

UNIONISATION, COLLECTIVE BARGAINING AND WORKING WOMEN IN INDIA[†]

*Harish Chander**

I. INTRODUCTION

Trade unionism is essentially a product of factory system and is a counteraction to the capitalistic order of society. In the year 1800 trade unions were utterly illegal.¹ Any act of combining and organising themselves for trade union activities on the part of the workers was considered to be a criminal conspiracy punishable under the Combination Acts of 1799 and 1800 in Great Britain. Apart from criminal liability, the workers or union officials were also liable for damages in tort. However the socialist thinkers and particularly the Marxist ideology in the nineteenth century influenced the industrial society to realise that the workers should be given the right to organise themselves into trade unions. And for the first time in history the Trade Unions Act, 1871 recognised that the trade unions are legal bodies and enjoy immunities from criminal conspiracy and tortious liability under the law for resorting to industrial actions in furtherance of trade disputes. The British workers had to fight a long drawn out battle in the last quarter of the eighteenth and the nineteenth centuries. On the other hand Indian workers had not fought for trade union rights but struggled along with the national movement for independence.

The basic object of unionisation on the part of the workers is to secure better wages, conditions of work and terms of employment in every respect with the help of collective bargaining with the employers. Collective bargaining is crucial for the workers because individually the workers have no strength to bargain with the mighty employer. And in the process of collective bargaining, if need be, it is necessary to provide for the legality of strike and other industrial actions as weapons in the armoury of workers to put pressure on the employers to yield to accept their demands. It is for this purpose that the immunities from criminal conspiracy and from tortious liability are needed while workers resort to industrial actions in

* Professor, Law Center II, Faculty of Law, University of Delhi, Delhi.

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1. K.W. Wedderburn, *THE WORKER AND THE LAW* (Penguin Books, 1968) at 214.

furtherance of industrial disputes. In India the trade union officials and members are immune from criminal conspiracy under section 17 and trade unions, their officials and members are immune from tortious or civil liability for industrial actions in furtherance of industrial disputes under section 18 of the Trade Union Act, 1926. The object of this paper is to focus the concern on whether the law of trade unions and collective bargaining has been effective means of ameliorating the conditions of working women in organised and unorganised sectors in India.

II. THE CONCEPT OF COLLECTIVE BARGAINING

The origin of the term "collective bargaining" was for the first time used effectively by Sydney and Seatrice Webs in their famous book on the History of Trade Union Movement in Britain. The utility of the process of collective bargaining was emphasised by them as opposed to individual bargaining so that effective amelioration of the wages and conditions of the workers can be achieved.

The Geneva Convention of 1949 of the I.L.O. defined the process of collective bargaining as follows:

Negotiations between an employer, a group of employers or one or more of organizations of employers on the one hand, one or more representatives, organizations of workers on the other, with a view to reaching an agreement over working conditions and terms of employment.

Similarly H.D. and N.J. Marshalls define collective bargaining as "a method of making decision" or "method of resolving disputes by compromise" or a "method of adjusting to change" or a "struggle between parties with the outcome dependent on the relative strength to withstand a strike".

Thus, we find that in the process of collective bargaining between the employers and the unions for the resolution of industrial disputes strike and other industrial actions short of strike are the weapons essential for putting pressure on the employers so that there is a quick compromise between the unions and the employers. These industrial actions have the sanction of the law in the form of immunities from criminal conspiracy and tortious or civil liability of the unions, officials, and members under sections 17 and 18 of the Trade Unions Act, 1926. Thus, without proper unionisation and the process of collective bargaining it is very difficult to improve the conditions and wages and terms of employment of workers. So far in India in the organised sector there is sufficient unionisation however collective bargaining as a method for the resolution of industrial disputes is not extensively used. This is primarily because our system of

resolution of industrial disputes has become accustomed to the compulsory adjudication method provided under the Industrial Disputes Act, 1947. It would certainly be better if the employers and the unions do realise the importance of "collective bargaining" as a method for resolving disputes by negotiations or by voluntary arbitration in most of the cases.

III. WORKING WOMEN IN ORGANISED AND UNORGANISED SECTORS

According to rough estimates, about 20% of the total working force in the organised sector are women workers. About 40 to 45 % are the women workers of the total work force in the unorganised sector like construction workers and agriculture workers etc. In private sector even though there are unions but in many establishments and organizations women are paid less wages than the men workers. Equal pay for equal work is not strictly followed in the private sector. Moreover, it is observed that in many cases women workers are also sexually harassed by their colleagues, superiors or the employers inspite of the fact that the Supreme Court has laid down the guidelines for prevention of harassment to the women workers and the guidelines are mandatory to be followed by the organizations and establishments. It is submitted that in the organised sector because the union leadership is primarily in the hands of male union leaders who are not much bothered to improve the wages of women workers particularly in the private sector. It is therefore imperative that women workers, both in the public sector and private sector should have an important role to play in the union activities so that they could have effective and decisive say at least in the matters concerning women workers. If women workers would have effective say in the unions then in private sector women would be able to get equal pay for equal work. Moreover, once it is realised in organised sector that women are in fact united and have their say in union activities then there would be less harassment of women workers by their colleagues, superiors and the employers also.

As we know that without unionisation it is not possible to secure better wages, conditions of work and terms of employment. This is much more so in the case of women workers in the unorganised sector in a male dominated society in India. Precisely for this reason, the women workers in unorganised sector are paid less wages for manual work in the construction industry than men. It is observed that a male *baledar* gets more daily wage as compared to a woman coolie in construction industry. It has also been observed that because of no unionisation in unorganised sectors in construction industry women workers are commonly harassed sexually by the contractor, or his agent before actually the payment is made to them for the work they have already performed. Therefore, it is imperative that there should be union of women workers in unorganised

sectors where it is the women leaders who should have decisive say in improving the wages, conditions of work and prevent their harassment by the contractors, their agents and superiors at work.

IV. CONCLUSION AND SUGGESTIONS

From the above discussion, it is amply clear that the condition of a lot of workers in general and women in particular cannot be improved without the women workers active union participation in organised industries. It is basically the collective strength of the women workers in the organised sectors that can secure them better wages, conditions of labour and terms of employment with collective bargaining with the employers. If the women workers are united then they are less likely to be harassed by the colleagues, superiors and their employers.

In unorganised sector atleast now the time has come that there should be unions of workers more particularly of the women workers. The task to organise unions of women workers is not an easy one because most of the women workers in unorganised sector are illiterate. The women in this sector are not conscious of their rights and their sad plight. For this it is suggested that some NGO's of women may provide for the leadership needed for the union activities. Even the Central Government and State Governments have to become alive to the problems of women workers in the unorganised sector.

It is submitted that in this respect the National Commission of Women and State Women's Commissions have to play a spearhead role along with the NGO's in organising unions and provide them with leadership for the union activities in the unorganised sectors. In this regard, it is also suggested that agriculture should be regarded as an industry and trade union of agriculture women workers should be permitted under the Trade Unions Act, 1926, to be registered under the said Act. Even in the organised sector there is a need for effective participation of women workers in the union activities. It is further suggested that the Trade Unions Act, 1926 should be suitably amended whereby 30% of the women workers and women outsiders should atleast be the Office bearers of Unions right up to the All India Federation of Unions.