra* note 8.

¹⁰ Martin Behrens, *Still Married after All These Years? Union Organizing and the Role of Works Councils in German Industrial Relations*, ILR Review, Vol. 62, No. 3 (Apr., 2009), pp. 275-293.

¹¹ G. C. Rath, D. V. Giri and S. C. Parida, *Industrial Relations in Orissa*, Indian Journal of Industrial Relations, Vol. 27, No. 2 (Oct., 1991), pp. 43-51.