

Industrial Relations

MBA 4TH SEM

HUMAN RESOURCE SPECIALIZATION

HI-TECH INSTITUTE OF TECHNOLOGY

INDUSTRIAL ESTATE, KHURDA

Industrial Relations

Unit No.	Unit Name	Page No.
Unit –1	Conceptual Aspects of Industrial Relation	6
Unit –2	Parties to the Industrial Relations	22
Unit –3	Trade Union Movement in India	30
Unit –4	Trade Union Movements Abroad	63
Unit –5	Problems of Trade Unionism in India	117
Unit –6	Central Trade Union Organization	133
Unit –7	Collective Bargaining	155
Unit –8	Workers Participation in Management	170
Unit –9	Trade Union Legislation (Part i)	181
Unit – 10	Trade Union Legislation (Part ii)	194
Unit – 11	Industrial Relation Legislation (Part i)	208
Unit – 12	Industrial Relation Legislation (Part ii)	224
Unit – 13	Industrial Relation Legislation (Part iii)	237
Unit – 14	Industrial Relation Legislation (Part iv)	249
Unit – 15	Industrial Relation Legislation (Part v)	263
Unit – 16	Case Laws	271-289

,

UNIT -1

Conceptual Aspects of Industrial Relations

Objectives

The object of this unit is to apprise the student about the

- Concept of Industrial Relations – evolution and definitions.
- Immerging trends in industrial relations.
- and its importance in industrial democracy

Structure

Introduction
Evolution and Conceptual aspects of Industrial Relations
Meaning and Definition of Industrial Relations
Industrial Relations Guiding Factors
Emerging Trends
Importance of Industrial Relations in industrial Democracy
Globalization and thereafter
Summary
Self assessment Tests
Suggested Reference Books

Introduction

This unit has been prepared to acquaint the readers with the concept of industrial relations its evolutions, definition and to highlight the emerging trends and its importance in the industrial democracy. Industrial Relations are the relations between the three key partners of industries, i.e. 1. Employer - who promotes the industry for production.? 2. Employees or Workers who work there for production and wages. 3. Government as policy makers for welfare of both.

They all the time interact with each other for the betterment of Industries, promotion of economy and production.

Evolution and Conceptual Aspects of Industrial Relations

The term "Industrial Relations" denotes the relations between management and Labour and it covers all sorts of relationships individual and collective. The term Labour denotes men and also the trade unions with whom he /she or the association of which he is a member negotiates. The term management denotes a private or public employer or a public corporation or a company or local authority like municipality or the state of the government. or the instrumentality of state, who wields power define policy, to make rules and above all decisions, through whose exercise management manifests itself to those who are its subordinate. To manage means to command.

To gauge the distribution of managerial power and to identify its locations is not always an easy task. In England, the Royal commission on Trade union and employers association (The Donovan commission) spent a deal of time and energy on this questions and especially on the problem of how power was shared between boards of Directors and the lower technocrats, whether "Line" or "perso", "where" and by whom rules affecting workers, were in fact made, and where and by whom they were applied and that is who wielded the power of discipline. The Donovan commission was also much concerned to find out how the rule making powers were distributed between the employees and their association¹.

To trace the distribution of managerial power is a difficult task in any given society, no less difficult where means of privately owned. To find who has the power on the side of labour is equally, if not more, difficult. Here however, we can establish as clear and hardly controvert one elementary preposition which will explain a great deal of what we have to say. The individual employee or worker has normally no social power, because it is only in the most exceptional cases that as an individual, he has any bargain power at all. Such exceptional cases exist of course –one can think of a high powered managerial employee with unique experience, a top rank scientist or

even of these whom Alan Fox calls “Occupants of high discretion roles.”²

For our purposes these cases are atypical and therefore irrelevant in the present context. Typically the worker as an individual has to accept conditions which the employer offers. On the labour side, power is collective power. The individual employee represents an accumulation of material and human resources, socially speaking the enterprise are itself in this sense a “collective power”.

If a collection of workers (whether it bears the name of a trade union or some other name) negotiate with an employer, this is thus a negotiation between collective entities, both of which are or may at least be, bearers of power. But the relation between an employer and an isolated Employee or Worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operations it is a condition of subordination

, however much the submission and subordination may be contract of employment.³

The main object of labour law has always been and Prof. Freund venture to say, will always be “a counter veiling force to a counteract the inequality of bargaining power which is inherent and much be inherent in the employment relationship. Most of what we call protective legislations; legislation on the employment of women, children and young persons, on safety in mines, factory and offices, on payment of wages in cash, on guarantee payment, on race or sex discrimination, on unfair dismissal and indeed most labour legislations altogether much be seen in this context. It is an attempt to infuse law into a relation of command and subordination. I have said that all this is inherent in the employment relationship. Capital resources cannot be utilized by anybody (whether the body is private or public) without exercising a command power over human being. This is ought to be a common place. In any event I have not heard of any legal system which has sought to replace the relation of subordination by a relation of coordination. Except in a one man undertaking economic purposes cannot be achieved without a hierarchical order within an economic unit. Let me say again and let me repeat it in view of what shall have to say now, there can be no employment relationship without a power to command and a duty to obey, that is

without this element of subordination in which lawyers rightly say the hallmark of the “contract of employment”. However the power to command and the duty to obey can be regulated. An element of coordination can be infused into the employment relationship. Coordination and subordination are matters of degree but however strong the element of co-ordination, a residuum of command power will and must remain⁴.

The purpose of industrial relation system is therefore to regulate, to support and to restrain the power of management and the power of the organized labour.

Meaning and Definitions of Industrial Relation

The term “industrial relations” denotes the relation between management and Labour. It covers all sorts of relationship, individual and collective and hence the orbit of what we are accustomed to call labour law comprehends matters of industrial disputes, of collective agreements as well as of job security, in short anything that can arise between the managers and those subject to managerial power⁵.

Nor is it possible neatly to separate these two categories of persons⁶. One of the most significant features of our contemporary economic and social development is rapidly growing overlap of management and the Labour. A production manager or the head of one of a chain of stores in management if seen below and Labour if seen from above. A steadily increasing number of man and woman are employed to exercise managerial power and entrepreneurial functions. It is an inevitable consequence of the growth of the units of enterprise, and of that separation of management and of policy making from ownership, which results from technical development of the industrial society, and it matters little in this context, whether we consider the private or public sector of the economy. It is however also a phenomenon which has very important repercussions in the structure of labour relations and of labour law⁷.”

INDUSTRIAL RELATIONS - GUIDING FACTORS

The industrial relations between management and labour has been a continuous source of conflicts and contradictions as the aims of the two partners of the industrial process-management and labour are pole ascender, the management or the employer's aim is to extract maximum money or profit out of the minimum investment made and the labour or employee expects higher wages and other benefits out of the minimum labour put in. Further the mutual conflict between

management and labour over the question of adequacy of their respective shares in social produce thus constitute the crux of labour problems.

In this context, John T. Dunlop has observed: "Every industrial community, regardless of its political form, creates manager and workers. The status of these workers and their inter-relation come to be defined in greater or lesser details. The national state cannot ignore these vital relations in the industrial society particularly when the Governments in the contemporary world are actually engaged in stimulating and directing developmental programs. Industrial societies necessarily create industrial relation, defined as the complex of inter-relations among managers, workers and agencies of Govt. Every industrial relations system thus involves three groups of actor: (i) workers and their representatives; (ii) Managers and their organization; (iii) The Govt. agencies concerned with the work-community⁸ '.

Thus every industrial relations system creates a complex of rules to govern the workplace and work-community. These rules may take a variety of forms in different systems, agreements, statutes orders, decrees, regulations, awards, policies and practices and customs.

The form of rules does not alter the essential character to define the status of the actors and to govern the conduct of all actors at the workplaces and work- community. The actors in an industrial relation system are regarded as confronting an environmental context at any time. The environment is comprised of three inter- relation contexts, the technology, the market or Budgetary constraints and the power relations and status of the actors, the system is bound together by an ideology or understanding shared by all the actors. These actors act and react according to their own interests. The role of the Govt. is, therefore, to prescribe rules and regulate the inter relations of these two actors i.e. workers and their

representatives and managers and their organizations. In any country the effort of the Government is to harmonize relations between these two actors”.⁸ Due to divergence of interests, there is a continuous tension in the minds of these two actors in the industrial sector-be it a private or public sector or joint sector. Therefore the primary functions of labour law have been to harmonies the relations between these two actors. The law has to be a counter veiling force to counter act the inequality of bargaining power which is inherent in the employment relations. The law has created a mechanism for the resolutions of conflicts and contradictions between management and labour, in a given society.⁹ Likewise the law may restrict the managerial power as to the time of work by prohibiting work at night or on Sundays¹⁰ and as to work place by seeking to overcrowding and other insalubrious condition.¹¹ More than that: the law may create a mechanism for enforcement of such rules and it may protect the worker who relies on its operation. By doing so the law limits the range of workers duty of obedience and enlarges the range of workers freedom.

In all democratic societies, the workers have been given certain freedoms i.e. freedom speech and expression, freedom to assemble, freedom to form unions and associations. For instance in India, the Constitutions of India envisioned the welfare of workers. The preamble the fundamental rights (parts-iii) and the directive principles of state policy (Part-iv) constitute a core of constitutional culture and provide socio – economic rights to the working class.

The right to organize and form unions has been a fundamental right of workers.¹²

Likewise managements can also from their unions and associations. The state has made rules and regulations for negotiations and consultations through collective bargaining process.

EMERGING TRENDS

Before the constitution of International Labour Organization (I.L.O.); the term “labour- management- relations” was not in use in any country.¹³In the 1920, industrial relations begin to be used to describe the contacts between organised

management and the trade union or between individual employers and group of workers, in collective bargaining and negotiation and day to day relations in particular plants. After the world war, industrial relation tended to be supplanted by "labour-management relation" in the terminology of the "I.L.O." and many of its member states.¹⁴

The prewar approach of the I.L.O had been on improvement of industrial relations. In the post war period, the work of I.L.O. on the broad front of industrial relations has been characterized by two approaches. In the first place in 1947, the international Labour conference (I.L.O) initiated a comprehensive programme aimed at regulations of industrial relations through the adoption of conventions and recommendations.¹⁵ As a result of I.L.O. efforts, much has been done by and through the I.L.O. to develop the machinery for solving the legislative problems of industrial relations and more satisfactory relations between employer and workers.

In 1955 the Director-General of I.L.O. decided that as a result of what had been accomplished the time was ripe to take a wider view of the whole problem of labour management the submitted a report to the I.L.O. and state that the relations between labour and management were a vital force in development of modern industrial societyHe pointed out that the state of labour-management relations was an important conditioning factor in attaining broad goals laid down for organization in recent years; the raising of productivity, the promotion of fuller employment of human resources in the under developed country the improvement of working conditions and the guaranteeing to the worker of a high degree of economic security. In view of the wide recognition that higher productivity was essential for raising standards of material prospective there had been a perceptible shift of emphasis in labour-management relations toward what had been called "Collective bargaining rather than conflicting bargaining."

The I.L.O on the basis of proposal jointly made by the Govt. delegates of five Scandinavian countries adopted a resolution (a) asking the Director-General, in light of the observations made by the members of the conference, to consider how the I.L.O. activity should be modified or supplemented as to contribute towards promoting labour management cooperation and better human relations in industry and (b) asking Governing body to draw up a practical programme of I.L.O. action

on the basis proposals to be submitted by the Director- General and to consider bringing of the matter before a future session of the conference.

Latter on in 1960 & 1967, the I.L.O adopted recommendation to promote industrial relation. The I.L.O. also suggested workers participation in industrial management as to promote healthy relations.

The Rise of Technology Sector in India

The technology sector in India has a major impact on the Indian economy. The industry has grown from US\$4 billion in 1998 to more than US\$80 billion in 2011, employing directly and indirectly more than 10 million people. Riding on the services outsourcing wave, domestic and international companies have leveraged India's value proposition to enhance their competitiveness in the global market.

Key government initiatives, such as setting up of tax free zones, Software Technology Parks of India (STPI) and Special Economic Zones (SEZ), have given strong impetus to the export of IT services.

The technology sector in India received US\$6.197 billion through FDI in 2011, an increase of 46% from the previous year. The investment has created 153 projects with an estimated 41,607 jobs in the industry.

Five principle sectors in the IT industry, namely online businesses, IT services, IT-enabled services and software and hardware merchandise received most of the investments. Compelling cost advantage coupled with available skilled force has driven this spectacular growth.

Although many low-cost delivery destinations, such as China, Philippines and Vietnam, are emerging, India's leadership position cannot be challenged. Its benefit of long term cost competitiveness, supply of highly trained engineers and its expertise in processes and quality will continue to foster its growth.¹⁶

Two most powerful forces affecting each sector of the economy today are the increasing rate of globalization and advances in information and communication technology. Technological change brings about an increase in per capita income, either by reducing the amount of inputs per unit of output or by yielding more output for a given amount of input. In the last decade, almost all the sectors have gone in for a massive investment in information technology. Banking is one of the industries which involve both high information content of the product and high information intensity of process. The role of information technology in

performance of an organization is still a paradox. In this context, the study is an attempt to analyze the effect of information technology on the performance of Indian banking industry. The main objectives of the proposed study are :

- a) To review the theory and empirics on the relation of technology and performance with special reference to service sector;
- b) To analyze the structure and structural changes in the Indian banking;
- c) To explore the trends in nature and quantum of information and communication technology being used in the banking sector in India;
- d) To evaluate the performance by inclusive measures of performance; and
- e) To analyze the relation of information technology and performance

Data and Methodology is as follows. The present study is based upon the time-series data from 1998-99 to 2010-11. To derive the overall technology parameter, a technology index has been derived using the discrete technology parameters. Performance analysis has been done by computing a performance index. The relation of technology index and performance index has been analyzed by using correlation and regression technique on both time-series and panel data. The overall conclusion that emerges from the analysis is that in banking industry, performance is a positive function of information technology, if some other complement conditions like intellectual capital, size and scale of operations.¹⁷

Factors Affecting Industrial Relations:

In industrial relations various factors makes direct and indirect impact. They determine the future of industrial trend of that country. The major factors affecting the industrial trends of a country are Political, Governmental, Social, Economical, Institutional and cultural etc.

Political factors play a very important role in the industrial relations as different political parties are having different ideologies and they plan development according to their ideologies. Congress government started with mix economy system and after globalization shifted to open market economy. Communist parties are having pro labour ideologies so they all the time protest against the open and capitalist economy.

In the same manner Bhartiya Janta Party is also having its own indigenous ideologies so they plead for indigenous developments rather than foreign investment or collaborations. Similarly economic ideologies like

indigenous, communist, capitalists etc. also play in similar fashion.

Government and Institutional factors also play important role in industrial relations. The type of government as stated above and the institutes related with them especially in matters of finance or loan etc. play a very important role in the development of good industrial relations. Pro industrial policies keep industrial relations comfortable and anti industrial policies keep industrial relations tense which are not good for the health of nation as well as industries.

Society and their cultural constraints also play important role in the development of industrial relations. Heavily industrialized societies are not suited to agro based societies. People of Northeast in India and people of south and north are having different culture so their priorities for industrial development are also different and often clashes with each other. Harmonious approach is required.

These above stated factors have deep say in the development of Industrial Relations and destiny of industry and of that is depends upon them. Positive and favorable attitude leads to development and negative attitude leads to backwardness.

In today's economy, where businesses must compete globally and governments are expected to do more with less, the most important business relationship that exists is the relationship between the employer and the employee. The labor-management relationship impacts directly on profitability, productivity, job security, and quality of life.

Labour Management Cooperation:

The term labour management cooperation refers to the joint cooperation or efforts of labour and capital for productivity and to find solutions and remedies coming in their way. As labor-management relations evolve to meet the challenges of today's economy, the Department's services have evolved to meet the needs of their customers. These services, provided jointly by the Bureau of Mediation and the Office of Labor-Management Cooperation, assist labor and management in improving their relationship at all levels, from the "shop floor" to the "board room," and enable them to address issues of mutual concern together, rather than as adversaries.

The Emerging trends – Indian situations. India has been one of the founder members of the I.L.O. and is the therefore, making all efforts for promoting cooperation between labour and management relations. During internal emergency (1975), workers' participations in management of industries was

included in 20-

point programme announced by the then Prime Minister, Indira Gandhi. Accordingly on Oct. 30th 1975, the Central Government announced a scheme of workers' participations in management of industries.¹⁸ The scheme envisaged the Constitution of shop/department/councils at plant level by the employers in every industrial unit comprising of employer's and workers' representatives so as to discuss and debate on a matter of common interested. Later on the constitution of India has also been amendment.¹⁹

In the year 1990 a two-day seminar was held at New Delhi under the joint supervision of Ministry of Labour and Ministry of Industries, Govt. of India to give a fresh look to the existing scheme. On the basis of discussions held during the conference/seminar, a bill was introduced in the parliament but due to fall of the then Govt. the bill could not be passed. Thereafter new Government shaped those proposals.

1.7 Impact of Globalization on Industrial relations and Afterwards²⁰:

After year 1990 the hue and cry for Globalization started. Globalization has created clamor all over the world and especially in the developing countries of the world. It has become buzzword and watchword of the day especially in the last decade of the twentieth century and the first decade of this twenty first century.

During nineties there was severe economic recession all over the world. To deal with this economic recession globalization was put up as magic wand before the world. Before 1991, India was following the principles and policies of mixed economy for economic upliftment and progress. Under the policy the government was enabled to harness, a group of professional managers and experts for the development and advancement of the public sector and maintaining the operational autonomy of the private sector pari-passu, the government could thus ensure the public's interest in ultimate control and responsibility of the entities in strategically important areas. The public sector was primarily confined to infrastructural development along with the growth and promotion of industries for the production of basic and capital goods such as steel, heavy machinery, fertilizer etc. - instead of consumer goods.

But under the new industrial policy of 1991, the government sidelining itself from the approach of welfare, moved towards disinvestments in public sector enterprises.²¹ That time economic condition of India was very weak. The industrial world was at the crossroads. Industrialists were unable to coordinate with production and labour. Laborers were in a state of utter confusion regarding its job due to closure of industries. The policy decisions taken have inducted a degree of competition both within India and outside India. Policy aimed to reduce burden on the government of the public enterprises which had shown a low rate of return or were incurring losses over the years and help increase competitiveness, efficiency and profitability. Areas hitherto reserved for public sector only were opened for private sector. Public enterprises became chronically sick.

The country was in the midst of unprecedented economic crisis. Inflation was accelerating rapidly to the extent of double digit, i.e. 16.7 per cent in the month of Aug. 1991. Balance of payment and the foreign exchange reserve were rapidly declining. Credit worthiness gradually decreased, international funding institutions stopped the lending, and non-resident Indians were withdrawing their deposits.²²

The rate of industrial growth was negative. The Central Government and its Public Sector Undertakings in the core sectors like power, oil, banks insurance etc. were faced with deepening financial crisis, and very little investable resources were left. The rate of growth of GNP was reduced to less than 2 percent. Interest payments were more than half of the Central Governments estimated revenue receipts. India had an unprecedented balance of payment crisis. India has lost its credit in international market. In such conditions, the government of India had to mortgage forty tones of gold to the Bank of England.

The rate of industrial growth was negative. The Central Government and its Public Sector Undertakings in the core sectors like power, oil, banks insurance etc. were faced with deepening financial crisis, and very little investable resources were left. The rate of growth of GNP was reduced to less than 2 percent. Interest payments were more than half of the Central Governments estimated revenue receipts. India had an unprecedented balance of payment crisis. India has lost its credit in international market. In such conditions, the government of India had to mortgage forty tones of gold to the Bank of England.

The development was welcomed by foreign countries and MNCs. But the labour, trade unions and industries raised lots of hue and cry. Privatization, voluntary retirement, modernization and technological up gradation, lack of finance for modernization and technological up gradation fear of unhealthy and unequal competition etc. were the main issues of worry before workers, trade unionists and industrialists.

Under the existing circumstances, the Government of India had no option but to adopt the concept of Globalization and Liberalization²³.

The following are the fundamental principles of the concept of liberalization and Globalization which were applied to deal with crisis.

1. Free market, without intervention from the government; generally result in most efficient and socially optimal allocation of resources.
2. Privatization, which moves functions and assets from government to the private sector to improve efficiency.
3. Sustained economic growth, as measured by gross national product in the path to human progress.
4. Economic Globalization, i.e. remove barriers to the free flow of goods and money anywhere in the world, spin competition, increase economic efficiency, create jobs, lower consumer prices, increase consumer choices, increase economic growth, etc., is generally beneficial to everyone.

Globalization has made strong foothold in India still there is problem of surplus labour and unemployment. Inflation is still not under control in India. Industrial growth is also not satisfactory. In such a state there is need to understand the problems of labour and industries from the inner core of the heart of all the parties of Industrial Relations i.e. Industrial Management and Workers and the Government.

Management has to understand that without the help of workers production is not possible. Workers should understand that they should cooperate in production so that they do not become unemployed. Similarly Government machineries should take care of the Minimum wages and Employers do not exploit and make huge profits on the cost of workers and government infrastructures.

Importance of Industrial Relations in Industrial Democracy:

As we have seen in the preceding pages, there has been a vital shift of emphasis in labour management relations all over the world. The workers participation in

decision-making process of industrial management has been considered as an effective tool of management in all democratic countries. It is also considered as a prerequisite of a healthy industrial democracy. All the three organs of Industrial Relations should work under harmonious relations with each other. Every party should understand problems of other parties and accordingly they shall operate industries for the betterment and advantage of all.

The healthy industrial relations are keys to the progress and success. Their major significance of them is as under –

- **Uninterrupted production** – The most important benefit of industrial relations is that this ensures continuity of production. This means, continuous employment for all from manager to workers. The resources are fully utilized, resulting in the maximum possible production. There is uninterrupted flow of income for all. Smooth running of an industry is of vital importance for several other industries; to other industries if the products are intermediaries or inputs; to exporters if these are export goods; to consumers and workers, if these are goods of mass consumption.
- **Reduction in Industrial Disputes** – Good industrial relations reduce the industrial disputes. Disputes are reflections of the failure of basic human urges or motivations to secure adequate satisfaction or expression which are fully cured by good industrial relations. Strikes, lockouts, go-slow tactics, gherao and grievances are some of the reflections of industrial unrest which do not spring up in an atmosphere of industrial peace. It helps promoting co-operation and increasing production.
- **High morale** – Good industrial relations improve the morale of the employees. Employees work with great zeal with the feeling in mind that the interest of employer and employees is one and the same, i.e. to increase production. Every worker feels that he is a co-owner of the gains of industry. The employer in his turn must realize that the gains of industry are not for him alone but they should be shared equally and generously with his workers. In other words, complete unity of thought and action is the main

achievement of industrial peace.

It increases the place of workers in the society and their ego is satisfied. It naturally affects production because mighty co-operative efforts alone can produce great results.

- **Mental Revolution** – The main object of industrial relation is a complete mental revolution of workers and employees. The industrial peace lies ultimately in a transformed outlook on the part of both. It is the business of leadership in the ranks of workers, employees and Government to work out a new relationship in **consonance** with a spirit of true democracy. Both should think themselves as partners of the industry and the role of workers in such a partnership should be recognized. On the other hand, workers must recognize employer's authority. It will naturally have impact on production because they recognize the interest of each other.
- **Reduced Wastage** – Good industrial relations are maintained on the basis of cooperation and recognition of each other. It will help increase production. Wastages of man, material and machines are reduced to the minimum and thus national interest is protected.

Thus, it is evident that good industrial relations are the basis of higher production with minimum cost and higher profits. It also results in increased efficiency of workers. New and new projects may be introduced for the welfare of the workers and to promote the morale of the people at work. An economy organized for planned production and distribution, aiming at the realization of social justice and welfare of the mass can function effectively only in an atmosphere of industrial peace. If the twin objectives of rapid national development and increased social justice are to be achieved, there must be harmonious relationship between management and labor.²⁴

SUMMARY

In this unit, the conceptual basis of industrial relations interaction of the actors of industrial relations, the emerging trends and the importance of industrial relations in the industrial democracy have been highlighted. Unit also suggests that all the parties to Industrial Relations should work in coordination and understanding of each other so that industrial peace and development of Nation do not hamper.

SELF ASSESSMENT TEST

Answer the following questions in not more than 500 hundred words

- (1) Discuss the concept of industrial relation.
- (2) Define the term "industrial relations."
- (3) What are the emerging trends in the industrial relation system?
- (4) What is the importance of industrial relation in industrial democracy?

REFERENCES

1. John. T. Dunlop : Industrial Relations System.
2. Roberts, : Industrial Relations and the Law.
3. Dr. N.D. Sharma. : Law, Labour and the Management.
4. A.Monappa : Industrial Relations-Tata Mc Graw-Hill pub. New Delhi.
5. C.M. Choudhary : Industrial Relations Research publication, New Delhi.
6. Mamoria & Dashora : Indian Labour Problem Sahitya Bhawan, Agra.
7. S.C. Pant : Indian Labour Problems Chaitanya, Pub.Hou, Allahabad.

UNIT-2

Parties to the Industrial Relations

(Trade Unions, Management, State and Their Inter-Actions)

Objectives:

After going through this unit, you should be able to appreciate:

- What are the parties to the Industrial Relations?
- the role of Trade Unions, Management and State in the Industrial Relations
- Their action and inter-action Trade Unions, Management and State.

STRUCTURE

Introduction

Rise of Trade Unions and their role

Role of Management

Role of State

Emergence of the Industrial Relations system.

Group of Actors

Actions and re-activities of these actors

Summary

Self Assessment test

Key words

Suggested Readings.

INTRODUCTION

This unit has been prepared to acquaint you with the parties to the industrial relations system and their actions and reactions according to their own interests.

Industrial relations are an important aspect of industrial employment. The pace of industrial employment was accelerated by Industrial Revolution in England and elsewhere. The history of industrial relations shows that the differences between employers and their employees/workers are offshoots of rapid industrialization resorted to in the wake of scientific and technological

development of human resources. This development brought new social problems. The old industrial order was replaced by the Factory System, depending upon the huge investment, nature resources and man power. The old of freedom of contract or **laissez faire**, rule of hire and fire begin to crumble. The exploitation of wage-earners resulted in a social thinking and they began to unit, with the result, the industrial relation scenario was dominated by two social classes-Employer or Management class and wage-earners class. Their actions and reactions affected the industrial sector and other sectors of economy.

Trade Unions: Rise of Trade Unions and their Role

The industrialization brought changes everywhere. Within nations, new forces arose out of industrialization; new classes reared their heads to claim rights and powers. Women and working classes presented new demands and a new attitude of life. A chain of advocates pleaded for the political and professional freedom for women. Likewise, other problems of social security, wider opportunities of education and economic independence came to the fore-front towards the end of nineteenth century. The industrial revolution also produced a class of artisans and great working class movements become dominate feature of that period. The working class movements raised their voices against the exploitation of working class by the managements or the employers. The great revolution also created the capitalist employer and factory workers, on one side a class of men acquiring wealth privileges and the power through their organizations and hiring of labour of other men and on the other body of wage earners, giving their labour on hire, forced into a practical dependence by necessities of subsistence and by lack of capital ambition, enterprise or organizing skill on their own account. Men, women and children were employed for meager, payments and excessive hours, under insanitary condition until the worker, with ruined health, brokenly fighting the starvation and oppression that continually threatened him, seemed the veritable, 'wage slaves' described by his ardent champions. There were other bondages also, the constant fear and the periodical recurrence of unemployment, deliberately fostered, declared the enemies of the capitalist system, by the employers themselves that they might have a reserve of cheap labour on which to draw.

There was the aesthetic and intellectual depression of factory organization, on over-specialization of labour and the deadening confinement of a worker to a single repetitive process (such as a worker in a pin factory). He was not allowed to have neither interest in the completed article nor profit in its merchandizing. It resulted in a class of discontented workers.

Such briefly were the circumstances and considerations which led to demand through-out the industrial world for the amelioration of the conditions of the working classes. The impulse has expressed itself in three ways.

It has led first to the trade union movements, which is in essence of a spontaneous form of defense adopted by the working man to protect himself against the dependence and oppression to which he was exposed. He speedily realized the ancient principle that combined action is more effective than isolated effort and collective bargaining than individual negotiation. The suggestion to organize was contained in the economic grouping of the workers already at hand. Combination of workmen employed in the same occupation-as also of employers, who has readily grasped the fact that unions served their interests-came into existence before the end of eighteenth century. Now a day there is hardly any industry, occupation or even profession without its union. The labour union's greatest weapon is the strike, either of a single union or of several unions in sympathy or a stay in strike and the employers corresponding weapon is the lockout or closure. The Trade or Labour Unions were organised primarily to fight the employer. The unions have secured immense benefits for the workers; they have achieved successive reductions in the hours of work and increases in the rates of pay until in most industries the workers have attained a standard of living undreamt of by their fathers.

Secondly, the other factors have of course intend in to this result, in particular various national, municipal and private enterprise which are to be regarded as the expression of another impulse towards in-proving the lot of people of the working classes. This may be summarized as reforms or attempted reform from the above, from the state, the Municipality or the employer induced partly by the agitations of the working men and partly by spontaneous philanthropy. The welfare of the working classes has been the direct or indirect object of the Factory Legislations, Minimum Wages Act., workmen's compensation act and the like. The third expression of the impulse of the working class movement was in the rise of socialism. The achievements and reforms as sketched above are primarily the

causes for development of a way of thinking which led to development of socialism in the world. Social thinkers like Karl Marx and Engels championed the cause of labour and advocated socialism. Marx saw the development of human history through continuous conflict or tension between opposing economic classes

–the Management and the workers. His whole assumption rests on the belief that the capitalist and the proletarians (workers etc.) have opposite interests and their tensions could be removed by state regulations, trade union actions and philanthropic, a rising common standard of living and the growth of a wage – earning class with capital investment. His ideas not only received a considerable success in Russia but also in other industrial countries of the world .he extorted the workers to combine and fight for their rights. The communist manifesto prepared by Marx and Engels asked the workers to combine. That was the primary reason for the rise of trade unions in the industrial world.

Management: Role of Management

The management, as seen above, has also acquired immense powers and privileges due to industrial revolution. The employers got the freedom of contract. It created in fact the capital employers who acquired wealth, privileges and the power through the organizing and hiring of the labour for the running of their industries and factories. The ‘hire and fire’ was the rule at that time. The interest of the management was to earn more with the minimum investment and to receive and to receive huge profits with the minimum input. So, the management more or less adopted an oppressive attitude towards the working class for achieving their interests/ or objects. Thus, the labour and their trade unions fought against oppressive attitude of the management and tried their best to achieve better wages, reduction in normal working hours and a decent standard of living. The employers, therefore, always treat the trade unions as their enemies, and their enemies, and there is always a tension in the industrial relations system. There is need of change in attitude of management towards workers.

State: Role of State

There opposite interests were primarily the reasons for state intervention in the private relationship between the employers and the employee. The state intervention resulted in enactment of state laws, rules and regulations

for the

regulation of industrial relations, in the industrial world. The humanist and philanthropist of the world raised their voices for amelioration of conditions of labour and asked the governments of the Europe to intervene in the matter. In the congress of the Aix-la-Chappell (1818) the Five Big powers viz., France, England, Austria, Persia (Germany) and Russia took part. The congress received a memorial from Sir Robert Owen, a philanthropist, declaring that the prime task for the government task for the government of Europe was the international fixation of the legal limits of the normal working hours (day) for industrial class of Europe and inviting the Congress to appoint a commission to report on the question. But the Big Powers of that time missed that opportunity. History had to wait for another hundred years to Paris Peace Conference (1919), the idea of International Labour Legislation was given a practical shape and a commission was appointed by the Paris Peace Conference and on acceptance of the Report of that Commission, the International Labour Organization (ILO) was established to regular the conditions of employment from international aspect. The ILO did a lot of work and has passed number of Conventions and Recommendations. At present, the ILO has 170 member-States and India is one of the founder-member of that Organization and has been endeavoring to implement the spirit of the ILO Conventions and recommendations by molding the existing labour laws or creating new laws where necessary.

Thus, the role of State has become meaningful in all the countries who have become member of ILO. Now-a-days, the State has more or less assumed the responsibility everywhere to regular industrial relations. They prepare policies which are not contrary to the local as well as at national and international level so that no confrontation arises and good and peace industrial relations are not disturbed.

Emergence of Industrial Relations System

The State intervention has created a body of rules and regulation to regular the industrial relations. This complex system of rules and regulations has been named as “Industrial Relation System” by an American writer, John. T. Dunlop. In his book on Industrial Relation System, he has observed :
“Every Industrial community, regardless of its political form, creates managers and the workers. The status of these workers and their inter-relation come to be defined

in greater or lesser detail. The national state cannot ignore these vital relations in the industrial society particularly when the Government in the contemporary world is actually engaged in stimulating and directing developmental programs. Industrial societies necessarily create industrial relations, defined as the complex of inter-relation among managers, workers and agencies of Government. Every industrial relation system thus involves three groups of actors: (1) workers and their representatives; (2) managers and their organizations, and (3) The Government agencies concerned with the work place and work community.” (See Preface).

Thus, every industrial relation system creates a complex of rules to govern the work place & work community. These rules may take a variety of forms in different systems, agreements, statutes, orders, decrees, regulations, awards, policies and practices and customs. But the form of the rule does not alter its essential character to define the status of the actors and to govern the conduct of all the actors at the workplaces and work-community.

GROUP OF ACTORS

The actors-management and their organizations, workers and their organizations and the State or Government agencies in an industrial relations system are regarded as confronting an environment at any time. The environment is comprised of three inter-relation contexts, the technology, the market, or the budgetary constraints and the power relations and the states of actors; the system is bound together by an ideology or understanding shared by all the actors. The role of the Government is, therefore, to prescribe rules and regulations to regular in interrelation of these actors. In every between Communities, the role of the Government is to harmonize the relations between management actor and the worker actor so that the industrial peace may not be hampered.

ACTIONS AND RE-ACTIONS OF MANAGEMENT ACTOR AND THE WORKER ACTOR

The management actor and the worker actor acts and reacts according to their own interest. The management tries to dictate its terms and rules of conduct and discipline and forces lockout or closure of the work place if the will of the management was not obeyed. The workers and their trade organizations usually

press their demands for better wages and decent standard of living and other fringe benefits and resort to collective bargaining process. In the collective bargaining process, these two actors test their rival strength through their weapons-strike and lock-out etc. Strike is also a part of collective bargaining process. Prof. R.E. Mathews, in his book on “Industrial Relations and the law” has rightly observed, “Strike is itself a part of the bargaining process. It tests the economic bargaining power of each side and forces each to face squarely the need; it has for other’s contribution. A strike progresses, the worker’s saving disappear the union treasury dwindles and the management faces mounting losses. Demands are tempered, offers are extended compromise previously unthinkable become acceptable. The very economic pressure of the strike is the catalyst which makes agreement possible.”

Thus, the collective bargaining process at times market the agreement possible because these actors know their economic pressure or strategies and in all major industries, the employer actor and the worker actor used to resort bilateral agreements for years together. Now-a-days, the Government are promoting worker’s participation schemes to smoothen the rigor of better inter-relation.

SUMMARY

Thus, the industrial communities have evolved means of regulation of inter-relation of these three actors and the effort of the ILO has been to guide the member states to solve the intricacies of this inter-relation. The industrial relation system so developed provides enough safeguards to regular the inter-relation of these actors harmoniously and strikes and lock-outs closures etc. are regulated by laws, rules and regulation so that the larger interest of industrial community may not suffer.

SELF-ASSESSMENT TEST

1. What do you understand by “Industrial Relations”?
2. What are the parties to the industrial relations system?
3. What are the opposite interest of management and the workers?
4. What is the role of State in the industrial relations system?

KEY WORDS

- ~~1. Industrial Relations: It is an aspect of industrial employment.~~
2. The inter-relations of employer and the worker: The inter-relations of these actors are guided by their own interest.
3. Role of State: The State is to harmonize the industrial relations and guide the inter-relations of the management and the worker.

SUGGESTED READINGS.

1. John. T. Dunlop : Industrial Relations System.
2. Roberts, Industrial Relations and the Law.
3. Dr. N.D. Sharma. : Law, Labour and the Management.

UNIT-3

Trade Union Movement in India

Objectives

After going through this Unit, you should be able to understand :

- the growth and development of trade unionism in India;
- importance of Trade unions;
- Future prospects of trade unions in the context of our country's industrial development.

Structure

Introduction
Historical Perspective
Causes for the development of trade unions
Difficulties and drawbacks of the trade union movement in India
Measures to strengthen trade union's Movement in India
Conclusion
Self assessment test
Suggested Readings

INTRODUCTION

Trade union movement is essentially an outcome of labour problems. Labour problems in their more acute form emerged out of the growth of industrialization on large scale. The establishment of factories and industries provided employment opportunities and thus attracted labour force. The owners of factories and industries, being more interested in their profits, neglected even primary needs and requirements of the workers who came to work. This exploitation of labour and absence of basic facilities made the lives of the workers miserable. As a result of this a series of labour legislations were introduced to protect the workers interest and to improve their lot. The trade union movement also owes its

inception to the various problems of the labour force. In fact, the trade unions developed to unity the powers of the workers and utilize the same for promoting and procuring their

welfare against the employers, who by virtue of their position and ownership of the means of production had a tendency to exploit the poor and helpless worker. Today, trade unions are a powerful mechanism for resolving the labour problems of all kinds and, also for the protection and advancement of their interests. In brief, trade unions occupy a crucial place in the present day economic and political development of our country. The Government and the industries have as much stake in the development of a healthy and stable trade union movement as the workers themselves. Needless to say that much of their health and stability must inevitably depend on the persons who lead this movement.

Objectives of Trade Union:

Major objectives of the trade unions are:

1. To improve the economic lot of employees by securing for them better wages.
2. To secure better working conditions for the workers.
3. To secure bonus for the employees from the profit of the concern,
4. To resist schemes of the management which reduce employment, e.g., rationalization and automation.
5. To secure welfare of employees through group schemes which give benefit to every employee.
6. To protect the interests of employees by taking active participation in the management.
7. To secure social welfare of the employees.
8. To secure organizational stability, growth, and leadership.

Functions of Trade Unions:

From working point of view, trade unions perform two types of functions **(1) Militant Functions:** Violent action in form of go-slow, strike, boycott, gherao, etc. to secure adequate wages, secure better conditions of work and employment,

get better treatment from employers are known as militant or fighting functions.

(2) Fraternal Functions: Functions or set of activities in any form (welfare

measures, publication, legal assistance to its members) performed by trade unions aims at rendering help to its members in times of need, and improving their efficiency.

(3) Political functions: These functions include affiliating the union

with a political party, helping the political party in enrolling members, collecting donations, seeking the help of political parties during the periods of strikes and lockouts.

Types of Trade

Unions:

1. **Reformist Union:** Reformist union aims at the preservation of the capitalist economy and the maintenance of competitive production based industrial relation. This is again classified into 2 categories: Business union Friendly or Uplifting union.

2. **Business Union:** Business union this type of union are built around congenial employee-employer relation. Business union primarily protects the workers interest by participating in collective bargaining with the employer. These union generally been craft conscious rather than class conscious. These unions prefer voluntary arbitration and conciliation.

3. **Friendly Union:** Friendly or Uplifting union -These unions aspire to elevate the moral, intellectual and social life of workers. These unions concentrate on education, health, insurance and benefits. These unions are not craft conscious but interest conscious of the workers. Though these unions emphasis on collective bargaining and mutual insurance they advocate co operative enterprise and profit sharing

4. **Revolutionary Union:** These unions aim at replacing the present system with the new and different institutions based on the ideals that are regarded as preferable. These union aim at destroying the capitalistic system, abolish private poverty and installing socialist or communistic systems. These unions are of two types: Political 2. Anarchist *25

HISTORICAL PERSPECTIVE

Trade Unions signify continuous voluntary association of organization to wage earners of workers formed for the purpose of maintaining or improving their working conditions and promoting and protecting their interests by concerted collective action. It will now be in the fitness of things to trace the historical development of the trade union movement in India. The word 'movement' by its very nature, signifies a dynamic process having its origin, growth

development,

²⁵ <http://www.authorstream.com/Presentation/aSGuest138879-1465132-trade-unions/>

progress and even succession promoted by developments in the social, scientific and technological fields and the consequential change in the structure of relationship between the employers and the workers.

Modern Trade unionism is essentially an outcome of the scientific and technological development manifesting themselves in big factories and industrial establishments and the capitalistic order of society. It is the child of modern capitalism born out of industrial revolution. These developments are more or less the same in all the countries, and India is no exception in this regard.

There is no evidence of the existence of trade unionism in ancient India. There was perhaps no need also for such an organization; because India lived in villages and village communities were self-sufficient units. The caste wise division of labour produced goods and material which took care of the elementary needs of the society. In cases of problems, the caste panchayats or village panchayats dealt with the same. This was, more or less, the position during the mogul period also. The period of British rule in India witnessed a decline in economic development. After the industrial revolution, British interests in India were to have a vast market for their manufactured goods and a source of food and raw materials for the materials for the west. As a result of this, the Indian manufacturing industries were paralyzed and India was converted into an agricultural hinterland of Great Britain. Agricultural growth too considerably suffered due to the policy that was followed by the British in India. In fact, an economically strong India was never a basic objective of British Policy. Never the less, whatever development that took place, was the result partly of the circumstances of that time, partly of the policies formulated and adopted to protect the British colonial interests and partly the dynamic entrepreneurship of a few Indians.

The history of trade unionism in India can be analyzed into three distinct phases, namely :

- (1) From 1875 to 1917
- (2) From 1918 to 1946; and
- (3) From 1947 to the present day.

(i) The Period between 1872 to 1917

This era may be called era of social welfare. In this period a number of modern industries were established and unions were formed by the employers. The workers were not supposed to bargain with the employer and they were

being, exploited by the later. However, with the march of some industrialization brought

lot of social evils in the workers. The attitude of government was to protect society evils in the workers then the workers from the society. Working conditions of Indian workers were miserably poor as compared to their counterparts in Britain or other European countries. Greatly perturbed by lot of Indian workers Shri P.C. Majumdar started a few night schools for their education. In 1875, a few social reformers and philanthropist, under the guidance and leadership of Mr. S.S. Bengali started an agitation in Bombay to protect against their working conditions. A few humanitarian leaders like Shri Sohrabji Shopuraji Bengali (1875); Shri N.M. Lokhande (1884) tried to attract the attention of the government to solve the problems of workers. As a result of this the Indian Factories Act- 1881; and 1911 were passed. Thereafter, a memorandum signed by workers was served to second Bombay Factory Commission. Mr. Jones found in his survey that memorandum submitted in 1890 by 17000 workers to the government gave enough strength to the trade union movement. A few trade unions were formed during this period. In

1890 Mr. Lokhande formed the Bombay Mill-head Association. He started publishing a newspaper "Deen-Bandu". Other trade unions formed were the Calcutta Printers Union (1905), Post & Telegraph Union, Bombay, Madras and Calcutta (1907) Kamgar Hitwardhak Sabha 1910, Samaj Seva League, Bombay, 1910 etc.

The trade union movement was mainly served by two stalwarts Mr. Bengali and Mr. Lokhde. The death of these staunch leaders caused great damage to trade union movement in India. After their departure no remarkable progress was made in this field. However, the labours associations organize during this period were essentially labour welfare organization and they could hardly be called as trade unions. These organizations wanted to mitigate the evils of modern factory system and improve the lot of the workers. They discussed the problems of the workers, gave definite shape to their grievances, represented their case before the government and pressed for suitable legislation to ameliorate their condition. There was no class consciousness among the workers. The trade union movement regained momentum in the beginning of the twentieth century. According to Dr. Giri there was remarkable progress in the trade union activities between years 1904 to 1911. There were a series of strikes in Bombay and Calcutta. The strike of Bombay in 1908 in which Bal Gangadhar Tilak was imprisoned for a 6 years, strengthened the hands of trade union

movement after the partition of Bengal. In
1905 Calcutta Printers Union was formed which was followed by the Calcutta

Postal Union was formed which was followed by the Calcutta Postal Union in 1906 and the Kamager Hitwardhak Sabha was established in 1910.

It is noteworthy that the trade union movement in India during the period was wholly unorganized and social in character. The organization of workers formed during this period lacked definite objectives and the leaders mostly worked in an advisory capacity. Dr. Punekar has rightly characterized this period as "as social welfare period of early trade union movement in India.

During this period most of the trade union took birth to solve a specific problem and they collapsed with the solution of that problem. Other trade unions were lacking the spirit of real trade unionism.

(ii) The Period between 1918 to 1946

According to Dr. Punekar the period between years 1918 to 1946 has been called as the era of the real beginning of the trade union movement in India. The Post World War I period saw the beginning of trade union movement in true modern sense. The Economic and Political conditions of the time contributed to the new wave of awakening. Consequently the leadership of trade union came into the hands of political leaders (from social leaders). During the period, efforts were made to organize trade union movement systematically all over India. Though there is evidence of workers in the Ahmadabad Cotton Mill forming a union in

1917 under the leadership of Smt. Anusuyaben, the credit of forming the first industrial union on a systematic basis goes to Mr. B.P. Wadia who founded the Madras labour Union in 1918. Not a single textile labour in the city of Madras remained out of the union. However, scores of unions came into existence in the next five years. Under the inspiration of Mr. Mahatma Gandhi. Several occupational unions such as weavers union, spinner's unions were established at Ahmadabad which federated into the industrial unit known as the Textile Labour Association, Ahmadabad.

The Russian Revolution also had a great impact on the trade union movement in India. It held out prospects of new social order to the common man of the country. Ideas of new thought and self respect caught the attention of workers.

In the political field also new ideas were gaining support. The Home Rule movement and the Material law in Punjab had changed the whole ideology of the people. The leaders of the political agitations knew that organize workers would be an asset to their cause. Laborers who had many grievances

needed proper guidance

and leadership. The non-co-operation movement of Gandhi Ji launched in 1919-21 and his teaching of identification of leadership with the masses provided willing leadership to labour movement. Pandit Nehru said “A demoralized, backward and broken-up people suddenly strengthened their backs and lifted their heads and took part in disciplined, joint action on a country wide scale”.

The setting up of the International Labour Organization of trade unions tremendously. Besides developing labour-consciousness, it created general awakening among the workers. The formation of A.I.T.U.C. was started with Lala Lajpat Rai as its first President. It had the support of Mr. C.R. Das, Sardar Patel, Moti Lal Nehru, Jawahar Lal Nehru and Subhash Chandra Bose etc. It also had the support of the members of the Indian National Congress. ITUC made several attempts to improve the social, economic and political interest of the workers. At this stage the number of unions affiliated to the AITIC was 125 with membership over 2 to 5 lakhs.

These developments eventually led to the formation of many new trade unions in Bombay and Calcutta namely, Indian Sea Workers Union, Calcutta Employees Union, Punjab's Press Employees Union, G.I.P. Railway Workers Union, Madras and Madras Textile Labour Union etc. During 1917-1919 as many as Seventeen trade unions were formed. These trade unions were formed mainly in the Textile, Jute, Railway and Transport industries. At this stage an attempt was made for the first time to establish machinery for settlement and prevention of disputes. The spread of trade unionism in the country during this period was, however, accompanied by large number of strikes. The year 1919 witnessed a number of work stoppages, and strikes in Bombay & Madras. In 1920, about 200 strikes were witnessed all over India. Due to this the Government of India started collecting information regarding these strikes. In all 400 disputes involving 523521 workers were recorded. In 1922, the number of strikes was 278 involving 435434 workers actively participating in them. The number of strike began to decline after

1922. However, the large number of strikes does not mean that the various unions formed during this period had become stable and permanent organizations. In fact, most of them were started with an immediate objective and dissolved soon after the strike was over. The strength of trade unionism during this period (1921-21) has been differently estimated but notwithstanding the dispute about the strength of trade unions, the fact remains that trade unionism had come to stay in the country and during this short period some very reputed and stable unions were formed. The

workers were made conscious of their right and foundations were formed. The workers were made conscious of their rights and foundations were laid for significant development of trade unionism. Shri V.V. Giri said that in the first quarter of the century the number of trade unions doubled and the number of workers multiplied four times. Trade unionism took the shape of organize trade union movement and all the classes of workers actively cooperated in the movement.

The Royal commission on labour in its report has quoted that the contribution of National leaders notably, Shri C.R. Das, M.L. Nehru, S.C. Bose, V.V. Giri and Dewan Chaman Lal is remarkable and the trade union movement gained momentum due to their efforts. But unfortunately the employers began to feel that trade unions were destructive organizations leading to industrial unrest. As a result of this, at times even the most reasonable demands of the workers were not accepted by them. This had an adverse effect on the growth of trade union movement in India, since nearly 75% the trade unions were dissolved soon after their birth and thus the progress of trade unionism slowed down considerably.

(iii) The period between 1924-35

This period of trade union movement may be called the era of “Left-wing Trade Unionism”. Ever since 1924, Symptoms of Militant tendencies and revolutionary trade unionism in the labour movement of the country becomes apparent. This era lasted up to 1935. During this period communists captured the labour movement, and there was a split of the Trade Union Congress twice followed by some of the most violent strikes in India. The main cause for the growth of these extremist feeling was the economic hardship of the workers. Depression, cut in wages and unemployment were the main factors responsible for the development of communism in India. It can be said that communism vegetated on the soil of economic hardship.

The stiff attitude of employees also gave a fillip to growth of communist ideology among workers. In the Kanpur session of Trade Union Congress of 1927, it become apparently clear that the labour in the country was going in two different directions, namely, the rightist ideology and the leftist ideology. These two ideologies are also known as Geneva-Amsterdam Group and Muscovites group. They had militant approach to problems which was clearly obvious at the international level in the I.L.O. Due to this, in the Nagpur

session of 1929 question of sending delegation to I.L.O., boycotting the
What they Commission etc.

Widened the gap between rightists and the leftists. As a result of this, All India Trade Union Federation was formed as a new trade union. This division was a great loss to AITU as its strength was reduced from 51 unions to 21 and the membership came down from 1.9 lakhs to 94 thousand. A new union NTUF was formed by the leaders of moderate thoughts. The main supporters of this union were Shri N.M. Joshi, V.V. Giri and Dewan Cheman Lal. This new more keen to protect the rights of the workers.

In the 1931 session of communists at Calcutta ITUC had another division. Shri B.T. Ranadive and T.V. Deshpandy etc. Formed a new trade union organization called the Red Trade Union Congress.

By this time, the Indian trade union movement had three trade union, namely, AITUC which was under control of nationalists; AITUF which was controlled by the nationalists but militant congressites RUTC-which was controlled by the communists. The communists wanted some revolutionary changes in the Trade Union Organization. There were some other independent trade unions such as All India Railway men's Federation Textile Labour Association. After this decision a few persons known as Roy Group tried to unite these trade unions. IRF took initiatives and there were some positive results. This union formed a Trade Union Unity Committee in the 1932 session at Bombay. AITUF and AITUC took some important decisions acceptable to both the parties. They gain made a unity bid which resulted in formation of National Federation of Labour. AITUF after lapse of sometime emerged into N.L.F. to form National Trade Union Federation. However, AITUC and RTUC were away from this unity attempt.

This division was not in the interest of workers. In 1933 more than 50,000 workers were reverted from their jobs in Bombay. There was loss of 21.7 lakhs of man-days. Trade Union movement was now facing a hard time. From 1934 onwards, however, trade and business of country started reviving and since the employers wanted to introduce further schemes of retrenchment and wage cut etc, the trade union activity also revived as there were some major industrial disputes to be resolved. In January, 1934 a conference of All India Textile workers was held to protest against wage-cut, retrenchment etc, and a resolution was passed to resort to a country wide strike of all the textile workers. The influence of communists, reasserted itself but in 1934. The Government of India declared the communist party an unlawful association. There after the influence of Communists gradually started declining.

The significant achievement of this era was the India Trade Union and Act, 1926, which provided for voluntary registration of Unions and conferred certain rights and privileges upon registered trade unions. The demands of trade union law become insistent after prosecution of Mr. B.P. Wadia, President of Madras Labour Union and the issue of injunction by the court.

In 1935 RTUC merged itself with AITUC. Further efforts were made by the Trade Union Unity Committee to bring together the two sections the NTUF and AITUC. Finally, in 1938, an agreement was reached where by the NTUF affiliated itself with AITUC. This was a healthy trend to make unit amongst-different trade unions which led to revival of trade union movement in India. In 1937, the Congress Government took charge of system states of India their hands. By this time the number of industrial disputes had increased considerably. There were 376 strikes in which 6.47 lakhs of workers participated. These strikes caused a loss of 89-82 lakhs of man days. The Congress Government adopted a Liberal policy towards the labour cause which helped trade union movement. The number of trade unions rose from 101 to 217 in 1937 and it was 562 in 1939 with membership of 3.99 lakhs. In 1934, there were 159 strikes in all and the number rose to 379 in 1937 and to 339 in 1938. The year 1939 the famous strike of Digboi Oil Fields in which the Viceroy and the Governor intervened on plea of war to bring about a settlement.

Due to efforts of Shri. V.V. Giri there was substantial progress in bringing about unity of unions when AITUC and NTUF met together. This unity bid of trade unions was initiated after a period of nine years.

Trade unionism in India becomes a consolidated labour movement with the commencement of World War II. It witnessed some significant changes. The increase in nu number of employment and growing disparity in the cost of living supplied materials for the stabilization of the trade union movement. Employee's attitude had also undergone a completed change and so was that of the government.

Due to difference in AITUC the trade union movement was split into several parts. Now main control was in the hands of Radical Democratic Party. The leaders of this party wanted that AITUC should give statement against fascism.

In the year 1940, NTUC which was only an affiliated body of AITUC since

1938 dissolved itself into the parent body. Though this was a unity bid yet it barked a unity bid yet it barked a unity front. This unity was short lived. Dr. Aftab

Ali, President of Seaman's Association, Calcutta disaffiliated his union from Congress. Another section known as "Rayists" under the leadership of M.N. Roy also seceded from the organization and formed a body known as Indian Federation of Labour. The federation made steady progress partly because the congress leaders were behind bars in the Quit India Movement, but it lost its representative character after the termination of war. In 1944 there were 222 unions with 407773 members. When Hitler attacked Russia, Communists in India supported government for the war. In 1947 AITUC had 601 unions with 8 lakhs members. In

1946, there was tussle between AITUC and IFL regarding representative character of the organization. An enquiry conducted by chief Labour Commissioner established that AITUC had membership of 456000 as against 40773 of IFL.

By the end of World War II, three organizations were mainly in the field Communist influenced, AITUC, IFL with harmonious and Labour Front with nationalist approach.

In 1940 there were 667 trade unions. This number rose to 865 in 1945 which further rose to 1833 in 1947. Similarly membership of the trade unions which was 5, 11,000 increased to 88800 in 1945 and in 1947 the membership rose to 1331962.

The main contribution of this era was India trade Union Act, 1946 and the Bombay Industrial Relation Act, 1946. The period between years 1918-1946 was the most eventful period in the history of the trade union movement. Initially it was the movement for the workers rather than by the workers but as time passed, it becomes a self generating independent movement led by the working class representatives, though its subordination to different political parties could not be denied. The movement during this period was mainly politically motivated. It was combined with political radicalism and economic militancy. In spite of the splits and the political pulls, the movement remained devoted to the national labour- cause.

(iv) The period after 1947

The Indian trade union movement in its second stage was ideologically nationalistic. It tried to be independent of the communists influence. It must be stated that the trade union movement have always been regarded

subsidiary to main political current. Freedom of association, barring few exceptions, was only in name. The relations between employer and employee were far from cordial. The

main weapon in the armory of trade union was militancy and a, a tendency of mass-conflagration the bargaining power of the trade unions was weak. The number of trade unions increased but their growth and development was not regular. The movement was limited to industrial workers and unionism hardly existed at other levels. The search of self-realization continued. That is why strong trade unions exist only in non-industrial concerns.

Realizing the need for greater production and with a view to restoring normalcy in the country, the Central Board of Hindustan Mazdoor Wewak Singh called upon its various member unions to affiliate themselves to AITUC. Since their attempt to change the policy of All India Trade Union Congress proved futile, the labour leaders in Congress party felt the necessity to form a new Central trade union organization. Consequently, the Indian National Trade Congress was formed in May 1947. After setting up of INTUC, the communist dominated AITUC considerably both in prestige and membership.

Immediately after the independence of India, the trade union movement suffered a setback. Due to inflationary trends, India-Pakistan problem and communal riots in the country, many workers become unemployed. Industrial peace in country could not be maintained. In 1948 when socialists separated themselves from the Congress, they formed another labour organization, the Hindustan Mazdoor Sabha. The Indian Federation of labour also merged into it. In

1949, some splinter groups from the H.M.S. and AITUC set up a trade union as United Trade Union congress. The Government recognized these four trade unions, namely, INTUC, AITUC, HMS and UTUC for the purpose of representation at national and international level. With the emergence of Jan Singh the Bhatia Mazdoor Snag Panchayats came into existence in 1965. Apart from these, a few independent trade union such as all India Bank Employee's Association, National Federation of Indian Railway man, National Federation of Post and Telegraph workers, All India Mines worker's Federation are also in existence. In 1970 several leftists' trade unions collectively formed themselves into a united body known as Indian Trade Union.

Due to difference in Indian National Congress after was split in it in 1971 as a result of which Mazdoor Mahajan came into existence in Gujarat. Likewise another group of Congress formed a National Labour Organization in 1972. Some of the trade unions of Gujarat and Kerala affiliated themselves with NIO.

At the national level an attempt of unity bid was made in 1973 which led to motion of National Council of Central Trade Unions. The government, on its parts has tried to provide a common platform the various unions in an effort to bring about unity among different trade unions.

The trade union movement in India has also been associated for long with two international trade unions, federation, viz. The world Federation of Trade Unions (WTTU), an organization supported by communist bloc formed in 1946 and the International Confederation of Free Trade Union (ICFTU), and organization supported by Anglo-American block, set up in 1949. The Indian Trade Union Leaders have their spokesman in these international forums. The INTUC and the HMS are affiliated to the ICFTU and the AITUC is affiliated to WFTU. A review of the trade union movement during this period would reveal that the trade unions remained divided on the basis of political and ideological differences, protest motivations and other considerations. There have been efforts for unity among various trade unions but without success. Loyalties to the political parties and the approach of trade union leaders to protest manifestations destroyed the unity efforts. The attitude to test secret ballot through workers offered formidable difficulties in the unity-approach. Vested interests of trade union leaders and trade union rivalries indicate a zigzag course of trade union movement not conforming to any specific ideology.

The number of registered trade unions has increased considerably in recent decades. The scope of trade unions has fairly widened during these years. Many working sectors like journalist, dock-workers and even teachers have organized themselves to form trade unions. But the workers in the agricultural sector have still remained unorganized and deprived of the trade unions benefits. With the increasing power and constitutional and legal safeguards in favor of trade unions, they are obliged to observe greater restraints.

How far these restraints have been observed in various bundhs and gheraos is, however, a big question mark. Nevertheless, it is felt that these questions are short-lived and the solution shall improve soon with the awareness of workers towards trade unionism. It is significant to not that compulsory adjudication characterizes the Indian relations system though it was opposed by some unions. In the beginning, there was no responsible spokesman asking for scrapping off the system. Collective bargaining also emerged almost simultaneously. India's collective bargaining agreements differ fundamentally

from the system of western

economy. In India the agreement has tripartite approach whereas in west it is **bipartite**. The system of compulsory adjudication and collective bargaining co- exist in India. Which of these system shall prevail over another, is yet to be seen? The System of work committees failed in India mainly due to trade unions rivalry. The worker's participation has increased in the trade union activities thus marking the beginning of democracy in the industrial field. The concept that labour is partner and should participate in the policy frame work has now been firmly established. Accordingly, Joint management Councils has been set-up in industries. This scheme has been found quite successful. This scheme is also proposed to be introduced in all progressive undertakings.

During this period the issues of Dearness allowance and Bonus occupied most important place on the industrial front. These issues were settled amicably. The statistics reveal that from 1957 to 1963 there was decline in the trend in the number of disputes, number of workers involved and the man-days lost. The year 1966 shows further deterioration. The number of trade unions, workers involved in man-days lost show abnormal trend since, then there is continuous growth in these figures. Now the workers are able to get a fair deal due to the increasing trade unionism in industries. This is the major contribution of trade unions to the workers of modern India. (See Table 1 & 2 subsequent pages).

CAUSES FOR DEVELOPMENT OF TRADE UNION MEVEMENT or FACTORS PROMOTING TRADE UNIONISM-REASONS :

The factors which have contributed to the growth and development of trade unions in India are as under :-

1. The Impact of Indian Immigrant Workers :

In the early stages of development, trade unionism in India was greatly influenced by immigrant workers abroad. The workers sin Indian when came to know about the working and service conditions abroad through immigrant workers **demanded** similar conditions. Indian workers returning from South-Africa, Fiji, Kenya, Mauritius and New-Guinea inspired the native Indian workers. Better working and service conditions abroad motivated Indian workers to make claims for their rights which ultimately resulted in agitation and consequence controls on industry.

The organization “Gadar movement” founded in U.S.A. in 1913 by the Indian immigrants caused public concern. This organization had branches in Manila, Shanghai, Bangkok, Hong-Kong and Panama. This organization provided active support to the participants and leaders of the political parties and trade unions in India.

2. The First world war and its Consequences :

There was general demobilization in the Indian army after the First World War. Several soldiers from all over India lost their jobs and came back to their villages. The higher salaries, status and standard of living of their British counterparts had already made some of them jealous of the British rulers; some medals for services won in the Middle East during the period of war raised their own image. Contact with German and Italian prisoners of war and residents of other free countries brought home to them that they were slaves under foreign yoke. In addition to this the economic problems, inflation, unemployment, among the educated Indians and after-effects of the war resulted in widespread unrest as a result of this these groups united together to form associations and unions to improve their lots.

3. The Soviet Revolution

Several merchants of India had trade contacts with Russia. When Russia became USSR in 1917, they brought rumors home and ‘Bolsheviks’ were under discussion for many years. The opponents of the British Empire in India found sympathy with the enemy of their enemy. In addition to that, the British policy in Turkey resulted in Khilafat Movement in several Islamic countries and reached its climax in 1920 with westward migration of several Muslims. This transferred their fanatical allegiance from Islam to communism. They even formed a social communist party of India and were sent back home for the spread of Communism. Their return brought back fanaticism against capitalism. This provided favorable climate for the growth and development of trade unionism in India.

4. British Radicalism :

The role played by the British Trade Union Congress cannot be overemphasized. Even the suffix T.U.C. of Indian Trade Union Federation, INTUC, AITUC, & UTUC is borrowed from British counterpart.

British trade

unionists even encouraged their Indian and British trade unions have been exchanging delegations and messages of goodwill at periodical conferences. Persons like Dewan Chaman Lal came into contact with trade union leaders during their education in Britain. The British friends of Indian trade unionist and radicals- notably, Philip Spratt and L. Hutchinson helped nursing trade union movement in India. They also contributed to the enactment of Trade Union Act, 1926 and promoted the study of working conditions by supporting the apportionment of Royal Commission of Labour in India. However, aid was not free from self interest. Availability of cheap supply of labour and the apprehensions that the trade unions in India may not go completely under the influence of nationalist or communist was the main purpose of this aid. Differences of opinion within the trade union movement and unwillingness of some trade unionist to free themselves of their commitment in the national liberation movement did restrict the British inclination to help them. But it must be accepted that people from Britain and Ireland did provide development aid to Indian trade union movement as its initial stages.

5. Religious and Political Movement :

Police firing at the Jalianwalla Bagh in Amritsar on 13th April, 1919 as a protest meeting against Rowllat Act, followed by martial law in Punjab, Mahatma Gandhi's civil disobedience movement. Akali agitations for democratization of the control of places of worship and other religious and political movements combined to provide situation in which trade unions found educated leaders available for services free of charge, and always eager to mobilize laborers as storm-trooper for the national movement.

6. The International Labour Organization :

The formation of the International Labour Organization under the auspices of League of Nations also served as a catalytic agent for the development of trade union movement in India. Its terms of reference provided for separate delegations of Government's Employer's and Worker's organizations at its periodical Conferences. In 1919 and thereafter the Government of India nominated Shri N.M. Joshi to represent worker's at the tripartite discussions in Geneva, to the jealousy of those who though themselves more competent to represent the Indian labour at the international forum. In the year 1919, the Indian National Congress at its

Amritsar session passed a resolution to set up a subsidiary body to deal with labour affairs because the government wanted to utilize the ILO platform Geneva. There after the AITUC was duly set up at Bombay in 1920 under the influence of the International worker's movements. The resolutions of ILO have provided substantial support to trade unions in several under development countries and have also facilitated labour legislation for their workers. The lure of paid foreign tours has acted in no small measure to win leaders of trade unions clamoring to get nominated to all sorts of delegation.

DIFFICULTIES AND SHORT COMINGS OF THE TRADE UNION MOVEMENT IN INDIA

(1) Narrow Operational Basis

The first and foremost peculiarity, which at once attracts one's attention, is the fact that history of Indian labour movement and trade union Movement has been, to a great extent, the story of unions in an organize industry, and there has been no movement amongst the vast mass of labour in the primary sector as well as the small industries. Trade Union movement was manually mainly confined to textile industry. Dr. Buchman has observed that lot of problems arose in textile industry as a result of which there were numerous strikes which ultimately led the emergence of trade union Leaders notably, Shri N.M. Lokhandey, B.P. Wadia, H.N. Shastri, N.M. Joshi, K.B. Desai who were the products of textile industry. Other industries were not affected by trade union movement. Plantations, Coal and mines, chemicals and public utility services such as transport & telecommunications etc made little progress in this centralized for textile industry in Bombay, Ahmadabad, Kanpur, and plantation industry in Assam and Tamil Nadu and Jute industry in Bengal and so on.

(2) Preponderance of Small Size Unions

Another peculiarity of the Indian trade union movement is that union movement is that it has remained confined to big industries even in the organize sector. Although small industries had small and numerous trade unions but their average membership was very low. Small size of trade union led to financial

problems. Industrial complexity needs organize workers hence smaller and unorganized trade unions were unable to protect labour from employers.

(3) Alliance with Political parties

Yet another peculiarity of the Indian trade union movement, is its alliance with political. In the initial stages of the development of trade unions their alliance was with the Indian National Congress. For that matter, almost all the movement such as Swadesi Movement, the Khilafat Movement, the Non-cooperation movement, the Home Rule movement, and the civil Disobedience movement were launched under the leadership of the Indian national Congress. Leaders like Shri C.R. Das, S.C. Bose and Jawahar Lal Nehru presided over the session of all India Trade Union Congress. Broadly speaking, Indian trade union movement until independence of India was only a phase of growing movement for national independence. The communist influence came into existence at the Nagpur session of AITUC in 1929. Till 1929 Indian trade union movement was integrated. The Nagpur session of AITUC was the prelude, foreshadowing things to come, the creation of H.M.S. and the Federation of Labour was the interlude and the year 1947 was the climax. After 1947, the India Labour movement split into sub-movements and resulted into multi-unionism and political manipulation, which eventually harmed the interest of the working class.

Trade Union Movement-a matter of Social adjustment

One of the characteristic features of the Indian trade union movement which manifested itself in its earlier phase and to a certain extent, exists even today is that it defies interpellation sense. The sociological explanation as to why the Indian labour movement cannot be interpreted in terms of 'class war' theory is that there is peculiar configuration of social classes in India. The cause of Indian independence could best be served only in both, the masses and classes, united solidly to wrest power from the foreign government, only it nationalism could be blended with the forces of proletarian movement and also with the growing power of India capitalism. It is significant to not that some of the Indian capitalists actively helped the cause of India's freedom movement.

Therefore, "Class feeling" was relegated to place of secondary importance. Thus the Indian trade union movement in the colonial setting had presented somewhat of new type in the world history. Class-war philosophy, therefore, fails to explain broader term" social read

judgment” seems to describe the Indian situation better not only in the past but in the present as well.

4. Its dependence on external sources

By and large, the trade union movement in India has depended on external sources. This dependence has been caused by “fundamental weakness” of the Indian working class. Beside this, Indian working class remained handicapped because of lack of sound political or intellectual conventions. During its development stage the Indian trade union movement could not propound any philosophy of its own.

Under the circumstances, the Indian trade unions had to remain in continuous search for help from sources out of its own legitimate field of activity. If the Indian trade union movement had to grow from within its own inherent strength, and sustain itself on its own philosophy, it would have avoided relying too much on external factors. Dependence of trade unions on state has led, on the one hand, to the cultivation of an attitude of dependence, the workers expecting that the government will do everything for them at their mere request; on the other hand, such reliance has affected the trade union movement in the field of Industrial relations.

That is why for most of the issues, like wages, discipline and discharge, involving labour and management, the Indian Unions are prone to look to tribunals. Thus the Indian trade unions still have a Herculean task before them to get themselves deeply entrenched in Indian society. Otherwise, the pattern of labour-management relations, as it exists today, shall not be conducive to healthy growth of trade unions in India. Externally, the inherent weakness of the Indian working class led to its involvement in international activities”. This tendency of workers has manifested itself recurrently.

This has consequently led to ideological polarization of trade unions in India. The impact of the Red International Labour Union (Moscow) and the international Federation of Trade Union (Ahmadabad) resulted into the split of AITUC in 1929 and 1931. It must be stated that ideological polarization among Indian workers remained dormant till India attained independence. During the post independence period it got affiliated on the same basis with the INTUC, on the extreme right, and AITUC on extreme left.

5. Financial handicaps of Unions

The position of Trade Union movement was very weak from the financial point of view. Income of trade unions was meager and insufficient. Financial statistics indicate that average income of trade unions has fallen as compared to 1945-46 to 1966-67. This decline in income was not due to no confidence of workers in trade unionism. There are other reasons as well such as multiplicity of trade unions, adhoc payment from workers, and low membership fee etc. The paucity of funds is due to the fact that trade unions do not have specific welfare schemes for their members.

6. Multiplicity of the Unions

Multiplicity of trade unions and unions and inter-union rivalry is a distinct feature of trade union movement in India. Trade union rivalry, ideological and political interference are the major hurdles in the smooth development of trade union movement. This rivalry is not only between the two or other trade union but within the same trade unions as well. The spirit of healthy competition and constructive approach is wanting among the trade unions. Labour unions are often involved in destructive work which hampers their Trade union activities. The attitude of the employers is also not very encouraging. First of all they do not prefer trade unions and if at all they are formed, they try to break it using all possible means.

7. Outside leadership

Another peculiar feature of trade union movement in India is dominance of outside leadership. In other words the control of leadership of the trade unions is not in the hands of workers but it is with professional or politicians who are not associated with industrial world. Thus it is the leadership of intellectuals and those of workers.

The main reasons for the outside leadership in Trade unions are :-

- (1) The average workers are ill-treated and he is not able to communicate himself properly with the employer.
- (2) The management comprises of the members from high social background are not able to face them psychologically.

- (3) An average worker treats his employer as his parent and expects the latter to look after his interests as a true guardian.
- (4) The political the labour force as a supporter to fulfill their dreams and the labour on its parts, thinks that politicians can better protect their interests. It is for the reason that external leadership of politicians is widespread among the unions in India.

8. Heterogeneity of Workers

Another significant feature of trade union movement in India is that its basis unity, namely the worker is very poor, illiterate and ignorant about his rights. Labour as a class consists of various castes, religions and languages. These factors create problems in their unity. Employers take undue advantage of this heterogeneity of labour. The Royal commission of Labour has also observed in this report that language and caste are the major obstructing elements in the formation of a trade union. It has been also observed that there is lack of stable labour fore in trade union movement in India. Usually workers come from rural areas and often like to go back to their villages. Thus they are migratory in their nature. It is for this reason that trade union movement could not attain stability as is noticed in the Western world.

9. Limited Membership

Trade unions in India are confined to urban areas and their total membership forms a small percentage of total members of wage earners. In other words, trade union-ism has only touched a fringe of working class in India. Even in the organized sector where strong trade unions have been formed, a good number of the workers do not join any union. Except for a few industries where trade unionism has made considerable progress, the great majority of the industries have not come under the influence of trade union activity.

MEASUREA TO STRENGTHEN TRADE UNION MOVEMENT IN INDIA

With the democratization of industries and active participation of workers in the management, the role of trade unions has become very important in

safeguarding the interests of the workers. Therefore, it has become necessary to strengthen the trade union movement in India. Some of the measures to achieve this object are as under :-

1. Full time paid official propounding the necessity of trade union Movement

Shri V.V. Giri rightly observes that a strong trade union movement is necessary for the protection of interests of workers and achieving the targets of production. If trade unions cannot do that, the objective of welfare democratic state is difficult to visualize. He further emphasized that development of trade union movement is not possible unless we have full time and paid union officials. The Union-officials should be paid adequate remuneration. It has been observed that part-time or honorary union officials are more interested in their personal work rather the cause of workers. Therefore, paid and full time union officials are essential for proper functioning of trade unions.

2. Leadership of workers from within

Right from its inception, the trade union movement has been provided leadership by external persons such as politicians, intellectuals or lawyers. These leaders did not pay proper attention to the needs and rights of the workers. Therefore, if the workers themselves assume leadership of their unions the trade union movement shall be able to achieve the desired goal. This can be done by shall govern trade unions on democratic principles and the worker's leadership is sure to inculcate faith among the workers in improving their prospects.

3. Strong trade unionism with united forum of labour

Trade unions are at present in a developing stage and they lack unity. That is why we find political differences, lack of amenities, class differences and multiplicity of trade unions. This reduces bargaining capacity of workers. A strong trade union is therefore, very much desirable to look after the interests of the workers. It is necessary that there should be fewer trade unions so that the interests of the workers are protected and production is high. Shri V.V. Giri has very rightly observed that the principle of one union one industry shall be followed. This union should have enlightened labour force. A strong union shall have better power of

bargaining as compared to a weak union. Addressing the 16th Labour Conference in 1958, the Union labour one industry emphasized that the consent of one union one industry cannot achieve the desired results unless trade unions are divorced from party politics.

4. Recognition of Trade Union

There is a general tendency that employers do not recognize a trade union in their industry. Workers participation in management though accepted in principle, is hardly to be seen in practice. The Royal Commission on Labour in the year 1931 had observed that Recognition to trade union means many a thing and nothing at the same time. An active union though it is with a low membership and not recognized, is able to force its demands for acceptance. The Fifteenth tripartite Conference held in National had provided procedure for the recognition of trade unions.

5. Development of a State labour force

For the proper development of the Indian Traded Union movement a stable labour force is inevitable. Migratory nature of the Indian labour force has to be curbed. That can be done by providing workers better working conditions, housing and hospital facilities and adequate sources of entertainment. A stable labour force will be able to understand the employer and trade properly. It shall help in boosting up production also. For a stable labour force it is also necessary that economic conditions of workers should be improved. Workers should be paid adequate wages and incentives-to ensure increase in production.

6. Adequacy of Union Funds

The economic condition of Indian trade unions is far from satisfactory. Workers pay very low subscription for their membership of a union. To make the financial position of the union should. Subscription of members should be raised. A properly paid worker shall not hesitate in paying his subscription regular and a union with adequate funds shall be an asset for the industry.

7. Promotion of Welfare Activities by Trade Unions

Indian Trade Unions normally do the work of disposing of complaints or settlement of industrial disputes. Their functions are more or less of a fighting type or of a militant nature. This character of trade union keeps away the workers from joining trade unions. To muster promote labour welfare activities. Such as games and sports, medical facilities, library, entertainment etc. So that more and more workers participate in the union activities.

8. Eradication of Disintegrating Forces

As already stated earlier, due to differences in religion, language, caste and living style the Indian workers lack unity. In order to mitigate the evil effects of these disintegrating forces, it is necessary to educate the Indian workers properly. Perhaps, education is the only means to bring them together. Though the Government of India in 1958 has established a Central board for the education of workers, it needs expansion in its activities so that the workers are able to change their mental attitude and rise above caste, religion and language etc. Seeding aside their conservative and orthodox way of thinking.

9. Need of Comprehensive legislation

The present law regarding Trade Unions is rather inadequate. There should be a comprehensive legislation on the subject which should provide not only for the registration and recognition of trade unions but also for protection and development of workers interests. The present trade union Act was passed in 1926 and it has been in force since then without and major change. New provisions with additional responsibilities should be laid down for trade unions.

The Growth and development of trade unions movement in India can be summarized from the Tables given below :-

Brief Study of Few Recognized Central Organization :

Although the general objectives of four central trade union organization in the country, namely the INTUC, the AITUC, the HMS and the UTUC are more or less the same, viz, promotion of economic, political, social and cultural interests of workers yet they differ widely as regards their political attitudes.

Indian National Trade Union Congress (INTUC) :-

INTUC was formed in 1947 by Congress with the aim to establish an organ of society which is free from hindrances in the way of all round development of its individual members eliminating social and political, exploitation and inequality, and anti-social concentration of power in any form. It believes in bringing about change gradually through democratic and peaceful means and it does not want to adopt radical method of achieving its objectives INTUC believes in nationalization of industries and settlement of disputes by peaceful means. It also has relationship with ILO.

All India Trade Union Congress (AITUC) :-

²⁷ http://labourbureau.nic.in/Trade_Unions_In_India_2010.pdf

This trade Union was formed in 1920. It is under the control of the communists, and aims to establish a socialist state so as to socialize and nationalize the means of production, distribution and exchange. Its theme is that labour and capital can never be reconciled within a socialistic system and that trade unions are organs of class struggle. Thus the approach of AITUC is more radical and certainly not as non-violent as that of the INTUC, ITUC ultimately aims at abolishing the wage slavery and establishing socialism if society are relieved from exploitation. It publishes a bulletin of its own, viz. Trade union Record and is affiliated to WFTU. It also publishes Vishwa Majdoor which is a Hindi edition of WFTU.

Hindi Majdoor Sangh (HMS)

:-

This Union is controlled by socialist group and was formed in 1948. HMS. Aims to promote the establishment of a democratic socialistic society and to further the economic, political, social and cultural interests of workers. H.M.S. prefers legitimate, peaceful and democratic methods to achieve these objects. Since 1953, the HMS has been publishing a journal called \Hind Majdoot which publishes texts of resolutions adopted by HMS, important memoranda etc. The H.M.S. is affiliated to ICFTU.

The United Trade Union Congress (UTUC) :-

The U.T.U.C. was formed in 1949 when some trade union leaders was attended the conference called by socialists in Dec, 1948 did not agree with ideology and objectives of H.M.S. and hence decided to form a new trade union. The main objectives of this organization ate to conduct trade union actively and build up a central plate from for laborers on the broadest possible basis of trade union unity, free from sectarian party politics, U.T.U.C. aims at establishing a pure trade union free from political government's labour policy.

CONCLUSIO N

In recent years lots of changes have taken place in the industrial world as also in industrial relations. The old Militant attitude of trade unions is being slow replaced by responsible behavior. Outside leadership is also declining in the unions. Trade unions are now, entering into collective bargaining with

employers. **These** are hopeful true concept of unionism. Trade Unions have also favored

tripartite agreements in place of bipartite ones. It can also be seen that trade unions in India are slowly undergoing changes in their functions. They are being much more realistic in their approach with the employers and the management.

If the trade unions do not show strong will to change their attitudes, and then it may lead to their disintegration thus adversely affecting the trade union movement in India. We may also have a plural system of industrial relations depending on the realignment of political forces and other forces increasing day by day, thus trade unions are likely to undergo a process of deepening or in deepening. Increasing labour force would certainly change all the nomenclature of the trade unions.

Further of trade unions movement in India seems to be quite bright. It can be noticed that the awareness among the workers is increasing day by day. A worker has become more conscious about his rights and duties. On the other hand employers have also started abandoning the policy of "hire and fire". Now they cannot afford to ignore their workers. They very patiently attend to the problems of the workers and try to solve them amicably. The government, on its part, is also playing a very significant role by enacting suitable legislations from time to time. The Government also tries to solve the problems of workers and employers through deliberate intervention in the disputes of workers and employers. Thus the progress may be a little bit slow but it is certainly in the right direction. It can, therefore, be hopefully expected that the trade unions have a crucial role to play in time to come to ensure a better deal for workers as also the employers.

UNIT – 5

Problems of Trade Unionism in India

Objectives:

After going through the Unit, you should be able to :

- Understand the problems faced by trade Unions in their development in India
- Understand the measures which can be taken into consideration for improvement of trade Unionism in India.

STRUCTURE

:

Introduction

Problems of Trade Unionism in India

Measures for Improvement of Trade Unionism in India

Conclusion

Self Assessment Test

Suggested Readings.

INTRODUCTION

N

Trade Unionism is a major component of the modern industrial world. A trade union of workers is an organization formed by workers to protect their interests and to improve their working conditions.

Trade unionism is the result of the growth of modern industries involving the employment of large number of workers in conditions which make them helpless in bargaining individually for their terms of contract.

Trade unionism came into being for a variety of purpose.

Individual

workers found it more advantageous to band together and seek to establish their terms and condition of employment. Workers realized that if they bargained as an individual's, the employer would have better leverage, for an individual it would not batter as much a group in terms of running of the enterprise. Since the

group's

contribution is much larger than an individual's so are the affects of its withdrawal. Also an, individual may not be able to organize and defend his increase as well as a group can. Therefore, workers saw the advantages of organizing themselves into groups to improve their terms and conditions of employment.

The main factor that led to the development of trade unionism has more or less been same in every country. The setting up of large scale industrial units widespread the use of machinery. Concentration of industries in large towns, changes in the working and living environment, produced a new class of workers who were dependent on wages for their livelihood. It the interest of higher profits it was quite easy for their employer to pay low wages as possible. Because of plentiful supply of labour individual worker had little bargaining power. With the object of collective action and at least to maintain, if not to increase their bargaining power worker had to join together. For scientific study of trade unionism in India a clear conception of term & trade union and the trade union movement in India is highly necessary.

Modern Trade Unionism has a fairly short span of life in India as compared to the western countries. The Trade Union Movement in India has passed through different stages of its development. The pattern of growth and character of movement in different period was shaped by than existing social, economical and political characteristics of each period. In the process of its development trade unionism has developed variety of problems. These problems has adversely affected their status and bargaining power. These problems need serious, considerations. Through trade unionism in India was born in very favorable development of trade unionism are numerous and may be summarized as follows ;-

PROBLEMS OF TRADE UNIONISM

:

The problems in the movement of trade unionism have been both internal and external. In fact, there is a vicious circle of trade unionism in the country today. The principle drawbacks of the trade unionism in the form of vicious circle may be illustrated the following diagrams :

**(i) PROBLEMS
WORKERS**

**OF
66**

The Indian labour force is heterogeneous in character. This character and composition of labour force and political environment are, to a great extent, responsible for the weak trade unionism in India. There is lack of class solidarity due to the heterogeneous character of Indian labour force. Contract labour class is also suffering due to its weak bargaining power. Workers are divided on account of differences of religions and states. These disintegrating forces make it difficult for worker to become unite. Workers in India are usually illiterate or lowly educated. Lack of education among workers has made them ignorant and indifferent workers remain docile and fatalistic. Due to illiteracy and ignorance workers have failed to understand the complexity of modern factory system them to remain away. Professional trade union leaders and employers take advantage of their ignorance and lack of solidarity. Basically, the average industrial worker is an agriculturist and a factory employee by forced necessities. The workers in India are passive and loyal to their master and accept the existing position or disabilities easily. The spirit of class or union consciousness is lacking and is responsible for weak trade Unionism.

Method of recruitment of workers in India is inimical for the development of trade unionism. It does not allow developing a permanent labour force. Faulty method of recruitment is also responsible for excessive labour turnover which ultimately is against trade unionism. Indian labour is migratory in nature. This nature of Indian workers has proved a great hindrance is the development of trade unionism. This nature does not make a permanent substantial labour class. Healthy trade unionism is always based on a stable industrial population. As industrial workers are chiefly drawn from rural areas, they continue to have their link with their villages for the social and economical factors. They prefer to return village rather than to stay and struggle for their grievances. Acute poverty among Indian labour is wide spread. Half-fed and half-clothed workers living under precarious conditions, neither have time nor energy for trade union activities. Debt ridden and low paid worker is unable to meet the bare necessities of the life. Workers do not join trade unions, because they cannot afford to pay even subscriptions and unions suffer from financial weakness.

(ii) UNEVEN GROWTH OF INDUSTRIES :

Growth of Industries in India is uneven. Industrialization is concentrated in a few states and in bigger centers. Trade unionism has not influenced a variety of

industries due to their uneven growth. The degree of unionism is high in industries like textile, coal and railways. These industries are organised one, while unionism is low in mining, agriculture, transport and manufacturing industries as they are not much organised one. Uneven growth is the reason and trade union activities are mostly concentrated in large scale industries and to a few states or towns. Rural sector is totally lacking in union activities. In other words unionism has only touched a fringe of the working class in India. Even in organised sector, a good number of workers do not join any trade unions. The extension of trade unionism in India is only 2.9%. Due to uneven growth the membership of trade unions is very low.

(iii) NATURE OF ECONOMY :

Nature of Indian economy is very typical. Agriculture sector pre-dominates industrial sector. Workers of cottage industries, handicraft, mines, plantation etc. cannot be organised easily. Percentage of workers in these industries is very small and scattered. These industries do not have stable work force and are seasonal in nature. The seasonal nature of work do not made a stable work force. This nature of economy is serious obstacle in healthy development of trade unionism in India.

(iv) ATTITUDE OF THE EMPLOYERS

:

Employers in India has developed certain pre-conceived notions such as :

- (a) Trade Unions are the militant organizations.
- (b) Trade Unions in India concentrates on a strike only.
- (c) Trade Unions are just strike committees.

This is the reason that employers in India are not able to reconcile with trade union as yet. Employers consider trade unions as interference in their interest right to manage concerns. Employers adopt all fair and foul means to check the formation of trade unions in their industries. They try to disrupt trade unions. They through victimization of the leaders and members of a trade union. They employ spies, gonads and strike breaker to sabotage the trade unions activities. Employers setup rival trade unions to counter real trade union of workers.

Employers take advantage of the ignorance and illiteracy of the workers and try all foul means to check the formation of Union. That is why N.M. Joshi has said that "They first try to scoff at it, they try to put it down and

lastly. If movement pessimist to exist they recognize it.

(v) MULTIPLICITY OF TRADE UNION :

Multiple rival unionisms are an important feature and one of the great weaknesses of Indian Trade Unionism. During recent years trade unions of smaller size have been creasing fastly. Multiple unions are mainly the result of outside wanting to establish unions of their own, with a view to increasing their political influence. These leaders make union at their convenience.

The existence of various small and rival unions, with divergent political views, is responsible for inadequate and unhealthy growth of trade unions in India.

These smaller unions are not in a position to carry on effective collective bargaining. Small unions can never be strong on any front and become weak. In India many trade unions continue to be virtually strike associate expanding rapidly when a conflict arise and liquidate equally with the same speed when strike is over.

Dr. Raman has observed that the trade union multiplicity in India is directly traceable to the domination and control of the trade union movement by rival political parties.

(vi) POLITICAL ELEMENT :

Dr. Pandey has observed that the unions in India are closely aligned with political parties even now. In India it has become fashion amongst the politicians to become the leaders of the trade unions and in many cases it is found that conflicting political parties have led the trade union movement into fragmentation of hostile camps. This happens due to lack of internal leadership. In absence of proper leader workers get depressed and divided, and loss all interest in trade unionism. Workers divided into rival unions fail to gather strength for protecting and advancing their interest. Trade Unionism to the present day leaders has become a means to end which is the interest of their political party or often his own self interest. In such an atmosphere trade unions cannot grow.

(vii) OUTSIDE LEADERSHIP :

Another disquieting feature of trade union is the outside leadership, i.e. leadership of trade unions by person who do not have any physical relations with the industry. Normally they are professionals, politicians, lawyers etc. It is leadership "by intellectuals" rather than "by workers". It applies at local as well

as national level.

Lack of education among the working class accounts for the predominance of outside leadership. Lack of insight of these leaders into the real difficulties of workers keeps them away from real welfare of the workers. Opportunists leaders generally exploit the nature of their work own interest. Further, the philanthropic nature of their work weakness their sense of responsibility. Outside leadership leads to political unionism, which in turn leads to multiplicity of trade unions, leading to intra union rivalry, which causes low membership leading to unsound finance in turn, lack of welfare activities, which may infuse strength into unions and so to conduct collective bargaining effectively the unions depend on outside leadership, and the vicious circle thus goes on and on.

(viii) TRADE UNION RIVALRY

:

Inter union rivalry is another distinct feature of trade unionism in India. This is due to multiplicity of trade unions. This rivalry is not only between the two or other trade union but within the same trade union as well. There is no spirit of healthy competition and constructive approach. Most of the trade union have failed to realize the importance of mutual help and welfare activities, Catlin has rightly observed that the greater number of phase of the workers' life which the union serve, the more secure, presumably, will be its hold on his allegiance and more affective its control on the trade. Inter union rivalry ultimately cuts at the very root of trade unionism, weakness the power of collective bargaining, and reduce the effectiveness of workers in securing their rights.

Another vexing problem of the unions along with inter union rivalry is intra rivalry. No doubt there is room for disagreement in democratic structures of a trade union, but trade unions leader shall understand that it ultimately goes against their own interest. It has been observed that leaders defeated in election challenges the result and prevent elected group from functioning. Most unions split off a dissident section of a trade union to form a new organization as one of the deadly sins against trade unionism.

The state of rivalry between two groups of the same union is said to be inter union rivalry. Inter and intra-union rivalries have been a potent cause of industrial disputes in the country. They are responsible for weak bargaining power of trade unions in collective bargaining. These rivalries are responsible for slow growth of

trade union movement in the country.

An Inter-union rivalry is mainly because of the multiplicity of unions which ultimately cuts at the very root of unionism, weakens the power of collective bargaining, and reduces the effectiveness of workers in securing their legitimate rights. Therefore, there should be one union in one Industry'. Practically in every important industry, there exists parallel and competing unions, e.g. on the Indian Railways, there are two parallel Federations.

(xi) LACK OF FINANCE

:

Inter-Union and Inter-Union rivalries results in split and formation of very small unions.

During recent years, trade unions of very small size have been increasing. In India average size of trade unions is very small. Small unions can never be strong on any front they become financially weak. The primary source of income of the unions is the membership dues. Due to low membership, funds at the disposal of trade unions are limited. Hence they cannot have full time official to undertake the work of a union, nor can they provide adequate relief to their members and undertake social welfare schemes. They concentrate mainly on extra union activities.

On the other hand poverty and low saving capacity of workers also hinder the growth of a trade union. The workers fail to contribute subscriptions to the union funds and many of the workers do not become members due to this reason. Further subscriptions are not paid regularly and unions suffer from financial weakness. The National Commission on Labour has observed that union leaders generally do not claim anything higher nor do workers feel like contributing more because the service rendered by the unions do not deserve a higher fee. Poor financial position adversely affects the entire working of a trade union. They can neither undertake welfare activities nor can conduct their routine work, or publications etc. Due to insufficiency of funds unions cannot make use of their competent leaders and have to avail the services of honorary leaders or outside leaders. Honorary leaders or outside leaders are not able to safeguard the interest of workers due to shortage of time etc. Therefore, paid officials need to be employed.

(x) PROBLEM OF RECOGNITION

:

In our country employers are not reconciled to trade unionism as yet. They are hostile and unsympathetic towards trade unions. As employers are not under any obligation to give recognition to any union, they first try to scoff at it, they are

to put down and lastly if the movement persists even then, they recognize it. The employers at many a time has refused recognition of trade unions either on the basis that unions consist of only a minority of employers, or that two or more union exist. Employer should understand that uniting all the employees with common interest in a single union is desirable, but it is a matter for them and not for employers.

MEASURES FOR IMPORVEMENT OF TRADE UNIONISM :

It is very essential to recognize the vital importance of trade unions as an integral part of the industrial structure of India. They can make valuable contribution to industrial development. The government and employers have started appreciating the existence of trade unionism. But the future of trade unionism in India mainly depends upon the efforts by trade unions themselves. As Shri V.V. Giri has remarked “A Strong trade union movement is, therefore, necessary both to safeguard the interest of labour and it helps in achieving the targets of production”. Shri V.V. Giri has further further remarked “If the trade union movement is not united and strong enough.....the industrial structure to be built in India, on the basis of full-fledged socialist democracy, would not have firm foundations and the state, in spite of its best ideals and designs, would find it difficult to assure fundamental rights to the working class.” So internal vitality of the unions need to be developed. It can be developed by the measures given below:

(i) DEVELOPMENT OF A UNITED FORCE OF LABOUR :

A United labour force is an urgent necessary of strong trade unionism. It can be developed only by imparting education to the workers; rural background of workers does not inhibit them for entering industry. In fact, once they do, they prefer to say on and improve their prospects.

Education work among workers in India in the past has been done mainly under “Welfare:” only.

In the 15th session of the Indian Labour Conference in an education policy was endorsed. It ‘visualized for sitting up of a Central Board of Worker’s

Education. Worker’s education will develop stronger and effective trade union.

Trained officials and more enlightened members will develop leadership and democratic process in trade union and administration. So far workers education has remained a literary programme, now it should be made a post literary programme. Education would a worker: (a) a responsible committed and disciplined worker. (b) understand basic economical and technicality of industry, (c) aware of his rights and obligations (d) understand the organization and functioning of the unions as well as developed qualities of leadership, loyalty and devotion towards trade union work so that he can intelligently participate in affairs of his union; (e) lead a clean **healthy** life based on firm ethical foundation; (f) a responsible and alert citizen. This programme should be implemented by trade unions themselves.

Training of trade union leaders is also essential. They should be given fairly good knowledge of industry, finance, law, business principles and psychology and economic forces at work. Knowledge of above field will help trade union leaders in better functioning of the unions.

(ii) UNUSUAL DEVELOPMENT OF INDUSTRIES :

Growth of industries in India is uneven. Industrialization in big cities or industrial center should be stopped further. Proper legislation should be brought into force. Trade unions in unorganized and rural sector should be encouraged. Employers setting up industries in remote or rural should be given special hand of help by government.

(iii) CHANGE IN NATURE OF ECONOMY

:

In Indian economy agriculture sector predominates industrial sector. An average worker finds it difficult to adjust himself in typical industrial environment so he depart back to his village whenever he feel dishearten, lonely or his needs are finished. So agriculture based industries should be given special encouragement. Small scale industries, plantation industry and rural handicrafts industries will be able to stop migration of workers and labour turnover in industries. Special training, capital inputs, effective marketing and special policy framework shall be provided by the government and the trade unions.

(iv) CHANGE IN ATTITUDE OF EMPLOYER :

In most of the industries the attitude of employers has been found to be hostile against trade unions, so there is need of change in the attitude of employers

towards trade unionism. The employers must display more foresight than they have done so far and co-operate with power-that-be in the evolution and implantation of measures reasonable and necessary to keep the workers contented, instead of rusting to courts to establish their fundamental rights and indulge in legal quibbling, actions which give a convenient handle to the leftists for strengthened their hold over the must of workers. Employers should give up their unsympathetic and hostile attitude. Instead of considering trade unions a challenge to their power and authority employers should realize the advantage of trade unions which help to increase production and maintain industrial peace.

(v) RESTRAIN ON MULTIPLICITY OF TRADE UNIONS

:

Multiplicity of trade unions in the some undertaking leads to inter-union rivalries which ultimately cut the root of trade unionism. Multiplicity of trade reduces the size of trade unions in term of number of members. Mutual understanding between employers and workers would be greatly facilitated if the principle of “one union in one industry” is fully implemented and adhered to in practice. The concept of “one union in one industry” could not be achieved unless trade unions were divorced from party politics.

It has been also observed that in case of many unions in one industry, if one union is extremely weak, they lack finance, leadership and proper organization. This problem may be solved if weak and small union leave their individual identity and amalgamate into bigger unions.

(iv) REDUCTION OF POLITICAL ELEMENTS IN TRADE UNIONS :

Trade unionism in India has greatly suffered at the hands of various political leaders and parties. This unhealthy political influence needed to be checked workers should see that unions are not utilized for political objectives. Workers should not allow themselves to play the role of pawn in the game of party politics. Trade unions leaders and party leaders should also take active measures to ensure that workers are kept away from disruptive political learning's so those genuine trade unions do not suffer. It does not mean the workers should quit politics. They may part in political activities in their individual capacity. In democracy as long as worker has right to vote he cannot be divorced from politics. Looking towards the existing

pattern of trade unionism trade unions cannot be completely divorced from political influences. Majority of workers are not able to

lead a trade union. There is no escape but to depend upon political leadership. To dispense with it consciousness among workers and sound finances are required, which is slow evolutionary process.

(vii) REATRAIN ON OUT-SIDE LEADERSHIP

:

Trade-Unions in India inherited outside leadership due to the association of its leaders with various political parties during national movement of independence. It is true that trade-union movement in India would not have reached its present dimension and strength in the absence of leadership provided by outside. In post independence era the trade union movement took wrong direction due to vested interest by these politicians. Now there is strong need of evolution of labour leadership from within the labour rank which will bring the spirit of self-reliance, responsibility and independence. In doing so we should not deny that it were the outside that organised the workers and have continuity and strength to trade unions movement the right technique in this regard would be gradual elimination of outside leadership. Outside leadership shall be retained till actual working class leadership is firmly established. While eliminating outside leadership the very fact that outsiders are beyond the jurisdiction of employers adds to the strength and bargaining power to trade unions shall be kept in mind.

(vii) ERADICATION OF TRADE-UNIONS RIVALRY

:

For strong trade unionism efforts shall be made to resolve inter-union and inter-union rivalry. In 1958 a code of conduct was evolved and all the central organizations virtually agreed to observe the basic principles of the code for harmonious inter-union and inter-union relations. The basic principles of the code are :

(1) Every employee in an industry or unit will have the freedom and right to join the union of his choice. No casuals will be made in this matter.

(2) There will be no dual membership of unions.

(3) There will be unreserved acceptance of and respect for democratic functioning of trade unions.

(4) There will be regular and democratic election of executive bodies and

office hearers of trade-unions.

(5) Ignorance and backwardness of workers will not be exploited by an organization. No organization will make excessive or extravagant demand.

(6) Castism, communism or provincialism will be eschewed by all unions.

(7) There will be more violence, coercion, intimidation or personal vilification in inter-union dealings.

However, there is still doubt about the unity of trade-unions as they differ in purpose, direction and methods. This well intended code of conduct has failed to secure the desired results partly due to its inherent deficiencies and partly due to non-cooperation of trade union leaders. There is immense need of sanction for non-observation of these provisions of the code.

National Commission of labour has recommended following lines of action to eradicate inter-union rivalry.

(1) Elimination of party politics and outsider through building up of internal leadership.

(2) Promotion of collective bargaining through recognition of sole bargaining agent.

(3) Improvement of the system of union's recognitions.

(4) Encouragement to Union security; and

(5) Providing for Labour courts to settle inter-union disputes if they are not settled within the organization. The labour courts may, however, step in at the request of either group or on a motion by the appropriate government, in cases where the central organization is unable to resolve the dispute.

(ix) STRENGTHENING THE FINANCES OF TRADE UNIONS :

Inadequate funds have stood in the way of growth and development of trade unionism in India. The primary source of income of the union is the membership fee. Trade unions have failed to collect dues in time due to low wages, poverty and in-debtness of the workers, lack of staff and efficient organization of trade unions to collect fund. Indifferent attitude and Luke-warm interest of an average member of the trade unions. The collection by donations, sale of periodicals and other literature and interest on investment etc. is also low. Data show that 70% of fund comes from membership fee, 15% by donations and rest by other resources. The Indian Trade Union Act prohibits the spending of general funds of a Union for political purpose. The trade union act, 1926 has a clause for prescribing the minimum membership fee, which is very low and not sufficient to meet out the expenditures of a trade union. It needs to be raised to a higher amount than prevailing one. The suggestion of percentage rate and different amount within

each

slab has not find favor with many unions. General observation is that as for as possible same rate should be levied. Unions should try to tap new sources income and on the other hand considerable saving shall be done on overhead and establishment costs.

(x) SIMPLIFICATION OF SYSTEM OF RECONDITION OF TRADE UNIONS :

Indian employers are pre-conceived. They do not recognize the trade unions easily. Granting of compulsory recognition by employer has become the most vexed questions during recent years. Many bills aimed at compelling employers to recognize unions were introduced by private members in legislatures but these failed to carry support of government concerned. However, the trade union act was amended to provide for compulsory recognition of representative trade unions by employers. This amendment Act, however, has not been brought into force so there is immense need of change into legislations. National Labour for recognition of trade unions as it would stabilize sound labour-management relations.

Generally employers do not recognize unions considering it encroachment upon their rights. They grant recognition unless they are compelled.

In 1958 Tripartite Labour Conference laid following norms for recognition of trade unions :

1. A Union must cover at least 15 percent of employees in the concern to claim recognition.
2. Where there are two or more unions, a union claiming recognition should have been functioning for at least one year after registration. In case there is one union this condition is not possible.
3. When a Union has been recognize there should be no change in the position for two years.
4. For an industry in a area a Union may claim to be recognized if it has a membership of at least 25 percent of the workers of the industry in that area.
5. When there are several unions in an industry the union with largest membership may be organised.
6. Only those unions which observed code of discipline should be entitled to recognition.

In 1959 the labour conference agreed that employers might recognize it even if it did not satisfy the condition of 15 percent membership or one year standing.

(xi) **MISCELLANEOUS SUGGESTION TO IMPROVE TRADE UNIONISM :**

1. For strong trade unionism the trade unions should pay attention towards **extra-mural** activities or fraternal functions. The union meeting should be given the some importance during normal periods as in the time of disputes or strikes. The operation of unions in the sphere of education, health, housing, and recreation and workers welfare must be enlarged.

2. To encourage the trade unionism, it is necessary to provide facilities for the training of trade unions workers. They must be trained in the field of finance, law, business principle, psychology and technology of the industry in which they are working. Government has established an Asian Trade Union College to train the leaders. Workers education programme has also been working in almost all industrial centers.

3. Legal provisions related to trade unionism are in force since their inception without any changes. Healthy growth of trade unionism not only requires **suitable** legislations, but also protection and development of workers interests. Government tried to bring forward a comprehensive legislation, but unfortunately it could not be passed. Thus comprehensive legislation is still needed.

4. The attitude of central as well as state Govt. is not upto the mark in words of Mr. N.H. Tata. In his words "Any sentimental patronage shown by the government can have its effect upto a limit beyond which it would only give immoral courage to unprincipled and irresponsible union of wrong shade and hue **which** under the protecting umbrella of trade unionism are merely interested in their political ambitions of supporting a party in power.

5. Mobilization of public opinion to secure sympathy of public is very essential for success and strength of trade unionism in India. Public opinion will stand by the trade unions if workers not only press upon their rights and privileges, but also feel **their** duties and responsibilities. Many a difference can be amicably removed through the influence of general public if workers know how to secure public sympathy for their demands. In democratic system public opinion

helps in pressing upon the government to design labour policy in favor of workers.

CONCLUSIONS :

The Trade Unionism in India is about eight decades old. As Dr. Punekar, in his book Trade Unionism in India put it. "In the life of a movement, unlike that of an individual this may constitutes a short span; however it is sufficient long for a movement to grow out of its infancy, childhood and adolescence into an adult mature organism. There is no doubt that these are several problems before trade unions in their development, even than they have made good progress in lass few decades. A comparison of labour conditions of pre and post independence era is a pointer to the progress of trade unionism in India. Besides, trade unions have now served both legal and social status both from employers and the state.

Despite the progress, trade unionism still suffers from a number of weakness and defects which retard its progress. There weakness are small size, low degree of unionization, unstable membership, multiplicity, inter and intra union rivalry, poor finances, limited welfare programs and dependence of outsiders with political influence etc.

The Character and composition of labour force and the politics is greatly responsible for these weaknesses. Very few unions have stable membership. There is need of development of trade unionism on sound lines. Trade Unions shall be **accepted** as an essential part of industrial and economic administration. Trade unions should not only serve as an agency seeking for their members fair wages and proper conditions of work, but should also play an increasingly important role in development in India.

Trade Unions are at cross. They have to modify the traditional role and adopt new role for strong trade unionism. Progress of India will be greatly facilitated if the trade unions follow a policy of active and coiling cooperation.

SELF ASSESMENT TEST :

1. What are the major weaknesses of trade unionism in India?
2. Do you agree with the view that trade unions in India neither strong nor self-reliant?

3. "A strong trade union movement is necessary both for safeguarding the interest of labour and for realizing the target of production" Elucidate the statement and point out the major obstacles that hamper the growth of trade unionism in India.
4. "If industrial democracy is to work effectively a strong trade union movement must be built up." In the light of this statement suggest measures for improvement of trade unionism in India.
5. Suggest measures which are essential to remove various weakness of trade unionism in India.

UNIT – 6

Central Trade Union Organizations (STRUCTURE, OBJECTIVES, AND FUNCTIONS)

Objectives:

After going through this unit you should be able to :

- * know why workers organize.
- * recognize that the central trade union organizations have a three tier structure.
- * note that links in Indian trade unions are not of a fixed pattern.
- * understand how Indian trade unionism is suffering from a high degree of plurality in leadership.
- * realize that differences in the objectives and methods of the central trade union organizations are based upon their political and ideological differences.
- * appreciate that the central trade union organizations are engaged multifarious activities.
- * agree that in developing countries, trade unionism has some special role to play.
- * identify that new dimensions have been added to the trade union movement necessitating a change in traditional approach.

STRUCTURE

Introductio
n The
Structure
The objectives
The Functions
Unity in the Indian Trade-Unionism
The new challenge ahead
Summary Key
terms Further

readings

INTRODUCTION

The question “Why do workers organize” is being continuously analyzed although the working class movement first came on the scene in near about 1790 in the U.S.A. and 1815 in the Great Britain. Garry Desseler observes that several recent studies confirm the fact that “Low morale is a major reason why workers turn to union the belief on the part of workers that it is only through unity that they can get their fair share of the “pie”, and also protect them from the arbitrary action of the management.

The Trade Union movement is necessarily an outcome of modern factory system after the Industrial Revolution. It is a reaction to the emergence of the capitalize system of economy in which the means of production and the product are not owned by people who put in the major effort. The negative attitude of the employees and mostly a neutral attitude of the government in the first instance. Since then the labour movement has moved a long way in the direction of ameliorating the lot of workers.

The Indian Trade Union Act, 1926 defines a trade union as any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers, or between workmen and workmen, or between employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

Sydney and Webb hold that a trade union is a continuous association of wages earners for the purpose of maintaining or improving the conditions of their working lives.

To Karl Marx, the trade union was first and foremost an “organizing center” towards a change in the structure of society.

A brief review of the historical background of the Indian Labour movement would be helpful in better analyzing the role of central trade union organizations.

To draw government’s attention towards inadequate provision in the first factory act, 1881, the first labour leader in India, Mr. Naryan Meghajee Lokhande organised the first conference of factory workers in Bombay in 1884, and formed the first labour organization in India under the banner of Bombay Mill-Hands Association. The credit for forming the first industrial union goes to Mr. B.P.

Wadia, who in 1918 organised the textile workers under the Textile workers Union at Choolai in Madras.

The necessity of electing delegates for the annual International labour conference gave birth to the first national federation in 1920 with the formation of the All India Trade Union Congress (AITUC) at the initiation of the leaders of the Indian National Congress, with Lala Lajpat Rai as the president of its first session.

The enactment of the Trade Union Act in 1926 gave a fillip to the labour movement in India.

During the pre-independence period the labour movement besides being a class-movement, was an integral part of the national movement against the Imperialism, and at least to that end it was aligned with the capitalists, under the

influence, of national leaders who were also holding the reins of leading trade unions. After the attainment of freedom, this alliance gave way to bitter class conflict with the capitalists because of growing political and ideological differences among the leaders, resulting into fragmentation of the labour movement. In fact, ruptures within the complex relationship of the political parties in-avoidable reflected into the division of labour force. The different nature of political urges of different factions of India labour movement, and the inclination of labour leaders towards particular political parties were the root cause of the ultimate rift in the movement during the post-independence period.

THE STRUCTURE

The Indian labour movement is composed of three tier structure viz. 1) the Primary Union, (2) the Industrial federations, and (3) the Central Trade Union organizations also popularly known as the National Centers.

PRIMARY UNION

:

At the base of the structure of the Indian trade unionism are the Primary Unions, Being nearest to the workplace and to the workers, primary unions take up local problems confronting workers engaged in a particular craft or in a particular unit. The primary unions have been organised on different footings and may be

grouped under-three heads viz. the craft unions, the industrial unions, and the general unions.

(a) CRAFT UNIONS

:

Craft unions are organised on the basis of a particular craft, or occupation e.g., spinners union, weavers union, bank-employees union etc. such unions may operate at local level e.g. the spinners Union. The Weavers Union etc. at Ahmadabad or at regional level e.g. The Rajasthan University and College Teachers Association, or at national level e.g. National Union of Blast furnace cement.

(b) INDUSTRIAL UNIONS

:

Industrial unions aim at organizing all the workers in a single industry without any distinction as to occupation & skill.

An Industrial union may operate only at plant level i.e., for a unit, or a mine, or a plantation etc, with membership open to all employees excepting generally the supervisory staff. Alternatively, there may be a region-cum-industrial level union whose membership extended to all workers employed in an industry located in a particular centre, or in a particular region e.g., the Rashtriya Mill Mazdoor Sangh (Textile Industry) at Bombay.

It is worth observing that structurally, the Indian labour movement differs materially from its counterpart in the U.K. and the U.S.A. where due to early start of modern industry, the craft or occupation unions become the base of the movement. In the U.K. the movement developed from the guilds upwards, while in the U.S.A. the Unions are organised from locals to nationals either covering an occupation, or an industry. However, in India generally the small unit-wise unions have formed the base of loosely federated organization at the regional level. This was partly due to political necessity, and partly due to typical characteristics of the Indian labour. The organizers as a whole movement were mostly politicians, who were interested in workers as whole rather than particular sections of workers. It was easier to mobilize workers on plant, or industry basis to fight a single employer or a group of employers. This process also strengthened workers unity, and facilitated integration in the freedom struggle. Besides, the Indian workers being mostly unskilled or semi skilled, and of migratory nature, they were not following a particular craft or occupation and did not stay continuously at a particular place.

(c) GENERAL UNIONS
:

General unions are meant for organizing all workers irrespective of their trade or craft. General unions are normally formed at places where different types of industrial units are under a common employer e.g. Rohtas Workers Union at Dalmia Nagar covering units of cement, sugar, paper, chemicals etc, owned by the Rohtas Industries. A general at a particular centre may extend its membership to workers of other employers also e.g. the Jamshedpur labour Union.

Primary unions of craft type at a particular place may get affiliated to a local industrial union as has been the case with different craft unions related to textile industry forming the Textile labour Association at Ahmadabad.

A primary union may simultaneously be a member of regional federation, an industrial federation at the national level, and also of a national center directly, or through its state-branch. However, majority of primary unions prefer operating independently at local level without having any federal link.

ADMINISTRATION STRUCTURE OF PRIMARY UNIONS :

There is generally a two-tier administrative structure of the primary unions consisting of (a) the meeting of the General Body; and (b) the Executive Committee.

All the powers of the union vest in the General Body comprising of all the union members. The General Body, within the frame work of the union, constitution and guidelines from parent organization, if any e.g., industrial federation or national center, decides the policy of the union. It meets at least once in a year to guide the functioning of the Executive committee, and to discuss and approve the decision taken by the latter. At its annual meeting, the General Body elects the members and office-bearers of the committee.

The Executive Committee is responsible for the administration of the affairs of the union in the light of guide lines received from the General Body. The composition of the committee is generally of a uniform pattern, with a president, one or more-vice-presidents, a general secretary, a treasurer, and ordinary members. Decisions of important nature taken by the Executive Committee are subject of the approval by the General Body. The Indian Trade Union Act, 1926 allows outsiders to become members of this committee subject to a maximum of 50 percent of the total membership.

(2) INDUSTRIAL FEDERATIONS :

Industrial federations occupy the next higher hierarchical position in the Indian labour movement, and are formed to solve effectively the common problems at the industry level through a united front of all the workers engaged in a particular industry irrespective of their craft or occupation, location of units and employers.

Industrial federations may operate at regional level e.g., the U.P. Chini Mazdoor federation, the Bihar Sugar Worker's federation etc, or at national level such as national Mine Workers federation, Indian National Iron and Steel Workers' federation etc. Industrial federations working at regional level may be simultaneously affiliated to relation federation at national level and also to national centers. However, there are a number of regional and national federations, the All India Defense Employees federation.

In some industries parallel industries federations belonging to different national centers are also functioning e.g., in industries like coal mining, sugar, cement, jute, plantation etc.

The formation of wages Boards for different industries, and setting up of various industrial committees have given an impetus to the formation of industrial federations. S

Administrative Structure of Industrial Federations :

The three tier administrative set-up of industrial federations consists of (a) the General Body of Conference, (b) the General Council, and (c) the Working Committee.

The General Body is constituted by delegates of the affiliated unions. The number of delegates from individual union is related to its total membership. Council and the Working Committee, and also elects members of these two bodies, besides its annual meeting, the General Body may also meet at special sessions.

The General Council is formed by members elected by the General Body of the basis of the total membership of affiliated unions. The Council is responsible for framing rules, for the functioning of the federation, screening such rules which are framed by Working Committee and guiding the Committee.

The Working Committee generally consists of a president, a few Vice Presidents, a General Secretary, a Treasurer, Secretaries, and ordinary members. The Committee looks after the functioning of the federation, implements the resolutions passed by the General Body and the General Council frames rules,

appoints sub-committees, and deals with emergency situations.

(3) THE CENTRAL TRADE UNION ORGANIZATION OR THE NATIONAL CENTERS

With industry becoming more and more national, thereby widening the labour market, it has been realized that important labour problems cannot be effectively tackled at local or regional level. In most cases, the efforts of individual unions to secure higher wages and other benefits cannot succeed because of lower wages prevailing in similar industries in other place. The best solution in such circumstances is to bring near uniformity in terms and conditions of employment at national level. Further, pressure has to be put on the government for protective and pro-labour legislation. All these considerations necessitate unity in the trade unionism, and hence the formation of central federations or central trade union organizations.

Labour movement in India, unlike labour movements in the communist countries, and leading industrialized countries in the west like the U.K. Austria is not led by a single federation of trade unions. In the U.S.A. too although at the top of the structure of trade unions there are more than one federations, but the American Federation of Labour and Congress of Industrial organization (AFL-CIO) is the only major U.S. Labour federation (with over three quarters of all union and association members affiliated), and the United Auto Workers (UAW) is the largest independent union. However, the Indian labour movement is suffering from a high degree of plurality of trade union federations with as many as 60 all India federations submitting in 1978, besides the central trade union organizations.

In the Indian Trade Union movement, at the top of the structural ladder are the Central trade union organizations, popularly known as the National Centers, having their branches in different states. They are associations of various unions and federations for preserving and enhancing the solidarity of the labour force. The National Centers are organised primarily to lay down broad policy for their affiliated, coordinate and guide their functioning, and represent the workers at various forums. As a matter of fact the centers have a loose control over their constituents.

The following 10 leading Central Trade Union organizations had about 6,500 union affiliated to them in 1981

(a) The First Federation of Indian trade unions was organised in 1920 by the Indian National Congress leaders under the banner of the All India Trade Union Congress (AITUC) which ultimately came under the domination of the communist (the CPI)

(b) The split in the leadership of the AITUC brought on the scene in 1947, the Indian national Trade Union Congress (INTUC) by the then ruling Congress Party (the Congress-R)

(c) A further division of the Congress party resulted into the formation of the Hind Mazdoor Sabha (HMS) in 1948, with the merger of the Hind Mazdoor Panchyat and the Indian Federation of labour the socialist group (the PSP).

(d) Closely on the heels of the HMS, came into existence the United Trade Union Congress (UTUC) in 1949, with the support of the Radicals (a leftist group mostly from Bengal and Kerala) who also once belonged to the AITUC).

Besides the above 4 major central trade union organizations, there are at least 6 other national centers of Indian trade unionism.

(e) The United Trade Union congress-Lenin Sarai (UTUC.LS) which is a splinter of UTUC.

(f) The National Labour Organization (NLO) formed by the organization-wing of the Congress Party (thus leaving INTUC with the Congress-R).

(g) The Centre of Indian Trade Union Congress (CITU) organised by the Marxist wing of the communist Party-(CPM), (this leaving the AITUC with the CPI).

(h) The Akhil Bhartiya Mazdoor Sangh (BMS) set up by the Jan Sangh Party in 1955.

(i) The national Front of Indian Trade Unions

(NFITU) (j) The Trade Union Coordination Centre

(TUCC)

In addition to the above, there are a-few more organizations, mostly regional in character but claiming to operate on national level like the Bhartiya Kamgar Sena (otherwise known as Shiv Sena) in Bombay and the labour

Progressive Federation formed by the DMK Party in Madras. With their

membership restricted to the railway only, the All India Railway men's Federation and Indian National Railway Workers Federation are also functioning on national level.

Membership of Central Trade Union Organization in India (1981&2002)

S. No.	Name of the Central organization	No. of Verified Unions	Verified Membership (approx) in 000
1.	INTUC	1,604	2,236 <i>3,892,011 in 2002</i>
2.	CITU	1,474	331 <i>3,222,532 in 2002</i>
3.	BMS	1,333	1,211 <i>6,215,797 in 2002</i>
4.	AITUC	1,080	344 <i>2,677,979 in 2002</i>
5.	HMS	409	735 <i>3,342,213 in 2002</i>
6.	NLO	172	247
7.	UTUC	158	35 <i>383,946 in 2002</i>
8.	UTUC (LS)	134	621 <i>1,368,535 in 2002</i>
9.	NFITU	80	84
10.	TUCC	63	15 <i>732,760 in 2002</i>

ADMINISTRATIVE STRUCTURE OF THE CENTRAL TRADE UNION ORGANIZATIONS :

The administrative machinery of all the Central Trade Union organizations is almost similar, and consists of three major organs viz., (a) the Annual Delegates Conference, (b) the General Council, and (c) The Working Committee.

The Annual Delegates' Conference is vested with the constitutional authority of the organization. Delegated to the conference are elected by the affiliated unions and federations on the basis of their membership. The Delegates Conference frames the general policy of the organization and elects office-bearers of the General Council. The office bearers of the General Council INTUC are has ever elected by the council itself. As a rule, decision is taken by simple majority of votes excepting in case of important matters like affiliation to foreign organization, **political** issues, amendment of constitution etc., in which case a three-fourth majority is required. Besides annual meeting, the delegates may meet at special conventions also.

The General consists of the office-bearers (a President, Vice Presidents, a General Secretary, a Treasurer and Secretaries), and ordinary members elected from different trade groups of state branches, and also co-opted members who need not be connected with any affiliated unit. The general council elects members of the working committee other than the office-bearers, but in the case of the INTUC, it elects the office-bearers also. The Council among other things, frames bye-laws for election, affiliation etc., defines duties of office-bearers, elects delegates to various forums, prepares the list of trade groups to be given representation in various committees, drafts resolutions for the Annual Delegates' Conference, hears **appeals** against decisions of the Working Committee and resolves disputes among constituent units.

The Working Committee is constituted by the office-bearers viz., a President, a Vice-President, a General Secretary, a Treasurer, Secretaries, and ordinary members elected by the General Council. The Committee is responsible for the day-to-day administration of the organization, and implementing the resolutions of the General Council and the Annual Delegates Conference. In the case of the INTUC, the working Committee also performs certain functions which are otherwise entrusted to the General Council like elections, affiliations etc.

Political committee of the Central Trade Union Organizations :

Almost all the leading central trade union organizations owe their origin to different political parties and remain divided on political and ideological basis. Although there is no direct link or alliance of a constitutional nature between the organizations and the political parties, yet it is a fact the Indian

Trade Unions are alleged to Practice political unionism.

The constitution of the AITUC and the UTUC provide for the appointment of political Committee by the working committee. The INTUC and other organizations have also constituted such committees. The Political Committees lend their support to relevant political by raising funds, carrying out political propaganda and organizing elections to the local bodies or to the legislatures.

State and Regional branches of the Central Trade Union Organizations :

All the leading central trade union organizations have their branches in states functioning on state-level or regional level basis.

THE OBJECTIVES

The trade union movement in India, as of course elsewhere, originated as a protest against the exploitation of workers by the emerging capitalist system of economy. With the changing socio-economic political environment, the horizon of the objectives of the movement has also expanded from the problem of bread and butter to recognition as a partner in the management and as a motive force for restricting of the society on a socialistic pattern.

There distinct theories have been propounded to spell out the objectives of trade unionism viz.,

- (a) the classical or historical theory,
- (b) the new-classical theory, and
- (c) the theory of revolutionary unionism.

(a) THE CLASSICAL THEORY :

To the classical theories, a trade union is a continuous organization of employees established for the purpose of protecting or improving through collective action the economic and social status of its members. This theory restricts the role of a trade union mainly to the economic aspect. The activities of a trade union, according to this theory, should center round obtaining for its members steady employment with adequate income and better working conditions, protecting against ill-treatment and discrimination, and providing relief during economic hazards which are beyond worker's control. A Trade union is taken as a father substitute and it should therefore, act as a protector and a guardian of the interest of workers.

(b) THE NEO-CLASSICAL THEORY :

The neo-classical theory looks upon trade unions as a means of providing a total upliftment in worker's lives i.e., an all round development of the working class on economic, social and political fronts. This expectation, the theorists argue, is just a corollary to the classical approach. To keep the workers rallied round them, the trade unions have realized that once the physiological and safety needs of the workers are near satisfaction, they are likely to be increasingly concerned with ego needs. The workmen now want to move forward and are mentally prepared to accept challenging tasks for fuller exploitation of their abilities and talents. It is for this reason that besides increased income and insurance against job-risks, the trade unions are bargaining for better living conditions, proper facilities for education and training, adequate aid, suitable arrangements for recreation, provision for after retirement stage etc. Additionally, the trade unions are also agitating for participation in management to gain a voice in decisions influencing workers' welfare.

Victor feather has visualized an ever expanding role of trade unions when he holds that "if a union is therefore, to maintain and improve the living standards of its members, it will be involved in consideration of all those factors, which effect price, such as indirect tax which may be levied by the government on food- stuffs, or a direct tax on wages". To feather, most of the government on economic front whether related to credit, tariff, price, taxation, import and export, industrial licensing etc., have their effect of changing the consumer demand directly or indirectly, and thus affect the livelihood of workers. This necessitates workers' representation in legislatures, and trade unions have to look to it.

The neo-classical theory its substance believes in "recognition" and "participation" as additional objectives of trade-unionism.

(c) THE THEORY OF REVOLUTIONARY UNIONISM :

The theory of Revolutionary Unionism is in a way modification of the classical theory. This theory is based on the belief that trade unionism is a reaction to the exploitation of the working class by, what the theories term as the 'bourgeoisie' and therefore, a class war of the workers against the bourgeoisie is

inevitable. However, different schools of thought have advocated their own views to conduct the said class-war e.g. through peaceful transformation i.e., gradualism, or by exerting militant pressure, or through revolutionary process.

In India, the trade-union movement is now largely on the neo-classical theory. All the central trade union organizations have adopted the total development of the workers, and the restricting of the society on socialistic pattern as their goals. At the same time, the central organizations have realized the need of planned economic development in the country, but not at the cost of the workers. Shri S.A. Dange, the then General Secretary of the AITUC in 1957, spelled out the policy of this organization by declaring that “we have to follow a TWO PILLAR POLICY” : to help in the development of economy, and to defend the interest of the working masses in that economy. “The so-called two-pillar policy although enunciated by the AITUC, has been accepted in principle by the other central organizations with a difference only in the ways of achievement of the objectives. The central trade union organizations are willing to cooperate with, and support the government in the efforts to normalize industrial relations to increase production and to evolve a constructive labour policy. They have proved it by their deeds to the extent there was no class with the interest of the workers. At the same time they have kept” “protection and promotion” of workers’ interest as their basic goal. Apparently, all the central trade union organizations are one at this point; however, there are differences below the surface.

The INTUC is guided by the sarvodaya philosophy based on class- cooperation and is therefore, nearest to Gandhi ji’ concept of “trusteeship”. The INTUC believes in a change through gradualism. Formed with the blessing and support of the then ruling party (the congress-R), the INTUC sub serves the immediate short term interest of the working class to the more important national issue of maintaining political stability.

The AITUC is clearly inclined towards communism, believes in class-war and, subscribes to the dictate of Karl Marx that in the militant state of the working class, its economic movement and its political actions are indissolubly united. The AITUC thus aims at bringing about a Socialistic State through militant unionism, keeping pressure on both the economic and the political fronts.

To the HMS, the concept of socialistic is qualified by the word “democratic”. It lays emphasis on a non-Violent class-struggle and believes in collective bargaining to achieve its goal.

The UTUC is radical and non-communist, cherishing a socialist society with the “Workers’ and Peasants State” in India, where means of

production, exchange and distribution would be nationalized.

THE FUNCTIONS

The objectives of trade unionism may be briefly summed up as “to be recognized, and to represent” to achieve these objectives, the activities of the Central Trade Union Organizations are mainly related to the spheres of (a) organizational, (b) economic, (c) political and (e) nation-building.

(a) ORGANIZATIONAL FUNCTION :

The state branches of the Central Trade Union organizations encourage and assist the unorganized workers or local unions in unionization campaigns to ultimately well the membership and raise the strength of the organizations. The central organizations also arrange campaigns for educating workers in the principles of trade unionism, and enlighten workers on their position and responsibilities. The organizations maintain liaison with the media and communicate their official position on current issues concerning labour in particular and the society in general. To maintain a link between the organization and the individual members and the public at large, all the central organizations have their own periodical publications. The central trade union organizations also maintain a liaison with the counterparts in other countries.

(b) ECONOMIC FUNCTION :

Problems relating to betterment of the position of workers in the economic field are, as a matter of fact taken up by the local labour organizations. It is only when the problems have to be tackled at state-level or National-level, or when the local unions cannot conduct disputes at their own, that the central trade union organizations get involved to exert greater pressure on employers mostly by providing publicity, appealing for funds to finance the agitation, lending political support to the labour cause, and very rarely by resorting to direct action. With the development of communication and transportation facilities, industries are now operating more and more on national level leading to a significant decline in the bargaining strength of local and regional unions. Thus, central trade union organizations are frequently brought into picture for resolving conflict between the workers and the management.

(c) SOCIAL FUNCTIONS :

The central trade unions organizations are more active in 'fraternal functions' by helping the workers in times of need and to improve their efficiency. The organizations arrange for community services during local crisis, and regional or national disasters. The state branches of the organizations work closely with government agencies, administering health and safety legislation e.g., in organizing campaigns for family planning, removal of illiteracy, training in safety devices, checking environmental pollution etc.

Unlike their counterparts in the western countries, the central organization have not taken up welfare activities like running schools, providing recreational facilities, organizing mutual insurance schemes and housing schemes, or matters related to social security including unemployment insurance, legal assistance etc., because of their weak financial standing.

(d) POLITICAL FUNCTION :

It has already been observed that the relationship between the central trade union organizations and the political parties is of a vague nature. In the western countries, the trade unionism takes active interest in state policies, economic development programs, and elections, but the political parties, by a large, do not directly influence the policy decisions of the labour organizations. However, in India, the political activity of the central organizations is, as a rule, decided by the political-cum-labour leaders in a manner that such activities can serve more the cause of the political parties than the workers. As such political activities of the central organizations are not of much interest to general workers, none the less, the central organizations have to an extent influenced labour policy of the government to enact protective and pro labour legislation, and also initiate welfare schemes at government level. The central organizations draft official representations to various bodies dealing with labour problems, and provide testimony on relevant legislation dealing with labour and social issues. It is through their political wigs and political links that the central trade union organizations are trying both for reforms within the present system into the socialistic pattern. The central federations also pursue liaison activities with the state and central civil administration to keep a watch against violation of civil rights

of workers.

(e) NATION BUILDING FUNCTIONS :

Labour is ultimately a part of the society and its progress depends on the overall development of the society as a whole. The central trade union organizations have associated with nation building activities, significantly from the period of National Emergency.

The INTUC has passed resolutions concerning fullest utilization of installed capacity, creation of land-army for covering the country with canals and roads, setting up of a national water-authority and a national power-grid. It accepted the

20 point programme initiated by the government\ and emphasized the gravity of rural indebtedness. The INTUC has chalked out the path to socialism by linking political democracy to economic democracy, and then linking economic democracy to industrial democracy. The INTUC, though not directly related to the planning Commission had been submitting to it its views and recommendation at the initiation of each plan and had expressed its great concern over growing unemployment and increasing number of man days lost in production.

Likewise, the AITUC too has been playing its role in nation-building activities, by advocating land reform with a tilt towards the poor and land-less peasantry, nationalization of banks, expansion of public sector etc. The AITUC has also raised its voice against increasing environment pollution, has asked the government to give top priority to the issue of national integration, and has put forward concrete steps for introducing workers participation in management. The AITUC while endorsing India's adopting the path of "political economy of self-reliance" has shown its serious concern on the ever increasing unemployment.

The other central trade union organizations too have realized the importance of their constructive role in shaping the future of the country and cooperating with the government in tanking burning issues like population explosion, modernization of industry, increasing productivity with improved quality and reduced cost etc.

METHODS :

Trade unionism seeks to achieve its goal mainly through the methods of (a) mutual insurance (b) collective bargaining, (c) political actions, and (d)

direct action.

(a) MUTUAL INSURANCE :

In the western countries, trade unions provide insurance against sickness, accident, disablement, old age, unemployment etc., and also arrange for welfare benefits like running of schools, construction of houses etc. through mutual insurance. The funds for mutual insurance come from membership subscription, special levies and donations. In India, the financial structure of the labour movement is too weak to take up schemes of mutual insurance, and consequently the central trade union organizations have not been carrying on such welfare activities significantly. Again, with the enactment of the employees' state Insurance Act, 1948, a beginning has already been done at the governments' instance to provide benefits of mutual insurance schemes, and this fact has also added to lack of interest in such a scheme by the trade-unions.

(b) COLLECTIVE BARGAINING :

Under collective bargaining, the labour representatives bargain with the employer over the terms and conditions of employment, and allied issues. Collective bargaining involves mutual negotiations, and failure of negotiations may lead to resort to direct action. For bargaining and negotiation with employers, there must both the strength and the will to bargain. However, in India because labour movement lacks in strength due to plurality in top leaders and political rivalry among them, the will to bargain is naturally at a low level. This explains why the leadership of trade unionism looks more and more towards third parties viz., the adjudication, the labour tribunal or the labour court for effectively conducting disputes with employers. Traditionally agreements through collective bargaining were treated as "gentlemen agreements," and were not enforceable in a court of law. With the enactment of the Industrial Disputes Act, 1947 if a collective agreement is registered with the appropriate government, it becomes a **settlement** and its violation is treated as a penal offence. Collective bargaining enables the labour leaders to participate in the decision-making process relating to workers interest. The method of collective bargaining had thus indirectly initiated workers' participation in management and may well serve as a stepping stone for achieving industrial democracy.

(c) POLITICAL ACTIONS:

In India, trade unionism is alleged to be politicized because of frequent resort to political pressure by the central trade union organizations, which are

themselves organised by the politicians. Whereas mutual insurance and collective bargaining mainly serve the cause of only trade union members, political action is largely intended to benefit the workers as a whole. The central trade union organizations exert pressure on the political front by returning labour leaders to legislatures, or by supporting pro labour candidates of other parties. The central organizations actively lobby with the members of legislatures and leaders of political parties to support the cause of labour in and outside legislatures'.

(d) DIRECT ACTION:

As a last resort to get their demands fulfilled, the central trade union organization, take-up the path of direct action through strikes or threats of strike, 'gherao', 'bundh', dharna, picketing etc. Direct action, it may be noted serves as a multipurpose activity. It keeps high the morale of workers who are by temperament more inclined towards militant aspect of their struggle. Besides, direct action brings direct pressure on the employers not only because of stoppage of production, but also due to the risk of violent clashes and sabotage activities, Again, it helps in gaining public sympathy and bringing social pressure on the management. When prolonged direct action attracts state intervention and solution at political level. Being aware of the inherent weaknesses of trade-union movement such as loose organization, weak finances and lack of unity, the leadership of labour movement does not encourage this method at local and regional levels.

UNITY IN THE INDIAN UNIONS

A work about the unity in the labour movement in India will not be out of context.

Since different political parties organised their own central trade union organizations, this historical factor has exercised such a powerful influence on the future developments of the Indian labour movement that all efforts trade union

unity has met failure. Efforts have been made to bring out unity in a

limited industrial field (e.g., a united front of the AITUC, INTUC, HMS and UTUC for jute workers strike in W. Bengal in 1961), and for a limited purpose (e.g., a united front of non-communist organizations like the INTUC, HMS and UTUC against

the communist ministry in Kerala in 1959), but the basis of inter central organization unity in India has not been clear till now.

The AITUC is willing to cooperate with all the other three major central trade union organizations, but nobody is responding favorably to it because of its communist character. The INTUC does not like to join hands with the AITUC on political and ideological grounds, and also avoids a link with the HMS because of latter's alleged inclination towards, the AITUC, The HMS wants to come to terms with the AITUC, the ITUC and the HMS, but not at the cost of AITUC.

THE NEW CHALLENGES AHEAD

The history of the labour movement in general and the central trade union organizations in particular, during the post-independence period reveals that trade unions have largely failed to comprehend the changing environment. They have no clear conception of the twin developmental goals of bringing about a total upliftment of workers and restructuring of the economy on socialistic pattern. The central organizations have lagged behind in forging appropriate class alliances to move forward. The movement, due to its inherent weaknesses, has largely been left to play the militant role where it has often faced adverse results.

The president of the world Federation of Trade Unions, Mr. Sandor Gasper has observed that the trade unionism in developing countries cannot merely play the role of bargaining agent and class interest defender. It has to acquire higher roles in the context of encroachment of freedom of national economy by multi-national organizations who are in search of cheap labour and new markets in the developing countries. The trade unions must combine with the non-working class sections of population and also the national capital to resist this new mode of capital expansion and accumulation (termed as Global Capital Control by Centre) in the cause of restructuring of national economy, preservation of political and economic freedom, and democratic development in the developing world in the context of emerging non-aligned world system. The trade union movement, and for the purpose the central organization, should assume increasing

responsibilities and

look after the workers welfare as well as the health of industry, and indeed the economic health of the nation.

Another significant change that has to be noted is in the nature of membership of the movement. Traditionally, unions were meant for blue-collar workers only, who were basically attracted towards the movement for economic upliftment. The proportion of blue-collar jobs is gradually decreasing partly due to automation, and partly due to an increase in service sector. Further, the passage of the Industrial disputes Act, 1947 has enabled the clerical and other non-manual **employees** including junior supervisory categories to raise industrial disputes. Unions, having predominantly white-collar membership have come up in banks, insurance companies, mercantile firms and even in government and semi- government institutions. To add to this is the movement of the specialized ranks viz, scientists, medical practitioners, engineers, university professors etc., rising **their** voice against bureaucracy in what is popularly known as the issue of the specialists versus the generalists.

The Central organizations should bring the white collar employees under their fold with suitable amendment to membership conditions. These organizations should continually seek out and address new issues of concern to manual as well-as non-manual workers. For example, the issue of pay-inequality has **gained** importance in the changed social set-up, the dangers of drug-addiction particularly among the low-paid and unemployed youths has become a national concern and the ever increasing child labour is a challenge for the progressive society.

It is gratifying to note that the Indian central trade union organizations are not sleeping over the demand of time. The INTUC has already given a call for political rethinking transcending the day-to-day issues concerning workers' economic well being to issues concerning national interest when it resolved that "such thinking obviously cannot be limited to only the butter and bread aspect of our trade union movement, but should take in its sweep the entire gamut of all our national activities political, economic, social and cultural.

It has been rightly observed that trade unionism assumes diverse roles: a revolutionary instrument, a moral institution, an economic welfare organization, a social club-indicating psychological reaction. The role depends upon the motivation of the workers about the means for achievement of the aim.

SUMMARY

You have learnt that the trade union movement is the outcome of modern industry system. It has also been observed that in India, because of political considerations generally small unit-wise unions, instead of craft unions, have formed the basis of the trade union movement. You might have also noted that the Indian labour movement is not led by a single federation of trade unions, and that there are at least 10 central trade union organizations. Since the Central trade union organizations are necessarily inclined towards different political parties, they remain divided on political and ideological basis. All these organizations, apparently, have common twin goals of total upliftment of workers and restructuring of society on socialistic pattern. They are mainly engaged in organizational, economic, social, political and nation-building functions. It has also been brought out that new challenges are coming up for the trade unionism, and central trade union organizations should continually seek and address new issues.

KEY TERMS

1. Collective bargaining: The process through which representatives of management and the union meet to negotiate a labour agreement.
2. Global Capital/Control by Centre: A new trend in internationalism in which multi-national organizations are encroaching the freedom of national economy of developing countries.
3. Two-pillar policy: The policy to help the government in the development of the economy, and at the same time to defend the interests of workers in that economy.

FURTHER REFERENCES

1. Sinha and Sinha : Industrial Relations and Labour legislation (1986) : Oxford and IBH Publishing Co. Pvt. Ltd. New Delhi.
2. Saxena R.C. : Labour Problems and Social Welfare (1986) K. Nath & Co., Meerut.
3. Fossum J. : Labour Relations (1989) : IRWIN INC., USA.
4. Dwivedi R.: Manpower Management (198) Prentice Hall of India, New Delhi.
5. Punekar, Deodhar, Sankaran : Labour Welfare, Trade Unionism and Industrial Relations (1984) Himalaya Publishing House, Bombay.
6. Malik. D.: Indian Trade Unionism in Developmental Perspective (1989) Commonwealth Publishers, New Delhi.

UNIT-7

Collective Bargaining

Objectives

After going through this unit the students should be able to appreciate:

- the underlying concept behind collective bargaining; the processes involved in collective bargaining in order to ensure settlement of disputes
- Prerequisites of successful collective bargaining
- Differences with the employees pertaining mainly to wages, working conditions, etc.
- Functions of the collective bargaining and its limitations
- And the basic policies required to be adhered to in the process of collective bargaining.

Structure

Introduction

Definitions

Prerequisites of successful collective bargaining

Subject-matter covered within the purview of collective bargaining Functions of the collective bargaining and its limitations Collective bargaining and its relevance in India

Summary

Self-Assessment Test

Key-Words

Suggested Readings

Introduction

Trade Unions are complex organizations created with the object of protecting the interest of their members in terms of providing them good working conditions and ensuring payment of adequate wages commensurate with the cost of living so that they may be in a position to meet the basic necessities of life. Employers and the trade unions can achieve the objective of maintaining industrial

peace and prosperity through the process of successful collective bargaining as the same is bound to promote understanding and co-ordination between them. The objectives to be achieved through collective bargaining may be economical as well as non-economical. In the former category may be included wage-settlements, levels of employment, payment of contributions for various social security schemes, etc. While the latter may comprise of working hours, holidays, rest intervals, safety conditions, welfare activities, etc. Whenever the union and employer sit together to bargain collectively a number of issues are raised in discussion between them. Settlement on issues pertaining to the disputes is generally arrived at after a long discussion because the union leaders suggest terms, suitable to their members while the representatives of the employers try to counter-act by offering terms favorable to their interest. Consequently, many a time their approach, leads to a deadline and this stage has to be overcome by adopting flexible attitude and in such a situation attempts are made by both the parties to reach an acceptable compromise.

Definitions

Collective bargaining' may be defined as negotiations about working conditions and terms of employment between an employer, a group of employers or one or more organizations, on the one hand and one or more representative of workers' organizations, on the other, with a view to reaching agreement. In the absence of a representative workers' organization, representatives of the workers duly elected and authorized by them in accordance with national laws and regulations may be parties to collective negotiations.¹

The Encyclopedia Britannica defines 'collective bargaining' as negotiation between employers, a group of employers and a group of work people aiming to reach an agreement pertaining to working conditions. In fact, negotiation which is the basic feature of collective bargaining may be defined as the process for settling the differences by personal talks between the employers and the workers representative who may sit around the same table in order to arrive at amicable settlement. Encyclopedia of Social Science defines the term 'collective bargaining' as a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. Professor Edwin B. Flipped, an expert on personnel management defines

'collective bargaining' as a process in

which representative of two groups meet and attempt to negotiate an agreement that specifies the nature of future relationship between the two.

Objectives of worker's participation

- Worker's participation is an instrument for improving efficiency of enterprises and establishing harmonious industrial relations.
- It is a device for developing social education for effective solidarity among the working community.
- The expectation of workers from participation is to achieve security for employment, better wages and bonus etc.
- The employee interest in participation is to maximize profit
- So broadly the objectives may be economic, social or psychological.

Pre-Requisites of Successful Collective Bargaining

Industrial peace and harmony is the basic requirement for the growth and prosperity of an establishment and in order to achieve this, it is imperative to promote co-operation and understanding between employers and the workers and the process of collective bargaining could lead to achievement of these goals. The management is expected to plan its strategy carefully by chalking out expected to be followed in the process of collective bargaining. Similarly, trade union or the workers' representatives may be required to work out their strategy well in advance so that it may be feasible for them to protect workers interest in the process of collective bargaining. In case of small establishment the employer may either himself or along with one or more officers including personnel officer, if any, carry out the process of collective bargaining with the trade union or the workers representatives whenever need arises for it either due to occurrence of disputes or demand made by the workers. In case of bigger establishment collective bargaining is done in a routine and systematic manner in accordance with the scheduled programme. In bigger establishment representation is provided to the executives and workers of all the departments. In case of workers either trade union leaders or the nominated representatives of the workers participate in the scheduled meetings pertaining to collective bargaining. The essential prerequisites of the collective bargaining mainly include flexible attitude on the part of management and the workers as well as the inclination to arrive at the settlement. There is no doubt that the process of collective bargaining would prove to be a futile attempt if the parties

adopt rigid attitude. At the same time it is also advisable for the workers as well as the management to keep in mind capacity and limitations of each other in order in order to make collective bargaining a success. Existence of well organised trade union, generally, results in successful collective bargaining. It is imperative for the representatives of the employers as well as the workers to adopt give and take policy, in the process of collective bargaining. The parties to the collective bargaining are expected to work in an impartial manner without any ill-will, bias or pre-conceived notions towards each other. After the process of negotiation with each other when the parties come to a mutual agreement, it is essential that the terms and conditions should be reduced in writing and should be signed by all the members. An agreement arrived at through the process of collective bargaining should be implemented in proper spirit and adhered to by the employers as well as the workers.

Important Prerequisites for a Successful Collective Bargaining are

listed below: (1) The parties must attain a sufficient degree of organization. If the workers' organization is weak, employers can say that it does not represent the workers and

will refuse to negotiate with it. Unless the workers are able to form strong and stable unions, collective bargaining will not be successful.

(2) Freedom of association is essential for collective bargaining. Where there is no freedom of association, there can be no collective bargaining. Freedom of

association implies that the workers as well as the employers will have the right to form an organization of their own to protect their interests.

(3) There should be mutual recognition between both the groups. Collective bargaining cannot begin if the employers do not recognize the workers' organization. The conflict of interests makes the two groups hostile to each other. They must recognize each other and realize that adjustment and understanding is essential for the achievement of organizational goals.

(4) There must exist a favorable political climate, essential for successful collective bargaining. If the government encourages collective bargaining as the best method of regulating conditions of employment, it will be successful.

Where the governments restrict trade union activities, there can be no

collective bargaining. (5) Agreement must be observed by those to whom they apply. The workers' organization must be strong enough to exercise its

authority over its members. If the trade union has no power over its members, collective bargaining will not be effectively implemented.

(6) A give and take policy must prevail in the organization. The difference between two parties can be adjusted only by compromise so that an agreement can be reached. Neither side should be too rigid on its demand.

Their attitudes should be flexible and both sides should be ready to give up some of its demands. Unions should not rigidly insist upon unreasonable demands and should be ready to reduce its demands to come to an agreement.

(7) Sometimes unfair labour practices are resorted to by both the employers and the trade unions. These will restrict the development of collective bargaining. Unfair labour practices should be avoided by both the sides, as this will create an atmosphere of goodwill.²⁸

Subject-Matters Covered Within the Purview of Collective Bargaining

Matters falling within the purview of collective bargaining are generally the determination and revision of wages, terms and conditions of employment, working hours, conditions pertaining to leave, working conditions, measures relating to health and safety of the workers, promotions, seniority, payment of overtime and bonus, payment of social security benefits viz., sickness, maternity, pension and other related benefits, labour welfare measures, labour recruitment measures. It has been observed that the dimensions of the collective bargaining are becoming more and more broad-based with the passage of time and its scope has expanded quite substantially due to the vital role of collective bargaining in bringing about settlement of disputes between labour and the management and consequently promoting co-operation and understanding between them. In this context it has been quite appropriately observed by Professor Randle that the scope of collective bargaining has increased, tremendously in recent years and many subjects have been included within its purview. The subject matter of collective bargaining has broadened and it has virtually eliminated the field of management prerogatives. With regard as scope and utility of collective bargaining it has been observed by the Indian Institute of Personnel Management that the collective bargaining should include within its ambit the scope and purpose of the agreement entered into between the management and the trade unions as well as their rights and responsibilities. Its scope should also extend over the terms and conditions of serving grievance redress procedure, modes for settlement of possible future disputes as well as the termination clause. There is no doubt that recently the

²⁸ <http://www.yourarticlelibrary.com/business-management/7-important-prerequisites-for-a-successful-collective-bargaining>

process of collective bargaining has become multi-dimensional on the basis of working experience gained so far in this regard and majority of the matters which are likely to create misunderstanding between labour and the management could be resolved by this process of collective bargaining.

Functions of Collective Bargaining and Its Limitations

The first and the foremost function of collective bargaining has been to resolve misunderstanding between labour and the management and consequently to promote industrial peace and harmony between them. By bringing about amicable settlement between the parties it could be possible to avoid strike as well as the lockout and to increase productivity in the industrial establishment. In case the process of collective bargaining has been carried out in a proper form, it may not be possible for the management to frame unreasonable policies and to impose their arbitrary and unilateral decisions on the workers. Successful working of the process of collective bargaining also results in the development and growth of the trade union in the establishment. Collective bargaining ensures the collective control of the establishment both by the management as well as the workers. By the process of collective bargaining, management and the workers develop mutual faith and confidence in each other and consequently more and more subjects- matters involving differences or disputes between the labour and the management are resolved through the process of collective bargaining. Therefore, successful collective bargaining leads to industrial democracy and thereby promotes intimacy between the workers and the management. In this regard it has been observed by Dunlop that the process of collective bargaining is a system which establishes, revises and administers many of the rules which regulates the working of the employees. It is procedure which determines the quantum of compensation payable to the employees. Collective bargaining is a method of settling disputes during the pendency of an agreement.⁵ there is no doubt that the process of collective bargaining operates as an effective agency for bringing about social change in an establishment. It brings about stability and progress in the establishment by virtue of concerted efforts made by the management and the worker to protect interests of each other by providing good working conditions as well as better wage structure; thereby protecting the interests of the workers.

With a view to promoting co-ordination and understanding between the management and the trade union which is the basic requirement for the successful

functioning of the collective bargaining, it is essential for the management to follow reasonable policy which may be beneficial for the workers. It should give due recognition to the trade union and only after having due consultation with the union, it should modify its rules and regulations keeping in view working experience in this regard. The management should discourage the practice of multiple trade unions; rather it should give recognition to one trade union as far as possible. The management should repose confidence in the officers of the trade union and should have good relations with them. It is also expected from the trade union and its members to co-operate with the management in increasing productivity and improving quality of the products as well as to minimize wastage. Officeholders of the trade unions should keep in mind the overall interest of the establishment and they should not confine their approach only to the interest of the workers. They should not declare strike quite often; it should be the last resort for them when they fail to resolve their differences with the management having exhausted all possible means of peaceful settlement.

The process of collective bargaining may thus prove to be a boon for the prosperity of the establishment and welfare of the employees if these limitations are kept in mind by the management as also the trade unions or the workers. Successful collective bargaining may lead to industrial democracy which is the basic need of the workers and may result in growth and development of the enterprise/establishment which is the main objective of management. **Collective Bargaining and its Relevance in India**

The process of collective bargaining was adopted in the industrial sector immediately after the World War II in order to overcome certain problems which had arisen due to modernization of certain industrial establishments. It could get proper recognition only in the year 1950 when the rules of collective bargaining were incorporated in the Industrial Disputes Act, 1947. Thus Sec. 5 of the Act provides for appointment of conciliation officers who are required to of the Act provides for appointment of conciliation officers who are required to mediate between the parties to the dispute through the process of conciliation for promoting settlement of industrial disputes. After the conciliation officer the next stage is to refer the dispute to the Board of Conciliation as provided in section 6 of the Act. Infect conciliation is a process by which discussion between employers and employees is kept going through the participation of conciliator.

As the main task

of the conciliation officer is to go from one camp to the other and to find out the greatest measure of common interest involved and to do all such things as the conciliation officer think fit to arrive at a fair and amicable settlement of the dispute.⁶ Obviously this process of conciliation involves collective bargaining between the workers and the management with the intervention of conciliation officer o the Board of Conciliation. In the First Five Year Plan it was stated that although collective bargaining was unknown to India but it has been accepted by the State for usage in order to maintain peaceful relationship between trade unions and the management. In this regard late Shri V.V. Giri the former President of India and renowned labour leader had observed that until the parties could learn the technique of collective bargaining, it would merely amount to unnecessary trial of strength by the parties. In fact collective bargaining was introduced as such for the first time in the year 1952 and subsequently it could gain vital significance in public and private sector establishments engaged in various trades and covered under different industries of national importance and producing various commodities. In the context of collective bargaining the National Commission on Labour in its report observed that there are no statutory provisions which require employers and workers to bargain in good faith and consequently it is not at all surprising to find that collective bargaining has not made much headway in India so far. Some historical factors have also come in the way of collective agreements having greater share in maintaining industrial harmony. However, ever since the Indian independence, trade unions have been growing ad their agreements with the employer through the process of collective bargaining have become more common. The changing attitude of the employers and the emergence of new generation of employers and workers have also helped to make process of collective bargaining a success. Legal measure inspire of their limitations, have lent much support to the process of collective bargaining at the national and industrial levels. Broadly speaking, the agreements arrived at between the labour and the management by virtue of collective bargaining is of three types, namely.

1. Those agreements which have been drawn up after direct negotiation between the parties and which are purely of voluntary character so far as their implementation is concerned;
2. Agreements which combine the elements of voluntariness and compulsion

viz., those negotiated by the parties but registered before the conciliator as settlements; and

3. Agreements which acquire legal status because of successful discussion between the parties when the matters in dispute have been referred to industrial tribunals/courts and could be considered as subjudice and the agreements

As regards the process of collective bargaining it was further observed by the National Commission on Labour that most of the collective agreements have been at the plant level, though, in important textile centers like Bombay and Ahmadabad industry level agreements have been common. These have a legal sanction under the State acts and have to be distinguished from other agreements arrived at by virtue of collective bargaining where no statutory sanction prevails. Such agreements are also to be found in plantation industry in the South and in Assam and in Coal industry. Settlement of disputes through voluntary agency viz., collective bargaining have become common in recent years in industries like chemicals, petroleum, oil refining and distribution, aluminum, manufacture of electrical and other equipments and automobile repairing. Agreements through the process of collective bargaining have been the rule in ports, docks and the banking industry. In Life Insurance Corporation of India also there has been fair measure of discussion across the table between the parties in order to bring about settlement of disputes. On the whole, record of reaching collective agreement has not been unsatisfactory though its extension to a wider area is certainly desirable. From these observations of the National Commission on Labour, it may be inferred that the settlement of industrial disputes through the process of collective bargaining has been quite popular in India in the last three and half decades but it has yet to be adopted by many other industries which are not covered by it so far. Collective bargaining has been found to be an effective instrument for bringing about settlement between the management and the workers in most of the industries in India but it is noticed that it has been quite frequently resorted to by the parties at the plant or establishment level. The main reasons for the slow growth of the system relating to collective bargaining in India are: lack of faith and understanding between labour and the management, proper training of the trade union leaders for carrying out collective bargaining effectively as well as the need to provide them adequate protection for their trade union activities, multiple trade unions, rigid attitude of the management, etc.

In order to achieve the desired goals through the process of collective bargaining, it is imperative that both the parties should have desired maturity and

for that purpose requisite training may be provided to the trade union leaders as

well as the representatives of the management. It is desirable that collective bargaining should be declared as the integral part of the National Industrial Relations Policy and it should be included in Part IV of the Constitution of India which deals with the Directive Principles of State Policy so that it may be obligatory for the Government to ensure its implementation in public and private sectors undertaking. On the basis of working experience it has been observed that the process of collective bargaining has failed to give desired results in public as also in private sector undertakings. This has been mainly due to some basic drawbacks on the part of workers as well as the management. During the process of collective bargaining it is, generally noticed that the workers and the management adopt inflexible attitude and make it a prestige issue instead of adopting pragmatic approach, with the result that no settlement is arrived at between them. The representatives of the management and union leaders do not, generally, enjoy faith and confidence of each other because they carry preconceived suspicions and hostile attitude towards each other. In some cases it has been observed that the management is doubtful about the competence and the power of understanding of the union leaders, while interested in bringing about settlement through the process of collective bargaining and consider it as a mere formal process. At the same time in few cases it has been observed that the parties are not in a position to negotiate independently as directly or indirectly seen to be under the position influence. It is more common in case of union leaders. In few cases the union leaders involved in the process of collective bargaining with the management do not enjoy full faith and confidence of the workers whom they represent and consequently they have much reservations and inhibitions while they are negotiating with the management. Under these circumstances it is not feasible to achieve fruitful results.

The success of collective bargaining depends mainly upon effective negotiations between the management and the union leaders. Proper negotiations could be possible only if the parties have ability, intelligence, maneuvering capacity and they are tactful enough to handle the basic issues skillfully. It is, therefore, imperative that the union leaders should be provided requisite education and training so that they may achieve perfection in the art of negotiation with the management. For that purpose it is suggested that the Central Government and the concerned State Government should provide education

and training either at district level or at least in industrial towns. In these centers along with the union

leaders the representatives of management should also be provided proper training and education for the betterment of their establishment. Management and the workers should repose confidence and understanding in each other which is the first and the foremost prerequisite of successful collective bargaining. Workers at the same time should have full faith and trust in their leaders so that may be in a position to negotiate with the representatives of the management fearlessly and with confidence, keeping in view, the sole object of protecting the interest of the workers. Both the parties should consider representatives of each other to be intelligent and competent enough to understand the problems involved in right perspective only then they shall be in a position to have effective negotiation with each other culminating in settlement of disputes involved between the labour and the management. Both the parties should realize that their common approach, in terms of wage rate and price fixation is imperative is imperative for the successful functioning of the undertaking. It is advisable for the management to adopt uniform labour policy which should be modified from time to time in consonance with the changing circumstances. The management should discourage multiplicity of the trade unions and should recognize trade union having majority representation of the workers for the purpose of collective bargaining. Collective bargaining is being extended gradually to more and more areas pertaining to industrial disputes and its proper utility can prove to be an effective weapon for promoting industrial peace which may ultimately result in national prosperity. In order to make collective bargaining really result-oriented the representatives of the consumer's forums should also be involved in the process, particularly at the national or industry level. Conclusively it can be summed up that effective collective bargaining could ultimately help in ensuring better standard of living for the workers and growth and prosperity for the management.

Recent Trends in Collective

Bargaining:

Workers' participation in management means giving scope for workers to influence the managerial decision-making process at different levels by various forms in the organization. The principal forms of workers' participation are information sharing, joint consultation, suggestion schemes, etc.

The concept of participation means sharing of decision making power by rank and

file of an industrial organization through proper representatives at all levels of management in the entire range of managerial action. • Participation means the

mental and emotional involvement of a person on a group of situation which encourage him to contribute for achieving objectives of the organization.

The main Advantages of collective bargaining are as follows:

At the beginning, unions were considered as necessary evils, but in course of time, a rationale for collective bargaining emerged which has been accepted by all.

It is argued that collective bargaining is a good anti-cyclical measure and that the depression of the thirties was caused partly by the workers' inability to organize and bargain collectively and thus maintain their wage levels.

Secondly, collective bargaining has been considered as an extension of democracy to the work-place. According to Sumner Slichter collective bargaining establishes a system of 'Industrial Jurisprudence.'

Industrial jurisprudence involves the function of collective bargaining as a method of introducing civil rights into industry of requiring that management be conducted by rule rather than by arbitrary decision.

Rules made jointly by employers and workers are much better than those unilaterally imposed by employers on unions or by unions on employers. Moreover, this form of rule making is considered superior to Government imposed rules because it is more flexible. The people who experience the problems are in a better position than anyone else to make the rules governing those problems. Thirdly, the idea of participatory democracy has been accepted by many employers as a force for social stability. By participating in the formulating of working rules and joining political organizations, workers gain a stake in the system.

For this reason many employers support efforts to extend the so-called 'free' labour movements to the developing countries. They feel that collective bargaining will buffer the spread of revolutionary unionism in these countries. It is contended that revolutionaries do not make much progress in countries with advanced collective bargaining system.

Finally, collective bargaining is regarded as an equitable system because of its equalized power between workers and employers. Government helped employers gain power by permitting them to form corporate type of business activities. So, it is only equitable to protect workers in their right to organize and bargain collectively.²⁹

Disadvantages of Collective Bargaining:

²⁹ <http://www.yourarticlelibrary.com/business-management/what-are-the-main-advantages-of-collective-bargaining>

The important Disadvantages of collective bargaining are as follows: Collective bargaining generates many problems. First, there is the problem of strikes. The strike creates a dilemma for those who have accepted the institution of collective bargaining because it is difficult to have collective bargaining without the right to strike.

At the same time strikes can inflict considerable damage on the public. Much attention has been given to the problem of how to maintain collective bargaining while preventing the damage that might be inflicted upon by the strikes. No effective solution has been found as yet.

The second limitation of collective bargaining is that since it is based on power and conflict, it does the most for the people who need it least.

The stronger workers in the labour market could protect their income of their skills while the weakest workers in the workforce have very limited ability to form unions and hence are unable to gain the benefits of collective bargaining.

Thirdly, collective bargaining does not contain sufficient safeguard for the public interest, which might be ignored by collusion between strong unions and employers to fix prices.

In the USA, where collective bargaining is a feature of industrial relations, it is claimed that it has impeded the economy's growth, imparted an upward drift to the general price level and periodically imperiled the nation's health and safety.

Recent trends:

During the past two decades, however, many employee involvement processes have re-emerged at some large firms, along with other human resources management or industrial relations practices, mainly driven by enterprises' need to remain competitive and productive by involving their workforce in the business as a whole. Yet information sharing, suggestion schemes and consultation are most commonly found, whereas codetermination or participation in its true sense exists only in a few cases. The paper concludes that real employee participation is still relatively rare and the sustainability of recent developments remains nebulous or at best unpredictable. The extent to which emerging employee participation processes in India can be used to complement collective bargaining and sound industrial relations will continue to be the subject of our research.³⁰

Summary

³⁰ http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/

This unit contains a discussion on the meaning, object and purpose of the collective bargaining along with the definition of the term collective bargaining as given by various experts. After that the pre-requisites of successful collective bargaining and the planning needed in order to resolve the disputes through the process of collective bargaining have also to be discussed. Various matters viz., payment and revision of wages, health and safety of workers, working hours, payment of social security benefits, payment of overtime and hours, etc. are the areas wherein disputes between the workers and management could be settled through the process of collective bargaining. The various functions pertaining to the process of collective bargaining and limitations which have to be kept in mind by the labour and the management to achieve the desired results have been explained in detail. Relevance of the collective bargaining and its role in the Indian context has also been discussed at length in the light of the observations of the National Commission on Labour vide its report submitted in the year 1969. Finally, suggestions have been given to make collective bargaining a successful process not only at plant or establishment level but also at industry and national level.

Self-Assessment Test

1. What is meant by collective bargaining? Discuss its essential pre-requisites with special reference to India.
2. Define the term 'Collective Bargaining'. What is the role of collective bargaining in India and how can it be made more meaningful?
3. 'Collective bargaining is an effective weapon for promoting industrial peace and prosperity'. Critically examine this statement and give suggestion for making it more result-oriented particularly under the existing circumstances in India.
4. What is the object and purpose of collective bargaining? Elucidate its essential features and give suggestions for making it more useful in terms of achieving the desired results.

Key -

Words

Trade Union means association of workers.

Settlement of disputes means resolving disputes or differences between the parties.

Pre requisites of collective bargaining mean its essential features.

Subject matter covered within the purview of collective bargaining means scope of the collective bargaining.

Process of Collective Bargaining means proceedings of the meetings wherein collective bargaining is being carried out.

Co-ordination and Understanding means capacity of the labour and the management to know and understand each other.

Collective Agreements mean agreements finalized between the parties through the process of collective bargaining.

Negotiation means to resolve differences through discussion with each other.

Industry Relations Policy of the Government to promote peaceful relations between labour and the management.

Suggested Readings

Marshall F.R.; Briggs V.M.; King A.G.: 'Labour Economics', (Irwin Publications in Economics, Sixth Ed.)

Flippo B. Edwin, 'Personnel Management', (McGraw Hill Book Company, Sixth Edn.)

Smith I.T. and Wood J.C., 'Industrial Law', (Batterworths Publication, 1980 Edn.)

Report of the National Commission on Labour (1969)

Varandani Gurusharm, 'Workers' Participation in Management with special reference to India' (Deep and Deep Publication, 1987 edn.)

Chamberlin N.W. 'Collective Bargaining' (McGraw Hill Book Company)

UNIT- 8

Workers' Participation in Management

Objectives

This unit has been prepared to acquaint you with

- The progress of a country mainly depends upon the co-operative attitude towards each other of Management and workers; otherwise the conflicting interests are bound to hamper the pace of productivity.
- It has thus rightly been opined that 'if the twin objects of a rapid national development and increased social justice ought to be achieved; there must be a most complex understanding between management and labour'. Newly added provision in the Constitution, namely Article 43-A, makes a pioneer attempt to provide for workers' participation in industries by suitable legislation.
- A retrospect of the Scheme of Workers' Policies is some of areas which set the boundaries of the present lecture.

Structure

Introduction
Definitions
'Workers' Participation' -Meaning
Growth and Development
Current Trends
Summary
Self-Assessment
Test Key Words
Suggested Readings

Introduction

This Unit has been prepared to acquaint the Students with the subject of 'Workers Participation in Management'. Industrial pace has always occupied a

permanent place. The instruments of state policy such as labour legislation, welfare measures trade union developments etc., have all been geared to promote peaceful climate for the industry to operate. Therefore, the primary requirement for attaining the declared goal of the country is that conflicting interest must not be allowed to create hindrances in path and ought to be kept at the bottom. All these factors need to be responsive to the call of the time and without the whole-hearted co-operation between management and the workers; it is difficult to attain anything of worth. Thus the age-old notion regarding the relation between the management and workers became out-dated and the industrial philosophy should be expanded accordingly to be in time with the new changes.

There can be no two opinions that the cordial relation between the management and the workers play an important role in the establishment of industrial peace which is vital for the economic development of the country. For this purpose, it is all the more essential that the concerned parties' viz., supplier of capital, entrepreneur, management, workers and the State should fully realize their importance as also their roles in the national life.

There can be no denial of the fact workers, particularly in India, constitute economically weaker section of the society. As such the 'contract' theory that treats the employer and employee as equals, free to enter into a contract with whatever terms and conditions they like will not provide proper solution of the problem of workers. But it is also an admitted fact that workers interest should be taken care of because it would be on their productive capacity and sincerity of purpose which would result in the prosperity of the industrial enterprise. The management should share the industrial earnings with the workers who have substantially contributed to its creation for earning more profits.

The fact that good industrial relations are conditions precedent to rapid industrialization induces the Government to take positive steps in order to raise the status of labour by protecting the workers' interest and improving their lot. However, the experience shows that the industrial sector in India has not been able to secure the identity of purpose between the management and the workers. They often find themselves at cross-roads. Some elements are still there in the management of the enterprise who are not prepared to admit the realities and to them the trade unions are traitors. The Government can play an important role in conditioning the behavior of

labour unions. The Government may intervene effectively and at times even impose its decision in the interest of industrial peace.

For this purpose the Government shall have to amend suitably the existing labour laws to ameliorate the labour conditions.

Definitions

Worker: The dictionary meaning is 'one who works'. There was a time when a worker was not treated as human being. He was like a chattel, which should be sold in the open market. Since the beginning of 20th century, it has become everybody's realization that a worker is not a marketable commodity but is a human being and that too, a self-respecting human being. It has been now realized that the workers have feelings, emotions and aspirations like all other human beings and strive to fulfill them through the instrumentality of work from which they not only make their livelihood but also drive self-satisfaction. According to the Father of the Nation, Gandhi Ji, worker is not merely a means of production but is essentially a human being with a personality, having a sense of responsibility towards his family, the industry and the nation. **Participation:** Its dictionary meaning is 'the state of sharing in common with others'. Participation has been defined as a mental and emotional involvement of a person in a group situation, which encourages him to contribute to group goals and share responsibility in them.

Workers' Participation

Meaning

In the era of laissez faire employers enjoyed an unfettered right to run the business. The idea of workers' participation was alien to them with the evolution of the concept of social justice the idea of workers' participation entered in the field of corporate management. The seed of workers' participation was sown after the cessation of the World War as a result of Treaty of Versailles and the setting up of the International Labour Organization in 1919.

Workers' participation is a broad concept. It varies from country to country and industry to industry. Its main aim is to seek co-operation of those engaged in the production, in the fields of ethical, politico-social and economic. The workers' participation has been defined differently by sociologists, psychologists, economists and lawyers. According to the sociologists, the

workers' participation

is an instrument of varying potentialities to improve industrial relations and promote industrial peace. The psychologists consider participation as a mental and emotional involvement of a person in a group situation which encourages workers to share managerial responsibility. The economists think that the real basis of workers' participation is the higher productivity of labour. Lawyers, however, view workers' participation as a legal obligation upon the management to permit and provide for involvement of workers of industrial establishment through proper representation of workers at all levels of management in the entire range of managerial section. Majority of the representatives of the management are of the view that workers' participation in management of the enterprise would not be successful in India on account of special circumstances prevailing in this country. In this context former, President of Manufacturers Association expresses the view that the concept of participative management has just a political coloring and it cannot work successfully in practice particularly in India. He was of the view that workers are, in general, neither sincere nor capable of participating in management. In private sector concept of participative management could not be successful because the owners of private companies could not afford to promote participative management on experimental basis for the reasons of its being very expensive for them. So the Government should try to run on experimental basis in public sector undertakings at the first instance. Workers' point of view in this regard is quite contrary to that of the management. Workers are of the view that the concept of participative-management could be rightly visualized as the vital instrument for correcting the various industrial ills and are capable of contributing substantially to economic development. However, a study of Workers' Participation in management is of great relevance and practical value in the context of changing socioeconomic conditions. The Government of India has rightly declared the concept of participative management as one of the methods by which social justice and economic prosperity might be secured for the workers and at the same time production could also be increased. It would be possible to achieve the desired results in those countries wherein the scheme of participative management has been enforced in a planned and co-ordinate manner by a statutory legislation enacted and enforced in this regard.

Managements' Attitude vis-a-vis Participative Management:

The cordial relation between the management and the workers play an important role in the establishment of industrial peace which is vital for economic development of the industrial establishment. It is for the management to win the confidence and co-operation of its workers and to ensure that the workers feel a sense of attachment with the enterprise and for that purpose the management ought to be just and humane and must not indulge in any act of favoritism or nepotism and be fair to all. Equal opportunity for perusal, advancement within the organization is a requirement of justice, such a climate has to be created in which the workers feel at liberty to express their views freely and frankly.

Workers' Attitude vis-a-vis Participative Management:

The workers have to discard their old notions and to give up the hostile attitude towards the management. At the same time it is also essential on the part of workers to be responsive to creative and constructive efforts of the management otherwise efforts of the management for creating harmonious relations with the workers will not bear fruits. Both, the management and the workers, have to make combined efforts in the direction of industrial peace through the process of participative management.

In order to maintain human relations in industry, it is necessary that the management may treat their workers as individuals who, however, low in their origin, are entitled to dignity and fair treatment. With the emergence of the idea of an industrial organization as a vital socioeconomic institution of national importance, the status of worker has been lifted from that of a servant to a primary constituent of organization. It has increasingly been realized throughout the world that industrial peace and harmony is of utmost importance for the economic development. There cannot be industrial peace so long the worker remains alienated from the organization, so long worker does not have a sense of attachment and commitment with the organization, so long the social and psychological needs, besides economic needs of the worker remain unsatisfied. This line of thinking led many sociologists, economists, industrialists, psychologist, jurists and the Government to find out a way to solve this complex human

problem.

Growth and Development

A glance at the history of the Indian labour movement shall bring forth the fact that Indian worker was not having a sense of commitment with the organization. He has been suffering from poverty, and lived on the margin of living standard, poorly educated and insufficiently trained. The workers were just treated as men-power. On such a hard soil of estrangement, it was not feasible to build a peaceful economic system on a democratic basis which could enlist co-operation of workers to ensure improvement in the total performance of the industrial enterprise.

It was the Clayton Act of 1914 which declared that labour was not a commodity or an article of commerce and thus gave the worker its due recognition. Then the declaration of Philadelphia adopted by the International Labour Organization in 1944, upheld the personality and dignity of the individual. As stated earlier, the seed of workers' participation was sown immediately after the cessation of the World War I as a result of treaty of Versailles and the setting up of the International Labour Organization in 1919. The latter was founded under the influence of workers' right to organize which was accepted by all the Nations who were members of League of Nation.

Next crucial step was the appointment of the Royal Commission on Labour appointed in 1929 which made its report in 1931. The Commission made a series of recommendations including the workers' participation. The Commission also recommended the establishment of a Joint Machinery for settlement of industrial disputes. But unfortunately no steps were taken to implement these recommendations either by the Government or anyone else.

The real beginning in the context of workers' participation was made only after 1947 when India got its independence. Since then it has been the declared policy of the government to associate both employers' and workers' representatives in taking decisions relating to matters affecting labour.

Another landmark achievement in this regard was the enactment of the Industrial Disputes Act, 1947 which makes a provision for the constitution of Works Committee. The Plan Policies have also resulted in laying down policies for workers' participation.

At the 16th Session of the Indian Labour Conference held at Nainital in 1958, the then Union Labour Minister said that the scheme of workers' participation in management was the 'culmination of series of steps aimed at giving the workers a feeling of having place of their own in the industrial and social structure of the country and ultimately provide a solid base for building up the country's industrial edifice'.

The Central Government has also incorporated the concept of participation in management in the Constitution of India and it has provided for the workers participation in management in industry by suitable legislation in the Directive Principles of State Policy. Thus Article 43-A of the Constitution (42nd Amendment) Act, 1976 provides:

"The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings establishments or other organizations engaged in any industry".

The main object for the inclusion of workers' participation in the Directive Principles of State Policy is to give due recognition to the workers and to inculcate in them a sense of co-partnership. As it is a constitutional directive, so the State is under an obligation to take suitable measures either through legislation or otherwise to secure effective workers' participation in management. This will assure hard work and devotion on the part of workers to the industry. This system, if introduced properly, would also promote industrial peace and harmony leading to rise in production.

Current Trends

Modern large scale economic organizations-both in public and private sectors while contributing to the economic well-being of the community gave rise to certain labour problems viz., boredom and stifling of creativity on the part of employees resistance of change and avert acceptance and over-resistance of managerial decisions. In order to find solutions, to the above problems the scheme of joint management councils (on the line of Whitley Councils in England) which is synonymous with Workers' Participation in management was introduced with a

view to provide management necessary' advice and to give employees the feeling and thrill of participation in managerial decisions, affecting them.

However, the experience has shown that the part played by the Joint Management Councils has been quite insignificant. Measures taken for enforcing the Scheme of Participative Management have failed to yield the desired results.

The significant modes of workers' participation in the management that have recently gained ground are:

- (1) Making the workers share-holders; and
- (2) Appointing the workers in the Board of Directors.

In order to make any enterprise socially and economically viable, it has now been felt that a deep sense of involvement of both the workers and management is a necessary pre-condition. This sense of involvement is based on (a) sense of responsibility and (b) sense of attachment and the participation of workers in management. One of the methods for achieving this is to make the workers co- partners in the enterprise. This may be accomplished by inducing the workers to buy shares, and allot shares to them payment of which they could make in installments. For this purpose, even financial assistance may be given by the enterprise. The management will not only represent interest of capital but also of labour. This will reduce the chances of labour being exploited by unscrupulous outside interests.

Secondly, it is felt that greater participation can be ensured if workers are given representation on Board of Directors. As distinguished from work councils, this would enable the workers to join in the decision-making process rather than being confined only in a consultative body. It is clear that participation would become real and effective if workers get representation on board of management.

The Government of India have been making consistent efforts to make the scheme of Workers' Participation in management a successful venture in view of the constitutional mandate contained in Article 43-A of the Constitution:

Summary

Throughout the industrial world there has been considerable stress in recent years on the interest in human relations in industry so that management may treat their workers as individuals who, however, low in their origin, are entitled to **dignity and fair treatment**. It has been generally accepted that **mutual understanding and co-operation** between management and workers can provide a solid foundation for the economic development of the country.

The workers seek his involvement in the industrial society. He likes to assert his membership and status thereof in the organization. To have sense of responsibility and affiliation with the industrial system, he wants to associate himself with the **government** of the industrial entity and participate in the administration thereby contributing to the prosperity of the industrial enterprise, of which he is member. Thus with the passage of time, the concept of an industrial worker has changed from a mere cog in machine to a human being with his self-respect. According to Gandhiji, a worker is familiar to the modern way of thinking.

The principal reasons for this tendency could be traced to psychology of human beings. There exists in the workers' mind an urge for status and importance in the organization in which he works.

Every country has its own historical context and tradition. The social institutions in a country grow according to the political and social climate as well as the needs prevailing in that country. Since the political and social climate of a country varies from the other, its social institutions also are bound to vary. This equally applies in the arena of workers' participation in management.

However, a feature which is common in all the countries having a scheme of workers' participation in management is a sense of feeling that co-operation at the level of undertaking, is primarily associated with productivity.

Workers' participation in Management has various shades and designs in India. In this regard various statutory and non-statutory measures have been taken by the **Government** to introduce the concept of participative management by creating

Works Committee and Joint Management Councils. Efforts have been made from time to time to make this venture to be a success.

In this context, it would be pertinent to refer to a very recent decision of the

Supreme Court of India in Navnit R. Kamani and Others V. R.R. Kamani (A.I.R. 1989 S.C. 9) wherein the Court hoped and trusted that "KTU (Kamani Tube Union) and the concerned. Workers will make they fully aware of this crucial factor and also beseech them to rise to the occasion and individually and collectively to do their best to make it a success. They will have an opportunity to show to the world that the workers in New India are capable to managing their own affairs, shaping their own destiny and building their own future". (A.I.R.' 1989 S.C.

9 at page 19).

In the above case no less than 600 wronged workers of a once prosperous industrial unit Kamani Tubes Limited (KTL) induced or reduced to sickness were on their toes to resort to self-help to restore the lost source of their butter less bread. It was for the first time that such a scheme sponsored by the suffering employees themselves had come to be sanctioned. It was on the basis of the legislative intent reflected in the relevant provisions of the Act to encourage workers' scheme which was given a concrete shape.

Self-Assessment Test

1. Define the term "Workers Participation in Management" highlighting the approach of various experts. How can it be made more meaningful and result-oriented? Discuss.
2. Discuss the basis and forms of participative management. How could it be enforced effectively for achieving the desired goals?
3. What is the object and purpose of the workers' participation in the management of enterprise? Give suggestion for accomplishing the positive results in terms of promoting industrial peace and prosperity.

**Key-
Words**

'Participation' means active involvement. 'Worker' means employee.

'Management' means owners or executives working on their behalf.

'Production' means output or producing goods.

'Shareholders' means persons sharing in profits of the industrial establishment or undertaking.

'Private sector undertakings' means establishment owned by group of private persons.

'Public sector undertakings' means establishments owned by the government or members of general public.

'Contract' means agreement enforceable under law.

Suggested Readings

Keith Davis, Human Relations at Work.

Kenneth F. Walker, 'Workers' Participation in Management in Practice'.

Mary. P. Follet, 'Open Psychology of Consent Participation'.

Gursharan Varandani, 'Workers' Participation in Management' with special reference to India.

Dr. V.G. Mahetras, 'Labour Participation in Management'.

UNIT- 9

Trade Union Legislation (Part i)

The Trade Union Act, 1926 - Part I

(Definition, General Funds, Political Funds, Outsiders Recognition and Amalgamation)

Objectives

The purpose of this unit is to apprise the students about the –

- concept of trade union, general funds, political funds, amalgamation and outsider's standing in a trade union;
- need for a trade union and the procedure of its regulation;
- Policies regarding trade union's effective participation in the economic development of the country.

Structure

Introduction
Definition of Trade Union
General Funds
Political Funds
Outsider's
Recognition
Amalgamation
Summary
Self-Assessment Test
Key-Words
Suggested Readings

Introduction

This unit has been prepared to acquaint the readers the concept of trade union, its general funds, political funds and the procedure of amalgamation of two

or more trade unions. It also seeks to discuss the extent of outsider's recognition in a registered trade union.

Trade union is the representation of the organized labour which is a recognized force in the modern state. In many advanced countries, trade unions have achieved a status which involves representation on many public bodies dealing with labour and economic matters. Properly treated, industrial labour functioning through the trade unions can be one of the pillars supporting the state in any programme or policy of industrial development. The importance of trade union lies in the settlement of disputes between workmen and employers by methods of conciliation and negotiation. Collective bargaining is the main plank of trade union in this area the overall object of the Union is to ameliorate the economic and social conditions of its workers and to seek representation in legislative and local bodies for this purpose so as to influence policy decisions in the interests of the workers. For all these matters, union requires finances, which come mainly from the membership dues as well as from donations. These funds are to be spent for on specified matters under the Act and non-compliance shall lead to non-recognition of the trade union.

In order to function effectively in the interests of workers the trade union should be recognized and for that purpose, it should have the statutory objects for its formation under the Trade Unions Act, 1926. Considerable case-law has already been built up on the point whether an association has statutory objects or not. It is, therefore, necessary as to know what constitutes a trade union and for what purposes its funds can be utilized, do the outsiders have any role in the trade and can there be merger between the trade unions? The structure of this unit seeks to examine these issues in detail under the provisions of the Trade Unions Act, 1926.

Definition of a Trade Union

The Chamber's Encyclopedia describes trade union as "an association of wage-earners or salary earners, formed primarily for the purposes of collective action for the forwarding or defense of its professional interests". This definition is limited only to a trade union in which only the workers or employees are interested. Sydney and Webb define a trade union as "a continuous association of wage-earners for the purpose of maintaining the condition of their lives". But the

concept of : “collective bargaining” which is the main plank of a trade union envisages within its ambit the bilateral actions of both the labour and capital in the field of industrial relations, is limited in its scope in these definitions. The employers and employees in modern times form their own unions on the basis of class interests and prefer to settle issues relating to trade or industry through them. Both these definitions thus leave much to be desired.

Section 2(h) of the Trade Union Act, 1926 defines a trade union as “any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that the Act shall not affect-

- (i) any agreement between partners or to their business;
- (ii) any agreement between an employer and those employed by him as to such employment or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.”

This definition has been adopted from Section 23 of the (English) Trade Union Act, 1871. Following are salient features of this statutory definition:

1. A trade union should be a combination, whether temporary or permanent, whose “statutory purpose” (or primary purpose) is to regulate the relations between (i) workmen and employers, or (ii) workmen and workmen, or (iii) employers and employers, or (iv) for imposing restrictive conditions on the conduct of any trade or business.
2. The expression “trade union” includes any federation of two or more trade unions.
3. The definition in Section 2(h) shall have no effect on agreements detailed in the proviso therein.

The emphasis in this definition is on the purpose for which the trade union is constituted and not on its composition. Under the Act, it is not necessary that

members of the union should be workmen or employers though in normal case they will be one or the other. The main test of the trade union is its primary purpose. However, the persons who are not workmen in an “industry or trade”

cannot form a trade union because the definition of “trade dispute” in Section 2(g) and of “trade union” in Section 2(h) cannot be applied in their case because they can neither raise a “trade dispute” nor form a “trade union”.

Further, the primary purpose of a union should be statutory purpose. Though it may have many ancillary purposes which might be described as statutory but that will not make it a trade union unless it includes the primary purposes mentioned in the definition given above.

Trade Union Scope

The statutory definition of trade union contemplates the existence of the employer and the workmen engaged in the conduct of a trade or business. Trade or business includes, generally speaking, any gainful occupation. The term “workmen” has been defined in Section 2(g) of the Act as “all persons employed in trade or industry, for the purposes of the meaning of “trade union” industry should be one as would amount to a trade or business, i.e., a commercial undertaking. The Supreme Court has stated two distinctive features of an industry: (i) that the employer as well as the employees should be engaged in the industry, however wide the meaning of the term might be; and (ii) there should be co-operation between both of them for achieving the particular result. (State of Bombay V. Hospital Mazdoor Sabha (1960) ILLJ 251). If there is no co-operation between the employer and the employee, a dispute between them would not be a “trade or industrial dispute” which is defined in Section 2(g). (Osmania University, Hyderabad V. Industrial Tribunal 1960) ILLJ 593.)

Combination

The word “combination” used in Section 2(h) of the Act is of wider connotation. It embraces not only associations with formal rules but any two or more persons if act together for an agreed object and form a union shall also come within its purview. Such an agreement may be written or oral, made On the spur of the moment, for example, an agreement between a group of workmen in a factory who decide to strike upon the suspension of a fellow workman, or the

agreement may be implied as where the workmen, moved by common indignation, find

unnecessary to put their intentions into words and strike pursuant to a tacit agreement between them. All these are combinations and if their principal object or purpose is statutory, they would be trade unions.

It is further to be noted that the “combination” need not be permanent but may, be merely temporary one. A combination which comes into being because of a trade dispute and exists solely in relation to that may be a trade union.

Regulation of Relations

As has been stated already, the primary purpose of a trade union is to regulate relations between workmen or employers or both engaged in the conduct of any trade or business. Accordingly, the union of servants rendering services purely of personal nature at a government house was not held by the court to be a trade union, within the meaning of Section 2(h). Further, the sovereign activities of the government are outside the scope of “industry or trade”, hence the association of persons engaged in sovereign activities of the State is outside the purview of the term. These are the functions which a constitutional government can and must undertake for the governance and which no private citizen can undertake. The Supreme Court and also the Madras High Court, have held that the civil servants engaged in the task of sovereign functions of the government, which are its inalienable functions, cannot form a trade union and their union cannot be recognized within the meaning) of Section 2(h) of the Act. (Tamil Nadu N.G.Ps. Union V. Registrar Trade Unions (1961) ILLJ 753).

Imposing Restrictive Conditions

It would mean a restraint of trade in pursuance of a contract to restrict the manner in which one can earn a living. Any regulation of relations in employment would amount to imposing restrictive conditions. However, to come within the statutory definition, restrictive conditions imposed must be in respect of trade or business in general and the imposition of such conditions on particular members of a trade or business is not enough.

The real purposes of a combination is to defend trade or business interest and if the restrictive conditions imposed on the trade or business are necessary to secure results beneficial to such trade or business that shall not prevent the combination from coming within the definition of “trade union”. However, the protection of the

process of collective bargaining, welfare and livelihood of members and action taken in furtherance to obtain them are considered legitimate restrictions.

General Funds

Every registered trade union shall have the general funds which shall be spent on specified purposes or objects. Section 15 of the Act enumerates the objects on which the funds of the union can be spent. Contrary to Section 1(1) of the English Trade Union Act, 1913 which empowers the trade union to apply the **general** funds in furtherance of any lawful object or purpose for the time being authorised by its constitution, Section 15 does not allow the funds to be spent on objects other than those mentioned therein. The objects are as follows:

- (a) the payment of salaries, allowances and expenses to office bearers of the Trade Union;
- (b) the payment of expenses for the administration of the union, including audit of its general funds accounts;
- (c) the prosecution or defense of any legal proceedings to which the trade union or any member thereof is a party and when it is for the purpose of protecting the rights of the union or of its member arising out of the relations with his employer or with a person whom the member employ;
- (d) the conduct of trade disputes on behalf of the union or any member thereof;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment of such members; the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
- (h) the provision of educational, social or religious benefits for members (including the payment of expenses of funeral or religious ceremonies for deceased members) or their dependents;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
- (j) the payment in furtherance of any of the objects on which the general funds

of the union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions

shall not be in excess of one-fourth of the total income accrued to the general funds, including the balance of the credit, in any financial year;
(k) any other object notified by the appropriate government in the official gazette.

Section 15(d) does not make it obligatory upon a trade union to spend any portion of its general funds on the conduct of trade dispute; it merely renders such expenditure lawful. A union can be restrained by injunction from using its funds for an unauthorized object or for an unlawful purpose. If funds are spent on such an object the expenditure will be ultra-virus and can be restrained upon court's order.

Political Funds

A trade union may have certain civic or political objects which are not inconsistent with the primary objects or opposed to any law. But the union cannot use the general funds in its pursuit of political objects. A registered trade union under Section 16 of the Act is authorised to raise a separate fund for political purposes from contribution separately levied or made to that fund. The fund, however, is not confined merely to the separate political levy and is added by interest on investments from political fund, donations, and subscriptions.

The contribution towards the fund is voluntary and it cannot be made a condition for admission to the trade union. A member, who does not contribute to the said fund, shall not be excluded from any benefits of the trade union or put under any disability or disadvantage directly or indirectly as compared with other members of the union. But a member who does not contribute to political fund may be excluded from its control or management and shall not have the voting right in such matters. However, it shall not render non-members of political fund completely ineligible from performing those functions of an office which involve control or management of the fund unless the office is solely or mainly involved in such control. Selection of the trade union's political candidate is an essential part of the control or management of the political fund which can be restricted to the members of that fund.

The object of Section 16 is to ensure complete separation of the political fund from the general fund so that the money subscribed for general purposes should not be

spent on political objects. It is not permissible to allot any amount of the general fund for political activities. Section 16(2) specifies the objects on which the money may be spent out of this fund by the union in furtherance of civic and political interests of its members. They are as follows:

- (a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution, or of any local authority during, before, or after the election in connection with his candidature or election; or
- (b) the holding of any meeting or distribution of any literature or documents in support of such candidate or prospective candidate; or
- (c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or of any local authority; or
- (d) the registration of electors or the selection of a candidate for any legislative body constituted under the Constitution or for any local authority; or
- (e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

These funds are confined to the purposes of representation on local or legislative bodies and are not applicable to foreign or international elections.

(a) Election Expenses

Section 16(2) (a) relates to expenses incurred to help a person to get into a public office. The provision is very wide and covers expenses from the moment of initiation of election process till the completion of incidental expenses after the election is over. It is not limited to candidates representing a political party, but an independent candidate is also covered if he has been selected by the union.

(b) Election Meetings or Distribution of Literature

This clause is related to expenses incurred in the holding of meetings or distribution of literature or documents of whatever description and whether or not they are political in nature in support of a candidate. Thus, the trade union journal or a newspaper containing matter supporting election candidates comes within this provision. The payment of the delegate's expenses for the meeting or the costs of hiring a hall is similarly included.

(c) Maintenance of a Member of Legislative Body, etc.

This provision is not concerned with candidates but with persons who have been **elected** to political or civic bodies. It covers housing, clothing or feeding of any such person while occupying office and also the payment of travelling allowances but does not include the payment of any salary or any other strike benefit normally provided by a trade union to its members.

(d) Registration of Electors, etc.

It is related to expenditure in connection with registering electors or selecting a candidate prior to an election. Expenses on the issue of posters, circulars, notices, or loudspeaker announcements to ensure the registration of electors or on canvassing for this purpose are covered by this provision. The salary of an election agent engaged as “registration agent” is also covered and must be paid out of the political fund. Further, the money spent by the union for securing the selection of a candidate is within the purview of this provision. For this, the expenses incurred in the holding of selection conference and on the issue of information by leaflet or in any other manner recommending the selection of any particular candidate will be charged on the political fund.

(e) Political Meetings and Literature

Section 16(2)(e) deals with political meetings, literature and documents which are not covered by clause (b), i.e., they are not held or distributed, in support of a candidate. The word “distribution” in Section 16(2)(b) and (e) is meant distribution to the public at large or to the members of the trade union. However, mere circulation of document within the office of a trade union would not amount to “distribution”. But it is not clear whether expenses related to writing, preparing, printing or publishing of literature or documents is covered by the word “distribution”. However, “distribution” is not limited to free distribution.

Outsider's Recognition

The Act or the rules made there under do not confer absolute right upon a person to be admitted as a member of a particular trade union. Such a right can be conferred by an express provision in the Act or in the charter of the trade union.

A trade union incorporated under the Act has a right to make any person it likes as member unless deprived by its charter. However, by virtue of Section 16(e) primarily, the trade union is confined to ordinary members who should be persons actually engaged or employed in an industry with which a trade union is concerned and persons who are not so engaged or employed in an industry are the outsiders. They may be admitted as honorary or temporary members as office-bearers required under Section 22 to form the executive of the trade union. The formation of an executive is essential in accordance with the provisions of the Act and the rules thereof. Unless the executive is so constituted, the registration of the trade union is not possible (Section 6).

Section 22 provide that the proportion of the persons engaged in the industry as the office-bearers of the union would not be less than one-half, the other half may be from the members who are outsiders. But the application of this provision may be excluded by an exemption granted to the trade union by the appropriate government, in which case, the outsiders may not be admitted to the trade union at all. The term "office-bearer" is defined in the Act Sec.2 (a) which includes besides the officer of a trade union, the members of the executive of the union, but excludes an auditor.

A person may not be elected as a member of the executive or as an office-bearer of the union if he has not attained the age of 18 years or if he has been sentenced to imprisonment for the offence of moral turpitude. However, this disqualification will cease to exist after a lapse of five years from the date of his release (Section 21-A).

As the members of the executive, the outsiders have the right to inspect the account books of the trade union as also the list of members. They also have the right to inspect the accounts-books of the trade union. (Sections 20 and 6).

Problem of recognition of Trade Union:

1. Multiplicity of Trade union.
2. Status of Union.
3. Membership verification.
4. Check off on membership – member staying or leaving the union.

5. Secret Ballot Method and Politicalization of union:
6. Proper application of Code of Discipline.

Amalgamation

Section 24 of the Trade Unions Act provides a statutory method for amalgamation of two or more registered trade unions. For amalgamation, the dissolution of the unions or division or their funds is not a pre-requisite. Amalgamation does not involve the passing over of all the property of the amalgamated unions. But, before amalgamation is effected, it is statutorily required that voting should be held in each of these trade unions. At least one-half of the members of each of the trade union entitled to vote must record their votes and at least sixty percent of the votes recorded should be in favor of the proposed amalgamation.

Further, the Registrar must be given a notice of the amalgamation in writing. Such a notice must be signed by the Secretary and seven members of each and every union that is a party to the amalgamation. When the head office of the amalgamated trade union is situated in a different state, the notice must be sent to the Registrar of such State. The Registrar of the State in which the head-office of the amalgamated union is situated must satisfy himself that the statutory provisions in respect of amalgamation have been complied with and that the trade union formed thereby is entitled to registration. He may refuse to register a trade union if its name is identical with any other registered trade union. After satisfying himself, the Registrar shall register the trade union in the manner provided under the Act. The amalgamation will be effective from the date of its registration. An amalgamation shall be invalid without its registration. (Section 25).

The registration, however, is not conclusive proof of the validity of the amalgamation. Notwithstanding the registration, a member of an amalgamating union may obtain a declaration that the amalgamation is invalid on the ground of failure to obtain requisite number of votes. An illegal amalgamation may be restrained by an injunction.

The amalgamation does not prejudice the rights of any trade union which is party to amalgamation or the rights of a creditor of any of such trade unions. Further, the change in the name of a registered trade union does not affect the rights or obligations of the trade union or render defective any legal proceeding by or against it, which may commence or continue by or against it by its new name (Section 26).

Summary

In this unit, the trade union has been defined. The general funds, political funds, outsiders's recognition in the trade union and amalgamation of two or more registered trade unions have also been discussed. The definition of the trade union as given in the Trade Union Act, 1926 has not only been stated but its salient features have also been discussed. Every registered trade union must have general funds and is also entitled to have the political funds. The objects or purposes for which these funds can be utilized should be statutory and a union cannot spend the money for any other purpose. These objects have been amply discussed. A trade union is primarily concerned with the persons actually engaged in an industry and the outsiders can only be appointed as office-bearers and their representation should in no case be more than half of the total number of the office-bearer. It has also been explained as to who are entitled to be appointed as an office-bearer and what the rights of the outsiders are. The procedure of amalgamation of two or more registered trade unions has also been discussed. The rights and liabilities of trade union party to amalgamation, grounds of refusal for registration of an amalgamated union etc. have been mentioned in detail.

Self-Assessment Test

Answer the following questions in not more than 500 words, these are meant for recapitulation only)

- (1) Discuss the salient features of a trade union.
- (2) Define the objects for general funds of a registered trade union.
- (3) How the political funds are created? What are its benefits? State briefly the purposes of political funds.
- (4) How far the outsiders get recognition in a trade union? Mention their qualifications and the rights which they get once they are in the union.
- (5) Define briefly the procedure of amalgamation. How far amalgamation affects the legal proceedings by or against a trade union?

Key- Words

Trade Union: It is a combination either of workmen or of employers or of both to regulate relations between them or for imposing restrictive conditions on the conduct of any trade or business.

Combination: Any two or more persons if act together for an agreed object form a combination.

General funds: Every registered trade union must have general funds, primarily raised out of the membership fees from its members and which can be spent on specified purposes stated in Section 15 of the Trade Union Act.

Workmen: Means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute

arise. **Industry:** Means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen (Section 2(f) of the Industrial

Disputes Acts.). **Amalgamation:** The Act or process of merger of two or more registered trade unions.

Suggested Readings

1. Srivastava K.D., Law Relating to Trade Unions in India, Eastern Book Company, Lucknow (1982)
2. Seth R.B., Dwivedi R.N., Law of Trade Unions, Book Company, Allhabad (1973).
3. Dhyani S.N., Trade Unions and the Right to Strike, S. Chand & Company (1972).
4. Kinder & Richard, Trade Union Law (1983).

UNIT-10

Trade Union Legislation (Part ii) The Trade Union Act, 1926 - Part II (Procedure for Registration of Trade Unions, Withdrawal Refusal or Cancellation of Registration, Appeals, Immunities of Registered Trade Unions)

Objectives

After going through this the students should be able to:

- understand the procedure of registration of trade unions, refusal, withdrawal or cancellation of registration and appeals thereof, as also the immunities of registered trade unions;
- appreciate the need for registration and the disadvantages of non- registration;
- evaluate the role of the Registrar, Trade Unions, in the matters of registration, withdrawal and cancellation thereof.

Structure

Introduction
Procedure for Registration
Withdrawal, Refusal or Cancellation of Registration
Appeals
Immunities of Registered Trade Unions
Summary
Self-Assessment Test
Key-Words
Suggested Readings

Introduction

This unit has been prepared to acquaint the students with the process of registration of trade unions and the powers of the Registrar, who plays a pivotal role in matters of registration. It is further aimed at highlighting the immunities enjoyed by a registered trade union.

Under the present law, registration of a trade union is not compulsory. Several associations remain outside the purview of the Trade Unions Act. Though legally not essential, the registration brings with it certain advantages which are listed in Section 13 of the Act. A registered trade union becomes a body corporate with a distinct legal identity, which can sue and be sued; it gets perpetual succession and common seal; it can acquire and hold moveable and immovable property; and it can contract. It is also granted immunity from certain civil and criminal suits. On the other hand, an unregistered trade union is not illegal in any way, but the advantages of a registered trade union, including immunity from civil and criminal liability, shall not be available to it. The case law on the point clearly establishes that an unregistered trade union could not be sued in tort by suing a member thereof in a representative capacity but an action may lie against a member in his individual capacity. Thus, it cannot sue or be sued. It is merely a voluntary association of persons.

Since registration brings with it many benefits, it is deemed necessary to know the procedure for registration of trade unions, the conditions under which the Registrar can withdraw, refuse or cancel the registration, and where can an appeal lie against such an action of the Registrar who has wide powers in the matter of registration. In fact considerable case-law has already been built up on these aspects. It is therefore in the fitness of things to know about them in detail. Further, it is also necessary to discuss the immunities of registered trade unions from certain criminal and civil proceedings. As evident from the structure of this unit it is intended to examine these aspects in the context of Trade Unions Act, 1926.

Procedure for Registration

For registration of a trade union an application has to be made to the Registrar, Trade Unions (as defined in Section 2(f) of the Act). The application can be made by any seven or more members of a trade union after complying with the

provisions of the Act with respect to registration. In case members applying for registration dissociate themselves from the application by giving a written notice to

the Registrar or cease to be members of the union, after the date of application, but before the registration of the union, and their number is not less than half of the total number of persons applying, the application will not become invalid. The Registrar will register the union if he is satisfied that the application is in accordance with Sections 5 & 6 which lay down certain requirements to be fulfilled before registration. The corresponding sections under the English Trade Unions Act, 1871 are Sections 13(4) and 14.

Application and Conditions for Registration

When an application is made to the Registrar for the registration of trade union, it should contain certain details, besides being accompanied with a copy of the rule of the trade union. The details should be related to the:

- (a) names, occupations and addresses of members making the application;
- (b) name of the trade union and the address of its head office; and
- (c) Titles, names ages, addresses and occupations of the officers of the trade union.

In case a trade union has been in existence for more than one year, the application must contain a statement of its assets and liabilities.

Besides containing these details in the application, there are certain conditions which must be fulfilled before a trade union becomes entitled to registration. These conditions are: (1) that the executive of the trade union is formed in accordance with the provisions of the Act; and (2) that the rules of the trade union contain the details relating to the matters enumerated in clauses (a) to (j) of Section 6 of the Act.

The term “executive” has been defined in Section 2(a) of the Trade Unions Act, which is a body to which the management of the affairs of the trade union is entrusted. Without the constitution of the executive, the trade union shall not be registered. The executive has to be constituted in accordance with the provisions of the Act. Clause (h) of Section 6 requires that the rules of the trade union must provide the manner in which the members of the executive shall be appointed and removed. Section 22 of the Act requires that not less than one half of the total number of the office-bearers (the term includes the members of the executive: vide Section 2(b) of every registered trade union shall be persons actually engaged or employed in an industry with which the trade union is connected. Rest of

them may be from amongst the outsiders. However, the appropriate government may

declare that this provision regarding the proportion of office-bearers from amongst the employees and outsiders shall not apply.

The rules must be related to

the: (a) name of the

trade union;

(b) objects for which the union is established;

(c) purposes for which the general funds of the union shall be applicable and these purposes shall be in accordance with the Act;

(d) maintenance of a list of the members of the trade union and facilities for the inspection thereof by the office-bearers and members of the union;

(e) admission of ordinary members who shall be persons actually engaged or employed in an industry with which the trade union is connected as also the admission of honorary or temporary members as office-bearers under Section 22 to form the executive of the union;

(f) payment of subscription by members of the trade union which shall not be less than twenty-five Naye paise per month per member,

(g) conditions related to a member's entitlement to benefits and imposition of fine or forfeiture on him;

(h) manner of amendment and modification of rules;

(i) manner of appointment and removal of the members of the executive and office-bearers;

(j) manner of annual auditing of the union's accounts and adequate facilities for the inspection of the account books by the office-bearers and members of the trade union; &

(k) manner of dissolution of the trade union.

The primary object of a trade union for which it can be formed is stated in the definition of the "trade union" under Section 2(b) of the Act. This is to regulate the relations between (i) workmen and employers, or (ii) workmen and workmen, or (iii) employers and employers or (iv) for imposing restrictive conditions on the conduct of any trade or business. The Act does not define or limit the objects for which a trade union can be formed but the objects must include the primary objects enumerated in Section 2(h) and may have other incidental objects. But a trade union cannot be registered if any of its objects is unlawful.

Similarly, in the case of general funds, Section 15 of the Act specifies the objects for which the funds can be spent and is an indicator for which a trade union is

intended to be formed. These funds cannot be spent for political purposes for

which the Act authorizes the union to constitute separate funds (Section 16). It must be noted, however, that though Section 6 provides that no union can be registered unless its constitution provides for the matters enumerated therein, there is no authority for the proposition that these rules acquire any statutory force. It is merely a condition precedent for registration that the constitution of the union must provide for matters given in Section 6 of the Act. Further, rules framed for these matters are only in the nature of a contract binding on the members of the union and that violation cannot be enforced by a writ of mandamus under Article 226 of the Constitution. If a member has been aggrieved by violation of any of these rules, the remedy lies by way of a suit. (See: Triloki Nath Tripathi V. All India Postal Workers' Union, AIR 1957 All 234).

Role of the Registrar

Registrar's powers in relation to registration of the trade unions are lucidly defined under the Act. After an application has been filed with the Registrar for registration in accordance with the requirements as listed above, he shall scrutinize the application. If he finds the application wanting in any manner and the information furnished regarding the compliance with Sections 5 and 6 of the Act insufficient he may require the applicant to provide further information. He may refuse to register the trade union until such information is provided to him. [Section 7(1)]. Further, the Registrar can also require the applicant to change the name of the union if its proposed name is identical, or so nearly resembles with any existing registered trade union, which is likely to deceive the public or the members of other trade unions [Section 7(2)]. It is only after examining the application and satisfying him that all the requirements regarding registration has been complied with, he shall register the trade union.

The Registrar's satisfaction is confined to the compliance with the requirements of Sections 5 and 6 (Cf. Tamil Nadu Non-Gazetted Officers' Union .V. Registrar of Trade Unions (1962) 1 LLJ 953 (Madras H.C.). As such he cannot go into the question if the union could be described as an unlawful association. He should look at the objects for which the union is formed as also the-destination and use of the general funds of the union. If he finds that the objects are apparently lawful,

legitimate and intra virus the trade union and if he further finds that the funds are

only to be used in furtherance of those objects, then he has no option but to register the trade union.

In a leading decision, *In Re. Indian Steam Navigation Workers Union* (AIR 1936 Cal. 57), the Registrar refused to register the trade union on the ground that the application was an attempt to seek registration under a new name of another trade union which had been earlier registered and declared unlawful association. On appeal against this order the Calcutta High Court held that the duties of the Registrar were to examine the application and to look at the objects for which the union was formed. If these objects are according to the Act and if all the requirements of the Act and Regulations made there under had been complied with, it was his duty to register the trade union. At that stage, he was not entitled to go into the question whether the trade union was another union which had been proscribed and which was seeking the registration under a different name. Further, there is nothing wrong to form a rival union by workers in a particular industry. In case such a union seeks registration, it must ensure that the provisions of the Trade Union Act (Section 5 and 6) and rules and regulations there under have been complied with. If that has been done, the Registrar is obliged to register the union.

It is statutory duty of the Registrar to register a trade union after being satisfied that it has complied with the entire requirement. If he fails to comply with this duty within a reasonable time, he may be commanded by the court under Article 226 of the Constitution to perform this statutory duty imposed upon him under Sections 7 and 8 of the Act. However, what is a "reasonable time" is nowhere defined.

The Registrar shall, as a result of the order of registration enter the particulars relating to the trade union in a register maintained with the prescribed form he shall issue a certificate of registration in consequence thereof. The issuance of this certificate shall be the conclusive evidence that the trade union has been duly registered under the Act.

Withdrawal, Refusal or Cancellation of Registration

As has been stated earlier, the Registrar has wide powers in matters of registration. If he is not satisfied with the application for its non-compliance with Section 5 and 6 of the Act, he may refuse to register the Union. Further, if he seeks

any additional information regarding the rules of the union and that is not forthcoming, he is not obliged to register the union. Once he has registered the trade union, he may still withdraw or cancel the registration. This power of withdrawal or cancellation is vested in him by virtue of Section 10 of the Act, which corresponds to Section 8 of the English Trade Unions Act, 1876.

The withdrawal or cancellation may be either voluntary i.e., when the trade union applies for it, or involuntary, i.e., when the Registrar, on his satisfaction of certain factors, cancel the registration. The Registrar is empowered to withdraw or cancel the registration under the following cases:

- (1) Where the certificate of registration has been obtained by fraud or mistake;
- (2) Where the trade union has ceased to exist;
- (3) Where the trade union has willfully and after notice from the Registrar violated the provisions of the Trade Unions Act;
- (4) Where the trade union has willfully and after notice from the Registrar allowed any rule to continue in force which is inconsistent with the provisions of the Trade Unions Act;
- (5) Where the trade union has rescinded any rule providing for any of the compulsory matters required under Section 6 of the Act. And to this list one more ground may be added:
- (6) When the primary objects of the union are no longer statutory objects. The word "Fraud" has not been defined under the Act and there is no comprehensive definition of fraud under any other statute, including Section 17 of the Indian Contract Act. Like-wise the meaning and scope of "mistake" and "willfully" have not been indicated under the Act. But wherever a charge of fraud or mistake is made, whether in criminal or civil proceeding, it must be established beyond reasonable doubt.

For the purposes of the Act, mistake or fraud must be on the part of the applicant for the withdrawal or cancellation of the certificate of registration. In the case of Registrar of Trade Unions, Mysore V. Mariswamy (1974) LLC 695, the Registrar issued the certificate of registration to the Mysore State 'Provident Fund Employees Union by mistake, since the Provident Fund Organization, whose employees were the members of the Union, was neither a trade nor an

industry and thus was not entitled to registration. The Registrar withdrew the certificate, after receiving the reply from the union. The District Judge-as well as the Karnataka High Court observed that the Registrar had no jurisdiction to withdraw the

registration certificate on the ground that he had committed a mistake in registering the union. Section 10(b) uses the word “obtained” which clearly refers to the applicant’s fraud or mistake. It is only when the fraud or mistake is attributable to the applicant that the certificate can be withdrawn or cancelled. Since, in this case, the mistake was committed by the Registrar and not by the applicant; Section 10(b) could not be invoked.

Procedure for Withdrawal or Cancellation of Registration

In the case of voluntary withdrawal or cancellation of registration, according to Section 10(a) of the Trade Union Act, 1926 and Regulation 6 of the Central Trade Union Regulations, 1938, the Registrar, after receiving an application for cancellation or withdrawal of registration and before granting the application, must satisfy himself that the withdrawal or cancellation was approved by the general meeting of the trade union and if it is not so approved, then it had the approval of the members of the trade union. For this purpose, he may call any further particulars as he may deem necessary and may also examine them in any office of the union. However, where the proposed withdrawal or cancellation is on any of the grounds mentioned above, it is required that the Registrar must give to the trade union not less than two months previous notice in writing specifying the ground on which it is poised to take action (Section 10(b) proviso). No notice is, however, necessary when the union requests withdrawal or cancellation *suomoto*. Further, before the registration is revoked or withdrawn, the Registrar must give a fair hearing to the trade union. Normally there should be sufficient time to meet the charge. It is the duty of the Registrar that while acting under Section 10, he should act judicially, since the proceedings are of judicial or quasi-judicial nature. This requires him to follow the principles of natural justice in the matter of withdrawal or cancellation. Order of withdrawal or cancellation of registration should be a speaking order. In appealable cases, the courts below should, as far as may be practicable, pronounce their opinion on all the important points. No fee is payable on withdrawal or cancellation of registration. **Effect of Withdrawal or Cancellation**

After the withdrawal or cancellation of registration, the trade union ceases to enjoy the privileges of a registered trade union. If the combination still exists, its status becomes that of an unregistered trade union, provided it satisfies the

statutory definition. So long the registration is in force and is not withdrawn or cancelled, it

is conclusive evidence that the trade union is duly registered. In pursuance of this fact, the union can sue and be sued in its registered name notwithstanding that its registration is or has become void by reason of the illegality of any of the objects of the trade union.

Appeals

Section 11 of the Trade Unions Act refers to the right of appeal against the decision of the Registrar. The section corresponds with Section 2(4) of the English Trade Union Act, 1913. An appeal can be made by any person who is aggrieved by the refusal of the Registrar to register a trade union or by the withdrawal or cancellation of the certificate of registration.

The appeal is to be made within such period as may be prescribed. Regulation 10 of the Central Trade Union Regulations, 1938 provides a period of sixty days from the date on which the Registrar passed the order within which an appeal is to be filed.

The appellate court may dismiss the appeal or pass an order directing the Registrar to register the union and issue it a certificate of registration. It may also set aside the order for withdrawal or cancellation of the certificate of registration. The Registrar is bound to comply with such order [Section 12(2)]. The procedure to be followed and the powers to be exercised by the appellate court are those prescribed under the Code of Civil Procedure, 1908 for the trial of suits. These include the power to summon witnesses, compel production of documents, of making orders for discovery and inspection directing interrogatories etc. The court may direct by whom the whole or any part of the costs of appeal shall be paid. The costs so awarded can be recorded as if they had been awarded in a suit under the Code of Civil Procedure [Section 11 (3)].

The appropriate court in which an appeal can be filed is to be determined according to the head office of the trade union. Where the head office of the trade union is situated in a Presidency Town, the appeal would lie to the High Court exercising its original jurisdiction. Where the head office is situated in any other area, the appeal shall lie to the court to be appointed by the appropriate government, but such a court should not be inferior to the court of an additional or

assistant judge or a principal Civil Court of Original jurisdiction [Section 11(1)(a) & (b)].

Where the appeal was heard and decided by a court appointed by the government, the person aggrieved can file a second appeal before the High Court challenging the decision of the Registrar. In such a case, the High Court can exercise for the purpose of such appeal all the powers of an appellate court [Section 11(4)]. However, no period of limitation is provided for a second appeal to the High Court [Section 11(4)]. It shall be governed by the Limitation Act and the rules of the particular High Court.

It may be pointed out that Section 11 of the Act creates some anomaly, in the matter of second appeal. While in the case of trade unions established in tire Mofussil areas, the right of second appeal is clearly incorporated in clause (4) of Section 11. But in case of a trade union having its head office within the limits of a Presidency Town, there is apparently only one opportunity of challenging the decision of the Registrar, namely, by an appeal directly to the High Court. However, this anomaly was judicially noticed in Registrar of Trade Unions, West Bengal V. Mihir Kumar Gooha (1963) 1 Lab.L.J. 100). The High Court, while agreeing that a second appeal does not lie under Section 11(1)(a) of the Trade Unions Act, observed that it is still maintainable under clause 15 of the letters Patent. It is now an established law.

Immunities or Privileges of Registered Trade Unions

Privileges of a Registered Trade Union:

1. Immunity from Criminal Prosecution: Registered Trade Union enjoys certain rights in furtherance of their trade dispute, e.g., right to go on strike and to persuade their members to abstain from work. The trade union shall not be liable to punishment if they go on lawful strike.
2. Immunity from civil suit (sec18) No legal proceedings shall be maintainable in any civil court against any registered trade union due to trade dispute unless the acts interferes with the trade, business or employment.

Sections 17 and 18 of the Trade Unions Act grant certain exemptions to the office-bearers and members of a registered trade union from criminal and civil

processes, while the scope of immunity is limited in the case of criminal matters (Section 17), it is wider in its ambit in civil cases (Section 18).

Immunity from Offences

The office-bearers or members of a registered trade union are not liable to punishment under Sub-Section (2) of Section 120-B of the Indian Penal Code, dealing with criminal conspiracy if the offence arises out of any agreement entered into between members whose purpose is to further the objects laid down under Section 15 of the Trade Unions Act. No other offence is covered by the Section. Indeed, any agreement to commit an offence would under Section 17, make the members liable for criminal conspiracy.

It is to be noted that Section 15 deals with the objects on which the general funds of the union can be spent, but they should be in furtherance of over-all objects of the trade union. Accordingly, the purpose of any trade union shall not, by reason merely that it is in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy. To constitute a criminal conspiracy there must be an agreement of two or more persons, to do an act which is illegal or which is to be done by illegal means. Trade unions have the right to declare strikes, boycott, picket lines, and to do certain acts in furtherance of trade disputes. These activities are lawful so far they fall within the purview of Section 15. Strike is a recognized instrument in the hands of labour, which aids them in any concerted movement to improve their position vis-a-vis the management. Mere absence from work does not amount to strike. The pen-down strike and tool-down strike etc. are similarly strikes within the meaning of Section 2(9) of the Industrial Disputes Act, 1947. Under Section

17, there is no immunity against violence, intimidation or molestation in furtherance of trade disputes. In the case of "gherao" if accompanied by wrongful confinement under Section 340 of the Indian Penal Code, no immunity exists for the members of the registered trade union, even if the offence was committed in an attempt to enforce their power of collective bargaining (Jay Eng. Works V. State AIR 1968 Cal. 407).

Immunity from Civil Suits

Section 18 provides immunity from civil action to any registered, trade

union, or any office-bearer, or any member thereof for any action done in

contemplation of a trade dispute, or in furtherance of a trade dispute to which a member of a trade union is a party. The immunity under the Section is available only to the registered trade union and not to all unions like under Section 8 of the English Trade Disputes Act.

The immunity, however, is for an action which could be made only on the ground (1) that such act induces some other person to break a contract of employment; or (ii) that it is an interference with the trade, business or employment of some other person; or with the right of some other person to dispose of his capital or his labour as he desires. [Section 18 (1)]

Further, the immunity is granted to a registered trade union for any tortuous act done by an agent of the trade union in contemplation or furtherance of a trade dispute, if it is proved that such person acted without the knowledge of or contrary to express instructions given by the executive of the trade union [Section 18(2)]. The protection under this Section is limited. The important and significant words in the Section are “on the ground only”. The Section does not afford immunity to a trade union or an office-bearer thereof in legal proceedings on any other ground, such as for an act of deliberate trespass. (*Dalmia Cement Ltd. V. Narain Das Anandji Bechar*, AIR 1939 Sind 256).

This Section also does not provide immunity in a case where there is a threat or violence or where, as a result of inducement a contract for the sale or purchase of goods is broken, since it is clearly outside the ambit of the contract of employment. However, the participation simply-citer by the trade union or any officer or member thereof in any illegal strike cannot deprive the union or its members of the immunity granted under the Act. In other words, the legality of the strike has no bearing on the question of immunity granted by Section 18 of the Act. If the dominant purpose of the workmen in resorting to the act complained of is in contemplation or the furtherance of a trade dispute, they shall not incur any civil liability. (*Rohtas Industries Staff Union V. State of Bihar*, AIR 1963 Pat. 1701).

Summary

This unit contains a discussion on the procedure of registration of trade unions, refusal withdrawal or cancellation of registration by the Registrar and the right to appeal against such a decision of the Registrar as well as the immunities of

registered trade unions. The registration of a trade union is not 'compulsory, but if it desires to be registered, the procedure as laid down in Sections 4 to 9 of the Trade Unions Act in this regard need to be complied with. This has been discussed in detail. The application for registration has to be made to the Registrar, who also has the powers to refuse, withdraw or cancel the registration. Under what conditions, the Registrar can do so, has also been described. An appeal can be made against decisions of the Registrar but which are the competent courts where an appeal can be filed or is there a provision for second appeal have further been explained. A registered trade union enjoys many advantages and immunity from certain criminal and civil wrongs is one of them. What are those wrongs which entitle a registered trade union to immunity have also been lucidly discussed elaborately.

Self-Assessment Test

Answer the following questions in not more than two pages each.

1. Describe the procedure of registration of a trade union.
2. Discuss the role of the Registrar, Trade Unions, in the matters of withdrawal or cancellation of a certificate of registration.
3. Give the details of the right of appeal of a trade union.
4. Mention briefly the immunities of a registered trade union from Criminal and Civil Wrongs. Is a trade union immune from liability in the matter of illegal strike?

Key- Words

Registrar
means

- (1) a Registrar of Trade Unions appointed by the government under Section 3, and includes an additional or Deputy Registrar of Trade Unions; and
- (2) in relation to any trade union the Registrar appointed for the State in which the head or registered office, as the case may be, of the trade union is situated [Section 2(f) of the Trade Unions Act].

High Court:

The word “High Court” occurring in Section 11(a) of the Trade Unions Act means and includes the High Court in its original jurisdiction as well as appellate jurisdiction.

Strike

:

Means a cessation of work by a body of person employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment [Section 2(g) of the Industrial Disputes Act, 1947].

Tortuous

Act:

It is a civil wrong other than a mere breach of contract or breach of trust and is redressible by an action for unliquidated damages.

Suggested Readings

1. Srivastava K.D., Law Relating to Trade Unions in India S.Chand & Company (1982).
2. Sethi. R.B., Dwivedi R.N., Law of Trade Unions Book Company, Allahabad (1973).
3. Dhyani S.N., Trade Unions And the Right to Strike, S.Chand & Company (1972).
4. Karnik V.B., Indian Trade Unions

UNIT- 11

Industrial Relations Legislations - Part-I (Industrial Disputes Act, 1947)

Objectives:

“The object of this unit is to explain the students:

- Some of the provisions relating to the Industrial Disputes Act, 1947. The Act “seeks to pre-empt industrial tension, provides the mechanism of dispute resolution and sets up necessary infra-structure so that the energies of the partners in production may not be dissipated in counterproductive battles and assurance of industrial justice may create a climate of goodwill”³¹.
- The definition of ‘industry’ will, however, to be analyzed in greater detail in the light of judicial interpretation it has received over the years as it is key definition and determines the applicability of Act itself.
- It is also proposed to discuss the provisions relating to strikes and lockouts in this unit.”

STRUCTURE:

Definition
Summary
Self Assessment
Test Key words
Abbreviations used
Suggested Readings

INDUSTIAL RELATIONS LEGISLATION (PART—I)

Industrial disputes Act, 1947. Definitions (except of lay off and retrenchment) and regulation of strikes and lock-outs.

³¹Justice Krishna Iyer in LIC bf India v/s J.D. Bahadur (1980-Lab. & I.C. 1218).

11.1.

Definition

1. 'Appropriate Government'

This definition is basically a device for demarcating the jurisdiction of the Central and the State governments. The practice generally followed is to define the jurisdiction of the central government³². The rest of the industrial establishments which are not included in the central jurisdiction, fall in the state sphere.

2. Industrial Disputes

Under Sec. 2 (a) of the Act, the jurisdiction of the Central government extends to industrial disputes concerning –

- (a) any industry carried on by or under the authority of the Central Government;
- (b) or by a railway administration;
- (c) or concerning any such controlled industry;
- (d) dock labour boards;
- (e) banking and insurance companies;
- (f) mines, oil fields, cantonment boards, major ports and;
- (g) certain specified corporation and bodies such as industrial Finance Corporation of India, Employees State Insurance Corporation of India, Indian Airlines Corporation, Air India, etc.

3. Industry

The meaning and scope of the word industry carried by or under the authority of was explained by the Supreme Court³³ as referring to industries carried on directly by a department of the government, such as Posts and Telegraphs or the Railway or one carried on by such department through the instrumentality of an agent or servant. A limited company or a corporation established by an Act of Parliament is an independent legal entity. Although the Central government may own the entire share capital and control such companies or corporations but the industries carried on by them are still worked under the authority of their articles and memorandum of associations and not by the Central government.

Therefore, a central government company or corporation will not come within the jurisdiction of central

³²This is the position under all the labour laws whose administration is vested partly in the Central and partly in the State governments except the Payment of Wages Act, 1936.

³³ Heavy Engineering Mazdoor Sangh v/s State of Bihar (1969-II, LLJ,632-S.C.)

government unless it is specifically mentioned in Sec. 2 (a) of the Act as falling in the central sphere, such as the Air India or the Food Corporation of India...

4. Controlled Industry

As regards 'controlled industry', such an industry will come under the jurisdiction of central government provided the following conditions are satisfied;

- a) the industry is one whose control by the Central government has been declared to be expedient in public interest under Industries (Development & Regulation) Act, 1951;
- b) such an industry has been specified as 'controlled industry' by the central government by issue of a notification under the Act.

5. Banking Companies

In the case of banking companies, only such banking companies as come within the scope of Banking companies Act, 1949 and have branches or other establishment in more than one state, including Industrial Development Bank of India, Reserve Bank of India, and the State Bank of India (including its subsidiary banks) fall in the central sphere. With regard to the other banking companies, only the government of the state in which the bank is situated, will be the appropriate government.

6. Industry

Industry has been defined in the Act as "any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment handicraft, industrial occupation or avocation of workman Though the definition appears to be simple, it has been the subject matter of large number of judicial pronouncements. The definition is clearly in two parts, but read as whole, it denotes a collective enterprise in which both employers and employees are associated. It cannot exist either by employers or by employees alone. It comes into existence where is relationship between the two, the employers engaged in trade, business or undertaking manufacture or calling and employ workman in any of the capacities mentioned in the latter part of the definition.

The earliest case relating to the interpretation of the word 'Industry' was decided by the Supreme Court in *D. N. Banajree v/s. P.R. Mukerjee*³⁴. The point before the court was whether activities of a municipal corporation would fall within the ambit of 'industry'. The court held that though municipal activity could not be regarded as 'trade or business', it would come within the scope of the expression

'undertaking'. Thus, it was held that even if there be no private enterprise, no profit motive, activities of a municipality would be covered within the scope of 'industry'.

In the next case relating to *Baroda Municipality*³⁵, it was held that branches of municipal work which are analogous to carrying on of trade or business would fall within the definition of industry.

From the above two judgments, it is evident that it is not necessary for an activity to be carried on for profit or to be of commercial nature to come within the scope of 'industry'. It would be sufficient if the activity is analogous to trade or business. Yet another important case related to definition of industry is *the Corporation of the City of Nagpur v/s. It's Employees*³⁶. In this case, the Supreme Court made a distinction between the sovereign and other functions of municipal bodies and held that the latter were analogous to trade or business because these were not regal in nature and the activities were organised and service rendered. The court, therefore, held that the non-sovereign functions of the municipal bodies would come within the definition of 'industry'.

In the case of *Madras Gymkhana Club Employees Union v/s. Gymkhana Club*³⁷, the Supreme Court looked at the issue somewhat differently and held that the activity under consideration, trade or business, is ordinarily organised and it is not necessary that there should be a procurement of capital in the business sense nor the its objective must be profit-making.

In *the State of Bombay v/s. Hospital Mazdoor Sabha*³⁸, the Supreme Court stated that the first part of the definition contains the statutory meaning and the second part is an enlargement of it by including other items in it. The court proceeded to emphasize that the expressions used in the latter part of the definition are not items of 'industry' but are aspects of occupations of employees. The court also

³⁴ 1953-1. LLJ-195.

³⁵ AIR-1957. SC. 110.
³⁶ 1960-LIJ-523
³⁷ 1967-11. L11-720.
³⁸ 1960-11. LLJ-251.

considered profit motive and investment of capital as unessential. In the case of government undertakings, the court asked whether such an undertaking could be run by private individuals. The answer being yes in the case of hospitals, the court held a hospital to be industry as taken though run by government without any profit motive with public funds. In conclusion, the court laid down that an activity systematically or habitually undertaken for the production or distribution of goods or for rendering material services to the community of part of such community with the help of employees is industry.

In a subsequent case, namely, National Union of Commercial Employees v/s. Meher³⁹, which involved the question whether a solicitor's firm would come within the scope of 'industry', the Supreme Court added a new dimension by saying that the association of capital and labour must be direct and essential. According to the court, there was no direct and essential nexus between the service rendered by a solicitor's firm and the contribution made by labour, the latter being only negligible. The court, therefore, ruled that liberal professions like that of a solicitor, advocate, etc. were out of the scope of 'industry' -

In Delhi University v/s. Ramnath,⁴⁰ the Supreme Court held that schools, colleges and other educational institutions would be outside the scope of 'industry' because their aim was imparting knowledge and learning and could not be considered at par with production and distribution of material goods or rendering services.

Similarly, in Madras Gymkhana Club case¹¹, a member club was held to be not industry on the ground that its activities could not be considered analogous to trade or business.

In the case of Safdarjang Hospital v/s. Kuldip Sing Sethi⁴¹¹² the Supreme Court did not agree with the earlier decision in the case of Hospital Mazdoor Sabha and observed that the view taken in that case was rather an extreme view. The test whether an activity can be carried on by private persons was not considered appropriate. It was held that Saidarjang Hospital was run by government of India as part of the functions of Government and it was run as a department of government. Therefore, it could not be said to be an industry. Similarly, it was further issued that a charitable hospital could not be industry.

³⁹ 1962-1. LLJ-241.

⁴⁰ 10. 1963-11. LLJ-335.

⁴¹ 1970-11. LLJ-266.

In view of the differences and deviations in its decisions, the Supreme Court referred this issue to a seven judge bench in the case of Bangalore Water & Sewerage Board v/s. A. Rajjappa⁴² for decision. In this case, the Board opposed the application of the workman filed under Sec. 33C of the Act on the ground that it, being a statutory body, performed regal functions and was, therefore, outside the pale of 'industry'. This contention was not accepted by the court, which, in the words of Justice Krishna Iyer, held as follows:-

- a) 'Industry', as defined in Sec. 2(j), has a wide import;
- b) Whereas systematic activity, organised by cooperation between employers and employees (the direct and substantial element is chimerical) for the production and/or distribution of goods and service calculated to satisfy human wants and wishes, prima facie there is industry in that enterprise. This would exclude religious and spiritual things but include material goods and services geared to celestial bliss, making or processed food on a large scale;
- c) Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint or private or any other sector.
- d) The true focus is functional and the decisive test is the nature of activity with special emphasis on employer-employee relations,
- e) If the organization is trade or business, it does not cease to be so because of philanthropy animating the undertaking,
- f) though Sec. 2(j) uses words of widest amplitude, their meaning cannot be magnified to over-reach itself. Therefore, all organised activity satisfying the triple test (explained in clause (b) above) though not trade or business may still be industry provided the nature of activity bears resemblance to what we find in trade or business.
- g) Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operation,
- h) The consequences of this are that professions, cooperatives, clubs, education institutes, research institutions, charitable projects and other kindred activities fulfilling the triple test would be industry,

⁴² 1978 Lab. I.C. 467.

i) A restricted category of clubs, professions, cooperatives, and small research laboratories may qualify for exemption if substantially no employees are employed except in minimal matters or marginal employees are employed without destroying the no-employee character of the bodies,

j) If, in a pious or altruistic mission, people work, either free or for a small honorarium or like return, mainly drawn by sharing in the purpose or the cause, such as lawyers volunteering to run a free legal service, doctors sewing in their free time in a free medical clinic or ashramites working at the bidding of the holiness, divinity or like central personality and the services are provided free or at nominal cost and those who work are not engaged for remuneration or on the basis of master-servant relationship, then the institution is not industry even if stray servants are hired,

k) Where a complex of activities, some of which qualify for an exemption and others not, or where some of the persons employed are workmen and others not (as in the case of Delhi University), the dominant nature of the services will be the test. The whole undertaking will be industry although those who are not workmen under the Act may not benefit;

l) Notwithstanding the above, sovereign functions strictly defined alone qualify for exemption and not the welfare activities or economic adventures undertaken by government or statutory bodies;

m) Even in departments discharging sovereign functions, if there are units which are industries and those are substantially severable, the same can be regarded as industry;

As a result, the Supreme court over-ruled its decisions given in Safdarjang, Solicitor's, Gymkhana Club, Delhi University and other cases whose rulings run counter to the principles enunciated above and rehabilitated the judgment in the case of Hospital Mazdoor Sabha v/s. State of Bombay.

7. Industrial Dispute

Since the object of the Act is investigation and settlement of industrial disputes, the definition of 'industrial dispute' is obviously of great significance. It means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is

connected with

employment or unemployment or the terms or employment or the conditions of labour, of any person. This definition can be analyzed in three parts;

- a) Factum of dispute,
- b) Parties to the dispute,
- c) Subject matter of the dispute.

Obviously, such a dispute has to be in relation to an establishment or activity which is 'industry', as discussed above.

8. Factum of Dispute

The word 'differences' and 'dispute' used in the definition are not synonymous. A difference may exist long before it assumes the character of a dispute. The difference or the dispute should be definite and of real substance, having an element of persistency, and not merely a vague grievance or an agitation. Such difference or dispute should be in connection with employment, non-employment, and the terms of employment or the conditions of labour, of any person. And finally, the difference or dispute should be such which the employer is in a position to remedy.

It is obvious that an industrial dispute can arise only if the demands raised by the workmen are not conceded by the employer and, vice-versa; the demands raised by him are not acceptable to the workmen. It is not necessary to make a written demand except in the case of public utility services in which a formal strike notice under sec. 22 is a legal requirement. Similarly, there is no laid down procedure for communicating rejection of demands.

An industrial dispute may be an 'economic dispute' or what is called conflict of interests or there may be no economic demand as such and the dispute may relate to interpretation, application or implementation of a subsisting agreement, settlement or an award. Disputes of this type are called 'conflict or rights'.

9. Parties to the Dispute

Though the definition refers to difference, dispute between employers and employees and workmen and workmen, for all practical purposes the

disputes which matter are those between workmen and employers. The difference or dispute should be between a body or class of workmen working in the industry acting collectively. A difference or dispute between one or few workmen, not supported by the workmen as a body or class is not an industrial dispute. Secondly, it is the

community of interest of workmen as a class that imparts the character of an industrial dispute. Indeed, the machinery of the Act is intended to set in motion to settle only those disputes which involve workmen as a body or class. A demand pertaining to an individual workman per se does not constitute an industrial dispute, but it may assume the character of an industrial dispute if it is espoused or supported by a trade union or body of workmen.

By virtue of sec. 2A, which has been added later on to the Act in 1965, as individual dispute concerning discharge, dismissal, retrenchment, or termination only is deemed to be an industrial dispute even though no other workman or union of workmen makes a common cause with such individual workman. This addition has enlarged the definition of 'industrial dispute' for the limited purpose of disputes of individual workmen related only to the four grounds maintained in this section.

10. Subject Matter of Disputes

Not all disputes between an employer and his workmen come within the definition of 'industrial dispute', but only those which are connected with employment, non-employment, terms of employment or with conditions of labour. These matters are specified in the II and III Schedules to the Act. Employment will include, apart from initial appointment, continuity in the job. Disputes concerning non employment would take into their fold disputes of workmen whose services have been terminated or who are not allowed to work. Suspension, being temporary non-employment, would also come within purview of this definition. A dispute may be raised, not only by a trade union, but also by a group of workmen acting together.

What is meant by 'any other person' at the end of the definition? It means a person in the industrial establishment in whose employment, non-employment, terms of employment or conditions of labour, the workmen of that establishment as a class have a community of interest. In the *Workmen of Dimakuchi Tea Estate v/s. Dimakuchi Tea Estate*⁴³ 14, the Supreme Court held that interpretation of the words 'any other person' in the definition would be subject to the following two limitations:-

⁴³ 1958-1. LLJ-500

- i) The dispute must be real so as to be capable of settlement or adjudication whereby one party could give necessary relief to the other party;
- ii) The person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour, the parties to the dispute have a direct and substantial interest.

Amplifying the above, the Supreme court stated in All India Reserve Bank Employees Association v/s. Reserve Bank of India⁴⁴ that the workmen may, for example, raise an industrial dispute that a class of employees, who are not

'workmen' under the Act, should be appointed by promotion form amongst the workmen.

A demand by the employer for compensation for damages or loss of business against the union cannot be regarded as an industrial dispute similarly, a demand for recognition of the trade union by the employer has generally been held to be not an industrial dispute.

9. Wages

The definition has three parts. The first part says that wages means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman. The second part of the definition further extends the scope of 'wages' by including other payments. The third part clarifies what other payments are excluded from the scope of the definition. The definition of 'wages' is, therefore, an exhaustive one.

It is evident from the definition that a workman would be entitled to payment of wages only if he has fulfilled the terms of the contract of employment, both express and implied. Therefore, if he does not go for work on any day or does not complete the work assigned to him or takes part in a strike, he may not be paid wages.

10. Workman

The first important thing to note is that designation of a person is not decisive of the nature of employment. The question will depend upon whether the principal

and main duties carried by him are of a managerial character. If the answer is in

⁴⁴ 1984-I, JJ, 156

negative, then the person would be a workman under the Act even though designated as 'manager'. But if a manager has to do a small part of work, which is manual or clerical, it would not transform him into a 'workman'.

Secondly, a person should be employed for hire or reward to come within the definition. Unless, there is consideration for work done, there cannot be any contract of employment.

Thirdly, as stated by the Supreme court in Dharangdara Chemical Works Ltd., v/s. State of Surashtra⁴⁵ 16, the essential condition of a person employed as 'workman' is that he should be employed in 'industry', that there should be a relationship between him and the employer as between employer and employee as to constitute contract of service. Such a contract is one in which a person agrees to serve another person and to obey his reasonable orders within the scope of duty accepted.

In this connection, a distinction is often made between a 'contract of service' and 'contract for service'. In the former, the employer can direct not only what is to be done but also the manner of doing the same. Whereas in the latter case, the employer can only require what is to be done. If a person has entered into a contract of service, he is an employee or workman but if his contract is for service, he is an independent contractor.

It has been held that a casual workman, a temporary workman, or a probationer and even a Mali employed in 'industry' would fall within the above definition. Likewise, a doctor employed in an industry for rendering medical aid has been held to be a workman as he is employed to do work of technical nature⁴⁶. But the Supreme Court has recently held that a teacher is not a workman even though schools and colleges are industry⁴⁷ 18.

Strikes and Lockouts

Under sec. 2(q) of the Act, 'strike' means cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or accept employment.

⁴⁵ 16. 1957-1. LLJ-477.

⁴⁶ 1978-11. 114-46.

⁴⁷ Miss A Sunderambal v/s. State of Goa (1989-1. LLJ-61).

It is clear from the above definition that strike involves a body of persons acting in combination or in a concerted manner or with common understanding with the purpose of quitting; ceasing or refusing to work or accept employment. Therefore, a strike is essentially a collective refusal, withdrawal or, cessation of work.

Though normally a strike is in connection with some demand against the employer, in the definition given in the Act it is not necessary that such quitting or refusal to work should be in connection with an industrial dispute or for getting certain demands conceded from the employer.

Similarly, the mere fact that the quitting refusal or cessation was for short period of one or two hours only is not relevant. It is, therefore, not material that stoppage or work or withdrawal there from was for few minutes or few hours only.

Likewise, the purpose behind cessation or stoppage of work is also not relevant for deciding whether the same would constitute strike or not.

Refusal to work overtime by a body of workmen acting in combination or under a common understanding would also be strike. Similarly, stopping work collectively even while on paid overtime has been held to be strike. But if the workmen refuse to do additional work which the employer has no right in law to order, such as beyond the statutory limit, it would not be strike even if the element of concert or understanding is there⁴⁸ 19.

Although strike is a recognized weapon of the workmen, courts have always emphasized that it should be used as a last resort when, other avenues for settlement of the industrial disputes have failed. The right to strike is, however, not a fundamental right⁴⁹ 20. Its exercise has, therefore, been regulated by legal provisions.

Sec. 22 of the Industrial Disputes Act deals with strikes and lockouts in public utility services and provides that no person employed therein shall go on strike:

- a) without giving to the employer notice of strike as hereinafter provided, within 6 weeks before strike going on;
- b) within 14 days of giving such notice;
- c) before the expiry of the date of strike specified in the notice;
- d) during the pendency of any conciliation proceedings before conciliation officer and seven days thereafter.

⁴⁸Northbrook Jute Co. Ltd. Vs. Their Workmen (1960-1. LLJ-580.SC).

⁴⁹Radhey Shyam Sharma v/s. Post-Master General. (AIR. 1965. SC. 311).

Similar restrictions also apply to employers of public utility services in the matter of declaring lockout. Sec. 23 deals with prohibition of strikes and lockouts in general and it apply to all establishments, public utilities as well as non-public utilities and provides as under:

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout: a)

 during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

b) during the pendency of proceedings before a Labour Court, Tribunal, National Tribunal and two months after the conclusion of such proceedings;

c) during the pendency of arbitration proceedings before an arbitrator and two months after conclusion of such proceedings where a notification under sec. 10A A) has been issued,

d) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

In addition, sec. 10(3) of the Act empowers the appropriate Government to prohibit continuance of any strike or lockout which is in existence by an order after

reference of the industrial dispute to a Board of Conciliation, Labour Court, Tribunal or National Tribunal for adjudication. Similar order prohibiting a strike or

lockout can be by government under sec. 10A (4A) if the industrial dispute has been referred by it to an arbitrator and a notification has been issued under sec. 10A (3A).

A strike or lockout is illegal under Sec. 24 if it is declared or commenced in contravention of sections 22 or 23 or is continued in violation of orders issued under sections 10(3) or 10A (4A) of the Act. However, a strike declared in consequence of an illegal lockout or lockout declared in consequence of an illegal strike is not illegal.

A strike, if not illegal, does not put an end to the relationship of employer and employee notwithstanding in the certified standing orders providing for automatic termination for absence without leave. However, the management may take disciplinary action against the workmen under standing orders because taking part in an illegal strike amounts to misconduct.

12. Strike and Wages

The general rule is 'no-work no-pay'. However, in *Churakulam Tea Estate v/s. Its Workmen*⁵⁰, the Supreme Court held that if a strike is legal and justified, workmen will be entitled to wages for the strike period.

Summary

In this unit important definitions relating to Industrial Disputes Act have been explained except those relating to lay off and retrenchment and the provisions relating to strikes and lockouts. A clear understanding of the definitions is essential for proper appreciation of the scheme of the Act, Strike is now accepted as part of the collective bargaining process which is regarded as the best means of resolution of industrial disputes and developing better relationship between industrial partners. A lockout is an antithesis of strike and, therefore, of equal importance from the employer's point of view Strike and lockouts has, therefore, an important role in establishing proper industrial relations.

Self Assessment Test

Answer the following questions briefly so as to assess to what extent you have understood and absorbed the subjects discussed in this unit.

- (a) Explain the jurisdiction of the Central Government under the Industrial Disputes Act, 1947. What is meant by 'an industry carried on by or under the authority of the Act'?
- (b) Discuss the definition of 'industry' with reference to the judgments of Supreme Court delivered from time to time.
- (c) What are the essential ingredients of an Industrial Disputes? Also distinguish between an 'economic dispute' and a 'dispute of rights'.
- (d) Explain the provisions relating strike and lockouts as contained in the Industrial Disputes Act, 1947. Under what stances can the workmen have a valid claim to wages for the strike period?
- (e) Write short notes on 'Wage', 'Workman' and 'Lockout'.

Key words

i) Appropriate Government:

It is device for demarcating the jurisdiction of the Central and state governments under law whose implementation is the joint responsibility of the central and state governments.

ii) 'Industry':

Any activity which satisfies the triple test of systematic activity, organised by cooperation between employers and employees and for production and or distribution of goods and services calculated to satisfy human wants and wishes is, 'industry'.

iii) Industrial Dispute:

Industrial dispute refers to all differences and disputes in industry which bears upon the relationship of employer and employees concerning the terms of employment and conditions of labour.

iv) Retrenchment:

'Niceties and Semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except cases excepted in the definition".(21)

v) Strike :

"Strike is a simultaneous cessation of work on the part of workmen".

vi) Wage :

Wage is the consideration or recompense paid by the employer to his workers for the work done by them.

vii) Workman

:

Worker and employee are often used synonymously to refer to a person agreeing to work for another, under his direction and control, for wages or salary.

Abbreviations used

a) ~~' t he A ct '~~ . The Industrial Disputes Act, 1947.

b) Sec. Section.

c) S.C. Supreme Court.

- d) LLJ. Labour Law Journal.
- e) Lab. I.C. Labour & Industrial Cases. f)AIR All India Reporter.

Suggested Readings

1. Law Relating to Industrial Disputes by O.P.Malhotra.
2. Industrial Law by P.L. Malik
3. Labour Laws a Supervisor Should know by B.R. Seth.
4. Labour Law Journal.

UNIT- 12

Industrial Relations Legislations - Part-II (Industrial Disputes Act, 1947)

Objectives:

After going through this unit you should be able to understand about the provisions of lay off, retrenchment and closure as enshrined in the Industrial Dispute Act, 1947.

STRUCTUR

E

Introduction

Definitions

Compensations on Transfer of undertakings

Retrenchment and Closure - Special Provisions relating to establishments

Covered by Chapter

VB. Summary

Self Assessment Text

Key words

Suggested Readings

Introducti

on

In this unit, some more definitions contained in the Industrial Disputes 1947 Act, i.e., lay-off, retrenchment and closure are deal with and the provisions relating to payment of compensation for lay-off, retrenchment, transfer and closure of undertakings are discussed elaborately. The consequences of non-compliance with the legal provisions are also discussed in this unit.

Definitions

Lay-off is defined in sec. 2 (kkk) of the Act as “the failure, refusal or inability of an employer on account of shortage of coal, power or raw-materials or the accumulation or stocks or the breakdown of machinery or natural calamity or any other connected reason to give employment to a workman whose name is borne on the muster roll of his industrial establishment and who has not been retrenched. Explanation regarding the above definitions says that a workman, who presents himself for work at the appointed time during working hours and is not given work within two hours-of his reporting, deemed to have been laid off for that day.

It is further provided that if the workman, instead of being given work in the first half of the shift, is asked to present himself during the second-half of the shift and it then given employment, he shall be deemed to have been laid-off for only one-half of the shift of that day. However, if he presents himself in the second half of the shift again and is yet not given employment, then he shall not be deemed to have been laid off for the second half of the shift and shall be entitled to full wages and dearness allowance for the second half of the shift.

The explanation with its two provisos merely lay down the circumstances in which lay-off comes about and do not limit it to any period of time. It does not affect the quality of lay-off which can only be for the reasons given in the main definition.

Lay-off is thus temporary unemployment of the workmen. Under the general law, the employer will be free to dispense with the services of the workmen in the circumstances mentioned in the definition. But the Act requires him not to lay off the workmen and has to that extent, abridged the powers of the employers.

The provisions contained in sections 25C to 25E of the Act in regard to lay-off do not apply to industrial establishments;

- a) in which less than fifty workmen on an average per working day have been employed in the preceding twelve months;
- b) which are seasonal in character or in which work is carried on intermittently,
- c) to which provisions of Chapter VB of this Act apply.

An industrial establishment, as regard provisions relating to lay-off, means-

- a) a ‘factory’ as defined in the Factories Act, 1948;
- b) a ‘mine’ as defined in the Mines Act, 1952;
- c) a ‘plantation’ as defined in the Plantation Labour Act, 1951.

Thus, the provisions relating to lay-off do not apply to industrial establishments

other than factories, mines and plantations.

Under Sec. 25C of the Act, a workman would be entitled to lay-off compensation equal to fifty percent of the total of his basic wage and dearness allowance for all the days during which he is laid off except weekly holidays provided he satisfies the following conditions:-

- a) his name is borne on the muster roll of the industrial establishment and he has not been retrenched,
- b) he is not a 'badli' or casual workman,
and
- c) he has completed one year of continuous service in the industrial establishment.

Under sec. 25E of the Act, a workman is not entitled to payment of lay-off compensation in the following circumstances:

- a) when he refused to accept an alternative employment in the same establishment or in another establishment belonging to same employer and situated in the same town or village or within a radius of five miles from the establishment in which he is employed if the alternative employment in the opinion of the employer, does not call for any special skill or experience and can be done by the workman and it carries the same wages which the workman would have been paid in his original employment.
- b) If the workman does not present himself for work at the appointed time in the establishment in which he is employed,
- c) If the lay-off has been due to a strike or go-slow on the part of the workmen in another section of the establishment.

Provision to. Sec. 25C lays down that if a workman is laid off for more than forty-five days in a period of twelve months, no compensation shall be payable after the expiry of forty five days if there is an agreement to that effect between the

employer and the workman. It further provides that it shall be lawful for the employer in such situation to retrench the workman at any time after the expiry of forty-five days of lay-off and the lay-off compensation paid during the preceding twelve months may be set-off against the retrenchment compensation.

One of the conditions for being entitled to lay-off compensation for a workman is that he must report for work every day at the appointed time. There

should therefore be evidence that the workman has reported for work. Sec. 25E of the Act accordingly casts statutory responsibility on the employer of the industrial establishment to maintain a muster-roll to provide for marking of attendance by the workmen who report for work.

The provisions relating to lay-off applicable to establishments covered by Chapter VB of the Act, in which not less than one hundred workmen were employed on an average per working day during the preceding twelve months, are different and are explained in the following paras. However, before that is done, it must be mentioned that definition of 'appropriate Government' for the purpose of Chapter VB (including for retrenchment and closure of industrial establishments) has been separately defined in sec. 25L of the Act and is as under:-

“Notwithstanding anything contained in sub-clause (ii) of clause (a) of sec. 2,- (i) in relation to any company in which not less than fifty one percent share of the paid up capital is held by the central government.

(ii) in relation to any corporation (not being a corporation referred in sub-clause (i) of clause (a) of Sec. 2) established by an Act of Parliament, The Central government shall be the appropriate Government.

Thus all companies belonging to the central Government and all corporations created by or under a central law fall in the jurisdiction of central government for the purpose of chapter VB, of the Act even though for investigation and settlement of the industrial disputes these may come Within that jurisdiction of the state government, i.e., Bhilai Steel Plant, establishments of nuclear Power Corporation, Vayudoot Ltd., etc.

Under sec. 25M, no workmen can be laid off except with the written previous permission of the appropriate Government or an authority specified by it unless the lay-off is due to shortage of, power or due to natural calamity Or in the case of a mine, due to fire, excess of inflammable gas, flood or explosion.

An application for permission has to be made in the prescribed manner clearly stating reasons for the same and a copy of the same has to be served simultaneously on the concerned workmen.

If workmen have been laid off in a mine due to fire, flood, explosion; etc., the employer of the mine is required to make an application within thirty days from the commencement of lay off for permission to continue the same.

An application for lay off, the prescribed authority has to give its days either granting or not granting permission. The decision of tike prescribed authority is final and binding on the parties. In case no decision is communicated to the parties within the above period, permission shall be deemed to have been

granted on the expiry of sixty days period. The Government has the power to review its decision

Suo Moto and also to refer the issue to an industrial tribunal for decision, which is required to give the same within one month.

If an employer covered by chapter VB of the Act lays off workmen without making an application for permission or after permission has been refused to him, all the workmen laid off shall be entitled to all the benefits under the law for the time being in force as if they have not been laid off.

However, the above provisions may not be applied by the appropriate Government for such period it may specify in the order if it is satisfied that owing to exceptional circumstances such as an accident in the establishment or death of the employer or the like, it is necessary so to do.

If, however, an alternative job is offered to a workman by his employer, which does not call for any special skill or experience, either in the establishment or in another establishment in the same town/village or within such distance as does not involve undue hardship to the work men and the same wages are offered for the alternative job, a workman shall not be deemed to have been laid off.

When permission for lay-off is granted or is deemed to have been granted, the rate of compensation for lay off is the same as for establishments not covered by chapter VB i.e., fifty percent of the total basic wages and dearness allowance.

Retrenchment According to sec. 2(00) of the Act, retrenchment means:- termination by the employer of the service of a workman for any period what so ever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- a) Voluntary retirement of the workman; or
- b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of non-renewal of the contract of employment... on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- c) Termination of the service of workman on the ground of continued ill-health.

Initially it was held⁵¹ that retrenchment connotes in its ordinary acceptations that the business itself is being continued but a portion of the labour force is discharged as surplus age; that the termination of services of all the workmen as a result of the closure of business cannot be properly described as retrenchment. However, later on the Supreme court shifted the emphasis on the words in the definition

‘termination of the service of a workman by the employer for any reason

whatsoever’ and held that every termination of service of a workman, whether being surplus or otherwise, would be retrenchment, unless it came within one of the exceptions.

Clause (bb) in the above definition, which was inserted in 1984, has considerably softened the impact of the Supreme Court decisions. An analysis of the definition would show that the initiative for retrenchment has to come from the employer and the motive for reduction of the labour force has to be economy. Therefore, when a workman is removed from service as a measure of disciplinary action, such termination is excluded from retrenchment because the workman has, in a way, invited his removal from service by committing the misconduct. Similarly, voluntary retirement is excluded from the definition because it is due to an act of the workman himself. Same is the position in case of superannuation because the termination is in terms of the contract of service, which may have been either voluntarily entered into by the workman or might be legally binding on the parties, as in the case of settlement award or certified standing orders. Lastly, termination of the service of a workman on ground of continued ill-health is excluded from the definition because the workman is unfit to discharge the duties which he had agreed to perform. As the Supreme Court put it in *Bangalore Woolen, Cotton & Silk Mills Ltd., v/s. Its Workmen*⁵², “Where, therefore, a workman is discharged on the ground of continued ill-health, it is because he was unfit to discharge the services which he had undertaken to render and therefore it had really come to an end itself.” It is therefore evident that in this also, the termination is not because the workman is surplus or because of the desire of the employer to economies, but because of the inability of the workman to comply with his part of the agreed contract. Hence, it is not treated as retrenchment.

⁵¹ In the case of Pipraich Sugar Mills Ltd. 1957-1. LLI-235.
SC.

⁵² 1962-I. LLJ-213.

Compensation for Retrenchment- Payment of compensation for retrenchment is dealt with in sec. 25F of the Act. The said section provides as under:-

Conditions Precedent to Retrenchment of Workmen

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every complete year of continuous service or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official gazette.

It is clear from the title of the section that the conditions incorporated in it are to precede the act of retrenchment. It flows that the requirement of paying compensation is mandatory for valid retrenchment of workmen. Non-compliance with the same will render retrenchment invalid and inoperative⁵³. The Supreme Court has also held that if retrenchment is found to be illegal and invalid for non-compliance with the mandatory requirements of sec. 25F, it is imperative for the tribunal to award the relief of reinstatement to the workman with full back wages and it has no discretion to award any other relief⁵⁴. This has been slightly relaxed subsequently and courts have held that where reinstatement is physically impossible (the undertaking having been closed down in the meantime) or would not be otherwise desirable/feasible for any reason, suitable monetary relief may be given. In addition to the above, it has also been held that the requirement of notice to the appropriate Government or the prescribed authority under clause (c) of Sec.

25F is not mandatory but only directory. Accordingly, if notice to the government authority does not precede but follows the retrenchment, it will not vitiate the same⁵⁵. Apparently, the reason is that this clause is designed to keep the authorities concerned informed about employment situation or trends in the industry and is

⁵³ State of Bombay v/s. hospital Mazdoor Sabha, 1960-1. LLI-251. SC.

⁵⁴ Mohan Lal v/s. B.E.L. 1981-Lab. I.C. 815. SC.

⁵⁵ Union of Journalists v/s. State of Bombay. 1964-1. LLJ-351.
SC.

therefore only of statistical importance and does not provide any direct relief to workmen.

Compensation on Transfer Undertakings

In para 12.3 above, it was explained that retrenchment can take place only in a live industry and, therefore, if the business itself is closed down, the resultant termination of service of workmen would not be retrenchment and the workmen would not be entitled to any compensation. Same would be the position in the case of termination of service of workmen due to transfer of the undertaking by one employer to another. To deal with the above situation, created by judgment of the Supreme Court, the law was amended in the year 1957 to provide for payment of compensation in the event of transfer and closure of undertakings by inserting sections 25 FF, 25 FFF in the Act.

Section 25FF provides that in case the ownership of any undertaking is transferred from one employer to another, whether by operation of law or otherwise, the workmen employed in the establishment who have put in minimum one year of continuous service before the transfer of the undertaking, would be deemed to have been retrenched and paid compensation on the scale prescribed in sec. 25P of the Act; that is fifteen days wages for every completed year of continuous service or part thereof in excess of six months.

But the workmen of the transferred undertaking shall not be entitled to compensation if the continuity of their service is not disturbed by such transfer. This will happen if the following conditions are satisfied:

- i) The service of the workmen is interrupted by such transfer,
- ii) The terms and conditions of service applicable to the workmen after the transfer of the undertaking are not in any way less favorable to them compared to their conditions prior to such transfer,
- iii) The new employer, under the terms of the transfer, is legally liable to pay to the workmen, in the event of their retrenchment, compensation as if their service has been continuous and not interrupted by the transfer.

Compensation on Closure of Undertaking

With a view to reducing the hardships caused to workmen on closure of undertakings, provision was made in sec 25F11; of the Act for payment of compensation to workmen on the lines of sec. 25F of the

Act as if the workmen

have been retrenched. In both the situations, whether the termination is due to redundancy or closure, the workmen are thrown out of their jobs for no fault on their part and have to face difficulties. The Parliament, therefore, considered it reasonable on grounds of social justice that the workmen should be paid compensation to maintain themselves and their families during period of their involuntary unemployment caused by closure of industrial undertakings.

The amount of compensation shall, however, be limited to average pay not exceeding three months if the closure of an undertaking is on account of circumstances beyond the control of the employer. However, in the following cases, the closure of an undertaking is not considered on account of circumstances beyond the control of the employer:

- i) Financial difficulties, including financial losses;
- ii) Accumulation of indisposed stocks;
- iii) expiry of the period of lease or license granted to it;
- iv) in case the undertaking is engaged in mining operations, exhaustion of minerals in the area in which such operations are carried on.

In the case of mining operations, it is further provided that if the undertaking is closed down by reasons merely of the exhaustion of minerals, the workmen will not be entitled to any notice or compensation in accordance with the provisions of sec. 25F of the Act if,

- i) they are provided with alternative employment by the employer on the same terms and conditions including remuneration,
- ii) there is no interruption in their employment,
- iii) the employer is legally liable to pay to the workmen, in the event of their retrenchment, on the basis of their total service, including service rendered in their previous employment, on the basis that their service has been continuous.

Another exception to the norms concerning payment of closure compensation relates to construction of bridges, canals, dams, roads and other construction works. It provides that if such works are closed down within two years from the date of their setting up and such closure is on account of completion of work, no compensation would be payable to workmen.

An important point of difference between retrenchment compensation payable under sec. 25F and compensation payable to workmen in the case of transfer and closure of undertakings under sections 25FF and 25FFF is that non-payment of

compensation in the former case before or at the time of retrenchment would

render the action of the employer as ineffective and void, entitling the workmen to be reinstated with continuity of service, in the latter case, the transfer and closure of the undertaking is not dependent on prior payment of compensation. The same can be paid after transfer/closure of the undertaking without affecting the legality of the action taken.

Retrenchment and Closure

Special Provisions relating to establishments Covered by chapter VB

As in the case of lay-off (discussed in para above), industrial establishments employing on an average not less than one hundred workmen per working day in the preceding twelve months are only covered by Chapter VB of the act and the employers in relation to such establishments are required to obtain prior permission in writing from the specified authority both for effecting retrenchment of any workman and also for closure of the undertaking. In case permission is not applied for or is not granted, the retrenchment/closure would be illegal and the workmen concerned entitled to benefits under all the relevant labour laws as if there has been no retrenchment/closure. But if the specified authority fails to communicate its order granting or refusing to grant permission for retrenchment or closure, as the case may be, within sixty days from the date of making of the application, the permission applied for shall be deemed to have been given on the expiry of the prescribed period of sixty days and the employer concerned will be free to proceed with process of retrenchment/closure of his undertaking after complying with the conditions laid down in sec. 25F of the Act, that is by-

- i) giving notice of one month or wages in lieu thereof;
 - ii) payment of compensation at the rate of 15 days average pay for completed year of continuous service; and
 - iii) giving notice to the appropriate Government or the prescribed authority.
- It is not left to the will or discretion of an employer to decide whom to retrench. If it becomes necessary for an employer to do so he has ordinarily to follow the rule of 'last-come first-go'. A departure from the above may be made for valid and justifiable grounds. However, if the action of the employer concerned is challenged, the burden of providing the existence of valid and justified grounds will lie on him.

Lastly, if an employer, who has retrenched workmen, proposes to take into his employment some persons, he is legally required to give the retrenched workmen, who are citizens of India, an opportunity for re-employment and to give them preference if they offer themselves for such re-employment. Under the rules, each of the retrenched workmen has to be intimated by registered post by the employer about the existence of the vacancies.

It may be mentioned in this connection that forms have been prescribed under the Industrial Dispute Rules for making applications for permission for lay-off, retrenchment and closure of undertakings. Application for permission has therefore; to be made in the relevant form in triplicate and delivered personally to the specified authority or sent by registered post acknowledgement due. The appropriate Government or the specified authority may call for such further information as may be considered necessary for arriving at a decision; Failure to furnish the required information may result in rejection of the application.

Summary

In this unit the definitions of lay-off, retrenchment and closure are elaborately explained. Besides, the compensation payable to worker affected by such lay-off retrenchments and closure and the conditions subject to which such compensation is to be paid are also discussed.

Self-Assessment Test

Answer the following questions, in about two pages each, to know for your-self to what extent you have absorbed the topics discussed in this unit.

- (i) What is 'lay-off under the Industrial Disputes Act, 1947 and under what circumstances a workman is entitled to receive lay-off compensation?
- (ii) Give the definition of 'Retrenchment' and explain the implications and scope of the various exceptions to the definition.
- (iii) What are the conditions precedents to retrenchment? What consequences can be fall an employer for his failure to comply with the same?
- (iv) Explain the circumstances in which transfer/closure compensation may not be paid to workmen concerned.

(v) Write short notes on Closure, Continuous service and definition of 'appropriate Government' in section 2(a) and Chapter VI3 of the Industrial Disputes Act, 1947.

Key -words

(i) Lay-off:

Lay-off is temporary suspension of work by the employers for reasons mentioned in the definition during which the contract of employment remains suspended. Such suspension of work is due to exigencies of trade and is independent of any action or inaction on the part of the workmen.

(ii) Retrenchment:

Termination of the services of a workman by his employer for any reason whatsoever except as punishment for misconduct, voluntary retirement, superannuation, non-renewal of contract or termination according to stipulation in the contract and on account of continued ill-health.

(iii) Closure:

Permanent closing down of a place of employment or part thereof. For the purpose of the definition, it is not necessary that the whole of the establishment should be closed down. There may be a partial closure of an establishment also.

(iv) Continuous Service:

Compensation for lay-off and retrenchment is payable to workmen who have put in not less than one year's continuous service. The same has been defined in sec. 25B of the Act as under:-

(1) "A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or on account of a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.

(2) If a workman is not in continuous service within the meaning of the above clause, he shall be deemed to be in continuous service under an employer-

a) for a period of one year, if the workman, during the period

of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- i) one hundred and ninety days in the case of workman employed below ground in a mine; and
- ii) two hundred and forty days, in any other case;
- b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under an employer for not less than
 - i) ninety five days, in the case of a workman employed below ground in a mine; and
 - ii) one hundred and twenty days, in any other case.

For the purpose of clause (b) above, the days on which a workman was laid-off, was on leave with full wages, the days of absence on account of disablement caused by accident arising out and in the course of employment and the period of maternity leave in the case female employees are to be treated as day actually worked for the purpose of calculating continuous service.

Suggested Readings

- (a) Law Relating to Industrial Disputes by O.P. Malhotra.
- (b) Industrial Law by P.L. Malik.
- (c) 'Labour Laws a Supervisor Should know' by B.R. Seth.
- (d) Labour Law Journal.

UNIT- 13

Industrial Relations Legislations - Part-III (Industrial Disputes Act, 1947)

Objectives

- After going through this unit you should be able to understand about the machineries given in the Industrial Disputes Act, 1947 for prevention and settlement of Industrial Disputes.
- Proceedings before an Arbitrator, Labour Court, Tribunal Commencement.

STRUCTURE:

Introduction

Definitions

Settlements - on whom binding

Conciliation Proceeding Commencement

Proceedings before an Arbitrator, Labour Court, Tribunal Commencement

Summary

Self-Assessment Test

Key words

Suggested Readings.

Introduction

on

As the preamble of the Industrial Disputes Act, 1947 indicates, the primary purpose of the Act has been to provide for investigation and settlement of industrial disputes. The object of this unit is to explain the various authorities provided for under the Act for prevention and settlement of industrial disputes, the power of the 'appropriate Government' to refer disputes which are not settled as a result of collective bargaining or conciliation proceedings and which the parties are not willing to submit for arbitration, for

adjudication to the labour judiciary

provided for under the Act to secure their final determination and other related matters.

Definitions

For prevention of industrial disputes, a bipartite committee called works committee, consisting of equal representatives of the employer and the workmen employed in the establishment has been provided for (sec. 3). Its function is to promote measures for securing and preserving amity and good relations between the employer and the workmen. Towards this end, a works committee is expected to make efforts to reduce differences between an employer and his workmen at the initial stage itself, thereby preventing them from assuming serious dimensions. Thus, the focus of a works committee has to be on elimination of day to day irritants, differences and possible, misunderstanding that may arise in the course of daily work, but it is not a substitute for or a rival body for replacing the trade unions. As the Supreme Court put it, "Works committee is not intended to supplant or supersede the unions for the purpose of collective bargaining.....Their task is to smooth away frictions that may arise between the workmen and the management in day today work"⁵⁶.

Unfortunately, works committees are not very popular and have not been success except in a few cases. This has primarily been because of the apathy, and in some cases outright hostility, of trade unions towards works committees, absence of demarcation between the area of functioning of trade unions and works committees and the feeling among employers in general that these committees are an unnecessary imposition on them.

To improve the functioning and effectiveness of the works committees, the National Commission on Labour recommended the following measures :-

- (a) a more responsive attitude on the part of management;
- (b) adequate support from unions;
- (c) proper appreciation of the scope and functions of the works committees;
- (d) whole-hearted implementation of the recommendations of the - works committees; and

⁵⁶North Brook Jute Co. v/s. Their workmen 1960-1.

(e) proper coordination of the functions of the multiple bipartite institutions at the plant level⁵⁷.

However, the functioning of works committees in general has not improved as no action has been taken by the government to remove the deficiencies observed in their functioning over the last four decades.

The most important and widely used method for settlement of industrial disputes is conciliation. The Conciliation or mediation proceedings may be undertaken under the Act by a conciliation officer or Board of Conciliation. The former is public servant appointed by the 'appropriate Government' on a regular basis with defined jurisdiction. The Board of Conciliation is an ad-hoc body, consisting of two or more persons with an independent chairman, which may be constituted as and when considered necessary by the 'appropriate Government'. The function of both the conciliation officer and the Board of Conciliation is the same, i.e., to mediate and promote settlement of industrial disputes.

However, Boards of Conciliation, as an authority for settlement of industrial disputes, are on paper only and have rarely been constituted. Therefore, for all practical purposes, the conciliation function is being performed only in the conciliation officers being appointed by the Central and the state governments in their respective jurisdictions.

Till 1956, the Industrial Disputes Act recognized only a settlement arrived at in the course of conciliation proceedings. This hampered the growth of collective bargaining as a settlement arrived at between the parties without the aid of conciliation machinery was not given legal recognition. The Act was, therefore, amended in that year and now the definition of 'settlement' includes both a conciliation settlement as well as a Settlement arrived at otherwise than in the course of Conciliation proceedings. Conciliation is compulsory in the case of public utility services when a notice of Strike or lockout has been given and the conciliation officer has no discretion in the matter. However, in the case of non- public utility services and in the case of public utility services when notice of strike/lockout is not given it is left to the conciliation officer to decide whether to intervene or not.

To bring about a settlement, the conciliation officer is required to investigate the matter without delay and do all such things as he may consider necessary to bring

⁵⁷ Para 24.5 of the Report page 345.

about a fair and amicable agreement between the parties. He has no powers to force the parties to come to an agreement. The conciliation officer has to basically rely upon his knowledge, repetition and use the gentle art of persuasion to bring about an understanding between the parties. That is probably the reason the monograph on 'Conciliation' published by the international Labour organization calls it 'the process of peace-making.'

If a settlement is arrived at as a result of the conciliation proceedings initiated by him, the conciliation officer has to send a report to the appropriate Government along with a copy of memorandum of settlement duly signed by the parties in the prescribed manner. In case no settlement has been possible despite efforts made, the conciliation officer has to send a full report to the government indicating the steps taken by him for ascertaining the facts and other circumstances relating to the dispute and for bringing about a settlement thereof and the reasons on account of which a settlement could not be arrived. It may be mentioned that industrial disputes are raised by the workmen, including their trade unions, and the employers before the conciliation officers. The Government has no powers under the Act to compel the parties to approach the conciliation officer for settlement of their dispute except the requirement of notice of strike or lockout in the case of public utility services under sec. 22 of the Act. Government can however, refer an industrial dispute to a Board of Conciliator.

It may be mentioned that the Act also provides for constitution of a 'Court of Inquiry' as one of the authorities "for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. Such a court of inquiry may consist of one or more independent persons. If the number of persons constituting the court is two or more, one of them has to be appointed by the government as the chairman of the court of inquiry. A court of inquiry is only an investigating authority and has no powers to bring about a settlement of the dispute. As a result, like Board of Conciliation, it has not been a popular authority at all and the provision regarding constitution of court of enquiry has also not been made use of except in some rare cases.

On consideration of the report of conciliation, discussed in para above, if the appropriate Government is satisfied that the industrial dispute should be referred to a Labour Court, Tribunal or National Tribunal for adjudication; it may make a reference to one of the above authorities. Government has the powers under the

Act to make a reference of an industrial dispute suo-moto even though no conciliation proceedings have been held or report thereof is not received. Industrial disputes relating to any matter covered by the Second Schedule to the Act are normally referred to a Labour Court and those in the Third Schedule to an Industrial Tribunal though, under the Act, any matter covered by the Second Schedule can also be referred to an industrial tribunal. Similarly, if an industrial dispute relates to any matter in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may refer the same to a labour court.

An industrial dispute, which involves a question of national importance or is such in which industrial establishments situated in more than one state are likely to be interested in, or affected by, may be referred to a National Industrial Tribunal. A reference to the National Industrial Tribunal can be made only by the central government, even when the establishments concerned fall in the jurisdiction of the state governments. Once a reference of an industrial dispute, in respect of which the Central government is not the appropriate Government, has been made to National Industrial Tribunal, then any reference in the Act to 'appropriate Government' in relation to such dispute has to be constructed as a reference to the Central Government.

Further, after an industrial dispute has been referred to a National Industrial Tribunal by the Central government, the 'appropriate Government' cannot refer the same dispute to a labour court or industrial tribunal and in case any such reference already pending before either the labour court or the industrial tribunal, the same shall be deemed to have been quashed.

The Act also permits employer and his workmen to refer, by agreement, an industrial dispute to a mutually acceptable arbitrator before the same has been referred by the appropriate government to a labour court or tribunal for adjudication. Alternately, the parties may agree for arbitration of an industrial dispute by the presiding officer of a labour court or industrial tribunal. In this connection, it may be added that though Chapter II of the Act dealing with "Authorities under the Act" does not mention an arbitrator as one of the authorities for settlement of industrial disputes, the Supreme Court held in the case of Rohtas Industries Ltd.⁵⁸ as under :-

⁵⁸1987-1.I. SSC-588.

‘It is legitimate to regard such an arbitrator now as a part of the methodology of the sovereigns’ dispensation of justice, thus falling within the rainbow of statutory tribunals amenable to judicial review.’

Therefore, an arbitrator appointed by the parties to decide their industrial dispute under the Act has to be deemed as an authority under the Act, notwithstanding the omission in Chapter II of the Act. Accordingly, the decision (award) of the arbitrator will also be liable to be assailed before the concerned High Court under Article 226 and/or 227 of the Constitution.

Finally, though the government policy over the years has consistently been to encourage settlement of industrial disputes by voluntary arbitration, it is not popular and a very small number of industrial disputes are settled by arbitration.

The disputing parties may also apply in the prescribed manner to the appropriate government for reference of the industrial disputes to a labour court or industrial tribunal for adjudication Sec 10 (2). Such a request may be made by the parties either jointly or separately. In case, the appropriate government is satisfied that the persons making such an application represent the majority of each party. It is bound to make the reference as requested by the parties.

By virtue of an amendment made to the Industrial Disputes Act in 1984, the appropriate government has been empowered to specify in the order of reference the period within which the labour court or the tribunal shall submit its award to the government. It has also been provided that the period for submission of an award in the case of industrial dispute relating to an individual workman shall not exceed three months. The period specified by the appropriate government may, however, be extended by the court/tribunal at the request of the parties. The court/tribunal may also extend the period, if considered necessary and for reasons to be recorded in writing. By way of precaution, it is also provided that no proceeding before a labour court or tribunal shall lapse merely because the same could not be completed within the specified time limit.

Every award given by a labour court, tribunal or national tribunal is required to be published within thirty days of its receipt by the appropriate government. The award so published is final and there is no right of appeal against it under the Act. However, any of the parties may challenge the same by way of a writ petition before the appropriate High Court under article 226 and/or 227 of the Constitution. An award may also be assailed before the Supreme Court under Article 32 or by way of special leave petition under Article 136 of the

constitution.

An award, including an award given by an arbitrator, becomes enforceable on the expiry of thirty days from the date of its publication. But there is an exception concerning awards given by labour court or industrial tribunal to which the appropriate government is a party and in the case of awards given by National Tribunal. The exception is that if the government is of the opinion that it shall not be expedient to give effect to the whole or any part of the award on public grounds affecting national economy or social justice, a notification may be issued by the appropriate/central government declaring that the award shall not become enforceable on the expiry of thirty days.

After a declaration as above has been made, the government concerned may make an order within ninety days from the date of publication of the award or rejecting or modifying the award. Thereafter, it has to place the matter, on the first available opportunity, before the legislature of the state or the Parliament, as the case may be. The award, as rejected or modified, shall come into force on the expiry of fifteen days from the date it was placed before the legislature/Parliament. In case, no order rejecting or modifying an award is passed by government, the award, as originally published, shall become enforceable on the expiry of ninety days from the date of the notification, referred to in the preceding para.

Settlements - on whom binding

A mutual settlement, which is arrived at without the aid of the conciliation machinery, is binding on the parties to the settlement. Similarly, an arbitration award is also normally binding on the parties to reference only. But a conciliation settlement, an award of labour court, tribunal, national industrial tribunal and an Award of an arbitrator when a notification under sec. 10A (3A) of the Act has been issued, are binding on:-

- a) All parties to the dispute,
- b) all other parties summoned to appear in the proceedings as parties to the dispute unless the authority concerned records its opinion that they were summoned without proper cause,
- c) in the case of an employer, his heirs, successors, or assigns in respect of the establishment to which the dispute relates, and

d) in the case of workmen, on all those who were employed in the establishment and those who become employed subsequently. A notification under sec. 10A (3A) of the Act is issued by the appropriate government when it is satisfied that the persons making the reference represent the majority of each party. Once the above notification has been issued, the employers and workmen, who are not parties to the arbitration agreement but are concerned L. the industrial dispute, are to be given by the arbitrator an opportunity of presenting their case before him.

A settlement comes into operation on such date as may be agreed upon by the parties. If no date is agreed upon by the parties or the settlement is silent in this regard, then the settlement will come into operation on the date it is signed by the parties. The parties are free to decide the period of operation of the settlement. However, if no period is agreed upon and mentioned in the settlement, then it shall be binding for a period of six months from the date it is signed by the parties. The settlement shall continue to be binding even after expiry of the period of six months or the mutually agreed period till it is terminated by notice in writing by one of the parties and a period of two months has expired.

The normal life of an award is one year from the date it becomes enforceable. This does not, however, apply to awards which either do not require implementation or have to be implemented forthwith. The awards which impose continuing or long-term obligations, may be extended beyond the period of one year to a maximum period of three years. The period of extension at any one time shall not, however, exceed one year. As in the case of settlements, an award shall also continue to be binding on the parties even after expiry of its normal/extended life until expiry of two months from the date a notice is given by one of the parties intimating the other party/ parties of its intention to terminate the award.

Both in the case of a settlement as well as an award, a notice of termination shall be valid and legally effective only if it is given by a party representing the majority of persons bound by the settlement or the award, as the case may be.

Conciliation Proceedings - Commencement

In the case of public utility services, conciliation proceedings are deemed to have commenced on the day on which a notice of strike or lockout is received by the conciliation officer. The Act is, however, silent regarding commencement of conciliation proceedings in non-public utility services and in the case of public utility in which a notice of strike/ lockout is not given. However, under Rule 10 of the Industrial Dispute Central Rules, conciliation 'proceedings shall commence in the case of non-public-utility services from the date specified by the conciliation officer in the notice given by him in writing to the parties intimating his intention to hold conciliation proceedings in the industrial dispute. However, both the Act and the Rules are silent regarding commencement of the conciliation proceedings in the case of public utility services in which notice of strike/lockout is not given. It is felt that conciliation proceedings in their case will also commence from the date the conciliation officer intimates the parties of his intention to start the conciliation proceedings, as in the case of non-public utility services. Conciliation proceedings are deemed to conclude :-

- a) When a settlement is arrived at and a memorandum of settlement is signed by the parties in the prescribed manner;
- b) In the event of failure of 'conciliation proceedings, when the report of the conciliation officer is received by the appropriate government or when the report of Board of Conciliation is published;
- c) when the dispute is referred by the appropriate government for adjudication during the pendency of conciliation proceeding..
- d)

Proceedings before an Arbitrator, Labour Court, Tribunal - Commencement

As regard proceedings before an arbitrator, a labour court or tribunal, proceedings commence on the date of reference for arbitration or adjudication and the same conclude when the award given becomes enforceable under sec. 17A of the Act. Commencement and conclusion of proceedings are relevant for the purpose of change of conditions of service under sec. 33 of the Act and also have a bearing on the question of legality of a strike/lockout.

Summary

This unit contains a brief account of legal position and role of the various authorities provided for under the Act for prevention and settlement of industrial disputes. It was observed that the only authority for prevention of disputes, namely, the works committee, has not at all been effective in its role for various reasons. Similarly, Boards of Conciliation and Courts of Inquiry have also not succeeded. For settlement of industrial disputes, it is primarily the government appointed conciliation officers, who have borne the maximum burden. Voluntary Arbitration, considered by Mahatma Gandhi as the best method for peaceful resolution of disputes, has not succeeded. Therefore, adjudication-by courts and tribunals necessarily become an important method for settlements of disputes. It may be mentioned that though 'collective bargaining' is not even mentioned in the Act as a method for resolution of industrial disputes, it is admittedly the best and potentially the most important method for settlement of industrial disputes and for developing mature and responsible relations among the social partners.

Self Assessment Test

To find out to what extent you have understood the provisions discussed in this Unit, please answer the following questions briefly.

- (1) Describe the various authorities provided for prevention and settlement of industrial disputes under the Industrial Disputes Act and discuss their role and functions.
- (2) Discuss in detail the duties of a conciliation officer and what options are available to the Government for-determination of the dispute if the conciliation officer is unable to settle the same?
- (3) What is the normal period of operation of an award? Can it be extended? If so, for how long?
- (4) Under what circumstances can the appropriate Government modify/reject an award? Explain the relevant provisions of the industrial Disputes Act,
- (5) When do conciliation proceedings commence and conclude under the I.D. Act.

Key-words

i)

Award:

Award means an interim or a final determination of any industrial dispute or any question relating thereto by any labour court, industrial tribunal or National Industrial Tribunal and includes an arbitration award.

ii) Conciliation Proceeding:

Conciliation proceeding means any proceeding held by a conciliation officer of Board under the Act.

iii) Public Utility Service:

Public utility service means-

- i) any railway service or any transport service for the carriage of passengers or goods by air,
- ii) any service in, or in connection with, the working of major port or dock;
- iii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- iv) any postal, telegraph or telephone service;
- v) any industry which supplies power, light, or water to the public;
- vi) any system of public conservancy;
- vii) any industry specified in the first Schedule which may be specified by the appropriate Government as public utility service in public interest.

iv)

Settlement:

Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement arrived at other wise than in conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

Suggested Readings

- (a) Law Relating to Industrial Disputes by O.P.Malhotra.
- (b) Industrial Law by P.L. Malik
- (c) Labour Laws a Supervisor Should Know by B.R. Seth.
- (d) Labour Law Journal.
- (e) Report of the National Commission on Labour.

UNIT- 14

Industrial Relations Legislations- Part-IV (Industrial Disputes Act, 1947)

Objectives:

After going through this unit you should be able to understand:

- about the unfair labour practices adopted in an industry
- and control and discipline during pendency of such disputes.

STRUCTURE

E

Definition

Unfair Labour Practice and Victimization

Unfair Labour Practices and Recommendations of National Commission on Labour

Control and Discipline during Pendency of Disputes. Protected Workmen.

Summary

Self Assessment Test

Key words

Suggested Readings.

Definitions

Though the expression 'unfair labour practices' is widely used in labour-management relations and is well understood by trade union leaders and employers, it was incorporated in the Industrial Disputes Act only in 1984 by an amendment in the form of a new Section as under :

Sec. 25T says that no employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice.

As per Sec.2 (ra) of the Industrial Disputes Act, an 'unfair labour practice' means any of the practices specified in the Fifth Schedule. The above Schedule declares the following as unfair labour practices on the part of employers and trade unions of employers:-

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, that is to say:-

(a) threatening workmen with discharge or dismissal, if they join a trade union; (b) threatening a lockout or closure, if a trade union is organised; (c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say:

(a) an employer taking an active interest in organizing a trade union of his workmen, and

(b) an employer showing partiality or granting favor to one of the several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.

3. To establish employer sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say;

(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

(c) changing seniority rating of workmen because of trade union activities;

(d) refusing to promote workmen to higher posts on account of their trade union activities;

(e) giving unmerited promotion to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen :-
 - (a) by way of victimization;
 - (b) not in good faith, but in colorable exercise, of the employer's rights;
 - (c) by falsely implicating a workmen in a criminal case on false evidence;
 - (d) for patently false reasons;
 - (e) on untrue or trumped up allegations of absence without leave;
 - (f) in utter disregard of principles of natural justice in the conduct of domestic enquiry or with undue haste;
 - (g) for misconduct of minor-or-technical character, without having any regard to the nature of particular misconduct or past record or service of the workman, thereby leading to a disproportionate punishment.
6. To abolish the work of regular nature being done by workmen, and to give such work to contractors as a measure of breaking strike.
7. To transfer a workman with mollified intention from one place to another, under the guise of following management policy.
8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work?
9. To show favoritism or partiality to one of the workers regardless of merit;
10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute;
12. To recruit workmen during a strike that is not an illegal strike.
13. Failure to implement award, settlement or agreement;
14. To indulge in acts of force or violence.

15. To refuse to bargain collectively, in good faith with the recognized unions.
16. Proposing or continuing lockout deemed illegal under the Act.
On the part of workmen and Trade Unions of Workmen Unfair trade practices include:
 1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
 2. To coerce workmen in the exercise of their right of self organization or to join a trade union or refrain from joining any trade union, that is to say-
 - (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work place,
 - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
 3. For a recognized union to refuse to bargain collectively in good faith with the employer.
 4. To indulge in coercive activities against certification of a bargaining representative.
 5. To stage, encourage or instigate such forms of coercive actions as willful 'go-slow', squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or other staff.
 6. To stage demonstration at the residence of the employers or the managerial staff members.
 7. To incite or indulge in willful damage to employer's property connected with the industry.
 8. To indulge in act of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

It is evident that the above is not a definition of 'unfair labour practices' but rather a description of the same. Thus, while the above concept has not been defined statutorily either in the Industrial Disputes Act or even in the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, which is the only other enactment in force in one of the

states in the country and

specifically dealing with unfair labour practices, it has received judicial attention. It may broadly be described, in relation to employers, any act or omission which is an invasion of the legitimate rights or interests of workmen. Essentially, the concept is related to employer-employee relationship. Therefore, only those acts or omissions which have something to do with this relationship will constitute 'unfair labour practices' the Punjab and Haryana High Court, for instance held in Kapurthala Central Cooperative Bank v/s. Labour Court, Jallundher⁵⁹ that termination of the workmen on their completing 230 days even when their work was satisfactory amounted to an 'unfair labour practice' as the aim of the employer was to deprive the workmen concerned the benefits of continuous service under sec. 25F of the Act.

Unfair Labour Practice and Victimization

Unfair labour practice is not identical with 'victimization', though in common parlance both the terms are used interchangeably, in Industrial law, victimization has acquired a special significance. In the case of Bharat Bank Ltd and Its Employees⁶⁰, it was held by the Supreme Court that 'victimization' has a special meaning and connotes person who has become the victim of his employer's anger or annoyance by reason of his trade union activities and would not include the case of a workman who is removed from service unjustly. Victimization may assume one of the two shapes. In the first place, a workman, who is innocent, is yet punished by his employer because he has earned displeasure. Secondly, an employer may punish a worker for the reason that he has refused to do some work which is strictly not his duty. Victimization in the second case will arise when the workman is given excessive punishment because of his trade union activities.

It may be relevant to mention that 'unfair labour practices' was defined in the Trade Unions (Amendment) Act, 1947, but the above provision has not been enforced by the Government. Subsequently, a provision about unfair labour practices was made in the Industrial Relations Bill, 1950, but the same could not be passed into an Act. A more definite step taken in this direction was the Code of Discipline, adopted by the Indian Labour Conference in 1958, which contained a

⁵⁹1984 L.I.C. 974

⁶⁰1950-1 LL-1921

reference to unfair labour practices to be avoided by the trade unions and the managements. The first statutory provision relating to unfair labour practices was made by the Government of Maharashtra by enacting the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act-1971. This Act made detailed provisions for investigation of complaints relating to unfair labour practices by 'Investigation Officers' who work directly under the Industrial Court and submit their reports to the said court. Under the above Act, any person can approach the Industrial Court directly with a complaint regarding commission of unfair labour practice and if the same is found to be correct on investigation by the Industrial court, it can punish the person responsible for the same.

Unfair Labour Practices and Recommendations of National Commission on Labour

Protection to trade unions is a corollary to the promotion of healthy industrial relations and is as important as recognition of trade unions. A provision to grant such protection was made in the National Labour Relation Act, 1935 (also called the Wagner Act) in U.S.A. and which has inspired similar provision in other countries. The National Commission on Labour also examined this issue and recommended in para 23.6 of its report that-

- (a) the law should enumerate various unfair labour practices on the part of employers and workers' unions;
- (b) it should provide for suitable penalties for committing such practices; and
- (c) Complaints relating to unfair labour practices will be dealt with by labour courts, which shall have the powers to impose suitable punishments which may extend to de-recognition in the case of trade unions and heavy fines in the case of employers.

In the light of the above, it is evident that the provision made in the Industrial Dispute Act in sections 25T and 25U not only falls short of the recommendations made by the National labour Commission regarding dealing complaints relating to commission of unfair labour practices by the labour courts and de-recognition of trade unions found guilty of their commission, it also does not provide for an independent investigation agency as has been, done under the Maharashtra

Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. Further, the parties have not been given the right of direct access to judicial bodies in connection with their complaints relating to unfair labour practices. Since politicalization of trade unions in the country is a well known fact; the possibility of political consideration weighing with the appropriate Government while dealing with such complaints cannot, therefore, visions made in the Industrial Disputes Act in 1984 regarding unfair labour practices can at best be called half hearted efforts to curb the menace.

Control & Discipline during Pendency of Disputes

In Unit 13, it was explained that pendency of proceedings relating to a dispute also have a bearing on change of service conditions under Sec. 33 of the Act on the question of legality or otherwise of a strike/lockout. It was also stated that in public utility services the conciliation proceedings commence immediately on receipt of notice of strike/lockout and in the case of non-public utility services, from the date fixed by the conciliation officer in the notice given by him in writing to the parties. Proceedings before a Labour Court, Tribunal, National Tribunal and an Arbitrator under Sec. 10A commence on the date of reference of the dispute for adjudication/arbitration.

It was further stated that the proceedings before a conciliation officer conclude-

(a) when a settlement is arrived at; or
(b) when the report of Conciliation Officer, in the case of failure of conciliation, is received by the appropriate Government or, in the case of proceedings before a Board or Conciliation, when the report submitted by the

Board is published by the government; or

(c) when, pending conciliation proceedings, the dispute is referred by the appropriate Government for adjudication.

In the case of adjudication proceedings and proceedings before an Arbitrator under sec. 10A of the Act, the proceedings conclude when the award given by any of these authorities becomes enforceable under sec. 17A of the Act.

It would now be pertinent to discuss the legal provisions contained in the Industrial Disputes Act dealing with and consequences of pendency of disputes. In the first place, Section 17B which came into force in August, 1984, provides that where the

Labour Court, Tribunal or National Tribunal has directed reinstatement of any workman and the employer, prefers any proceeding against such an award before a High Court or the Supreme Court, the employer shall be liable to pay to the workman ordered to be reinstated during the pendency of proceedings before the High Court or the Supreme Court, full wages last drawn by him if he had not been employed in any establishment during the period of proceedings and the workman has filed an affidavit to that effect in High/Supreme court. This provision is intended to discourage employers from dragging on litigation in the superior courts where the labour Court/Tribunal has found the termination/dismissal/ of the workman illegal and or unjustified. The other objective appears to be to reduce the hardship caused to workman deprived of the benefits of reinstatement awarded by Labour Court/Tribunal and to enable him to support his family during the period of extended litigation before the High/Supreme court.

In the second place, a strike or lockout, which is commenced or declared in a public utility service during the pendency of a dispute before a conciliation officer and seven days thereafter is deemed to be illegal. Similarly, if a Board of Conciliation is constituted by the appropriate Government and an industrial dispute referred to it for bringing about a settlement, any strike or lockout launched during the pendency of proceedings before the Board, whether the establishment is a public utility or not, is illegal.

Similarly, when an industrial dispute has been referred for adjudication to a Labour Court, Tribunal or National Tribunal and has been pending with it, any strike or lock-out during the period of such pendency and within two months after the conclusion of such proceedings is illegal under section 23 of the Industrial Disputes Act. Same will be the case when the dispute has been referred to for arbitration as a result of an agreement between the parties under sec. 10A and a notification has been issued by the appropriate Government under sec. 10A(3A) of the Act.

Perhaps, the most important provision concerning pendency of industrial disputes is contained in sec. 33 of the Industrial Disputes Act. The caption of this section, reproduced below, clearly indicates its purpose: "Conditions of service, etc. to remain unchanged under certain circumstances during pendency of

proceedings”.

This section has three parts and is clearly intended to ensure that during the pendency of an industrial dispute before any of the authorities appointed under the Act, the employer shall not change the conditions of service applicable to the workmen concerned in the dispute except in accordance with the provisions contained in the above section. The section, therefore, introduces a fundamental change in the ordinary law of master and servant in as much as it prohibits the employer from exercising his normal prerogative of changing the conditions of service of the workmen employed by him in so far as the case falling within the Act are concerned.

Sub-section (1) of section 33 provides that during the pendency of any proceedings before a conciliation officer, or a Board, an Arbitrator, labour Court, Tribunal or National Tribunal in respect of an industrial dispute, no employer shall alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them, or discharge or dismiss any workman connected with the dispute for any misconduct save with express permission in writing of the authority before which the proceeding is pending.

Sub-section (2) of the above section softens the rigor of subsection (1) and recognizes that there may be certain occasions when the employer may be justified in discharging or punishing by dismissal his workman. It, therefore, allows the employer to take such action in accordance with the standing orders applicable to the workman concerned or, where there are no such standing orders, in accordance with the terms of contract between him and the workman. This may include alteration in the conditions of service applicable to the workman immediately before the commencement of the proceedings or punishing him for any misconduct not connected with the dispute by dismissal or otherwise provided the concerned workman has been paid wages for one month and the employer has made an application for approval of the action taken to the authority before which the proceeding was pending.

The purpose of the prohibition contained in the above subsections is to protect the workman concerned during the course of proceedings from harassment and victimization by the employer on account of the dispute raised by the workmen. Besides, it aims at maintaining status quo during the pendency of a dispute by prohibiting the employer from taking certain actions which may

have the effect

straining their mutual relations or which may give rise to further industrial disputes.

The difference between sub-section 33 (1) (b) and 33 (2) (b) is that while in the first case the employer has to obtain prior permission from the authority concerned before any action such as removal from service or dismissal is taken by him, in the second case the employer can take the action and then apply for approval for the action taken to the authority concerned. Accordingly, there is a difference in the nature of function to be performed by the authority concerned. It has been held by the courts that:-

- (a) the authority, while dealing with an application under sec 33 (1) has to grant or withhold permission. It has no jurisdiction to impose conditions for granting the permission;
- (b) provisions of sec. 33 (2) are not attracted where a reference under sec. 2A is pending before a Tribunal;
- (c) a proceeding validly commenced would not automatically come to an end merely because the main dispute has in the meanwhile been finally determined;
- (d) it is not necessary for the application of sec. 33 that the employer who discharges or punishes a workman or who alters the conditions of service of a workman should be the identical employer concerned in the industrial dispute

which is pending before any of the authorities. It is sufficient for invoking the provision of sec. 33 (and also 33A) that the relationship of employer and employee existed at the time the workman is punished, by discharge or dismissal or at the time his conditions of service are altered to his prejudice.

Sub-section (3) deals with cases of protected workmen. The protection of this sub-section is available to protected workmen, his termination is for any misconduct or for any other reason. The reason for the blanket protection given to protected workmen against any action is obvious For the healthy growth and development of trade union movement the Parliament appears to have thought it necessary to ensure that such workmen should have complete protection because of their position as office bearers of registered trade unions, recognized as such under the rules made in this behalf.

In order to be a protected workman relation to an industrial establishment, a

workman should be an office bearer of a registered trade union and he should have

been recognized as such by the employer of the establishment. The number of workmen to be recognized as protected workmen has been fixed at one percent of the total number of workmen employed in the establishment subject to a minimum of five workmen and a maximum of one hundred protected workmen. Rule 61 of the Industrial Disputes (Central) Rules deals with protected workmen and provides as under,

(a) Every registered trade union functioning in an industrial establishment shall communicate to the employer before 30th April every the names and addresses of such of the office bearers of the union who are employed in the establishment and who should be recognized as protected workmen.

(b) the employer shall, subject to the provisions of sec. 33 (3), recognize such workmen as protected workmen and communicate to the union within 15 days of the receipt of the names from union, the list of the workmen recognized as

'protected workmen' for a period of twelve months from the date of such communication;

(c) If the total number of names received by the employer exceeds the maximum number of protected workmen admissible for the establishment, the employer shall recognize only the maximum number of workmen permissible under the Act.

(d) In case, there is more than one registered trade union in the establishment, the maximum number shall be distributed by the employer among the unions in such a way that the number of recognized protected workmen is roughly distributed in proportion to the membership of the unions among the workmen of the establishment.

(e) Provided that if the number of protected workmen allotted to a union falls short of the number requested for by the union. union shall be entitled to select the office bearers to be recognized as protected workmen;

(f) Where a dispute arises between an employer and any registered trade union in regard to any matter connected with the recognition of protected workmen, the same shall be referred to any Regional Labour Commissioner or to Assistant Labour Commissioner (Central) concerned, whose decision shall be final.

It may be added that grant of permission by the authority under sec. 33 (1) or 33 (3) shall not preclude the workman from raising an industrial dispute challenging the action of the employer. Finally, it may be mentioned that the question whether

the workman is concerned in the dispute is a mixed question of law and facts and therefore it may not be possible to lay down any definite guidelines or rules to decide this point.

A code of conduct is a set of rules outlining the social norms and rules and responsibilities of, or proper practices for, an individual, party or organization. Related concepts include ethical, honor, moral **codes** and religious laws. All the **parties** to it have to follow it for smooth and harmonious Industrial Relations. It can be voluntary as well as statutory. A voluntary code of conduct aims to help industry members improve business practices and meet their regulatory obligations. It sets out specific standards of conduct – voluntarily agreed to by signatories – about how industry members deal with each other and their customers. An effective industry code can provide greater protection for consumers and reduce the regulatory burden for business. To be effective a code there must be following ingredients:

- have widespread support within the industry
- have clear objectives
- be well designed
- provide benefits to signatories
- be effectively implemented
- be underpinned by an effective complaint handling system
- be administered by an appropriate body
- be properly and objectively enforced
- be regularly evaluated and reviewed to retain currency and support from stakeholders.

Summary

In this unit an Endeavour has been made to explain the unfair labour practices and the legal position relating to pendency of industrial disputes. Since the provision relating to unfair labour practices was introduced only in August, 1984, it does not have the benefit of long experience. However, as already explained the provision

inserted in the Industrial Disputes Act is neither fully on the lines of

recommendation Made by the National Labour Commission nor it is as comprehensive as the provisions in this behalf incorporated in the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. As regards provisions relating to pendency of disputes, the same are quite elaborate and have greatly helped the working class from being exposed to harassment and **victimization** by the employers. These provisions have also contributed to the maintenance of industrial relations by requiring the parties to deal with one dispute at a time and not to accentuate matters by multiple disputes being raised. These provisions have considerably contributed in maintaining discipline.

Self Assessment Test

Please answer the following questions assess the extent to which you have understood the provisions discussed in this unit.

- (a) Explain the provisions relating to 'Unfair Labour Practices' as contained in the Industrial Disputes Act, 1947.
- (b) Do you consider the above provisions to be adequate and effective? If not, why?
- (c) Discuss the legal provisions relating to pendency of industrial disputes and consequences thereof.
- (d) Who is workman Explain the relevant provisions of the Industrial Disputes Act, 1947 in this regard.

Key-words

**(i) Unfair Trade
Practice:**

Any calculated or intended act or omission, on the part of the employer or workmen including their trade union, which amounts to an invasion of the legitimate rights or interests of the workmen or the employer, as the case may be.

**(ii)
Victimization:**

It normally refers to unjustified punishment of any workman for having annoyed his employer by reason of his trade union activities.

**(iii) Illegal
Strike/Lockout:**

Any strike/ Lockout, which is commenced or declared in breach of sections 22 or 23 of the industrial Disputes act or which is continued in contravention of an order issued by the appropriate Government under section 10 (3) or 10A (4A) of the above Act is deemed to be illegal.

(iv) Conciliation Proceeding :

Any proceeding held by a conciliation officer of Board of Conciliation constituted under the Industrial Disputes Act, 1947.

14.9. Suggested

Readings

- (a) Law relating to Industrial Disputes by O.P.Malhotra.
- (b) Industrial Law by P.L. Malik.
- (c) 'Labour Laws a Supervisor Should Know' by B.R.Seth.
- (d) Labour Law Journal
- (e) Report of the National Commission on Labour.

UNIT-15

Industrial Relations Legislations- Part-V

The Industrial Employment (Standing Orders) Act, 1946

Objectives:

After going through this unit you should be able to understand the

- applicability of the Act to Industrial Establishments
- special features of the Act
- authority for certification of Standing Order and his duties
- Miscellaneous provisions of the Act.
-

Structure

Introduction and Applicability
Non applicability of this Act to Certain Industrial establishment. Power of Exemption.
Special features of the Act.
Certification of Standing Order.
Duties of Certifying Officer and Penal Provisions. Appeal.
Self Assessment Test.
Suggested Readings.

15.1 Introduction and Applicability

S.1 of the Act, speaks about the extension and application of the Act. This Act Extends to the whole of India. It applies to every industrial establishment wherein one hundred or more Workmen are, employed or were employed on any day of the

preceding twelve months.

This rule is not, however, absolute. Because the appropriate government is empowered to apply the provision of this Act to any industrial establishment, employing less than one hundred workmen but the appropriate govt. has to give not less than two months notice of its intention to do so, by notification in the official gazette.

15.1 Non-applicability of this Act to certain industrial establishments:

This Act does not apply to any industry to which the provisions of chapter VII of the Bombay Industrial Relations Act, 1946 apply. Similarly, this Act also does not apply to any industrial establishment to which the provisions of the M.P. Industrial Employment (standing Orders) Act, 1961, apply. However, this Act applies to all industrial establishments Under the Control of the Central Government, not **withstanding** anything contended in the M.P., Industrial Employment (Standing Order) Act, 1961.

This Act does not apply to the employees of those industrial establishments to whom who apply any of the following rules:

- (A) Fundamental and Supplementary Rules, or
 - (B) Civil Services (classification, Control, Appeal) Rules, or
 - (C) Civil Services (Temporary Service) Rules, or
 - (D) Revised Leave Rules,
- or
- (E) Civil Service Regulations,
- or
- (F) Civilians in Defense Service (classification, Control, Appeal) Rules, or
 - (G) Indian Railway Establishment code or
 - (H) Any regulation or rules that may be specified by the appropriate government in the Official Gazette.

15.3 Power of Exemption

S. 14 of the Act speaks about the power of exemption. Accordingly, the appropriate Government, may by notification in the official Gazette, exempts conditionally or

unconditionally, any industrial establishment or class or establishments from all or any of the provisions of this act.

Special features of the Act,

- (1) This Act regulates the conditions of service between the employees on one hand and the employers on the other hand.
- (2) Rules of conditions of service are called under the Act, as Standing Orders. In the draft of standing Orders, provision shall be made for every matter set out in the Schedule, which may be applicable to the industrial establishment and where model standing orders have been prescribed, shall be so far as practicable, in conformity with such model.
- (3) Within six months from the date on which this Act becomes applicable to any industrial establishment, its employer is under a duty to submit to the certifying officer five copies of the draft standing orders proposed by him for adoption in his industrial employment,
- (4) A provision is made for a group of employers in similar industrial establishment to submit a joint draft of standing orders.
- (5) After submission of draft standing orders by employer to the certifying officer, there shall be a certification of the draft standing orders. This certification shall be made under the Act, if :
 - (A) Provision is made therein for every matter set in the schedule which is applicable to the industrial establishment and
 - (B) The standing orders are otherwise in conformity with the provisions of this Act.
- (6) Provision for appeal is made against the order of certifying office.
- (7) There is also a provision in the Act for modification of standing orders.
- (8) Certifying officer and appellate authority are given the powers of a civil court in certain respects.
- (9) In case of doubt as to application or interpretation of any standing order certified under this Act, the same may be referred to any labour court constituted under the industrial disputes Act, 1947.
- (10) The schedule to the Act covers the matters to be provided in standing orders under this Act.

Certification, of Standing Orders

As seen earlier the scheme of the Act is to regulate the relations between the employees on one hand & employers on the other hand.

Section 5 (3) provides that within six months from the date on which this Act becomes applicable to an industrial establishment the employer is under a duty to submit to the certifying officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. According to Section 4, standing orders are certifiable under this act if

- (A) Provision is made therein for every matter set out in the schedule which is applicable to the industrial establishment; and
- (B) the standing orders are otherwise in conformity with the provisions this Act.

Section 5 of the Act provides for certification of standing orders. On receipt of the Standing orders it is the duty of the certifying officer to send its copy to the track .union of the workmen if and where there is no such trade union, to the Workmen in a prescribed manner. Together with it, a notice shall he send requiring objections if any, from workmen, to the draft standing orders to be submitted him with fifteen days from the date of the receipt of the notice. The Certifying officer shall give an Opportunity of being heard to the employer and the trade Union, or such other representatives of the workmen as may be prescribed, He shall thereafter; under Section 5 (2) decide whether any modification or addition is necessary to render the draft standing Orders certifiable under this Act. It is his duty to make an order in writing accordingly.

Thereafter, under Section 5 (3) the certifying officer shall certify the draft standing orders after making such addition or modification therein, which his order under sub-section (2) of Section 5 may require. He shall, within seven days thereafter, send copies of the certified standing orders authenticated in the prescribed manner and of his order under Section 5 (2) to the employer and to the trade union or other prescribed representatives of the workmen.

Duties of certifying officer and Penal provisions



The Act provides that the duties of certifying officer shall be:-

- (1) to adjudicate upon the fairness or reasonableness of the proviso of any standing order, (sec. 4).
- (2) to forward a copy of standing orders to the trade union, if any, or if there is no such trade union, then to the workmen; together with, notice, requiring their objections, within fifteen days from the date of the receipt of the notice, [sec. 5(1)]
- (3) to give opportunity of being heard to the employer, trade union or representatives of the workmen;
- (4) to decide whether any addition or modification is necessary to the draft standing orders to render it certifiable under this Act and to make an order in writing accordingly; [sec 5(2)]
- (5) to certify the standing orders, after making any addition or modification, if any, and to send within seven days, the certified copies to the employer and to the trade union or other representatives of the workmen. [sec 5 (3)]

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946 THE SCHEDULE [See sections 2(g) and 3(2) :

MATTERS TO BE PROVIDED IN STANDING ORDER UNDER THIS ACT

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.

9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.

10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

Penal provisions under the Act are:

Section 13 deals with Penalties and procedure:

(1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finally certified under this Act or his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the second class shall try any offence under this section.

State amendments Madhya Pradesh: In section 13, after sub-section (4), insert the following sub-sections, namely: “(5) A Court taking cognizance of an offence under sub-section (2) shall state upon the summons to be served on the accused person that he

(a) may appear by pleader and not in person; or

(b) may, by a specified date prior to the hearing of the charge, plead guilty to the charge by registered letter acknowledgment due and remit to the Court such sum as the Court may, subject to the maximum limit of fine prescribed for the said offence, specify.

(6) Where an accused person pleads guilty and remits the sum in accordance with the provisions of sub-section (5), no further proceedings in respect of the offence shall be taken against him.

(7) Nothing contained in this section shall apply to the continuing offence referred to in sub-section (2).” [Vide Madhya Pradesh Act 18 of 1967, sec. 2 (w.e.f. 1-6-1968)]. Maharashtra: Gujarat.—In section 13,—

(i) in sub-section (1),—

(a) for “who fails to submit draft standing orders as required by section 3, or who modifies his standing orders“, substitute “who modifies the standing orders, model standing orders or amendments“;

(b) for “section 10“, substitute “the provisions of this Act“;

(c) for “shall be punishable“, substitute “shall on conviction, be punished“. (ii) in sub-section (2), for the words “the standing orders finally certified under this Act for his industrial establishment shall be punishable“, substitute the words “the standing orders, model standing orders or the amendments as finally certified under this Act for his industrial establishment, as the case may be, shall, on conviction, be punished“.

(iii) after sub-section (2), insert the following sub-sections, namely:— “(2A) **Whoever** contravenes the provisions of this Act or of any rule made there under in cases other than those falling under sub-section (1) or sub-section (2), shall, on conviction, be punished with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine which may extend to two hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(2B) The Court convicting an employer under sub-section (1) or sub-section (2) may direct such employer to pay such compensation as it may determine to any workman directly and adversely affected by the modification or contravention of the standing orders, model standing orders or amendments, as the case may be.

(2C) The compensation awarded under sub-section (2B) may be recovered as if it were a fine and if it cannot be so recovered, the person by whom it is payable shall be sentenced to imprisonment of either description for a term not exceeding three months as the Court thinks fit". [Vide Bombay Act 21 of 1958, sec. 16 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

Appeal

(S.6)

Any person aggrieved by the order of the certifying officer, under Section 5 (2) may, within thirty days from the day on which copies are sent to him under S.5 (1) may appeal to the appellate authority under sec. 6 of the Act. The appellate authority, shall by order in writing confirm the standing orders either by in the form certified by the certifying officer or after amending the said standing orders by making such modification or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

Self Assessment

Test

- Q. 1 Discuss the scope and object of the Industrial Employment (Standing) orders Act, 1946.
- Q. 2 State briefly the law relating to certification of standing orders under die Industrial Employment (Standing orders) Act, 1946. Enumerate the industries which are not covered under this Act.
- Q. 3 State briefly the duties of certifying officer under the Industrial Employment (Standing order) Act, 1946.

Suggested Readings

1. Hand Book of Labour And Industrial Law by P.L. Malik
2. An Introduction To labour & Industrial Law by S.N.Mishra
3. Commentaries on Industrial Employment Standing Orders Act, 1946 (including model Standing Orders, Recognition of Unions & unfair Trade Practices) by K.D. Shrivastava

4. Treatise on Social security & Labour Law by Dr. S.C. Shrivastava.

UNIT- 16

Case Laws

OBJECTIVE

S

After going through this unit, you should be able to: appreciate the underlying idea of lawful trade union activities, immunity and privileges of trade unions and activities thereof, the scope and nature of appropriate Government's power to refer industrial dispute to labour Court or Tribunal for adjudication.

**A. Jay Engineering Works Vs. State of West Bengal
A.I.R. 1968 Col. 407.**

(S.B.) STRUCTURE

Introduction
Facts.
Arguments (if any).
Question of law involved.
Judgment of the Court.
Principles of law laid down.

16.1 Introduction

This unit is aimed at analyzing the judicial approach of law courts towards industrial relations.

It is well known that World War I brought about rapid growth of industrialization which also affected the industrial relations. Therefore it became necessary to regulate the industrial relations, and consequently certain laws were enacted in European Countries as also in India. Among these were laws regulating Industrial

Deputes and the Trade Unions Activities. The Trade Union Act, 1926 and the industrial Disputes Act, 1947 (as amended from time to time) are the backbone of the industrial relations at present times, in India. Industrial harmony is essential for boosting up production and profit earning by the Industry. Harmony in this sense

means cordial and friendly relations between the employer and the employee as also the management and the workers of the industry. The harmony may be disturbed by anti labour activities such as lay-off, retrenchment, lock out, non-payment of wages, bonus etc. by the employer, on the one hand and/or by unlawful strike, and other unlawful union activities on the other.

Industrial relations have undergone a radical change in recent years. Today, organized labour and Collective bargaining are recognized forces of industrial management. The Stress of labour laws has been on protection of worker and peaceful settlement of disputes between the worker and the Management.

Industrial Disputes Act, 1947 provides for the machinery of settlement of industrial disputes and regulates other activities of the management. The Trade unions Act, 1926 recognizes the workers right to form organization as well as immunity of such organizations for activities in furtherance of their cause.

This unit is meant to discuss through case law and to what are lawful trade union activities, extent of immunity to trade unions, what is an Industrial dispute and the scope of Government's power to refer disputes for adjudication by labour Court of Tribunal. The relevant decided cases are discussed below:-

A. Jay Engineering Works Vs. State of West Bengal A.I.R. 1968 COL. 407. (S.B.)

A-16.1 Introduction

This case is important because it discusses what is lawful trade union activity and the extent of the immunity available to the members of such unions for acts done for their cause. The case emerged to challenge two circulars of Home and Political Deptt. of the West Bengal Government which reduced the District administration to total inaction in the matter of workers activities.

Facts

The petitioners, Jay Engineering works manufacturer of sewing machines and fans at the time of petition, had their sales office, known as the Estem India Usha corporation, at No. 26 R.N. Mukherjee Road in Calcutta. There were 365 workmen in the office in addition to the management staff. Petitioners No. 2

to 7

were holding posts of Manager, Office Superintendent, Supervisors etc. Respondent No. 8 was the Union of workers of the petitioner No. 1 and is registered under the Trade Unions Act 1926. Other petitioners are members of the union.

Arguments

Eighteen employees of the sales office including respondents No. 9 to 12, and 18 to 22 were retrenched on or about 17th Jan. 1967. On 27.1.67 at about 1 P.M. these employees with 70 others blocked the premises of the corporation **completely**, restraining the passage of personnel and goods, including food stuffs for the restrained person. This was lifted at 3 A.M. on 28.1.67 by police intervention. On 1.3.1967 a new Government in the State came into office. On

2.3.1967 the retrenched workers along with 200 employees again gheraoed the Manager and other officers in the office premises from 1 P.M., which was lifted at 10 P.M. on 3.3.1967. It was alleged that the said persons not only confined the petitioners but also tampered with the company's property, spoiled the walls, and **continuously** shouted insulting and humiliating slogans against the confined persons. Supply of food was not allowed except in nominal quantity. Police authorities were informed but no action was taken. The same tactic was followed by the employees on 17.4.1967 at 11 A.M. Which continued till 10 P.M. on

18.4.67, when the confined persons were rescued by the police not because they were informed but under the order of Chief Presidency Magistrate to search and rescue the confined persons on an application under section 100 of the Code of Criminal Procedure, 1898. They wrongfully confined the officers, trespassed office, tampered with property, shouted insulting and humiliating slogans, did not **allow** supply of food. The manager and other officers were again gheraoed on

29.5.67 for 5 hours from 10.30 A.M. Police authorities again took no action on information.

The total inaction on the part of the police was said to lie in the fact that the state Government, through its joint Secretary, Home and Political Department, issued two circulars:

(1) Circular No. 513 P.C. Dated 27.3.67 addressed to all District officers and

the Commissioner of Police, Calcutta, and

(2) Circular No. P. 914 P.S. dated 12.6.67 First circular interdicted police authorities from taking action in legitimate labour activities and in case of 'gherao' no action was to be taken without the permission of Labour Minister. So, the present writ petition was filed under Act. 226 questioning the validity of these two circulars and also employees activity.

Question of Law involved

Upon these facts the court formed following questions for determination:

- (1) What is a Gherao?
- (2) Is gherao practiced in this case lawful?
- (3) Are the circulars dated 27.3.67 and 12.6.67 lawful or competent?
- (4) Did the respondents 6 and 7 fail to perform their legal duties in any way?
- (5) To what relief the petitioners are entitled?

Judgment

The unanimous decision of the court was delivered by the Chief Justice and other judges concurred, but gave separate judgments.

However, for purposes of this unit only the first, second and the fifth questions are important and thus the main question of law before the court was what are the legitimate trade union rights of the workers and is 'gherao' included therein? So the court first tried to define Gherao. Tracing its origin and etymological meaning the court observed:

“ . It may be of two kinds. The ordinary kind is encirclement and blockade of the industrial establishment including the office, factory, workshop or residence, where the person gheraoed, is generally a person in managerial or supervisory position, who happens to be present. The encirclement may be complete or partial. In the latter case the gates or doors are blocked preventing egress and ingress. There might be such a blockade outside premises on a public through fare, or persons blockading may trespass into the land belonging to the industrial establishment.

The court further defined gherao as a physical blockade of target, either by encirclement or forcible occupation. The target may be place or a person or persons, usually the managerial or supervisory staff of an industrial establishment. The blockade may be complete or partial and is invariably accompanied by wrongful restraint, and for wrongful confinement and occasionally accompanied by assault, criminal trespass, mischief to person and property, unlawful assembly and various other criminal offences. Some of the offences complained of are cruel and inhuman like confinement in a small space without lights or fans and for long periods without food or communication with the outside world. The persons confined are beaten humiliated by abuse and not allowed even to calls of nature and subjected to various other forms of torture, and are completely at the mercy of the besiegers. The object is to compel those who control industry to submit to the demands of the workers, without recourse to the machinery provided for by law and in wanton disregard of it. In short they achieve their object, not by peaceful means but by violence.

The court then proceeded to answer the second question and after full consideration of various statutory provisions including ss. 17 and 18 of Trade Unions Act, 1926, Sec 2 (q) of Industrial Disputes Act, 1947, Criminal Law Amendment Act, 1932, Indian Penal Code, 1862 etc., the court held that A strike which is lawful is a recognized instrument in the hands of labour, which aids them in any concerted movement to improve their position vis-a-vis the management Strike, when it is lawful is a legitimate weapon in the hands of a worker. A

'Gherao' may or may riot amount to a strike but when accompanied by violence or the commission of any offence, can never be lawful.

As to the immunity of trade Unions for their activities, comparing Indian and English law the court said that both SS. 17 and 18 of the Trade Unions Act, 1926 fall far short of the rights conferred by the English Act. The common characteristic, however, is that both inhibit violence, intimidation and molestation. It further held:

"...Sections 17 and 18 of the Indian Trade Unions Act grant certain exemption to members of a trade union, but there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. Such strikes

must be peaceful and not violent and there is no exemption where an offence is

committed. Therefore, a concerted movement by workmen by gathering together either outside the industrial establishment or inside, within the working hours is permissible when it is peaceful and does not violate the provisions of law, but when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to unlawful confinement of persons, criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed.”

With regard to the validity of circulars, the court declared them invalid and discriminatory. The court held that the provisions of the circular are contrary to certain provisions of the code and add burdens which are not to be found in the code and are therefore invalid and cannot be allowed to remain operative. The court held the circulars unconstitutional being violative of Art. 14 as providing different courses of action by the police in the same situations. .

The court answered the questions as under: Q. No. 1. As defined above:

Q. No. 2. ‘Gherao’ practiced in this case is not lawful.

Q. No. 3. The circulars are unlawful and incompetent.

Q. No. 4. Yes, the respondents 6 & 7 failed to perform their legal duties/ but not deliberately

Q. No. 5. The court made the following order

“We quash the two impugned circulars dated 27th march, and 12th June, 1967, and we issue a writ of mandamus upon the respondents Nos. 1 to 7 restraining them from giving effect to the same. Respondents 6 and 7 are directed to proceed in accordance with law, and an order of injunction is made restraining respondents No. 9 to 28 from interfering with the right of egress and ingress of petitioners.”

Principles of Law laid down

1. There are no express provisions in the trade unions Act regulating strikes or picketing but these are recognized weapons in the armory of labour. The word strike in its broad sense has reference to dispute between employer and his workers in the course of which there is concerted suspension of

employment.

2. There are many varieties of strikes... but there is no provision in law which exempts a workman taking part in a strike from the criminal laws of the land, excepting section 17 of Trade Unions Act and no exemption from civil liability except Sec. 18 of the said Act.

3. Neither Sec. 17 nor Sec 18 of the Trade Unions Act, exempts a workman, if he commits an 'offence' which means an offence under the criminal laws of the country save and except the limited ground upon which he is exempted from being charged with criminal conspiracy under sec. 17. An agreement to commit an offence is expressly excluded from the purview of sec. 17.

A 'Gherao' is the physical blockade of a target, either by encirclement or forcible occupation. A 'Gherao' is not an offence as such mentioned in the Indian Penal Code but it is an act indulged by labour against the management and where it is accompanied by confinement, restraint or other offence under, the criminal law of the land, 'Gherao' is unconstitutional and unlawful, and the fact that it is done by members of a trade union and used as an instrument of collective bargaining, gives rise to no special treatment or exemption from liability under the law.

