

VOLUME V

ISSUE-IV



IILS QUEST

*A Quarterly Journal authored by IILS Students
Published in the IILS Website*

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INDIAN INSTITUTE OF LEGAL STUDIES

Accredited by NAAC

Affiliated to the University of North Bengal

Recognized by the Bar Council of India

Approved under Section 2(f) & 12B of the UGC Act, 1956

Dagapur, Siliguri, P.O.-Salbari, P.S.- Matigara, Dist- Darjeeling, West Bengal- 734002, India

Telephone: +91-353-2574013/ 2574697; Fax: +91-353-2574698

Mobile No.: +91- 97755- 09999

E-mail: iils.siliguri@gmail.Com; Website: www.iilsindia.com



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THE STUDENT JOURNAL

(2019)

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E-mail: iils.siliguri@gmail.com; Website: www.iilsindia.com

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MESSAGE
FROM THE CHAIRMAN'S DESK



The Indian Institute of Legal Studies is devoted to the all round development of its students and our quarterly journal "QUEST" happens to be the most exemplary manifestation of their persistent cognitive efforts. Over the years our students' journal has presented pertinent issues which not only pertain to the legal sphere but also bear the stamp of succinct social awareness. It is heart-warming to witness the burgeoning evolution of our students, who are attaining new heights of finesse with each passing day. Their ever enthusiastic creative spirit is testament to the fact that "QUEST" indeed has been successful in its quest to recognize and nourish the powerhouse of talent that is our beloved students.

I would like to congratulate all the students who have actively taken upon themselves the responsibility to turn "QUEST" into something which everyone looks forward to. We, on our end, pledge to arrange and implement everything conducive to the wholesome enlightenment of our students.

Joyjit Choudhury
Founder Chairman
Indian Institute of Legal Studies

MESSAGE
FROM THE REGISTRAR'S DESK



I take immense pride to record my views in the ‘ IILS Quest’, a students’ journal which is authored, edited and published by students of the college. This initiative provides a platform for the students to present their multivocal talent for all to witness and recognize. IILS QUEST is an extension of our collective objective of devoting ourselves for everything ‘of the students-by the students-for the students’. It not only aims at enhancing the writing skills of the students, but also awakens the shy embers of creative multiplicity and spirit of enterprise in them. This journal carries forward the contribution of the students thereby reflecting their ethos and aspirations. The articles, poems and photographs published here flaunt the poetic prowess, imagination, creativity, technical competence of our dear students teeming with talent. I congratulate my dear children and wish them all the success.

Sanjay Bhattacharjee
Registrar,
Indian Institute of Legal Studies

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ARTICLES



THE POWER OF APPELLATE COURT UNDER THE CRIMINAL PROCEDURE CODE, 1987



By Aditi Agarwal
Semester VII (5 Years) B.B.A., LL.B.

INTRODUCTION

The term “appeal” has not been defined in the code. According to the dictionary meaning, an appeal is a complaint or grievance to a superior court for reconsideration or review of a decision, verdict or sentence of a lower court. It has been said that every human being is fallible and a judge is not an exception. It is thus possible that even a judge may err or commit mistake and his decision may be wrong or faulty. Article 25 of the Constitution Of India guarantees life and liberty to every citizen, small or big, rich or poor, as one of the Fundamental Rights. It is therefore, necessary that a person aggrieved by an order of the court of the first instance may be able to challenge it by preferring an appeal. An appeal is a method of correction of manly error or solution of human frailty. (Section 372 – 394 of Cr.PC) deals with Appeals.

A right of Appeal is not a natural or inherent right. It is a statutory right and must be governed by the statute which grants it.

APPELLATE COURT

Section 386 of the Code of Criminal Procedure provides that, after perusing the records and hearing the appellant or his Pleader and the Public Prosecutor, the Appellate Court may dismiss the appeal, if it considers that there is no sufficient ground for interfering.

However, it may also pass any of the following five orders:

- i.** In an appeal from an order of acquittal, —it may reverse the order, and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass a sentence on him according to law.

- ii. It may, in an appeal from a conviction, —
 - (a) Reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court; or
 - (b) Alter the finding, whilst maintaining the sentence; or
 - (c) With or without altering the finding, alter the nature or the extent, or both, of the sentence, but not so as to enhance the same.
- iii. In an appeal for enhancement of the sentence, it may,—
 - (a) Reverse the finding and sentence, and acquit or discharge the accused or order him to be retried by a competent Court; or
 - (b) Alter the finding, whilst maintaining the sentence; or
 - (c) With or without altering the finding, alter the nature or the extent, or both, of the sentence, so as to enhance or reduce the same.
- iv. It may, in an appeal from any other order, —alter or reverse such order.
- v. It may make any amendment or any consequential or incidental order that may be just and proper.

However, it may be noted that a sentence cannot be enhanced, unless the accused is given an opportunity of showing cause against such enhancement. Moreover, an Appellate Court cannot inflict greater punishment for the offence which in its opinion the accused has committed, than the one which might have been inflicted on him for that offence by the Court passing the sentence which is under appeal¹.

The Privy Council has observed that in an appeal from an acquittal, the Court must keep in mind the following four matters:

- i. The views of the Trial Judge as to the credibility of the witnesses;
- ii. The presumption of innocence in favour of the accused, which presumption is, in no way, weakened by the fact that he has been acquitted at the trial;
- iii. The right of the accused to the benefit of any doubt; and
- iv. Hesitancy of an Appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. (Sheo Swarup, — A.I.R. 1934 P.C. 227)

It is interesting to note that there is no provision in the Criminal Procedure Code for withdrawal of an appeal which has once been admitted for hearing. Therefore, it is

¹*Someshwar savale, 17/2/2016, Powers of the Appellate Court under 386 of the Code of Criminal Procedure*
<http://www.shareyouessays.com/knowledge/powers-of-the-appellate-court-under-386-of-the-code-of-criminal-procedure/117973>

neither in the power of the Court, nor even of the appellant, to allow the appeal to be withdrawn. (Chhitar,—1956 Raj. 545)

POWERS AND DUTIES OF APPELLATE COURTS

An appellate court wherein an appeal of first instance lies having this prominent stature of entertaining such an appeal must have certain powers and duties which stands in consonance to its position. The same have been provided under the Code of Civil Procedure, 1908 in case of civil cases. The power of an appellate court ranges from powers such as power to decide a case finally which can be seemed as an obvious power. Other powers such as power to remand, power to frame issues and refer them for trial, power to take additional evidence and power to modify a decree are few such powers which the appellate court adheres while entertaining an appeal.

Dealing with its power and foremost power of deciding a case finally, it is a general rule under section 107(1) (a) of the Code that evidence on record is sufficient for the appellate court to pronounce the judgement and it is also held that a case should be disposed of on the evidence on record and should not be remanded on fresh evidence, except in rare cases.²

The power to remand is dealt with under section 107(b) which states in general that the appellate court can send back such case to the lower court to retry or reopen such case. But there must be some conditions precedent to be met with so that such a remand can be made. Firstly, the suit must have been disposed of by the trial court that means a lower court on a preliminary point. Secondly, the decree under appeal must have been reversed and thirdly, any other reason must exist, which has been widened its horizon by virtue of rule XXIII which says that the appellate court can remand a case even when lower court has disposed off the case otherwise than on a preliminary point and wherein the remand is considered of paramount importance for serving the interests of justice³.

The third power, that is the power to frame issues and refer them to trial is considered very important in the cases where the lower court has done abstinence in performing its functions of framing any issue or trying any issue or determining any question of fact which is essential to be determined for the suit to be disposed off on merits. In all these situations the appellate court has the power to frame issues for the lower court and may even while referring these for trial, fix any time limit as well. It is provided under section 107(1) (c).

Fourthly, it is the power of an appellate court to take additional evidence. Otherwise, what we call it a general rule is that the appellate court has to decide such appeal on the evidence given by parties at the lower courts. But this exception as provided under

²*Kausalya Devi Bogra v. Land Acquisition Officer (1984) 2 SCC 324*

³*Team @Law Times Journal, Powers and Duties of Appellate Court, August 28, 2017, <https://lawtimesjournal.in/powers-duties-appellate-court/>*

Section 107(1) (d) has three conditions which are to be fulfilled by the parties producing such additional evidence in the appellate court which are, firstly, that the person's seeking such an admission of additional evidence should be able to establish the reason as to why he could not produce it at first instance. Other condition is that the party affected by the admission of additional evidence should have an opportunity to rebut such additional evidence. Thirdly, the additional evidence must be relevant for determination of the issue.⁴

The last important power of an appellate court is the power to modify a decree. This power is a genuine yet discretionary power. It is quite apparent that in case wherein the decision is reversed in an appeal, the decree for the same reversed decision is passed by the appellate court. The provisions and procedure thereof of the same are dealt with under Rule XXXIII. The jurisprudential approach behind this provision is to enable rather empower appellate court to take the entire matter into its hand and imparts justice completely.

Where there exists power, it comes with responsibilities. There are also some duties conferred upon the appellate court. Since as we can analyse from the consent of the Code that the powers of the appellate court are not immune from the subject of scrutiny or in simple words, absolute. The duties which ranges from duty to decide the appeal fully to duty to not to interfere with a decree for technical errors along with duty to reappraise evidence and duty to record reasons keeps a check on control of powers of appellate court⁵.

Dealing with the duty to decide appeal finally, it is quite apparent that since the court has taken appeal to be heard and decided, the court has to give its judgement based on such appeal and the essential of making a judgment is application of judicial mind of a judge. Secondly the contents of section 99 provides that "to prevent from overcoming the ends of justice, and from operating as means of circuitry of litigation", a decree which is otherwise correct and based on merits should not be upset for technical reasons therefore it is the duty of the appellate court not to interfere with a decree for technical errors.

The duty to reappraise evidence by the appellate court provides that when an appellate court hears an appeal bearing the same powers as that of the court of original jurisdiction along with some additional power, the court after taking due care and caution can reappraise those evidences as it has been held in a case where a finding of a fact has been arrived at by the trial court by mainly appreciating oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of

⁴*N. Kamalam V. Ayyasamy (2001) 7 SCC 503*

⁵*Team @Law Times Journal, Powers and Duties of Appellate Court, August 28, 2017, <https://lawtimesjournal.in/powers-duties-appellate-court/>*

evidence is materially erroneous, contrary to well established principles or perverse⁶.

Lastly one of the important duties of an appellate court is the duty to record reasons. All other appellate courts other than a High Court have duty to record reason for its decision while it is even appreciable to do so. While Rule XXXI provides that there must be reasons in support of a judgement of an appellate court and such judgement, supported by reasons must be finally determining and concluding arriving at the findings of the court. Henceforth, all these above mentioned points and findings are the powers and duties of the appellate court which are endowed upon them for the paramount reason of meeting the interests of justice⁷.

CONCLUSION

The term “appeal” has not been defined in the code. According to the dictionary meaning, an appeal is a complaint or grievance to a superior court for reconsideration or review of a decision, verdict or sentence of a lower court. It has been said that every human being is fallible and a judge is not an exception. It is thus possible that even a judge may err or commit mistake and his decision may be wrong or faulty.

However, it may be noted that a sentence cannot be enhanced, unless the accused is given an opportunity of showing cause against such enhancement. Moreover, an Appellate Court cannot inflict greater punishment for the offence which in its opinion the accused has committed, than the one which might have been inflicted on him for that offence by the Court passing the sentence which is under appeal.

One of the important duties of an appellate court is the duty to record reasons. All other appellate courts other than a High Court have duty to record reason for its decision while it is even appreciable to do so. While Rule XXXI provides that there must be reasons in support of a judgement of an appellate court and such judgement, supported by reasons must be finally determining and concluding arriving at the findings of the court. Henceforth, all these above mentioned points and findings are the powers and duties of the appellate court which are endowed upon them for the paramount reason of meeting the interests of justice.

⁶*Jagdish Singh v. Madhuri Devi (2008) 10 SCC 497*

⁷*Team @Law Times Journal, Powers and Duties of Appellate Court, August 28, 2017, <https://lawtimesjournal.in/powers-duties-appellate-court/>*

TRADE UNION



By Akshay Mishra
Semester VII (5 years) B.Com., LL.B.

INTRODUCTION

Labour unions or trade unions are organizations formed by workers from related fields that work for the common interest of its members. They help workers in issues like fairness of pay, good working environment, hours of work and benefits. They represent a cluster of workers and provide a link between the management and workers.

The purpose of these unions is to look into the grievances of wagers and present a collective voice in front of the management. Hence, it acts as the medium of communication between the workers and management.

Regulation of relations, settlement of grievances, raising new demands on behalf of workers, collective bargaining and negotiations are the other key principle functions that these trade unions perform.

The Indian Trade Union Act, 1926, is the principle act which controls and regulates the mechanism of trade unions. In India, political lines and ideologies influence trade union movements. This is the reason why today political parties are forming and running trade unions.

Trade Unionism had made its headway owing to growth of industrialization and capitalism. The Indian trade union movement is now over fifty years old. It has passed through several stages in its career. Periods of frustration and bitter struggle have alternated with occasions of recognition, consolidation, and achievements.

This research article mainly focuses on the roles and objectives of Trade Union in India. Researchers have included present working conditions, identifying the needs of Trade Unions, social responsibilities, working methodology of Trade Unions, significance of Trade Unions and role of Trade Unions in collective bargaining because Trade

Unions had made a great impact on social, political and economic life.

The objective for which formation of trade union takes place in the recognition of law is to spread industrial peace with aim to provide social, economical justice to people at large but this function can only be performed if the members of the trade unions are provided with civil liberty and democratic rights by the society they live in. at the end of research article Researchers have mentioned the problems being faced by Trade Unions in India and suggestions for the success of Trade Unions.

Trade unions are a major component of the system of modern industrial relations in any nation, each having their own set of objectives or goals to achieve according to their constitution and each having its own strategy to reach those goals.

Union of workers plays an important role in industrial system. Annually statistics on Trade Unions are collected by Ministry of Labour, Government of India Labour Bureau. Right to form Trade Union is a fundamental right under Article 19 (1) (c) of the Indian Constitution.

After the First World War there was a need for the coordination among individual unions which leads towards the trade union movement in India Gradually this movement becomes an essential part of industrial progress in India. Apart from economic, social and political are dimensions of Trade Unions in India.

The Webbs defined a trade union as a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their working lives

Historically, union representation and collective bargaining have been the keys to the growth of a stable working population in developed economies, and have made it possible for workers to gain a more equitable share of the wealth that they create; they are also able to improve working conditions and help workers gain job security.

OBJECTIVES AND NEED OF TRADE UNION

Wages and salaries-Wages and salaries are the most important subjects of Trade Unions. In the organized industry, wages and benefits are determined through processes such as collective bargaining, wage boards, conciliation, and adjudication. Working of all these processes deserves systematic inquiry. Union power and objective facts hopefully influence the wage scene through these forums.

Working conditions-Another major objective of the Trade Unions is to insure the safety of workers. While working every worker must be provided with basic facilities like. Drinking water, minimum working hours, paid holidays, social security, safety equipments, lights and others.

Personnel policies-Any personal policy of the employer with respect to promotion, transfer and training may be challenge by Trade Unions if arbitrary.

Discipline-Trade Unions also protect the workers from arbitrary discipline action taken by management against any worker. No worker should be victimized by management in the form of arbitrary transfer or suspension.

Welfare-The main objective of the Trade Union is to work for the welfare of the workers. This includes welfare of the family members or children of the worker.

Employee and Employer Relations-for an industrial peace there must be harmony between employer and employee. But due to superior power of the management sometimes conflict arises in this situation Trade Union represent the whole group of workers and continue negotiations with management.

Negotiating Machinery-Trade Unions may also put proposals before management, as this policy is based on the principle of Give and Take Trade Unions protect the interest of workers through collective bargaining.

Safeguarding Organisational Health and the Interest of the Industry-Trade Unions also help in achieving employee satisfaction. Trade unions also help in better industrial relation by creating procedure to resolve the industrial dispute.

Alone workers feel weak. Trade Union provides him a platform to join others to achieve social objectives.

FUNCTIONS OF TRADE UNIONS IN INDIA

Collective Bargaining-Honble Supreme Court of India has defined Collective bargaining as the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion in this process negotiations and discussions take place between employer and employee in respect to working conditions.[12]Refusing to bargain collectively is an illegal trade practice. Collective bargaining helps to resolve the issues of workers. Collective Bargaining is the foundation of the movement and it is in the interest of labour that statutory recognition has been accorded to Trade Union and their capacity to represent workmen.

Trade Unions protect the worker from wages hike, provides job security through peaceful measures.

Trade Unions also help in providing financial and non-financial aid to the workers during lock out or strike or in medical need.

It has also to be borne in mind while making an agreement that the interest of the workers who are not the members of Trade Union are also protected and the workers who are not members of the Trade Union are also protected and the workers are not discriminated.

Social Responsibilities of Trade Unions

Social responsibility is an obligation recognized over an individual, group of individual, Institution so that they can be accountable and answerable to people for their civic duties, here accountability refers to the objective of the act or decision which should be welfare of the society for attaining the balance between growth and welfare.[15]If the outcome of the result of an action or decision is causing harm to public then an individual or group of individual cannot be said to be socially responsible. The goal of the labor legislation somehow rests with the emergence of industrial peace, where protection of innocent employee is an essential condition and this is the reason which motivated the formation of trade unions and its recognition by the law.

The function of collective bargaining acts as process of negotiation between employer and employee so that either consensus or difference in the opinion can be pointed out to settle the major dispute but the need of social responsibility generates from the fact that Trade union exists in representative capacity as it represents the labors therefore accountability and responsibility of Trade union generates towards the labours.]There should be warranted social responsibility from the trade union because there is direct impact of decisions of trade union of labours this role of organization is developed by virtue of societal norms, ethical values and concept of social contract. Responsibilities can be summarized with regards to function of trade union and employer employee relationship.

Education and awareness amongst labours so that a traditional or conventional way indulging into grave agitation can get the shape of cooperation and understanding. The development of the society should not be obstructed by virtue of unnecessary strikes and grave agitation, sometimes the consensus reached between employer and employee is favorable to them but may be unjust to innocent customer that innocent customer is supposed to be protected by trade union.

Their acts and deliberation with employer should be in the manner so that consensus becomes the part of economic growth and development for that purpose cooperation is required, Trade unions are supposed not to be influenced by the caste division system for the interest of its workmen and to maintain the integrity of the nation. Goals should be achieved by not overlooking the interest of community at large.

Rural and urban population comprises of unorganized labour which should be made organized by trade union to uplift them and to get them above poverty line. To promote the planned schemes and ideas for savings so that capital formation increases. New equipments should be supported by virtue of awareness programmes about its use.

Significance of the Trade Unions establishment

Trade unions fill the void which was obstructing the attainment of industrial peace and social justice any decision arrived by virtue of deliberation with employer through trade union should be followed strictly by the labours which forms the part of that trade union as it improves the working condition, wages they get and other matters related to employment as the trade unions help the labors in their bad days like the personal accidents or at the time of retrenchment or lockouts . There are many welfare measures are taken for supporting the workmen example of which is legal assistance, housing schemes and education to children of workers so these functions of trade union makes its existence significant for social justice.

Trade unions perform substantial roles in increasing the wages of the workers. This role may not be observed by direct method but indirectly wages can be increased by the actions of Trade unions like assurance can be there from the trade union regarding the payment of marginal productivity level which can be done by increasing bargaining capacity and power. Trade union can stop supply of labours in the specific trade which may have consequence of increased wage.

Growth and Origin of Trade Union in India

The first factories Act was passed in the year 1881 by virtue of recommendation of Bombay factory recommendation in the year 1885. The workers of the Bombay textile industry demanded that the working hour should be reduced, weekly holidays and compensation in case of injuries suffered by the workmen. Bombay mills hand association is first union established for workers by N.lokhande in the year 1890.

Several Labour movements started after the outbreak of worldwar one. The miserable social and economic condition of the people at that time triggered the labour movement. Formation of ILO (international labour organization) leads to formation of trade unions .Ahmadabad labor textile association was formed under the guidance of Mahatma Gandhi principle of non violence.

AITUC (All India Trade Union Congress)

All India trade union congress is formed in the year 1920 for the purpose of selecting the delegates for ILO, first meeting of AITUC was held in Bombay under the president ship of Lala Lajpat Rai in the year 1920 AIRF (All India Railways man Federation) was formed in 1922 , all the union consisting and compromising of railway workmen were made part of it and affiliated to it. AITUC witnessed the split because some members were in support of the war and other were not in support of the war, later group is separated as an organization under the leadership of congress leaders resulted in the formation of Indian National Trade Union Congress (INTUC) .Socialists also got themselves separated from the AITUC which resulted in the formation of Hind

Mazdoor sabha in the year 1948. Therefore the splits and detachment can be observed resulting in creation of separate trade unions.

TYPES OF TRADE UNIONS

There were three kinds of unions on the basis of structure it consists of-

- Industrial union
- Craft union
- General union

Crafts union consists and comprises of earning of wage from the single occupation, it includes all the workmen working for single craft even of different industries, An Industrial union is formed by virtue of actions of industry not because of similar crafts or works, General union consists the workmen of various crafts and industries. In India formation of trade union takes place mainly because of industrial decisions reason of which can be reduced importance of craftsmen after industrialization and availability of large unskilled labour.

The four major organization serving as union for workmen are INTUC, AITUC, HMS, UTUC, INTUC

The formation is lead by congress leaders, all the unions affiliated to INTUC should go for arbitration for the dispute once all other remedies are exhausted.

HMS (HIND MAZDOOR SABHA)

It was formed by those who neither became part of AITUC, INTUC in Calcutta in the year 1951 following the socialist principle.

UTUC (United Trade Union Congress)

It was formed in the year 1949 and mainly operated in west Bengal and Kerala. Apart from these four trade unions there are other trade unions working in various industries not affiliated to any central organization. Indian trade unions have now recognized by law and given legal status and becomes the permanent attribute industrial society influencing policy making and decision of employers by virtue of negotiation over interests between workman and employer.

Structure of Unions

The term ~structure of unions alludes to the premise on which unions are structured or organized (i.e. whether they are arranged on the basis of regional or craft or industrial) and to the model whereby the plant unions are linked to regional level or national level federations or unions. These two aspects of the unions will be examined separately.

Trade unions are classified into three categories:

- Craft union
- Industrial unions
- General unions

A craft union can be defined as an association of wage earners engaged in a single occupation. It may cover all workers engaged in a particular craft irrespective of the industries in which they are employed. Thus, electrician or mechanics though working in different industries may form a union of their own.

For example, The International Wood Carvers Association and the Indian Pilots Guild. Industrial Unions are organized on the basis of industry, for example, if the workers of a cotton textile factory decide to form a union of workers of different crafts, the union will be called an industrial union. General unions are not so popular in India and it covers workers employed in different industries and crafts. In India, even though trade unions are largely organized by industry, craft unions are also emerging here and there. The predominance of industrial unions can be partly due to the conditions not favoring the growth of craft and general unions and partly due to environmental support to industrial unions.

The specific reasons may be listed below:

With the advent of industrialization in India, the importance of Indian craftsmen reduced, thus bypassing the merchant craftsmen stage of capitalism, technological development went straight from agriculture to factory stage. As a result, craftsmen reduced significantly. The reduced importance of craftsmen coupled with large population of unskilled workers led to the growth of industrial unions.

Another factor behind growth of industrial unions can be higher wages of skilled workers. During the early days of union growth, the skilled workers used to enjoy higher rates of wages due to their relative scarcity. They, therefore, took no interest in unionism. This lack of interest on their part plus the predominance of unskilled workers favored union growth on industrial rather than craft lines.

Industrial unions also flourished because of the influence of outsiders. As trade union was a movement started by outsiders, they were interested in labor class as a whole and not just a section of it. Industrial unions bring more workers within its fold than craft unions, as a result outsiders gave more attention to the formation of industrial unions.

PROBLEM FACED BY TRADE UNIONS IN INDIA

The condition of trade unions in India is not very sound and this is mainly because of the fact that trade unions suffer from many problems. A brief account of them is given below:

A. Uneven Growth: Trade union activities are concentrated in large scale industries and that too in regard of manual labor only and mainly in bigger industrial centre, there are hardly any trade union activities in small scale enterprises, domestic and agricultural labour. The degree of unionism varies a lot from industry to industry, thus touching only a portion of the working class in India.

B. Low Membership: Even though, the number of trade unions has increased considerably in India but this has been followed by the declining membership per union. The average number of members per union was about 3,500 in 1927-28. It reduced to about 1,400 in 1946-47 and again to as low as a figure of 675 in 1985-86 and 659 in 2000-01. This indicates the emergence of small scale trade unions.

C. Multiplicity of Unions: Another problem faced by the growth of trade unions is that of multiplicity of unions. There may exist many trade unions in the same establishment. The existence of large number of trade unions can be attributed to the fact that The Trade Unions Act, 1926 permits any association of seven workers to be registered as a union, and confers upon it certain rights. Many a time, it is contended that multiplicity of unions is because of outside leaders, but more pertinent point is that they are able to work because law permits and gives sanctity to the small unions.

D. Inter Union Rivalry: Unions try to play down each other in a bid to gain greater influence among workers. In the process they do more harm than good to the cause of unionism as a whole. Employers are given an opportunity to play unions against each other. They can refuse to bargain on the contention that there is not true representative union. Besides this, the workers own solidarity is lost. Employers are able to take advantage of in fighting between workers groups.

E. Weak Financial Position: The financial position is very low as their average yearly income is very low and inadequate. The subscription rates are very low due to multiplicity of unions, unions interested in increasing their membership keep the subscription rates very low resulting inadequacy of funds with the unions. Another important reason for the weak financial position of unions is that large amounts of subscription dues remain unpaid by the workers. The name of constant defaulters continuously appears on the registers on most of the unions. They are neither expelled nor cease to be members ipso facto according to the union rules.

F. Lack of Public Support: The trade unions frequently resort to strike and protest in order to make their demands meet. As a result, inconvenience is caused to public. This is the public support or sympathy is almost negligible.

RIGHTS OF REGISTERD TRADE UNIONS

- Rights of Registered Trade Unions:

The rights of registered trade unions are as follows –

1. Right to admission
2. Right to represent
3. Right to own property
4. Right to contract
5. Right to amalgamate
6. Right to inspect books
7. Right to sue
8. Rights of minors to membership of trade unions
9. Right to change the name

CONCLUSION

Unfair labour practice and practice of not involving employees in any kind of decision making resulted in formation of trade union in India and its recognition by court of law, The notion of social justice and industrial peace can only be achieved by the mutual cooperation of employers and employee and that is why trade unions play their major roles in achieving the industrial peace and serving overall justice to employee.

There are various contexts in which employee should be exempted from the arbitrary decisions of employers like wages, bonus, working hour, holidays, this exemption can only be achieved by virtue of negotiation named as collective bargaining where interest of both parties are given priorities in any kind of dispute, origin of trade union clarifies the struggle behind the formation of trade unions in India, further the continuous division in the trade union at national level led to the less implementation of objective they frame before formation, one of the cause can also be traced in the form of legislation in this regard, now a days there are only two essentials which have be satisfied in order to establish a trade union that is substantial number of workers and matter of dispute have substantial nexus with workers but the representation is not the only task which is to be done, for the purpose of negotiation and complete management the skill of bargaining is required which commonly lacks in the common workers of the industry as they lacks in education and awareness.

There are other sufferings which prevails with the working of trade union like lack of financial resources and leadership which prohibits the proper allocation of resources and involvement in policy making despite of such limitations the need of more efficient labour union is required so as to protect the interest of sweat labours, In case of any arbitrary action from the employers which hires them.

RAPE- WHY DIFFERENTIATION?



By-Neha Mittal

Semester VII (5 YEAR) B.COM LL.B

In 2013, by the Criminal Law Amendment Act, the age of consent to sexual intercourse was increased from 16 to 18 mentioned under Section 375 of the Indian Penal Code. But there is an exception clause to this Section i.e., under Exception 2, a husband can have non-consensual sex with a girl child (i.e. below 18 years) if she is above 15 years. In 2012, the POCSO Act was passed which also set the minimum age for the consensual sex as 18 years. Exception 2 is contradictory to the Section 3 of the POCSO act which has criminalized penetrative sexual assault.

Independent Thought⁸ a National Human Rights organization which was registered on 06.08.2009 had filed a writ petition under Article 32 of the Constitution challenging the legality and constitutionality of Exception 2 as it is both arbitrary and discriminatory towards the girl child. The society had filed a petition in public interest with a view to draw attention to the violation of the rights of girls who were married between the ages of 15 and 18 years. The SC had held that the exception 2 creates an unnecessary distinction between the married minor girl and unmarried minor girl, and should be struck down.

Section 375⁹ of the Indian Penal Code provides for three circumstances relating to

⁸The Petitioner is a registered society and had since been working in the area of child rights. The society provides technical and hand-holding support to non-governmental organizations as also to government and multilateral bodies in several States in Country. It has also been involved in legal intervention, research and training on issues concerning children and their rights.

⁹375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following de-scriptions:—

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be law-fully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupe-fying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

'rape'. Firstly sexual intercourse with a girl below 18 years of age is rape (statutory rape). Secondly and by way of an exception, if a woman is between 15 and 18 years of age then sexual intercourse with her is not rape if the person having sexual intercourse with her is her husband. Her willingness or consent is irrelevant under this circumstance. Thirdly sexual intercourse with a woman above 18 years of age is rape if it is under any of the seven descriptions given in Section 375 of the Indian Penal Code (non-consensual sexual intercourse).

The result of the above three situations is that the husband of a girl child between 15 and 18 years of age has blanket liberty and freedom to have non-consensual sexual intercourse with his wife and he would not be punishable for rape under the Indian Penal Code since such non-consensual sexual intercourse is not rape for the purposes of Section 375 of the Indian Penal Code. Very strangely, and as pointed out by Sakshi¹⁰ before the LCI, the husband of a girl child does not have the liberty and freedom under the Indian Penal Code to commit a lesser 'sexual' act with his wife, as for example, if the husband of a girl child assaults her with the intention of outraging her modesty, he would be punishable under the provisions of Section 354¹¹ of the Indian Penal Code. In other words, the Indian Penal Code permits a man to have non-consensual sexual intercourse with his wife if she is between 15 and 18 years of age but not to molest her.

The exemption makes the IPC internally inconsistent, since non-consensual, non-penetrative sexual acts by a man with his wife continue to be criminally punishable. A girl under the age of 18 is incapable of consenting to sexual activity or intercourse as per legislations other than the IPC, notably the POCSO Act. The POCSO Act, in fact, specifically makes sexual intercourse with a minor, by a person related to her by marriage, an aggravated offence under Section 5.¹² the Protection of Human Rights Act, 1993 defines "human rights" in Section 2(d)¹³ as meaning the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in international covenants and enforceable by courts in India. There can be no doubt that if a girl child is forced by her husband into sexual intercourse against her with or without her consent, it would amount to a violation of her human right to liberty or her dignity

¹⁰*an organization to provide legal, medical, residential, psychological or any other help, assistance or charitable support for women, in particular those who are victims of any kind of sexual abuse and/or harassment, violence or any kind of atrocity or violation and is a violence intervention centre*

¹¹354. *Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

¹²S. 5(n), *Protection of Children from Sexual Offences Act, 2012: Whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or living in the same or shared household, commits penetrative sexual assault on the child is said to commit aggravated penetrative sexual assault.*

¹³(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;

guaranteed by the Constitution or at least embodied in international conventions accepted by India such as the Convention on the Rights of the Child (the CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW).

Similarly, under Section 3(a)¹⁴ of the PWDVA, the definition of ‘domestic abuse’ includes “causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse”. Sexual abuse, in turn, is defined as “any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman”. Clearly, sexual intercourse without consent would fall squarely into this definition. Since the PWDVA does not apply specifically to child brides or minors who are in domestic relationships, but to all women who are married, or in relationships in the nature of marriage, this contradiction also extends to marital rape simpliciter.

Article 14¹⁵ of the COI deals with Right to equality and this right extends to every individual irrespective of the fact whether the individual is a child or an adult. A child is a

¹⁴3. *Definition of domestic violence.*—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—
(a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. *Explanation I.*—For the purposes of this section,—
(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
(iii) “verbal and emotional abuse” includes—
(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
(iv) “economic abuse” includes—
(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. *Explanation II.*—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

¹⁵14. *Equality before law* The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

child whether married or unmarried or divorced or separated or widowed. The rationale of classification between a married and unmarried child in Exception 2 has become non-existent, therefore, making exception arbitrary, unreasonable and violative of the doctrine of equality. Exception 2 decriminalizes the forceful sexual relation by a husband with his wife between 15-18 years, who is a girl child unable to look for herself, therefore, it is arbitrary. Moreover, it is discriminatory as it is discriminating between an educated girl child who is protected even if she has sexual intercourse whereas, it doesn't help a married girl between 15-18 years even if she is subjected to have forceful sexual intercourse by her husband. Therefore, Exception 2 being discriminatory and arbitrary is violative of Article 14 of the Constitution.

Further, Article 15¹⁶(3) of the COI, Parliament has powers to make legislation for the welfare of child and women. POCSO was such a prerogative of Article 15(3) by the legislature. POCSO provisions have overriding effect over any other law. There is an artificial distinction between rape of a married girl child and aggravated penetrative Sexual Assault which is completely arbitrary and discriminatory. Due to the paucity of funds State should not form a law negatively affecting its citizens that too a minor girl child.

It has been held in the case of *Vishaka v. State of Rajasthan*¹⁷: A forceful sexual intercourse with a 15 or 16 years old girl child leads her to trauma which is injurious to her body as well as her mind. Exception 2 is violative of Article 14, 15 and 21 of the Constitution as it puts a girl's both physical and mental health in serious jeopardy.

Thus, after considering the fact that having sexual intercourse with a girl aged between 15 and 18 years can have various negative effects as mentioned, the provision of providing strong immunity to the husband of minor girls against their acts of rape should be amended as soon as possible for the protection of the girl child.

¹⁶15. *Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*

(1) *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them*

(2) *No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to*

(a) *access to shops, public restaurants, hotels and palaces of public entertainment; or*

(b) *the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public*

(3) *Nothing in this article shall prevent the State from making any special provision for women and children*

(4) *Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes*

¹⁷(1997) 6 SCC 241



BLOGS



RAPE CULTURE AND SEXISM IN INDIA



By Arkaprava Bhattacharya
Semester III (5 year) B.B.A., LL.B

“The death penalty is an easy political candy to hand out to angry and upset citizens, but it’s much harder to work on justice systems that guarantee swift and certain punishment for sexual assault or to limit the violent patriarchies that cause rape in the first place.”

Rape is the fourth most common crime against women in India. According to the National Crime Records Bureau 2013 annual report, 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by someone known to the victim. If I go through the legal context section 375 of the Indian Penal code defines rape which refers to any non-consensual penetration of any orifice (vagina, anus, mouth, urethra) in a woman by a man,

Non-consensual touching of any orifice with the mouth. This is not restricted to having sex. Forcing a woman to do this to herself, or with someone else, is also rape.

In the generation where we are talking about women empowerment the dark side of the picture is continuously nullifying all the positives. The sense of despoliation is continuously striking the minds of the innocent minors, majors and sadly irrespective of any age group. That’s the harsh reality, it’s inhumane it’s unnatural it’s heinous. It hurts you as a person when you hear such cataclysmic news. Being a prudent man it’s important to discover the root cause of rapes happening in the country. The nation recently celebrated its 73rd Independence Day but the important issues are yet to be solved. Our nation is blessed with diversities but many unethical practices are still performed in backward outskirts of the country and contrary to that in advanced metro cities the western culture is followed. This creates an imbalance which forms the foundation of random rapes happening. It becomes extremely difficult for the respective individuals to strike a balance sometimes it leads to misinterpretation of the situation both are facing. It’s not a try of generalizing the reason of rape rather it’s an attempt to highlight the basic cause.

But the inhumane rapes don't have any justification nor does it deserve any second chance. Death penalty can only be the possible remedy.

Capitalism needs to draw women into the labor force as cheap, under-paid labor, and it also needs women's unpaid work in the home to bear the bulk of the burden of social reproduction (bearing children, replenishing labor power daily by providing food, care and psychological comfort for the exhausted worker, and caring for the past and future labor-force – children and the aged).

In India therefore, the current spate of sexism and culture of justifying rape and surveillance on women, is best explained as a means of disciplining women's labor in a neoliberal capitalist economy, rather than as a mere vestige of a backward culture.

In the late 1980s, India's ruling class imposed neoliberal economic policies (popularly called LPG – Liberalization, Privatization, Globalization) on India.² Those policies, the rulers claimed and still claim, would lift India out of poverty, create jobs, and empower women.

Women have, in the past few decades in India, come out in increasing numbers to seek paid work. However, women's workplace participation rates are still low, and women are still mostly employed in the '3-D jobs' (jobs that are 'Dirty, Dangerous, Demeaning'). While women are being drawn into exploitative wage labor, they are also called upon to bear increased burdens of household labor. It is not just oppressive families, then, that seek to hold women down to these roles. The very processes of capitalism and globalization that seek to draw women out into wage labor, also seek to hold women down to their domestic roles in maintaining social reproduction. In India today, ideologies of domesticity and the "Indian family" are under strain, thanks to women being drawn into wage labor and women's increasing assertion of their autonomy within their natal and marital homes. Yet, the ideologies continue to be invoked by the government as well as by factory owners producing for global capital.

The ideology of gender, family and national/religious "culture" are invoked in contemporary Indian political, economic and social narratives to justify gender, caste, class hierarchies and religious divides. That is why the fight against caste, gender and communal violence in India cannot merely be a fight against "backward culture" or "regressive mindsets," as is popularly understood in mainstream media in India and the West. Those battles, along with those of India's workers and peasants, need to integrate with each other and confront capitalism and neoliberal policies; and battles will have to be fought together, for freedom and autonomy in fields, factories and families.

Rape culture can be stopped when children will be taught about consent especially young boys it's essential to resist cultural assumptions that sexual violence is in any way "natural." Challenge common misconceptions that assault is caused by "uncontrollable" male urges. It's also essential to resist "jock worship" and other cultural norms that value strength and athleticism above compassion, as these norms work to excuse problematic behavior. Object to notions of masculinity that frame sexual aggression as a strong or admirable quality for men to strive toward.

MODERNIZATION?



By Abhishek Roy
Semester III (5 year) B.B.A., LL.B

India has major social issues like corruption, women's safety, education, poverty, unemployment. Everyone discusses those big issues but Indian society has a basis and most important social problem which is nothing but the relationship in the family, mainly the relationship between parents and children. There is so much change in the modern age parents and children. To know the problems we need to compare the basic facts of family of modern and old age. We know the character of a human being created at the minor age by the family. If a child stay on the good hand from the beginning then he or she become a good and responsible human beings.

So, the main problem is the Nuclear family system, in older time there was at least one family member who always there with the child to take care, but now parents goes to earn and the child stays all alone or with the babysitter who can't able to make the child character appropriately than the family members. Then the parents don't give enough time nowadays. That is why children become more suppressed and don't share the problems to their parents. Even they do not even share problems with their friends and become isolated from the whole society. And tries to solve the problem as its own. If they succeed to solve than it is fine but if they don't succeed then it becomes the way to suicide.

One can easily see that most of the suicide victims are teen. It's because of not share problems with the closest friend, it means the family and get depressed.

People call it is effect of modernization but my questions are 'is success more important than life?'

Is modernization more important than humanity?

Is isolation the modernization?'

If inhumanity, suicide, nucleus family are the effects of modernization then it better to live a primitive life. All of above, family is the most important thing of life because emotional human beings are better than machinery human beings.

WHY SEQUESTER WOMEN EMPOWERMENT AND NOT EDUCATE MEN?



By Madhushree Chakraborty
Semester III (5 Year) B.B.A LL.B

India is a diverse nation with rich cultural heritage. In contrary to that the biggest project for women in this huge nation is “betibachaobeti padhao”. This is the irony. The slogan itself is justifying the harsh truth that in my nation that women are vulnerable. It also implies that unless that victim is our beti we don’t care about her. It is indeed the old patriarchal tactic of keeping women subjugated. It is also an indicative of the attitude that women are weak and hence needs to be saved.

A big question should come into the scanner, that instead of following “ betibachaobeti padhao" why don't we move forward with the slogan as given by a great wrestler named BabitaPhogat -----" baton ko padhao or beton ko samjhao".

We all are in the transition period where we all are liberal thinkers . We do talk about homosexual rights, the Sabrimala issue but the sad reality is that this independent thinking is not prevailing in the backward and some of the deserted parts of India. And this creates an imbalance to the societal structure.

The mainstream India is unaware of the pathetic situation of the nation. There are places where the people lack legal awareness. The root cause of rapes happening in my county is the upbringing issue and the mindset factor of the individual. Objectifying women, judging them with their dressing style is the perception which is indeed a threat for the society. Even today we could see the phenomena of “ male domination". They are considered as head of the family, they are labelled as weak if they cry and express their emotions. They are lambasted verbally if they cry. They are expected to act matured in every situation and if they do something contrary to that they are criticized.

“ Real men never afraid to cry “. The statement itself is ironical if we see in the context of “ Backward India “. The people of those places lack basic awareness and are subjected to a mindset which is poisonous.

Men must be taught that if you cry you are not weak, if a women wants to work she is not insulting you, rather it is her independent mindset which needs your appreciation.

It’s high time, let’s not talk about Women Empowerment without truly meaning to empower them”; it’s time for us to concentrate on education and sensitization of our men.



POEMS



COURAGE



By Anukriti Saha Gupta
Semester III (5 year) B..B.A., LL.B

Thirty one times its was,
They had outraged her
modesty,
But the monsters knew barely,
That her scars bled no more.

The stains on her salwar,
Were no more a shame,
She now had the courage,
To deal with the scourge.

The rest of the story is in bits and parts,
The knife, the blood pool and the dead demon.
Courgae was her only weapon.

STATES OF MIND



By Subham Bansal
Semester VII (5 YEARS) B.B.A., LL.B.

Burden on back,
Burden on mind,
In strength were lack
No strength to find.

Up the slope,
Down the hill,
On we go
And onward still.

No comfort In sleep,
Still in time to bed,
Forced to sleep,
With no sweet dreams ahead.

PHOTOGRAPHY



ABHISHEK ROY
5 YEARS B.A., LL.B., SEMESTER 3



SAMIRA ALAM
3 YEARS LL.B, SEMESTER 1



SUBHAM BANSAL
5 YEARS, B.B.A.,LL.B, SEMESTER 7