

Trade Union Act, 2049 (1992)"

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Act No. 37 of the year 2049 B.S.

A Act made to provide for the management of trade union

Preamble : Whereas it is expedient to make legal provision regarding registration, operation of Trade Union and other necessary provisions relating to it for the protection and promotion of professional and occupational rights ^{*}of the persons engaging in self-employment and the workers working in various industry, trade, profession or service in Enterprises or outside the Enterprises.

Now, the parliament has made this Act in the 21st year of the reign of His Majesty's King Birendra Bir Bikram Shah Dev.

CHAPTER – 1

Preliminary

1. **Short title and commencement:** (1) This Act may be called "Trade Union Act, 2049 (1992)".

(2) This Act shall come into force on such date as the Government of Nepal may by a notification published in the Nepal Gazette, specify.[∇]

2. **Definitions** : In this Act, Unless the subject or context otherwise requires :-

(a) "Enterprise" means an Enterprise established pursuant to Clause (b) Section 2 of the Labour Act, 2048 (1991).

* (b) "Worker" means the worker engaged in various industry, trade, profession or service in the Enterprises or outside the Enterprises on permanent, temporary, agreement, daily wages, piece-rate or contract basic or working thereunder and the Agriculture Labourer, and this term also includes the other personnel and the person engaged at self-employment, except those

* Amended by the First Amendment.

[∇] It came into force on 2050.7.2 (Oct ,18, 1993) by a notification published in the Nepal Gazette

* Amended by the First Amendment.

personnel who are working at the Manager or Proprietor level and who are working as the chief of its department, branch, sub-branch and unit.

- ⌘(b1) "Agriculture Labourer" means the person who earns his/her livelihood by working on wages or paid Labour in agriculture sector".
- (c) "Manager" means the Manager appointed pursuant to Clause (f) Section 2 of the Labour Act, 2048 (1991) .
- (d) "Trade Union" means the Enterprise level Trade Union registered under this Act for the protection and promotion of the occupational rights of the workers and this expression shall also includes Trade Union Association and Trade Union Federation.
- (e) "Enterprise level Trade Union" means the Enterprise level Trade Union registered pursuant to Section 3.
- (f) "Trade Union Association" means the Trade Union Association registered pursuant to Section 4
- (g) "Trade Union Federation" means the Trade Union Federation registered pursuant to Section 5.
- (h) "Authorized Trade Union" means the Enterprise level Trade Union recognized pursuant to Section 11 to protect the rights of workers through collective bargaining with the management.
- (i) "Working Committee" means the working committee constituted under the statute of the Trade Union.
- (j) "Member" means the worker of the concerned Enterprise who has taken membership of the Enterprise level Trade Union.
- (k) "Official" means the Chairperson, Vice-Chairperson , General Secretary and Treasurer of the working committee and the expression shall also includes the member of the working committee.
- (l) "Registrar" means the registrar appointed pursuant to Section 4 and this

⌘ Inserted by the First Amendment.

expression shall include the officer authorized to use the registrar's power by Government of Nepal in a notification published in the Nepal Gazette.

- (m) "Register Book" means the Register book maintained pursuant to Section 16 for the registration of Trade Union.
- (n) "Labour Court" means the Labour Court pursuant to Labour Act, 2048 (1991).
- (o) "Prescribed" or as prescribed" means prescribed or as prescribed in the Rules framed or the order issued by Government of Nepal in a notification published in the Nepal Gazette.

CHAPTER – 2

Registration of Trade Union

3. **Registered of Enterprise Level Trade Union:** (1) The workers of concerned Enterprise may constitute an Enterprise Level Trade Union to protect and promote their occupational rights.

(2) In order to register an Enterprise Level Trade Union constituted pursuant to Sub-section (1), an application in the prescribed form signed by at least ten members of the Trade Union as designated by the working committee along with the Constitution of the Trade Union, prescribed fee and other prescribed particulars shall submit to the Registrar.

(3) The Registrar shall after receiving an application pursuant to Sub-section (2) if finds complied with the Act, shall register the Trade Union within 15 days from the date of receipt of application or from the date of receipt of additional particulars as requested pursuant to Section 6 and provide certificate to the applicant in the prescribed form.

(4) Notwithstanding anything contained in Sub-section (3), the Enterprise Level Trade Union shall not be registered if at least twenty five percent workers of the concerned Enterprise are not members.

(5) No workers shall be eligible to be member of more than one

Enterprise Level Trade Union at the same time.

4. **Registration of Trade Union Association:** (1) At least fifty enterprise Level's Trade Union or [∞]five thousand Agriculture Labourers of at least twenty districts comprising one hundred persons from each district or Five thousand workers of similar nature Enterprise, may constitute a Trade Union Association by mutual agreement.

(2) Notwithstanding anything contained in Sub-section (1) ^{*}at least five hundred workers or self-employees working in industry, trade, profession or service occupation from outside the enterprise may constitute Trade Union Association by mutual agreement.

[∞]Provided that, only a maximum of four associations constituted under this Sub-section shall be counted for the purpose of constituting of a Federation pursuant to Section 5.

(3) In order to register a Trade Union Association constituted pursuant to Sub-section (1), an application in the prescribed form by the official as designated by the working committee, along with a copy of mutual agreement, the statute of the trade unions, prescribed fee and other prescribed particulars shall submit to the Registrar.

(4) The Registrar shall after receiving an application pursuant to Sub-section (2) if finds complied with the Act, register the Trade Union Association within fifteen days from the date of receipt of the application or from the date of receipt of additional particular as requested pursuant to section 6 and provide certificate to the applicant in the prescribed form.

(5) Notwithstanding anything contained in the Sub-section (1), no trade union of the Enterprise shall be eligible to be member of more than one Trade

[∞] Inserted by the First Amendment.

^{*} Amended by the First Amendment.

[∞] Inserted by the First Amendment.

Union Association at a time;

(6) After the registration of a Trade Union Association pursuant to Sub-section (4) its registration shall remain valid for one year even if the number of member of such Trade Union Association declines upto 10 percent.

5. **Registration of the Trade Union Federation:** (1) At least ten Trade Union Association may constitute a Trade Union Federation by mutual agreement.

(2) In order to registrar a Trade Union Federation pursuant to Subsection (1) an application in the prescribed form by the official as designated by the working committee along with a copy of mutual agreement, statute of the Trade Union Federation, prescribed fee and other particulars shall submit to the Registrar.

(3) The Registrar shall after receiving an application pursuant to Sub-section (2) if finds compiled with the Act shall register the Trade Union Federation within fifteen days from the date of receipt of the application or from the date of receipt additional particulars as requested pursuant to Section 6, and provide certificate to the applicant in the prescribed form.

(4) Notwithstanding anything contained in Sub-section (1) , no Trade Union Federation shall be eligible to be member of more than one Trade Union Federation at a time.

(5) After the registration of a Trade Union Federation pursuant to Sub-section (3) its registration shall remain valid for one year even if the number of member of such Trade Union Federation declines upto 10 percent.

6. **Additional particular may be demanded:** (1) Regarding the registration of a Trade Union if the Registrar considers additional particular necessary, he/she may request the required particulars within 7 days from the date of receipt of the application for the registration of Trade Union .

(2) Notwithstanding anything contained in Section 3, 4 and 5 no Trade Union Shall be registered unless the particulars request pursuant to Sub-section (1) have been received.

7. **Refusal of Registration:** The Registrar may refuse to register a Trade Union in the

following circumstance:

- (a) If necessary particulars are not attached with the application.
- (b) if at least 25 percent worker of the concerned Enterprise are not the member of the Enterprise Level Trade Union.
- (c) If the name of the Trade Union coincides with the name of Trade Union which has already been registered.
- (d) If the particulars mentioned in Section 10 are not being included in the of the statute of Trade Union .

7A. **Renewal of Trade Unions:** (1) A Trade Union of Enterprise level shall be required to be renewed in every two years and a Trade Union Association and Trade Union Federation in every four years.

(2) Other provisions relating to the renewal of Trade Unions shall be as prescribed.

CHAPTER – 3

Operation, Management and Recognition of the Trade Union

8. **Autonomous and Corporate body:** (1) The Trade Union shall be an autonomous and Corporate body having perpetual succession.

(2) The Trade Union Shall have a seal of its own to carry out its activities.

(3) The Trade Union may acquire, posses, dispose or manage by other means of its movable and immovable property as a person.

(4) The Trade Union may sue or be sued under its name as a person.

9. **Objectives:** (1) The Objectives of the Trade Union shall be as follows:

(a) To engage in economic and social development of the workers by improving their working conditions .

(b) To make an effort to establish good relationship between worker and management.

(c) To assist in the development of Enterprise by increasing the productivity of

⁸ Inserted by the First Amendment.

Enterprise.

(d) Try to make the workers dutiful and disciplined.

(2) In addition to the objectives mentioned in Sub-section (1), the Trade Union Association and the Trade Union Federation shall have the following objectives:-

(a) To conduct activities providing education to the worker.

(b) To establish relation with International institutions for the benefit of the workers.

(c) To provide necessary advice to Government of Nepal in formulating the Labour Policy.

(d) AS required to conduct workshops, seminar etc and publish facts and figures beneficial to the workers.

(e) In order to protect and promote the rights and interest of the workers negotiate with Government of Nepal and take other necessary measures subject to the prevailing law.

^{9A} **Functions, Duties and Powers of Trade Union:** In addition to the functions, duties and powers referred to in its Statute of a Trade Union, the other functions, duties and powers of a Trade Union shall be as follows:-

(a) To carry out and cause to be carried out the activities and programmes as required for the achievement of the objectives of the Trade Union as referred to in Sub-section (1) of Section 9

(b) To require its members to participate in the election of the Authorized Trade Union of Enterprise level,

(c) To require the workers of an Enterprise to abide by the decisions of the Authorized Trade Union of Enterprise level.

⁹ Inserted by the First Amendment.

9b. **Functions Duties and powers of Trade Union Association and Trade Union**

Federation: In addition to the functions, duties and powers referred to in their Statute of the Trade Union Association and Trade Union Federation, the other functions, duties and powers of the Trade Union Association and Trade Union Federation shall be as follows:-

- (a) To carry out and cause to be carried out the acts and proceedings and programmes as required for the achievement of the objectives of the Trade Union Association and Trade Union Federation as referred to in sub-section (2) of Section 9,
- (b) To require their members to participate in the elections of Trade Union Association and Trade Union Federation,
- (c) To require their members to abide by the decisions of the Trade Union Association and Trade Union Federation.
- (d) To take necessary measures in order to resolve the Labour disputes by entering into negotiations with Government of Nepal, with professional associations and federations of various types as well as with the Enterprises, representing the entire workers on policy level labour disputes,
- (e) To negotiate with the concerned Enterprise and Managers on behalf of the Trade Union of Enterprise level,
- (f) To establish and operate various types of funds for the benefit and welfare of the workers,
- (g) To make public the facts of oppression committed against a worker and Trade Union and to make aware the concerned Enterprise of such acts, as required.

10. **Statute :** (1) The following particulars shall be included in the statute of the Trade Union:-

⁹ Inserted by the First Amendment.

- (a) Name and address of Trade Union;
- (b) Objective of the establishment of Trade Union;
- (c) Procedure of the formation of the working committee as well as the term of office to be a maximum period of four years;
- (d) General Membership, the number of officials and the mechanism (process) of their election;
- (e) Provision that only a worker, who is a Nepali Citizen and having served continuously for one year to be elected for the official post;
- (f) Provision regarding fund of the Trade Union and its auditing;
- (g) Provision regarding inspection and examination of the account of the Trade Union.
- (h) Provision to bring the vote of no confidence against the officials;
- (i) Provision regarding functions, duties, powers and meeting of the working committee and the General Meeting of the Trade Union.
- (j) The Procedure of amendment of the statute of Trade Union;
- (k) Provision regarding dissolution of the Trade Union;
- (l) Provision regarding liability and assets of the Trade Union after its dissolution.

(2) If any amendment is made in the statute of the Trade Union, the concerned *Trade Union shall inform the Registrar with a copy of such amendment within 35 days after such amendment has been made and approval of such amendment have to taken from the Registrar.

11. **Recognition of the Authorized Trade Union:** (1) The Authorized Trade Union shall be recognized for the collective bargaining with the management on behalf of the workers of authorized enterprise level Trade Union.

⊃(1a) where only one Trade Union is registered in any Enterprise, the

* Amended by the First Amendment.

⊃ Inserted by the First Amendment.

Trade Union registered earlier shall be recognized as the Authorized Trade Union if another Trade Union is not registered within three months from the date of such registration.

⌘(1b) In reckoning the time period of three months as referred to Sub-section (1a), it shall be reckoned from the date of commencement of this Act.

(2) The Authorized Trade Union recognized pursuant to Sub-section (1) shall inform to the Registrar and the Manager within fifteen days after such recognition has been extended.

(3) The Registrar shall provide the certificate of Authorised Trade Union as prescribed within 15 days from the date of receipt of notice pursuant to Sub-section (2).

⌘(4) The procedures relating to the election of the Authorised Trade Union shall be as prescribed.

12. **Presentation of Claim:** (1) Notwithstanding anything contained in Section 74 (1) in the Labour Act, 2048 (1991), the working committee of the Authorised Trade Union on behalf of the workers may present claims in written form with the number and names of its representative to the management for collective bargaining.

(2) The Authorised Trade Union shall not go on strike in Enterprise or do such action that may assist it in any manner without completing the procedure mentioned in Section 76 of the Labour Act, 2048 (1991).

13. **Duration of Validity of the Recognition of the Authorized Trade Union:** The duration to bargain collectively on behalf of the workers of the authorised Trade Union recognized pursuant in Section 11 with the management shall remain valid for two years from the date of issue of the certificate by the Registrar pursuant to Sub-section (3) of the same Section.

⌘ Inserted by the First Amendment.

⌘ Inserted by the First Amendment.

⌘ Provided that in cases where the registration of such Authorized Trade Union is cancelled or such Trade Union is dissolved, the election for another Authorized Trade Union shall be conducted within three months from the date of such cancellation or dissolution.

CHAPTER – 4

Appointment, Functions, Duties and Rights of the Registrar

14. **Appointment of the Registrar:** (1) Government of Nepal shall appoint Registrars as required for the registration of the Trade Union in accordance with this Act.
- (2) Notwithstanding anything contained in Sub-section (1) Government of Nepal may by notification published in the Nepal Gazette authorise as required any other officer to use the power of Registrar.
15. **Function, Duties and Power of the Registrar:** The Functions, duties and powers of the Registrar shall be as follows:-
- (a) To registrar the Trade Union.
 - (b) To maintain and keep upto date Register Book with detailed particulars of the registered Trade Union and other related particulars.
 - (c) To request additional particular necessary for the registration of the Trade Union.
 - (d) To take necessary action if the particulars, report or other documents required to be submitted by the Trade Union under the Act is not submitted or if false particulars are submitted.
 - (e) To specify the procedure of election of the Authorized Trade Union.
16. **Register Book:** The Registrar shall maintain a separate Register Book to keep upto date the particulars, records etc. of the Trade Union.

⌘ Inserted by the First Amendment.

CHAPTER - 5

Fund and Auditing

17. **Fund**: (1) The Trade Union shall have its own separate fund and the fund shall contain the following amounts:-
- (a) The amount obtained from the national fee.
 - (b) The amount obtained from the national organizations in the form of Aid or Grant.
 - (c) The amount obtained from any other sources.
- (2) All expenses incurred in the name of Trade Union shall be borne out from the Fund.
- (3) The Amount to be contained in the fund pursuant to Sub-section (1) shall be deposited by opening an account in any Commercial Bank within Nepal .
18. **Accounts and Auditing**: (1) The accounts shall be maintained as mentioned in the statute of the Trade Union.
- (2) The accounts maintained pursuant to Sub-section (1) shall be audited by the auditor appointed by the General Meeting of the Trade Union.

CHAPTER – 6

Miscellaneous

19. **Merging of the Trade Union**: * (1) In case two or more than two Trade Unions desire to be merged into one Trade Union, such Trade Unions may constitute a new Trade Union by concluding a mutual agreement if the majority in the General Meeting of each Trade Union desiring to be so merged vote in favour of merging.
- (2) In order to register a new ^{२०}..... Trade Union constituted pursuant to Sub-section (1), the officials authorized by the working committee shall apply to the Register in the specified form along with a copy of the agreement mutually entered into by the merged Trade Unions, the statute of the Trade Union, prescribed fee and

* Amended by the First Amendment.

other prescribed particulars.

20. **Information of the change in name:** If any Trade Union changes its own name the Registrar shall be informed of such change within fifteen days of the change of name.

21. **Effect of change in name, merging or dissolution:** (1) No effect shall occur in the power to be achieved or obligation to be fulfilled by such Trade Union only by the reason of change in name of the Trade Union.

(2) The merging of two or more than two Trade Unions into only one Trade Union or the dissolution of Trade Union in other Trade Union shall have no effect in the obligation to be performed by such Trade Union.

*22. **Contractual liability To Be Fulfilled:** (1) The contractual liability concluded by the Trade Union itself or by the authorized office-bearer on behalf of the Trade Union shall have to be fulfilled by such Trade Union and the party which concludes the contract with such Trade Union.

(2) In case any dispute arises in respect of the contract concluded between the Trade Union and Enterprise or Manager pursuant to Sub-section (1), a case shall have to be filed in the Labour Court within three months from the date of arising such dispute or the cause of action for filing the case.

23. **No case To be filed:** After complying with the procedure ~~of~~ of this Act or the Labour Act, 2048 (1992) by the Authorized Trade Union or the office bearer of such Trade Union. while doing anything in the context of collective bargaining have affected by its action to the Enterprise, no case shall be filled against Trade Union or the officials in any court regarding such action.

23a. **Transfer or Promotion Not To Be made:** The office- bearers of the Working

^x Deleted by the first Amendment .

* Amended by the First Amendment.

* Amended by the First Amendment.

[∞] Inserted by the First Amendment.

Committee of the Trade Union of Enterprise level shall not be transferred or promoted without their consent except in special situation.

24. **Presentation of Annual Report:** (1) The Trade Union shall submit to the Registrar a yearly report of each year within three months from the end of fiscal year by auditing its account book showing clearly all property, loan including liability of the Trade Union.

(2) In the annual report pursuant to Sub-section (1) the total number of members who pay fees of the Trade Union and the particulars of the officials changed during the year shall also be included.

25. **Cancellation of the Registration:** (1) The Registrar shall cancel the Trade Union registered under this Act on the following circumstances:

- (a) If the Trade Union submits an application to the Registrar for the cancellation of its registration.
- (b) If it is proved that the registration of the Trade Union has been made by mistake or fraudulent act.
- (c) If anything is done against this Act or the Regulation framed under this Act.

* (2) In case the registration of any Trade Union is required to be cancelled on the occurrence of the circumstances referred to in Clauses (b) and (c) of Sub-section (1), the concerned Registrar shall have to give a notice of fifteen days, with specifying therein the reason which requires such cancellation of the Trade Union, to the concerned Trade Union to submit the clarification thereon.

* (3) If the concerned Trade Union does not submit the clarification within the time-period referred to in Sub-section (2) or the clarification submitted is not satisfactory or in conformity with the law, the Registrar may cancel the registration of such Trade Union.

* Amended by the First Amendment.

* Amended by the First Amendment.

26. **Officials of Trade Union Association and Federation:** Notwithstanding anything contained elsewhere in this Act, the Trade Union Association and Trade Union Federation shall appoint from their working committees not exceeding 10% and 25% respectively of the total number of officials who are engaged in the protection and promotion of the rights of the worker, in the officials of the Trade Union Association and Trade Union Federation.
- 26a. **Representation of the Trade Union:** While nominating a representative on behalf of the Trade Union or making representation from the Trade Union, Government of Nepal shall nominate or make representation from such Trade Unions proportionately or by turns if the Trade Unions related with the subject-matter are more than one.
27. **Notice of Dissolution of Trade Union To Be Provided:** (1) If a Trade Union is to be dissolved in accordance with the statute, notice of such dissolution shall be provided to the Registrar by the concerned official with reason.
- (2) After receiving the notice of dissolution of Trade Union pursuant Sub-section (1), the Registrar shall conduct an inquiry whether the dissolution has been made accordance with the statute and register such notice if so found . Only after the registration of such notice the trade union shall be deemed to have been dissolved .
- 27a. **Limitation for Filing a Case:** Except otherwise provided for in this Act, in case it is required to institute a case against a person in regard to any act and proceeding done in contrary to this Act and the Rules made under this Act, the case shall have to be filed within three months from the date on which such act is committed or done or the cause of action for filing the case arises.
28. **Penalties:** * (1) If any office-bearer, member or any employee of the Trade Union

∞ Inserted by the First Amendment.

∞ Inserted by the First Amendment.

* Amended by the First Amendment.

misappropriates the property of the Trade Union or the property of the fund and programme operated by such Trade Union or causes loss and damage of any kind to such property, the Labour Court may order to recover and realise from such office-bearer, member or employee the amount equal to the amount so misappropriated or caused loss and damage and may impose a fine of upto five thousand rupees or impose an imprisonment of upto one year or impose both punishment.

(2) If the particulars, reports, notices, or any other documents to be submitted on behalf of the Trade Union in accordance with this Act or the Rules under this Act is not submitted or false particulars are submitted, the Registrar may fine the concerned official to the extent of Rupees five hundred.

29. **Appeal:** (1) An appeal to the case initially decided by the Labour Court in accordance with this Act shall lie to the Appeal Court.

(2) An appeal on the order made by the Registrar under this Act may be filled to the Labour Court.

(3) An appeal may be filled within 35 days from the date of such proceeding and decision made by the Labour Court or the order made by the Registrar.

30. **Special Power of Government of Nepal:** Government of Nepal may give necessary order or direction to restrict such activities of Trade Union or Trade Union Association or Trade Union Federation if the activity of the Trade Union seem, to create extra-ordinary situation thereby disturbing the peace and order or to go against the economic development of the country.

31. **Power of Frame Rules:** Government of Nepal may frame necessary Rules to carry out the objectives of this Act.