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RIGHT TO TRADE UNION AS A PART OF HUMAN RIGHT TO FREEDOM OF ASSOCIATION: FROM INDUSTRIAL STRUGGLE TO HUMAN RIGHT.

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1. ABSTRACT

The right to form and join trade unions is a vital element of the right to freedom of association and plays a crucial role in labour and industrial law. Emerging from the collective struggles of workers during the era of industrialization, trade unions have evolved from being viewed merely as economic pressure groups to becoming internationally recognized human rights institution.

Over time, their protection has been firmly established in both international and constitutional legal frameworks. This paper examines the conceptual basis of freedom of association and its protection under key international instruments such as the Universal declaration of human rights, the international covenant on civil and political rights, social and cultural rights, international covenant on economics and ILO conventions no 87 and 98. It further analyses constitutional guarantees and judicial interpretations within the Indian legal system, especially in relation to Article 19(1)(c) of the Indian constitution. The study also considers whether the right to strike forms an integral part of trade union freedom and evaluates the scope of reasonable restrictions that the state may impose. In the context of informal employment, globalization and the gig economy, the paper shows how important it is to protect trade union rights to uphold industrial democracy, equality, and social justice.

Key Words: Freedom of association, trade union rights, collective bargaining, right to strike and industrial democracy.

2. INTRODUCTION

The concept of association stands as a foundational pillar of modern democratic governance and a cornerstone of constitutional liberty. In the specific realm of industrial and labour law, this principle finds its more potent expression in the collective right of workers to establish and

participate in trade unions. historically these organizations emerged as a necessary collective response to the systematic exploitation and abysmal labour conditions characteristic of the industrial revolution -a period defined by a profound imbalance of power where individual labourers possessed virtually no bargaining leverage against industrial capital. While early legal framework often stigmatized labour organizations as criminal conspiracies, they have undergone a radical legal evolution, eventually securing recognition as indispensable institutions within a functional industrial democracy.

The history of trade unionism reflects a profound transformation in global legal thought; the shift from viewing labour protections as mere statutory economic entitlements to recognize them as fundamental human rights. This capacity to organize is a functional tool that empowers the workforce to negotiate equitable wages, engage meaningfully in work place governance and advocate for occupational safety. Without collective representation, the broader promise of freedom of association risks becoming a formal liberty that lacks substantive power to protect vulnerable.

This article critically examines the ontological status of the right to unionize, questioning whether it should be categorized strictly as a legislative labour right or if it constitutes an inherent component of the universal human right to associate. the following analysis contends that trade union freedom is an essential prerequisite for the realization of human dignity, democratic participation within the industrial relations and social equality. It further argues that the legal protection of these rights must be interpreted expansively, moving beyond narrow domestic statutes to align with the broader mandates of international human rights frameworks and constitutional guarantees by recentering the union as a vehicle for human rights, we can better understand its role in modern socio-legal structures.

3. CONCEPTUAL FRAMEWORK: FREEDOM OF ASSOCIATION

Freedom of association means the right of a person to join with others to form groups or association for lawful purpose¹. It also includes the right not to join in any group if a person does not wish to. This right protects individual choice and ensures that the government does not interfere unnecessarily in the working of such groups. Freedom of association has a collective aspect. Workers come together to protect their common economic and social

¹ Constitution of India, 1950, art. 19(1)(c).

interest. When employees unite they are stronger than when they act individually.

The right essentially includes three elements:

- i) The right to form associations or unions.
- ii) The right to join any existing associations.
- iii) The right of associations to function independent without outside interference.

These elements ensure that associations are not just formal bodies but active and meaningful organizations. The concept is based on liberal constitutional principles that support individual freedom and autonomy.

It is also connected to democratic theory, which views associations as a bridge between citizens and the state. In labour law, the idea of industrial democracy supports workers' participation in workplace decisions. Trade unions are a practical example of freedom of associations in industries. They help workers bargain collectively for fair wage and better working conditions. without unions, individual workers may not have enough power to negotiate ²with employers.

Thus, trade unions convert the theoretical right of association into real protection and empowerment for workers.

4. INTERNATIONAL LEGAL FRAMEWORK

4.1 UNITED NATIONS INSTRUMENT

The international human rights system recognizes trade union rights as an important part of the principle of freedom of association. These ideas were first clearly expressed by the United Nations in the Universal Declaration of Human Rights (UDHR)³. Article 20 of the UDHR states that every person has the right to peaceful assembly and association. In addition, Article 23(4) specifically provides that everyone has the right to create and join trade unions to protect their interests.

The International Covenant on Civil and Political Rights (ICCPR) also protects this freedom. Article 22 guarantees the right to freedom of association⁴, including the right to establish and join trade unions. However, this right can be restricted by law only when such restriction is

² S.C. Srivastava, *Industrial Relations and Labour Laws* (7th edition, Vikas Publishing House 2020) 215. Constitution of India, 1950, art. 19(1)(c).

³ Universal Declaration of Human Rights, 1948, arts. 20 & 23(4).

⁴ International Covenant on Civil and Political Rights, 1966, art. 22.

necessary in a democratic society for reasons such as national security, public safety, public order or the protection of the rights and freedoms of others.

Likewise, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes trade union rights under Article 8. This provision protects the right of workers to form trade unions and acknowledges the right to strike, although it may be subject to lawful limitations. The recognition of trade union rights in both the ICCPR and the ICESCR shows that these rights are connected to both civil and political freedoms as well as economic and social rights.

4.2 INTERNATIONAL LABOUR ORGANISATIONS STANDARDS

The International Labour Organizations (ILO) plays a key role in developing international labour standards related to freedom of association. Two important conventions in this area are ILO Convention No.87 and ILO Convention No.98⁵.

Convention No.87 ensures that workers and employers have the right to form organizations of their own choice without needing prior permission from authorities. It also protects these organizations from interference by public authorities in their activities.

Convention No.98 focuses on protecting workers from discrimination based on their union membership. It also encourages the collective bargaining between workers and employers.

Although India has not ratified Convention No.87, the principles contained in this convention still influence Indian labour law and judicial decisions. In addition, the supervisory bodies of the ILO have repeatedly stated that the right to strike is an important part of freedom of association⁶.

5. CONSTITUTIONAL AND STATUTORY PROTECTION IN INDIA

5.1 CONSTITUTIONAL FRAMEWORK

The constitution of India protects the Freedom to form associations under Article 19(1)(c). This right includes the ability of individuals to establish trade unions or other organizations for

⁵ International Labour Organization, Convention No. 87 (1948) and Convention No. 98 (1949).

⁶ International Labour Organization, *Digest of Decisions of the Committee on Freedom of Association* (ILO Geneva).

common purposes. However, this freedom is not absolute. Under Article 19(4)⁷, the state may impose reasonable restrictions on this right in the interests of the sovereignty and integrity of India, public order, or morality.

The supreme court has clarified the scope of this constitutional protection through several important decisions. In *All India Bank Employee Association v. National Industrial Tribunal*, the court held that the constitution guarantees the right to create associations or unions, but this does not automatically include a fundamental right to obtain recognition from employers or to engage in collective bargaining. This decision shows the constitutional protection mainly relates to the formation of unions rather than all activities carried out by them.

In contrast, the supreme court in *Damyanti Naranga v. Union of India*⁸ emphasized that the freedom of association also includes the right of an association to function without unwanted external interference. The court recognized that members have the right to continue their association in the form they originally created, highlighting the importance of organizations autonomy.

Overall, while the constitution ensures the freedom to establish trade unions, judicial interpretation has placed limits on the extent to which related rights such as collective bargaining and strike action are treated as fundamental rights.

5.2 STATUTORY FRAMEWORK

Apart from constitutional protection, trade unions in India are also regulated through legislation. The Trade Unions Act provides a legal framework for the registration of trade unions⁹ and grants them formal recognition. Once registered, trade unions receive certain legal protections, including limited immunity from civil and criminal liability for acts carried out in furtherance of legitimate trade disputes.

More recently, the Industrial Relations Code has brought together several earlier labour laws¹⁰ dealing with trade unions, industrial disputes, and standing orders into a single statute. The objective of this consolidation is to simplify and modernize labour regulation. However, some

⁷ Constitution of India, 1950, art. 19(4).

⁸ *Damyanti Naranga v. Union of India*, AIR 1971 SC 966.

⁹ Trade Unions Act, 1926.

¹⁰ Industrial Relations Code, 2020.

scholars and labour organizations have raised concerns that certain provisions such as stricter conditions for strikers and higher thresholds for union recognition may make collective action more difficult in practice.

6. RIGHT TO STRIKE: A COMPONENT OF FREEDOM OF ASSOCIATION

Right to strike is an important tool for workers when negotiating with employers. At international level labour rights instruments recognize the importance of strike action. For example, Article 8 of (ICESR) acknowledges the right to strike¹¹ and the supervisory bodies of the (ILO) have also treated strike action as an essential element of trade union freedom.

In India legal position is more limited. The court taken the view that although the constitution protects the right to form association and trade unions it does not automatically guarantee a fundamental right to strike. In *T.K Rangarajan v. Government Of Tamil Nadu*¹², the supreme court ruled that government employees do not possess a fundamental or statutory right to strike. Because of this approach, the judiciary has generally held that strike action can be controlled through legislations and regulations which means the workers may organize themselves into unions, their ability to use strikes as a method of protest or negotiations is restricted by law.

This situation creates difference between international standards and the way the right is interpreted in India. Many scholars argue that if workers are unable to strike, trade unions may struggle to negotiate effectively with employers. Therefore, even if the right to strike cannot be treated as unlimited, it can still be viewed as an important practical element of the broader freedom of association.

7. RESTRICTIONS AND STATE REGULATION

The right to form and join trade union is important, but it is not limited. Both international laws and national constitutions allow governments to place reasonable restrictions on this right¹³.

However, these restrictions must follow three main principles: they must be legal, have a valid purpose and be proportionate.

¹¹ International Covenant on Economic, Social and Cultural Rights, 1966, art. 8.

¹² *T.K. Rangarajan v. Government of Tamil Nadu*, (2003) 6 SCC 581.

¹³ International Covenant on Civil and Political Rights, 1966, art. 22(2).

In some situations, restriction is allowed for workers in essential services, the armed forces¹⁴. Or for reasons of public safety. But if the government created very strict rules, such as complicated registration processes, cancelling union recognition or banning strikes widely, it can weaken the independence and effectiveness of trade unions.

The principle of proportionality means that the government must balance public interest with workers rights. If restrictions make trade unions unable to function properly. Then they violate the basic idea of freedom of association.

8. CONTEMPORARY CHALLENGES

Modern economic changes have created new challenges for trade unions. globalization and technological developments have changed the way people work. For example, gig workers and platform workers often do not fit into the traditional employer-employee relationship, which makes it difficult for them to form or join unions.

Many workers today are part of the informal sector, contract labour or temporary work¹⁵, where union membership is low. Because of this, collective representation of workers has become weaker. Some employers also try to avoid unionization, and large multinational companies operates through complex supply chains, which makes it harder to hold them responsible for labour rights.

Therefore, labour laws need to adapt to these new forms of work so that workers can still organize collectively and protect their rights.

9. CRITICAL ANALYSIS

Trade union rights are based on the democratic idea that workers should have a say in decisions that affect their working and economic conditions¹⁶. If workers cannot bargain collectively, the right to form associations become meaningless. Courts in many cases have been hesitant to recognize the right to strike as a fundamental right, which reduces the effectiveness of trade unions. However, unrestricted strikes could also affect public order and essential services.

¹⁴ International Labour Organization, Convention No. 87, 1948.

¹⁵ B. Hepple, *Labour Laws and Global Trade* (Hart Publishing 2005) 202.

¹⁶ K.D. Ewing, "The Right to Strike in International Law" (2013) 42 *Industrial Law Journal* 1.

The best solution is balanced regulation protecting the core rights of trade unions while preventing misuse. Trade union freedom should therefore be understood in a purposeful way, aiming to achieve fairness and justice in industrial relations rather than just following legal formalities.

10.CONCLUSION

The right to form trade unions is a key part of human right to freedom of association. International law, constitutional principles, and labour law all recognize its importance for democracy and workers' rights. Although governments can impose reasonable restrictions, the basic essence of this right must always be protected so that workers can bargain collectively and maintain industrial harmony.

In today's world of economic liberalization and rapid technological change, strengthening trade union rights is essential to protect worker dignity, equality, and social justice. without effective trade union rights, freedom of association would remain incomplete. When protected properly, it becomes a foundation of industrial democracy.

11.REFERENCES

- 1) Trade Unions Act 1926.
- 2) Industrial Relation Code 2020.
- 3) Constitution of India 1950.
- 4) Universal Declaration of Human Rights, 1948.
- 5) International Labour Organization, Convention No. 87, 1948.
- 6) International Labour Organization, Convention No. 98, 1948.
- 7) International Covenant on Economic, Social and Cultural Rights, 1966.
- 8) International Covenant on Civil and Political Rights 1966.