

Book Review

Commentary On Trade Unions Act, 1926

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Trade Union movement started as a fallout of the industrial revolution, which, introduced machinery to do the tasks which were being done by men. One of the drawbacks of industrialization was that it divorced the Proletarian worker from the owner Bourgeois. The capital owned Bourgeois exploited the working class and the State intervened by enacting the various labour and factory legislations to regulate the employer-employee relations and to bring harmony in the working of the industrial undertakings. The Trade Unions Act was passed in 1926 and this gave legal recognition to registered trade unions. The Trade Unions Act was amended in 2001 with a view to reducing multiplicity of trade unions, promoting internal democracy and facilitating orderly growth and regulation of trade unions.

COMMENTARY ON TRADE UNIONS ACT, 1926, edited by Shri S.Krishnamurthi presents an analysis of the Trade Unions Act in India in a simplified form, offering a clear understanding of the subject to the employer and the employee communities and to the lay citizens beside the legal fraternity. The book under review has been published by Commercial Law Publishers (India) Private Limited, 151, Rajindra Market, Delhi - 110 054. The editor of the book has stated in the preface that the book explains the law in a narrative form in the light of the decisions of the High Courts and the Supreme Court of India. The publisher has stated that the book has been written in a simple and lucid style as a guide meant for both the layman and the law man that will prove to be a useful referencer to the Trade Union people as well as those who administer trade unions.

The contents of the book are divided into eight chapters. The first chapter introduces the trade union movement. The 2nd Chapter deals with the essential requirements of a trade union. It is only the registered trade union that is protected under the law. The law and procedure for registration of trade unions is covered in Chapter 3. The trade union is a corporate body and the management of the Union vests with the office bearers of the Union. The management of trade unions is the concern of Chapter 4. Collective bargaining is the substratum of trade union movement. But it is subject to certain restrictions. This aspect of the law is dealt with in Chapter 5. Where there is multiplicity of unions, the employer recognizes one among them for holding discussions. The State Governments have enacted the provisions for recognition of trade unions, which are dealt with in Chapter 6. The powers of the trade unions is dealt in Chapter 7. The last Chapter deals with the Administrative machinery under the Trade Unions Act. Apart from this, there is a Statutes part in which the Trade Unions Act, 1926 and the Rules and Regulations made by different States are appended. A Nominal Case Index and General subject Index is also annexed.

In Chapter 1, the author has highlighted the historical background of the Trade Unions Act. The origin of the movement for passing the Act in India was in 1920 on the Madras High Court

granting an interim injunction against the Strike Committee of the Madras Labour Union forbidding them from inducing certain workers to break their contract of employment by refusing to return to work. The right to form Union is now protected by the Constitution. In *All India Bank Employers' Association Vs National Industrial Tribunal (Bank Disputes)*, AIR 1962 SC 171, the Supreme Court held that the right guaranteed under Article 19(1)(c) of the Constitution extends to formation of an association and in so far as the activities of the association are concerned or as regards the steps which the Union might take to achieve the purposes of its creation they are subject to such laws as might be framed and the validity of such laws is not to be tested by reference to the criteria to be found in clause (4) of Article 19 of the Constitution. The author has discussed the importance and the legal framework relating to collective bargaining. The requirements of International Labour Organisation convention have also been analysed in this chapter.

In Chapter 2, the author has discussed the concepts of trade union, 'Workmen,' 'Industry' etc. There is a comparison of the term 'Industry' used in Trade Unions Act with the definition of 'Industry' in the Industrial Disputes Act. A number of cases has also been discussed in this Chapter.

In Chapter 3, the author has dealt with the registration of trade unions. The Trade Unions Act, 1926 provides for registration of trade union and in certain respects defines the law relating to registered trade unions. Being a person, a trade union can enforce its rights arising from and under the provisions of the Act as against a member (*All India Bank Officers Confederation Vs Dhanalakshmi Bank Ltd.*, (1997) 3 Comp.LJ 132 CLB). The benefits of registration, mode of registration, major requirements for registration have also been discussed with reference to various case laws. Discussion on the consequences of registration and the effect of cancellation or withdrawal of registration of trade union also find a place in this Chapter. A model application for registration of trade union has also been appended at the end of this Chapter.

In Chapter 4, the author has discussed the management aspects of trade unions. A detailed discussion on qualifications, disqualifications, status of office bearers, members etc., also find a place in this Chapter. Topics like duties of trade unions, unfair labour practice, victimisation of office bearers and internal disputes of trade unions are also covered in this chapter. Important forms are appended at the end of this chapter. An office bearer cannot under the guise of trade union activities try to blackmail or coerce the employer to act according to his dictates or threaten to do physical harm to the officers or co-employees and still claim privilege. Such acts would amount to unfair labour practice being not allowing the employer to exercise his managerial right in relation to service conditions or management of Industry.

In the 5th Chapter, the author has emphasised the rights and privileges of trade unions. The topic of immunity of trade unions and their leaders from criminal, civil and tortious liabilities also find a place in this chapter. This chapter also covers the requirements for settling trade disputes. Sabotage is not a weapon in a worker's legal armoury. The following observations express the anguish of the court in this regard.

"Developing countries can ill afford fatal assaults on their infantile industrial projects. Whatever be the grievance of the labour and however vigorous be the ventilation of such grievances, there cannot be any doubt that assault and attack on the managerial personnel cannot be condoned or compromised with. While the management has to abandon arbitrary deals, the labour has to

eschew mischievous violence. Discipline in an establishment has to be preserved at all costs; almost like the apple of the eye. Violence, crude violence directed against the top managerial personnel would be the swan song of industrial peace. No worker can embrace violence as a motto of grievance redressal." (Rohtas Industries Vs Its Union, AIR 1976 SC 425).

Section 18 or any other provision of the Act cannot come in the way of the court exercising its constitutional powers like writs. A writ petition would be maintainable against the operations of trade unions in the field of public duty. (Bharat Petroleum Corporation Ltd. Vs Bharat Petroleum Employees Union). It is true that the right to carry on agitational activities like holding demonstrations and dharnas are considered to be a part of employees' rights. However, one cannot be oblivious of the fact that after all banks especially public sector banks, are established for rendering banking services to the society at large in general and to their customers in particular. If bank employees are permitted to carry on agitational activities like shouting slogans, dharnas etc within branches/ office premises of the bank, the banking operations would be disrupted even if they do not come to a stand still. (Central Bank of India Vs Central Bank Officers Association- 1998 1 CLR 597).

In the sixth chapter, the author has discussed the recognition of a trade union. There is no provision in the Act relating to the recognition of the union by the management. The right to form an association under the constitution does not carry with it the right of recognition by the management. A trade union does not automatically get a right of recognition from the authorities. Recognition of a union is a policy matter and the court would not interfere. But the Court would see that whatever policy the management adopts is adopted after due and fair regard to all the conflicting interests. The author has also discussed the topics of recognition of trade unions through secret ballot, code of discipline and criteria for recognition of a trade union and the procedure for determination of relative strengths of unions operating in an establishment under secret ballot. The author has also discussed elaborately the case law on the proof of substantial representation of the members of trade unions.

In Chapter 7, the powers of trade unions have been discussed. The creation of general fund, funds for political purposes, object of funds, audit of accounts, income tax exemption to the trade unions and amalgamation, dissolution etc. of trade unions are discussed in this chapter.

In the last chapter, the author has discussed the topic of the administrative machinery in respect of trade unions. The Trade Unions Act, 1926 and the Rules and Regulations of different States have been appended in the Statutes pages.

The book is priced Rs.350/-. It provides a valuable source of reference for those interested in the subject of trade unions.

"The nuts and bolts of lending money," he said, "is getting it back. And that still depends upon human judgement."

— WRISTON, Walter, as quoted in "Inside Citicorp,"
by Robert A. Bennett, *The New York Times Magazine*, May 29, 1983, p. 46

A liberal is one who won't even take his own side in a quarrel.

— *FARNSWORTH, Arthur, October 22, 1977,
quoting a conversation with Robert Frost*

Law of Affidavits

By Shri P.S. Narayanan

Published by Asia Law House, Opposite High Court,

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An affidavit is normally understood to be statement in writing swearing to the facts before a competent authority to administer an oath. Affidavits can be accepted by courts in support of interlocutory applications of substantive nature.

The contents at a glance of Shri P.S. Narayana's Law of Affidavits, creates interest as the courts of law except in case of original petitions, verified petitions, all interlocutory applications are supported by affidavits. An affidavit per se does not become evidence in the Court in Suits. In this book the Law relating to affidavits is discussed in detail under different chapters like preliminary, Affidavits under Code of Civil Procedure, Affidavits in Criminal Proceedings, Affidavits under Contempt of Courts, Affidavits under Representation of Peoples Act and also Affidavits under different enactments.

The Author has discussed the essential ingredient of the affidavit with the help of the case law. The expression 'Affidavit' has been commonly understood to mean a sworn statement in writing made especially under oath or on affirmation before an authorised Magistrate or officer. Affidavit has been defined in sub-clause (3) of Section 3 of the General Clauses Act, 1897 to include 'affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing'. The essential ingredients of an affidavit are that the statements or declarations are made by the deponent relevant to subject matter and in order to add sanctity to it, he swears or affirms the truth of the statements made in the presence of a person who in law is authorised either to administer oath or to accept the affirmation. The responsibility for making precise and accurate statements in affidavit were emphasised by the Supreme Court in *Krishnon Chander Nayar vs. Chairman, Central Tractor Organisation* (AIR 1962 SC 602). The part or the role assigned to the person entitled to administer oath is no less sacrosanct. Section 3 of the Oaths Act, 1969 specifies persons on whom the power to administer oath or record affirmation is conferred. It inter alia includes 'any court, judge, Magistrate or person who may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf (a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or (b) by the State Government, in respect of other affidavits'. The schedule to the Act prescribes forms of oaths or affirmation that is required to be administered to the party seeking to make his own affidavit. Rule 40 of the Civil Rules of Practice framed by the Andhra Pradesh high Court provides that 'the officer before whom an affidavit is taken, and sign his name and description at the end, as in Form No. 14, otherwise the same shall not be filed or read in any matter without the leave of the Court. Form

No. 14 prescribes the form of affidavit on solemn affirmation. It requires a solemn affirmation or oath before the person authorised to administer the same and then at the foot of which the signature of the deponent must appear and below that the officer entitled to administer oath must put his signature in token of both that he administered the oath and that deponent signed in his presence and by his attestation he has subscribed to both the aspects. Rule 34 of the aforementioned rules sets out officers authorised to administer oath for the purpose of affidavits and an Advocate or Pleader other than the Advocate or Pleader who has been engaged in such a proceeding have been included in the list of officers authorised to administer oath. The appellant as an advocate enrolled by the State Bar Council was thus authorised to administer oath for the purpose of an affidavit and attest the same.

The book contains various kinds of moral forms to be used on each occasion and also before the court/authority including detailed case law on the subject. The book contains 599 pages and priced at Rs. 350-.

As knowledge of Law of Affidavits is very important and essential to Advocates/Bar, Bench and also public, the book provides a good insight and creates an interest in the reader to know the intrinsic value of affidavits used on various occasions in court proceedings.