



**KOCHHAR & Co.**  
ADVOCATES & LEGAL CONSULTANTS



## India: Update on Formation of First Trade Union in IT Industry

30 November 2017

by [Arvind Gurumurthy](#) (Gurgaon)

Kochhar & Co.

Your [LinkedIn Connections](#)  
with the authors



### **Introduction**

On 7th November 2017, the Commissioner of Karnataka Labour Department certified the formation of the Karnataka State IT/ITES Employees Union (KITU) under the Trade Union Act, 1926 ('TU Act'), and Karnataka Trade Unions Regulations, 1958. This is the first trade union in India, officially registered and recognised by the labour department, which is dedicated to the information technology ("IT") sector and IT sector employees and claims to have about 250 IT industry employees as its members.

The formation of a trade union to espouse and fight for the cause of IT industry employees in India, has been in the making for a few years with unrecognised groups already in existence. The movement has gained greater impetus with the increase in layoffs and retrenchment in the IT sector and more being foreseen in the coming days.

The IT industry has largely remained unregulated with respect to works hours, wages, holidays, termination given the exemption granted to them under various statutes which cover these aspects. The Industrial Disputes Act, 1947 ("ID Act") requires any industry with more than 100 employees to obtain prior approval of labour commissioner before retrenchment of employees, but this does not cover IT industry. The Industrial Employment (Standing Orders) Act, 1946 ("Standing Orders Act") (which covers industrial establishments employing 100 or more workmen)

requires employers in industrial establishments to define and publish uniform conditions of employment in the form of 'standing orders'. The standing orders which are required to be approved by the representatives of the employees and certified by the labour department is required to contain terms of employment such as hours of work, wage rates, working shifts, provisions for leaves and holidays, termination, suspension, or dismissal of workmen. However, by a notification published on January 25, 2014, the Karnataka government exempted IT companies from applicability of Standing Orders Act for a period of five years. While, the Shops & Commercial Establishments statutes of various states contain similar provisions governing leaves, hours, and number of days of work, holidays and leaves, termination etc., some of those provisions (such as provisions pertaining to holidays, hours of work etc.) have been exempted by Karnataka government for IT companies and same is the case in some other states as well.

While the aim of the exemptions could have been to spur the growth of IT industry and also help them recover from global economic slump, yet many in the industry and leaders of employee groups view this as substantial runway given to IT organisations to put their interests ahead and being unfazed about adopting arbitrary practices with respect to layoffs and retrenchments.

### **Role & Recognition of Trade Unions**

The definition of 'trade union' under Section 2(h) of the Trade Unions Act, 1926 highlights these key aspects:

- A Trade union is an association either of employees or employers or of independent workers.
- It is a relatively permanent formation of workers. It is not a temporary or casual combination of workers.
- It is formed for securing certain economic (like better wages, better working and living conditions), social (such as educational, recreational, medical, respect for individual) benefits to members. Collective strength offers a sort of insurance cover to members to fight against irrational, arbitrary and illegal actions of employers

Labour unions or trade unions are organizations formed by workers from related fields that work for the common interest of its members. They are a legitimate system for organizing workers to voice their rights and grievances and present a collective voice in front of the management. Without unions, companies would become either too paternalistic or too dictatorial. Responsible trade unions play an important role in maintaining cordial relations between management and labour and act as a vital tool for collective bargaining. The collective bargaining could include aspects such as pay scales, working hours, working conditions, holidays, health safety, promotion prospects, maternity, and paternity rights and most importantly on manner of retrenchment or layoff. Larger trade unions could have political affiliations and pressurize the government to adopt laws and policies which are most beneficial to its members.

Trade unions in present era of industrial development, perform two sets of functions - militant and fraternal. They are militant in the sense that they are formed to fight for the cause of workers and fraternal in the sense that they provide financial and non-financial assistance to workers during the periods of strikes and lockouts.

The right of collective bargaining is largely provided to trade unions that are recognized. Recognition of trade unions refers to the recognition of such associations by the management as agents of collective bargaining. The employer accepts the particular trade union as having a representative character and hence, will be willing to engage in discussions with the union with respect to the interests of the workers. The Constitution of India under Article 19(1)(c) guarantees freedom to form associations and various judicial decisions uphold the right to form trade unions and have encourage collective bargaining between management and union for peaceful resolution of disputes. Refusing to permit formation of trade unions or engage in collective bargaining with a recognized trade union is, matter of fact, deemed an unfair labour practice under the ID Act.

Recognition is unique from registration of a trade union. However, registering a trade union, while not mandatory, confers certain benefits. The trade union would be deemed to be a body corporate with perpetual succession, may acquire and hold property, enter into contracts, and sue and sued. A registered trade union is also immune from certain contractual, criminal, and civil proceedings. Usually large, recognized trade union are also registered and contain their own charter, rules & objectives, manner of appointing and removing leaders etc. Registration of a trade union is permitted if at (a) least 10% or 100 workmen (whichever is less) engaged in the employment of the establishment are members of such trade union and (b) minimum seven of its members are workmen employed in the establishment or a particular industry which the trade union seeks to represent.

### **Analysis on Impact**

The Karnataka labour department's recent certification of the country's first IT workers' union could have both positive and negative effects on the industry. From a positive viewpoint this move is targeted towards ensuring a higher job security and justifiable practices for layoffs, termination and working conditions through checks and balances. This would also dispel any doubts about arbitrary practices adopted by IT companies in terminating employment based on arbitrary performance reviews or other discriminatory practices. The laws for IT industry will be harmonized with the other industries and ensure transparent practices, which not only boosts the outlook for IT industry but also avoid government's imbroglio that it handles IT industry with kids' gloves.

However, this move has also received severe criticism as it could hamper job creation as companies would be overly cautious about their employment practices and reduce the in-take of employees as an alternative to layoffs or termination. The IT industry worked on capitalistic principles of hiring when there is demand and laying off when demand is low.

It is a settled matter of law that the definition of 'workmen' under ID Act includes employees of IT industry that are not in managerial or supervisory capacity. However, the definition of 'workmen' under TU Act, also upheld by the Karnataka High Court in one of its judgment<sup>1</sup>, is much broader and could include employees in managerial and supervisory capacity. This judgment has also observed that TU Act emphasis more on the purpose of the union than on the nature or role of employees that are its workmen. Hence the coverage of trade unions for IT employees could apply to entire industry and across hierarchies. Given this wide coverage, the potential requirement to engage in collective bargaining and re-structure the termination/lay off policies (including compensation to be paid) across the spectrum, could hamper recruitment and gradually paralyze one of the fastest growing and robust sectors in our country. In general, many trade unions function as labour cartels and have driven up the wages to levels of not being sustainable or compel organisations to maintain bloated work forces during business downtown. Further trade unions are usually concerned about the purpose of the union and espousing the cause of its members notwithstanding whether such members are white collared or blue collared workers. This could impair organisations and leave fewer resources for investment in new production processes or activity and eventually run the organization into closure. These issues have been especially endemic to manufacturing sector which has seen a systematic slowed down forcing our country to depend on imports for a vast array of products.

## **Conclusion**

The IT industry in India has weathered many storms and has time and again proven to be the bellwether in reviving our country's economy and employment prospects. Employing nearly 4-5 million employees across India, shaping cities as fastest growing hubs, accounting for nearly \$160 billion in total revenues of which nearly \$100 billion being export revenues and growing at a rapid pace of nearly 12-13% year-on-year, even a minor hiccup to this industry could have a butterfly effect and paralyze many other dependent sectors, such as education, transport, start-ups etc. Hence, the country should tread cautiously in creating laws and monitor unions from turning excessively belligerent in order to create a healthy balance, usher a new era of transparency and buoy the sentiments of both employees and management.

## **Footnote**

1 Govt Tool Room & Training Centre Vs. Asst. Labour Commissioner, (28.09.2001 – KAR HC): MANU/KA/0040/2002

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

AUTHOR(S)



**Arvind Gurumurthy**  
Kochhar & Co.

