

NATIONAL COMMISSION ON LABOUR

Union Security - Closed Shop/Union Shop

Union security arrangements are essentially Western concepts. The quest for such union security followed the growth of trade unionism and the importance of collective bargaining in the regulation of wages and conditions of work of employees. Trade unions started asking: is it reasonable that a worker should benefit from the activities of a trade union and decline to belong to it? and generally came out with the answer that there should be no 'free riders'.

2. Union security involves agreement with the employer or at least his acquiescence in refusing to employ a non-member. Its two main variants are; (i) pre-entry 'closed shop' by which the employer will recruit only trade union members; this gives the union control over the supply of labour; and (ii) post-entry or 'union shop', by which new entrants to employment, if they are not union members, must join it within a specified period. Union security arrangements of this type may or may not operate with 'check off'. That can be an independent area of agreement between parties.

3. An important argument in favour of closed-shop/union-shop is the close link that exists between effective collective bargaining and strong trade unions; where there is already a strong and stable union it adds to its strength and in other cases it hastens and supports the process of stabilisation of unions. A corollary to the above argument is the common obligation principle. The arguments normally advanced in its support are: (a) since in an establishment all workers enjoy the benefits secured by a representative union, no employee is entitled to share the gains unless he contributes towards its activities and expenses; (b) it becomes easier for a representative union with which collective agreement is signed, to implement its part of

the obligations, if workers are subject to union discipline, (c) it exercises a check on eventualities like non-members not honouring the commitments made by a representative union and (d) union security clauses give financial support and also enhance the prestige of a representative union. Closed/Union shop provisions will provide some advantages to the individual worker also; it will eliminate interference from the employers' side in the trade union activities for membership. His employment is also more secure, though in countries where it is practiced employment is not much of a problem. An employer also benefits by such arrangements as he is sure that he is dealing with an organisation which represents all his workers.

4. The arguments on the other side are: (i) The practice infringes on the constitutional right of freedom of association in that it compels an employee to join a particular union. (ii) It reduces individual's liberty in a number of ways. Freedom of association has two aspects - freedom of individual to form or join an association of his liking as well as the freedom not to join any association. Since in a union-shop or closed-shop a person has no choice but to join a trade union and to pay subscription, such arrangements seem to abridge a person's freedom. It may also happen that a trade union may refuse to accept an individual's membership and cut him out of employment market altogether. The individual is obligated to accept all the decisions of a union of which he is a member, in case of disagreement or non-observance of decision he runs the risk of expulsion from the union and losing his job. The trade union therefore loses its voluntary ^{character} organisation. Some critics have also argued that if union's finances are secure it may not be necessary ^{for} it to function in a democratic manner.

5. In India the experience with closed-shop or union-shop is almost nil. The earliest attempt for union security was

made by Tata Workers Union in 1956; the agreement of January 1956 between TISCO, Jamshedpur and Tata Workers Union provided in principle for a union membership security clause. The parties jointly approached the Government for alteration in law to make it premissible. A Committee appointed by the Bihar Government in 1956, 'to examine the question of introduction of check-off and union shop in selected establishments', recommended the conditional introduction of union-shop purely as an experimental measure. In the Committee's view, "the right of the citizens to seek and get employment is one of the fundamental rights guaranteed under the Constitution and any interference with that right in the shape of prior membership of a trade union will be an unreasonable limitation on the right to work". It, therefore, was "strongly opposed to the system of "closed-shop" under which membership of a trade union is a condition of employment. The Committee, however, felt that this objection does not apply equally to "union-shop ^{under} ~~under~~ which a worker is given an opportunity to be a member of the recognised trade union within a certain period after his employment."* The main condition laid down by the Committee for the introduction of union-shop was the determination of the representative character of the union by the Labour Commissioner through secret ballot. Only when majority of the workers within the bargaining unit voted for a particular union, the demand for union-shop provision could be considered by the management.

II Evidence before the Commission

6. The trend of evidence before the Commission on this subject has been that although closed shop/union shop may have some advantages from the point of view of trade unions, the introduction of such a system is not practicable nor

*Report of the Committee on Union-shop and Check-off (1965) appointed by the Bihar Government in 1956.

desirable, and that in any case the closed-shop is inconsistent with the Constitutional position on freedom of association. Some have, however, favoured union-shop subject to the fulfilment of certain preconditions before its introduction.

7. The State Governments seem to feel that the system can work well only when there is no multiplicity of unions. Most of them consider it undesirable and unlikely to succeed in the present circumstances; in the view of some, it comes in the way of the individual's freedom of association.

Employers' organisations, including Public Sector undertakings, generally, have expressed themselves against its introduction. In their view its success to a large extent depends on responsible trade union leadership, unified trade union movement, etc. which do not exist today nor do they foresee its establishment in the coming years.

9. Most of the workers' organisations including the two central organisations of workers which have given their opinion on closed-shop/union-shop are against the introduction of the system. One central organisation desires that every worker should be member of a union. Many have pointed out that membership of a union is voluntary and to force a worker to join a union is unconstitutional and infringes his fundamental rights. Some have pointed out that because of the multiplicity of unions, and inter-union and intra-union rivalries, it would not be desirable to introduce the system; that the situation is not ripe for its introduction. It "will only give further opportunities to the Government and employers to interfere in trade union affairs and manipulate the unions". Majority of those who favour 'union-shop' have based their arguments on the plea that it will give strength to a recognised union, eliminate multiplicity of unions, and lend it financial support. A few have favoured the system on the grounds that such a system will ensure job protection to workers, besides promoting good industrial relations.

10. The Study Group on Industrial Relations (Eastern Region) and Ports & Docks are not in favour of this system. The Study Group on Industrial Relations (Northern Region), although it did not consider the time ripe to attempt any legal measure in the form of either closed or union-shop, recommended that union-shop may be gradually built up without the compelling force of law. To this end, it recommended that where a recognised union exists, in a unit all workers in that unit should be required to join that union or any other union of their choice.

III
Foreign Practices

11. The 31st Session of the International Labour Conference discussed the question whether the convention (No. 97) on Freedom of Association and Protection of the Right to Organise covered 'the right not to organise'. The problem was considered controversial because member countries having provision of freedom of association permitted such union security clauses as closed shop or union shop. It was also feared that in countries where there are several trade union movements, the introduction of the system might endanger the principle of freedom of a worker to choose his union. Owing to wide variations in the approach between one country and another, the Conference came to the conclusion that the "convention could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice."

12. Netherlands, Belgium and France have by law prohibited union security clauses. A provision in the French Act of 1946 which was incorporated in the 1950 Collective Agreements Act enjoins that nation-wide agreements must contain the clause on freedom of association. In addition an Act was passed on 23rd April, 1956 which forbids anti-union discrimination.

13. The Labour Management Relations (Taft-Hartley) Act of 1947 stipulates that employers may not be required to hire trade unionist only, but permits union-shop and maintenance of membership clauses. These clauses are valid subject to certain conditions. However, a number of States have a provision of 'right to work'. In U.S.A. in the matter of membership, the State Legislation is given precedence over provisions of LMRA. The States which have provision of 'right to work' prohibit by law any requirement of union membership condition for employment. Despite the State provisions, in 1958-59, the Bureau of Labour Statistics found that ~~71~~⁷¹ per cent of the workers were covered by the agreements providing for union security clauses.

14. In the United Kingdom, it is estimated that ~~some~~ employees working in units with closed shop agreements numbered ^{about} 16% of the total. Among union members, two persons in every five were covered under such security clauses. The union security clauses in U.K. are differently understood as compared with U.S.A. Where such agreements prevail in the U.K. workers can be members of one or the other union and not necessarily of a particular union as the term union-shop or closed-shop connotes in U.S.A.

15. The methods generally used to achieve union security are (i) to put pressure or persuasion, (ii) refuse to work along side with non-unionist; and (iii) in some cases employers have also been found to show preference for union members, to achieve 100 per cent membership. Because of the strong tradition of voluntarism and self-government, the parties are left free to come to any agreement on closed-shop or union-shop. The Donovan Commission (1965-68) rejected the idea of prohibiting closed-shop: "It is better to recognise that under proper safeguards, a closed shop can serve a useful purpose and to devise alternative means of overcoming the disadvantages which

accompany it. We have also borne in mind that throughout this report, we advance a number of proposals to assist trade unions to organise effectively and to reduce the incidence of strikes. The effect of our proposals should be to extend to more industries the conditions which now permit many trade unions to organise and bargain without need for the closed-shop, and we believe therefore that in many cases unions should in time feel able to dispense with its aid".*

16. Mexican Labour Code permits such clauses, but consequent agreements are required not to work to the detriment of non-organised workers who were already in employer's service at the time of contracting the agreement. In New Zealand, the recruitment of non-union workers is permissible only if union members are not available. In Japan, union-shop clauses are quite usual. In other developing countries of Asia, the instances of union-shop are rare.

17. In countries which allow union security clauses the law, in order to protect the workers who are thus compelled to join a union, usually stipulates that no obstacles must be placed in the way of their joining and that there must be no discrimination against them. In Australia, for example, the registration of a union may be annulled if its rules do not grant adequate facilities for the admission of new members or if they impose unduly severe conditions. Similarly, in New Zealand any person required to join a union is entitled to become a member, and any provision to the contrary in the union rules is null and void. In the United States it is illegal for any organisation to require wage earners covered by a union security clause to pay entrance dues which the National Labour Relations Board considers excessive or arbitrary.

* Report of the Royal Commission on Trade Unions and Employers' Association (1968) PP: 163-164.

IV

Suggestions

18. The question of permitting pre-entry unionisation 'closed-shop' does not in India arise, because it may operate against the fundamental right of Freedom of Association. Therefore, one can only think in terms of 'union-shop', though in this system also some compulsion is 'in built'. Admitting that such security measures give strength and stability to a union, organisational and financial and facilitate collective bargaining, the question that arises is whether such security should be used to enable unions acquire strength or unions should build themselves up and win, through their own strength, the benefits of union security. In the present multiplicity of unions, inter and intra-union rivalry, present political climate, the extent of unionisation and dependence on adjudication rather than on collective bargaining, any move in the direction of union-shop will generally be resisted.

19. The issue of union security through closed-shop or union-shop arises mainly in a situation where trade unions, through collective agreements, are responsible for the regulation of wages and conditions of work and would like that all workers who benefit from the union's efforts should belong to the unions. In the Indian situation, with no obligation on employers for recognition of unions and with collective bargaining in its nascent stage, the unions cannot claim to be responsible for the regulation of the conditions to any great extent and consequently cannot claim the benefits of union security either. Further multiple unionism makes it difficult for trade unions to demand and obtain any effective union security measures. This however could be considered as a static view of what is likely to happen in labour management relations in the years to come.

20. Any attempt to give the benefit of union-shop to recognised representative unions at present will amount to

conferring on it the status permanently.' This question therefore ties itself up with union recognition on the one hand and the rights of minority unions on the other. The weight of the evidence before us is in favour of granting some rights to minority unions; this by implication means accepting the existence of minority unions and any legal provision for union security will go against this evidence.

21. The Commission's recommendations on recognition of a representative union, union finances, rights of recognised vis-a-vis minority unions, changes in the present system of settlement of industrial disputes, joint consultation at plant level etc. will have far-reaching impact on unions' organisational and bargaining capacity and hence on union security provisions. Therefore, it will be better that such security measures are allowed to evolve in the natural process of the growth of trade unions rather than be introduced through compulsion. There should be nothing in our recommendations which should rule out this evolution.

22. Even when the matter of union-shop is to be left to be decided between the parties, it is quite conceivable that the demand might come up here and there. Already, one comes across unions which have acquired necessary strength and stability and such unions may legitimately demand union-shop or similar security measures from employers. Commission's recommendations will have to foresee and accommodate such cases. At the same time it will be necessary to recommend safeguards to the individuals against the possible abuse of the system.

- (i) The union demanding union-shop should satisfy to the authorities concerned with the recognition of unions, that it has got a clear majority of the working force as its members;

- (ii) Before union asks for union-shop, it should hold a free and fair referendum ascertaining the wishes of the workers. If majority of workers favour such a clause only then union ship should be permitted.
- (iii) 'Union-shop' established in the manner referred to at (i) and (ii) above should be allowed to operate for at least a year.
- (iv) Adequate safeguards should be provided for the protection of (a) individuals who are members of the union but are expelled unreasonably; (b) workers though willing to join the union are not admitted; and (c) workers who are already in employer's service before the agreement on union-shop is concluded but who are not union members.
- (v) If 20% of the workers at any time after a year demand that 'union shop' clause should be inoperative, action should be initiated by the authority concerned for ascertaining the wishes of all workers. If a clear majority is in favour of rescinding the clause, the union and management should work without 'union shop' arrangement.
