

## TRADE UNIONISM AND LOCUS STANDI OF TRADE UNION FOR THE ESPOUSAL OF LABOUR DISPUTES IN PAKISTAN

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Despite constitutional guarantees and express pledges to the international covenants, the freedom of association has been subject to array of sanctions and impediments in Pakistan and the bargaining infrastructure has never been up to the global standard. The road to the extant trade unionism in Pakistan has been long and convoluted. In this respect, perhaps, the starting point is the promulgation of the Trade Union Act, 1926, a pre-partition piece of legislation. This article is an endeavour to present evidence, principally, from the primary sources and judicial paradigms to demonstrate the fact that parliamentary assertions have been one of the main stumbling blocks in up scaling the role of unions in Pakistan. Key Words: Trade Unionism, Locus Standi, Espousal, Freedom of Association

### Introduction

Pakistan has ratified almost all of the core conventions as enshrined in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. These conventions include Convention No.87 and Convention No.98 which relate to Freedom of Association and Right to Organize and Collective Bargaining, respectively. Since the day of her independence from the British regime, Pakistan has attempted five constitutions<sup>1</sup>. At the outset, Pakistan had no constitution; therefore, it was decided to deal the constitutional affairs by the adoption of Government of India Act, 1935 but no constitutional guarantee could be articulated for the fundamental rights. It was not until 1956 that the fundamental rights could find place in Pakistani constitution. Under the said constitution, every citizen had a right to be associated but subject to certain reasonable restrictions to be imposed by framing law in the interest of morality or public interest<sup>2</sup>. (Constitution of 1956) The constitution of 1956 could hold ground hardly for six years when a new constitution was enforced in 1962. At the very outset, there was no mention of fundamental rights in the said constitution. However, by way of first constitutional amendment, fundamental rights were incorporated in

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the said constitution<sup>3</sup>. (Constitution first Amendment, 1973) Fundamental right relating to freedom of association was reproduced as such from the late constitution of 1956 and it was ensured that all the citizens were entitled to form associations or trade unions but subject to certain reasonable restrictions to be imposed by enacting law in the interest of morality or public interest<sup>4</sup>. (Constitution, 1962) So, it transpires from the constitutional provisions pertaining to the fundamental right of freedom of association that the regulatory area of the union activities remained the same for more than a decade. After remaining on constitutional horizons for about a decade, it was replaced by the new constitution in 1973. Under the said constitution, the right to be associated or unionised has been put subject to reasonable restrictions to be imposed by the legislature in the interest of morality or public order<sup>5</sup>. (Constitution, 1973) At the time of its enforcement, the area of restriction was partially akin to that of the preceding couple of constitutions but the words 'public interest' were replaced by the words 'public order'. However, in 1975 the words "sovereignty or integrity of Pakistan" were also added to the inventory of restrictions expanding, thus, the range of restrictions<sup>6</sup>. (Constitutional Amendment, 1975) So, in line with constitutional mandate, there have been emerging numerous statutory endeavours for steering freedom of association in Pakistan. In this context, Trade Unions Act, 1926 was the first formal attempt for the advancement of trade unionism in Pakistan. Under the said law, the Registrar was not only saddled with a lot of powers regarding registration and deregistration of a trade union but also rendered the process of registration to be cumbersome in a variety of ways. For instance, it was incumbent that the application for the registration should bear the signatures of seven persons who had to subscribe their names to the rules of the Trade Union<sup>7</sup>. (Trade Union Act, 1926) Moreover, besides annexing the copy of rules with the application, the applicant union had to furnish certain information as to names, occupations, addresses of the

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members, name and address of the head office of the union along with full description of its office bearers<sup>8</sup>. (Trade Union Act, 1926)

In case, however, the applicant union had been in existence for last more than twelve months, it was incumbent for it to submit the detail of its assets and liabilities in such form and with such particulars as would be prescribed by the rules<sup>9</sup>. (Trade Union Act, 1926) Added to this inventory were the provisions to be incorporated in the rules of applicant union: the constitution of the executive body of the applicant union in line with the provisions of the Act; the name; purpose of its formation; utilization of funds; list of its members and inspection thereof; manner of admitting ordinary and honorary or temporary members as officers to form the executive of the Trade Union; the exigencies under which a any benefit may be assured to nay member and the circumstances under which any penal action may be taken against the delinquent; the manner of amending, varying or rescinding the rules; the manner of appointing and removing the officer of the union; the method of ensuring safe custody of the funds, annual audit, and adequate facilities for inspection of record relating to accounts of the union and the manner of dissolution of trade union<sup>10</sup>. (Trade Union Act, 1926) Besides this plethora of information to be supplied by the applicant trade union, the Registrar was still authorised to call for further information which he deemed fit, a condition the non-fulfilment of which would result in putting the registration process in abeyance, for the purpose of satisfying himself as to entitlement of the applicant trade union for registration<sup>11</sup>. (Trade Union Act, 1926)The law further empowered the Registrar to withhold registration if he was of the opinion that the name of the applicant trade union was similar to that of already registered trade union or there was close resemblance in terms of names that there was likelihood of being deceived by the public<sup>12</sup>. (Trade Union Act, 1926)

The broad message to emanate from this is that the process of registration of trade union was tailored in a fashion that the same

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proved to be instrumental in dashing the optimism of the growth of trade unionism, which the founding fathers had visualised at the time of ratifying the core conventions of the International Labour Organization, in Pakistan. Albeit, a pragmatic endeavour was demonstrated to revamp the law on the subject but the same proved to be an illusion<sup>13</sup> (Trade Union Amendment Ordinance, 1961) by not providing for any time limit within which the registrar was obliged to dispose of the issue of registration of a trade union. Conversely, it added more teeth to his authority and imposed only a statutory duty to register trade union only and only if he was satisfied that the incumbent union had fulfilled the entire statutory requirements. Thus, the non-incorporation of provision regarding the time limit within which he had to grant or refuse the registration of trade union enhanced the chances of delay on the part of registrar and the countervailing disadvantage of which was that the applicant union had to invoke the constitutional jurisdiction of the apex courts for the sake of issuance of writ in the nature of mandamus.

So, after remaining on the industrial horizons for more than a couple of decade, the said law was replaced by West Pakistan Trade unions Ordinance, 1968. Although the new law was expected to bring about revolutionary changes in post-independence era and the legislature had a chance to purge it of its colonial flavour but the effort was launched in a mawkish way and instead of demonstrating complete deviation from law, which primarily was meant for catering for the requirements of the colonial regime, not only its old character was retained but the spectrum of limitation for registration was enhanced manifold. For instance, in addition to the requirements adumbrated under the previous law, a trade union had to specify in its rules a minimum membership of ten per cent of the total strength of the workmen employed in an establishment of the industry concerned, or not less than one hundred workmen employed in such establishment, which ever was less; the applicant union had to mention not only the number of members of its executive but the officers as well and such number was to be within defined limits; manner of their appointment and removal; the powers and function of such officers, which would be such that no officer, to the exclusion of

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other, monopolised the control of the affairs of the union; the procedure of moving a vote of no-confidence in any or all of office bearers of the union; the holding of meetings of the Executive and General bodies of the Trade Union to ensure that the Executive Body may meet, at least, once in every six months and the General Body, at least, once in every year and the procedure of declaring a strike<sup>14</sup>. (West Pakistan Trade Union Ordinance, 1968)

The West Pakistan Trade Unions Ordinance, 1968 couldn't hold ground any longer and after the lapse of almost one year it was replaced by the Industrial Relations Ordinance, 1969. The new law manifested numerous deviations from the previous statute on the subject. For instance, unlike its predecessor, the President and Secretary of the applicant union were enjoined upon to submit an application for registration of a trade union to the registrar<sup>15</sup> (Industrial Relations Ordinance, 1969) if authorised by a resolution of the general body of the trade union<sup>16</sup>. (Industrial Relations ordinance, 1969) Another hallmark of that law was that the principles of association contained in the Convention No.87, adopted by the International Labour Organization, had been emulated in it<sup>17</sup>. (Industrial Relations Ordinance, 1969) The provisions resounded in it were more speaking vis-à-vis previous laws on the subject and some new provisions were also added to the inventory of requirements of registration. For example, the applicant union was required to attach three copies of its constitution coupled with copies of the resolutions whereby the constitution of union was passed and the president and secretary were authorised to apply for registration thereof<sup>18</sup>. (Industrial Relations Ordinance, 1969)

As to the requirement of registration of a union, the new law enlarged the scope of requirements. For example, seventy five per cent of the members of the executive body were required to be the actual workers of the concerned establishment/ establishments or the industry; unlike former law on the subject, it was mandatory to hold the meeting of the executive at least once in every three

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months; all the members were required to be the actual workers in the said industry and in case there were more than one registered trade unions in the said establishment, the applicant union had to establish that it had, as its members, at least, one fifth of total number of workers employed in such establishment<sup>19</sup>. (Industrial Relations Ordinance, 1969) Albeit on infinitesimal level, but contrary to erstwhile arrangements, the new law resuscitated the process of registration, as the Registrar was enjoined upon to dispose of the application within fifteen days<sup>20</sup>. (Industrial Relations Ordinance, 1969) In case, however, the Registrar found some material deficiency in the application, he would communicate such deficiencies in writing to the applicant union, which would reply thereto within fifteen days of receipt thereof and in case the deficiencies pointed out by the Registrar were removed to the satisfaction of the Registrar, he would grant a certificate of registration or reject the application within span of three days<sup>21</sup>. (Industrial Relations Ordinance, 1969) Moreover, in case of failure of the Registrar to observe the time-bound network, the aggrieved trade union would be entitled to lodge an appeal or application to the Labour Court<sup>22</sup>. (Industrial Relations Ordinance, 1969)

After remaining on industrial horizons of Pakistan for more than three decade, the Industrial Relations Ordinance, 1969 was surrogated by another law<sup>23</sup>. (Industrial Relations Ordinance, 2002) As far as the registration of a trade union was concerned, the new law turned out to be a facsimile of its predecessor except some deviations. For instance, the tenure of the executive was enhanced to three years; the executive of the union was obliged to meet, at least once, after every four months and in case there existed more than one registered trade unions in the establishment, group of establishment, the applicant union had to show that it had not less than one-fourth of the total number of workmen as its members<sup>24</sup>. (Industrial Relations Ordinance, 2002) The industrial Relations Ordinance, 2002 was replaced by the Industrial Relations

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Act, 2008. In the new law, old procedure of registration of a trade union has been, as had been provided under the Industrial Relations Ordinance, 1969, restored<sup>25</sup>. (Industrial Relations Act, 2008) The said law, however, could not hold the ground any longer and as a result of eighteenth amendment to the constitution of 1973, firstly, the Punjab Industrial Relations Ordinance, 2009 and secondly, the Punjab Industrial Relations Act, 2010 were enacted<sup>26</sup>. (Eighteenth Amendment, 2010) One of the hallmarks, inter alia, of the eighteenth amendment turned out to be the abolishment of concurrent legislative list. Resultantly, the labour, being the subject of said list, has become the exclusive domain of the Provincial Legislatures. It is worthwhile to note that the procedure of registration has, in the present law, been incorporated on the same fashion as had been provided under the previous law with the only addition that union could be formed only in an establishment in which fifty workers were employed<sup>27</sup>, (Punjab Industrial Relations Act, 2010), a precondition, which has been termed by the lamenting labour leaders to be incorporated with an invidious approach. As a result of Eighteenth Constitutional Amendment, the entrustment of the subject of labour to the provinces had posed a difficulty i.e. the nascent laws<sup>28</sup> (All the Provincial Laws) were to be confined to the territorial limits of the respective provinces and didn't address the issues of the unions to be formed within the territorial limits of the Capital Territory Islamabad and the unions of transprovincial stature. So, in order to fill the legal void, the Federal Legislature, after a gap of about four years, enacted the law which encompasses the issues pertaining to the unions at both levels<sup>29</sup>. (Industrial Relations Act, 2012)

### **Cancellation of Registration**

The law saddles the registrar of the trade unions with the powers to lodge a complaint for the annulment of registration if the union contravenes the provisions of the law, rules made thereunder or the provisions of its own constitution<sup>30</sup>. (Pakistan security Press

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Employees Union v Sindh Labour Court, 1979) So much so, the registrar is empowered to authorize someone else to make such type of complaint<sup>31</sup>(Pakistan Security Press Employees Union v Sindh labour Court, 1979) and appearance and arguing by a person duly authorised by registrar, held, was not open to objection<sup>32</sup>. (Registrar of Trade Unions Hyderabad v Sindh Seed Corporation Employees' Union, 1989) The basic logic behind the lodging of complaint by the Registrar is stated to be vesting jurisdiction in the Labour court<sup>33</sup>. (National bank of Pakistan Employees' Union v Chairman Punjab Labour Appellate Tribunal, 1983) For this purpose, the Registrar of the Trade Union is the sole judge of the situation as the lodging of the complaint with the Labour Court is purely discretionary as there exists no legal provision under which registrar is obliged to take such action<sup>34</sup> (Munawwar Ali Khan v J Ali Sher v Registrar Trade Unions Sindh, 1983) and such power has been stated to be enabling or permissive neither creating any legal right nor imposing upon him any obligation to file such complaint at the instance of petitioner<sup>35</sup>.(Rice Export Corporation Labour Union v Registrar of Trade Unions Karachi, 19883) In case of pendency of such application before the labour court, the registrar of the trade unions has no power to issue a certificate of collective bargaining agent notwithstanding the fact that the applicant union is the only registered union in that institution and has atleast one third of total number of employees as its members<sup>36</sup>(Pakistan Insurance Corporation employees Union Karachi v Registrar of the Trade Unions Karachi, 2002) and the Registrar can exercise this authority either *suo moto* or on the basis of some credible information received by him from any relevant source and one of such source may be the employer<sup>37</sup>.(Messers S.N.H Industries v Registrar of the Unions Albeit, the Registrar of the Trade Unions has been invested with the powers to cancel its registration, but the provisions of the said subsection have been couched in such manner that only executive or administrative

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powers have been given to him to cancel registration of a Trade Union<sup>38</sup>.(P.C Hotel Karachi Workers' Union v M/S Pearl Continental Hotel,2006) As far as the element of violation or contravention of provisions of the Industrial law or its constitution is concerned, the Registrar has got no power to cancel the registration.

In this respect, the question of employer's locus standi to be associated in any inquiry or investigation for the verification of certain facts relevant for the registration of Trade Union has paved the way to a lot of controversies. The bench has been demonstrating opposite views. For instance, it has been held that apparently, the issuance of notice to the employer and union already existing though not provided for in the relevant provisions pertaining to registration of union, but it was not possible to comply with provisions of section 7(2) of the law <sup>39</sup>(Industrial Relations Ordinance, 1969) without associating in proceedings the employer and union or unions already in existence. Therefore, non-association or non-participation of the employer or an existing trade union would be contrary to the principles of natural justice<sup>40</sup>.(Ghee Corporation of Pakistan v Registrar Trade Unions, 1991) Similarly, it has been held that upon registration of the trade union certain results are likely to be emanated not the least of which would be the recognition of the seamen as workers of the petitioner with the further consequences of the enforcement of their rights provided under the Industrial Relations Ordinance, 1969. In these circumstances, it cannot be said that the petitioner would not be affected by the impugned registration and hence debarred from invoking the constitutional jurisdiction of the court. Accordingly, the petitioner squarely fits into the meaning of the term aggrieved person and has the right to file this petition in the circumstance of the case<sup>41</sup>. (Messers Forbes Cambell and Co v Registrar of the Union, 1999) However, the views expressed by the court could not hold ground any more. Where the application for the registration of a trade union was granted by the Labour Court but the matter was returned to the Registrar with the order to take

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up the issue in association with the employer. The aggrieved union contested the matter in constitutional petition and it was held by the court that both the employer as well as a rival trade union had no locus standi to oppose the registration under the premise that they had not been associated in the issue<sup>42</sup>. (WAPDA Employees Union v WAPDA Employees Housing Society, 2011) Similar views have also been held that rival trade union had no legal right to be heard at the stage of disposal of an application for registration of a union<sup>43</sup>. (Karachi Atlas Honda Corporation Labour Union v Registrar of Industry-Wise Trade Unions, 2000)

The Registrar, of course, can exercise such powers only in case of dissolution or ceasescion of a trade union. For this purpose, the registrar is not supposed to conduct a trial but he has been authorised to hold an inquiry<sup>44</sup>. (Karachi Atlas Honda Corporation Labour Union v Registrar of Industry-Wise Trade Unions, 2000)

Furthermore, the law enjoins upon the registrar to hold inquiry as he deems fit but the same should be conducted fairly, in a reasonable and in equitable manner, thus fulfilling all formalities, conditions and requirements of natural justice by giving notice and hearing all concerned parties, before passing any order<sup>45</sup>. (Karachi Atlas Honda Corporation Labour Union v Registrar of Industry-wise Trade Union, 2000) If, however, as result of such inquiry, the Registrar is of the opinion that any of the law rules or the constitution of trade union have been contravened or other grounds of section 10 of the Ordinance are attracted, he would refer the matter to Labour Court by filing a complaint in the manner provided in under relevant law<sup>46</sup>. (Karachi Atlas Honda Corporation Labour Union v Registrar Industry-Wise Trade Union, 2000)

The act of registration of a union is neither mechanical nor automatic. It requires satisfaction on the part of the Registrar as to be observance of the requirement of the Ordinance. This satisfaction refers to the state of mind. Registration being a conscious act due satisfaction should be reflected while executing

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this act as in case of illegal registration all process to be undertaken at the behest of such union becomes *ultra vires*<sup>47</sup>. (Aftab Ahmad v General Manager Planning, Planning Division, WAPDA Lahore, 1992) Furthermore, the registration ought to satisfy the test of objectivity, if not, it may well be exposed to judicial scrutiny<sup>48</sup>. (Habib Sugar Mills v registrar of the Trade Unions Sindh, 2000) As the status of the Registrar of the trade unions has been held to be of a prosecutor<sup>49</sup>, (Industrial relations ordinance, 1969) therefore, he enjoys executive functions under section 10 (3) of the Ordinance and the same must be exercised fairly, reasonably, honestly and in an equitable manner<sup>50</sup>. (KPT Progressive Workers' Union v Registrar of Trade Unions, 2000) Albeit, the Registrar of the Trade Unions has been enjoined with function of committing an enquiry before the annulment of the registration of a union, but the statute and the rules made thereunder are silent on the procedural aspect of the enquiry. As to this aspect of the registration, it has been held that the Registrar is not prevented from seeking assistance both from the rival unions as well as the employer but it is purely optional act<sup>51</sup>. (Essa Cement Industries Workers' Union v Registrar of Trade Unions, Hyderabad Region, Hyderabad, 1998)

Consequent upon the registration of union and issuance of certificate of registration, there accrues a valuable vested right to the union. In that case it is imperative that the cancellation of registration of a union can only be done, after due notice, enquiry and full hearing given to the affected party<sup>52</sup>. (Registrar Industry Wise Trade Unions v Pakistan Steel People's workers' Trade Unions, 1996) It is well settled law that in all proceedings i.e. judicial, quasi-judicial or administrative, the observance of principles of natural justice has been held to be mandatory if the proceeding are likely to affect the person, property or other rights of the parties<sup>53</sup>. (Registrar of the Industry-Wise Trade Unions v Pakistan Steel People's Workers' Trade Union, 1996) The rule has

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to read as integral part of the statute notwithstanding its express incorporation in the relevant statute<sup>54</sup>. (Registrar of the Industry-Wise Trade Unions v Pakistan Steel People's Workers' Trade Union, 1996)

In the absence of any express words in the enactment giving such power excluding the application of the principles of natural justice, the courts of law are inclined generally imply that such powers given is coupled with a duty to act in accordance with such principles of natural justice as may be applicable to the facts and circumstances of a given case<sup>55</sup>. (Registrar of the Industry-Wise Trade Unions v Pakistan Steel People's Workers' Trade Union, 1996) Only clear language will be interpreted as conferring a power to exclude operation of rule of *audi alteram partem*, where a public functionary is not required to act judicially but only to hold such inquiry as he consider appropriate, but he had been acting in a quasi-judicial capacity, he must give opportunity of hearing the affected person and Registrar of industry-wise Trade Union is supposed to be acting at least in a quasi-judicial capacity<sup>56</sup>. (Registrar of the Industry-Wise Trade Unions v Pakistan Steel People's Workers' Trade Union, 1996)

### **Espousal of Industrial Dispute**

As far as the question of espousal of industrial dispute is concerned, the same has been subject of discussion by the courts in a variety of ways. For instance, in case of collective bargaining agent, it is the privilege of such union to take up such matter with the employer. However, in case of non-existence of such arrangements, the matter can be initiated by a body of workers who have some 'direct and substantial interest' in the matter. The phrase 'direct and substantial interest' has been creating a lot of confusion as far as the matter of championing the cause of workers in Pakistan is concerned. The expression was interpreted by the apex court in connection with the case of Dimakuchi Tea Estate.

Notwithstanding the fact that in Pakistan, the law relating to trade union's locus standi to raise an industrial dispute has been interpreted so liberally that it has been extended to champion the cause of the individual workers as well, the law relating to the

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locus standi of the trade union to champion the cause of the workers badly lacked consistency and harmony. In deed, the track of union's locus standi seems of be utterly bemused. For instance, under the provisions of the Industrial Disputes Act, 1947 an industrial dispute could not deemed to have been raised unless the same was anchored by a body or workers acting through union or otherwise. So, a dispute raised and decided in the prescribed way would come within the ambit of section 18. The basic urge behind the policy manifested under section 18 was to enlarge the operation of settlement concluded in the course of conciliation and it was owing to this object with that four categories of persons bound by such settlement were specified in section 18<sup>57</sup>. (Ramnagar Cane and Sugar Cane v Jatin Chakravorty, 1961) once it is shown that a number of workmen, either through the agency of their trade union or by some other way, have sponsored the cause of an individual workman, it becomes an industrial dispute for the purposes of the law. Even, unlike subsequent arrangements, it was not necessary that the body or trade union sponsoring the cause of workman ought to be registered<sup>58</sup>. (Newspapers Limited Allahabad v U.P State Industrial Tribunal, 1961) With the emergence of the institution of the Collective bargaining agent on industrial landscape in Pakistan, mere registration as trade union has not been held to be sufficient for the espousal of an industrial dispute. It wouldn't be out of place to mention that the condition of being collective bargaining agent for raising an industrial dispute is applicable to disputes raised after 13-10-1974. Prior to this date there was no such requirement for raising an industrial dispute.

In order to be eligible for raising an industrial dispute, not only the achievement of certificate of collective bargaining agent from the registrar is *sine qua non*<sup>59</sup>(Workers' Union v Messrs Awal Silk Mills, 1976) but the proper constitution of the union is also necessary. Where the union raising the industrial dispute was not validly constituted as it had non-workers as its members, it was held that the union was not properly constituted, therefore, not a Collective Bargaining Agent, hence not entitled to raise an

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industrial dispute<sup>60</sup>. (Employees Union v Smith Kline and French of Pakistan, 1976) In the same year, another requirement of “being legally constituted” was imposed and this requirement was emanated from Punjab, Industrial Relations Rules. The combined effect of section 32(1-A) and rule 5 the Punjab, Industrial Relations Rules, 1973, reveals that the union must have been legally constituted. Where the number of office-bearers of Union was much in excess of number prescribed under rule 5, it was held that the union was illegally constituted and hence incompetent to anchor the industrial dispute. It was also pointed out that the number of outsiders amongst office-bearers was more than 25%, therefore, the union was not legally constituted and not competent to raise industrial dispute<sup>61</sup>. (Labour Union v M.M Ispahani Tea Packeting factory, 1976) So much so, in case of only one trade union, it is obligatory for such union to apply for obtaining certificate of collective bargaining agent<sup>62</sup>. (Industrial relations Ordinance, 2002) Where only a single union existed in the establishment and the same had not applied for the certification of Collective Bargaining Agent, it was held that such union was not entitled to raise an industrial dispute and was also not entitled to take the benefit of section 52 of the Industrial Relations Ordinance, 1969<sup>63</sup>. (Tube well Employees Union SCARP v Secretary to the Government of Punjab, 1976)

Another requirement was complete adherence to the constitution of the trade union. The question, if the union raising the industrial dispute doesn't adhere to its constitution is not entitled to raise it has been subject of debate in a number of cases<sup>64</sup>. (Khokhar Glass Works Karachi v Khokhar Glass Works Mazdoor Union, 1970) In all these cases, it has been held that the union has to show complete adherence to its constitution. Where a union had laid down in the constitution that it would seek approval of the demands by the Executive Body before service of notice of strike and the notice was served without seeking such approval, it was held that the dispute was not raised in the prescribed manner. The

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onerous requirement of being legally and properly constituted has been attaining liberal interpretation. For instance, where an application for the change of elected General Secretary was submitted to the registrar and during the pendency of such application, the union had served a charter of demands; it was held that the union was not entitled to raise such demands<sup>65</sup>. (Mazdoor Union v Futehally Chemical Karachi, 1978)

Similarly, a trade union would lose its locus standi if it deviated from the procedure prescribed for the espousal of an industrial dispute. Where the union didn't serve strike notice on prescribed form, it was held that no industrial dispute would be deemed to exist unless that was raised in the prescribed manner either by the CBA or an employer. For that purpose, adherence to the relevant rules was deemed to be *sine qua non*. The strike was rendered to be illegal on the ground that notice was not sent in consonance of the rules<sup>66</sup> (Staff Union v Messrs International General Insurance) according to section 2(xix) of the Ordinance, the expression "prescribed" meant prescribed by the rules. Under rule 75 of the Punjab Industrial Relations Rules, 1973, strike notice was to be given in form "U"; therefore the dispute raised on the basis of such notice was not valid<sup>67</sup>. (Staff Union v Messrs International General Insurance) In order to raise an industrial dispute it is necessary that union should be properly constituted and it should have obtained the certificate of CBA from the Registrar of the Trade Unions. Where the election of General Secretary of the union was not yet approved by the Registrar, it was held that such Secretary was not competent to raise industrial dispute and once the union is properly constituted, it becomes obligatory to maintain that status<sup>68</sup>. (Employees Union v Messrs Coming Glass Karachi, 1977)

Similarly, if the union loses the status of CBA in referendum during the pendency of application, it is obligatory for such union to withdraw the application for the substitution of the new CBA. If, however, the union continues to do so, its application becomes infructuous because the union cannot continue the proceedings<sup>69</sup>.

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(Labour Union v Messrs marble Industries, 1977) Albeit, the emergence of the institution of the collective bargaining agent gave new dimensions to the union's right to espouse the cause of the workers, but it didn't leave any adverse effects on the status of the unions. Where, there was only one registered trade union in the establishment. The management had accepted the same as CBA and entered into settlement with that union on 15<sup>th</sup> of March, 1972. On 10<sup>th</sup> of October, 1974 by virtue of an amendment (Ordinance, XIX of 1974) it made compulsory to obtain certificate of CBA to act as such. It was held that the Ordinance had prospective and not retrospective application and, therefore, the union had the locus standi to raise the industrial dispute.<sup>70</sup>(Workers' Union v Messrs Regal Manufacturing Company, 1977)

### **Conclusion**

Basically, the range of the workers participation largely depends on the strength of the trade union. As Lowell Turner calculates that the employers often pursue contrasting strategies in different locations, from partnership where union are entrenched to determined avoidance where unions lack a strong presence or institutional protection<sup>71</sup>. (Turner, 1996) In this situation, the role of the union increases manifold as the labour purely relies on traditional characters for securing better terms and conditions of employment<sup>72</sup>. (Turner, 1996) The sway of unionism needs to be stretched to other segments of the economy as well. For instance, the agriculture sector consumes 43.48% of the total workforce but the exiting labour laws don't afford any protection to worker associated with this sphere of the economy. Similarly, the condition that only the workers of that establishment are entitled to form a trade union wherein fifty or more workers are working also seems to be a living manifestation of an attempt to deprive the workers of small establishments of the benefits of trade unionism. Another striking example, which merits attention, is the monster of Export Processing Zones. Being riddled with economic oddities, the developing nations, under the illusion of foreign investment, willingly pledge to surrender the rights of the trade unions within their respective jurisdictions. Domestic employment is another

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equally important arena, which has hitherto been ignored by the successive government in Pakistan. Since the dawn of independence in 1947, none of the governments, civil or military, have ever taken any pragmatic initiative to ameliorate the condition of domestic servants.

Another terrain, which needs to be adverted, is the mantra of multinationalism. The extant law seems to be imbued with inadequacies to cope with the challenges likely to emerge with the advent of multinationalism. Last but not the least, it is equally important to confer *locus standi* on employer and the rival trade union to take up the objections for getting the registration cancelled. Such arrangement will be efficacious in purging the industrial arena of the ghost unions and equally instrumental in surfacing the malpractices/ illegalities of the unions.

### REFERENCES & NOTES

1 At the time of its independence, Government of India Act, 1935 remained in force and after about two decades, in 1956, first regular constitution was promulgated and enforced but unfortunately it couldn't gain ground even for a decade and in 1962 another constitution was promulgated by the then Military led government. Like its predecessor, this constitution ought to be abrogated and an interim constitution was promulgated by another military led government and finally, in 1973 a unanimous constitution was given by a democratically elected government.

2 Article 10 of the Constitution of 1956

3 Constitution (First Amendment) Act, 1963

4 Article 7 of the Constitution of 1962

5 Article 17 of the Constitution of 1973

6 Section 3 of the Constitution (Fourth Amendment) Act, LXXI of 1975

7 Section 4 of the Trade Unions Act, 1926

8 Section 5 of the Trade Unions Act, 1926

9 Section 5(2) of the Trade Unions Act, 1926

10 Section 6 of the Trade Unions Act, 1926

11 Section 7 of the Trade Unions Act, 1926

12 Ibid

13 Trade Unions (Amendment) Ordinance, 1961 (XI of 1961)

14 Section 6 of the West Pakistan Trade Union Ordinance, 1968

15 Section 5 of the Industrial Relations Ordinance, 1969

16 Section 6 of the Industrial Relations Ordinance, 1969

17 Section 3 of the Industrial Relations Ordinance, 1969

18 Section 6 of the Industrial Relations Ordinance, 1969

19 Section 7 of the Industrial Relations Ordinance, 1969

20 Section 8 of the Industrial Relations Ordinance, 1969

21 Ibid

22 Ibid

23 Industrial Relations Ordinance, 2002

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- 24 Section 6 of the Industrial Relations Ordinance, 2002  
25 Sections 4, 5, 6 and 9 of the Industrial Relations Act, 2008  
26 Eighteenth Amendment, 2010  
27 Section 3(i) of the Punjab Industrial Relations Act, 2010  
28 All the Provincial Laws on the Subject  
29 Industrial Relations Act, 2012  
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31 ibid  
32 Registrar of Trade Unions Hyderabad v Sindh Seed Corporation Employees' Union, 1989 PLC 857  
33 National bank of Pakistan Employees' Union v Chairman Punjab Labour Appellate Tribunal, 1983 PLC1256  
34 Munawwar Ali Khan v J Ali Sher v Registrar Trade Unions Sindh, 1983 PLC 171  
35 Rice Export Corporation Labour Union v registrar of Trade Unions, Karachi and Another, 1983 PLC 332  
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39 Section 7(2) of the Industrial Relations Ordinance, 1969  
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42 2011 PLC 18 WAPDA Employees Union through its President/ Secretary v. WAPDA Employees Cooperative Housing Society Gujranwala  
43 Karachi Atlas Honda Corporation Labour Union v Registrar of Industry-Wise Trade Unions, 2000 PLC 393  
44 Karachi Atlas Honda Corporation Labour Union v Registrar of Industry-Wise Trade Unions, 2000 PLC 393  
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49 Section 10(1) of the Industrial Relations Ordinance, 1969  
50 KPT Progressive Workers' Union v Registrar of Trade Unions, 2000 PLC 376  
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52 Registrar Industry Wise Trade Union v Pakistan Steel People's Workers' Union and 12 Others, 1996 PLC 661

- 53 Registrar of the Industry Wise Trade Union v Pakistan Steel People's Workers' Union and 12 Others 1996 PLC 661
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- 58 Newspapers Ltd Allahabad v U.P State Industrial Tribunal [1961] PLC 40
- 59 Workers' Union V Messers Awalin Silk Mills [1976] PLC 222.
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- 62 Industrial Relations Ordinance 2002 s 20
- 63 Tubewell Employees' Union SCARP No IV v. Secretary to Government of the Punjab, Irrigation Department, Lahore, 1976 PLC 476 and Messrs Mahboob Elahi & Sons LTD. Vs Employees Union 1976 PLC 514.
- 64 For instance, Khokhar Glass Works, Karachi Vs Khokhar Glass Works Mazdoor Union, 1970 PLC 659, Ms P I Silk Mills, Karachi Vs Muhammad Ali, 1970 PLC 662, Sindh Industrial Trading Estate Limited Employees Union, Karachi Vs The Registrar, Trade Unions , Sindh, 1973 PLC 88 and Employees' Union Vs Messrs Lahore Chemical and Pharmaceutical Works LTD, Lahore, 1976 PLC 880.
- 65 Mazdoor Union v Messrs Futehally Chemical Ltd Karachi, 1978 PLC 472
- 66 Staff Union Vs Messrs International General Insurance Company of Pakistan PLC 137
- 67 Similarly, in the case of Staff Union Vs Messrs International General Insurance Company of Pakistan LTD; Lahore PLC 137
- 68 Employees' Union v Messrs.' Corning Glass (Pak) Limited Karachi and Others, 1977 PLC 408
- 69 Labour Union V. Messrs Marble Industries LTD; 1977PLC 95
- 70 Workers' Union V. Messrs regal Manufacturing Company, 1977 PLC 412.
- 71 Lowell Turner, "*Globalization and the Logic of Participation: Unions and the Politics of Coalition Building*" Journal of Industrial Relations, 2006, Vol.48 P.83.
- 72 Ibid