

Trends in Collective Bargaining Coverage and Union Membership Level in Sri Lanka

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Abstract— *Collective bargaining is a powerful weapon in the labour field as the 'Contract of employment' is a negotiation between two unequal parties. In a contract of employment employer is the powerful and decision making party and that party always tries to draft the contract in favour of their own benefits. In a particular situation the other party, employee is in a vulnerable situation and normally these contracts create in a favorable manner. So it is very difficult to identify these contracts as voluntary contracts. Trade unions as agents or representatives of the employee have to play a main role in such a situation with handling the collective bargaining on behalf of their members. But in the last decade with changes of social, Economic and political culture with influence of inter-war and post-war experiences trade unionism shows significant changes and emerging trends with their behavior as an instrument to protect labour rights. Among several changes this research focused on the decline of active registered trade unions and cancellation of registration. This is a qualitative research mainly based on literature review done together with the preliminary survey. As the main sources in this research it based on the Registrar office of trade unions in Colombo. Registrar and assistant registrars of trade unions in-depth interviewed as key formants. And there also focus group discussions with Trade union leaders in several sectors. Instead of that telephone interviews were conducted with trade union members of cancelled trade unions. Participatory method also done with participating some trade union meetings as a observer. Secondary data was gathered from journals, books, reports and internet and statistics from the Labour Department and ILO. According to the statistics of the labour department of Sri Lanka on 2013, while 8394 trade unions have been registered with the registrar office of trade unions only 2192 trade unions can be find in active mode.*

All the other trade unions have been cancelled by the registrar of trade unions based on several reasons. So this research basically focuses on this critical situation and tried to clarify the reasons for this negative trend. And finally some solutions were gathered to protect trade unionism in Sri Lanka as a final output of the research.

Keywords – Collective Bargaining, Trade Unions, Emerging Trends

Collective bargaining may be defined as negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employers organizations, on the one hand and one or more representative workers organizations on the other with a view to reaching agreement. (Chacko, 1995) Industrial relations handbook on the British master of labour says "The term collective bargaining is applied to those arrangements under which wages and conditions of employment are settled by a bargain in the form of agreement made between employers, associations of employer and workers organizations.

Many conditions have generally been accepted as necessary for successful collective bargaining, and the more important of these many summarized as follows;

1. Active encouragement of collective bargaining by the state, which may take the form of laws to ensure compliance with collective agreements and prohibition against contracting out.
2. Freedom of association granted to organizations of workers and employers.
3. It is axiomatic that the strong and stable trade union movement is a prerequisite to successful collective bargaining. A strong and independent trade union, with the ultimate sanction of the strike weapon, is the most effective guarantee

that employers would not only bargain but would also do so in good faith. It also provides some guarantee that employers would not only bargain but would also provide some guarantee that there will be equality in the bargaining position of the parties.

4. A sufficiently representative trade union of such unions by employer.
5. Both parties should bargain in good faith (ILO,1936)

Sidney and Beatrice Webb regarded collective bargaining as one of the several methods used by trade unions to further their basic purpose of maintaining or improving the conditions of their working lives. The primary role of the collective bargaining then, is to improve the working conditions of the large number of employees affected by it.

So Collective bargaining is a powerful weapon in the labour field as the 'Contract of Employment' is a negotiation between two unequal parties. In a contract of employment employer is the powerful and decision making party and that party always tries to draft the contract in favour of their own benefits. In a particular situation the other party, employee is in a vulnerable situation and normally these contracts create in a favourable manner. So it is very difficult to identify these contracts as voluntary contracts.

As Allen Flanfers said "Collective bargaining was exactly what the words imply: a collective equivalent and alternative to individual bargaining. Where workmen were willing and able to combine, they preferred it to bargaining as individuals with their employer because it enabled them to secure better terms of employment by controlling competition among themselves. And the greater the scale of the bargaining unit, So it appeared the greater their advantage such a viewignored any positive interest on the part of the employer"

Trade unions as agents or representatives of the employee have to play a main role in such a situation by handling the collective bargaining on behalf of their members. So trade union actions can be considered as effective method with demanding rights rather than an individual employee fight over his rights.

A trade union is a formal voluntary organization of workers or employees, which aims to secure and improve the well being of members through collective actions. It is an association of workers working on the principals of unity equality and security for the betterment of its members.(Jinadasa,1999)

According to the section 2 of the Trade Union Act No 24 of 1970 a "trade union" is defined as being "any association or combination of workmen or employers, whether temporary or permanent, formed with the objective of (a) the regulation of relations between workmen and employers, or between workmen and workmen or between employers and employers; or (b) the imposing of restrictive conditions on the conduct of any trade or business; or (c) the representation of either workmen or employers in trade disputes; or (d) the promotion or organization or financing of strikes or lock-outs.

According to Jinadasa, trade union or labor union is an organization of workers that have banded together to achieve common goals such as better working conditions. Originating in Europe, trade unions became popular in many countries during the Industrial Revolution, when the lack of skill necessary to perform most jobs shifted employment bargaining power almost completely to the employers' side, causing many workers to be mistreated and underpaid. Trade union organizations may be composed of individual workers, professionals, past workers, or the unemployed. The most common, but by no means only, purpose of these organizations is "maintaining or improving the conditions of their employment"(Glick,1977).

Basically the main activities of trade unions vary, but may include:

- Provision of benefits to members: Early trade unions, like Friendly Societies, often provided a range of benefits to insure members against unemployment, ill health, old age and funeral expenses. In many developed countries, these functions have been assumed by the state; however, the provision of professional training, legal advice and representation for members is still an important benefit of trade union membership.

- **Collective bargaining:** Where trade unions are able to operate openly and are recognized by employers, they may negotiate with employers over wages and working conditions.
- **Industrial action:** Trade unions may enforce strikes or resistance to lockouts in furtherance of particular goals.
- **Political activity:** Trade unions may promote legislation favorable to the interests of their members or workers as a whole (Sharma, 1987).

This has been recognized by the International Labour Organization which adopted two conventions of importance in this connection, ILO Convention No 87 on "Freedom of Association and protection of the Right to Organize" was adopted in 1948, and on the other hand ILO Convention No 98 on the "Right to Organize and Collective Bargaining" adopted by the ILO in 1949. And also with Universal Declaration of Human Rights (UDHR), according to article 23 "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- Everyone has the right to form and to join trade unions for the protection of his interests."

With International Covenant on Civil and Political Rights (ICCPR), Article 22:

" Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

- No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.
- Nothing in this article shall authorize States

Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."

With Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87),

Article 2: Employees and employers shall have the right to establish union with only to the rules of the organization concerned and right to join to workers and employers' organizations of their own choosing without previous authorization.

Article 3.1: workers and employers' organizations have right to draw up their constitutions and rules, right to elect their representatives and have right to organize activities and programs.

Article 3.2: The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 5: workers and employers' organizations have the right to establish and join federation's confederations.

It also recognized with **Right to Organize and Collective Bargaining Convention, 1949 (No. 98)**

Article 1.1: Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

Article 1.2: Protection is respect to make the employment of a worker subject to the condition that he shall not join a union, causes the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities within working hours.

Article 4: Measure appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employees' organization and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

In Sri Lanka (Ceylon) under the British rule, the idea of trade unionism bloomed in the minds of a

few educated socially concerned intellectuals who had experience in the British trade union movement in the latter part of the 19th century. Especially mention may be made of the powerful impact of the 1917 revolution in Russia and the Indian National movement both of which helped to energize the nascent trade union movement in Sri Lanka.(Silva,1978)

Historically in Sri Lanka trade unions were at the forefront of the movement for independence prior to 1947, and unions therefore fulfilled a political role at that time. And Trade Unionism in Sri Lanka is a unique record in our labour movements. When we make a narration of the history of the Trade Union Movement in Sri Lanka, it is natural to make mention of the earliest landmark events such as "The Printing Workers' strike in 1893", "The Railway Workers' strike in 1896", "The Carters' strike in 1906" and many others that could be said to have laid the foundation stones of the Trade Union movement (Jayawardana,1972) .

With this context in Sri Lanka, trade unions role has been to protect jobs and real earnings, secure better conditions of work and life and fight against exploitation and arbitrariness to ensure fairness and equity in employment context. And also trade unions were recognized as the bargaining agent in the industrial disputes.

The history of State intervention in industrial relations through law commences from about 1830 with the growth of Coffee and tea plantation industries in Sri Lanka.

The right to form and join a trade union of one's choice is known as the fundamental rights guaranteed and protected by the Section 14 of the Constitution of Sri Lanka 1978 and the Trade Union Ordinance No 14 of 1935 which has been amended by Ordinance No 2 Of 1946, Trade union amendment act No 15 of 1948 , Act no 18 of 1958 and Act No 24 of 1970 .

Industrial Disputes(Amendment) Act, No.56 of 1999, Sections32A(a)-(d):

According to the act no employer shall forced to employee to be a member of trade union as a condition of his employment, employer can not dismiss a workman by reason only of his membership of a trade union or engaging in trade

union activities, no employer give any promise to workman for the purpose of preventing him from becoming a member/ officer or representative of a trade union and no employer prevent a workman from forming a trade union or supporting a trade union by financial or other means.

Basically registration of trade unions describes on Part III of the Trade unions ordinance No 14 of 1935.According to the section 7 of the ordinance it's given a duty to the Registrar of trade unions to keep and maintain a registrar or trade unions. With Sec 8 and 9 it gives mandatory provisions to register a trade union within a period of 3 months reckoned from the date and other wise these unions can be consider as illegal gatherings. Instead of that Section 11,12,13,14 deals with the registration process and its consequences. According to these provisions registrar has given wide powers to deal with the related issues. Every year these registered trade unions have an obligation to send their progress report to the registrar and otherwise according to the section 15 registrars have power to withdrawn or cancelled the registration of trade unions.

Within year 2013 only 226 trade unions have send these reports to the registrar and even after the final notice of cancellation most of the trade unions did not bother about the activation of the trade unions. Nearly 1250 trade unions have given notice about the cancellation and only 10 of them have response to the notice. And total 40 trade unions have cancelled only within year 2013.

According to the above facts it can be found a trend that trade unions have been just registered for the temporary arrangements and members of the trade union have basically only focus one or two main trade union actions only. And after their temporary goals these unions were not interested in keeping the trade union in an active mode or update and keep connections with the office of registrar. Even after getting notice their carelessness in responding shows that this is not just a mere negligence. It shows that trade unions only need some temporary arrangement with their demanding process.

As reasons for these practice researcher found several reasons and the political influence over trade unionism of the country and social and economic changers of the human behaviour of

post war situation can be shown as main reasons. Most of trade union leaders convey that they were fed up with the modern political and legal system of the country and betrayal of trade union actions in the past decade have destroyed the unity of most trade unions of the country.

However from this trend it shows the departure of the present trade unionism from their original concepts. The major disadvantage of this situation is that the society haven't any trust over the trade unions or other formal discussion forums, the other informal gatherings will get the chance to immerge in employment sector and the economy of the county may get a bad impression with the continues labour disputes. Final result will make bad effect with foreign investments as investors never try to involve with the host countries with bad image of labour practices.

Finally as a suggestion it can be recommended that the value of the trade unions as a powerful weapon with collective bargaining have to emphasis with the trade union leaders and their members and it should encourage people to keep trade unions actively. For that the government of Sri Lanka, the legal community and the labour experts have a responsibility to facilitate trade union leaders to keep actively connect with the labour office of the country and other rigid formalities have to change with essay access to any person. And statuary arrangements have to introduce to reduce the gap between the trade union members and the registrar office of trade unions in Sri Lanka.

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