INDUSTRIAL RELATIONS AND LABOUR LAWS

MCOM

Semester - I

MCOM - 102

SHRI VENKATESHWARA UNIVERSITY

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INTRODUCTION

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Developments are taking place in the area of labour welfare and industrial relations, although at a very slow pace. Organizations in the country are becoming more and more sensitive to the needs of workers and those at the management level are taking a scientific approach in dealing with issues concerning their workers or employees. A lot of efforts are being made these days to understand the psychology of workers and promote worker's participation in management as well as to ensure amicable settlement of grievances. What is lacking is the fast pace of positive reforms or the speed required in implementing welfare activities and policies that could bring about a radical improvement in the area of labour welfare and industrial relations in the country.

Labour law seeks to regulate the relations between an employer or a class of employers and their workmen. The scope of this law is so wide that it touches the lives of millions of men and women who constitute the labour force. However, it is unfortunate that barring a few statutes such as the Minimum Wages Act, 1948, most labour legislations are not applicable to unorganized labour, which constitutes about 92 per cent of the total labour force. Further, most labour legislations are more than five decades old. It is felt that our labour laws are overprotective, overreactive, fragmented, outdated and irrelevant and have created hurdles in achieving the target of ensuring fair labour practices.

The emergence of globalization, liberalization and privatization has brought new challenges. There is, therefore, mounting pressure to reform labour laws. In view of this, the Second National Commission on Labour was set up by the Government of India. It has made some headway in removing the irritants and stumbling blocks. However, it is unfortunate that no positive steps have been taken to give legislative shape to the recommendations of the Commission. In the legislative sphere, the Trade Unions Act, 1926 underwent major amendments in 2001, which came into force from 2002. Further, the Central Rules framed under the Industrial Employment (Standing Orders) Act, 1946 have incorporated several new provisions of great significance.

The learning material in this book, *Industrial Relations and Labour Laws*, has been presented in the self-learning format, wherein each unit begins with an Introduction to the topic followed by an outline of Objectives. The detailed content is then presented in a simple, structured and easy-to-grasp style interspersed with 'Check Your Progress' questions to test the student's understanding. At the end of each unit, Summing Up and a list of Questions and Exercises have been provided for recapitulation.

UNIT 1 INDIAN LABOUR

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Structure

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1.2 Industrial Workflow Analysis
1.3 Characteristics of Indian Labour
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1.0 INTRODUCTION

The labour sector of the Indian economy consists of roughly 487 million workers, the second largest after China. Agriculture, dairy, horticulture and related occupations alone employ 52 per cent of labour in India. India has two broad groups of migrant labourers - one that migrates to temporarily work overseas, and another that migrates domestically on a seasonal and work available basis. This affects industrial relations.

This unit discusses the characteristics of Indian labour along with the industrial workflow pattern that helps bring better output and productivity.

1.1 OBJECTIVES

After going through this unit, you will be able to:

- Recognize the importance of workflow analysis in improving business processes
- Discuss the various shades of Indian labour
- Demonstrate the latest labour statistics and shortcomings

1.2 INDUSTRIAL WORKFLOW ANALYSIS

Business processes carry on well when they are updated and a proper workflow analysis procedure has been followed. Workflow analysis is the first step towards improving your business processes, which in turn improves your business. Industrial workflow analysis can be used for the following purposes:

- Streamlining your manual business processes to make them more efficient
- Automating your business processes

Some workflow analysis steps are mentioned below:

1. Review and Assessment

An important step in streamlining business and industries is to go electronic in processes. Paper based documents and processes that can be converted to electronic mode should

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be identified. This includes creating as many self-service functions as possible. An Electronic Document Management System should work with both scanned documents and electronically created documents.

The management and employees involved with the intake and processing of the documents should both get involved in this task. A preliminary design input from participating employees is important to the success of the overall project. Employees have fresh ideas and can contribute to better review and assessment. This assessment will address the following:

- Current document management systems
- Current document workflow processes
- Security and permissions requirements
- Identification of challenges and opportunities
- Legacy system or line of business integration

Without a proper workflow analysis template, the chances for a successful project are significantly reduced. This planning will not only reduce errors, but also bring more, varied ideas into the design.

2. Charting Workflow Strategy

Charting a proper workflow strategy is an important building block in the implementation of any successful industrial programme. First the information about the various documents in the organization should be collected and they should be streamlined properly. The documents must be categorized to determine the indexing attributes that will allow for fast and easy retrieval as well as monitoring throughout their lifecycle and records retention. This process will help us in retrieving the documents for future use. Once the documents have been categorized the format of the documents can be determined. Some of them may be scanned images, some may be submitted electronically, and some may be generated internally.

The development of the strategy will address the following questions:

- Which documents drive essential business functions?
- Which documents and processes have the highest potential for re-engineering or refinement to produce benefits?
- Which documents and process flows have an opportunity to be changed with the best probability for success?
- What applications and systems are used to produce the documents included in this review?
- Who are the major stakeholders with respect to responsibility for document performance and efficiencies?
- Who are the authors, readers, producers and stakeholders of these documents?
- What are the needs regarding efficiency, legislation and compliance requirements?
- How well are those requirements being met?

3. Operational Savings and Summary for Posterity

The summary of benefits and operational savings will address the following qualitative benefits and quantitative efficiencies gained:

- Overall efficiency
- Overall employee time: searching information, reformatting documentation, copying information, and sorting formation

- Physical space utilization
- Improvements in customer service
- Compliance
- Employee job satisfaction

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4. Setting Parameters to Achieve Maximum Benefits

To achieve the maximum benefit from automating business processes, we must ensure that the new processes are aligned with the business needs. To measure the effectiveness of a project a set of parameters must be established using the current processes. This includes timing each step of a process and the time required to complete the entire process. Developing a process improvement plan and engaging the staff in the redesign effort significantly reduce the fear of change. This also improves the chance for success by bringing in the ideas from the people who do the work every day; also increasing their buy-in of the new processes since they were able to provide input.

Part of the change management process is to assess the current skill set of the staff and compare that to the skills required to operate the new processes. Proper implementation of new business processes increases the ability to cross-train employees by automating the manual steps and letting them focus on tasks that drive revenue. The system manages the process and the people execute the tasks.

1.3 CHARACTERISTICS OF INDIAN LABOUR

The characteristics of the Indian Labour have changed greatly over time with the growth of new industries and the continuous migration of labour, the face of the Indian Labour class is continuously changing. Here are some of the characteristics of Indian Labour:

1. Size of Labour Force

India is predominantly an agricultural country. As per the 1991 census, out of a total population of 836.61 million, 285.42 million were main workers and 29.42 million were marginal workers. Between 1993-94 and 1999-2000, the estimated total labour force grew from 382 million to 402 million or at an average annual rate of about 0.9 per cent. While the growth rate in urban labour force was 2.4 per cent per annum (2.8 per cent for males and 1.2 per cent for females), in the rural areas it was only 0.4 per cent (0.7 per cent for males and – 0.2 per cent for females), primarily due to the sharp decline in the participation rates in the latter.

According to the labour availability map 2011, India had about 487 million workers compared to China's 795 million and United States 154 million.

2. Industrial Structure of Workforce

From the year 2000 to 2012, there has been a significant decline in the proportion of the workforce in agriculture. In the year 2000, the contribution of workforce in agriculture was 59.8 per cent whereas in 2005 it declined to 51.1 per cent and in 2012 it decreased to 47.2 per cent. However, the contribution of workforce in industries increased from 2000-2012. In the year 2000, the contribution of workforce in industries was 19 per cent whereas in 2010 it increased to 22.4 per cent and further in 2012 to 24.7 per cent. Similarly, the contribution of workforce in services increased from 24.1 per cent in 2000 to 26.5 per cent in 2010 and further to 28.1 per cent in 2012.

Check Your Progress

1. State the situations for the implementation of industrial workflow analysis.
2. What happens without a proper workflow analysis template?

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3. Employment Status

The surveys of the National Sample Survey Organization (NSSO) identified the employment status of workers in terms of the self-employed, the regularly employed for salaries\wages and the casually employed.

Among the usually employed, about 54 per cent of the rural males and 56 per cent of rural females were self-employed. In the urban areas, corresponding proportions were 41 per cent for both males and females. In the urban areas, about 42 per cent of the usually employed males and 39 per cent of the usually employed females were regular salaried/wage employees.

In rural India, the proportion of usually employed male workers engaged in the agricultural activities declined gradually from 81 per cent in 1977-78 to 63 per cent in 2009-10 whereas for the female workers, the decline was less – from 88 per cent to 79 per cent during the same period.

The proportion of urban females employed in 'other services' sector increased from 36 per cent in 2004-05 to 39 per cent in 2009-10 and the 'agriculture' sector revealed a fall in its share by about 4 percentage points during this period.

4. Industrialization

With rapid industrialization requiring the use of more advanced technology and skilled personnel, industrial workers engaged in the formal sectors of the economy are often looked upon as a privileged category. They unionize themselves and demand for, and compel for concession of major wage-welfare benefits. They are able to eliminate the institution of 'jobbers', and restructure their employment relations.

5. Unemployment and Underemployment

During 1999-2000 to 2004-05, employment (usual status) increased by 59.9 million persons from 398.0 million to 457.9 million. But the progress was slow during the 2004-05 to 2009-10 period, showing a small increase by 1.1 million persons. It picked up again during 2009 - 10 to 2011-12, adding 13.9 million persons to the workforce (Table 13.6). During 2004 - 05 to 2011-12, employment growth (compound annual growth rate [CAGR]) was only 0.5 per cent, compared to 2.8 per cent during 1999-2000 to 2004-05 as per usual status. Based on current daily status (CDS), CAGR was 1.2 per cent and 2.6 per cent respectively for the same periods.

Method	1999-2000	2004-05	2009-10	2011-12
	Persons and persondays employed (in millions)			
PS+SS	398.0	457.9	459.0	472.9
CDS	336.9	382.8	400.8	415.7
	Persons and persondays unemployed (in millions)			
PS+SS	9.2	11.3	9.8	10.8
CDS	26.6	34.3	28.0	24.7
	Job creation over previous period (in millions)			
PS+SS	-	59.9	1.1	13.9
CDS	-	45.9	18.0	14.9
	Unemployment rate (in per cent)			
PS+SS	2.2	2.3	2.0	2.2
CDS	7.3	8.2	6.6	5.6

Source : Various survey rounds of the NSSO on employment and unemployment in India.
Note : PS+SS: usual status (principal + subsidiary) measures employment in persons, CDS: current daily status measures employment in persondays.

6. Other Characterisitcs Affecting Industrial Relations

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(i) **Low wages:** Discontent amongst industrial workers revolves around the question of wages. Low wages figure prominently both in industrial and agricultural sectors.

(ii) **Ignorance and illiteracy:** Another malady of Indian workers is illiteracy. Out of 2.81 million workers employed in tea plantations, mines, jute, cotton textiles, iron, and steel, 2.08 million workers are illiterate. The workers do not fully realize the social and economic implications of the modern industrial system and the evils arising therefrom and, therefore, are less likely to insist on reforms. Lack of education among industrial workers has also given rise to the evolution of outside leadership.

(iii) **Heterogeneity:** Another characteristic of Indian labour is its heterogeneity. India is a country where customs and traditions differ considerably from one part to another. There are distinctions based on caste, creed and religion, provincial jealousy, where residents of one state look down upon residents of other states. In spite of the provisions in the constitution that there would be no distinction on the basis of caste, creed, etc., there is no denying that these vices are widely prevalent. The effect of this is that workers will not unite for better conditions *inter se* and for reform.

(iv) **Absenteeism:** Absenteeism has been a cause of great concern all over the country in most of the organizations. There is no hard and fast rule to deal with this characteristic. However, it is certain that it requires a great deal of expertise to effectively bring down the cases of absenteeism.

Disciplining is, of course, the last resort to curb and control the absenteeism but now with advancement of behavioural science, some psychological methods have also proved to be very useful which is known as the human relations approach.

(v) **Women workers:** Employment of women in industrial establishments is common in almost all countries—developed and developing. India is no exception. Special provisions of labour law exist to deal with the special problems of women workers employed in factories, mines, plantations and other industrial establishments.

Average daily employment of women in factories was 8.41 percent during the year 2008. At State level, average daily employment of women in the factories for all groups was 2, 21,290 during the year 2008. Share of women employment in coal mines was reported as 3.06 percent during the year 2009. The share of women employment in mines was 4.63 percent during the year 2009.

The employment of women workers in the modern industrial system has given rise to several problems. First, a set of major social evils involved in the employment of women is 'widespread disorganization of family life'. The lack of maternal care on the development of a child's personality may continue even in his adult life. The increasing number of juvenile delinquents, stillborn children, abortions, morbidity of women, abnormal pregnancy and premature births is a clear reflection on employment of women. 'Second, the economic problem involved in industrial employment of women is in no way less significant. The inadequacy of family income and the desire to supplement the meagre family income compel women workers to work in industry. But employment in such an establishment does not provide them adequate wages. They are generally placed either in the lower jobs or in the traditional jobs which carry lower salaries and are not given higher posts. Third, 'equal pay for equal work' for both men and women has not been

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fully implemented; and despite legislation there is a disparity of pay between men and women. Fourth, the employment of women in industry creates a variety of other problems, such as hours of work (particularly during night), overtime, health, safety, welfare and maternity leave. Fifth, the legal protection afforded to women workers is also inadequate and involves problems of inadequate inspecting staff. Sixth, working women face the problem of sexual harassment for which norms have been laid down by the Supreme Court for prevention and regulation.

7. Child Labour

Another major characteristic or feature of Indian labour is child labour.

The evil of employment of children in the agricultural and industrial sectors in India is a product of economic, social and, among others, inadequate legislative measures. Social evils involved in the employment of children are widespread illiteracy resulting in lack of development of a child's personality (which may continue even in his adult life), negligence and indifference of the society towards the question of child labour. There is also lack of proper appreciation on the part of parents as to how continuance of child education would benefit the employment prospects and improve the standard of living. The economic problems involved in the employment of children are in no way less significant. The poverty resulting in inadequate family income and the desire to supplement compell children to work. Indeed, the parents of low income groups like artisans cannot afford to educate their wards even if education is free. For them an uneducated child is an asset; desire to be educated becomes a double liability because of: (*a*) loss of earning if the child does not work, and (*b*) expenditure on education, howsoever, small. Thus, the economic evils have not only deprived children at work from education, but also have led to high infant mortality, morbidity and malnutrition, particularly in weaker sections of the society in urban areas. The indifference of the legislator to provide adequate legislation to regulate the employment of children has failed to minimize the growth of child labour. The socio-legal problems involved in the employment of children in agriculture and industries are: (*a*) Is it feasible to abolish child labour particularly of those (*i*) who are orphans, destitutes, neglected, and abandoned children; (*ii*) children who have to work for livelihood; (*iii*) children belonging to migrant families; and (*iv*) handicapped children? If not, what should be done immediately: (*b*) Should the child labour be banned in hazardous employment? If so, what are these employments? (*c*) What should be the minimum age for the different kinds of employment? (*d*) What should be the duration of their work including rest interval? Is it desirable to adjust the working hours in such a manner to provide for schooling of children? (*e*) What privileges should be afforded to them in matters of leave and holidays? (*f*) What protection should be afforded to them in matters of health, safety and welfare?

The legislature has met the first problem by providing certain minimum standards of age, physical fitness and sometimes educational attainments. The second problem has also been dealt by the legislature by prohibiting employment in certain establishments or part of establishments. The third problem has been met by prohibiting employment of women and children in certain dangerous work. The rest of the problems have been met by the legislature by imposing various restrictions on the conditions of work, such as limited hours of work, provisions for holidays, rest intervals, leave, health, safety and welfare amenities.

Check Your Progress

3. What happened to the Indian labour after industrialization?
4. What is the result of the ignorance and illiteracy of the Indian labour?
5. State the number of workers in India according to the Labour Availabiliy Map 2011.
6. Define heterogeneity as a characteristic of Indian labour.

1.4 SUMMING UP

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- Business processes carry on well when they are updated and a proper workflow analysis procedure has been followed. Workflow analysis is the first step towards improving your business processes, which in turn improves your business.
- Charting a proper workflow strategy is an important building block in the implementation of any successful industrial programme.
- To achieve the maximum benefit from automating business processes, we must ensure that the new processes are aligned with the business needs. To measure the effectiveness of a project a set of parameters must be established using the current processes.
- India is predominantly an agricultural country. The characteristics of Indian labour have changes greatly over time.
- With the growth of new industries and the continuous migration of labour, the face of Indian labour class is continuously changing.
- Over the three decades since 1970, the proportion of the workforce in agriculture and allied activities declined from about 74 per cent to 62 per cent while that in manufacturing, construction, trade, transport and services improved significantly.
- With rapid industrialization requiring the use of more advanced technology and skilled personnel, industrial workers engaged in the formal sectors of the economy are often looked upon as a privileged category.
- They unionize themselves and demand for, and compel for concession of major wage-welfare benefits. They are able to eliminate the institution of 'jobbers', and restructure their employment relations.
- Unemployment and underemployment are the most important economic evils in a welfare state. India is no exception. In India, one-sixth of the total population of the country is either unemployed or chronically underemployed.
- As per the Government of India report during 2004 (January-August) about 36.10 million were on the live registers of the Employment Exchange.
- Another malady of Indian workers is illiteracy. Out of 2.81 million workers employed in tea plantations, mines, jute, cotton textiles, iron, and steel, 2.08 million workers are illiterate.
- Women constitute a significant part of the workforce in India. According to the 2001 census, the total number of women in the country was 494.82 million out of the total population of 1,025.25 million.
- The evil of employment of children in the agricultural and industrial sectors in India is a product of economic, social and, among others, inadequate legislative measures.
- Social evils involved in the employment of children are widespread illiteracy resulting in lack of development of a child's personality (which may continue even in his adult life), negligence and indifference of the society towards the question of child labour.

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1.5 KEY TERMS

- **Workflow analysis**: Workflow analysis entails reviewing all processes in a business with a view to identify inefficiencies and recommend improvements.
- **NSSO**: The National Sample Survey Organization (NSSO), is an organization under the Ministry of Statistics of the Government of India. It is the largest organization in India conducting regular socio-economic surveys. It was established in 1950.

1.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Industrial workflow analysis can be used for the following purposes:
   - Streamlining your manual business processes to make them more efficient
   - Automating your business processes
2. Without a proper workflow analysis template, the chances for a successful project are significantly reduced. This planning will not only reduce errors, but also bring more, varied ideas into the design.
3. With rapid industrialization requiring the use of more advanced technology and skilled personnel, industrial workers engaged in the formal sectors of the economy were often looked upon as a privileged category.
4. Due to the result of illiteracy and ignorance the workers do not fully realize the social and economic implications of the modern industrial system and the evils arising therefrom and, therefore, are less likely to insist on reforms.
5. According to the labour availability map, 2011, India had about 487 million workers.
6. India is a country where customs and traditions differ considerably from one part to another. There are distinctions based on caste, creed and religion, provincial jealousy, where residents of one state look down upon residents of other states. In spite of the provisions in the Constitution that there would be no distinction on the basis of caste, creed, etc., there is no denying that these vices are widely prevalent.

1.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What do you understand by operational savings and summary for posterity?
2. Why are unemployment and underemployment considered as economic evils in a welfare state?
3. Write a short note on child labour.

Long-Answer Questions

1. Discuss the steps of industrial workflow analysis.
2. 'With the growth of new industries and the continuous migration of labour, the face of Indian labour class is continuously changing.' Discuss.
3. What problems has the employment of women workers in modern industrial system created?

1.8 REFERENCES AND SUGGESTED READINGS

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UNIT 2 TRADE UNION MOVEMENT

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2.0 INTRODUCTION

Trade union is an outcome of the factory system. It is based on labour philosophy—'united we stand, divided we fall.' Industrial revolution in India has changed the traditional outlook in the labour management relationship. With the introduction of the modern factory system, personal relationship between employer and employee disappeared and gave rise to many social and economic evils which made it imperative on the part of the workers to devise an effective means to contact employers and to bargain with them. Formation of trade unions has provided an ideal solution.

This unit will help you understand the factors that led to the formation of various trade unions, the problems and the role of trade unions for a span of over fourteen decades.

2.1 OBJECTIVES

After going through this unit, you will be able to:

- Trace the origin and development of the trade union movement in India
- Discuss about the various organizations and trade unions formed for the benefit of the workers
- Classify the role of trade unions in the changed economic scenario
- Recognize the problems of trade unions and unfair trade practices
- Explain the powers and duties of the registrar of trade unions

2.2 TRADE UNION MOVEMENT IN INDIA

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The labour movement in India can be traced back to the 1860s. The early years of movement were generally led by philanthropists and social reformers, who organised workers and protected them against inhuman working conditions. The early years of the labour movement were often full of difficulties. Strike committees arose calling themselves trade unions and demanded the privileges of trade unions without any means of discharging the responsibilities thereof. The position of trade unions has considerably improved since then. The number of trade unions has gone up and its membership and funds have increased. The development during the span of about 145 years may be considered broadly under the following six periods: (*i*) pre-1918, (*ii*) 1918–24, (*iii*) 1925–34, (*iv*) 1935–38, (*v*) 1939–46 and (*vi*) 1947 and thereafter.

The Pre-1918 Period

The earliest sign of labour agitation in India was a movement in Bengal in 1860 led by Dinbandhu Mitra, a dramatist and social reformer of Bengal, followed by some journalists to protest against the hardships of the cultivators and also the plantation workers. The government thereupon appointed an Indigo Commission. The report of the Commission reflects upon the grossest cruelties perpetrated by foreign planters with the aid and under the protection of laws framed by the British Government specially for this purpose. Thereafter, the system of indigo cultivation was abolished due to the discovery of the synthetic process.

In 1875 in Bombay Sarobji Shapuri made a protest against the poor working conditions of workers at that time. The deplorable conditions of workers were brought to the notice of the Secretary of State for India. The first Factory Commission was, therefore, appointed in 1875 and as a result the Factories Act, 1881 was enacted. This Act was, however, inadequate to meet the evil of child labour. Moreover, no provision was made to regulate the working conditions of women workers. This gave rise to great disappointment among workers. Thereupon another Factory Commission was appointed in 1884. In the same year, N.M. Lokhande organised a conference of the Bombay factory workers and drew up a memorandum signed by 5,300 workers demanding a complete day of rest on Sunday, half-an-hour recess, working hours between 6.30 a.m. to sunset, the payment of wages not later than 15th of the month, and compensation for injuries. In 1889, in Bombay, workers of spinning and weaving mills demanded Sunday as a holiday, regularity in the payment of wages and adequate compensation in case of accident.

In spite of these agitations no material change could be brought about and, therefore, another representation was made to the government in 1890. The stand of 1884 was also reiterated and this time the petition was signed by 17,000 workers. The same year, the Bombay Mill Hands Association, the first labour association was organised with Mr Lokhande as its President. It started a labour journal (*Dinbandhu*) in order to propogate effective views of their own. In the very same year, the Bombay Mill Hands Association placed its demand before the Factory Labour Commission (1890), with Bangalee, the great philanthropist as a member. The Commission gave due consideration to the demands of labour.

Several labour associations were formed after 1890. For instance, the Amalgamated Society of Railway Servants in India and Burma was formed in April

1897 and registered under the Indian Companies Act, the Printers Union, Calcutta, was formed in 1905, the Bombay Postal Union was formed in 1907 and the Kamgar Hityardhak Sabha and Service League was formed in 1910.

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The post-1890 period was also important for the reason that several strikes occurred during this period. Instances may be quoted of two strikes which occurred in Bombay in 1894. The first big strike of mill operatives of Ahmedabad took place in the first week of February 1895. The Ahmedabad Mill Owners Association decided to substitute a fortnightly wage system for a weekly one which was in force ever since 1896. This forced over 8,000 weavers to leave work. However, the strike was unsuccessful.

There were also strikes in the jute industries in Calcutta in 1896. In 1897, after the plague epidemic, the mill workers in Bombay went on strike for payment of daily wages instead of monthly payment of wages.

In 1903, the employees of the press and machine section of the Madras Government went on strike for overtime work without payment. The strike went on for six months and after great hardship and starvation, the workers returned to work. Two years later in 1905, the workers of the Government of India Press, Calcutta, launched a strike over the question of (*i*) non-payment for Sunday and gazetted holidays; (*ii*) imposition of irregular fines; (*iii*) low rate of overtime pay; and (*iv*) the refusal of the authorities to grant leave on medical grounds. The strike continued for over a month. The workers returned on the fulfilment of certain demands. In December 1907, the workers of the Eastern Railway Workshop at Samastipur went on strike on the issue of increment of wages. They went back to work after six days when they were granted extra allowance owing to famine conditions prevailing at that time in that region. In the same year, the Bombay Postal Union and Indian Telegraph Association called a strike. In 1908, workers of the textile operatives in Bombay struck work in sympathy with Bal Gangadhar Tilak who was imprisoned for sedition. The workers in Bombay went on strike in 1910 demanding reduction in working hours. As a result of this agitation, the Government of India set up a Commission to enquire into the desirability of reducing the working hours. On the basis of the recommendation, the working hours were reduced to 12 hours a day. Similar strikes continued from year, to year particularly in Bengal and Bombay, demanding an increase in wages.

Certain broad features of the labour movement during the period of 1860–1917 are stated below:

First, the movement was led by philanthropists and social reformers and not by workers.

Second, there was no trade unions in the modern sense. According to the Report on the working of the Factories Act at Bombay, in 1892, the Bombay Mill Hands Association was not to be classified as a genuine trade union. The following excerpt of the Report itself is pertinent:

> ... The Bombay Mill Hands have no organised trade unions. It should be explained that although Mr. N.M. Lokhande, who served on the last Factory Commission, described himself as President of the Bombay Mill Hands Association, that Association has no existence as an organised body, having no roll of membership, no funds and no rules. I understand that Mr. Lakhonde simply acts as volunteer Adviser to any mill hand who may come to him.

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But, the trade unions existed as early as 1897. For instance, the Amalgamated Society of Railway Servants of India and Burma and other unions were formed in April 1897.

Third, the Association mainly relied on petitions, memoranda and other constitutional means for placing their demands which were mainly confined to factory legislation, e.g., hours of work, health, wages for over stay, leave, holidays and such other matters.

Fourth, the early movement was confined to protests against the conditions of child labour and women workers employed in various industries.

Fifth, another feature of this period was the absence of strike as a means of getting grievances redressed. The association of workers worked with the cooperation of management and government officials and some of them considered it their duty 'to avoid strikes upon the part of its members by every possible and lawful means'.

Sixth, strikes during this period were considered to be a problem of law and order; instances are not lacking where police acted as strike-breakers by using force and framed false charges against the strikers.

The 1918–1924 Period

The period 1918–1924 can perhaps be best described as the era of the formation of modern trade unionism. This period witnessed the formation of a large number of trade unions. Important among these were the Madras Labour Union, Ahmedabad Textile Labour Association, Indian Seamen's Union, Calcutta Clerks's Union and the All India Postal and RMS Association. One of the significant features of this period was that the All India Trade Union Congress was started in 1920.

The growth of trade unions was accompanied by a large number of strikes. The deteriorating economic conditions of workers resulted in strikes. The wages of workers were increased but it could not keep pace with the soaring prices of commodities. Further, there was a shortage of labour in some of the industries due to the epidemic of influenza.

Several factors were responsible for its formation and growth:

First, the economic conditions of workers played an important role in the formation of trade unions. The demand of Indian goods increased enormously for two reasons: (*i*) The shortage of shipping facilities led to restricted imports of several commodities for which India was dependent on foreign countries, (*ii*) there was a great demand of Indian goods from the allies and neutral countries. For these reasons, the prices of Indian commodities, *viz*., salt, cotton, cloth and kerosene, rose. Naturally, the cost of living steadily increased. The employer earned huge profits. The wages of workers were increased but it could not keep pace with the soaring prices of commodities. This resulted in further deterioration of the condition of workers. Further, there was shortage of labour in some of the industrial centres due to an epidemic of influenza. These reasons led to the formation of trade unions to improve their bargaining positions.

Second, the political conditions prevailing in the country also helped the growth of the labour movement. The struggle for independence started during this period and the political leaders asserted that the organized labour would be an asset to the cause. The labour unions were also in need of some help. The political leaders took the lead and helped in the growth of trade unions.

Third, the workers' revolution in Russia which established the first workers' state in the world had its own influence on the growth of the trade union movement.

Fourth, the other factor responsible for the growth of trade unions was the worldwide unrest in the post-war period.

Fifth, another factor was the setting up of the International Labour Organization in 1919 of which India was a founder member. The constitution of the ILO required one representative from the government of every Member State. The Government, without consulting the unions, appointed N.M. Joshi as its representative. This gave rise to anxiety among workers to organise. As a result, the AITUC (All India Trade Union Congress) was formed in 1920. This gave an opportunity to send members to ILO Conferences and also brought a change in the Government's attitude in dealing with labour problems.

The 1925–1934 Period

This period witnessed a split in the AITUC into leftist and rightist factions. Later in 1929, a wing of the AITUC, the All India Trade Union Federation was formed. The main cause for the Communist influence was the economic hardship of the workers.

The period 1925–1934 saw a remarkable decrease in the intensity of industrial conflict. At least two factors were responsible for it. *First*, the Trade Disputes Act was passed in 1929 prohibiting strikes and lockouts. *Second*, the failure of strikes and lockouts resulted in industrial strife.

Another significant feature of this period was the passing of the Trade Unions Act, 1926 and the Trade Disputes Act, 1929. The former Act provides for the registration of trade unions and affords legal protection to intervene in trade disputes. The latter Act provided for an *ad hoc* Conciliation Board and Court of Enquiry for the settlement of trade disputes. The Act, as already observed, prohibited strikes and lockouts in public utility services and general strikes affecting community as a whole.

The 1935–1938 Period

During this period, unity was forced in trade unions. This led to the revival of trade union activity. In 1935, the All India Red Trade Union Congress merged itself with AITUC. Again, in 1938 an agreement was arrived at between the All India National Trade Union Federation and AITUC and consequently NTUC affiliated itself with AITUC.

Several factors led to this revival of trade unionism. *First*, the change in the political set-up in the country was responsible for the change. It is significant that the Congress Party which formed its Government in 1937 in several provinces tried to strengthen the trade union movement and to improve the conditions of labour. *Second*, the working class also awakened to its rights and wanted to have better terms and conditions of service. *Third*, management also changed its attitude towards trade unions.

In 1938 came the most important state enactment, *viz*., the Bombay Industrial Disputes Act. The significant features of this Act were: (*a*) compulsory recognition of unions by the employer, (*b*) giving the right to workers to get their case represented either through a representative union or where no representative union in the industry/centre/unit existed through elected representatives of workers or through the Government Labour Officer, (*c*) certification of Standing Orders which would define with sufficient precision the conditions of employment and make them known to workmen, (*d*) the setting up an Industrial Court, with original as well us appellate jurisdiction to which parties could go for arbitration in case their attempts to settle matters between themselves or through conciliation did not bear fruit, and (*e*) prohibition of strikes and lockouts under certain conditions. The scope of the Act was limited to certain industries in the province.

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The 1939–1946 Period

World War II, like World War I, brought chaos in industrial relations. Several reasons may be accounted for the industrial unrest and increased trade union activity. *First*, the rise in prices far more than the increase in wages. *Second*, there was a split in the AITUC due to the nationalist movement. *Third*, the post-World War II era witnessed retrenchment and, therefore, the problem of unemployment. During this period, the membership of registered trade unions increased from 667 in 1939–40 to 1087 in 1945–46. Further, the number of women workers in the registered trade unions increased from 18,612 in 1939–40 to 38,570 in 1945–46. Moreover, the period witnessed a large number of strikes.

During the emergency, the Defence of India Rules, 1942 remained in force. Rule 81 A of the Rules empowered the government, (*i*) to require employers to observe such terms and conditions of employment in their establishments as may be specified; (*ii*) to refer any dispute to conciliation or adjudication; (*iii*) to enforce the decisions of the adjudicators; and (*iv*) to make general or special order to prohibit strikes or lockouts in connection with any trade dispute unless reasonable notice had been given. These provisions thus permitted the government to use coercive processes for the settlement of trade disputes and to place further restrictions on the right to use instruments of economic coercion.

In 1946, another enactment of great significance in labour relations, namely, the Industrial Employment (Standing Orders) Act, 1946 was passed with a view to bring uniformity in the condition of employment of workmen in industrial establishment and thereby to minimise industrial conflict. The Act makes it compulsory for employers engaging 100 or more workmen 'to define with sufficient precision the conditions of employment' and to make those conditions known to the workmen.

Another important enactment at the state level was the Bombay Industrial Relations Act, 1946. The Act makes elaborate provisions for the recognition of trade unions and rights thereof.

Post 1947

With the advent of Independence, the trade union movement in India got diversified on political considerations. The labour leaders associated with the Congress Party formed the Indian National Trade Union Congress (INTUC) in 1947. The aim of the INTUC is 'to establish an order of society which is free from hindrances in the way of an all-round development of its individual members, which fosters the growth of human personality in all its aspects and goes to the utmost limit in progressively eliminating social, political or economic activity and organization of society and the anti-social concentration of power in any form.'

In 1948, the Socialist Party formed an organization, the Hind Mazdoor Sabha. The aims and objectives of the Sabha were to: (*i*) promote the economic, political, social and cultural interest of the Indian working class, (*ii*) guide and coordinate the activities of affiliated organizations and assist them in their work; (*iii*) watch, safeguard and promote the interests, rights and privileges of workers in all matters relating to their employment; (*iv*) promote the formation of federation of unions from the same industry or occupation; (*v*) secure and maintain for the workers freedom of association, freedom of speech, freedom of assembly, freedom of press, right of work or maintenance; right of social security and right to strike; (*vi*) organise and promote the establishment of a democratic

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socialist society in India; (*vii*) promote the formation of cooperative societies and to foster workers' education; (*viii*) cooperate with other organizations in the country and outside having similar aims and objectives.

A year later in 1949, another organization, the United Trade Union Congress (UTUC) was formed. The aims and objects of the UTUC as given in its constitution are: (*i*) the establishment of a socialist society in India; (*ii*) the establishment of a worker's and peasant's state in India; (*iii*) the nationalisation and socialisation of the means of production; (*iv*) safeguarding and promoting the interests, rights and privileges of the workers in all matters, social, cultural, economic and political; (*v*) securing and maintaining the workers' freedom of speech, freedom of press, freedom of association, freedom of assembly, right to strike, right to work or maintenance and the right to social security and (*vi*) bringing about unity in the trade union movement.

The same year also witnessed the passing of the Industrial Disputes Act, 1947 and the Trade Unions (Amendment) Act, 1947. The former Act introduced the adjudication system on an all-India level. It prohibited strikes and lockouts without giving fourteen days' prior notice and during the pendency of conciliation proceeding before a Conciliation Officer in public utility services. In non-public utility services, it prohibited strikes and lockouts during the pendency of proceedings before the Board of Conciliation, Labour Court, Tribunal, National Tribunal and Arbitration (when a notice is given under Section 10-A of the Act). The Act further prohibits strikes and lockouts during the operation of settlement or award in respect of any matter covering settlement or award. The latter Act brought several changes of great significance. The Act provided for the recognition of trade unions and penalties for unfair labour practices by employers and unions. But the Act has not yet been enforced. Again in 1950, the Trade Unions' Bill was introduced in Parliament providing for registration and recognition of trade unions and penalties for certain unfair labour practices. On dissolution of the Parliament, the bill lapsed and has not since been brought forward by the government.

Political involvement continued even after 1950. In addition to the four major all India organizations discussed above there are three unattached unions dominated by one of the other political parties. For instance on 23 July, 1954 a federation called, Bharatiya Mazdoor Sangh (BMS) was formed in Bhopal by the Jan Sangh Party, now known as Bharatiya Janta Party. The main object of BMS was to check the increasing influence of the Communist unions in industry and cooperate with non-Communist unions in their just cause. A year later a Central Federation, the Hind Mazdoor Panchayat, a new trade union organization by the Sanyukt Socialist Party and the Indian Federation of Independent Trade Unions which had no affiliation with any political party, were formed.

The period also saw amendments in the Trade Unions Act in 1960. The amended Act brought four new provisions: (*i*) minimum membership subscription was incorporated; (*ii*) the Registrar of trade unions was empowered to inspect accounts books, register, certificate of registration and other documents connected with the return submitted by them under the Trade Unions Act; (*iii*) Government was empowered to appoint Additional and Deputy Registrars with such powers and functions as it deemed fit; (*iv*) the fate of the application for registration, where the applicants (not exceeding half of them) ceased to be members or disassociated themselves from the application, was to be statutorily decided.

Some independent trade unions met at Patna on 21 March 1964 and decided to form the All India Independent Trade Union Congress, but this effort to unite the unaffiliated unions did not continue for long and was soon dissolved.

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The Act was once again amended in 1964. It made two changes: (*i*) it disqualified persons convicted by a court of an offence involving moral turpitude from becoming office-bearers or members of the executive of a registered trade union, and (*ii*) it required the submission of annual returns by registered trade unions on a calendar year basis.

1970 witnessed another split at the national level in the AITUC. The decision of the left Communist group, which decided not to remain within the AITUC resulted in the formation of a separate organization, the Centre of Indian Trade Union by the Communist Party of India (Marxist).

A further split took place in 1970–72. During the period there was a split in the United Trade Union Congress and another organization the United Trade Union Congress, Lenin Sarani was formed.

2.2.1 The Unity Move

In 1972 a new experiment was made when three central trade union organizations, the HMS (Hindu Mazdoor Sabha), the INTUC (Indian National Trade Union Congress) and the AITUC, in the meeting held on 21 May 1972 at New Delhi agreed to form a National Council of Central Trade Unions for the purpose of promoting understanding, cooperation and coordination in the activities of the central trade unions, to defend the interests of the working class and the trade union movement, to advance the interests of the working people and help towards the development of the national economy on a democratic, self-reliant and non-monopoly basis, to overcome trade union rivalry and bring about trade union unity for common objectives and to action. However, this organization even for limited purpose could not survive for a long period. The year also witnessed the emergence of the Trade Union, SEWA (Self-Employed Women's Association), by workers in Ahmedabad. Ms. Ela Bhatt has been instrumental for the same.

In September 1977, an All-India Convention of Central Organization of Trade Unions including CITU, BMS, HMS, HMP and TUCC was called, which demanded time-bound programmes ensuring reduction in wage disparity, national wage and price policy and need-based wages for industrial and agricultural workers.

In 1981, once again, unity was seen in the trade unions to protest the promulgation of the Essential Services Maintenance Ordinance, 1981 and also the Bill in that regard in Parliament. A year later in 1982, the Trade Unions (Amendment) Bill was introduced in the Lok Sabha. The Bill proposed to make the following amendments in the Act:

- To reduce multiplicity of unions, it is proposed to change the existing provision of enabling any seven workmen to form a trade union by providing for a minimum qualifying membership of 10 per cent of workmen (subject to a minimum of ten) employed in an establishment or industry where the trade union proposed to function or hundred workmen, whichever was less, for the registration of a trade union.
- There was no machinery or procedure for the resolution of trade union disputes arising from inter-union and intra-union rivalries. It was proposed to define the expression 'trade union dispute' and to make provision for resolving such disputes through voluntary arbitration, or by empowering the appropriate government and the parties to the dispute to refer it to the Registrar of Trade Unions for adjudication.
- The Act does not lay down any time limit for registration of trade unions. It is proposed to provide for a period of sixty days for the registration of trade unions by the Registrar after all the formalities have been completed by the

Check Your Progress

1. Who led the labour movement during the period of 1860-1917?
2. When was the first factory commission appointed and enacted?
3. State any two objectives of the Hind Mazdoor Sabha.

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trade unions. It also proposed that a trade union whose certificate of registration had been cancelled would be eligible for re-registration only after the expiry of a period of six months from the date of cancellation of registration, subject to certain conditions being fulfilled by the trade union.

- Under the existing provisions of the Act, 50 per cent of the office bearers in the executive of a registered trade union should be persons actually engaged or employed in an industry with which the trade union is connected. It proposed to enhance this limit to 75 per cent so as to promote the development of internal leadership.
- It proposed to empower the Registrar of Trade Unions to verify the membership of registered unions and connected matters and report the matter to the State and Central Governments.
- The penalties specified in the Act for the contravention of its provisions were proposed to be enhanced.

In order to reduce the multiplicity in trade union, strengthen their bargaining power and to provide check-off facilities to trade union, the Bill seeks to provide that in relation to a trade union of workmen engaged or employed in an establishment or in a class of industry in a local area and where the numbers of such workmen are more than one hundred, the minimum membership for the registration of such trade union shall be ten per cent of such workmen. Such unions shall be eligible for registration only if they meet this minimum test of strength. From this it followed that the setting up of bargaining councils (which would be able to negotiate on all matters of interest to workmen and employers) would to some degree, bring confidence and strength. The limitations placed upon the leadership of trade unions by restricting the number of non-workmen as office-bearers of a trade union to two and the provision that a person can become an office-bearer or a member of an executive of not more than seven registered trade unions, would go a long way in developing internal leadership in trade unions.

The Bill also provided for the constitution of a bargaining council for a three-year term to negotiate and settle industrial disputes with the employer. The check-off system would be normally adopted for verification of the strength of trade unions in an industrial establishment, though the Bill provided for the holding of a secret ballot in certain exceptional circumstances.

While the unit-level bargaining council would be set up by the employers, the appropriate government would be empowered to set up such councils at the industry level. All the registered trade unions will be represented on the bargaining councils in proportion to their relative strength, but any union with a strength of not less than 40 per cent of the total membership of the workmen in an industrial establishment would be recognised as the 'principal agent'. If there was a no trade union having members among the workmen employed in an industrial establishment, a Workmen's Council would be set up in such a manner as may be prescribed. The Central government would also be empowered to constitute such bargaining councils at the national level.

However, the aforesaid Bill lapsed. Six years later the Trade Unions and the Industrial Disputes (Amendment) Bill, 1988 was introduced in the Rajya Sabha on 13 May 88 but it has not yet been ratified.

The Government of India had, in 1997, approved certain amendments to the Trade Unions Act, 1926. The objective of these amendments is to ensure the organized growth of trade unions and reduce the multiplicity of trade unions. The Trade Union Amendment

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Bill, 1997 was to be introduced in the Rajya Sabha in the winter session of Parliament in 1997, but due to various reasons, it was not introduced.

During 1999, a consensus emerged among the leading trade union federations like the BMS, AITUC, CITU and INTUC on the protection of domestic industry, strengthening the public sector units by way of revival and induction of professionals in the management, amendment of labour laws and inclusion of rural and unorganised labour in the social safety net.

Several amendments of great importance in the Trade Unions Act, 1926 were seen in 2001. However, these amendments came into force from 9 January 2002.

The total number of registered Trade Union was 18,602 in the year 2010 (Table 2.1). The number of Unions submitting returns was 2,937 i.e. 15.8 percent of the total registered unions.

The average membership for workers union was 1,735 only. Out of total of 18,602 registered unions as many as 18,546 unions i.e. 99.7 per cent belong to Workers and remaining 56 (0.3 per cent) unions were Employers. Among States/Union Territories, Kerala accounted for the largest number of registered Trade Unions (12,030).

Table 2.1 *Number of Registered Trade Unions (2010)*

Year	No. of Registered Trade Unions	No. of Unions Submitting Returns	Membership of Unions Submitting Returns					Average Membership per Unions
			Men		Women		Total	
			Number ('000)	Percentage	Number ('000)	Percentage	Membership ('000)	
1	2	3	4	5	6	7	8	9
1996	58988	7242 12.3	4250	75.9	1351	24.1	5601	77
1997	60660	8872 14.6	6504	87.8	905	12.2	7409	83
1998	61992	7403 11.9	6104	84.2	1145	15.8	7249	97
1999	64817	8152 12.6	5190	81.0	1218	19.0	6408	78
2000	66056	7253 11.0	4510	83.2	910	16.8	5420	74
2001	66624	6531 9.8	4392	74.8	1481	25.2	5873	85
2002	68544	7812 11.4	5102	73.2	1871	26.8	6973	85
2003	74649	7258 9.7	4854	77.3	1423	22.7	6277	86
2004	74403	5252 7.1	2954	87.0	443	13.0	3397	64
2005	78465	8317 10.6	6334	72.6	2385	27.4	8719	104
2006	88440	8471 9.6	7754	86.5	1206	13.5	8960	105
2007	95783	7408 7.7	5751	73.0	2126	27.0	7877	106
2008	84642	9709 11.5	7420	77.5	2154	22.5	9574	98
2009	22284*	3861 17.3	4388	67.7	2092	32.3	6480	167
2010	18602*	2937 15.8	3185	62.5	1912	37.5	5097	173

Conclusions

A survey of the development of trade unions in India shows that most of the unions are affiliated to either of the four central trade union federations, viz., the Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United

Trade Union Congress. Besides these, some to trade unions are affiliated with seven other trade union federations, viz., the Bhartiya Mazdoor Sangh, Hind Mazdoor Panchayat, Centre of Indian Trade Union, National Federation of Independent Trade Unions, National Labour Organization, Trade Union Coordination Committee and United Trade Union Congress (Lenin Sarani). These trade union organizations have been patronised by different political parties in the country. Further, a survey of the trade unions in India reveals that over the years the trade union movement has undergone significant development. Both workers and non-workers have been involved. The beginnings of the movement were the outcome of the efforts made by certain social reformers and labour leaders. 'The early ... trade union movement was often full of difficulties. Strike committees arose calling themselves trade unions and demanding the privileges of trade unions, without any means of discharging the responsibilities thereof'. The position has considerably changed since then. The number of unions has gone up and membership and funds of trade unions have increased.

The Second National Commission on Labour, in its report of 2002, gave the following account of the development of the trade union movement.

- The trade union movement in India has now come to be characterised by multiplicity of unions, fragmentation, politicisation, and a reaction that shows a desire to stay away from politically oriented central federation of Trade Unions and searches for methods and struggle for cooperation and joint action.
- One sees an increase in the number of registered unions in the years from 1983 to 1994. But one also sees a reduction in the average membership per union and in the number of unions submitting returns.
- There are other unions that have been founded into bodies relating to certain industries or employment, but have kept out of the main central trade union federations. This includes the National Alliance of Construction Workers, National Fish Workers Federation, National Alliance of Street Vendors, etc.
- We must also make specific mention of the emergence of the Trade Union, SEWA group of organizations. It did not confine itself to the traditional method of presenting demands and resorting to industrial action in pursuit of them. It took up the work of organising women workers who were engaged in the unorganised sector of employment, combining other constructive activities like marketing, the provision of micro credit, banking, training and representing the views and interests of workers.
- There is yet another development on the Trade Union scene to which we must refer the increasing tendency on the part of Trade Unions: to get together in ad hoc struggle committees to launch struggles, or to support a struggle that one of them has launched.
- Another new feature is the readiness and determination of Central Trade Unions to escalate the objective to matters of government policy like, disinvestment, privatisation, etc. Instances of such action were witnessed in the strike on BALCO's privatisation, the Rajasthan agitation by government employees and the strike by electricity workers in UP, government employees in Kerala, and so on.
- A grave threat to the authentic trade union movement seems to be emerging from the underworld. There are also reports of cases where such unions have succeeded through other means. Many questions arise. The primary

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question perhaps is: What are the methods or abnormal methods that these new leaders employ, and how can the authentic Trade Unions, the management and industry as a whole be protected from the inroads and tactics of these interlopers from the underworld? The use of terror in any form will only nullify democratic rights by creating an atmosphere in which people are forced to act or not to act merely to protect their skin. It has therefore, become necessary to protect the workers as well as managements from such forces.

- There are trade union leaders who ask for the abolition of contract labour but ultimately relent if the contract assignment is given to them or their *benami* agents. This makes a mockery of the trade union movement and brings down the trade union leaders in the esteem of employees.
- Another practice that undermines respect is that of permitting permanent workers to get their work done through proxy workers or letting others work in their place, and taking a cut form the wages of their proxies. Similar is the effect of so called unions that take up the grievances of workers and charge a commission on the monetary gains they may secure.
- Yet another practice that compromises the Trade Union movement is the tendency to convert Unions into closed shops.

Closed Shop/Union Shop

The trade unions get greater strength and security if they have a contract over the supply of labour at the pre-entry or post-entry stages in the industry. In order to appreciate the feasibility of adopting such a system in India, it is necessary to examine the concept of closed shop and union shop.

Lord Denning defines 'closed shop' as:

> A factory or workshop or firm in which all the workmen are members of a trade union; it is closed to everyone except the members. Any newcomer who comes to work there, must join the union. If the newcomer refuses to do so, the union members will insist on his dismissal. They tell the employer to sack him or threater to go on strike. The employer gives in. He dismisses the man, or the man gives in and joins the union.

The National Commission on Labour explains "closed shop" as an agreement with the employer or at least his acquiescence to recruit only trade union members.

On the other hand, union shop is one by which new entrants to employment, if they are not union members, must join the union within a specified period.

Unlike the industrially advanced countries like USA or UK, closed shop or union shop has not gained currency in India. The Committee appointed by the Government of Bihar in 1956 strongly opposed the system of closed shop on the ground that the right of the citizens to seek and get employment is one of the fundamental rights guaranteed under the Constitution and any interference with that right in the shape of prior membership of a trade union will be an unreasonable limitation on the right to work. The same line of approach was adopted by the National Commission on Labour. According to the Commission, closed shop is neither practicable nor desirable. Indeed it is against the fundamental right of association guaranteed under Article 19 (1) (c) of the Constitution.

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Legal Framework

Every registered trade union is a body corporate by the name under which it is registered and shall have perpetual succession and a common seal with a power to sue and to be sued. It is, however, not a statutory body. It is not created by statute or incorporated in accordance with the provisions of a statute. In other words, a registered trade union is neither an instrumentality nor an agency of the State discharging public functions or public duties. A registered trade union is an entity distinct from the members of which the trade union is composed. It has the power to contract and to hold property both moveable and immoveable and to sue and be sued by the name in which it is registered. It can institute a suit in *forma pauperis* within the meaning of Order XXXIII Rule 1 of the Civil Procedure Code.

Compulsory vs Voluntary Registration

Under the Act, the registration of a trade union is not compulsory but merely voluntary. The question of voluntary registration is, however, debatable. Two conflicting views are discernible. (*i*) Compulsory registration would prove burdensome and expensive. It is felt that the present legal position should continue. The provisions of the Trade Union Act, 1926 themselves afford legal status and protection to trade union members which will encourage trade unions to get themselves registered. (*ii*) The registration of trade unions should be made compulsory because all the unions shall be governed by the provisions of the Act and the Rules framed thereunder in a similar manner. This view was also shared by the National Commission of Labour. The Commission is of the view that the registration of trade unions should be made compulsory because it will bring the application of same standards of obligation to all unions. The second view seems to be better. It would not only ensure the application of uniform standards and obligation to all unions, but would prevent fraud, embezzlement or deception practised upon members by designed unscrupulous persons. Further, it would result in the qualitative improvement of their organization and functioning. Moreover, it would strengthen the trade union movement. This should however, be done in stages. To begin with, it would be better if registration of trade unions is made compulsory for the purposes of their recognition.

Appointment of the Registrar

Section 3 empowers the appropriate Government to appoint a person to be the Registrar of Trade Unions. The appropriate Government is also empowered to appoint as many Additional and Deputy Registrars of Trade Unions as they think fit. Such persons will function under the superintendence and direction of the Registrar. He exercises such powers and functions of Registrar with local limit as may be specified. Where, however, the Additional or Deputy Registrar exercises the powers and functions of a Registrar in the area within which a registered office of the trade union is situated, he shall be deemed to be the Registrar.

Mode of Registration

Who may Apply: Minimum Membership of Trade Unions

1. ***Legislative Response:*** Under Section 4(1) any seven or more members of a Trade Union may, by subscribing their names to the rules of Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

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Provided that no Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.

The Supreme Court in *Tirumala Tirupati Devasthanam* v. *Commissioner of Labour* held that any group of employees may be registered as a trade union under the Act for the purpose of regulating the relations between them and their employer or between themselves. The Court added:

> It would be apparent from this definition that any group of employees which comes together primarily for the purpose of regulating the relations between them and their employer or between them and other workmen may be registered as a Trade Union under the Act. It cannot be disputed that the relationship between the appellant and the workmen in question is that of employer and employee. The registration of the association of the said workmen as a Trade Union under the Act has nothing to do with whether the said wings of the appellant are an 'industry' or not. We are, therefore, of the view that the High Court went into the said issue, although the same has not arisen before it. Since the findings recorded by the High Court on the said issue, are not germane to the question that falls for consideration before us, we express no opinion on the same and leave the question open.

Earlier in *Registrar of Trade Unions in Mysore* v. *M. Mariswamy* the employees of the Provident Fund Organization got themselves registered under the Trade Unions Act, 1926. This registration was subsequently withdrawn by the department resulting in litigation which ultimately reached the Karnataka High Court. It was held by the court that from the definition of the expression 'trade union' it could be a combination either of workmen or of employees or of both, provided it is formed primarily for one of the purposes mentioned to clause (h) of Section 2 of the Act. It is, therefore, possible to have a trade union consisting only of employers. The emphasis in Section 2(h) is on the purpose for which the union is formed and not so much on the persons who constitute the union. The court accordingly directed the Registrar to register the petitioner who fulfils all other legal requirements in terms of the Trade Unions Act, 1926.

It is submitted that under the Trade Unions Act, 1926 both employers and workers can get themselves registered. Indeed both Section 2(g) and 2(h) refers to the employer. One may wish to add that the attention of the court was not drawn to this aspect.

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2. ***Registration of Trade Unions in Unorganized Sector:*** The (Second) National Commission on Labour has recommended that Trade Unions of workers in the unorganised sector should be registered even where there is no employer–employee relationship or such relationship is not clear.

Whom to Apply?

Section 5 requires that every application for registration must be sent to the Registrar of Trade Unions.

Form for the Application

Section 5 requires that every application for registrations made to the Registrar must be in Form 'A'. Further, every application must be accompanied with a statement of the following particulars, namely (*a*) the names, occupations and addresses of the members making the application (*aa*) in the case of a Trade Union of Workmen, the names, occupations, and addresses of the place of work of the members of the Trade Union making the application. (*b*) the name of the trade union and the address of its head offices and (*c*) the title, names, ages, addresses and occupations of the office bearers of trade union. Moreover, every application must be accompanied with a copy of Rules. Such Rules must comply with the items mentioned under Section 6 of the Act. Furthermore, the trade union of more than one year standing applying for the registration is required to submit a general statement of its assets and liabilities in the prescribed manner to the Registrar. Moreover, a trade union (which had previously been registered by the Registrar in any State) applying for registration is required to submit with its application a copy of certificate of registration granted to it and copies of entries to it to the Registrar of Trade Unions for the State.

Rules of a Trade Union

Section 6 provides that no union can be registered unless its constitution provides for the following items, namely:

(*a*) the name of the Trade Union;

(*b*) the whole of the objects for which the Trade Union has been established;

(*c*) the whole of the purposes for which the general funds of a Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

(*d*) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;

(*e*) the admission of ordinary members who shall be persons actually engaged or employed in a trade or industry with which the Trade Union is connected and also the admission of the number of honorary or temporary members as office-bearers, required under Section 22 to form the executive of the Trade Union;

(*ee*) the payment of a minimum subscription by members of the Trade Union which shall not be less than;

- one rupee per annum for rural workers;
- three rupees per annum for workers in other unorganised sectors; and
- twelve rupees per annum for workers in any other case.

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(*f*) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

(*g*) the manner in which the rules shall be amended, varied or rescinded;

(*h*) the manner in which the members of the executive and the other office-bearers of the Trade Union shall be appointed and removed;

(*hh*) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;

(*i*) the safe custody of the funds of the Trade Union, and annual audit, in such a manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and

(*j*) the manner in which the Trade Union may be dissolved.

Nature and Scope of Rules

The existence of the aforesaid matters in the rules is a condition-precedent for the registration of the union. But, the fact that Section 6 provides that no union can be registered unless its rules provide for these matters does not necessarily mean that rules relating to matters contained in section 6 acquires a statutory force. They have only contractual force. Thus, the rules framed by the trade unions under Section 6 of the Trade Unions Act, 1926 are rules meant for internal administration and, therefore, cannot create any statutory obligation upon the Labour Commissioner. It is like the bye-laws of a co-operative society or rules framed by a society for securing registration under the Societies Registration Act, 1860.

Amendment in Rules of the Trade Union when not Valid

In *B.S.V. Hemantha Rao* v. *Deputy Registrar, Trade Union* (1988), the Hyderabad Allwyn Workers' Union amended its rules appointing its President of the union to act as Election Officer and empowering him to nominate all office-bearers, whereas this power is vested with the general body of the trade union. Even though such amendments were registered by the Registrar of the Trade Union, the Court held the amendments were contrary to the letter and spirit of the Trade Union and such a procedure allowing the President to nominate office bearers amounts to allow a person to act as a Judge in his own cause. Accordingly, it was held invalid.

Scope of Section 6 (e)

In *Bokajan Cement Corpn. Employees' Union* v. *Cement Corpn. of India Ltd (2001)* a question arose whether on ceasing to be an employee one would lose his right to continue as a member of the trade union. A single judge of the Gauhati High Court answered the question in the negative. But a division bench of the High Court on appeal reversed the findings of the single judge. It was held that the right to continue as a member of the trade union continues only so long as an employee is actually employed. Thereupon, the union filed an appeal before the Supreme Court. The Court held that Section 6 (e) only provides for admission of membership of those who are actually engaged or employed in industry as ordinary members so as to entitle a trade union to seek registration under the Act and not for automatic cessation of membership. It does not provide that on cessation of employment an employee would cease to be a member.

Check Your Progress

4. When was the Industrial Disputes Amendment Bill, 1988 introduced in the Rajya Sabha?
5. What is a registered trade union?

2.2.2 Powers and Duties of the Registrar

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Section 7 empowers the Registrar of Trade Unions to make further enquiries on receipt of an application for registration to satisfy himself that the application complies with the provisions of Section 5 or that the trade union is entitled for registration under Section 6. Such enquiries can be made only from the application and not from any other source. Further the Registrar may require the trade union to change its name if the name of the trade union is identical or resembling with any other existing trade union. However, he has no power to declare an election of the office-bearer of a trade union unconstitutional. Further, whenever there is a dispute between the groups of office-bearers, each claiming itself to be a valid executive, such dispute very much falls within the jurisdiction of the competent Court of Law, and the Registrar of Trade Unions has no power or jurisdiction to decide the issue. But where the petitioner himself called for an enquiry with regard to the election of new office-bearers of a union and submitted to the jurisdiction of Registrar of Trade Unions he is stopped from challenging the jurisdiction of the Registrar if the result of the enquiry happened to be against him.

1. No powers of the registrar to verify membership of trade unions

Under the Trade Unions Act, 1926, the Registrar has no power to verify membership of registered trade unions. However, Section 28A of the Trade Unions (Amendment) Bill, 1982, empowers the Registrar to verify the membership of registered trade unions and matters connected therewith and, for this purpose, Registrar shall follow such procedure as may be prescribed by regulation.

2. Power to conduct election

The Registrar of Trade Unions is the authority charged with the duty of administration of the provisions of the Act. The Registrar is empowered under Section 28 to ascertain who are the elected office-bearers in order to register their names. However, in making such enquiry the Registrar does not perform any quasi-judicial functions; only administrative functions. He has no authority to ask any party to give evidence and to give opportunity to the other party to cross-examine any witness. Under this concept of a limited administrative inquiry, the dispute as raised by the rival parties cannot be set at rest.

In *Ranipet Greaves Employees' Union* v. *Commissioner of Labour* the union requested the Labour Commissioner to conduct the election of the union as per settlement arrived at under Section 12 (3) of the Industrial Disputes Act. The Labour Commission rejected such a request. On a writ petition the Madras High Court held that the Labour Commissioner committed an error in rejecting such request. It accordingly directed the Labour Commissioner to conduct the union election to elect the representative body which could get recognition from the management and the right to negotiate with it.

Earlier in *H.M.T. Karmika Sangh* v. *Labour Commissioner* the Court held that if a trade union makes a request to appoint an officer of Labour Department as Returning Officer, as he considers that it is expedient to do so, he could do so and there is nothing in the Act or Rules to prevent him from doing so. However, the order of the High Court in designation to the General Manager to hold election of the Trade Union was wrong. Instead, the Court ordered that the election should be held under the supervision of the Registrar of Trade Union or his nominee.

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3. No power to hold enquiry

In *IFFCO Phulpur Karmchari Sangh* v. *Registrar, Trade Union Kanpur*, the Allahabad High Court held that Section 28 (3) of the Trade Unions Act, 1926 read with Regulation 17A does not contemplate holding of any elaborate enquiry such as one required in judicial or quasi-judicial proceedings. All that the Registrar is required to do is to hold a summary enquiry for satisfying himself before making any change in the register regarding office- bearers whether the elections have been held in accordance with the rules of the Trade Union.

4. No power to decide rival claims

In *Rattan Kumar Dey* v. *Union of India*, the Gauhati High Court held that under Section 28 of the Trade Unions Act, 1926, the Registrar of Trade Unions has no power or authority to decide a dispute between the rival office-bearers of the union or rival clients as office-bearers of the union. However, Registrar of Trade Unions under Section 28(4) has the power to make enquiries and give his own conclusion in regard to maintenance of the office-bearers of the union.

In *Ram Das Tigga* v. *State of Jharkhand* the Jharkhand High Court held that the Registrar of Trade Union cannot resolve the dispute pertaining to election of rival office-bearers of Union. Such dispute can only be decided by a Civil Court of competent jurisdiction. The court accordingly held that notice issued by Registrar of Trade Unions calling upon General Secretary of Union to participate in a meeting fixed for deciding dispute with respect to election of trade union would be wholly unjust and without jurisdiction.

In *Kovai Periyar Maavatta Dravida Panchalai Thozhilalar Munnetra Sangam, Coimbatore* v. *Commissioner of Labour (Registrar of Trade Unions), Chennai and Others* the Madras High Court held that Section 28 of the Trade Unions Act does not confer any quasi-judicial power to decide the dispute between the rival claimants and even if any decision is taken, such a decision does not have any binding force and the dispute between the rival claimants in a union can be decided by a Civil Court.

5. No power to decide regarding admission of membership

In *Borosil Glass Works Ltd. Employees Union* v. *D.D. Bombode,* the Supreme Court interpreted Section 28 (1-A) of the Trade Unions Act. In this case certain workers made a joint application for membership of the appellant union, which is a registered and recognised trade union. However, no action was taken because the application was not in accordance with the procedure laid down by the appellant union thereon. The employees were asked by the union to apply individually on the prescribed form and make payment of requisite fee and membership subscription. Aggrieved by this, employees filed a complaint before the Registrar of Trade Unions. Thereupon, the Registrar of Trade Unions under Section 10(b) of the Trade Unions Act issued a notice to the appellant union threatening to cancel its registration pursuant to a complaint field by these employees under Section 28(1-A). The union then represented its case before the registrar. The Registrar of Trade Unions found that the complainants were not members of the appellant union for six months prior to the date of the application, a condition necessary under Section 28(1-A). Therefore, no certificate under that Section could be granted to them permitting them to refer the dispute to the industrial tribunal. Aggreived by the decision of the Registrar, these employees filed a writ petition in the Bombay High Court seeking

direction to the Registrar of Trade Unions to issue a consent certificate. The High Court ruled that even a person who has applied to become a member is covered by Section 28(1-A) of the Trade Unions Act and accordingly directed the Registrar of Trade Unions to issue a consent certificate to these employees to enable them to refer the dispute to the industrial tribunal. This order of the High Court was challenged by the union before the Supreme Court under Article 136 of the Constitution.

The Supreme Court found the interpretation given by the High Court to Section 28(1-A) of the Act to be too wide. According to the Court, the said provision is to be interpreted to ensure that internal disputes in trade unions get decided expeditiously but it can be only invoked by a person who has been a member of such registered trade union for a period of not less than six months. The Court observed that the words 'where there is a dispute as respects whether or not any person is an office-bearer or a member of a registered trade union' have to be read along with the words "any member of such registered trade union for a period of less than six months". A person whose application for membership has not been considered or allowed would not have been a member for six months. The court held that the dispute between persons who are not members and the union would not be covered by Section 28(1-A). Indeed, a dispute between a person who is not yet a member and a union would not be an internal dispute of the union. The Court added that under Section 28(1-A) the jurisdiction of the civil court is barred only in respect of the matters which have been referred to an industrial court under Section 28(1-A). But, if a dispute does not fall under Section 28(1-A) then that dispute can be taken to a civil court. Further, in a case like the present one where the dispute is whether a person should or should not be admitted a member is not a dispute falling under Section 28(1-A) and, therefore, it is open to such person to approach a civil court for resolution thereof. However, if the law permits, they may also raise an industrial dispute before the industrial court in this behalf. The Court, accordingly, set aside the judgement of the High Court.

Duties of the Registrar

Section 8 lays down the duties of the Registrar in matters of registration of trade union. It provides that as soon as the Registrar is satisfied that the trade union has complied with all the requirements of this Act in regard to registration, he shall register the trade union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the trade union contained in the statement accompanying the application for registration. This shows that where the definitions under Section 2(g) and 2(h) are themselves inapplicable to the so-called union, the Registrar has every power to refuse the registrations. Section 8 raises several questions: (*i*) whether it is obligatory for the Registrar to register a trade union within a reasonable time where it has complied with all the requirements of the Act (*ii*) the scope of enquiry under this section; (*iii*) whether Section 8 contravenes the fundamental right under Article 19(1) (*c*) of the Constitution and (*iv*) whether the Registrar can refuse to register more than one union in one plant/industry.

Time-limit for Registration

The Trade Unions Act does not prescribe any time-limit for the grant or refusal of registration. It only imposes a statutory duty upon the Registrar to register a trade union if he is satisfied that the requirements of the statute have been complied with. The absence of any provision regarding the time-limit for grant or refusal raises a question

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whether the Court can interfere in regard to the time taken by the Registrar in granting or refusing registration of trade union. The decision in *A.C.C. Rajanka Lime Stone Quarries Mazdoor Union v. Registrar of Trade Unions, Government of Bihar* has a direct bearing on this question. In this case the Union sent an application on 31 July 1951 for registration to the Registrar of Trade Unions in the prescribed manner together with the constitution and rules of the said union which was received by the latter on 3 August 1957. But no action was apparently taken under Sections 7 and 8 on the application for over 3 months. The union sent many reminders but they remained unreplied. Under the circumstances the union proferred a writ petition before the Patna High Court, praying that the Registrar of Trade Unions be directed to perform his statutory duty of registering or refusing to register the trade union under the Act. The High Court of Patna held that Section 8 imposes the statutory duty upon the Registrar to register a trade union on being satisfied that it had complied with the requirements of the Act. The Court accordingly held that there was a case for issuance of writ in the nature of mandamus under Article 226 of the Constitution. The court directed the Registrar of Trade Unions to perform the statutory duty imposed upon him under Sections 7 and 8 and to deal with the application of the Trade Union according to law at an early date.

It is submitted that a time limit should be prescribed for the grant or refusal of registration by the Registrar. The National Commission on Labour has suggested 30 days, excluding the time which the union takes in answering queries from the Registrar. This view is likely to give some scope to the Registrar to make vexatious inquiries simply to gain time. Indeed, Section 23 of the Industrial Relations Bill, 2978 prescribed 60 days time from the date of the receipt of the application by the Registrar either in granting or refusing to grant registration of trade union and communicating the order to the applicant. Where, however, the Registrar refuses to grant registration to a trade union, he is under an obligation to state reasons for refusing to grant registration. The Trade Unions (Amendment) Bill, 1982 has provided for insertion of the words 'within a period of 60 days from the date of such compliance' after the words 'Register the Trade Unions' in Section 8 of the Trade Union Act, 1926.

Registration of One Union in One Industry

It has been seen elsewhere that the Trade Unions Act, 1926, provides that as soon as the Registrar is satisfied that the trade union has complied with all the requirements in regard to registration he shall register the trade union. From this it is clear that the Act does not empower the Registrar to refuse registration of trade union in cases where one or more unions are already in existence in the plant/industry. A question, therefore, arises, whether it is in the interest of trade unions to empower the Registrar to refuse to register trade union on the above ground. Two views are discernible:

(*i*) The Registrar of Trade Unions should be empowered to refuse to register one union in one plant or industry. The reason is that the multiplicity of union leads to rivalry among trade unions. This view, is however, open to several objections. First, this may run contrary to Article 19(1)(c) of the Constitution. Second, the problem of multiplicity of trade unions may be resolved to a great extent by providing recognition to a representative union.

(*ii*) The Registrar of Trade Unions should not be given power to refuse to register more than one union because the refusal may infringe upon Article 19(1)(c) of the Constitution. The other reason is that recognition of majority union will to a great extent meet this problem. The second view seems to be a better view.

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Certificate of Registration: A Conclusive Evidence

The certificate of Registration issued by Registrar shall be on the prescribed form, i.e., in Form C of Schedule III and is conclusive evidence to show that the Trade Union has been duly registered under the Act. This finality is only for the purposes of the Act and cannot in any way affect the powers of the High Court under Article 226 of the Constitution as the provisions of the statute are always subject to the jurisdiction of the Constitution.

Minimum Requirement about Membership of a Trade Union

Section 9-A provides that a registered Trade Union of workmen shall at all times continue to have not less than ten per cent or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.

Cancellation and Deregistration of a Registered Trade Union

The registration of a trade union may be cancelled by the Registrar on any one of the following grounds: (*i*) that the certificate under Section 9 had been obtained by fraud or mistake; (*ii*) that the trade union had ceased to exist; (*iii*) that the trade union had 'wilfully' contravened any provision of the Act even after notice from the Registrar; (*iv*) that a trade union allowed any Rule to continue in force which was inconsistent with any provisions of the Act; (*v*) that the trade union had rescinded any Rule providing for any material provision which was required by Section 6; (*vi*) if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members. However, not less than two month's previous notice in writing, specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

The Trade Union (Amendment) Bill, 1982, provides for insertion of new clause (c) after the provison to Section 10, namely:

If the Registrar is satisfied that the Trade Union has called for, or participated in, any illegal strike.

Explanation — For the purposes of this section, 'illegal strike' has the meaning assigned to it in Section 24 of the Industrial Disputes Act, 1947.

The grounds for cancellation of registration are open to several objections: First, the term 'wilful' is vague. In practice, it is found that trade unions do not submit their annual return. The section, however, requires that the default has to be 'wilful'. To establish a wilful default to the satisfaction of a Court is difficult. In view of this the (First) National Commission on Labour recommended that where the union failed to submit the annual return, its registration should be cancelled irrespective of whether the default is 'wilful' or otherwise. This recommendation should be implemented. Second, it is doubtful whether the materially defective return should be treated as return under Section 10. In view of the prevailing ambiguity the National Commission on Labour suggested that 'materially defective return' should amount to a default and the union should be under an obligation to rectify mistakes within the prescribed period failing which the Registrar should be deemed not to have received the return.

The Registrar is not competent to cancel the registration of a trade union, without, in the first instance, giving to the trade union concerned two month's previous notice in

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writing, specifying the grounds on which he proposes to withdraw or cancel the certificate and giving an opportunity to the Trade Unions to show cause against proposed action. However, unlike Section 26(3) of the Industrial Relations Bill, 1978, there is no provision that 'while cancelling the certificate of registration of a trade union the Registrar shall record the reasons of doing so and communicate the same in writing to the trade union concerned.' Once the Registrar cancels or withdraws the registration of a Trade Union he has no power to quash that order. Further, he has no power to review it. Moreover, he has no power to withdraw it because of subsequent events.

Powers of the High Court in Respect of Cancellation of Registration

The Bombay High Court held that the High Court may exercise its powers under Article 226 of the Constitution where the cancellation of the registration of the trade union had been effected improperly. Again the Gujarat High Court quashed the orders of Registrar where no show cause notice was given before cancellation of registration as required under Section 10(b).

Powers of the Registrar in Respect of Deregistration

The Registrar is empowered to cancel or withdraw certificate of registration on the application of the trade union. He is required to: (*i*) give an opportunity to trade unions except in the case of applications of the concerned trade union; (*ii*) satisfy himself that any one of the grounds of cancellation of registration of such trade union exists and (*iii*) make such order which he deems necessary for verification.

The power of cancellation of registration of trade unions also confers with an in-built power to withdraw the order of cancellation. Thus, the Registrar is also empowered to withdraw the order of cancellation on realisation of mistake and on such order, the cancellation becomes *non-est*.

2.2.3 Union Recognition

The recognition of trade unions is said to have been originated, in relation to the Government with its servants. Prior to 1933, Government servants were prohibited from submitting collective memorials and petitions. When conceded this right was granted only to combination which confirmed certain rules. Unions which confirmed these rules were ordinarily granted formal recognition and were allowed to conduct negotiation with government on behalf of their members.

Appointment of the Royal Commission

Problems relating to recognition of trade unions attracted the attention of the Royal Commission on Labour in 1929. It made a comprehensive survey in almost all the problems relating to labour (including recognition of trade unions) and recommended that the 'Government should take the lead, in case of their industrial employees, in making recognition of union easy and in encouraging them to secure recognition.'

Legislative Action on the Royal Commission's Recommendation

Legislative attempt was, however, not made until 1943 for compulsory recognition of trade unions by employers when the Indian Trade Unions (Amendment) Bill, 1943, was placed before the Central Legislative Assembly. The Bill was opposed by the management and, therefore, it could not be passed. The Bill was revised in the light of discussion made in the Assembly and a new Bill, namely, the Indian Trade Unions (Amendment)

Bill, was introduced three years later in 1946 in the Central Legislative Assembly. This Bill was referred to the Select Committee which suggested certain amendments. The Bill was passed in November 1947 and received the assent of the Governor General on 20 December, 1947. But the Trade Unions (Amendment) Act was never brought into force. Subsequently in 1950, Trade Unions Bill also incorporated provisions for recognition of trade unions. The Bill was moved in the legislature but it was not ratified into an Act.

Role of the International Labour Organization

At an international level the concern felt by the International Labour Organization for evolving an international instrument for recognition of trade unions resulted in ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 1948 and Convention No. 98 concerning the right to organise and bargain collectively in 1949. The former states:

> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organization of their own choosing without previous authorization. The convention empowers the workers organization to frame their constitution, to elect representatives and among others to organise their activities. To establish and join federations Article 8 of the Convention requires that workers and employers and their respective organizations, like all other, shall respect the law of the land. The law of the land shall not be such as to impair nor shall it be so applied as to impair, the guarantees provided for in the constitution. The latter confers protection to workers against acts of anti-union discrimination in respect of their employment. The protection is, directed in respect to acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership and (b) cause the dismissal of, or otherwise prejudice a worker by reason of union membership or because of his participation in union activities outside working hours.

Plans and Recognition of Trade Unions

Immediately after India became a Sovereign Democratic Republic, the Trade Unions Bill, 1950, concerning the recognition of trade unions through planning was accepted and a Planning Commission was constituted. In the evolution of labour policy during the Plan, recognition of trade union has been accorded due importance by the planners. Thus the Second Five-Year Plan (1956–61) paid considerable attention to the problems of recognition of trade unions. In view of the fact that 'recognition has strengthened the trade union movement in some states' the Plan recommended that 'some statutory provisions for securing recognition should be made, where such recognition does not exist at present. In doing so the importance of one union for one industry in a local area requires to be kept in view'. The Third Five-Year Plan (1961–66) envisaged a marked shift in the policy of recognition of trade unions. It was stated in the plan that 'the basis for recognition of unions, adopted as a part of the Code of Discipline will pave the way for the growth of a strong and healthy trade unionism in the country. A union can claim recognition if it has a continuing membership of at least 15 per cent of the workers in the establishment over a period of six months and will be entitled to be recognised as a representative union for an industry or a local area, if it has membership of at least 25 per cent of workers. Where there are several unions in an industry or establishment, the union with the largest membership will be recognised. Once a union has been recognised,

there should be no change in its position for a period of two years, if it has been adhering to the Code of Discipline'.

First National Commission on Labour

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Another landmark in the recognition of trade unions was reached with the appointment of the National Commission on Labour in 1966. The Commission recommended, inter alia, for statutory recognition of trade unions but no concrete legislative action was taken till 1978.

Industrial Relations Bill, 1978

In 1978, the Industrial Relations Bill, inter alia, incorporated the provisions for recognition of Trade Union. But the Bill which was introduced in Lok Sabha in August 1978, lapsed after the dissolution of sixth Lok Sabha on 30 August, 1978.

The Hospital and other Institutions (Settlement of Disputes) Bill, 1982

The Bill provides for the recognition of trade unions of workmen. A trade union will not be considered for recognition with respect to an establishment for the purposes of the legislation unless it is registered under the Trade Unions Act and each of its office-bearers is a workman in such establishment or any other establishment. In order to be entitled to recognition, such a trade union must have the support of the majority of workmen in the establishment. The representatives of workmen on the Grievance Settlement Committee, Local Consultative Council and Consultative Council would be nominees of recognised trade unions.

To sum up, the existing arrangement for the recognition of trade unions reveals that no legislative step at central level has been effectively introduced and enforced for recognition of trade unions. The voluntary arrangement for recognition of trade unions as we shall presently see has failed to deliver the goods for want of adequate implementation machinery.

Law and Practice Relating to Constitution and Recognition of Rrade Unions

Is the right to grant recognition to trade unions a fundamental right within the meaning of Article 19 (1) (*c*) of the Constitution? This has been answered in the negative because the right to form an association does not carry with it the concomitant right that the association should be recognised by the employers. Hence neither withdrawal of recognition of the union nor the discontinuance of recognition infringes the fundamental rights guaranteed under Article 19(1) (*c*) of the Constitution.

Legislative Measures

In some industrially advanced countries such as the United States of America, Canada, Columbia, and Bahrain, where collective bargaining and voluntary arbitration have developed considerably and statutory provisions have been made for determining the representative character of trade unions.

2.2.4 Trade Unions (Amendment) Act, 1947

In India, it has been observed earlier, that there is no Central enactment governing recognition of trade unions. The Trade Unions (Amendment) Act, 1947, however, provided for recognition of unions, (*i*) by agreements, and (*ii*) by order of the Court on satisfying

the conditions laid down in relevant sections of the Act. But the Act, as stated earlier, has not been enforced.

NOTES

1. ***Machinery for Determination of Representative Unions*:** Section 28E of the Trade Unions (Amendment) Act, 1947, empowers the Labour Court to grant recognition where a registered trade union having applied for recognition to an employer fail to obtain the same within a period of three months.
2. ***Conditions for Recognition:*** Section 25D provides that a Trade Union shall not be entitled for recognition by order of a Labour Court under Section 25E unless it fulfills the following conditions, namely:
   (*a*) that all its ordinary members are workmen employed in the same industry or in industries closely allied to or connected with another;
   (*b*) that it is representative of all the workmen employed by the employer in that industry or those industries;
   (*c*) that its rules do not provide for the exclusion from membership of any class of the workmen referred to in clause (*b*);
   (*d*) that its rules provide for the procedure for declaring a striker;
   (*e*) that its rules provide that a meeting of its executive shall be held at least once in every six months;
   (*f*) that it is a registered Trade Union, and that it has complied with all provisions of this Act.

   The aforesaid provisions of the Act raise various problems (*i*) Can an employer voluntarily recognize a union which is not registered under the Act and which is in fact a majority union? (*ii*) Can an employer be compelled to recognize more than one union? Notwithstanding the relative importance of these questions and rather unsatisfactory answer that we get from the statute, the significance of Trade Unions (Amendment) Act, 1947, must not be overlooked. But, even this could not be put into force.
3. ***Rights of Recognized Trade Unions:*** The recognized trade unions have been conferred the right to negotiate with employers in respect of matters connected with employment, non-employment, the terms of employment or the conditions of labour of all or any of their members, and the employer is under an obligation to receive and send replies to letters sent by the executive and grant interviews to them regarding such matters.
4. ***Withdrawal of Recognition of Trade Unions:*** Under Section 28G of the Trade Unions (Amendment) Act, 1947, the Registrar or the employer is entitled to apply to the Labour Court in writing for the withdrawal of the recognition on any one of the following grounds:
   (*a*) that the executive or the members of the Trade Union have committed any unfair practice set out in Section 28 J within three months prior to the date of the application;
   (*b*) that the Trade Union has failed to submit any return referred to in Section 281;
   (*c*) that the Trade Union has ceased to be representative of the workmen referred to in Clause (*b*) of Section 28 D.

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On receipt of the application the Labour Court is required to serve a show cause notice in the prescribed manner on the Trade Union as to why its recognition should not be withdrawn. If the Court is satisfied that Trade Union did not satisfy conditions for the grant of recognition it shall make an order declaring the withdrawal of recognition.

The aforesaid provisions raise a question as to whether recognition of Trade Union can be withdrawn on the ground that recognised trade union has lost its status as a representative union.

5. ***Re-recognition of Trade Unions:*** Section 28H of the Trade Unions (Amendment) Act, 1947, permits the registered Trade Union whose recognition is withdrawn under sub-section (3) of Section 28G to make an application for re-recognition after six months from the date of withdrawal of recognition.

The Trade Unions Bill, 1950

In 1950 the Trade Unions Bill, 1950 was introduced in the Parliament. The Bill was primarily a consolidating measure, but there were some new provisions which were added namely:

(*a*) A trade union of civil servants shall not be entitled to recognition by the appropriate government if it does not consist wholly of civil servants or if such union is affiliated to a federation of Trade Unions to which a Trade Union consisting of members other than civil servants is affiliated.

(*b*) A trade union shall not be entitled to recognition by an employer in relation to any hospital or educational institution by order of a Labour Court if it does not consist wholly of employees of any hospital or educational institutions, as the case may be.

(*c*) A trade union consisting partly of supervisor and partly of other employees, or partly of watch and ward staff and partly of other employees shall not be entitled to recognition by an employer by order of a Labour Court.

The Bill also provided for recognition of trade union where application for recognition was made by more than one union. The trade union having the largest membership gets preference over others. The recognised unions are given rights such as collecting subscriptions, holding meetings on employer's premises and of collective bargaining. The Labour Court is empowered under the Bill to order for recognition of unions. The Bill could not, however, be brought in the form of an Act because of opposition to it from several quarters. The Bill lapsed on the dissolution of the Legislature.

State Legislation

In some states there are legislations on the recognition of trade unions. These legislations may be briefly discussed:

(a) *Maharashtra*: The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1972, provides for the recognition of trade union for facilitating collective bargaining for certain undertakings and confers certain rights and obligations upon recognised trade unions and also confers certain powers on unrecognised trade unions. The Act is applicable in every undertaking employing fifty or more persons on any day of the preceding twelve months. The application of the Act can be extended by the State Government even in undertakings employing less than fifty persons. In order to be registered as recognised trade

union (*i*) the trade union must have a total membership of 30 per cent in the said undertaking, (*ii*) it must be in existence for the last six months and (*iii*) it must make an application in the prescribed form to the Industrial Court.

When such an application is made and is found to be in order, a notice shall be issued and after considering the objections and holding enquiries, if any, the union shall be recognised and a certificate would be issued. On the contrary, if a counter claim is put forward by any other union and it is found that union has the largest number of employees in the undertaking, and if that other union also fulfills the requirements which the applicant-union also fulfils for being recognised, then the Industrial Court is empowered to grant recognition and issue a certificate not to the applicant union but to the other union which has the largest number of persons employed in the undertaking.

(*b*) *C.P. and Berar:* The C.P. and Berar Act, 1947 lays down the following conditions for recognition of unions:

(*i*) The membership of union is open to all employees irrespective of caste, creed or colour;

(*ii*) The union has for the whole of the period of six months preceding the date of application, membership of not less than between 15 and 20 per cent as the State Government may prescribe for that local area, of the employees in the industry in that area;

(*iii*) The constitution of the union shall be such as may be provided under this Act.

(*c*) *Madhya Pradesh:* The Madhya Pradesh Industrial Relations Act, 1960, provides that a union for the purpose of recognition shall have not less than 25 per cent of the total number of employees employed in the industry in such local area.

Tribunal's Response

The attempt of the union to bring the question of its recognition by management within the purview of industrial dispute proved futile. The Industrial Tribunal has consistently rejected the union's claim for its recognition by the management on the grounds that (*i*) the refusal to recognize the union was not an industrial dispute within the meaning of the Industrial Disputes Act, 1947, (*ii*) the specific remedy was provided in the Trade Unions (Amendment) Act, 1947, (unenforced) and (*iii*) the Tribunal cannot take the task which the Labour Courts are required to perform.

Non-statutory Code of Discipline in Industry

To fill the lacuna in the Central Law, the 16th Session of the Indian Labour Conference provides for the recognition of trade unions, it lays down the following, criteria for their recognition:

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply.
2. The membership of the union should cover at least 15 per cent of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscription for at least three months during the period of six months immediately preceding the reckoning.

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3. A union may claim to be recognised as a representative union for an industry in a local area if it has a membership of at least 25 per cent of the workers of that industry in that area.
4. When a union has been recognised, there should be no change in its position for a period of two years.
5. Where there are several unions in an industry or establishment, the one with the largest membership should be recognised.
6. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has membership of 50 per cent or more of the workers of that establishment it should have the right to deal with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All other workers who are not members of that union might either operate through the representative union for industry or seek redress directly.
7. In the case of trade union federations which are not affiliated to any of the four central organizations of labour, the question of recognition would have to be dealt with separately.
8. Only unions which observed the Code of Discipline would be entitled to recognition.

This Code, however, has not been effectively implemented and it is respected more in its breach than in its observance. The failure of enforcement machinery of the Code is revealed by the fact that during 1960, 70,10,402 cases of breach of Code of Discipline were reported. In addition to this there are numerous unreported cases as well. The Central Implementation and Evaluation Division has made much work in this regard. The division secured recognition to twenty-four unions during 1968-70. Faced with the problem of infringement of the Code of Discipline the Committee took certain decisions:

- When a union is recommended for recognition by the implementation machinery after proper verification of its membership, the employer should recognize it within a month. If he fails to do so, he should be considered responsible for infringement of the Code of Discipline and action should be taken against him by the Central Organization concerned.
- A union which is not affiliated to any of the four central organizations of workers should wait for a period of one year after it has accepted the Code of Discipline before its claim for recognition can be considered.
- When the breach of the Code by a union has been established by the appropriate implementation machinery it would be open to the employer concerned to de-recognize the union.

However, the question of recognition of the union by the employer raises various doubts (*i*) whether the gap in law will be filled by the provisions of the Code? (*ii*) whether the provisions of the Code particularly regarding the recognisation of the union can effectively be implemented? (*iii*) whether the provisions of Code have also been adopted by such organizations and unions which are not affiliated by Central Federation?

The Division Bench of the Madras High Court in *Tamil Nadu Electricity Board* v. *Tamil Nadu Electricity Board Accounts and Executive Staff Union* gave a helping hand in strengthening provisions for recognition of trade union under the voluntary Code of Discipline. In this case the name of the petitioner was changed from Tamil Nadu Electricity Subordinates Union to Tamil Nadu Electricity Board Accounts and Executive

Staff Union. Originally the membership was open to all workmen who were engaged in clerical, accounting and other work. The coverage was extended to employees covered under Section 2 (i) of the Industrial Employment (Standing Orders) Act, 1946. This change was communicated to the management with a request to accord recognition to the changed name of the trade union but the management withdrew recognition without giving a notice on the ground that the recognition granted to it was for clerical workmen and not to workmen covered by Section 2 (i). Aggrieved by this order the union preferred a writ petition in the Madras High Court, single judge of the High Court allowed the petition. It was submitted by the management that the writ petition was not maintainable because recognition was not granted under any statute. Rejecting the contention, Ismail C.J., observed:

> [T]he Code of Discipline in Industry does contemplate recognition and that it was only under that Code [that] recognition was applied for and granted. It is not disputed that the grant of recognition confers a status on a body like the respondent Union to represent the workers in a particular category with reference to their service conditions, with the Management; in other words, it becomes a bargaining agent on behalf of the group of workers with reference to which it was recognised. Withdrawal of that status or recognition will certainly bring about adverse consequences, on a body like the respondent Union, and with reference to such adverse consequences, even an order of withdrawal like the one made by the appellant if it is illegal or is in violation of principles of natural justice, certainly a body like the respondent Union can approach this court under Art. 226 of the Constitution. Therefore we reject the contention of the learned counsel for the appellant that the writ petition was not maintainable.

It is thus evident that Courts may interfere under Article 226 of the Constitution even where the recognition granted by the employer under the non-statutory Code of Discipline is withdrawn on flimsy grounds or erroneous basis or in violation of the principles of natural justice.

Do principles of natural justice apply in the de-recognition of a trade union recognised under the Code of Discipline by the management? This issue was raised in *Secretary, Meters Staff Association* v. *Union Electrical Industries Ltd.* Here the staff association was recognised by a government company, wholly owned and controlled by the government under the Code of Discipline. After some time the recognition enjoyed by the association was withdrawn. Thereupon, the association filed a writ petition before the Kerala High Court. The questions arose: (*i*) whether the discretion exercised by the management to derecognise the association could be interfered with under Article 226? and (*ii*) whether the management is bound to apply the principles of natural justice in derecognising a union? While dealing with these questions the Court observed:

> Recognition certainly confers a status on the union to represent the workers and as a bargaining agent Unions have come to enjoy various facilities by virtue of such status. De-recognition involves deprivation of such status, right and facilities. It certainly involves serious adverse consequences. No doubt the decision to de-recognize a particular union can be regarded as an administrative decision or order. Nevertheless since it involves serious adverse consequences to the union and the employees organised under the union, their right to [a] hearing before the decision is taken has certainly to be recognised as part of the principle of fair play in action. If the decision is taken without giving a hearing to the union, it has to be regarded as violative of [the] principles of natural justice and must be treated as void.

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In the absence of any statutory recognition of trade unions, the question has arisen whether a civil suit is maintainable on an action by a trade union under the voluntary Code of Discipline? This issue was answered in the negative in *T.C.C. Thozhilali Union* v. *T.C.C. Ltd.* In this case the management and workers represented by six unions arrived at a settlement over the then existing differences and drew up a memorandum of settlement. The settlement inter alia, provided that the management recognised all the six unions as the collective bargaining agent of the workmen. The settlement was operative for four years and was to be governed by the Code of Discipline. When the period of four years was about to expire the company refused to allow the plaintiffs union to enter into a 'Long Term Settlement'. The union then filed a civil suit praying that the management be restrained from entering into any settlement or agreement with other unions. The trial court dismissed the suit. The lower Appellate Court, on appeal, by the union upheld the findings of the court below. The union thereupon filed a second appeal before the Kerala High Court which observed:

> The position, therefore, is—(i) 'recognition dispute' is an industrial dispute; (ii) recognition is a matter of volition on the part of the employer; (iii) a trade union has neither common law right nor statutory right which enables and entitles it to compel an employer to give recognition to it as the bargaining agent of its members; and (iv) since it has no such common law right, a 'recognition disputed', cannot be said to be one emanating from, and emerging out of, any right under the general common law; and, therefore, (v) principle No. 2, stated by the Supreme Court in the Premier Automobiles case is not attracted to a 'recognition dispute', no matter that a trade union, has no such right under any statute either.

The Court maintained that the lower courts rightly held that the suit brought by the union in respect of the 'recognition dispute' could not be entertained by a civil court.

Can a bank refuse to negotiate with General Secretary of the Workers' Union on the ground that he is no longer the employee of the Bank? The High Court in *State Bank of India Staff Association* v. *State Bank of India* answered the question in affirmative.

Rights of Unrecognized Unions

The management is obliged to hear trade unions registered though not recognised and resolve their disputes as far as possible without resorting to conciliation or adjudication processes. Though the management is not obliged to recognize a trade union, at the same time it cannot refuse to hear the grievances voiced by it in respect of service conditions or its members. There is no provision in the Industrial Disputes Act or Trade Unions Act prohibiting the management from negotiating, discussing or entering into settlement with an unrecognised union. It is only in those cases where the demands of unrecognised union is already seized of by a recognised union that such demand would not be maintainable. Direction can be given to management falling under Article 12 of the Constitution.The Supreme Court in *Chairman, State Bank of India* v. *All Orissa State Bank Officers Association* delineated the rights of recognized and unrecognized trade unions, while interpreting the provision of Rule 24 of the verification of membership and recognition of Trade Union Rules, 1974 framed by the State of Orissa which is as follows:

> 22(a) Rights of Unrecognized Union—to meet and discuss with the employer or any person appointed by him in that behalf the grievances of any individual member relating to his service conditions.

(b) To appear on behalf of its members employed in the establishment in any domestic or departmental enquiry held by the employer and before the Conciliation Officer/labour court/Industrial Tribunal or Arbitrator.

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While interpreting the aforesaid clause the court held that an unrecognized trade union unlike 'recognized trade union' has (*i*) no right to participate in the discussions/ negotiations regarding general issues affecting all workmen/employees; and (*ii*) settlement, if any, arrived at as a result of such discussion/negotiations is not binding on all workmen/employees. But it has (*i*) the right to meet and discuss with the management/ employer about the grievances of any individual member relating to his service conditions; and (*ii*) to represent an individual member in domestic inquiry or departmental inquiry and proceedings before the conciliation officer and adjudicator.

The court gave two reasons in support of its conclusion: (*i*) the right of the citizens of this country to form an association or union is recognized under Article 19(1) (c) of the Constitution; (*ii*) for the sake of industrial peace and proper administration of the industry it is necessary for the management to seek co-operation of the entire work force.

The court added that the very fact that certain rights are vested in a non-recognized union shows that the Trade Unions Act, 1926 and the rules framed thereunder acknowledge the existence of a non-recognized union. Such a union is not a superfluous entity and it has relevance in specific matters relating to administration of the establishment. Thus, the management/employer cannot outrightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto.

Response of the First National Commission on Labour

(*a*) *Scheme for recognition:* The First National Commission on Labour has recommended compulsory recognition of trade unions by the employers under the Central legislation in industrial undertakings employing one hundred or more workers or where the capital invested is above the stipulated size. In order to claim recognition by the individual employer the union must have the total membership of 30 per cent of the plant or establishment. The industry-wise union in local area may, however, be recognised if the minimum membership is 25 per cent. The Commission has recommended that where recognition is sought by more than one union, the larger union should be recognised. But the Commission was in favour of recognition of industry-wise union over plant or unit union. The Commission's recommendations are open to several objections: *First,* recognition of either industry-wise union or unit-wise union may lead to industrial unrest and rivalry. *Second*, the two alternative choice given to Industrial Relations Commission may also lead to confusion and thus no uniform method may be followed. It may, in effect, affect the industrial peace and harmony.

(*b*) *Mode of determination of representative character:* The National Commission on Labour has suggested alternative methods, namely, 'verification' and 'ballot'. It suggested that the proposed Industrial Relations Commission should be empowered to decide the representative character of a union either by examination of its membership or by holding an election through secret ballot of all employees. The alternative choice given by the National Commission may also lead to confusion and thus no uniform method may be followed. It may, in effect, also affect industrial peace and harmony. Out of the two methods the secret ballot method is a democratic method and is more acceptable to a welfare society like ours.

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(*c*) *Machinery for determination of representative character:* The National Commission recommended that the Industrial Relations Commission at centre and states (as proposed by the Commission) should be empowered to issue certificate to unions as representative for collective bargaining.

(*d*) *Right of recognized trade unions:* The National Commission on Labour recommended that the recognized trade unions should be given certain rights and privileges such as (*i*) right of sole representation; (*ii*) entering into collective agreement on terms of employment and conditions of service; (*iii*) collection of membership subscription within the premises of the undertaking, the right to check-off; (*iv*) holding discussion with departmental representatives of its workers members within factory premises; (*v*) inspecting by prior agreement the place of work of any of its members; and (*vi*) nominating its representatives on works/ grievance committees and other bipartite committees. As regards the rights of unrecognised trade unions the Commission suggested that they should enjoy the right to represent individual grievances relating to termination of service and other conditions of service.

The proposed rights of recognised trade unions suggested by the National Commission on Labour have been subject of criticism by AITUC and other organizations. According to them the proposed rights are inadequate. They suggested that more rights should be conferred upon the recognized trade unions.

6. ***Trade Unions and Industrial Disputes (Amendment) Bill, 1988:*** The Bill seeks to provide for the constitution of a bargaining council to negotiate and settle industrial disputes with the employer. Thus, under Chapter II-D every employer is required to establish a bargaining council for the industrial establishment for which he is the employer consisting of representatives of all the Trade Unions having membership among the workmen employed in the establishment not being trade unions fenced on the basis of craft or occupation each Trade Union being called a bargaining agent.

   Where there is more than one trade unions having members among the workmen employed in an industrial establishment, the representation of all such Trade Unions on the bargaining council shall be in proportion to the number of the members in that establishment as determined under the Trade Unions Act, 1926.

   The Trade Union with the highest membership of workmen employed in that establishment and having in no case less than forty per cent of the total membership among the workmen shall be known as the principal bargaining agent.

   Where there is only one Trade Union having members among the workmen employed in an industrial establishment that Trade Union shall be the bargaining council for that establishment and such bargaining council shall also act as the sole bargaining agent.

   The Chairman of the bargaining council shall be a person chosen by the principal or sole bargaining agent from amongst its representatives. However, if there is no Trade Union having membership of at least forty per cent of the total membership of the Trade Unions of workmen in an industrial establishment, the one with the highest membership among the workmen employed in the establishment shall have the right to nominate one of its representatives as the Chairman of the bargaining council.

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If there is no Trade Union having members among the workmen employed in an industrial establishment a workmen's council shall be established by the employer in the prescribed manner and such workmen's council shall be the bargaining council for that establishment.

The State Government is empowered to establish a bargaining council in a class of industry in a local area in respect of which it is the appropriate Government on the basis of the relative strength of the Trade Unions of workmen concerned as determined under the provisions of the Trade Unions Act, 1926, in such manner as may be prescribed.

Similarly, the Central Government may establish a bargaining council in respect of an industrial undertaking or a class of industry in respect of which it is the appropriate Government on the basis of the relative strength of the trade unions of workmen concerned as determined under the provisions of the State Trade Unions Act in the prescribed manner.

The Central Government is also empowered to set up in consultation with the State Government concerned a council at the national level to be called the National Bargaining Council in respect of a class of industry or a group of Central Public Sector Undertakings in relations to which the appropriate Government is the State Government.

The National Bargaining Council shall comprise representatives of the Central Government, the State Government concerned, employers or trade unions of employers and trade unions of workmen, being represented in proportion to their relative strength of membership as determined under the provisions of the Trade Unions Act, 1926.

Every bargaining council establishment under Section 9, other than a national bargaining council establishment shall be registered with the Labour Court in such manner as may be prescribed.

The term of office of a bargaining council registered under this Chapter shall be three years.

A registered bargaining council shall, subject to the provisions of this Act be entitled:

- to raise industrial disputes with the employer or employers;
- to settle industrial disputes with the employer or employers;
- to sign on behalf of the workmen the documents settling industrial disputes;
- to represent the workmen in any industrial disputes; and
- to exercise such other powers as may be prescribed.

Where a Labour Court finds a bargaining agent guilty of indulging in all or any of the unfair labour practices listed at item No. 1 (Illegal strike), item No. 5 (in so far as it relates to go slow) and item No. 8 (Violence) of Part II of the Fifth Schedule, it may disqualify such bargaining agent to function as such for such period as may be determined by it.

7. ***Response of the Second National Commission on Labour:*** The (Second) National Commission on Labour which submitted its report to the Government of India on 29 June 2002 has recommened that the negotiating agent should be selected for recognition on the basis of the check off system. A union with 66 per cent membership be entitled to be accepted as the single negotiating agent, and if no

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union has 66 per cent support, then unions that have the support of more than 25 per cent should be given proportionate representation on the negotiating college. The commission also suggested that recognition once granted, should be valid for a period of four years, to be coterminous with the period of settlement. The individual workers' authorisation for check-off should also be coterminus with the tenure of recognition of the negotiating agent or college.

An Appraisal

A central law on the recognition of trade unions is the need of the hour. It should provide for the compulsory recognition of trade unions. It is necessary in the interest of both trade unions and employers. It will also facilitate the settlement of disputes and will make such settlement more enduring. It will also, in effect, prevent the number of disputes which arise from inter union rivalry. Indeed, it will impose a legal obligation upon the disinterested and adamant employer to recognize a representative trade union for the purposes of collective bargaining. This will also bring into application a uniform standard for all trade unions seeking recognition.

2.3 PROBLEMS OF TRADE UNIONS AND UNFAIR LABOUR PRACTICES

The expression 'unfair labour practices' has not been exhaustively defined in any of the enforced legislative enactments in India. However, Section 28 (K) of the Trade Unions (Amendment) Act, 1947 enumerated the following to be an unfair labour practices on the part of the employer:

(*a*) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organise, form, join or assist a Trade Union and to engage in concerted activities for the purpose of mutual aid or protection;

(*b*) to interfere with the formation or administration of any Trade Union or to contribute financial or other support to it;

(*c*) to discharge, or otherwise discriminate against any officer of a recognized Trade Union because of his being such officer;

(*d*) to discharge, or otherwise discriminate against any workman because he has made allegations or given evidence in any inquiry or proceeding relating to any matter such as is referred to in sub-section (i) of Section 28 F;

(*e*) to fail to comply with the provisions of Section 28 F.

Check Your Progress

6. State the rights of recognized trade unions.
7. When was the first national commission on labour appointed?
8. State any three functions of a registered bargaining council.

Unfair labour practices on the part of Trade Unions under the Trade Unions (Amendment) Act, 1947

Section 28 J of the Trade Unions (Amendment) Act, 1947, (which is unenforced) dealt with the unfair labour practices by Trade Unions:

(*a*) for a majority of the members of the Trade Union to take part in an irregular strike;

(*b*) for the executive of the Trade Union to advise or actively to support or to instigate an irregular strike;

(*c*) for an officer of the Trade Union to submit any return required by or under this Act containing false statements.

Judicial delineation of unfair labour practice

In the absence of any enforced statutory definition, the courts have tried to fill this gap. The Judicial interpretation of the expression 'unfair labour practice' has given rise to two main views, viz., the narrow and the extensive.

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Narrow View

Some of the early adjudicators confined the expression 'unfair labour practice' to trade union activity. In other words, 'no trade union activity, no unfair labour practice.' This view was evidently supported by the provisions of Section 28 K of the Trade Unions (Amendment) Act, 1947. However, later decision-makers refused to accept the narrow interpretation on at least two grounds. *First*, if unfair labour practice is confined merely to trade union activities, then the worker who is not the member of any union and as such, having no trade union activities will not be entitled to any relief under the Industrial Disputes Act, 1947 when they are discharged. The result will be that either the employer would try to engage non-union men or that non-union men will be forced indirectly to join a union. This will, in the words of the Tribunal be an interference with the natural rights of workmen. *Second*, the narrow interpretation limits the scope of the Tribunal's jurisdiction to intervene only in cases where the management has dismissed or discharged workmen for the trade union activities.

Extensive View

A few of the earlier decisions and later decisions generally emphasise the extensive view. For instance, Shri A.G. Gupta in *Alexandra Jute Mills Ltd.* v. *Their Workmen* illustrated unfair labour practice:

> Any order made in bad faith with an ulterior motive arbitrarily or with harshness is an instance of unfair labour practice.

There are other illustrations, e.g., hasty action of company without giving the employee any notice or holding an inquiry provided that the refusal by an employer to permit his workmen to engage in Trade Union activities during their hours of work shall not be deemed to be unfair practice on his part. And Section 32-A of the Trade Unions (Amendment) Act, 1947 prescribed the penalty for committing unfair labour practices. Thus it provides that '(1) any employer who commits any unfair practice set out in Section 28 K shall be punishable with fine which may extend to one thousand rupees. (2) Where a Criminal Court imposes a fine, or confirms in appeal, revision or otherwise a sentence of fine imposed on an employer for committing an unfair labour practice set out in clause (c) or clause (d) of Section 28 K, it may when passing judgement, order the whole or any part of the fine to be applied in the payment to any person as compensation for lessor injury caused by the unfair practice.'

Code of Discipline in Industry

The Code of Discipline, 1958 also contains provisions for unfair labour practices to be avoided by unions and management:

1. Management agree not to support or encourage any unfair labour practice such as:
   (*a*) interference with the rights of employees to enroll or continue as union members;

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(*b*) discrimination, restraint or coercion against any employee because of recognised activity of trade unions; and

(*c*) victimisation of any employee and abuse of authority in any form.

2. Unions agree to discourage unfair labour practices such as:
   (*a*) negligence of duty
   (*b*) careless operation
   (*c*) damages to property
   (*d*) interference with or disturbance to normal work
   (*e*) insubordination

Response of the [First] National Commission on labour

The [First] National Commission on Labour has also recommended that the law should enumerate the various unfair labour practices on the part of employers and workers' unions and provide for suitable penalties for committing such practices. Complaints relating to unfair labour practices will be dealt with by the Labour Courts. They shall have the power to impose suitable punishments/penalties which may extend to de-recognition in case of unions and heavy fine in case of an employer found guilty of such practices.

Unfair labour practices on the part of employers and trade unions of employers under the Industrial Disputes (Amendment) Act, 1982

Section 2 (ra) read with the Fifth Schedule of the Industrial Disputes (Amendment) Act, 1982 defines and enumerates unfair labour practices on the part of employers to mean:

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes 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 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 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 organising a trade union of his workmen; and
   (*b*) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised 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 organise 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);

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(*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 promotions 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 victimisation;

(*b*) not in good faith but in the colourable exercise of the employer's rights;

(*c*) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(*d*) for patently false reasons;

(*e*) on untrue or trumped up allegations of absence without leave:

(*f*) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(*g*) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
7. To transfer a workman *mala fide* 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 pre-condition to allowing them to resume work.
9. To show favouritism or partiality to one set of 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 which is not an illegal strike.
13. Failure to implement awards, settlements or agreements.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith, with the recognised trade unions.
16. Proposing or continuing a lockout deemed to be illegal under this Act.

And Section 25 T of the Act prohibits employers (whether registered under the Trade Unions Act, 1926 or not) to commit any of the aforesaid unfair labour practices. Violation of the provision is punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 1000 or with both.

A perusal of item 7 of the Fifth Schedule read with Section 25 T of the Act reveals that there is a statutory prohibition engrafted in the Industrial Disputes Act

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prohibiting transfer of a workman *mala fide* from one place to another under the guise of management policy. This is a right which has been created by the Industrial Disputes Act in favour of the workmen restricting the unfettered right of the management in the matter of effecting transfer of his employees. The obligation not to transfer a workman *mala fide* from one place to another under the guise of management policy was not recognised under common law. That right it now created by the statute. The remedy has been provided in Section 10 of the Act. There are several conditions which are to be satisfied for invoking the remedy provided under Section 10 of the Act. When the statute prescribes a remedy and also prescribes the conditions for availing of that remedy, if the conditions for invoking the remedy cannot be complied with, it does not mean that the statute has not provided the remedy. Thus, the right as well as the remedy have been provided by the Industrial Disputes Act in the matter of transfers by the management. In such a case the jurisdiction of the Civil Court is by necessary implication barred.

Discouragement of badli workmen to join Trade Union—an unfair labour practice. In *Panyam Cement Employees Union affiliated to INTUC, Kurnool District* v. *Commissioner of Labour, Hyderabad* the High Court of Andhra Pradesh held that a reading of clause 4 of Part 1 of the Fifth Schedule reveals that any action on the part of the employer/workmen to discourage a workman from participating in a trade union activity is unfair labour practice. *Badli* workmen are workmen and, therefore, if any employer disapproves a 'trade union of *badli* workers' or discourages *badli* workers to join a trade union or denies voting right to *badli* workers, the same would amount to unfair labour practice.

Temporary appointment for successive fixed tenure with artificial breaks—an unfair labour practice. The Supreme Court in *Regional Manager*, *SBI* v. *Raja Ram* ruled that when an employee is appointed temporarily for successive fixed tenures with artificial breaks in between so as to deny the employee the right to claim permanent appointment such action would be an unfair labour practice within the meaning of the phrase in Section 2(ra) of the Act. Section 2(ra) says that unfair labour practice means any of the practices specified in the Fifth Schedule to the Act. The Fifth Schedule to the Act contains a list of unfair labour practices which have been classified under two heads, namely:

(a) on the part of the employer and trade unions of employers, and (b) on the part of the workmen and trade unions of workmen. The principle that we have referred to earlier finds place in Item 10 of Part I under which:

> '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,'

is an unfair labour practice. In other words, before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the *badlis,* casuals and temporary workmen had been continued for years as *badlis,* casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasised that for the practice to amount to unfair labour practice it must be found that the workmen had been retained on a casual or temporary basis with the object of depriving the workmen of the status and privileges of a permanent workman.

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Contravention of Model Standing Orders–an unfair labour practice. In *R.P. Sawant and Ors.* v. *Bajaj Auto Ltd. and Anr.*, the Bombay High Court held that the contravention of the Model Standing Order is an unfair labour practice within the meaning of item 9 of Schedule IV in respect of which an Industrial Court was competent to grant relief to the complainants.

Unfair labour practices on the part of workmen and trade unions of workmen under the Industrial Disputes (Amendment) Act, 1982

Section 2 (va) read with the Fifth Schedule of the Amendment Act also enumerates the following unfair labour practices on the part of workmen and their trade unions:

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To advise workmen in the exercise of their right to 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 their workplaces;
   (*b*) to indulge in acts of force or violence or to hold out treats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised 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 wilful '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 demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

The commission of aforesaid unfair labour practices are prohibited under Section 25 T and whosoever commits any such unfair labour practice is punishable under Section 25 U of the Industrial Disputes (Amendment) Act, 1982 with imprisonment which may extend to six months or with fine which may extend to ₹ 1000 or with both.

Proof of Unfair Labour Practice

The charge of unfair labour practice should be specifically levelled so that the employer is able to meet it. It should also be proved by clear evidence. It is undoubtedly correct that sometimes the facts may speak for themselves and it may be possible to infer that the employer was acting unfairly but there should be some evidence which should indicate an improper motive so as to enable the Court to arrive at a finding of unfair labour practice.

Victimization

Victimisation and unfair labour practice are 'like twins who cling together'. According to some, unfair labour practice can stand by itself, but victimisation must always keep

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company with unfair labour practice. For instance, where the employer interferes with employees' right to self-organization or with the formation of any labour organization, or where the employer closes the door on any settlement by negotiation, there may be unfair labour practices. In such cases, no punishment need be inflicted on any employee. It cannot be said that there is any victimisation. Thus, separate existence of unfair labour practice is conceivable. 'In other words the dividing line between victimisation and unfair labour practice is very thin and what is unfair labour practice may also be a victimisation and *vice versa*.'

Like the unfair labour practice the word 'victimisation' has not been defined either in the Trade Unions Act, 1926 or in the Industrial Disputes Act, 1947. The Supreme Court in *Bharat Bank Ltd.* v. *Employees of Bharat Bank Ltd.*, has, however, defined 'victimization' to mean:

> a certain person has become a victim, in other words, that he has been unjustly dealt with.

The aforesaid meaning was followed in *Bharat Iron Works* v. *Bhagubhai Balubhai Patel* wherein the Supreme Court observed that a person is victimized, if he is subjected to persecution, prosecution or punishment for no real fault or guilt of his own, in the manner, as it were a sacrificial victim. The Supreme Court said that victimisation may be of various types. For example, pressurising an employee to leave the union or union activities, treating an employee unequally or in an obviously discriminatory manner for the sole reason of his connection with union or his particular union activity; inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like.

The Supreme Court in *Workmen of M/s Williamson Magor and Co. Ltd.,* v. *M/s Williamson Magor and Co. Ltd.,* accepted the normal meaning of 'victimisation', namely, being the victim of unfair and arbitrary action, and held that there was 'victimisation' of the superseded workmen. The tendency of the Court to safeguard the interest of workmen, is also evident from the observation of the Court, that whenever, the word 'victimisation' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are poorer compared to management.

Justice Dhawan in *LH. Sugar Factories & Oil Mills (P) Ltd.,* expressed the view that what is unfair labour practice or victimisation is a question of fact to be decided by the Tribunal upon the circumstance of each case. However, from the mere fact that the concerned workmen were office-bearers of the union it cannot be inferred that the company was actuated by any improper motive to victimise them when the charge of misconduct was proved against them.

Ludig Teller has enumerated and given seven instances where the employees may be held guilty of unfair labour practice. These are, for instance, sit down strikes, to compelling members to join the union, strikes in violation of collective bargaining agreement, strike during 'cooling-off', obstruction of lawful works, the commission of misdemeanours in connection with labour disputes, unlawful picketing, etc.

In *R.B.S. Jain Rubber Mills* the Tribunal listed the following as outward manifestation to be taken into account for victimisation or unfair labour practice:

(a) Discrimination between workers

(b) Singling out union leaders or members

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(c) Anti-union statement made at a time of discharge or shortly prior thereto

(d) Relative significance of the alleged infraction

(e) Whether others ever committed the same infraction without similarly being punished to the context of discharge

(f) Failure, without explanation, to introduce specific evidence in support of a general accusation or reason for discharge or to call witnesses who have personal knowledge of the basis of denial

(g) Failure of the employer to hold an investigation

(h) Failure to afford an employee the opportunity to defend himself

(i) Uneven application of the Company's rule

Proof of Victimization

Victimization is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being, as it is an amalgamation of facts as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is *per se* no crucial instance.

Burden of Proof

The onus of establishing a plea of victimisation will be upon the person pleading it. Since a charge of victimisation is a serious matter reflecting to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced.

Again, victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him. A proved misconduct is antithesis of victimisation as understood in industrial relations.

2.4 ROLE OF TRADE UNIONS IN A CHANGED ECONOMIC SCENARIO

In India, over the years, the functions of trade unions have undergone a change both in their object and scope. The traditional role of trade unions has been confined to redress of grievances of their members regarding employment, non-employment, terms of employment and conditions of service and is still a predominant part of its activities. The Welfare State requires widening in the outlook and functions of trade unions. The role that trade unions can most effectively play in a planned economy, in addition to their traditional activities, may be as follows:

- To help, formulate and implement various five-year plans.
- To maintain discipline in the industry.
- To exercise utmost restraint regarding interruption of work and thereby maintaining industrial peace and harmony.

Check Your Progress

9. State any two unfair labour practices on the part of the employer.
10. How has the Supreme Court defined 'victimization'?

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- To assume increased responsibility for the success of higher productivity.
- To extend the working of various co-operative societies, e.g., credit societies, fair-price shops, housing co-operatives, co-operative stores, canteens, etc.
- To observe the wage restraint according to the requirements of economic development.
- To assist the Government in the workers' education programme and also to train workers.
- To ensure that management carries out the provisions of minimum standard statutes properly.
- To settle industrial disputes through the machinery provided under the Industrial Dispute Act, 1947.
- To uplift the status of women workers.
- To encourage small savings among working classes.
- To encourage family planning in the working classes.
- To help and improve the content and standard of labour research.
- To participate actively in the joint management council.
- To induce the labour class to effectively participate in social security schemes.
- To help the state in the prohibition policy in accordance with the Directive Principles of the State policies as enshrined in the Constitution of India by discouraging drinking habits amongst working classes.
- To help the workers in getting housing accommodation.
- To help in evolving safety measures and in implementing all safety provisions.
- To frame the programme for retaining surplus labour.
- To run cultural and welfare activities
- To protect personnel and properties of the establishment against antisocial elements.
- To check false rumours being propagated during wartime; (xxiii) to uplift the status of backward classes.

Several factors motivated the widening of the sphere of activities of trade unions.

First, the Government of India has committed itself to the task of economic reconstruction as its main objective. The cooperation of trade unions is a **sine quo non** feature for industrial development.

Second, an extension of these activities of trade unions seems to offer a genuine opportunity to workers and may create further incentive for workers to join trade unions.

Third, trade unions have now been accepted as an integral part of the apparatus of industrial and economic administration of the country and should discharge their responsibilities and functions effectively.

Fourth, the requirements of planned economic development necessitated the enlargement of trade union activities, on patterns most conducive to the achievement of national objectives.

2.4.1 Traditional Role of Trade Unions

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The traditional role of trade unions is to secure higher wages and better service conditions for their workers. This has been considered by them to be their 'primary' and predominant purpose.

A survey of the activities of trade unions of various States during 1956-62 reveals that the activities of trade unions are mainly directed towards making demands for redress of grievances of workers.

1. Formulating and executing various Five Year Plans

For the successful implementation of the plans the cooperation of trade unions is indispensable. The First Five Year Plan expected co-operation of all Indian organizations of workers in several forms. First, it required discussions in the affiliated unions and their views thereon. The object was to create enthusiasm amongst workers for the plan. A healthy atmosphere was to be created amongst the working class for this purpose. Second, in the interest of national economy, trade unions were required to avoid industrial disputes and maintain industrial peace and harmony. Third, the trade unions' help was also required to increase production. Fourth, it was expected that the outlook of a union with regard to the question of wages was to be attuned according to the requirement of economic development, in keeping with considerations of social justice. Fifth, the plans also required trade unions to devote more time to promote welfare and cultural activities especially in organizing and running consumers' and credit societies. Lastly, the trade unions were to be associated at various levels, namely, individual, industry, regional and national level.

The plan expected an effective role of workers in execution of the plan as increases in the standard of living of the common man depended on their efforts.

The Planning Commission in the Second Five Year Plan again sought the cooperation of trade unions for realizing the targets of production in the plan. A new approach was adopted to minimize the conflict between employers and workers based more on moral rather than legal sanction. The emphasis was on prevention of industrial unrest.

The Third Five Year Plan emphasized the 'need for a considerable adaptation in outlook, functions and practices of trade unions to suit the conditions which have arisen and are emerging'. The Planning Commission considered the trade union 'as an essential part of the apparatus of industrial and economic administration of the country' and expected that the trade unions should be prepared for the discharge of these responsibilities. It, inter alia, required trade unions to play a responsible role in matters such as observance of Code of Discipline, etc.

The fourth plan again emphasizes the constructive work and responsibility of trade unions in the national economy in addition to their traditional activities. The Planning Commission added that 'inevitably, strong trade union organizations are able to assume greater responsibilities in serving their members as well as in participating and shaping economic, social policies and programmes'. The various forums in which labour is represented provide a ready means through which trade unions can make an effective and continuous contribution in the area of policy. These include, besides tripartite bodies like the Indian Labour Conference, Development Councils constituted under the Industrial (Development and Regulation) Act, Industrial Committees, Productivity Councils, Labour Welfare Board, Port Trust, Dock Labour Boards and others. The Planning Commission expected similar participation of trade unions in private sectors.

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The constructive role and indispensability of the cooperation of trade unions for achievement of the target has been repeatedly emphasized in all Five Year Plans. Unfortunately the response of the trade unions has not been encouraging due to several reasons like:

- Absence of a unified trade union movement
- Lack of adequate finances of trade unions
- Lack of attitudes towards organized life
- Lack of encouragement either by the employer or government to actively associate themselves with these programmes.

2. Maintaining discipline in the industry

The Welfare State requires that trade unions should be responsible for maintaining discipline in industries. Trade unions should, therefore, discourage their members who are:

- Habitual late-comers
- Absent without giving notice
- Interfering with or creating disturbance to normal work
- Insubordinate
- Negligent towards their duty
- Careless in operation of plant and machine
- Causing damage to property, etc.

The impact of these work stoppages on the developing economy of India undoubtedly is enormous. According to Professor Charles A. Myers '. . . Work Stoppages, which are part of the western concept of collective bargaining, are costly. . . . India cannot afford them now when it needs more resultant strain on India's productive potentialities have magnified the intensity of the situation.'

Under the circumstances, the need for avoiding interruption of work and maintaining peace in industry in a developing economy is obvious. In the interest of the national economy, unions and employers should exercise the utmost restraint in interruption of work so as to maintain peace in industry. The Code of Discipline in industry also contains provisions for avoidance of industrial disputes. For instance, management and unions jointly agree that 'they will avoid (a) litigation, (b) sit-down and stay-in strikes and (c) lock-outs'. Further, for the avoidance of industrial disputes, the Planning Commission suggested that the duties and responsibilities of employers and workers should be laid down in specific terms.

3. Achieving higher productivity of labour

The cooperation of trade unions is a 'must' for productivity improvement. This was best described in the Annual Report by the Director General of the International Labour Organization:

Economic development and technological change are the two great motive forces transforming the material conditions of societies. In doing so they require the organizations of society to respond to new problems, to grow and to adjust themselves. Nowhere is this more so than in the sphere of labour relations, and especially perhaps in the growth and functions of trade unions.

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The autonomous growth of trade unions and the process of dialogue and accommodation among separate interest groups and the State are both desirable in themselves and a means of strengthening society for the work of economic development. They are desirable because trade unions and labour relations in this sense provide scope for individual and group freedom and initiative. They can be a means of strength for economic development by diffusing powers of decision, spreading responsibilities, and encouraging more spontaneity and facility for adjustment to change throughout the economically active group of population.

The need to make efforts for higher productivity through propaganda by the trade unions is significant in India in view of the growing importance of the industrial economy and dependence on it. 'The whole economic health of the country depends upon increased productivity of labour. Such increases will largely depend on improved conditions of work and improved methods and machinery. It will also greatly depend upon the utmost participation by the mass of workers in speeding up and improving production and that improvement can best be effected through modern industrial trade union organization. All this would depend upon the extent to which employers associate workers with the productive efforts and make the workers feel that in increased production lies the good of both the employers and workers. The employer should consult workers in respect of new machinery, method of production and the way in which economy could be effected in cost of production.' However, the suggestions stated in the First Plan are not exhaustive. We would like to mention that the industrial establishments should reserve a certain proportion of the profit for workers. This would create feelings of dignity and sincerity among workers as they may consider the industry to be their own.

However, neither the conditions prevailing in our country nor the response of the trade unions towards the movement for higher productivity is satisfactory. One trade union view is that 'productivity is not the means to exploit labour. The fact will have to be brought home to management. On the contrary, they will have to recognize that a worker first and foremost is a human being and any dealing with him will have to be on that basis.' Mr Michael pleaded that to achieve the object of higher productivity the proper atmosphere has to be created by the employer. In the thirteenth session of the INTUC. He said: 'Let the employers who cry for higher productivity create a climate for that and give better treatment to their workers. The productivity that the employers clamour for can be possible only when the workers have attained a fair wage, and on the condition that the additional gains of productivity will be shared by the workers.'

In the Tenth Convention the general secretary of the HMS said: 'It is necessary that the trade union movement should be vigilant and play an active role in ensuring that the productivity movement does not degenerate into merely a drive for intensifying labour. . . . The contribution that trade unions can possibly make is seriously restricted by the unsatisfactory state of industrial relations in general . . . when workers see that the employers are reluctant even to grant recognition to their union and to bargain with them on matters concerning service conditions. It is unrealistic to expect that the workers or the trade unions will feel particularly enthusiastic about productivity in the plant.'

The General Secretary of AITUC stated in his report: 'In the name of productivity, the existing time rates will be sought to be converted into piece rates. . . . But later on the employers will revise the norms and bring down the rates as also the complement of workers. . . . There is a tendency to look at the problem of speed-ups in an under-developed country like India on the same levels as in the advanced countries. And that generally leads to trouble. . . . Our workers are still fresh from the fields, . . . the average

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level of industrial skill takes time to rise . . . wages, nourishment and other conditions here are not at all conducive to greater speed-ups. We import European machines and techniques but not European wages and conditions.'

It has been generally accepted that 'action to raise productivity should be accompanied by appropriate employment policies, by appropriate policies to ensure that the benefits of higher productivity are fairly distributed through higher wages or lower prices or both, and thereby safeguards to ensure satisfactory working conditions. Such measures are essential in order to ensure that increases in productivity are translated into improvement much as measures which should accompany action to raise productivity but rather as integral parts of programmes to raise productivity. ... No less important are the questions of industrial and human relations.'

The abovementioned principles were accepted in the seminar on productivity. For increasing the national wealth and per capita income and for improving the standard of living, people must be made aware of the significance of higher productivity as a means of achieving these objectives.

It follows that trade unions are dissatisfied with the attitude of employers and wage rates prevalent in our country. They consider that higher productivity movement can be successful only if the employers give:

(i) Better treatment
(ii) Higher wages
(iii) A share in additional gains
(iv) Recognize their union and bargain with it,
(v) Improve their terms of employment and conditions of service

Only lip service has been rendered to these considerations but unless and until a concrete step is taken towards these problems it is doubtful whether trade unions can play an effective role in the higher productivity movement.

4. Development of co-operative societies

In a welfare state trade unions are required to run various types of co-operative societies, e.g., co-operative stores, credit societies, housing co-operatives, co-operative banks, cheap department stores, fair-price shops, canteens, etc. Setting up of co-operative societies, if properly managed by the agency of trade, will help the trade union movement in two ways:

(i) This will offer genuine opportunity to many workers to join trade unions and would thereby strengthen the trade union movement.

(ii) This will advance the economic position of the union members and thereby strengthen the union finances.

The Ahmedabad Textile Labour Association has been instrumental in establishing co-operative societies. 'The association has a special section for encouraging co-operative enterprise among the working class. At the end of 1956-57, there were 203 Co-operative Societies of Industrial Workers in the Ahemdabad Textile Labour Association. The number of co-operative societies affiliated to the Majdoor Sahakari Bank Ltd. increased from 4 in the beginning of the year to 76 at the end of 1956-57. The capital and membership of the bank at the end of 1956-57 were ₹ 654,540 and 28,000 respectively. With a view to strengthening the co-operative movement among the industrial workers in the city, the Association submitted a proposal to the Government for the formation of a federation of various types of co-operative societies of the workers.' Besides, many unions in Mumbai

were instrumental in establishing various types of co-operative societies, e.g., credit societies, housing co-operatives, co-operative stores, canteens, etc. Delhi Cantt. Board Employees' Association was also instrumental in establishing a co-operative thrift and credit society. A total of 2,748 consumers' co-operative stores and fair-price shops had been set up by April 1, 1967, in about 3,954 industrial establishments employing 300 or more workers.

However, except for the aforesaid and a few others, little or no enthusiasm has been shown by the rest of the unions in this direction. To begin with, such activities require adequate support from employers and government particularly in financial matters. The First Five Year Plan, therefore, recommended that trade unions should devote time to organizing and running consumers' and credit societies and that 'the employers could help such activities by providing facilities such as accommodation, clerical help, loans to start such societies, etc.' It is significant to note that as a result of continued efforts of INTUC, 'the Government of India has agreed to allow the workers to withdraw an amount from their Provident Fund Contribution to purchase shares of Co-operative Societies'. However, the progress in this regard is hardly satisfactory.

5. Sponsoring and assisting workers' education programmes

In a developing economy, trade unions are required to play a major and constructive role in the nation's development. A strong democratic and enlightened trade union movement is essential. Workers' education, naturally, has to play a key role in streamlining the trade unions in our country. Under the circumstances, the need for workers' education programmes appears to be indispensable for the economic development of an under-developed country such as India. This has become all the more important in view of the illiteracy of workers.

6. Contribution to family planning programme

Trade unions can vitally contribute towards the success of family planning. The unions have links with the majority of the population. Out of the total urban population of about 92.2 million, public sector undertakings alone absorbs about 16 million as workers; the mining sector employs a considerable labour population, the coal mines alone having a population of four lakhs. The private undertakings do not lag behind as employers of the labour force. Labour leaders can easily popularize the family planning programme. Workmen hail from all parts of the country and, if trade unions direct them, they can easily and efficiently carry the message of the programme to each corner of the land. Trade unions can find out the location of labourers' families, group them into sectors, and constitute a committee with a group leader to help them in implementing the programme. These unions can lend their propaganda machinery to the programme. Due to the closeness of leadership with the man in the street, unions can prove to be a boon to the programme in finding out and removing any defects.

Family planning officials should seek the co-operation of trade union leaders with a friendly smile, not in bureaucratic tones, if the programme is to be made a success in fact and not in files alone.

7. Promote industrial safety

Another important function of trade unions is to promote safety consciousness amongst the working class. It can help in the safety campaigns by showing films and audio-visual aids to workers with the help of central and regional labour institutes, the Central Board

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of Workers' Education and similar other bodies. The programme can also be discussed either in their educational forum or in cultural programmes, e.g., safety weeks, etc.

Further, the trade unions can help in the implementation of the safety provisions. The trade unions can insist on their members keeping in view the following measures to prevent accidents: (i) workers must co-operate with the employer in carrying out the provisions meant for safety; (ii) they should make proper use of all safeguards, safety devices and other appliances provided for their protection or the protection of others. They should not interfere with, remove, displace, damage or destroy any safety devices or other appliances furnished for their protection.

It is now evident that the role of trade unions should be orientated in such a way as to enable the country to achieve national and economic solidarity. Unfortunately, the response of the trade unions towards this objective has been far from satisfactory. Many unions, have to change their outlook and extend the scope of their activities so as to strive for a much more organized life. On the other hand, the managements should encourage trade unions in order to get them effectively associated in the programmes of national and economic development. The Government is also required to lend its cooperation in realizing the avowed objectives of trade unions. This, in effect, requires the reappraisal of labour policy and practices.

2.5 SUMMING UP

- The labour movement in India can be traced back to the 1860s. The early years of movement were generally led by philanthropists and social reformers, who organized workers and protected them against inhuman working conditions.
- The earliest sign of labour agitation in India was a movement in Bengal in 1860 led by Dinbandhu Mitra, a dramatist and social reformer.
- In 1875 in Bombay Sarobji Shapuri made a protest against the poor working conditions of workers at that time. The deplorable conditions of workers were brought to the notice of the Secretary of State for India. The first Factory Commission was, therefore, appointed in 1875 and as a result the Factories Act, 1881 was enacted.
- The period 1918–1924 can perhaps be the best described as the era of the formation of modern trade unionism. This period witnessed the formation of a large number of trade unions. Important among these were the Madras Labour Union, Ahmedabad Textile Labour Association, Indian Seamen's Union, Calcutta Clerks's Union and the All India Postal and RMS Association.
- Later in 1929, a wing of the AITUC, the All India Trade Union Federation was formed. The main cause for the Communist influence was the economic hardship of the workers.
- In 1935, the All India Red Trade Union Congress merged itself with AITUC. Again, in 1938 an agreement was arrived at between the All India National Trade Union Federation and AITUC and consequently NTUC affiliated itself with AITUC.
- With the advent of Independence, the trade union movement in India got diversified on political considerations. The labour leaders associated with the Congress Party formed the Indian National Trade Union Congress (INTUC) in 1947.

Check Your Progress

11. State the traditional role of trade unions.
12. Under what situations can higher productivity movement prove to be successful?

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- The Government of India had, in 1997, approved certain amendments to the Trade Unions Act, 1926. The objective of these amendments is to ensure the organized growth of trade unions and reduce the multiplicity of trade unions.
- The trade unions get greater strength and security if they have a contract over the supply of labour at the pre-entry or post-entry stages in the industry.
- Problems relating to recognition of trade unions attracted the attention of the Royal Commission on Labour in 1929. It made a comprehensive survey in almost all the problems relating to labour (including recognition of trade unions) and recommended that the 'Government should take the lead, in case of their industrial employees, in making recognition of union easy and in encouraging them to secure recognition.'
- Immediately after India became a Sovereign Democratic Republic, the Trade Unions Bill, 1950, concerning the recognition of trade unions through planning was accepted and a Planning Commission was constituted. In the evolution of labour policy during the Plan, recognition of trade union has been accorded due importance by the planners.
- The [First] National Commission on Labour has also recommended that the law should enumerate the various unfair labour practices on the part of employers and workers' unions and provide for suitable penalties for committing such practices.
- Victimization and unfair labour practice are like twins who cling together. According to some, unfair labour practice can stand by itself, but victimisation must always keep company with unfair labour practice.
- In India, over the years, the functions of trade unions have undergone a change both in their object and scope. The traditional role of trade unions has been confined to redress of grievances of their members regarding employment, non-employment, terms of employment and conditions of service and is still a predominant part of its activities.
- For the successful implementation of the plans the cooperation of trade unions is indispensable. The First Five Year Plan expected co-operation of all Indian organizations of workers.
- In a Welfare State trade unions are required to run various types of co-operative societies, e.g., co-operative stores, credit societies, housing co-operatives, co-operative banks, cheap department stores, fair-price shops, canteens, etc.
- The role of trade unions should be orientated in such a way as to enable the country to achieve national and economic solidarity.

2.6 KEY TERMS

- **Trade union:** A trade union is an organization of workers who have united together to achieve common goals such as protecting the integrity of its trade, achieving higher pay and benefits such as health care and retirement, increasing the number of employees an employer assigns to complete the work, safety standards, and better working conditions.
- **Closed shop:** A pre-entry closed shop is a form of union security agreement under which the employer agrees to hire union members only, and employees must remain members of the union at all times in order to remain employed.

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2.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The labour movement during the period of 1860-1917 was led by philanthropists and social reformers and not by workers.
2. The first Factory Commission was appointed in 1875 and as a result the Factories Act, 1881 it was enacted.
3. The objectives of the Hind Mazdoor Sabha were to: (*i*) promote the economic, political, social and cultural interest of the Indian working class (*ii*) guide and coordinate the activities of affiliated organizations and assist them in their work.
4. The Industrial Disputes (Amendment) Bill, 1988 was introduced in the Rajya Sabha on 13 May 1988.
5. A registered trade union is a body corporate by the name under which it is registered and shall have perpetual succession and a common seal with a power to sue and to be sued. It is, however, not a statutory body.
6. The recognized trade unions have been conferred the right to negotiate with employers in respect of matters connected with employment, non-employment, the terms of employment or the conditions of labour of all or any of their members, and the employer is under an obligation to receive and send replies to letters sent by the executive and grant interviews to them regarding such matters.
7. The first National Commission on Labour was appointed in 1966.
8. A registered bargaining council shall, subject to the provisions of this Act be entitled:
   - to raise industrial disputes with the employer or employers
   - to settle industrial disputes with the employer or employers
   - to sign on behalf of the workmen the documents settling industrial disputes
9. Two unfair labour practices on the part of the employer are:
   - to interfere with the formation or administration of any Trade Union or to contribute financial or other support to it
   - to discharge, or otherwise discriminate against any officer of a recognized Trade Union because of his being such officer
10. The Supreme Court has defined victimization' to mean: a certain person has become a victim, in other words, that he has been unjustly dealt with.
11. The traditional role of trade unions was to secure higher wages and better service conditions for their workers. This has been considered by them to be their 'primary' and predominant purpose.
12. The higher productivity movement can be successful only if the employers give:
    - Better treatment
    - Higher wages
    - A share in additional gains
    - Recognize their union and bargain with it,
    - Improve their terms of employment and conditions of service

2.8 QUESTIONS AND EXERCISES

NOTES

Short-Answer Questions

1. What factors led to the formation and growth of trade unions in India?
2. Write a note on the period of industrial unrest (1939-46).
3. What changes were brought about in the Trade Union Amendment Act, 1947?
4. Differentiate between the narrow and extensive view of judicial delineation of unfair labour practice.
5. What is the role of trade unions in formulating and executing various Five Year Plans?

Long-Answer Questions

1. Discuss the development of trade unions in India from 1918 to 1947.
2. Explain the powers and duties of a registrar.
3. Section 28(K) of the Trade Unions Amendment Act, 1947 enumerated certain unfair labour practices on part of the employer. What were these unfair trade practices?
4. What role do trade unions play in the changed economic scenario?

2.9 REFERENCES AND SUGGESTED READINGS

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UNIT 3 INDUSTRIAL RELATONS

NOTES

Structure

3.0 Introduction
3.1 Objectives
3.2 Industrial Relations and Labour Policy since Independence
  3.2.1 The Unity Move
  3.2.2 A Broad Survey of Trade Unions
3.3 Factors Affecting Industrial Relations
  3.3.1 External Factors
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3.4 Summing Up
3.5 Key Terms
3.6 Answers to 'Check Your Progress'
3.7 Questions and Exercises
3.8 References and Suggested Readings

3.0 INTRODUCTION

Industrial relations is a multifaceted discipline that examines the associations linked to employment. Industrial relations is more and more being addressed as employment relations or employee relations simply due to the significance of non-industrial employment relationships; this approach is at times envisaged as increased expansion of the human resource management inclination. Undeniably, a few authors now characterize human resource management as the same as employee relations.

Other authors perceive employee relations as transacting only with workers who are not part of any union. On the other hand, labor relations are believed to be associated only with workers belonging to unions. The study of industrial relations investigates a variety of employment scenarios, irrespective to whether the workforce belongs to a union or not. Nevertheless, as per Bruce E. Kaufman 'To a large degree, most scholars regard trade unionism, collective bargaining and labor-management relations and the national labor policy and labor law within which they are embedded, as the core subjects of the field'.

3.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain industrial relations and labour policy since Independence
- List and define the factors affecting industrial relations

3.2 INDUSTRIAL RELATIONS AND LABOUR POLICY SINCE INDEPENDENCE

With Independence, the trade union movement in India got diversified on political considerations. The labour leaders associated with the National Congress Party formed

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the Indian National Trade Union Congress in 1947. The aim of the INTUC was 'to establish an order of society which is free from hinderances in the way of an all-round development of its individual members, which fosters the growth of human personality in all its aspects and goes to the utmost limit in progressively eliminating social, political or economic activity and organization of society and the anti-social concentration of power in any form.

In 1948, the Socialist Party formed an organization known as Hind Mazdoor Sabha. The aims and objects of the Sabha were to: (*i*) promote the economic, political, social and cultural interest of the Indian working class; (*ii*) guide and coordinate the activities of affiliated organizations and assist them in their work; (*iii*) watch, safeguard and promote the interests, rights and privileges of workers in all matters relating to their employment; (*iv*) promote the formationof federation of unions from the same industry or occupation; (*v*) secure and maintain for the workers freedom of association, freedom of speech, freedomof assembly, freedom of press, right of work or maintenance; right of social security and right to strike; (*vi*) organize and promote the establishment of a democratic socialist society in India; (*vii*) promote the formation of cooperative societies and to foster workers' education; (*viii*) cooperate with other organizations within the country and outside having similar aims and objectives'.

A year later in 1949, another organization, namely, the United Trade Union Congress was formed. The aims and objects of the United Trade Union Congress as given in its constitution were: (*i*) establishment of socialist society in India; (*ii*) establishment of a workers and peasants state in India; (*iii*) nationalization and socialization of the means of production; (*iv*) safeguarding and promoting the interests, rights and privileges of the workers in all matters, social, cultural, economic and political; (*v*) securing and maintaining for the workers' freedom of speech, freedom of press, freedom of association, freedom of assembly, right to strike, right to work or maintenance and the right to social security; and (*vi*) bringing about unity in the trade union movement.

The same year also witnessed the passing of the Industrial Disputes Act, 1947 and the Trade Unions (Amendment) Act, 1947. The former Act introduced the adjudication system on an all India level. It prohibits strikes and lockouts without giving 14 days' prior notice and during the pendency of conciliation proceeding before a conciliation officer in public utility services. In public and non-public utility services, it prohibits strikes and lockouts during the pendency of proceedings before board of conciliation, labour court, tribunal, national tribunal and arbitration (when a notice is given under Section 10-A of the Act). The Act further prohibits strikes and lockouts during the operation of settlement or award in respect of any matter covered under settlement or award. The latter Act brought several changes of great significance. It provided for recognition of trade unions and penalties for unfair labour practices by employers and unions. But the Act has not yet been enforced. Again in 1950, the Trade Unions' Bill was introduced in the Parliament providing for registration and recognition of trade unions and penalties for certain unfair labour practices. On dissolution of the Parliament, the bill lapsed and has since not been brought forward by government before the Parliament.

Political involvement continued even after 1950. In addition to four major all India organizations discussed above, three unattached unions dominated by one or the other political parties were formed. For instance on 23 July 1954, a federation namely, Bharatiya Mazdoor Sangh (BMS) was formed in Bhopal by Jan Sangh Party, presently known as Bhartiya Janta Party. The main object of BMS is to check the increasing influence of the Communist unions in the industry and cooperate with non-Communist unions in their

just cause. A year later, Hind Mazdoor Panchayat, a new trade union organization by Sanyukt Socialist Party and Indian Federation of Independent Trade Unions which have no affiliation with any political party, were formed.

The period also saw amendments in the Trade Unions Act in 1960. The amended Act brought four new provisions: (*i*) minimum membership subscription was incorporated; (*ii*) the registrar of trade unions was empowered to inspect account books, register, certificate of registration and other documents connected with the return submitted by them under the Trade Unions Act; (*iii*) government was empowered to appoint additional and deputy registrar with such powers and functions as it deemed fit; (*iv*) fate of the application for registration where applicants (not exceeding half of them) ceased to be members or disassociated themselves from the application was statutorily decided.

Some independent trade unions met at Patna on 21 March 1964 and decided to form the All India Independent Trade Union Congress, but this effort to unite the unaffiliated unions did not continue for a longer period and met an early death.

The Act was once again amended in 1964. It made two changes: (*i*) it disqualified persons convicted by the court of an offence involving moral turpitude from becoming office-bearers or members of the executive of a registered trade union; and (*ii*) it required for submission of annual returns by registered trade unions on a calendar year basis.

1970 witnessed another split at the national level in the AITUC. The decision of Communist group, which decided not to remain within the AITUC resulted in the formation of a separate organization, namely, Centre of Indian Trade Union by the Marxist Communists.

A further split took place in 1970–72. During the period, there was a split in the United Trade Union Congress and another organization namely, the United Trade Union Congress Lenin Sarani was formed.

3.2.1 The Unity Move

In 1972, a new experiment was made when three central trade union organizations, namely, the HMS, the INTUC and the AITUC, in the meeting held on 21 May 1972 at New Delhi agreed to establish a National Council of Central Trade Unions for the purpose of promoting understanding, cooperation and coordination in the activities of the central trade unions, to defend the interests of the working class and the trade union movement, and help towards the development of the national economy on a democratic, self-reliant and non-monopoly basis, to overcome trade union rivalry and bring about trade union unity for common objectives and action. However, this organization could not survive for a longer period and met an early death. The year also witnessed the emergence of the Trade Union SEWA by leading workers in Ahmedabad. Ms Ela Bhatt has been instrumental for the same.

In September 1977, an All India Convention of Central Organization of Trade Unions including CITU, BMS, HMS, HMP and the TUCC was called which demanded time-bound programmes ensuring reduction in wage disparity, national wage and price policy and need-based wages for industrial and agricultural workers.

In 1981, once again unity was shown by the trade unions in the protest against the promulgation of the Essential Services Maintenance Ordinance, 1981 and also the Bill in that regard in the Parliament. A year later in 1982, the Trade Unions (Amendment) Bill, was introduced in Lok Sabha. The Bill proposed to make the following amendments in the Act:

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(i) To reduce multiplicity of unions, it proposed to change the existing provision of enabling any seven workmen to form a trade union by providing for a minimum qualifying membership of 10 per cent of workmen (subject to a minimum of ten) employed in the establishment or industry where the trade union is proposed to function or 100 workmen, whichever is less, for the registration of trade unions;

(ii) There is at present no machinery or procedure for resolution of trade union disputes arising from inter-union and intra-union rivalries. It proposed to define the expression 'trade union dispute' and to make provision for resolving such disputes through voluntary arbitration, or by empowering the appropriate government and the parties to the dispute to refer it to the registrar of trade unions for adjudication;

(iii) The Act does not lay down any time-limit for registration of trade unions. It proposed to provide for a period of 60 days for the registration of trade unions by the registrar after all the formalities have been completed by trade unions. It also proposed to provide that a trade union whose certificate of registration has been cancelled would be eligible for re-registration only after the expiry of a period of 6 months from the date of cancellation of registration, subject to certain conditions being fulfilled by the trade union;

(iv) Under the existing provisions of the Act, 50 per cent of the office bearers in the executive of a registered trade union shall be persons actually engaged or employed in an industry with which the trade union is connected. It proposed to enhance this limit to 75 per cent so as to promote development of internal leadership;

(v) It proposed to empower the registrar of trade unions to verify the membership of registered unions and connected matters and report the matter to the state and Central Governments;

(vi) Penalties specified in the Act for the contravention of its provisions were proposed to be enhanced.

In order to reduce multiplicity in trade union, strengthen their bargaining power and to provide check-off facilities to trade union, the Bill seeks to provide that in relation to a trade union of workmen engaged or employed in an establishment or in a class of industry in a local area and where the number of such workmen are more than 100, the minimum membership for the registration of such trade union shall be 10 per cent of such workmen. Such unions shall be eligible for registration only if they meet this minimum test of strength. From this it follows that the setting up of bargaining councils (which will be able to negotiate on all matters of interest to workmen with employers) will to some degree bring confidence and strength. The limitations placed upon the leadership of trade unions by restricting the number of non-workmen as office-bearers of a trade union to two and the provision that a person can become an office-bearer or a member of an executive of not more than seven registered trade unions will go a long way in developing internal leadership in trade unions.

The Bill also provides for the constitution of a bargaining council for a three year term to negotiate and settle industrial disputes with the employer. The check-off system would be normally adopted for verification of the strength of trade unions in an industrial establishment, though the Bill provides for the holding of a secret ballot in certain exceptional circumstances.

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While the unit-level bargaining council will be set up by the employers, the appropriate government will be empowered to set up such councils at industry level. All the registered trade unions will be represented on the bargaining councils in proportion to their relative strength, but any union with a strength of not less than 40 per cent of the total membership of the workmen in an industrial establishment will be recognized as the 'principal agent'. If there is no trade union having members among the workmen employed in an industrial establishment, a workmen's council will be set up in such a manner as may be prescribed. The Central Government will also be empowered to constitute such bargaining councils at the national level.

However, the aforesaid Bill lapsed. Six years later, the Trade Unions and the Industrial Disputes (Amendment) Bill, 1988 was introduced in the Rajya Sabha on 13 May 1988 but it has not yet received the colour of an Act.

The Government of India had in 1997, approved certain amendments to the Trade Unions Act, 1926. The objective of these amendments is to ensure organized growth of trade unions and reduce multiplicity of trade unions. The Trade Union Amendment Bill, 1997 was to be introduced in the Rajya Sabha in the winter session of the Parliament in the year 1997, but due to various reasons, it was not introduced.

During 1999, a consensus emerged among the leading trade union federations like the BMS, AITUC, CITU and INTUC on protection to domestic industry, strengthening the public sector units by way of revival and induction of professionals in the management and amendment of labour laws and inclusion of rural and unorganized labour in the social safety net.

The year 2001 witnessed several amendments of much relevance, in the Trade Unions Act, 1926. However, this amendment came into force w.e.f. 9 January 2002.

During 2009, the Workmen's Compensation Act, 192 was amended on the recommendation of the (Second) National Commission on Labour. Another development in this year was the enactment of the Unorganized Workers' Social Security Act, 2008 which came into force with effect from 16 May 2009. A year later, the Employees' State Insurance Act, 1948 was amended by the Employees' State Insurance (Amendment) Act, 2010. Moreover, the Payment of Gratuity Act, 1972 was amended by the Payment of Gratuity (Amendment) Act, 2010 and the Plantation Labour Act, 1951 by the Plantation Labour (Amendment) Act, 2010. Another major legislative development was the amendment in the Industrial Disputes Act, 1947 by the Industrial Disputes (Amendment) Act, 2010 which came into force with effect from 19 August 2010.

During 2009, a consensus emerged among major central trade unions including BMS, INTUC, AITUC, HMS, CITU, AIUTUC, TUCC, AICCTU and UTUC which had organized the National Convention of Workers in Delhi on 14 September 2009 and decided to launch joint action programme on price rise, labour law violations, job losses, creation of National Social Security Fund for Unorganized Workers and against disinvestment of profit-making PSUs. The National Convention was followed by All India Protest Day on 28 October 2009. The trade unions also met the Prime Minister on 17 September 2009 and urged upon him to address the above main concerns of the working people effectively. As a follow up, central trade unions staged massive dharna before Parliament on 16 December 2009 as a protest against government inaction to control price rise, check labour law violations, non-creation of National Fund for Unorganized Workers Social Security, loss of jobs in the name of recession and disinvestment of profit-making public sector undertakings. Similar joint dharnas have

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been staged all over the country in state capitals and industrial centres. The trade unions being dissatisfied with the attitude of the government in not taking any appropriate steps to meet the five demands, the workers went on Satyagraha/Jail bharo on 4 March 2010 all over the country, for the aforesaid demands.

On 28 February 2012, a national strike was called by 11 central trade union organizations (including AITUC, BMS, CITU, HMS, INTUC, AITUC, TUCI and NLO) supported by about 5,000 other smaller trade unions for their 10-point charter of demand which included rising unemployment, labour right violations, mass contractualization, price rise particularly of essential commodities, universalization of social security, etc. It was not only successful in bringing together the much-divided trade union movement but was also able to convey its seriousness over the issues facing the working class.

3.2.2 A Broad Survey of Trade Unions

A survey of the development of trade unions in India shows that most of the unions are affiliated with either of the four central trade union federations, *viz*., the Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United Trade Union Congress. Besides these, some trade unions are affiliated with seven other trade union federations, *viz*., Bhartiya Mazdoor Sangh, Hind Mazdoor Panchayat, Centre of Indian Trade Union, National Federation of Independent Trade Unions, National Labour Organization, Trade Union Coordination Committee and United Trade Union Congress (Lenin Sarani). These trade union organizations have been patronized by different political parties in the country. Further, a survey of trade unions in India reveals that over the years, the trade union movement has undergone significant development. Both workers and non-workers have been involved. The beginning of the movement was the outcome of the efforts made by certain social reformers and labour leaders. 'The early ... trade union movement (was) often full of difficulties. Strike committees called themselves trade unions and demanded the privileges of trade unions, without any means of discharging the responsibilities thereof.' The position has considerably changed since then. The number of unions has gone up and membership and funds of trade unions have increased.

3.3 FACTORS AFFECTING INDUSTRIAL RELATIONS

It is vital that a small business be regarded as a producer in a market economy. In the role of a producer, it has requirement for workforce or members of the staff who produce goods or provide a service to customers. The relationship that a small business maintains with its workforce reflects on its capacity to manage a consistent and reliable team of employees which is an indispensible constituent for stable economy. It is imperative to put in place the best management and human resources processes, for the benefit and satisfaction of the employees so that they feel valued in terms of their contribution to the business.

Check Your Progress

1. Who formed the Indian National Trade Union Congress in 1947?
2. What is the main objective of the Bharatiya Mazdoor Sangh?

3.3.1 External Factors

The chronicles of industrial relations dates back to the period when the labour felt that activities of the employer or market scenario was instrumental in affecting an uneven distribution of power and their relationship with their employer. Workers opted for collective bargaining in public and private sectors for the purpose of securing wages and improved

working conditions from their employer's agents. Taking an instance of the US, at present, there are numerous laws making certain least amount wages and safe working conditions mandatory for workers. Following this, additional labor directives reduced the need for collective bargaining.

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3.3.2 Internal Factors

A different way of taking into consideration industrial relations is the outcome of a company's human resources approaches. These may comprise of poor productivity, non-attendance, soaring worker yield, dwindling job security, substandard or hazardous working conditions, inability to identify performance in compensation policies and absence of motivation, as stated by the International Labour Organization. Small-business people can deal with these issues by revision of their HR policies and dismissing managers who cause such problems. They can also deal with employee motivation, inclusive of creating additional prospects for training and development, compensation for performance, performance bonuses and worker appreciation schemes.

Work Environment

Employers can establish the most research-oriented HR policies in their companies, but the workers will still evaluate the company by how they feel about working there. Employers should focus on the manner in which leadership styles affect employees and ways in which managers deal with employees. In case, there are problems with worker performance among a large number of workers or associated pointers like high turnover or non-attendance, employers need to study the reasons for such problems. The company should begin by the introduction of new HR initiatives, such as launching elasticity and contribution into the company's management model; empower managers and workers with additional authority to make decisions on strategies to achieve their goals.

Employee Attitudes

Companies can make use of employee surveys to learn about the causes of disputes or discontent in their workforce. They can access an extensive range of approaches about performing for the company. It is important to decide whether the employees respect the manager as a leader and are concerned about the company. These are indicators of healthy employee relations and generally result in improved performance. Employees who value their loyalty to the company are usually capable of performing well even in dire economic circumstances, which is likely to multiply their workload and affect a marginal hike in their pay packages.

Check Your Progress

3. State any one practice that companies can make use of to learn about the causes of disputes or discontent in their workforce.
4. A survey of the development of trade unions in India shows that most of the unions are affiliated with any one of the four central trade union federations. Name these federations.

3.4 SUMMING UP

- Independence caused a diversification in the trade movement in India on the basis of political considerations.
- The labour leaders associated with the National Congress Party formed the Indian National Trade Union Congress in 1947.
- In 1948, the Socialist Party formed an organization known as Hind Mazdoor Sabha.
- A year later in 1949, another organization, namely, the United Trade Union Congress was formed.

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- The Government of India had in 1997, approved certain amendments to the Trade Unions Act, 1926.
- A survey of the development of trade unions in India shows that most of the unions are affiliated with any one of the four central trade union federations, *viz*., the Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United Trade Union Congress.
- In essence, the success of industrial relations is based on the type of the relationship existing between the players of industrial relations. It is also equally dependent upon the distribution of power between the employers and the trade unions.
- It is not possible for industrial relations to subsist in isolation because they thrive within a system that includes a number of interdependent factors. A change in any one factor affects all others.

3.5 KEY TERMS

- **INTUC:** The trade union wing of the Indian National Congress.
- **Hind Mazdoor Sabha:** A national trade union center in India.
- **Bharatiya Mazdoor Sangh:** The largest central trade union organization in India.
- **SEWA**: The Self-Employed Women's Association of India is a trade union for poor, self-employed women workers in India.
- **CITU:** Centre of Indian Trade Unions is a National level Trade Union in India politically attached to the Communist Party of India (Marxist).
- **Essential Services Maintenance Act (ESMA)**: An act of Parliament of India which was established to ensure the delivery of certain services, which if obstructed would affect the normal life of the people.

3.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The labour leaders associated with the National Congress Party formed the Indian National Trade Union Congress in 1947.
2. The main object of Bharatiya Mazdoor Sangh is to check the increasing influence of the Communist unions in the industry and cooperate with non-Communist unions in their just cause.
3. Companies can make use of employee surveys to learn about the causes of disputes or discontent in their workforce.
4. A survey of the development of trade unions in India shows that most of the unions are affiliated with any one of the four central trade union federations, *viz*., the Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United Trade Union Congress.

3.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What were the aims and objectives of Hind Mazdoor Sabha?
2. List the aims and objects of the United Trade Union Congress.
3. What were the provisions introduced by the Amendment Act in the Trade Unions Act in 1960?

Long-Answer Questions

1. Give a detailed account of the industrial relations and labour policy since Independence.
2. Write a note on the propositions for amendments made by Trade Unions (Amendment) Bill in 1982.
3. Enumerate and explain the factors affecting industrial relations.

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3.8 REFERENCES AND SUGGESTED READINGS

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UNIT 4 INDUSTRIAL CONFLICTS

NOTES

Structure

4.0 Introduction
4.1 Objectives
4.2 Industrial Conflicts Disputes: An Overview
4.3 Resolution of Conflicts
4.3.1 Bipartite and Tripartite Bodies
4.4 Summing Up
4.5 Key Terms
4.6 Answers to 'Check Your Progress'
4.7 Questions and Exercises
4.8 References and Suggested Readings

4.0 INTRODUCTION

Industrial disputes are conflicts, unrest that place between workers and employers on various issues. This often results in strikes, lockouts and mass refusal of employees to work in the organization until the cause of conflict has been resolved. Labour management relations involve dynamic socio-economic process. Both the parties —labour and management, constantly, strive to maximize their preferred values by applying resources to institutions. In order to protect the interest of the community as well as that of labour and management, the Government has found it necessary to intervene in labour management relations. Thus, the Industrial Disputes Act, 1947 provides for the constitution of various authorities to preserve industrial harmony.

In this unit, you will have an overview of the industrial dispute and the various institutions that have been created to resolve the conflicts.

4.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain the industrial conflict disputes under different heads
- Discuss the various measures undertaken to resolve conflicts

4.2 INDUSTRIAL CONFLICTS DISPUTES: AN OVERVIEW

Section 2 (k) of the Industrial Disputes Act, 1947, defines 'industrial dispute' to mean:

> Any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

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The dimensions of the aforesaid definition determine the permissible area of both community intervention in industrial relations as well as labour activity.

Stated broadly, the definition of 'industrial dispute' contains two limitations. (*i*) The adjective 'industrial' relates to the disputes of an industry as defined in the Act, and (*ii*) it expressly states that not all sorts of dispute and differences but only those which bear upon the relationship of employers and workmen regarding employment, non-employment, terms of employment and conditions of labour are contemplated.

Broadly speaking, the definition of 'industrial dispute' may be analysed under four heads:

- Factum of industrial dispute
- Parties to the dispute
- Subject matter of the dispute
- Origin of the dispute

1. Factum of Industrial Dispute

The existence of a dispute or difference is the key to the expression 'industrial dispute'. The expression 'dispute or difference' connotes a real and substantial difference having some element of persistency and continuity till resolved, and likely, if not adjusted, to endanger the industrial peace of the undertaking or the community.

When the parties are at variance, and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour, there comes into existence an industrial dispute. But there is divergence of opinion among the courts on the issue whether a mere demand to the appropriate government or to the conciliation officer without a dispute being raised by the workmen with the employer regarding such demand can become an industrial dispute. The Supreme Court in *Sindhu Resettlement Corporation Ltd* vs *Industrial Tribunal* answered it in negative. Observed Justice Bhagwati:

> If no dispute at all was raised by the (workmen) with the management, any request sent by them to the government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employers, employers and workmen and workmen and workmen. A mere demand to a government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute.

The aforesaid view does not appear to be in conformity with the earlier decision of the Supreme Court in *Bombay Union of Journalists* vs *The Hindu*, wherein it was held that industrial dispute must be in existence or apprehended on the date of reference. The net effect of the principle is that even if the demand was not made earlier before the management and rejected by them and is raised at the time of reference or during conciliation proceedings, the dispute may be an 'industrial dispute'.

The aforesaid view in *The Hindu (Supra)* appears to have been followed in *Shambhu Nath Goel* vs *Bank of Baroda*. An employee of the Bank of Baroda was dismissed from service after an inquiry in which the employee appeared and claimed reinstatement. Further, when the union approached the conciliation officer, the management resisted the claim for reinstatement. Thereafter, the employee preferred an appeal to the competent authority. Before the tribunal, the management raised the preliminary objection that the employee had not made a demand. The tribunal accepted the claim of

the management and held that the reference was incompetent. Thereafter, the employee preferred an appeal before the Supreme Court. The question arose whether the government's reference was proper and in accordance with the provisions of the Act. The Court observed:

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> ... to read into the definition the requirement of written demand for bringing into existence an industrial dispute would be tantamount to rewriting the section.

The Court added:

> Undoubtedly, it is for the government to be satisfied about the existence of the dispute and the government does appear to be satisfied. However, it would be open to the party impugning the reference that there was no material before the government, and it would be open to the tribunal to examine the question, but that does not mean that it can sit in appeal over the decision of the government.

In *Workmen of Hindustan Lever Ltd* vs *Hindustan Lever Ltd*, the Government of Maharashtra referred a dispute between Hindustan Lever Ltd and its workmen for adjudication to the industrial tribunal, Maharashtra. A preliminary objection was raised by the employers that reference was incompetent because the dispute raised by workmen and referred by the government to the industrial tribunal was not an 'industrial dispute' because if the demand as raised is conceded, it would be tantamount to allowing the workmen to decide the strength of the work force required in various grades and it is well-settled that determining and deciding the strength of work force required in an industry is a management function. The industrial tribunal held that the dispute was not an 'industrial dispute'. On appeal, the Supreme Court set aside the award and remitted the matter for disposing of the reference on merits and observed:

> The expression 'industrial dispute' has been so widely defined as not to leave anything out of its comprehension and purview involving the area of conflict that may develop between the employer and the workmen and in respect of which a compulsory adjudication may not be available. This is recognized to be the width and comprehension of the expression.

Be that as it may, the full bench of the Himachal Pradesh High Court in *M/s Village Papers Pvt. Ltd* vs *State of Himachal Pradesh* has summarized the views expressed by the Supreme Court and high courts on the aforesaid subject as follows:

- A mere demand made to the government cannot become an industrial dispute without it being raised by the workmen with their employer.
- If such a demand is made to the government, it can be forwarded to the management and if rejected, becomes an industrial dispute.
- Though it is apparent that for a dispute to exist, there must be a demand by the workmen or the employer. This demand need not be in writing, unless the matter pertains to a public utility service, in view of the provisions of Section 22 of the Industrial Disputes Act, 1947.
- The demand need not be sent directly to the employer nor it is essential for it to be made expressly. It can be even implied or constructive, *e.g.*, by way of filing an appeal or refusal of an opportunity to work when demanded by the workmen. A demand can be made through the conciliation officer, who can forward it to the management and seek its reaction. If the reaction is in negative and not forthcoming and the parties remain at loggerheads, a dispute exists and a reference can be made.
- Whether a dispute exists has to be decided in each case and is dependent on the facts and circumstances of that case. The crucial time for this

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examination is the date of making the reference; material which comes into existence after the reference has been made is not relevant.

- Only that dispute which exists or is apprehended can be referred. If there is a different kind of demand made before the management and the reference pertains to some other demand, then the reference is incompetent, *e.g.*, reference pertains to reinstatement whereas the demand pertains to retrenchment compensation.
- The jurisdiction of the labour court/industrial tribunal is limited to the points specifically referred and matters incidental thereto. Since the scope of its jurisdiction and power is circumscribed by the order of reference, it is not permissible for it to go beyond the terms of reference.
- Thus, if a reference is made without any demand having been made on the employer either expressly or impliedly, there is no occasion for the employer to point out the nature of the dispute so as to facilitate the government for making an appropriate reference of the dispute.

2. Parties to the Industrial Dispute

In order to fall within the definition of an 'industrial dispute', the dispute must be between: (*i*) employers, or (*ii*) employers and workmen, or (*iii*) workmen and workmen.

Besides interpreting the key words, namely 'employer' and 'workman', which are statutorily defined and will be discussed in another section, tribunals and courts have indulged in judicial legislation.

Trade unions as such are not mentioned in the definition of 'industrial dispute' because they act on behalf of the workmen and, therefore, when a trade union raises a dispute, the workmen are deemed to be parties to the dispute.

The words 'employers and employers' which did not occur in the Trade Disputes Act, 1929, were inserted in the Industrial Disputes Act, 1947, in order to give the definition of 'industrial dispute' a wide coverage. The disputes between employers and employers may arise in respect of wage matters in an area where labour is scarce or disputes of similar character.

The words 'workmen and workmen' occur in Section 2 (k) to include the disputes between them either directly or through their trade unions. Such a dispute may be demarcation dispute, inter-union dispute, etc. Inter-union dispute has, however, not been held to be an 'industrial dispute'.

The aforesaid three expressions, namely, between employers and employers or between employers and workmen, or between workmen and workmen read with Section 13 (2) of the General Clauses Act, 1897 lead us to make the following categorizations:

(*i*) Where both parties include more than one person — employers and employers, employers and workmen, workmen and workmen.

(*ii*) Where only one of the parties includes more than one person — employer and employers, employer and workman, employers and workman, workmen and workman.

(*iii*) Where both the parties are in singular — employer and employer, employer and workman, workman and workman.

(*iv*) Where both the parties as in category (*i*) include more than one person, the dispute would be a collective dispute. Further, where one of the parties

include more than one person, it may be categorized as 'collective dispute'. However, doubts have been expressed whether the dispute between 'employers and workman' would be a 'collective dispute'. Moreover, where both the parties as in category (*ii*) above are composed of single individuals, the case falls into the category of 'individual dispute'.

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3. Subject Matter of Industrial Dispute

In order to be an 'industrial dispute', the dispute must be:

> ...connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

In practice, however, it is exceedingly difficult to draw a line between various expressions used to indicate the subject-matter of industrial dispute. Generally speaking, the expressions used in Section 2(k) are of wide amplitude and have been put in juxtaposition to make the definition thoroughly comprehensive. Thus, the phrase 'conditions of labour' is wide enough to include 'terms of employment' as well as matters connected with unemployment. Similarly, the expression 'terms of employment' includes certain matters relating to 'employment or non-employment'.

It is however, doubtful if the legislature intended any water-tight compartmentalization. The words 'in connection with' widen the scope of 'industrial disputes' and do not restrict it by any means.

The legislature used these phrases in the definition of 'industrial dispute' so that all aspects of labour problems may be resolved through the industrial relations machinery provided under the Industrial Disputes Act, 1947. Any attempt to draw a rigid line would limit, or at least create an impression of limiting the scope of 'industrial dispute' which, it must be emphasized, deals not only with the disputes between employers and workmen but also between 'employers and employers' and between 'workmen and workmen'. However, since every expression used by the legislature indicates certain meaning and idea, it is necessary to examine them.

'Employment' brings in the contract of service between the employer and the employed. The concept of employment involves three ingredients: (*i*) employer, (*ii*) employee and (*iii*) the contract of employment. The employer is one who employs, *i.e.*, one who engages the services of other persons. The employee is one who works on hire basis. The employment is the contract of service between the employer whereunder the employee agrees to serve the employer, subject to his control or supervisions.

'Unemployment' is the opposite of 'employment' and would mean that disputes of workmen which arise out of service with their employers are within the ambit of the definition. It is the positive or negative act of the employer that leads to employment or unemployment. It may relate to an existing fact of unemployment or a contemplated unemployment. Four illustrations were cited by the Federal Court in *Western Indian Automobiles Association* vs *Industrial Tribunal* in support of the aforesaid explanations. Of them, two are in respect of 'employment and two are in respect of unemployment.' A dispute is as to 'employment' or connected with or arising out of employment if:

(*i*) An employer has already employed a person and a trade union says 'please do not employ him'.

(*ii*) An employer gives notice to a union saying that he wishes to employ two particular persons. The union says 'no'.

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A matter raises a dispute as to unemployment or contemplated unemployment if:

(*i*) An employer may dismiss a man, or decline to employ him.

(*ii*) An employer contemplates turning out those who are already in his employment.

The failure to employ or the refusal to employ are actions on the part of employer which would be covered by the expression 'employment or unemployment'. Accordingly, the expression 'unemployment' is sufficiently elastic to include all cases of (*i*) termination of service either voluntary or by act of parties (as employer or workmen). The instances of this kind are dismissal, discharge, retrenchment, compulsory retirement, etc. It also includes temporary unemployment, *e.g.*, suspension, layoff, compulsory leave, lockout, strike, etc. Further, it would include within its scope the words arising out of unemployment, e.g., reinstatement, re-employment, compensation and back wages for wrongful termination of service.

The expression 'terms of employment' and 'conditions of labour' indicate the kind of conflict between those engaged in industry on the opposite but cooperative sides. These words connote dispute to be the share in which the receipts in a commercial venture shall be divided.

The expression 'terms of employment' generally covers basic wages, dearness allowance and other allowances, wages on promotion, wages on demotion, wages on transfer out of town, wages for over-time work, wages for work on holiday, payment of wages, recovery of wages, bonus, retiral benefits, e.g., pension, provident fund, gratuity, pension, etc.

The expression 'conditions of labour' is much wider in scope and refers to the conditions of service under which they work and the amenities provided or to be provided to them. This expression may include hours of work, holidays, leave, health, safety and welfare of labour.

Quite apart from those matters which have been said to be covered in the subject-matter of industrial dispute, an analysis of decided cases reveals that following matters have also been included in the definitions: (i) alteration of conditions of service of employees (ii) demand for modification of standing orders (iii) disputes regarding contract labour (iv) dispute on lockout in disguise of closure (v) dispute of workmen whose cases are left unsettled (vi) transfer of workman from one place to another.

In *Workmen of Hindustan Levers Ltd* vs *Hindustan Levers Ltd*, a question arose whether a demand for confirmation in the promoted post would be a dispute connected with the terms of employment or the conditions of labour within the meaning of Section 2 (k). The Supreme Court answered the question in the affirmative and observed:

> In respect of the classification, a dispute can conceivably arise between the employer and the workman because failure of the employer to carry out the statutory obligation would enable the workman to question his action which will bring into existence a dispute. It would become an industrial dispute because it would be connected with the conditions of employment. It becomes a condition of employment because necessary conditions of service have to be statutorily prescribed, one such being classification of the workmen was to confirm employees employed in an acting capacity in a grade, it would unquestionably be an industrial dispute.

However, dispute between two unions regarding membership of the union is not an 'industrial dispute.'

In *Cipla Limited* vs *Maharashtra General Kamgar Union,* the Supreme Court held that, if the employees are working under a contract covered by the Contract Labour (Regulation and Abolition) Act, then the labour court or the industrial tribunals have no jurisdiction to decide the question of abolition of contract labour as it falls within the province of an appropriate government to abolish the same. But if the workmen claim that they have been directly employed by the company but the contract itself is a camouflage and, therefore, needs to be adjudicated, is a matter which can be adjudicated by the appropriate industrial tribunal or labour court under the Industrial Disputes Act, 1947.

4. Origin of Industrial Dispute

The scope of the expression 'any person' occurring in the last part of the definition of 'industrial dispute' has been a subject matter of controversy. The question has arisen in several cases before the high courts and also before the Supreme Court as to what exactly is the scope of the expression 'any person' as contemplated in Section 2 (k). If construed literally, it may mean and include both natural as well as artificial persons. On the contrary, if interpreted narrowly, the expression 'of any person' may be equated with 'workman'. How and where to draw a line is not easy to answer.

An analysis of the decided cases of tribunals and courts reveals that prior to the Supreme Court decision in *Dimakuchi Tea Estate (supra),* there was no unanimity of opinion with regard to the scope of the expression 'any person'. Three views were discernible.

(*i*) The first view emphasized the literal meaning and held that employment or non-employment or terms of employment or conditions of labour of any person whether that person is a workman or not and whether that person was a sweeper in a director's bungalow could form the subject matter of industrial dispute. According to them, if 'the intention of the Legislature was to restrict the scope of the expression of industrial dispute as a dispute between employers and workmen relating to the terms of employment of workmen alone, there was no need to use the wider expression of 'any person'.

(*ii*) The second view equated the word 'person' with that of 'workman'. According to the supporters of this line of view, unless the 'person' was a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, a dispute concerning him could not be an 'industrial dispute' under Section 2(k).

(*iii*) The third view adopted a middle course, namely that 'concerned person' need not necessarily be a 'workman' within the meaning of the Act; it was enough if the present workmen of the employer were interested in such a person and the employer had the capacity to grant the requested demand.The supporters of this view emphasized that merely because such a dispute would become an 'industrial dispute', it did not follow that the demand would be accepted.

The construction of the word 'any person' came up for consideration before the Supreme Court in *Assam Chah Karamchari Sangha* vs *Dimakuchi Tea Estate*. There,

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Mr Banerjee was appointed by the tea estate as an assistant medical officer, on three months' probation. After 3 months, his services were terminated by the management after paying him one month's salary in lieu of notice. The legality of the termination of service was questioned and the cause of the assistant medical officer was espoused by the workers' union of tea estate. The government of Assam referred the dispute to the industrial tribunal about his reinstatement. The management raised a preliminary objection that the assistant medical officer was not a 'workman' and hence the industrial tribunal had no jurisdiction to adjudicate the question of reinstatement. The tribunal upheld the management's plea. On appeal before the Supreme Court, a question arose whether the workmen of the tea estate can raise an industrial dispute regarding the termination of service of an assistant medical officer (who was not a workman of the Tea Estate. Justice S K Das, who wrote the majority judgement for the Court, while explaining the expression 'any person' in the definition clause held that it cannot mean anybody and everybody in this world. The expression according to his Lordship means:

> ... a person in whose employment, or non-employment, or terms of employment or conditions of labour the workmen as a class have a direct or substantial interest with whom they have under the scheme of the Act, a community of interest. Our reason for so holding is not merely that the Act makes a distinction between workmen and non-workmen, but because a dispute to be a real dispute must be one in which the parties to the dispute have a direct or substantial interest. Can it be said that workmen as a class are directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belong to the supervisory staff and are, under the provisions of the Act, non-workmen and for whose representation the Act makes no particular provision? We venture to think that the answer must be in the negative.

He further pointed out that though a dispute concerning a person who is not a 'workman' may be an 'industrial dispute' within the meaning of Section 2(k), having regard to the scheme, object and the provisions of the Industrial Disputes Act, 1947 the expression 'any person' in the definition clause must be read subject to two crucial limitations and qualification, namely:

(i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (ii) the persons regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have direct or substantial interest.

He then observed:

> In the absence of such interest, the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be the 'workmen' but workmen as a class have a direct or substantial interest.

The Court in its majority judgement accordingly held that the medical officer was not a 'workman' because he could not be held to have any community of interest with the other members of the union to justify the industrial dispute being raised with regard to his unemployment.

The aforesaid majority view was reaffirmed by the larger bench of the Supreme Court in *Workmen of Dahingeapar Tea Estate* vs *Dahingeapar Tea Estate* and was

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reiterated in *Kays Construction Co. Ltd* vs *Its Workmen*. In the former case, a tea estate was sold as a going concern and the purchaser continued to employ the labour and some other members of the staff of the vendor. Under the agreement of sale, an option was given to the purchaser to continue to employ the members of the staff. It also made the vendor liable for the claims made by the members of the staff not retained in service by the purchaser. The claims of the members of the staff not retained in service by the vendee tea estate was raised by the workmen of the vendee tea estate. A question arose whether the dispute raised by such workmen regarding the employment of rest of the staff was an 'industrial dispute.' Justice S K Das (who wrote the majority view in *Dimakuchi Tea Estate supra*) delivering the judgement for the Court applied the test laid down in *Dimakuchi* case and held that such a dispute was an 'industrial dispute'. In the latter case, the business of M/s Kays Construction Co. was taken over by a private company called M/s Kays Construction Co. (Pvt) Ltd. The successor company had the proprietor, his wife and manager of the vendor company as its directors. The transferee employer refused to employ certain workmen of the transferrer employer. The workmen of the transferee employer raised a dispute regarding the erstwhile co-employees of the transferrer employer. It was held that a dispute which validly gave rise to a reference under the Industrial Disputes Act need not necessarily be a dispute directly between an employer and his workmen. The Court further held that the definition of the expression 'industrial dispute' was wide enough to cover a dispute raised by the workmen in regard to the non-employment of others who may not be the workmen at the material time.

The application and interpretation of 'any person' again came up for consideration of the Supreme Court in *Standard Vacuum Refining Co. of India Ltd* vs *Their Workmen.* In this case, regular workmen of the company raised an industrial dispute relating to contract labour. The dispute was that the workers of the contractor (who in effect were doing the work of the company) unlike regular workmen of the company, were getting low wages and were not provided any security of tenure. The regular workmen who raised their dispute, therefore, wanted that the contract system should be abolished and the contractors be considered as workmen of the company. Following *Dimakuchi Tea Estate (supra),* the Supreme Court held that the dispute was an 'industrial dispute' because: (i) the regular workmen of the company had a community of interest with the contractor's workers (who were, in effect, working for the same employer), (ii) the workmen had substantial interest in the subject-matter of the dispute of contractor's workers in the sense that the class to which they belong (namely workmen) was substantially affected thereby and (iii) the company could give relief in the matter.

Again in *Bombay Union of Journalists* vs *The Hindu*, the cause of a working journalist was taken up by a trade union of his profession, but not by other journalists under the employment of that particular branch office of *The Hindu*, in which he was employed. The Supreme Court, while determining the scope of 'any person' demonstrated how the test of 'direct and substantial control' could be applied. Justice Shah observed:

> The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our view applied to this class of cases also; persons who are not employees of the same employer cannot be regarded as so interested that by their support they may convert an individual dispute into an industrial dispute.

This application of the test only confirms the fears expressed by Justice Sarkar of the Supreme Court in his dissenting judgement in *Dimakuchi Tea Estate* case. Adverting later to the fact that the Act is dealing with a new concept, that of relations between

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employer and employee or between capital and labour—he sounded a warning to bear in mind that the concept is undergoing a 'fast change' from day-to-day. He observed:

> The numerous and radical amendments made in the Act since it came on the statute book not so long ago, testify to the fast-changing nature of the concept. Bearing all these things in mind, I find it almost impossible to define adequately or with any usefulness an interest which will serve the purposes of the Act. I feel that an attempt to do so will introduce a rigidity which will work harm and no good. Nor does it, to my mind, in any manner help to define such interest by calling it direct and substantial.

He added:

> It is enough to assume that as normal men, workmen would not raise a dispute or threaten industrial peace on account of it unless they are interested in it ... It is not a condition of an industrial dispute that workmen must be interested in it and no question of interest falls for decision by a court if it can be called upon to decide whether a dispute is an industrial dispute or not.

In *All India Reserve Bank Employees' Association* vs *Reserve Bank of India* the Court coined a new phrase 'vitally interested' to determine the scope of 'any person' in Section 2(k). In this case, a question arose whether the 'workmen' belonging to class III (who drew less than ₹500 per month) of the Reserve Bank of India were entitled to raise the dispute in respect of Class II employees who were doing supervisory nature of duties and drawing more than ₹500 per month and were excluded from the ambit of 'workmen'. The Supreme Court, after referring to the first excerpt (cited earlier by the author) in *Diniakuchi Tea Estate supra*, added:

> It may, however, be said that if the dispute regarding employment, non-employment, terms of employment or conditions of labour of non-workmen in which workmen are themselves vitally interested, the workmen may be able to raise an industrial dispute. Workmen can, for example, raise a dispute that a class of employees not within the definition of workmen should be recruited by promotion from workmen. The workmen can also raise a dispute about the terms of the their own employment though incidentally the terms of employment of those who are not workmen is involved. But workmen cannot take up a dispute in respect of a class of employees who are not workmen and (in whom workmen) have no direct interest of their own. What direct interest suffices, is a question of fact but it must be a real and positive interest and not fanciful or remote.

The Court also rejected the management's contention that the tribunal had no jurisdiction to adjudicate in respect of the dispute between it and those of its employees who fell within the purview of 'workmen'. Observed Justice Hidayatullah:

> It follows, therefore, that the national tribunal was in error is not considering the claims of Class II employees whether at the instance of members drawing less than ₹500 as wages or at the instance of those lower down in the scale of wages in excess of ₹500 per month at any stage were not within the jurisdiction of tribunal or that government could not make a reference in such a contingency.

The aforesaid issue once again came up for consideration in *Workmen* vs *Greaves Cotton Ltd* in which it was held :

> It would, therefore, appear that the consistent view of this court is that non-workmen as well as workmen can raise a dispute in respect of matter affecting their employment, conditions of service, etc., where they have a community of interest, provided they are direct and not remote.

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It is submitted that the aforesaid observation does not correctly reflect the law stated in earlier decisions of the Supreme Court. In none of the aforesaid decisions of the Supreme Court, is it stated that non-workmen can raise a dispute in respect of matters affecting their employment, unemployment, terms of employment or conditions of labour where they have community of interest.

Greaves Cotton Ltd, poses a question as to what would happen if none at all or all the 'workmen' have become non-workmen either during the pendency or at the time or adjudication. Does the dispute survive? The Court answered it in negative. Observed Justice Jagamohan Reddy:

> ... if there are no workmen of the category with respect to whom the dispute has been referred, the tribunal cannot be called upon to prescribe a wage structure for non-existing workmen, nor does it have the jurisdiction to do so.

We are inclined to agree with the aforesaid view. It may, however, be added that the 'direct or substantial interest' test to limit the horizons of the expression 'any person', has not been uniformly applied. While the workman has been said to be substantially interested in the subject matter of contractor's employees, he is not held to be so interested in case of 'doctors' or 'supervisors' who were not 'workmen' but employees of the same employer. Again the 'workmen of the transferee company are said to have a direct or substantial interest in the dispute of unemployment by the transferee employer of the erstwhile co-employees of the transferor employer. Quite apart from this, the application of the aforesaid test is not in conformity with the statement that 'persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute'.

In *Bongaigaon Refinery & Petrochemicals Ltd* vs *Samijuddin Ahmed,* a question arose whether a person who had been issued an offer of appointment which was withdrawn before he could join on knowing that he had suppressed material facts and who raised a dispute about his non-employment could fall within the meaning of 'any person' under Section 2(k) of the Industrial Disputes Act. The Court answered the question in negative and held that the reference of the dispute under Section 10 of the Act was wholly unwarranted and uncalled for. The present case did not satisfy the test laid down in *Dimakuchi Tea Estate* so as to warrant the validity of the reference being upheld. It rejected the contention of the respondent that his case fell within the meaning of 'any person' even if he was not a 'workman' *stricto sensu* and held that 'any person' cannot be read without limitation. In a case where employer-employee relationship never existed and can never possibly exist, it cannot be the subject matter of dispute between employer and workmen. Accordingly, the Court set aside the judgement of the division bench of the High Court and restored the judgement of the single judge of the High Court.

4.3 RESOLUTION OF CONFLICTS

Labour management relations involve dynamic socio-economic process. Both parties, namely, labour and management, constantly, strive to maximize their preferred values by applying resources to institutions. In their efforts, they are influenced by and are influencing others.

The objectives of labour and management are not amenable to easy reconciliation. For instance, labour and management are interested in augmenting their respective incomes

Check Your Progress

1. State two limitations in the definition of 'industrial dispute'.
2. Why are trade unions not mentioned in the definition of 'industrial dispute'?
3. What is 'conditions of labour'?
4. Mention the three ingredients of employment.

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and improving their power position. Since, the resources are limited, interest of one party conflicts with the other. Further, the means adopted to achieve the objective which vary from simple negotiation to economic warfare adversely affect the community's interests in maintaining an uninterrupted and high level of production. Moreover, in a country like ours where labour is neither adequately nor properly organized, unqualified acceptance of the doctrine of 'free enterprise', particularly between labour and management strengthens the bargaining position of already powerful management.

In order, therefore, to protect the interest of the community as well as that of labour and management, legislature has found it necessary to intervene in labour management relations. Thus, the Industrial Disputes Act, 1947 provides for the constitution of various authorities to preserve industrial harmony. At the lowest level is the Works Committee. The various machineries for investigation and settlement of industrial disputes under the Act are (*i*) conciliation (*ii*) court of inquiry (*iii*) adjudication and (*iv*) voluntary arbitration.

Quite apart from the aforesaid statutory machineries, several non-statutory machineries such as code of discipline, joint management council, tripartite machinery and joint consultative machinery play an important role in the process of preventing and settling industrial disputes.

The institution of Works Committee was introduced in 1947 under the Industrial Disputes Act 1947, to promote measures for securing and preserving amity and good relations between employers and workmen. It was meant to create a sense of partnership or comradeship between employers and workmen. It is concerned with problems arising in day-to-day working of the establishment and to ascertain grievances of the workmen.

Constitution of Works Committee

Industrial Disputes (Central) Rules

The Industrial Disputes Act, 1947 empowers the appropriate government to require an employer having 100 or more workmen to constitute a Works Committee. Such a committee shall consist of representatives of employers and workmen engaged in the establishment. However, the number of representatives of the workmen shall not be less than the number of representatives of the employer.

The Industrial Disputes (Central) Rules, 1957, Rule 39 contemplates that the number of representatives of the workmen shall not be less than the number of representatives of the employer and further that the total number of members shall not exceed 20. Rule 40 contemplates that the representatives of the employer shall be nominated by the employer and shall, as far as possible, be officials in direct touch with or associated with the working of the establishment. Rule 41 envisages that the employer shall ask the registered trade union of the workmen in the concerned establishment to inform the employer in writing as to how many of the workmen are members of that union and how their membership is distributed among the sections, shops or departments of the establishment. In other words, the employer is required to ask the registered trade union to supply him the nominal roll of members of the trade union. The election held without consultation with the trade union is liable to be set aside. Rule 42 provides that on receipt of the said information from the registered trade union, the employer shall provide for the election of representatives of the workmen on the Works Committee in two groups: (i) those to be elected by the workmen who are members of the registered trade union and (ii) those to be elected by the workmen who are not members of the

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registered union. It is further provided that the number of two groups should bear same proportion to each other as the union members in the establishment bear to the non-members. The first proviso to this rule contemplates that where more than half the workmen are members of the union or any one of the unions, the above kind of division in two groups shall not be made. This shows that where in an industrial establishment the majority of workers are members of a registered trade union, the distribution of the elected representatives as provided in Rule 42 in two groups will not be necessary. In other words, in that situation, the representatives of the workmen will be elected in a single group without any kind of division. It is not provided that if the union has majority of the workers as its members, then nomination of the representatives of the workmen may be done by the employer in consultation with the trade union. Thus, there cannot be any nomination of representatives of workmen on the Works Committee. The scheme of these rules for constitution of Works Committee has been fully explained in *Union of India* v. *M T S S D Workers Union,* as follows:

(a) Where there is a registered trade union having more than 50 per cent membership of the workers in that establishment, the total number of members of the Works Committee will be elected without distribution of any constituencies,

(b) if in an industry no trade union registered under Trade Unions Act represents more than 50 per cent of the members, then only the election will be held in two constituencies, one from the members of the registered trade union or unions and the other from non-members of the trade unions and it is only in this contingency, it is further provided that if the employer thinks proper, (he) may further subdivide the constituency into department, section or shed.

In *B Chinna Rao* vs *Naval Civilian Employees Union*, Andhra Pradesh High Court was invited to interpret Rule 41 of the Industrial Disputes (Central) Rules, 1957 which reads as under:

Rule 41: Consultation with trade unions:

(i) Where any workmen of an establishment are members of a registered trade union; the employer shall ask the union to inform him in writing (a) how many workmen are members of the union, and (b) how their membership is distributed among the sections, shops or departments of the establishment.

(ii) Where an employer has reason to believe that the information furnished to him under sub-rule (i) by any trade union is false, he may, after informing the union, refer the matter to the assistant labour commissioner (central) concerned for his decision; and the assistant labour commissioner, after hearing the parties shall decide the matter and his decision shall be final.

While interpreting the aforesaid provisions, the Court held that reference to the commissioner has to be made when the employer has 'reason to believe that the information furnished to him by the trade union is false'. False doubt expressed by the employer need not necessarily entail a reference. If a mere perusal of the list furnished by a trade union enables an employer to form a definite opinion, he can certainly act accordingly. Since the reference to the commissioner would have the effect of postponing the election, recourse must be had only when it is otherwise necessary and mandatory.

Functions of Works Committee

The main function of the Works Committee is 'to promote measures for securing and preserving amity and good relations between the employers and workmen and, to that

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end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.' Thus, the Works Committees are normally concerned with problems of day-to-day working of the concern. They are 'not intended to supplant or supersede the union for the purpose of collective bargaining. They are also not entitled to consider real or substantial changes in the conditions of service. Their task is only to reduce friction that might arise between the workmen and the management in the day-to-day working. The decision of Works Committee is neither agreement nor compromise nor arbitrament. Further, it is neither binding on the parties nor enforceable under the Industrial Disputes Act. It is true that according to the Supreme Court the 'comments' of the Works Committee are not to be taken lightly but it is obvious that the observation has relevance only where a third party gets involved in the claim adjustment process. As between the disputants, these comments, have only added persuasive value. But, by no stretch of imagination can it be said that the duties and functions of the Works Committee include the decision on such an important matter as an alteration in conditions of service.'

Operation and Assessment

We shall now turn to discuss the functioning of the Works Committee and assess its working.

A survey of the functioning of the Works Committee reveals that during 1997, 869 Works Committees were actually formed in the central sphere establishment involving 8,16,924 workers out of the 1,131 Works Committees to be formed involving 11,79,577 workers. Be that as it may, the Works Committees on the whole failed to deliver the goods. Several factors are responsible for the same. *First*, in the absence of strong industry-wise labour organization, the politically-oriented trade unions consider Works Committees to be just another rival. The elaborate provisions for securing representation of registered trade unions for proportional representation of union and non-union workmen and the possibility of further splitting of electoral constituencies into groups, sections, departments or shops not only accentuates the problem of rivalry but also weakens the strength of workmen in such committees. *Second*, notwithstanding the parity between workmen's and employers' representatives, the fact that the chairman of the committee is nominated by the employer from amongst his own representatives, has often helped the management to maintain an upper hand in the proceedings. Unwelcome items on the agenda are promptly declared to be out of order on one ground or the other. Absence of statutory provisions defining jurisdiction of these committees only helps the recalcitrant employer. *Lastly*, although tribunals and courts feel that 'agreed solution between the Works Committee and the management are always entitled to great weight and should not be readily disturbed', the fact remains that there is no machinery to enforce the decisions of these committees. Indeed, there is nothing to prevent by-passing of Works Committee. Perhaps it will be incorrect to say that most of the disputes that come up for adjudication have never been discussed in the Works Committee. Confronted with this situation, particularly in the absence of statutory provisions, the tribunals and courts have invariably held that non-discussion is no bar to reference by the government.

Remedial Measures

The [First] National Commission on Labour suggested the following measures for the successful functioning of a Works Committee:

(*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 Committee

(*d*) Whole-hearted implementation of the recommendations of the Works Committee

(*e*) Proper coordination of the functions of the multiple bipartite institutions at the plant level now in vogue

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The Commission also added:

> It is the creation of an atmosphere of trust on both sides. Unions should feel that management is not sidetracking the effective union through a Works Committee. Management should equally realize that some of their known prerogatives are meant to be parted with. Basic to the success of such unit level committees is union recognition.

It is submitted that for the success of a Works Committee, the following steps should be taken: (*i*) Trade unions should change their attitude towards the Works Committee. The unions should feel that management is not sidetracking the effective union through a Works Committee, (*ii*) The management should also realize that some of their known prerogatives are meant to be parted with, (*iii*) Recognition of trade unions should be made compulsory and the provisions therefore should be incorporated in the Trade Unions Act, 1926.

Experience shows that in the day-to-day running of business, disputes between the employer and workmen are resolved by administrative process referred to as grievance procedure. The Indian Labour Conference has also adopted a similar concept of a grievance in its following recommendations:

> Complaints, affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.

The aforesaid concept has also been adopted in the guiding principles for a grievance procedure appended to the Model Grievance Procedure in India. Further, Clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, specifies that 'all complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or the other person specified in this behalf with the right to appeal to the employers.' Moreover, the state governments have framed rules under the Factories Act, 1948 requiring a welfare officer to ensure settlement of grievances.

The Voluntary Code of Discipline adopted by the Sixteenth Session of the Indian Labour Conference in 1958 also provides that: (*a*) the management and unions will establish, upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement, and (*b*) they will abide by the various stages in the grievance procedures. However, there is no legislation in force which provides for a well-defined and adequate procedure for redressal of day-to-day grievances in an industrial establishment. In order to meet the shortcoming, the Industrial Disputes (Amendment) Act, 1982, provides for setting up of grievance settlement authorities and reference of certain individual disputes to such authorities. Section 9C of the amended Act provided:

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(1) The employer in relation to every industrial establishment in which 50 or more workmen are employed or have been employed on any day in the preceding 12 months, shall provide for, in accordance with the rules made in that behalf under this Act, a grievance settlement authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in sub-section (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed, such dispute to the grievance settlement authority provided for by the employer under that sub-section for settlement.

(3) The grievance settlement authority referred to in sub-section (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the grievance settlement authority concerned and the decision of the grievance settlement authority is not acceptable to any of the parties to the dispute.

However, the aforesaid provisions of the Industrial Disputes (Amendment) Act, 1982, have not been enforced, presumably because the Hospitals and Other Institutions (Settlement of Disputes) Bill, 1982, has not so far been passed. Further, no rules were framed under the unenforced Section 9C. The (Second) National Commission on Labour in 2002 has recommended that a grievance redressal committee for organizations employing 20 or more workers be constituted. But no legislative or administrative action was taken till 2010.

Grievance Redressal Machinery

In 2010, the Industrial Disputes (Amendment) Act, 2010 inserted new chapter IIB on grievance redressal machinery. Section 9C of the Amendment Act provides as follows :

(1) Every industrial establishment employing 20 or more workmen shall have one or more grievance redressal committees for the resolution of disputes arising out of individual grievances.

(2) The grievance redressal committee shall consist of equal number of members from the employer and the workmen.

(3) The chairperson of the grievance redressal committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

(4) The total number of members of the grievance redressal committee shall not exceed six:

Provided that there shall be, as far as practicable, one woman member if the grievance redressal committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.

(5) Notwithstanding anything contained in this section, the setting up of grievance redressal committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.

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(6) The grievance redressal committee may complete its proceedings within 30 days on receipt of a written application by or on behalf of the aggrieved party.

(7) The workman who is aggrieved of the decision of the grievance redressal committee may prefer an appeal to the employer against the decision of grievance redressal committee and the employer shall, within one month from the date of receipt of such appeal, dispose of the same and send a copy of his decision to the workman concerned.

(8) Nothing contained in this section shall apply to the workmen for whom there is an established grievance redressal mechanism in the establishment concerned.

4.3.1 Bipartite and Tripartite Bodies

Tripartite consultative machinery such as Indian Labour Conference, Standing Labour Advisory Committee and Industrial Committee also play an important role in ensuring the representation of the various interests involved in labour matters at the national level. Besides this, the committee on convention is also instrumental in reviewing the ratification of ILO conventions and the application of international labour standards.

The ILC/SLC have facilitated the enactment of central legislation on various subjects to be made applicable to all the states of the Indian union in order to promote uniformity in labour legislation which was an important objective to be achieved by these tripartite bodies.

4.4 SUMMING UP

- Section 2 (k) of the Industrial Disputes Act, 1947, defines 'industrial dispute' to mean: Any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.
- When the parties are at variance, and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour, there comes into existence an industrial dispute.
- But there is divergence of opinion among the courts on the issue whether a mere demand to the appropriate government or to the conciliation officer without a dispute being raised by the workmen with the employer regarding such demand can become an industrial dispute.
- The words 'workmen and workmen' occur in Section 2 (k) to include the disputes between them either directly or through their trade unions. Such a dispute may be demarcation dispute, inter-union dispute, etc. Inter-union dispute has, however, not been held to be an 'industrial dispute'.
- 'Employment' brings in the contract of service between the employer and the employed. The concept of employment involves three ingredients: (*i*) employer, (*ii*) employee and (*iii*) the contract of employment.
- 'Unemployment' is the opposite of 'employment' and would mean that disputes of workmen which arise out of service with their employers are within the ambit of the definition.

Check Your Progress

5. What do you mean by grievance procedure?
6. Name the various machineries for investigation and settlement of industrial disputes under the Industrial Disputes Act, 1947.
7. What is the role played by the tripartite consultative machinery?

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- The expression 'conditions of labour' is much wider in scope and refers to the conditions of service under which they work and the amenities provided or to be provided to them. This expression may include hours of work, holidays, leave, health, safety and welfare of labour.
- Labour management relations involve dynamic socio-economic process. Both parties, namely, labour and management, constantly, strive to maximize their preferred values by applying resources to institutions. In their efforts, they are influenced by and are influencing others.
- The institution of works committee was introduced in 1947 under the Industrial Disputes Act 1947, to promote measures for securing and preserving amity and good relations between employers and workmen. It was meant to create a sense of partnership or comradeship between employers and workmen. It is concerned with problems arising in day-to-day working of the establishment and to ascertain grievances of the workmen.
- The main function of the works committee is 'to promote measures for securing and preserving amity and good relations between the employers and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.'
- Tripartite consultative machinery such as Indian Labour Conference, Standing Labour Advisory Committee and Industrial Committee also play an important role in ensuring the representation of the various interests involved in labour matters at the national level. Besides this, the committee on convention is also instrumental in reviewing the ratification of ILO conventions and the application of international labour standards.

4.5 KEY TERMS

- **Industrial Dispute**: Any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.
- **Employer**: An employer is one who employs, *i.e*., one who engages the services of other persons.
- **Employee**: An employee is one who works on hire basis.
- **Employment:** The employment is the contract of service between the employer where under the employee agrees to serve the employer, subject to his control or supervisions.
- **Conditions of labour**: Condition of labour is much wider in scope and refers to the conditions of service under which they work and the amenities provided or to be provided to them. This expression may include hours of work, holidays, leave, health, safety and welfare of labour.

4.6 ANSWERS TO 'CHECK YOUR PROGRESS'

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1. The definition of 'industrial dispute' contains two limitations—(*i*) The adjective 'industrial' relates to the disputes of an industry as defined in the Act, and (*ii*) it expressly states that not all sorts of dispute and differences but only those which bear upon the relationship of employers and workmen regarding employment, non-employment, terms of employment and conditions of labour are contemplated.
2. Trade unions as such are not mentioned in the definition of 'industrial dispute' because they act on behalf of the workmen and, therefore, when a trade union raises a dispute, the workmen are deemed to be parties to the dispute.
3. 'Conditions of labour' is much wider in scope and refers to the conditions of service under which they work and the amenities provided or to be provided to them. This expression may include hours of work, holidays, leave, health, safety and welfare of labour.
4. The concept of employment involves three ingredients: (*i*) employer, (*ii*) employee and (*iii*) the contract of employment.
5. In the day-to-day running of business, disputes between the employer and workmen are resolved by administrative process referred to as grievance procedure.
6. The various machineries for investigation and settlement of industrial disputes under the Act are— (*i*) conciliation (*ii*) court of inquiry (*iii*) adjudication and (*iv*) voluntary arbitration.
7. Tripartite consultative machinery such as Indian Labour Conference, Standing Labour Advisory Committee and Industrial Committee also play an important role in ensuring the representation of the various interests involved in labour matters at the national level.

4.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Distinguish between employer, employee and employment.
2. What was the purpose behind the creation of the Institution of Works Committee in 1947 under the Industrial Disputes Act 1947?
3. Mention the steps that were suggested by the National Commission on Labour for the successful functioning of a works committee.

Long-Answer Questions

1. Analyse the definition of 'industrial dispute' under the four heads— Factum of industrial dispute, parties to the dispute, subject matter of the dispute and origin of the dispute.
2. Discuss the functions of works committee.
3. 'In 2010, the Industrial Disputes (Amendment) Act, 2010 inserted a new chapter IIB on 'grievance redressal machinery.' Discuss the provisions of the section 9C of the Amendment Act.

4.8 REFERENCES AND SUGGESTED READINGS

NOTES

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UNIT 5 STANDING ORDERS AND GRIEVANCE

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Structure

5.0 Introduction
5.1 Objectives
5.2 Standing Orders
5.3 Grievance Procedure
5.4 Ethical Codes
5.5 Discipline and Indiscipline
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5.0 INTRODUCTION

The management in order to avoid waste often undertakes measures in the day-to-day running of the business. Some of these actions have a direct bearing on the workmen who work in the organization. This often gives rise to indiscipline, misconduct on part of the employees. The employer, on account of misconduct suspends and even at times dismisses employees from their service. In the arena of industrial relations, most pressing issues relate to — employer-employee relation, sexual harassment of women at workplace, minimum standards of employment, unfair labour practice, humane conditions of work, etc. This unit deals with all these issues that operate within a workplace.

5.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain the concept of standing orders
- State the meaning and concept of labour grievance
- Discuss the ethics that are followed in the arena of industrial relations
- Explain the aspects, objectives and causes of discipline and indiscipline
- Discuss misconduct, termination of employment and punishment

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5.2 STANDING ORDERS

Definition

Section 2 (g) of the Industrial Employment (Standing Orders) Act, 1946 (herein referred to as IESOA) defines 'standing orders' to mean:

Rules relating to matters set out in the Schedule

Thus, the items which have to be covered by the standing orders in respect of which the employer has to make a draft for submission to the certifying officers are matters specified in the schedule.

Content of the Schedule

The matters referred to in the Schedule are:

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or *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. Requirements 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

The enumeration of the aforesaid items is not exhaustive. There seems to be no reason for including certain items and excluding many other important items. If the object of the IESOA is to 'give the workmen collective voice in defining the terms of employment and to subject the terms of employment to scrutiny of quasi-judicial and judicial authorities', there is no reason to exclude many items from terms of employment and conditions of service. It is significant to note that Section 73 (1) of the Industrial Relation Bill, 1978 provided:

(*i*) The Central Government shall, by notification, make standing orders to provide for the following matters, namely:

(*a*) Classification of employees, that is to say — whether permanent, temporary, apprentice, probationers or *badlis*

(*b*) Conditions of service of employees, including matters relating to the issue of orders of appointment of employees, procedure to be followed by employees in applying for, and the authority which may grant leave and holidays

(*c*) Misconduct of employees, inquiry into such misconduct and punishment therefor

(*d*) Superannuation of employees

(*e*) Shift working of employees

The aforesaid provisions could have given great relief to workmen but it lapsed after the dissolution of the Parliament.

Quite apart from the aforesaid shortcomings, the matters enumerated in the Schedule have also been the subject-matter of judicial interpretation in a number of decided cases. Some of the items which invited the attention of the Court may be noted:

Item 5: In *Bagalakot Cement Co*. vs *R K Pathan*, the Supreme Court has interpreted 'condition' in clause 5 of the Schedule 'in a broad and liberal sense' so as to include leave and holidays. In its view, 'to hold otherwise would defeat the very purpose of clause 5'.

Item 8: Prior to the Supreme Court decision in *U P Electricity Supply Co*. vs *T N Chatterjee*, the Madras and Orissa High Courts were divided on the issue whether the word 'termination' in Item 8 included 'termination of employment on attainment of age of superannuation'. Thus, in *The Hindu* vs *Secretary*, *Hindu Office*, the management of The Hindu had framed certain standing orders, one of the clauses of which provided that every employee shall ordinarily retire from service after completing the age of 58 years or 30 years of unbroken service, whichever is earlier. A question arose whether such a clause in standing orders is covered by any of the items of the Schedule of the Act. The Madras High Court held that termination in Item 8 of the Schedule was wide enough to govern the case of superannuation. But in *Saroj Kumar* vs *Chairman*, *Orissa State Electricity Board*, the Court took the contrary view. It held that 'superannuation' was covered by 'termination' in the Item. However, the controversy has been set at rest by the Supreme Court in *U P Electricity Supply Co*. vs *Chatterjee*. It related to retirement of certain employees on completion of the age of 55 years or 30 years of service. A question arose whether termination in Item 8 covered 'superannuation'. The Court held that termination in Item 8 does not cover each and every form of termination or cessation of employment. In view of this it held that it did not cover 'superannuation' which is automatic and did not require notice or any act on the part of employer or workmen. The Court agreed that if termination is to be read in a wider sense as meaning employment coming to an end, there was no necessity to have Item 9 because dismissal would then be covered by termination.

Item 9: The 'misconduct' under Item 9 for which an employee can be dismissed need not necessarily have been committed in the course of his employment. It is enough if it is of such a nature as to affect his suitability for a particular employment.

Item 11: This item refers to 'any other matter which may be prescribed.' When the appropriate government adds any item to the Schedule, the relevant question to be asked would be whether it refers to the conditions of employment or not. If it does, it would be within the competence of the appropriate government to add such an item.

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The nature of the standing order has assumed increasing importance in industrial law. It has also attracted the attention of tribunal and courts. An analysis of the decided cases relating to the nature of standing order reveals that different shades of opinion have emerged on the subject namely, it is: (*i*) statutory in nature, (*ii*) a special kind of contract, (*iii*) an 'award', and (*iv*) a form of delegated legislation. Let us turn to examine them.

Statutory in Character

Prior to the Supreme Court decision, the High Courts were divided on this issue. Most of the high courts were tilted on the side of statutory nature of contract.

In *Tata Chemicals Ltd* vs *Kailash C Adhvaryar*, a question directly arose before the Gujarat High Court whether a contract can override the terms of the standing orders. The Court after considering the provisions of the Act opined that:

> … on a true construction of the various provisions of the Act, the standing orders when finally certified under the Act are binding on the employer and the workmen and govern the relations between the employer and the workmen and it is not open to the employer and the workmen to contract themselves out of the rights and obligations created by the standing orders.

In *Behar Journals Ltd* vs *Ali Hasan*, the division bench of the Patna High Court also spoke in similar terms:

> … the certified standing orders have statutory force and under the above standing orders, there is a statutory contract between the employer and the workmen. It could not, therefore, be possible in law for parties … to enter into a contract overriding the statutory contract as embodied in the certified standing orders and any contract contrary to the above orders must be ignored.

The aforesaid line of view found the approval of the Supreme Court in *Bagalkot Cement Company Ltd* vs *R K Pathan*. In this case, even though the question was not directly in issue, the Court dealt with the nature of standing orders in the following words:

> The Act made relevant provision for making standing orders which, after they are certified, constitute the statutory terms of employment between the industrial establishments in question and their employees.

And while interpreting certain provisions of the standing orders, Justice Gajendragadkar observed:

> The object of the Act ... was to require the employers to make the conditions of employment precise and definite. The Act ultimately intended to prescribe these conditions in the form of standing orders so that what used to be governed by a contract hereto before, would now be governed by the statutory standing orders...

The aforesaid view was reiterated by the Supreme Court in *Workmen of Dewan Tea Estate* vs *Their Management*. In this case, a question arose whether any provision of the Act could have overridden the provisions of the standing orders. The Court held that the standing orders could only be overridden by specific provisions of the Act, which may have been introduced after the standing order was certified. In the course of judgement, the Supreme Court explained the nature of the standing orders in the following words:

> If the standing orders thus become the part of the statutory terms and conditions of service, they will govern the relations between the parties unless, of course, it can be shown that any provision of the Act is inconsistent with the said standing orders. In that case, it may be permissible to urge that the statutory provision contained in the Act should override the standing order which had been certified before the said statutory provision was enacted.

In *Western India Match Co*. vs *Workmen*, the Court spoke in similar terms:

> The terms of employment specified in the standing orders would prevail over the corresponding terms in the contract of service in existence on the enforcement of the standing orders.

The Supreme Court in *Sudhir Chandra Sarkar* vs *Tata Iron and Steel Company* has clearly stated that the conditions of service laid down in the standing orders is either statutory in character or has statutory flavour. Similarly, certified standing orders which statutorily prescribe the conditions of service shall be deemed to be incorporated in the contract of employment of each employee with his employer. This line of view was followed in later decisions.

In U P *State Bridge Corporation Ltd* vs *U P Rajya Setu Nigam S Karmchari Sangh*, the Supreme Court held that certified standing orders constitute statutory terms and conditions of service.

A survey of the aforesaid decisions leads to the conclusion that the standing orders are statutory in nature and their violation is punishable under the Industrial Employment (Standing Orders) Act, 1946.

In *Rajasthan State Road Transport Corporation* vs *Krishna Kant*, the Supreme Court held:

> The certified standing orders framed under and in accordance with the Industrial Employment (Standing Orders) Act. 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to statutory provision. Any violation of these standing orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

The aforesaid view was reiterated in *RSRTC* vs *Deen Dayal Sharma*.

Special Kind of Contract

The other view is that standing orders are a special kind of contract. This view was expressed in *Buckingham and Carnatic Co.* vs *Venkatayaga*. Observed Justice Gajendragadkar:

> The certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as private contract embodying similar terms and conditions of service.

However, the high courts were more specific on the holding that the standing orders are in the nature of contract. Thus, Madras High Court in *Mettur Industries* vs *Verma* observed:

> Reading the Act as a whole, it is clear that the standing orders form part of the contract between the management and every one of its employees.

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Likewise, in *Akhil Ranjan Das Gupta* vs *Assam Tribune*, Chief Justice Mehrotra speaking for the Assam High Court observed:

> the purpose of standing orders is to clarify the conditions of service and they are in the nature of a contract on which openly the employee enters into the service …

Thus, it is evident that 'though the certified standing orders have statutory flavour, the Act is directed to get the rights of an employee under a contract defined'. This was also recognized by the Supreme Court in *Guest Keen Williams Ltd* vs *Sterling and Others*:

> The standing orders certified under the Act no doubt become part of the terms of employment by operation of Section 7, but if an industrial dispute arises in respect of such (standing) orders and it is referred to the tribunal by the appropriate government, the tribunal has jurisdiction to deal with it on the merits.

In *M P Vidyut Karmchari Sangh* vs *M P Electricity Board*, the question was whether the regulations made under Section 79 (c) of the Electricity (Supply) Act, 1948 would prevail over the standing orders framed under the Act of 1961. The Supreme Court held that, 'for excluding the operation of the 1961 Act, it is imperative that an appropriate notification in terms of Section 2(2) of the 1961 Act is issued'. It has been further observed that the 1961 Act is a special law whereas the regulations framed by the board under Section 79(c) are general provisions. The maxim '*generalia special bus non derogant*' would, thus, be applicable in this case.

Following the aforesaid decision in *Jabalpur Development Authority* vs *Sharad Shrivastava*, the Madhya Pradesh High Court held that SSOs will prevail over the Regulations of 1987 as these rules have not been notified under Section 2(2) of the Act of 1961. The publication of the rules in the gazette is not enough. These are required to be notified under Section 2(2) of the Act involving a conscious decision of the government in the labour department that the operation of the SSOs would be excluded and the rules would have predominance.

From the above, it appears that the standing orders may also be of the nature of special contract law.

Standing Orders: If 'Award'

It is sometimes said that the nature of standing orders is like an 'award'. This is argued on the basis of the provisions of Section 4 (b) which says that 'It shall be the function of the certifying officer … to adjudicate upon the fairness and reasonableness of the provisions of any standing orders' and also on the basis of judicial decision which rules that the function of the certifying officer is quasi-judicial. However, standing orders cannot be an 'award' under Section 2 (b) of the Industrial Disputes Act, 1947.

Standing Orders: Form of Delegated Legislation

Sometimes, it is also argued that standing orders under IESOA is a delegated legislation. It is argued on the basis of the provision that standing orders should contain every matter set out in the Schedule and it should as far as is practicable, conform to the Model Standing Orders. But, this contention cannot be upheld, particularly when the Act imposes a duty upon the employers to submit the draft standing orders to the certifying officer and that he is required to examine the fairness and reasonableness of the standing orders and is also empowered to amend the same if they are not 'fair or reasonable'. These provisions do not conform that it is a delegated legislation. However, the Industrial

Relations Bill, 1978 appears to have changed the nature of standing orders from statutory or contractual to one of delegated legislation which is evident from the provisions of Section 73 (1) and Section 73(2) of the Bill namely:

> The provisions of standing orders made under sub-section (1) may be modified by the employer, in relation to any industrial establishment or undertaking, if an agreement is entered into by him with the negotiating agent in relation to employees in such industrial establishment or undertaking for such modification …

Further, provisions of Section 76 of the Bill which provides that:

> Every standing orders made by the Central Government under sub-section (1) of Section 73 shall be laid, as soon as, may be after it is made, before each house of Parliament.

Further confirms that standing orders are in the nature of delegated legislation. Needless to mention that the Bill lapsed after the dissolution of Lok Sabha.

In *RSRTC* vs *Deen Dayal Sharma*, the Supreme Court held that standing orders are not in the nature of delegated/subordinate legislation.

Submission of Draft Standing Orders by Employers

The Industrial Employment (Standing Orders) Act (hereinafter referred to as IESOA) requires every employer of an 'industrial establishment' to submit draft standing orders, i.e., 'rules relating to matters set out in the Schedule' proposed by him for adoption in his industrial establishment. Such a draft should be submitted within 6 months of the commencement of the Act to the certifying officer. Failure to do so is punishable and is further made a continuing offence. The draft standing orders must be accompanied by particulars of workmen employed in the establishment as also the name of the trade union, if any, to which they belong. If the industrial establishments are of similar nature, the group of employers owning those industrial establishments may submit a joint draft of standing orders.

Conditions for Certification of Standing Orders

Section 4 requires that standing orders shall be certified under the Act if:

(*a*) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment;

(*b*) they are otherwise in conformity with the provision of the Act; and

(*c*) they are fair and reasonable.

Since the aforesaid conditions formed the nucleus of valid standing orders, it is necessary to examine them in the light of decided cases.

Matters to be Set out in the Schedule

The draft standing orders should contain every matter set out in the schedule of the Act with the additional matters prescribed by the government as are applicable to the industrial establishment. And, according to Section 4, the standing orders shall be certifiable if provisions are made therein for every matter stated in the Schedule to the Act.

Matters not Covered by the Schedule

The Schedule, it has been seen earlier, contains Clauses 1 to 10 which deal with several topics in respect of which standing orders have to make provision and Clause 11 refers

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to any other matter which may be prescribed. These items are not exhaustive and do not contain items on several subjects. The question then arises — whether it is permissible for the employers to frame standing orders in respect of the matters not provided in the Schedule of the Act ?

The Supreme Court in *UP Electric Supply Co. Ltd* vs *TN Chatterjee* left the question open when it observed that it was unnecessary to decide the question as to whether in the absence of any item in the Schedule, any standing orders could be framed in respect of the matter which may be certified by the certifying officer, as fair and reasonable. On the other hand, the Supreme Court in *Rohtak and Hissar Electric Supply Co.* vs *UP* considered the question squarely and observed:

> Then in regard to the matter which may be covered by the standing orders, it is not possible to accept the argument that the draft standing orders can relate to matters outside the Schedule. Take, for instance, the case of some of the draft standing orders which the appellant wanted to introduce; these had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two standing orders were included in the draft of the appellant. These two provisions do not appear to fall under any of the items in the Schedule; and so, the certifying authorities were quite justified in not including them in the certified standing orders.

and later added:

> … The employer cannot insist upon adding a condition to the standing orders which relates to a matter which is not included in the Schedule.

Conformity with the Provisions of the Act

In *Indian Express Employees Union* vs *Indian Express (Madurai) Ltd*, the Kerala High Court held that the framing of the standing orders is to be in conformity with the provisions of the Act. The same need not be in conformity with the appointment order or any office order of the establishment.

In *Rashtriya Chemicals and Fertilizers Ltd* vs *General Secretary*, *FCI Workers Union*, the division bench of the Bombay High Court held that the word conformity means that is should not be inconsistent. In other words, merely because the central standing orders prescribe age of 58 years, it does not mean that automatically anything other than 58 years is not in conformity.

In *Burn Standard and Company* vs *I T*, the Supreme Court deprecated the practice of correction of date of birth at the fag end of the career of an employee.

Conformity with the Model Standing Orders

Where model standing orders have been prescribed, that draft submitted by the employers must be in conformity with the model standing orders provided under Section 15 (2) (b) 'as far as it is practicable.' Conformity cannot be equated with identity. In other words, it does not mean that the draft standing orders must be in identical words but it means that in substance, it must conform to the model prescribed by the appropriate government. The expression 'as far as is practicable' also confirms the view. This expression indicates that the appropriate authority may permit departure from the model standing order if it is satisfied that insistence upon such conformity may be impracticable. There is, however, no provision in the Act for making more beneficial provisions of the model standing orders applicable in cases where the certified standing orders exist.

In the absence of such a provision under Section 15 (2) (b), a question arose whether the standing orders can contain matters not found in the model standing orders. This issue was raised in *S K Seshadari* vs *HAL*. In this case, the standing orders of Hindustan Aeronautics Ltd, *inter alia*, provided the following acts and omission to be misconduct: Gambling and money lending or doing any other private business within the company's premises'.

The validity of these provisions was challenged on the ground that the model standing orders do not provide that the aforesaid acts would constitute misconduct. Upholding the validity of these provisions, the Karnataka High Court observed:

> [T]he mere fact that the model standing orders do not provide for constituting particular act as misconduct, it does not mean that the standing orders cannot include such act or acts as constituting misconduct. Sub-Section (2) of Section 3 of the Act, merely provides that where model standing orders have been prescribed, the standing orders shall have to be, so far as is practicable, in conformity with such model standing orders. Model standing orders are framed in exercise of the rule-making power. The rules cannot restrict the scope and ambit of the provisions contained in the Act. Thus, the question as to whether the standing orders are within the ambit of power conferred in that regard by the Act, has to be determined with reference to the provisions contained in the Act, more especially with reference to the Schedule which forms part of the Act. Providing for certain acts and omissions in the standing orders not already provided in the model standing orders, does not make such a standing order invalid or beyond the power of the employer to make such a standing order. Applicability of the model standing orders depends upon the nature of the industrial establishment.

This view is in conformity with the object and scheme of the Industrial Employment (Standing Orders) Act.

Model Standing Orders

Under the Act, model standing orders are framed and as soon as the Act applies to an industrial establishment. The employer is under an obligation to submit a draft amendment to the model standing orders as desired by him but the certifying officer has to certify the same. These model standing orders provide for minimum decent conditions of service. The Act took the first step of compelling the employer to give certain minimum conditions of service. These model standing orders were framed as early as 1948 and there are minor amendments here or there. They have undoubtedly stood the test of the time. But as the industrial employees are becoming more and more aware of their rights and concept of social justice is taking firm root, it is time that these model standing orders are comprehensively re-examined and revised. In the course of discussions, the committee came across certain suggestions relating to conditions of service which may now appropriately find their place in the model standing orders.

The model standing orders do not provide for any method or manner of recruitment, promotion, transfer or grievance procedure. Today, the employer enjoys an arbitrary discretion or an unfettered power of recruiting anyone he likes. This definitely results in favouritism, nepotism and class of loyal workers. It becomes counter-productive to healthy trade union activity.

Recommendation of the Second National Commission on Labour: The commission has recommended that the appropriate government may also frame model standing orders, including the classification of acts of misconduct as major and minor,

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and providing for graded punishments depending on the nature and gravity of the misconduct, and publish them in the official gazette. Where an establishment has no standing orders, or where draft standing orders are still to be finalized, the model standing orders shall apply.

Fairness or Reasonableness of Standing Orders

Prior to 1956, the certifying officer had no power to go into the question of reasonableness or fairness of the draft standing orders submitted to him by the employers. His only function was to see that the draft must incorporate all matters contained in the Schedule and that it was otherwise certifiable under the Act. Such a power was also not conferred upon the appellate authority. However, this provision did not provide adequate safeguards against unfair practices in the standing orders and, therefore, caused great hardship to workmen.

In 1956, the Parliament amended the Act and thereby not only considerably widened the scope of the Act but also gave a clear expression to the change in legislative policy. Section 4, as amended by Act 36 of 1956, imposes a duty upon the certifying officer and appellate authority to adjudicate upon fairness and reasonableness of the standing orders. If they find that some provisions are unreasonable, they must refuse to certify the same. While adjudicating the fairness or reasonableness of any standing orders, the certifying officer should consider and weigh the social interest in the claims of the employer and the social interest in the demand of the workmen.

Thus, the Parliament confers the right to individual workman to contest the draft standing orders submitted by the employer for certification on the ground that they are either not fair or reasonable. Further, the workers can also apply for their modification and dispute the finality of the order of the appellate authority.

Procedure for Certification of Standing Orders

When the draft standing orders are submitted for certification, the certifying officer shall send a copy of the draft to the trade union, if any, or in its absence to the workmen concerned, to file objections, if any, in respect of the draft standing orders, within 15 days of the receipt of the notice. He is further required to provide hearing opportunity to the trade union or workmen concerned as the case may be. After hearing the parties he shall decide whether or not any modification of or addition to the daft submitted by the employer is necessary to render the draft certifiable under the Act and shall make an order in writing accordingly. For the purpose he shall inquire (*i*) whether the said sanding orders are in conformity with the model standing orders issued by the government; and (*ii*) whether they are reasonable and fair. He shall then certify the standing orders with or without modification as the case may be. He shall send within 7 days authenticated copies of standing orders to employers and to the trade unions or other representatives of workmen.

Certifying Officers: Their Appoinment, Jurisdiction, Powers and Duties

The 'certifying officers' under the IESOA mean a labour commission or a regional labour commissioner, and includes any other officer appointed by the appropriate government, by notification in the official gazette, to perform all or any of the functions of certifying officer under the Act. He is 'the statutory representative of the Society.'

Section 11 (1) empowers certifying officer and appellate authority with all the powers of a civil court for the purposes of: (*i*) receiving evidence; (*ii*) enforcing the

attendance of witnesses; and (*iii*) compelling the discovery and production of documents. He shall also be deemed to be the 'civil court' within the meaning of Section 345 and 346 of the Code of Criminal Procedure, 1973.

The aforesaid power have been conferred upon the certifying officer and appellate authority so that they may summon any witness and may not find any difficulty in holding any inquiry when the draft standing orders are submitted for certification to the certifying officer.

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No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders finally certified under the IESOA shall be admitted in any court. Thus, Section 12 bars oral evidence in contradiction of written standing orders. But there is no provision prohibiting written agreement. However, in case of conflict between the general conditions of employment and special terms contained in standing orders—a written contract, the terms of special contract would prevail.

Section 11 (2) authorizes certifying officer and appellate authority to correct his own or his predecessor's (*i*) clerical mistake; (*ii*) arithmetical mistake; and (*iii*) error arising therin from any accidental slip or omission.

Jurisdiction

The Supreme Court in *Bhilai Steel Project* vs *Steel Works Union*, held that when standing orders are under consideration of the certifying officer and in the meanwhile if there is any amendment to the Industrial Employment (Sanding Orders) Act, though certifying officer had no jurisdiction at the time when he obtained the application to deal with the matter, during pendency of the application if the law is repealed and that law is to deal with such application, he can certainly entertain the same.

Section 4, we have already seen, imposes a duty upon the certifying officer/ appellate authority to:

(*i*) see whether the standing order provides for every matter set out in the schedule, which is applicable to the industrial establishment

(*ii*) consider whether the draft standing orders are in conformity with the provisions of the model standing orders. If the certifying officer finds that some provisions of the standing orders as proposed by the employer relate to matters which are not included in the schedule, he may refuse to certify them, and

(*iii*) to adjudicate upon the fairness or reasonableness of the provisions of any standing orders

The aforesaid duties are mandatory to be performed by the certifying officer. Further, certifying officer/appellate authority is required to discharge these duties in a fair and *quasi-judicial* manner.

Appeals against Certification

The Legislative Scheme

Section 6 of the Industrial Employment (Standing Orders) Act, 1946, *inter alia*, provides that any person who is aggrieved by the order of certifying officer may 'within 30 days from the date on which the copies are sent,' file an appeal to the appellate authority.

The scope of the aforesaid section was examined in *Badarpur Power Engineers' Association* vs *Dy. Chief Labour Commissioner*. In this case, the Delhi High Court held that:

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The word used in Section 6, on which emphasis has to be laid is 'from'. Section 9 (1) of the General Clause Act clearly provides that when in any Central Act or Regulation the word used is 'from', then the first day in a series of days shall be excluded. Section 9 of the General Clauses Act was clearly applicable to the present case and the effect of the same would be that 7 January, 1991 had to be excluded while computing the period of limitation.

Finality of the Decision of Appellate Authority

Section 6 also incorporates a finality clause namely that the decision of the appellate authority 'shall be final.' This provision means that there is no further appeal or revision against that order. This view finds support from Section 12 which lays down that once the standing orders are finally certified, no oral evidence can be led in any court which has the effect of adding to or otherwise varying or contradicting such standing orders. Section 6 read with Section 12 indicates that the finality given to the certification by the appellate authority cannot be challenged in a civil court. But the finality given to the appellate authority order is subject to the modification by him.

Appellate Authority: Its Nature and Constitution

Appellate authority means an authority appointed by the appropriate government by notification in the official gazette to exercise in such areas as may be specified in the notification of the functions of the appellate authority under the Act. But, in relation to appeal pending before the industrial court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963, that court or authority shall be deemed to be the appellate authority.

A survey of the official statistics regarding persons authorized to act as appellate authority under the Act reveals that only in the state of Assam and Tripura, secretary of labour department acts as appellate authority. In remaining states/union territories, such power is exercises by quasi-judicial tribunals, like industrial tribunal/labour court. But, in the state of West Bengal, such power is vested in the High Court. Looking to the quasi-judicial function exercised by the appellate authority in many states, it is desirable if such functions are performed by the industrial tribunal/labour courts in Assam and Tripura.

Powers of the Appellate Authority

An appellate authority can either confirm the standing orders in the form certified by the certifying officer or amend the said standing orders by making such modification thereof or addition thereto, as he thinks necessary so as to render standing orders certifiable under the Act. He has, however, no power to set aside the orders of certifying authority. Likewise, it has no power to remand the case because it has a power whether to confirm or modify the award as it deems fit.

Duties of the Appellate Authority

The Act casts a duty upon the appellate authority to send copies of the order made by it to the certifying officer, employer and trade union or other prescribed representatives of the workmen within 7 days of the date of the order, 'unless it had confirmed without amending the standing orders as certified by the certifying officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.'

The aforesaid provision is akin to a provision requiring the drawing up of the degree in pursuance of the orders passed by a civil court. The Act requires the appellate

authority to send copies to the authorities mentioned therein after effecting amendments or modification in terms of its order within 7 days of the order. In other words, the obligation to draw up standing orders in conformity with the orders passed in appeal is placed before the appellate authority and that obligation has to be discharged within the period of 7 days from the date of the order under sub-section (1).

Date of Operation of Standing Orders or Amendments

Section 7 sets out the date on which the standing orders or amendments made thereto would become operative. It provides that the standing orders shall come into operation on the expiry of 30 days from the date on which authenticated copies thereof are sent as required by sub-section (5) of Section 3, or where an appeal is preferred on the expiry of 7 days from the date on which the copies of the appellate order are sent under sub-section (2) of Section 6.

Binding Nature and Effect of Certified Standing Orders

There is no specific provision in the Act dealing with the binding nature and effect of standing orders. In the absence of any provision, courts have held that a standing order certified under IESOA is binding upon the employers and employees of the industry concerned. However, the decided case reveals that even though they are binding, they do not have such force of laws as to be binding on industrial tribunals adjudicating on industrial dispute.

In *Guest Keen Williams (Pvt.) Ltd* vs *P J Sterling*, Justice Gajendragadkar delivering the judgement of the Supreme Court explained the position:

> … the standing orders when they were certified became operative and bound the employer and all the employees.

Buckingham and Carnatic Co. vs *Venkatian* spoke more in terms of the binding nature of standing orders:

> The certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as a private contract embodying similar terms and conditions of service.

But, in *Tata Chemicals* vs *Kailash C. Adhvaryet*, the Gujarat High Court observed that:

> the standing order when finally certified under the Act becomes operative and binds the employer and the workmen by virtue of the provisions of the Act and not by virtue of any contract between the employer and the workmen.

The Court added:

> The rights and obligations created by the standing orders derive their force not from the contract between the parties but from the provisions of the Act. They are statutory rights and obligation and not contractual rights and obligations.

Whether certified standing orders govern the employees appointed before they become operative? This question has formed the subject-matter of controversy in number of decided cases.

In *Guest Keen Williams Pvt. Ltd* vs *P J Sterling*, the Supreme Court held that the retiring age fixed by the standing orders did not apply to the workmen appointed before their coming into operation and for them, a higher age of retirement was fixed as at the time when they were employed, there was no age of retirement. But, in *Salem*

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Erode Electricity Distribution Co. vs *Their Employee Union* and *Agra Electric Supply Co*. vs *Alladin*, the Supreme Court made a departure from its earlier decision in *Guest Keen Williams Pvt. Ltd supra*. In the former case, the first standing orders were certified in 1947. The management wanted to modify the certified standing orders, on the subject of leave and holidays sometime in 1960 in respect of the new entrants preserving the old rules in respect of old workmen. The modification was negatived by the certifying officer and appellate authority. On appeal, the Supreme Court upheld those orders observing that standing orders certified under the Act must be uniformly applied to all workmen and it was not permissible for an industrial establishment to have two sets of standing orders to govern the terms and conditions of its employees. In the latter case, the first standing orders of the company were certified in 1951. In these standing orders, the age of superannuation of employees was fixed at 55 years. Prior to 1951, there were no rules relating to superannuation. Three workmen who were appointed long before 1951 were retired from service in 1963 and 1964 on the ground that they had crossed the age of superannuation of 55 years. The workmen challenged the order retiring them from service on the ground that they were appointed before the making of the standing orders and were not governed by the rule of superannuation contained in them. The Supreme Court negatived the contention and ruled:

> [O]nce the standing orders are certified and come into operation, they become binding on the employer and all the workmen presently employed as also those employed thereafter in the establishment conducted by that employer. It cannot possibly be that such standing orders would bind only those who are employed after they come into force and not those who were employed previously but are still in employment when they come into force.

Because in its view:

> [I]f the standing orders were to bind only those who are subsequently employed, the result would be that there would be different conditions of employment for different classes of workmen, one set of conditions for those who are previously employed and another for those employed subsequently, and where they are modified, even several sets of conditions of service depending upon whether a workman was employed before the standing orders are certified or after, whether he was employed before or after a modification is made to any one of them and would bind only a few who are recruited after and not the bulk of them, who though in employment, were recruited previously. Such a result could never have been intended by the legislature, for that would render the conditions of service of workmen as indefinite and diversified, as before the enactment of the Act.

The aforesaid two decisions in *Salem Erode Electricity Distribution Co*. and *Agra Electric Supply Co*. were re-affirmed in *UP Electric Co*. vs *Workmen* wherein it was held 'that it was not intended by the legislature that different sets of conditions should apply to employees depending or whether a workman was employed before the standing order was certified of after, which would defeat the very object of the legislation'. Here, it is relevant to add that while the *Guest Keen Williams Pvt. Ltd* was decided before the 1956 amendment, the remaining three later cases were decided after 1956 amendment which empowered the certifying officer to go into the reasonableness or fairness of standing orders.

In *Sudhir Chandra Sarkar* vs *Steel Company Ltd* reliance was placed on an earlier decision in *Agra Electric Supply Company Ltd* vs *Alladin.*

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Again, the aforesaid view was reiterated in *Bharat Petroleum Corporation Ltd* vs *Maharashtra General Kamgar Union*. Here, the Supreme Court held that once the standing orders are certified, they constitute the conditions of service binding upon the management and the employees serving already and in employment or who may be employed after certification.

Posting of Standing Orders

The Act imposes a duty upon the employer to put up the text of certified standing orders in English language and in the language of the majority of workmen on special boards maintained for the purpose, at or near the entrance through which the majority of workmen enter the industrial establishment and in all departments thereof where the workmen are employed. This section has been held to be merely directory but non-compliance with the direction may result in the employer not succeeding in satisfying the industrial tribunal that there is proper case for termination of service or other disciplinary action.

5.3 GRIEVANCE PROCEDURE

Experience shows that in the day-to-day running of business, the disputes between the employer and workman are resolved by administrative processes referred to as grievance procedures. The Indian Labour Conference has also adopted a similar concept of a grievance in its following recommendations:290

Meaning and Concept of Labour Grievance

Complaints, affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.

The aforesaid concept has also been adopted in the guiding principles for a grievance procedure appended to the Model Grievance Procedure in India. Further, clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, specifies that 'all complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or the other person specified in this behalf with the right to appeal to the employers.' Moreover, the State Governments have framed rules under the Factories Act, 1948, requiring a welfare officer to ensure the settlement of grievances.

The Industrial Disputes (Amendment) Act, 1982 excludes hospitals, educational institutions, institutions engaged in any charitable, social or philanthropic service, khadi or village industries and every institution performing sovereign functions. For these institutions, the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982, enjoins upon an employer to constitute, within a specified period, a Grievance Settlement Committee for the resolution of individual disputes and Consultative Council and a Local Consultative Council for the resolution of industrial disputes of a collective nature. The Bill also provides for the arbitration of disputes not resolved by the Grievance Settlement Committee or the Local Consultative Council or Consultative Council. However, these provisions of the Industrial Disputes (Amendment) Act, 1982, have not yet been enforced

Check Your Progress

1. Define 'standing order'.
2. State the function of the certifying officer prior to 1956.
3. State the provision of the section 6 of the Industrial Employment ACT, 1946.

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presumably because the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982, has not so far been passed. Further, no rules have been framed under the unenforced Section 9C. The (Second) National Commission on Labour has recommended that a Grievance Redressal Committee for organisation employing 20 or more workers be constituted.

5.4 ETHICAL CODES

In the arena of industrial relations, most pressing ethical issues relate to (i) employer – employee relations (ii) sexual harassment of women at workplace (iii) equal pay for equal work (iv) discrimination in employment (v) minimum standards of employment (vi) social security for workers (vii) privacy of employees (vii) unfair labour practice on the part of trade unions and employers (viii) just and humane conditions of work (ix) protection of interest of consumers (x) voluntary code of conduct for recognition of trade union.

Code of Discipline

The need for Voluntary Code of Discipline was felt in 1957 in order to create awareness among the parties to industrial relations about their obligations under labour laws, as also to create in them an attitude of willing acceptance of their responsibilities and a readiness to discharge them. It was in this context that the Code of Discipline found approval at the sixteenth Indian Labour Conference, and was formally announced in June, 1958. The Code was ratified by the central organization of workers and employers. The Code has been accepted by a majority of private and public sectors. The Code, primarily as a result of the persuasive efforts of Central Implementation and Evaluation division, has been accepted by 166 trade unions and 180 employers affiliated to Central Workers' and Employers' Organisation.

The Code applies to all public sector undertakings run as companies and corporations except in defense, railways and ports and docks. Among those, where the Code of Discipline applies with certain modifications include Reserve Bank of India, State Bank of India and the Department of Defence Production. Under the Code, management and union(s) agree that:

(i) No unilateral action should be taken in connection with any industrial matter and that disputes should be settled at appropriate level.

(ii) The existing machinery for settlement of disputes should be utilized with the utmost expedition.

(iii) There should be no strike or lockout without notice.

(iv) They affirm their faith in democratic principles and they bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration.

(v) Neither party will have recourse to (a) coercion (b) intimidation, (c) victimization, or (d) go-slow.

(vi) They will avoid (a) litigation, (b) sit-down and stay-in strikes, and (c) lockouts.

(vii) They will promote constructive cooperation between their representatives at all levels and as between workers themselves and abide by the spirit of agreements mutually entered into.

(viii) They will establish upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement.

(ix) They will abide by various stages in the grievance procedure and take no arbitrary action which would bypass this procedure.

(x) They will educate the management personnel and workers regarding their obligations to each other.

In order to ensure better discipline in industry, the Code provides for — (i) a just recognition by employers and workers of the rights and responsibilities of either party as defined by the laws and agreements, (including bipartite and tripartite agreements arrived at all levels from time to time) and (ii) proper and willing discharge by either party of its obligations consequent on such recognition.

In the second set, the management agree (i) not to increase work-loads unless agreed upon or settled otherwise; (ii) not to support or encourage any unfair labour practice; (iii) to take prompt action for (a) settlement of grievances, and (b) implementation of settlements, awards, decisions and others; (iv) to display in conspicuous places in undertaking the provisions of this Code in local language(s); (v) to distinguish between actions justifying immediate discharge and those where discharge must be preceded by a warning, reprimand suspension or some other form of disciplinary action and to arrange that all such disciplinary actions should be subject to an appeal through normal grievance procedure; (vi) to take appropriate disciplinary action against its officers and members in cases where enquiries reveal that they were responsible for precipitating action by workers leading to indiscipline; (vii) to recognize the union in accordance with the prescribed criteria.

The third set imposes an obligation upon the unions:

(i) Not to engage in any form of physical duress

(ii) Not to permit demonstrations which are not peaceful and not to permit rowdyism in demonstration

(iii) That their members will not engage or cause other employees to engage in any union activity during working hours, unless as provided for by any law, agreement or practice

(iv) To discourage unfair labour practices such as, (a) negligence of duty, (b) careless operation, (c) damage of property and (d) insubordination

(v) To take prompt action to implement awards, agreements, settlements and decisions

(vi) To display in conspicuous places in the union offices, the provisions of this code in the local language(s)

(vii) To express disapproval and to take appropriate action against office-bearers and members for indulging in actions against the spirit of this Code

The Supreme Court in *General Secretary, Rourkela Shramik Sangh* vs *Rourkela Mazdoor Subha*, held that although Section 11 of the Code is headed 'implementation machinery', it consists of two separate organizations, viz. implementation units and tripartite implementation committees which is obvious from the language of Section 11 itself and also from the separate constitution and functions of the two organizations. The Court ruled that to hold that the implementation unit in the respective labour department together with the respective tripartite committee at Centre, state or local level would constitute the implementation machinery jointly and not each of them separately would run not only counter to the intention of the Code as is manifest from the language of Section 11 and their separate composition and functions, but would also be impracticable in working. Dealing with the composition of the implementation committees and their functions the Court observed:

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These committees consist of, at the Central level, an equal number of employers and workers' representatives—four each from the Central employers and workers' organization as nominated by the organizations themselves. At the state level, they are required to be constituted similarly and in consultation with the Central employers and workers' organization whenever they affiliates in the state concerned. The Committees are presided over as far as possible by respective Labour Ministers and even when it is not possible for Labour Ministers to preside over them, they have to associate themselves as much as possible with the deliberations of the committees. At the local level, the committees are similarly constituted of an equal number of representatives of the employers and workers in the area and are presided over by an officer of the Labour Department or by a prominent person in the region. In a given case, there may be more associations than one of employers and employees, and the committees would then consist of an unwieldly number. To expect such a committee to carry out the work mentioned in Appendix IV is unrealistic. This is why the code itself has entrusted to the implementation units and not to implementation committees the task of ensuring that recognition is granted to unions by managements. At the Centre, the implementation unit is kept in charge of joint secretary and at the state level, it is in charge of a whole-time officer of the State Labour Department.

However, the Code of Discipline has not been effectively implemented and it is respected more in breach than in observance. Several reasons may be accounted for the same: (i) the absence of a genuine desire for and limited support to self-imposed voluntary restraints on the part of employers' and workers' organizations, (ii) the worsening economic situation which eroded the real wage of workers, (iii) the liability of some employers to implement their obligations, (iv) a disarray among labour representatives due to rivalries, and (v) conflict between the Code and the Law. In view of this, the National Commission on Labour recommended that the part of the Code which enjoins stricter observance of obligations and responsibilities under the various labour laws may be left to the normal process of implementation and enforcement by the labour administration machinery, some others need to be formalized under law. These are: (a) recognition of a union as bargaining agents; (b) setting up of a grievance machinery in an undertaking: (c) prohibition of strike/lockout without notice; (d) penalities for unfair labour practices; and (e) provision of voluntary arbitration.

With the removal of these provisions from the Code and on giving them a legal form, the Code will have no useful function to perform.

5.5 DISCIPLINE AND INDISCIPLINE

Check Your Progress

4. Mention the constituents of grievance.
5. What was the need behind the creation of Voluntarily Code of Discipline in 1957?

Discipline means systematically conducting the business by the organizational members who strictly adhere to the essential rules and regulations. It pertains to improving employee performance through a process of assisting the employee (at least at first) to learn so he or she can perform more effectively.

Aspects and Objectives of Discipline

There are two aspects of discipline. They are:

- Positive aspect
- Negative aspect

(a) Positive aspect: Employees comply with rules not out of fear of punishment but out of an inherent desire to cooperate and achieve goals. Where the organizational climate is marked by two-way communication, clear goals, effective leadership, and adequate compensation, employees need not be disciplined in the traditional way. This type of approach is called positive approach or constructive discipline or self-discipline. According to Spriegel, 'positive discipline enables an employee to have a greater freedom in that he enjoys a greater degree of self-expression in striving to achieve the group objective, which he identifies as his own.'

(b) Negative aspect: Employees sometimes do not believe in and support discipline. As such, they do not adhere to rules, regulations and desired standards of behaviour. Hence, disciplinary programme forces and constraints the employees to obey orders and function in accordance with set rules and regulations through warnings, penalties and other forms of punishment. This approach to discipline is called negative approach or corrective approach or punitive approach. Negative or punitive discipline is one in which management has to exert pressure or hold out threat by imposing penalties on wrongdoers. When this pressure becomes increasingly severe each time a man is disciplined, it is called 'progressive' or 'corrective' discipline. The fear of punishment puts the employee back on rails. According to Spriegel, 'discipline is the force that prompts an individual or a group to observe the rules, regulations and procedures which are deemed to be necessary to the attainment of an objective.'

Negative discipline connotes that personnel are forced to observe rules and regulations on account of fear or reprimand, fine, demotion, or transfer. But these are helpful in extracting just minimum standards of work from the employees since they work on account of fear. In contrast, if the authority is exercised arbitrarily, or if rules of conduct are unreasonable or if employees do not have sense of adhering to the rules and regulations, discipline is threatened and if it is prolonged, it affects the organizational health. Any programme of discipline will be effective and successful only when it is used to supplement and strengthen self-discipline.

V.S.P. Rao summarizes the differences between the two approaches as follows:

Table 5.1 *Differences between Positive and Negative Discipline*

Point	*Negative Discipline*	*Positive Discipline*
CONCEPT	It is adherence to established norms and regulations, out of fear of punishment.	It is the creation of a conducive climate in an organzation so that employees willingly conform to the established rules.
CONFLICT	Employees do not perceive the corporate goals as their own.	There is no conflict between individual and organizational goals.

Source: VSP, Rao. 2000. *Human Resource Management—Text and Cases*. New Delhi: Excel Books, p. 433.

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Objectives of Discipline

The objectives of discipline are:

- To gain willing acceptance of the rules, regulations, standards and procedures of the organization from the employees
- To develop the feeling of cooperation among the workers
- To create an atmosphere of respect for the human personality and human relations and to maintain good industrial relations in the organization
- To increase the working efficiency and morale of the employees so that their productivity is stepped up and the cost of production is decreased
- To develop a sense of tolerance and respect for human dignity
- To give and seek direction and responsibility

Causes of Indiscipline

The common causes of indiscipline in an organization may be stated as follows:

- **Lack of effective leadership:** Effective leadership is a must for maintaining the discipline, which means to seek cooperation of the followers (subordinates) to achieve the desired objectives. In India, effective leadership could not be provided either by the management or by the trade unions which caused indiscipline in the industries.
- **Defective supervision:** Supervisor is the immediate boss of the workers and many disciplinary problems lie in faulty supervision. The attitude and behavior of the supervisor may create many problems. As the maintenance of the discipline is the core of supervisory responsibilities, indiscipline may spring from the want of the right type of supervision.
- **Varying disciplinary measures:** Consistent disciplinary actions must be there in the organization to provide equal justice to all concerned. At different times and for everyone, the same standard of disciplinary measures should be taken otherwise it may give rise to growing indiscipline in the industry in future i.e., the judicious function on the past of management must be free form may bias, privilege or favouritism.
- **Divide and rule policy:** Many mangers in the business obtain secret information about other employees through their trusted assistants. The spying on employees is only productive of a vicious atmosphere and of undesirable in the organization. Henry Fayol has rightly pointed out that dividing enemy forces to weaken them is clever, but dividing one's own team is grave sin against the business. No amount of management skill is necessary for dividing personnel, but integrating personnel into a team is the challenging task of sound management.
- **Lack of well-defined Code of Conduct:** There must be a code of discipline in every organization enlisting sufficient rules regulations or customary practices for the guidance and information of all employees. Such code should be communicated to all concerned in a clear and simple language so as to be as to be followed by the concerned parties in its true spirit. To be effective, the code should be adopted by the joint consultation of managers and the subordinates.

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In the absence of a well defined code of discipline, the disciplinary actions emanate form personal whims and temperaments which create indiscipline.

- **Deferring settlement of employee grievances:** The employee grievances cannot be put off by deferring or neglecting their solutions. The grievances should properly be inquired into and settled by the managers in a reasonable period. Neglect of grievances often results in reduced performance, low morale and indiscipline among the employees. Strikes and work stoppages stem in many cases form the utter neglect of employee grievances.
- **Inadequate attention to personal problems:** Actions or reactions of people are the direct outcome of their attitudes. Attitudes influence human beings and their activities. Discipline is the by-product of these attitudes and the attitudes in turn, is determined by the personal problems of employees. In order to maintain the discipline, understanding of the personal problems and individual difficulties as well as counsellings with employees, is necessary. Inadequate attention to the personal problems, thus, gives rise to indiscipline.
- **Victimization and excessive pressures:** Sometimes the manager or the supervisor develops ill-feelings in him about some persons and victimises them in his own way. It contributes to indiscipline. Moreover, the supervisor puts excessive work pressure on the employees under his strict control which make the employees feel suffocatied. It may result in indiscipline.
- **Misjudgment in promotion and placements:** Misjudgment in personnel matters like promotion and placements contribute to the growth of indiscipline in an enterprise. Cases of misjudgment are carefully noted, widely circulated, and hotly debated by the employees. Expecting discipline from misruled people is not possible. Sometimes, undesired persons are placed on the jobs which makes the employees discontented, thus, giving rise to the problem of indiscipline.

Disciplinary Procedure

The following should be the steps for taking disciplinary action:

(a) Preliminary investigation: The first step should be to hold preliminary investigation in order to find out whether a prima facie case of misconduct exists. Only if a prima facie case of misconduct exists, the management should proceed further. Otherwise, the case should be dropped.

(b) Issue of a chargesheet: If a prima facie case of misconduct exists, the management should proceed to issue a chargesheet to the worker. The following guidelines may be followed in framing the charges:

- Each charge must be very clear and precise
- There should be a separate charge for each allegation
- Charges must not relate to any matter which has already been decided upon
- Proposed punishment should be avoided in the charge sheet

(c) Suspension pending enquiry (if needed): If the nature of misconduct is grave and if it is in the interest of discipline and security in the establishment, the

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management may suspend a worker even before the chargesheet is issued. In case the worker is suspended he should be paid subsistence allowance at the following rates:

- For the first ninety days of suspension, half his wages
- For the remaining period of suspension, three-fourths of his wages

(d) Notice of enquiry: On receipt of reply to the chargesheet, either of the following two situations may arise:

(i) The worker may admit the charge. In such a case, the employer may award punishment without further enquiry.

(ii) The worker may deny the charge. In this case, the employer must hold the enquiry.

(e) Conduct the enquiry: The enquiry officer is a judge, so it is necessary that he must be impartial and qualified to act in that capacity. A fair opportunity should be given to the chargesheeted employee to examine the management witnesses.

(f) Recording of findings by the enquiry officer: At the conclusion of the enquiry proceedings the enquiry officer should decide as to whether the charges made are valid or not alongwith reasons for his findings.

(g) Awarding punishment: The punishment awarded to the accused employee should be communicated to quickly. The letter should contain the following:

- Reference to (i) the chargesheet (ii) the enquiry and (iii) findings of the enquiry
- Decision
- Date from which the punishment is to be effective

The strict law of master and servant conferred upon the employer an unfettered right to hire and fire his employees. This traditional law of employer-workmen relationship was based purely on contract. Quite apart from the law of contract, it is obvious that in the day-to-day running of the industry, the management is required to take disciplinary action against erring workmen. Initial decisions as to maintenance of discipline rest with the employer. These decisions, when made *bona fide,* are related to, and dependant upon considerations of the overall needs of the industry. But the reports of committees and commissions on labour and reported decisions are full of instances that managements have victimized their workmen for their union activities, and in particular, for inciting other workers to go on strike or fomenting a strike. Instances are not lacking when assertive striking employees were discharged *en masse*. Further, instances of dismissal of workmen by the management without complying with the provisions of the standing orders of the company or rules of natural justice are not infrequent. Under the circumstances, the need to protect workmen against capricious and vindictive action of the management becomes obvious. It was realized in most industrially advanced countries that if the law of master and servant was given free play, workers would hardly have any security of tenure.

On the other hand, in day-to-day administration, management is called upon to take *bona fide* decisions against erring workmen. It is also called upon to take disciplinary action against a workman who is found guilty of serious misconduct where such misconduct consists of intentional damage to the property of the concern or serious personal injury to other employees of the concern or where there is reasonable

apprehension of their committing acts of sabotage or instigation, abetment or incitement of workers of the concern to participate in the aforesaid activities. Under the circumstances, the mere fact that the management's order of dismissal of the workman is wrongful, disproportionate or *mala fide* and affects the workman one cannot altogether deprive the management from taking disciplinary action against the workman. To do so is to encourage indiscipline and render day-to-day running of the concern impossible.

To meet this situation, courts have evolved various norms to regulate management's power to dismiss its workmen. They have tried to maintain a balance between the power of the management to discipline the workmen and security of tenure of workmen. Further, the courts have not only interpreted the existing law but made new laws to meet the needs of the industry and to avoid hardship and unfairness to workers.

Tribunals' intervention in management's right to take disciplinary action

The labour appellate tribunal in *Buckingham and Carnatic Mills Ltd* vs *Their Workmen* ruled that the decision of the management in relation to the charges against the employees will not prevail unless:

(a) There is a want of *bona fides*, or

(b) It is a case of victimization or unfair labour practice or violation of the principles of natural justice, or

(c) There is a basic error on facts, or

(d) There has been a perverse finding on the materials

The aforesaid principles found the approval of the Supreme Court in *Chartered Bank Bombay* vs *Chartered Bank Employees' Union*, *Assam Oil Ltd* v. *Its Workmen* and *Indian Iron and Steel Co. Ltd* vs *Their Workmen*

In *Assam Oil Company Ltd* vs *Its Workmen*, the Supreme Court observed:

> Just as the employer's right to exercise his option in terms of the contract has to be recognized, so is the employee's right to expect security of tenure to be taken into account. These principles have been consistently followed by industrial tribunals and we think, rightly.

Again, in *Indian Iron and Steel Company Ltd* vs *Their Workmen*, the Supreme Court held:

> Undoubtedly, the management of a concern has the power to direct its own internal administration and discipline, but the power is not unlimited and, when a dispute arises, the industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the tribunal does not, however, act as a court of appeal and substitutes its own judgement for that of the management. It will interfere when:
>
> (a) There is want of good faith
>
> (b) There is victimization or unfair labour practice
>
> (c) The management has been guilty of a basic error of violation of a principle of natural justice
>
> (d) On the material, the finding is completely baseless or perverse

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Again, in *Workmen of Motipur Sugar Factory Pvt. Ltd.* vs *Motipur Sugar Factory Pvt. Ltd.*, the Supreme Court while dealing with the evidence required to be adduced before tribunals in case of failure to hold domestic inquiry observed:

> It is now well settled that where an employer has failed to make an inquiry before dismissing or discharging a workman, it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case, the employer would not have the benefit which he had in case where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified.

In *State Bank of Bikaner and Jaipur* vs *Nemi Chand Nalwaya*, the Supreme Court held that it is now well settled that the labour tribunals or courts will not act as an appellate court and re-assess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of the adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental inquiries. Therefore, courts will not interfere with finding of facts recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding on the material on record. Courts will however, interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulation have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations.

5.6 MISCONDUCT

Since 'misconduct' results in dismissal, it is necessary to know the concept of misconduct.

The expression 'misconduct' has not been defined in any industrial legislation. Under the Model Standing Order of the Industrial Employment (Standing Orders) Act, 1946, the following conducts shall be deemed to be misconduct:

(a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;
(b) Theft, fraud or dishonesty in connection with the employer's business or property;
(c) Wilful damage to or loss of employer's goods or property;
(d) Taking or giving bribes or any illegal gratification;
(e) Habitual absence without leave or absence without leave for more than 10 days;
(f) Habitual late attendance;
(g) Habitual breach of any law applicable to the establishment
(h) Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;
(i) Habitual negligence or neglect of work;

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6. What is discipline?
7. What are the two aspects of discipline?

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(j) Frequent repetition of any act of omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month; and

(k) Striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law

In *Ravi Yashwant Bhoir* vs *District Collector, Raigad*, the Supreme Court observed that 'the word "misconduct" though not capable of precise definition, receives its connotation from the context of delinquency in its performance and its effect on the discipline and nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, a forbidden act, a transgression of established and definite rules of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of the duty. The misconduct should bear forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.' Explaining the concept of 'misconduct', the Court pointed out:

> The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous with misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct, for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution, but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces. Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute. Misconduct is to be measured in terms of the nature of the misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to public interest.

A survey of decided cases indicates that acts such as absence without leave, go-slow, habitual neglect of work, misappropriation of fund or material, disobedience and subverting of discipline including disobedience that is likely to endanger life, threatening a co-worker within premises, insulting behaviour by employee towards customers, etc. constitute miscondoct.

5.7 TERMINATION OF EMPLOYMENT

The management in order to avoid waste often undertakes measures in the day-to-day running of the business. Some of these actions have a direct bearing on the workmen who work in the organization. For instance, the management may not temporarily require the services of certain workmen on account of shortage of raw material, accumulation of stock, breakdown of machinery, strike by workmen, etc. Under such circumstances, an employer does not temporarily need the services of the normal strength of the workmen. As such, he may well terminate the services of surplus workmen.

For terminating employment of permanent workmen, a notice in writing shall be given either by the employer or the workmen - one month's notice in the case of monthly-rated workmen and two weeks' notice in the case of other workmen, one month's or two week's pay, as the case may be, may be paid in lieu of notice.

However, no temporary workman whether monthly-rated, weekly-rated or piece-rated and probationer or *badli* shall be entitled to any notice or pay, in lieu thereof, if his

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services are terminated. The services of a temporary workman shall not be terminated as a punishment unless he has been given an opportunity to explain himself against the alleged charges of misconduct him that has been leveled against him.

In case, the employment of any workmen is terminated, his wages and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

Every permanent workman shall be entitled to a service certificate at the time of his dismissal, discharge or retirement from service.

5.8 PUNISHMENT

For various types of misconduct there are various types of punishment/penalties. These punishments/penalties can be divided into major penalties and minor penalties.

Table 4.1 shows the kind of penalties.

Table 5.2 *Kinds of Punishment/Penalties*

Minor Penalties	*Major Penalties*
1. Oral Warning	1. Withholding Increments
2. Written Reprimand	2. Demotion/Stopping Promotion
3. Loss of Privileges	3. Discharge
4. Fines	4. Dismissal
5. Suspension	

Minor penalties

Minor penalties is a mild form of disciplinary action. This punishment is generally given for some minor offences. The type of penalties are set below in the ascending order of their severity.

(a) Oral reprimand: This is the mildest form of disciplinary action. The issue of reprimand does not involve loss of status or wages. As people (subordinates) invariably value the social approval of their actions by their superiors and fellow beings, a reprimand is generally effective in correcting subordinates. Oral reprimand should be used sparingly; otherwise it will not produce any effect on the subordinate.

(b) Written reprimand: When oral reprimand proves to be ineffective and the worker continues with the misconduct, it becomes necessary to issue a written reprimand and to bring into record the misconduct. A written reprimand may state that certain privileges would be withheld or withdrawn if the subordinate continues with his present conduct.

(c) Loss of privileges: For such offences as tardiness or leaving work without permission, the employee may be put to loss of various privileges such as good job assignments, right to select machine or other equipment and freedom of movement about the workplace or company.

(d) Fines: This is a deduction from the remuneration of the employee by way of punishment.

(e) Punitive suspension: Punitive suspension is inflicted on the workman as a punishment for some misconduct. Under punitive suspension, an employee is prohibited from performing the duties assigned to him and his wages are withheld for so long as the prohibition subsists.

Major penalties

It is a severe form of disciplinary action initiated against the workmen. It is given for some major offences. The various forms of major punishments are as follows:

(a) Withholding of increments: Withholding of annual increment of an employee in a graded scale is a major punishment. The cumulative effect of losing an increment is considerable. It is equal to:

The amount of increment × 12 × the number of years of service still remaining.

(b) Demotion: Demotion implies condemnation of the employee as being unfit for the position occupied by him. It should not be used as a penalty if the employee is properly qualified for the present assignment. Demotion should be used only in a case where an employee does not meet present job requirement.

(c) Discharge: The term 'discharge' is used to denote removal of an employee from service by way of punishment. But no stigma is attached to the expression 'discharge'. Hence, it is not a disqualification for future employment.

(d) Dismissal: Also referred to as industrial capital punishment, dismissal is the ultimate penalty which is rarely resorted to nowadays. Though discharge and dismissal both have the same result, i.e., termination of service of the employee, dismissal is a more severe punishment. There is a stigma attached to the expression 'dismissal' which makes it a disqualification for future employment.

5.9 SUMMING UP

- Section 2 (g) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as IESOA) defines 'standing orders' to mean:

  Rules relating to matters set out in the Schedule

- The nature of the standing order has assumed increasing importance in industrial law. It has also attracted the attention of tribunal and courts. An analysis of the decided cases relating to the nature of standing order reveals that different shades of opinion have emerged on the subject namely, it is: (*i*) statutory in nature, (*ii*) a special kind of contract, (*iii*) an 'award', and (*iv*) a form of delegated legislation. Let us turn to examine them.

- The certifying officer, prior to 1956, had no power to go into the question of reasonableness or fairness of the draft standing orders submitted to him by the employers. His only function was to see that the draft must incorporate all matters contained in the Schedule and that it was otherwise certifiable under the Act.

- Appellate authority means an authority appointed by the appropriate government by notification in the official gazette to exercise in such areas as may be specified in the notification of the functions of the appellate authority under the Act.

- An appellate authority can either confirm the standing orders in the form certified by the certifying officer or amend the said standing orders by making such modification thereof or addition thereto, as he thinks necessary so as to render standing orders certifiable under the Act.

Check Your Progress

8. State the various types of minor penalties.
9. Which is considered to be the mildest form of disciplinary action?
10. What is punitive suspension?

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- Complaints, affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.
- The need for Voluntary Code of Discipline was felt in 1957 in order to create awareness among the parties to industrial relations about their obligations under labour laws, as also to create in them an attitude of willing acceptance of their responsibilities and a readiness to discharge them. It was in this context that the Code of Discipline found approval at the sixteenth Indian Labour Conference, and was formally announced in June, 1958.
- Discipline means systematically conducting the business by the organizational members who strictly adhere to the essential rules and regulations.
- There are two aspects of discipline— positive and negative aspect.
- The management in order to avoid waste often undertakes measures in the day-to-day running of the business. Some of these actions have a direct bearing on the workmen who work in the organization.
- For various types of misconduct there are various types of punishment/penalties. These punishments/penalties can be divided into major penalties and minor penalties.

5.10 KEY TERMS

- **Discipline**: Discipline means systematically conducting the business by the organizational members who strictly adhere to the essential rules and regulations.
- **Demotion:** Demotion implies condemnation of the employee as being unfit for the position occupied by him.
- **Discharge:** The term 'discharge' is used to denote removal of an employee from service by way of punishment.
- **Dismissal:** It is also referred to as industrial capital punishment, dismissal is the ultimate penalty which is rarely resorted to nowadays.

5.11 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Section 2 (g) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as IESOA) defines 'standing orders' to mean:

   Rules relating to matters set out in the Schedule.
2. The certifying officer, prior to 1956, had no power to go into the question of reasonableness or fairness of the draft standing orders submitted to him by the employers. His only function was to see that the draft must incorporate all matters contained in the Schedule and that it was otherwise certifiable under the Act.
3. Section 6 of the Industrial Employment (Standing Orders) Act, 1946, *inter alia*, provides that any person who is aggrieved by the order of certifying officer may 'within 30 days from the date on which the copies are sent,' file an appeal to the appellate authority.

4. Complaints, affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.
5. The need for Voluntary Code of Discipline was felt in 1957 in order to create awareness among the parties to industrial relations about their obligations under labour laws, as also to create in them an attitude of willing acceptance of their responsibilities and a readiness to discharge them.
6. Discipline means systematically conducting the business by the organizational members who strictly adhere to the essential rules and regulations.
7. The two aspects of discipline are — positive and negative aspect.
8. The various types of minor penalties are— oral reprimand, written reprimand, loss of privileges, fines and punitive suspension.
9. Oral reprimand is the mildest form of disciplinary action.
10. Punitive suspension is inflicted on the workman as a punishment for some misconduct. Under punitive suspension an employee is prohibited from performing the duties assigned to him and his wages are withheld for so long as the prohibition subsists.

5.12 QUESTIONS AND EXERCISES

Short-Answer Questions

1. State the nature and constitution of the Appellate Authority.
2. Discuss the reasons behind the Code of discipline not being effectively implemented.
3. State the objectives of discipline.
4. Discuss the various forms of major punishments.

Long-Answer Questions

1. 'The nature of the standing order has assumed increasing importance in industrial law.' Examine the diverse opinions that have emerged on the subject.
2. Discuss the Code of Discipline that was formally announced in June, 1958.
3. Discuss the common causes of indiscipline.
4. Describe the disciplinary procedures that are followed while taking disciplinary action.

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UNIT 6 CONCILIATION AND ADJUDICATION

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Structure

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6.1 Objectives
6.2 Settlement Machinery
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6.3.1 Voluntary Conciliation
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6.4 Arbitration – Investigation Procedure, Submission of Award
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6.0 INTRODUCTION

The government has set up various voluntary machineries to resolve industrial conflicts among the disputing parties. Conciliation, one such machinery, has shown remarkable success not only in many industrialized countries, but also in India, where statistics reveal that conciliation machinery is effective in solving industrial disputes. Conciliation machinery can be voluntary or compulsory in nature. Another effective mode of settling disputes is arbitration. The last method used by the government in settling industrial disputes when conciliation machinery, negotiations, voluntary arbitration fails is by referring the case to statutory bodies such as the labour court, industrial tribunal or national tribunal.

In this unit, the functioning of these bodies will be discussed in detail.

6.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the settlement machinery
- Explain the process of conciliation
- Discuss arbitration as an effective mode of settlement of industrial dispute

6.2 SETTLEMENT MACHINERY

Besides statutory machinery provided under the Industrial Disputes Act, 1947, several voluntary machineries have also been set up. The most important among these are the joint management council, code of discipline and tripartite consultative machinery. These voluntary machineries influence to some extent both employers and workers for preservation and maintenance of industrial relations. However, they have shown limited success for limited purposes.

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Joint Management Council

The need for joint management consultation was emphasized in the Government Industrial Policy Resolution, 1956 which is as follows:

> In a socialist democracy, labour is a partner in a common task of development and should participate in it with enthusiasm .... There should be joint consultation, and workers and technicians should, wherever possible, be associated progressively in management. Enterprises in the public sector have to set an example in this respect.

To translate the aforesaid idea into action, the Second Five-Year Plan reiterated that 'this would be achieved by providing for council of management, workers and technicians'. The Plan accorded due importance to the joint consultation and made it obligatory upon the management to supply such councils with fair and correct statements of all relevant information to enable them to function effectively. Pursuant to this, the Labour Ministry constituted a Study Group on Workers' Participation in Management which toured Europe. It consisted of representatives of government, labour and management. After a detailed examination, the study group submitted its report which favoured a scheme of joint management council to be set up in the country. This report was considered in the Indian Labour Conference in July 1957. The conference gave its approval to the scheme of joint management council and suggested the appointment of a small tripartite sub-committee to examine the details of the scheme and to select undertakings in which the scheme could be introduced. The sub-committee met in August, 1957 and selected 48 units (32 in the private and 16 in the public sector). The sub-committee also prepared a draft scheme of joint management council. The scheme was tried on an experimental basis in certain establishments upto 1960. To review the working of establishments having joint management councils, a seminar was convened on March 8 and 9, 1960. This seminar found that joint management councils could not contribute much because their exact nature and functions were not properly defined and appreciated. In these circumstances, the seminar recommended to set up a compact body at national level to deal with problems arising out of and connected with the working of the joint management councils. This led to the appointment of a Tripartite Committee on Labour Management Cooperation in November, 1960, to 'give advice and guidance on all matters pertaining to joint management councils, to collect and disseminate information relating thereto, and to explore possibilities of extending the scheme to new units.'

The scheme of joint management councils was evolved on voluntary basis to promote industrial peace and harmony between labour and management, ensure closer association between workers and management, increase production and share the responsibilities of management.

1. **Composition of the Council:** The question of composition and representation in councils figured prominently in the seminar on labour management councils convened by the Government of India in 1958. The seminar suggested that the councils should consist of an equal number of representatives of labour and management. However, the total number of members should not exceed 12. It was suggested that in an establishment having one registered trade union, the employees' representatives in the council were to be nominated by such union. However, where more than one registered trade union exist, the representative to the council was to be chosen by mutual agreement among such unions. The seminar also recommended that there should be no bar on members of supervisory and

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technical staff to be chosen as workers' representative. Further, outside employees were also allowed to represent the workers but the number of such representatives was not to exceed 25 per cent of the total number of representatives of such workers or unions in the establishment.

The representation of employees in joint councils requires consideration of two issues. *First*, the question of representation of workers is linked with the question of recognition of trade unions. The problem of representation can be met by making statutory provisions for recognition of trade union. *Second*, 'the management's representatives in the joint council are invariably nominated by the management. In most cases, the workers' representatives are nominated by the union. In few cases, workers' representatives complained that management nominated to the joint council comparatively junior officers who had often pleaded ignorance for want of instructions'. It is from this clear that the proper selection of representatives of management and trade union would play a significant part in making the council a success.

2. **Powers and Functions of the Council:** The draft model agreement regarding establishment of council of management prepared by sub-committee set up by the Indian Labour Conference and approved in the seminar on labour management corporation provided that 'the council/ councils would be consulted by the management on matters like — (*i*) administration of standing orders and their amendment, when needed; (*ii*) retrenchment; (*iii*) rationalization; and (*iv*) closure, reduction in or cessation of operations.' Clause 6 of the agreement conferred upon the council the right to receive information, to discuss and to give suggestions on (*i*) general economic situation of the concern; (*ii*) the state of market, production and sales programmes; (*iii*) organization and general running of the undertaking; (*iv*) circumstances affecting the economic position of the undertaking; (*v*) methods of manufacture and work; (*vi*) annual balance sheet and profit and loss statement and connected documents and explanation, (*vii*) long-term plans for expansion, re-employment, etc.; and (*viii*) such other matters as may be agreed to. However, matters such as wages, bonus, etc., which formed the subject of collective bargaining were kept outside the purview of council/councils. Further, individual grievances were also excluded from its scope.

   The Model Agreement conferred administrative responsibility upon the council in respect of (*i*) administration of welfare measures; (*ii*) superposition of safety measures; (*iii*) operation of vocational training and apprenticeship schemes; (*iv*) preparation of schedules of working-hours and breaks of holidays; (*v*) payment of rewards for valuable suggestions received from the employees; and (*vi*) any other matter.

3. **Working of the Joint Management Council:** It has been observed elsewhere that the sub-committee appointed by the Indian Labour Conference selected 48 units (32 in the private and 16 in the public sector) for setting up joint management councils. But in spite of governmental efforts, only 24 establishments could set up joint management councils till 1960. These 24 included seven councils in public sector and remaining 17 in private sector units. The public sector units among others included Hindustan Machine Tools Ltd, Bangalore; Kerala State Transport Department and Hindustan Insecticides Ltd. In 1962, the number rose to 95 (35 in public and

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60 in private sector units). However, a perusal of the lists of establishments having joint councils in public sector units, Hindustan Machine Tools Ltd (which figured in 1959 on joint council map) did not find place in 1962. From this, one may presume that the experiment of institution of joint management councils must have failed over there.[6] The year 1966 witnessed further increase in the number of joint management councils which were set up in establishments. Out of these, 43 councils were set up in public and 97 in private sector. Two years later, in 1968, the number of councils fell from 140 to 131; of these 46 were in public 85 in private sector. By the end of 1974, joint management councils were functioning only in 80 establishments, 31 in public and 49 in the private sector. From this it is clear that the scheme suffered a setback. Thus, a survey of the reports on the working of joint management councils in 1965 published by the Government of India reveals some key factors for the failure of the scheme of joint management council as under:

(i) Some managements nominate to the joint council comparatively junior officers who often are ignorant or for want of instructions are unable to effectively participate in the process.

(ii) Only in very few undertakings, meetings of the joint council had been held regularly in every month.

(iii) In most cases, workers' representatives seem to care more for the enlargement of amenities and facilities and in a few cases, the redressal of grievances, than about larger problems such as increasing productivity, reducing absenteeism, effecting economies, and suggesting methods for more efficient utilization of plant and equipment. In several cases, even employer's representatives do not bring such matters on the agenda as they are doubtful about the competence of workers to understand such problems and much less to make any contribution towards their solution.

(iv) Although the agreements by which joint councils were set up envisaged consultation with the council by management on a variety of subjects, occasions have been rare when such consultations have been made, except in regard to the administration of standing orders.

(v) Communication or sharing of information with the workers has not been adequately developed. In most cases, the employer's attitude seems to be that it is sufficient to give to the workers' representatives as much information as they seek, consistent with the terms of the agreement.

(vi) The agreements by which joint councils were set up envisaged the management transferring to the council administrative responsibility in regard to welfare measures, safety measures, etc. But in actual practice, there is no real transfer of administrative responsibility in these matters. In no case has the joint council been left the choice to determine, within the financial resources available, the priorities regarding welfare measures to be provided or the allocation to be made in respect of these facilities.

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(vii) Only in very few cases have incentive wage or bonus schemes been adopted to enable the workers to share the fruits of higher productivity. Most employers do not offer to share the gains of higher productivity.

(viii) One reason for difficulties faced in the running of joint councils has been the management's failure to implement the unanimous decisions of the joint council.

Thus, this scheme has not met with much success in its operation.

6.3 CONCILIATION AND MEDIATION

Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision maker — he is merely a person who helps the disputants through persuasion to amicably adjust their claims. The ultimate decision is of the disputants themselves. For this purpose, the Industrial Disputes Act, 1947, provides for the appointment of conciliation officers and constitution of board of conciliation by the appropriate government for promoting settlement of industrial disputes. For the successful functioning of the conciliation machinery, the Act confers wide powers and imposes certain duties upon them.

Conciliation as a mode of settling industrial disputes has shown remarkable success in many industrialized countries. It is said that it has proved to be a great success in Sweden.

In India, it has generally been reported that conciliation machinery has played an important role in resolving industrial disputes. Statistics no doubt, supports this claim. During 2008-2009, the Central Industrial Relations Machinery (CIRM) intervened in 397 threatened strikes and its conciliatory effort succeeded in averting 362 strikes which represent a success rate of 95.5 per cent. In the year, the number of disputes received by CIRM were 8,586, number of disputes in which formal conciliation was successful were 1,377 and number of disputes in which conciliation proceeding ended in failure were 1,798.

The statistics of the working of the conciliation machinery reveal that the conciliation machinery at central level is extremely high in many states. It has, however, made no remarkable success in several states. Several factors may be accounted for the same. *First*, failure of conciliation proceeding may lead to the reference to adjudicating authorities under the Industrial Disputes Act, 1947. *Second*, lack of proper personnel, inadequate training and low status enjoyed by conciliation officers and frequent transfers of conciliation officers result in the failure of conciliation. *Third*, undue emphasis on legal and formal requirements also leads to the failure of conciliation. *Fourth*, considerable delay in conclusion of conciliation proceedings also makes the conciliation machinery ineffective. *Fifth*, failure of conciliation machinery has been attributed to lack of adequate powers of conciliation authorities.

Conciliation Authorities

1. Constitution of Conciliation Authorities

(*a*) *Appointment of Conciliation Officer*: Under Section 4, the appropriate government is empowered to appoint conciliation officers for promoting settlement

Check Your Progress

1. State the reason behind the appointment of a Tripartite Committee on Labour Management Cooperation in 1960.
2. What was the reason behind the scheme of joint management councils?

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of industrial disputes. These officers are appointed for a specified area or for specified industries in a specified area or for one or more specified industries, either permanently or for a limited period.

(*b*) *Constitution of Board of Conciliation:* Where dispute is of complicated nature and requires special handling, the appropriate government is empowered to constitute a board of conciliation. The boards are preferred to conciliation officers. However, in actual practice it is found that boards are rarely constituted. Under Section 10(1) (a), the appropriate government is empowered to refer the existing or apprehended dispute to a board. The board is constituted on an *ad hoc* basis. It consists of an independent person as chairman and one or two nominees respectively of employers and workmen as members. The chairman must be an independent person. A quorum is also provided for conducting the proceedings.

2. Qualifications and Experiences

Unlike the adjudicating authorities, the Act does not prescribe any qualification and/or experience for conciliation officer or member of a board of conciliation. A report of the study committee of the [First] National Commission on Labour, however, reveals that one of the causes of failure of conciliation machinery is lack of proper personnel in handling the dispute. The conciliation officer is sometimes criticized on the ground of his being unaware about industrial life and not having received the requisite training. It is, therefore, suggested that the Act should prescribe qualification and experience for conciliation officer which may include proper and adequate training and knowledge of handling labour problems.

3. Filling of Vacancies

The proviso to Section 5(4) requires that where the services of the chairman or any other member have ceased to be available, the board shall not function until the appointment of chairman or member, as the case may be, is made. Section 8 deals with the manner in which the vacancy in the office of chairman or other members of a board will be filled.

4. Jurisdiction

Conciliation officers are appointed by the Central and state governments for industries which fall within their respective jurisdiction.

5. Powers of Conciliation Authorities

(a) *Powers of Conciliation Officer:* The Act empowers conciliation officer to conciliate and mediate between the parties. He is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. He is empowered to enforce the attendance of any person for the purpose of examination of such person or call for and inspect the documents which he considers (*i*) to be relevant to the industrial dispute or (*ii*) to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. For this purpose, he enjoys the same powers as are vested in the civil court under the Code of Civil Procedure, 1908. The conciliation officer is also empowered for the purposes of inquiry into any existing or apprehended industrial dispute to enter the premises occupied by any establishment to which the dispute relates after giving reasonable notice. Failure to give any such notice does not, however, affect the legality of conciliation proceedings.

(*b*) *Powers of the Board of Conciliation:* The board of conciliation acts in a judicial capacity and enjoys more powers than conciliation officers. Under the Act, every board of conciliation enjoys the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit. It can enforce the attendance of any person and examine him on oath, compel the production of documents and material objects, issue commission for examination of witnesses, make discovery and inspection, grant adjournment and receive evidence taken on affidavit. Every inquiry by a board is deemed to be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973. The proceedings are normally held in public but the board may at any stage direct that any witness be examined or proceedings be held in camera.

The board is empowered, subject to the rules in this behalf, to follow such procedure as it may think fit. The rules provide for the place and time of hearing of the industrial dispute by adjudication or arbitration authorities as the case may be, administration of oath by adjudication or arbitration authorities, citation or description of the parties in certain cases, the issuance of notices to the parties,[18] the circumstances when the board can proceed *ex-parte* and correction of clerical mistakes or errors arising from accidental slip or omission in any award. The board also has to keep certain matters confidential in the award. The board can accept, admit or call for evidence at any stage of the proceedings before it in such manner as it thinks fit. The representatives of the parties have the right of examination, cross-examination and addressing the board when any evidence has been called. The witnesses who appear before a board are entitled for expenses in the same way as witnesses in the civil court.

6. Duties of Conciliation Authorities

The Industrial Disputes Act provides for the appointment of conciliation officer, 'charged with the duty of mediating in and promoting the settlement of industrial disputes.' Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, he shall hold conciliation proceeding in the prescribed manner. He may do all such things which he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the disputes.' Further, Section 12 (2) directs the conciliation officer to investigate 'without delay' the dispute and all matters affecting merits and right settlement thereof. If the settlement is arrived at, the conciliation officer shall send a report together with memorandum of settlement signed by the parties to the dispute, to the appropriate government or an officer authorized on his behalf. If no settlement is arrived at, the conciliation officer is required to send a report to the appropriate government containing (*i*) a full report setting forth the steps taken by him for ascertaining the facts and circumstances of the dispute and for bringing about a settlement thereof, (*ii*) a full statement of facts and circumstances leading to the dispute, and (*iii*) the reasons why a settlement could not be arrived at. It is a mandatory duty on the part of the conciliation officer to submit the failure report. His omission to do so is culpable, if not motivated. Be that as it may, it is for the appropriate government to consider whether on the basis of the failure report and other relevant materials, it should refer the dispute for adjudication or not. If on a consideration of the report, the appropriate government is satisfied that there is a case for reference to board or adjudicating authority, it may make a reference. Where it does not make a reference, it shall record and communicate to the parties concerned its reasons therefor. Sub-section 6 of Section 12 provides that the report

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'shall be submitted' either within 14 days of the commencement of the conciliation proceedings or earlier if required by the appropriate government, or later if all the parties to the dispute agree in writing.

The Industrial Disputes Act 1947, draws a distinction between public utility services and non-public utility services. Thus, while in a public utility service, the conciliation officer is bound to hold conciliation, he is not bound to do so in a non-public utility service.

The powers of the conciliation officer are not adjudicatory but are intended to promote a settlement of dispute. However, a special responsibility has been vested in conciliation officer to see that the settlement arrived at is fair and reasonable and he should then give his concurrence. This is so because the settlement arrived at in the course of conciliation proceedings is binding not only on all parties to the industrial dispute but all other parties summoned to appear in the proceedings and where a party is an employer, his heirs, successors or assignees in respect of the establishment to which the dispute relates; and where a party is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Section 12, however, raises several important issues:

(*i*) What will be the effect of the failure of a conciliation officer to submit the report within 14 days of the commencement of the conciliation proceedings? Two views are discernible. One view is that the conciliation officer becomes *functus officio* on the expiry of 14 days from the commencement of conciliation proceedings and thereby invalidates the conciliation proceedings. The other view is that failure to submit the report within 14 days of the commencement of the conciliation proceedings does not affect the legality of the proceedings. The latter view found the approval of the Supreme Court in the *State of Bihar* vs *Kripa Shankar Jaiswal*. In this case, the conciliation officer had not sent his report to the appropriate government within 14 days of the commencement of the conciliation proceedings. A question arose whether failure to submit the report by the conciliation officer within the prescribed period will affect the legality of the conciliation proceedings. The Supreme Court answered the question in negative. The Court observed that the failure of the conciliation officer to submit his report after the prescribed period does not affect the legality of the proceedings. However, contravention of Section 12 (6) may amount to a breach of duty on the part of the conciliation officer. This decision is, however open to several objections. *First*, protracted conciliation proceedings tend to be fruitless. *Second*, since under Section 22 of the Industrial Disputes Act a strike or lockout cannot be declared during the pendency of any conciliation proceedings... and 7 days after (its) conclusion and, on the other hand in order to make the strike or lockout legal it must take place within 6 weeks of the date of notice, the time limit must be certain. *Third*, management too is debarred by Section 33 from exercising certain of its prerogatives during conciliation proceedings and since this means deprivation of a right, the canons of statutory interpretation suggest that the period of deprivation should be definite and tailored to meet the needs of the situation. *Fourth*, for industrial peace and harmony, it is essential that the dispute must be settled

at an early date. Under the circumstances, it is suggested that the Supreme Court may reconsider its view in the light of the aforesaid reasoning.

(*ii*) Whether a conciliation officer has jurisdiction to initiate conciliation proceedings at a place where the management's establishment is not situated? This issue was raised in *M/s. Juggat Pharma (P) Ltd* vs *Deputy Commissioner of Labour, Madras*. In this case, the management's establishment was situated at Bangalore. The company employed certain workmen therein as sales representatives at Madras to look after its business. The management later terminated their services. On these facts, a question arose whether the conciliation officer at Madras had jurisdiction under Section 12 over the management whose establishment was situated at Bangalore and the sales representatives appointed by them were looking after their work at Madras. The answer to the question depends upon whether a dispute existed or was apprehended between the management and the workmen in Madras. The Court observed that Section 2 (k), which defines an industrial dispute, is not controlled by the location of the management's establishment in Bangalore or the absence of such establishment in Madras. The fact that the management had no establishment or branch office in Madras did not alter the fact that termination of the workmen's service was in connection with their employment in Madras. The Court accordingly held that it was open to the conciliation officer to initiate conciliation proceedings under Section 12(1).

(*iii*) Is a notice necessary for a settlement to be in the course of conciliation proceedings? This question was raised in *Delhi Cloth & General Mills Co. Ltd* vs *Union of India*. In this case, the conciliation officer neither initiated any proceeding for conciliation nor issued any notice for holding the conciliation proceedings. He also made no attempt to induce the parties for reaching a settlement *de hors* conciliation proceedings. The Delhi High Court held that there was no settlement in the course of conciliation proceedings.

(*iv*) Whether a conciliation officer could go into the merit of the dispute and decide various points in issue one way or the other? The Kerala High Court answered the question in the negative and observed that a conciliation officer was not competent to decide the various points of issue between the opposing parties. All that he could do was to persuade the parties to come to a fair and amicable settlement. Although wide powers are conferred upon a conciliation officer to use his resourcefulness to persuade the parties but he has no power to decide anything at all. After having commenced the conciliation proceedings under Section 12, the conciliation officer exceeded his power and acted beyond his jurisdiction by passing the order. The Court highlighted the duties of a conciliation officer:

> The provision in sub-section (4) of Section 12 of the Act relating to the sending to the government a full report as contemplated thereunder is mandatory in nature. Having failed to bring about or arrive at a settlement of the dispute, it was the bounden duty of the conciliation officer .... to send to the appropriate government a full report as mandatorily enjoined under Section 12(4) of the Act setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of

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such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at. Thereafter, by virtue of the provisions in Section 12(5), it is for the appropriate government to consider whether it should make a reference or refuse to make a reference.

The Court accordingly held that by disposing of the conciliation proceedings on the close of the investigation, the conciliation officer not only failed to perform the statutory function vested in him under Section 12 (4) but also exceeded his power under Section 12 (1).

(*v*) Whether a writ of *mandamus* can be issued to the conciliation officer, on whose intervention a settlement was arrived at between the management and workmen, directing him to take all measures to see that settlements are implemented or to prohibit the management from laying-off the staff? The Court answered the question in the negative and observed that the labour commissioner, while acting under Section 12 as conciliation officer, was not empowered to adjudicate an industrial dispute. All that he could do was to try to persuade the parties to come to a fair and amicable settlement. In other words, his duties were only administrative and incidental to industrial adjudication. There was nothing either in the Act or in the rules empowering the labour commissioner to implement the settlement arrived at between the parties under Section 12 (3). If any of the parties to the settlement were aggrieved by the non-implementation of the terms of settlement by the other party, then the remedy would be to move the government for sanction to prosecute the party in breach of settlement under Section 29.

The scope of Section 12 was raised in *Manoharan Nair* vs *State of Kerala* where the Central Government rejected the demand of the trade unions regarding minimum wages and dearness allowance. Consequently, the workmen went on strike but later it was called off. The negotiations commenced on the Central Government's counter-proposal but the trade unions rejected the proposal. The regional joint labour commissioner's efforts to convene another conference also failed. The additional labour commissioner, however, succeeded in persuading three of these unions to accept the Central Government's proposal and a settlement was arrived at to this effect, which was countersigned by the additional labour commissioner. The validity of this settlement was challenged on two main grounds:

The conciliation officer erred in holding that the trade unions, who were parties to the settlement, represented the majority of the workmen in the establishment and (ii) the jurisdiction of the conciliation officer to resolve that dispute, which related to the matters mentioned in clause 6 did not bind the workmen in other matters. As to the first contention, the Kerala High Court, following the Supreme Court decision in *Ramnagar Cane & Sugar Co.* vs *Jatin Chakravarthy*, negatived it by holding that a settlement made with the minority would bind all the workmen of the establishment when it was countersigned by the conciliation officer unless, a collusive settlement, designed to defeat certain kinds of claims, is arrived at with those who could not speak for even a small section of the interested workmen.

As to the second contention, the Court held that no manner was prescribed for raising an industrial dispute (whether existing at the commencement or cropping up during the pendency of proceedings). It accordingly, rejected

the contention that the conciliation officer was incompetent to countersign the final settlement.

If the conciliation officer fails to effect a settlement, the appropriate government may, after considering the report of the conciliation officer, refer the dispute to a board or adjudicating authorities and, in particular, not to a court of inquiry. The power is discretionary. But, if the appropriate government decides not to refer the matter, it must record the reasons there of, and communicate the same to the parties concerned. It follows that conciliation officer's report is considered by the appropriate government. But unlike the board of conciliation, the conciliation officer is not required to make recommendation for the determination of dispute under the Act. It is suggested that the conciliation will prove to be more effective if the conciliation officer is also be required to make a recommendation to the appropriate government whether or not the matter is fit for adjudication. It is also suggested that the recommendation of a conciliation officer should be given due consideration by the appropriate government.

(*vi*) Can conciliation proceedings pertaining to industrial disputes be initiated and continued by legal heirs even after death of the workman? This question was answered in the affirmative by the division bench of the Karnataka High Court in *Dhanalakshmi* vs *Reserve Bank of India*, *Bombay*. The Court held that despite the death of the workman, the point sought to be settled by legal heirs remains an 'industrial dispute' for the purpose of adjudication under the Industrial Dispute Act, 1947.

(*vii*) Can the registrar of a cooperative society nullify a settlement pertaining to wages made before the conciliation officer between cooperative societies and their employees ? This question was answered in the negative by the Madras High Court in *S Jina Chandran* vs *Registrar of Cooperative Societies, Madras*.

7. Duties of Board of Conciliation

A board to which a dispute is referred must investigate the dispute and all matters affecting the merits and the right settlement thereof and do all things for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute without delay.

If a settlement is arrived at, the board should send a report to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute. If no settlement is reached, the board must send a full report together with its recommendation for the determination of the dispute.

In case of failure of settlement by a board, the 'appropriate government' may refer the dispute to a labour court, tribunal or national tribunal. The government is, however, not bound to make a reference. But where the government does not make a reference in a public utility service after receiving a report from a board, it must record and communicate to the parties concerned its reasons for not doing so.

A board is required to submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate government. The time limit for the submission of a report can be extended by the appropriate government or by agreement in writing by all the parties to the dispute.

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8. Conciliation Proceedings

The study of conciliation proceedings requires examination of: (*i*) when and how conciliation machinery is set in motion? and (*ii*) what is the duration of conciliation proceedings? These questions are of great practical significance. It is important because the management is prohibited from exercising its prerogative during the pendency of conciliation proceedings before a conciliation officer and board of conciliation in respect of an industrial dispute. Further, workmen and employers in public utility services are prohibited from declaring strike or lockout as the case may be during the pendency of any conciliation proceedings before a conciliation officer. In non-public utility services, management and workmen are prohibited to declare lockout or strike during the pendency of conciliation proceeding before a board of conciliation and 7 days thereafter.

Let us now turn to examine when a conciliation machinery is set in motion and what is the duration of conciliation proceedings before the conciliation officer and board of conciliation.

(i) Cognizance

(a) *By Conciliation Officer:* In case of public utility services, where a notice of strike or lockout has been given under Section 22, it is mandatory for the conciliation officer to intervene under the Act. But in non-public utility services, where an industrial dispute exists or is apprehended, conciliation officer my exercise his discretion to conciliate or not. In practice, it has been found that the optional provision is acquiring compulsory status in non-public utility services also. The conciliation officer may take note of an existing or apprehended dispute either *suo motu* or when approached by either of the parties. His power under the Act is essentially confined to investigation and mediation of industrial dispute.

(b) *By Board of Conciliation:* The board assumes jurisdiction over the existing or apprehended dispute when it is referred to it by the appropriate government.

(ii) Pendency of conciliation proceeding before a conciliation officer

The opening clause of Sections 22 (1) (d), 22 (2) (d) and 33, namely, 'during the pendency of any conciliation proceeding before a conciliation officer' prescribes the period of prohibition of strikes and lockouts in public utility services as well as on the exercise of management's prerogative. These critical words, however, have to be read with other provisions of the Act and the rules framed thereunder.

(*a*) *The commencement of proceedings:* Sub-section (1) of Section 20 provides that in public utility services, the starting point of the prohibition is the date on which the conciliation officer receives a notice of strike or lockout under Section 22.

(*b*) *The termination of proceedings*: Sub-section (2) of Section 20 provides the other terminus of the period of prohibition:

A conciliation proceeding shall be deemed to have concluded—

(*a*) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the disputes;

(*b*) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate government or when the report of the board is published under Section 17, as the case may be; or

(*c*) where reference is made to a court, labour court, tribunal or national tribunal under Section 10 during the pendency of conciliation proceedings.

Of these, clause (b) alone which has given some ground for anxiety, need detain us.

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The Supreme Court, however, in *Industry Colliery* while construing the word 'received' in Section 20(2) (b) interpreted it to mean 'when the report is actually received by the appropriate government' and imposes criminal liability where the employer or the workmen could not possibly know that he was doing an illegal act by declaring a strike or lockout illegal and put prohibition on the use of instruments of economic coercion by the parties which can hardly be justified on the ground of maintaining harmonious labour management relations to facilitate settlement of disputes.

The facts are as follows: On 13 October 1949, the workmen gave a notice to the management under Section 22(1) of a one day strike to take place on 6 November 1949. The regional labour commissioner (central) held conciliation proceedings on 22 October 1949. The workmen declined to participate in the conciliation proceedings. On the same day, the regional labour commissioner sent the failure report to the chief labour commissioner stating that no settlement was arrived at in the conciliation proceedings and that he 'was not in favour of recommending a reference of the dispute to the industrial tribunal' for adjudication. The failure report of the chief labour commissioner, Delhi was, however, received by the Ministry of Labour only on 19 November 1949. In the meanwhile, the workmen went on a one day strike as per their notice on 7 November 1949. The question arose whether the strike was illegal. This question depended on whether the strike occurred 'during the conclusion of such proceedings'. The Supreme Court pointed out that under Section 24 (1), a strike was illegal if it commenced or was declared during pendency of a conciliation proceedings .... and 7 days after the conclusion of such proceedings' which is prohibited under clause (1) of Section 22 (1) and the proceeding is deemed to have concluded' where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate government.' The Court dealt with the word 'received' occurring under Section 20(2) (b) as follows:

> '... while the word 'send' is used in Section 12 (4) and the word 'submitted' in Section 12 (6), the word used in Section 20 (2) (b) is 'received'. That word obviously implies the actual receipt of the report. To say that the conciliation proceedings shall be deemed to have concluded when the report should, in the ordinary course of business, have been received by the appropriate government would introduce an element of uncertainty, for the provisions of Section 22 (1) (d) clearly contemplate that the appropriate government should have a clear 7 days' time after the conclusion of the conciliation proceedings to make up its mind as to the further steps it should take. It is, therefore, necessary that the beginning of the seven days' time should be fixed so that there would be certainty as to when the seven days' time would expire. It is, therefore, provided in Section 20 (2) (b) that the proceedings shall be deemed to have concluded, where no settlement is arrived at, when the report is actually received by the appropriate governments.'

(iii) Pendency of proceedings before a board of conciliation

(*a*) ***The commencement of proceedings:*** The proceeding is deemed to have commenced on the date of the order referring the dispute to the board. The effect of this provision can be interpreted only with reference to the provisions of Section 5 and Rule 6 of the Industrial Disputes (Central) Rules, 1957. These provisions do

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not provide sufficient safeguards to the workmen or the employer. What if the employer declares a lockout or the workmen declare a strike between the date of notice under Rule 6 and the date of order referring the dispute to the board of conciliation?

(*b*) ***The termination of proceedings*:** Under sub-section (2) of Section 20, conciliation proceedings shall be deemed to have concluded—

(*i*) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute

(*ii*) where no settlement is arrived at, ... when the report of the board is published under Section 17

(*iii*) when a reference is made to a labour court, tribunal or national tribunal under Section 10

9. Settlement in Conciliation

After having discussed the proceedings in conciliation, it is necessary to examine the settlement in conciliation. The settlement in conciliation requires consideration of several aspects such as concept and nature of settlement, form of settlement, publication of settlement, period of operation of settlement, persons on whom settlement is binding and enforceability of settlement.

(*a*) *Concept of settlement:* Section 2 (p) defines 'settlement' to mean: a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and the workmen arrived at otherwise than in the course of 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.

An analysis of the aforesaid definition reveals that there are two modes of settlement of industrial disputes — (*i*) settlement arrived at in the course of conciliation proceedings, *i.e.*, one which is arrived at with the assistance and concurrence of the conciliation officer, who is duty-bound to promote a settlement and to do everything to induce the parties to come to a fair and amicable settlement of the dispute, and (*ii*) a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceedings.

It also appears from the above definition that 'unless an agreement arrived at between the parties is a settlement in its grammatical or ordinary signification, such an arrangement although arrived at in a conciliation proceedings will not be a settlement within the meaning of Section 2 (p).' Further, the expression 'in the course of conciliation proceedings' refers to the duration when the conciliation proceedings are pending. Moreover, for the validity of this kind of settlement 'it is essential that the parties thereto should have subscribed to it in the prescribed manner and a copy thereof should have been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer.'

(*b*) *Nature of settlement:* The nature of proceedings before the conciliation officer is not judicial or quasi-judicial but administrative. Let us examine the requirements therefor.

(*i*) *Settlement must be 'in writing':* The Industrial Disputes Act, 1947, requires the settlement arrived at in the course of conciliation proceedings by the

conciliation officer and board of conciliation to be 'in writing'. The purpose is to minimize area of disputes over the contents thereof and to have permanent record in matters affecting labour management relations.

(*ii*) *Settlement must be signed by the parties:* The Industrial Disputes Act 1947, requires the 'settlement arrived at in the course of conciliation proceedings by the conciliation officer or by the board to be signed by the parties to the dispute. Thus, clause (2) of Rule 58 of the Industrial Disputes (Central) Rules provides:

> The settlement shall be signed by (a) in the case of employer, by the employer himself, or by his authorized agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation; (b) in case of workmen, by an officer of a trade union of the workmen or by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

The aforesaid provision raises several problems. *First*, what if the parties do not sign it? *Second*, what is the position of an individual workman who is not a member of any union whatsoever and his erstwhile co-workers are not prepared to help him? *Third*, what is the position of an individual workman who is made a scapegoat by his own union?

As to the first, it is significant to note that Sections 12 (3) and 13 (3) make it obligatory upon the conciliation officer and the board of conciliation to submit the report with a 'memorandum of the settlement signed by the parties to the dispute'.

The second and third problems are not easy to answer. It would be observed that Rule 59(2) (b) does not at all recognize an individual workman. This is all the more so in view of the fact that his erstwhile co-workers are not prepared to help him. Under the circumstances, he will be helpless, and will be bound by the settlement arrived at by the union. This view is fortified by the provisions of Section 18.

(*c*) *Settlement must be in the prescribed form:* Should the settlement be one document signed by both the parties, or can it be gathered from documents which have been separately signed by the parties, *e.g.*, correspondence? Clause (i) of Rule 58 which provides that 'a settlement arrived at in the course of conciliation proceedings or otherwise, shall be in form 4' suggests that the written agreement must be embodied in one document.

(*d*) *Publication of the settlement by board of conciliation:* Section 17 (1) which deals with the publication of award by the appropriate government, provides:

> Every report of a board... together with any minute of dissent recorded therewith .... shall, within a period of thirty days from the date of its receipt by the appropriate government, be published in such manner as the appropriate government thinks fit.

The aforesaid provision raises several issues: the key question is whether the aforesaid provision is mandatory or directory? *Second*, what will be the effect of withholding the publication of the report? *Third*, whether the publication of the report after the expiry of statutory period of 30 days will make the settlement invalid or unenforceable? *Fourth*, whether the report will be taken to have been published on the date of the government's notification or the date on which such notification appeared in the gazette?

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(*e*) *Settlement must be fair, just and bonafide:* The apex Court in *K C P Ltd.* vs *The Presiding Officer*, held that a court or tribunal must satisfy itself that a settlement was not *ex facie* unfair, unjust or *malafide*.

(*f*) *Period of operation of settlement*:

(*i*) **Commencement:** Sub-section (1) of Section 19 provides:

> A settlement shall come into operation on such date as is agreed upon by the parties to the dispute and if no date is agreed upon, on the date on which the memorandum of settlement is signed by the parties to the dispute.

Thus, the settlement shall come into operation on the date agreed upon by the parties or, if none, the date on which the memorandum of settlement is signed by them.

(*ii*) **Termination:** Sub-section (2) of Section 19 provides for other terminus of the settlement.

> Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

The object of the provision under sub-sections 1 and 2 of Section 19 is to ensure that once a settlement is arrived at, there prevails peace, accord and cordiality between the parties during the period agreed upon and if the settlement does not require to be altered for some reason or the other, the same climate prevails by extension of the settlement by operation of law. Section 19 is not dead and freezing (in) all manner... There is an option given to either party to terminate the settlement by a written intimation after the expiry of two months from the date of such notice. This is in accord with the policy of settlement of industrial disputes which is the principal object underlying the provisions of the Act.

Section 19 (2) has given rise to a controversy whether a settlement made for a specified period expires by efflux of the said period. Answering the question, the Supreme Court in *Shukla Manseta Industries Pvt. Ltd* vs *The Workmen* observed:

> To avoid uncertainty and speculation, Section 19 prescribes a terminus *ad quo* and a terminus *ad quem*. If in a settlement there is no time limit agreed upon between the parties, the period of operation is a space of six months from the date of signing the settlement and will also last until the expiry of two months from the date of receipt of the notice of termination of settlement. If the period is fixed, it commences from the date as specified in the settlement and will theoretically end as agreed upon but shall continue to operate under the law until the expiry of the requisite period of two months by a clear written notice.

Jaypore Sugar Company Ltd vs *Their Employees* decided the other issue, namely, when a settlement would terminate if no period was agreed upon? Here, settlement was reached between the management and workers in the course of conciliation proceedings. It stated that the workers' union gave an undertaking that there 'shall be no strike till the end of the next crushing season.' No period was, however, agreed upon for such settlement and no notice was given to terminate such settlement. The labour appellate tribunal observed:

> Under Section 19 (2) of the Industrial Disputes Act, this will be binding for a period of six months and also shall continue to be binding for a further period of

two months after notice to terminate it. In this case, we find that no such notice to terminate this settlement was given by either party and the settlement is still in force.

The Supreme Court in *South Indian Bank Ltd* vs *Chako* held that binding 'nature of award' and 'operation of award' are two different expressions.

The notice under Section 19 (2) must be given by a party representing the majority of persons bound by the settlement. Further, such a notice can be inferred from correspondence between the parties.

In *Cochin State Power Light Corporation Ltd* vs *Its Workmen*, the employer and the employees arrived at a settlement on 25 November 1954, which was to remain in force upto 30 September 1959. The employer contended that the settlement was never terminated by notice in writing, so it continued to be in force when the reference was made. Hence, the tribunal had no jurisdiction to adjudicate the dispute. The workmen had presented a charter of demands on 14 October 1959 in which there was a reference to the settlement and it was stated therein that the union had on 18 October 1959 resolved to terminate the existing settlement. It was contended that this did not put an end to the settlement as required by Section 19 (2) of the Act because there was no reference to the termination of settlement by the charter. While rejecting the contention, Justice Wanchoo observed:

> There is, however, no form prescribed for terminating settlement under Section 19 (2) of the Act and all that has to be seen is whether the provisions of Section 19 (2) are complied with in substance and a notice is given as required thereunder.

The Court rejected the employer's contention and held that as there was a reference under the charter of demands to a resolution in which specific statement that the settlement was being terminated thereby was made, it was sufficient notice as required under Section 19 (2) of the Act.

The above view was approved by the Supreme Court in *Indian Link Chain Manufacturers Ltd* vs *Their Workmen*.[71] But at the same time, the Court warned:

> It is true that though a written notice can be spelled out of the correspondence, there must be some certainty regarding the date or which such a written notice can be construed to have been given because a settlement notwithstanding such notice continues to be in force for a period of two months from that date.

The lacuna in the law on this point is that unlike the provisions for termination of operation of award under Section 19 (3), the Act does not expressly provide for termination of the operation of a settlement. It is, therefore, suggested that the Parliament should make an express provision in the Act for the termination of operation of settlement.

In *Management of Karnataka State Road Transport Corporation* vs *KSRTC Staff and Workers Federation*, a settlement was arrived at between the Karnataka State Road Transport Corporation (KSRTC) and union federation of KSRTC emerging as sole bargaining agent on 28 July 1988. The payroll check-off facility was made available to the union as per the settlement. The settlement was to last till recognition of federation or until both parties terminate it by mutual consent. On 10 May 1993, a memorandum of understanding was reached subject to the approval of board of directors and state government. On 21 September 1999, the Karnataka State Road Transport Corporation by notification withdrew the responsibility of collection of donation or monthly subscription called payroll check-off facility. On these facts, a question arose whether (*i*) there was sufficient notice and (*ii*) the settlement was legally terminated. The Supreme Court answered the question in the negative and held that the government orders and

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consequential notification withdrawing payroll check-off facility was illegal and *ultra-vires* of Section 19 (1) of the ID Act. The agreement of 1988 continued to be binding on parties and KSRTC could not act unilaterally.

(*g*) *Persons on whom settlement is binding:* The Industrial Disputes Act, 1947 draws a distinction between a settlement arrived at by agreement between the parties and settlement arrived at in the course of conciliation proceedings. Whereas the first category of settlement 'shall be binding only on the parties to the agreement', the second one is binding not only on 'all parties to the industrial dispute' but also on:

(*a*) all other parties summoned to appear in the proceedings as parties to the dispute unless the board, arbitrator, labour court, tribunal or national tribunal as the case may be, records the opinion that they were so summoned without proper clause;

(*b*) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assignees in respect of the establishment to which the dispute relates;

(*c*) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

It is evident from above that the settlement arrived at in the course of conciliation proceedings shall be binding on all categories of persons mentioned above. In extending the operation of such a settlement beyond the parties thereto, Section 18 (3) of the Industrial Disputes Act makes a departure from the ordinary law of contract which leads towards collective bargaining. The object of this section is to promote industrial peace and harmony between the parties. It is with this object that wide coverage has been given to Section 18 (3) and this can possibly be done when settlement would bind all the parties.

In *Virudhachalam P* vs *Mgmt of Lotus Mills*, the Supreme Court ruled that once a written settlement is arrived at during the conciliation proceedings, such settlement under Section 12 (3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement has the same legal effect as an award of labour court, tribunal or national tribunal or an arbitration award. They all stand on par. It is easy to visualize that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Section 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlements necessarily are based on written agreements between the parties.

The scope of Section 18 (3) (d) has been the subject-matter of judicial interpretation in a series of cases decided by the high courts and the Supreme Court. The debatable

issue has been whether settlement with one or more concerned union in a conciliation proceeding would bind all other workmen of unions of establishment who were not made parties to the settlement. This issue was raised in *Ramnagar Cane and Sugar Co. Ltd* vs *Jatin Chakravarty*. In this case, Ramnagar Cane and Sugar Co. Ltd, a public utility concern, carried on the business of manufacturing sugar. The management employed 545 permanent and 703 seasonal workers (excluding casual labourers). Majority of these workmen belonged to the Ramnagar Cane Sugar Co. Employees' Union (hereinafter referred to as the workers' union). On 9 December 1953, the workers' union submitted a charter of demands to the management. On 20 January 1954, a similar charter of demands was also submitted by the employees' union to the management. On the same day, the workers' union gave a strike notice to the management. On 1 February 1954, the conciliation officer started conciliation proceedings which were attended by the employees' union and the management. Workers' union, apparently did not attend the meeting even though a notice was served upon the said union. On 2 February 1954, the management suggested to the conciliation officer to discuss the disputed matter with the representatives of two unions separately. The workers' union objected to this suggestion and informed the conciliation officer that it assumed that the conciliation has failed. Consequently, on 2 February 1954, the conciliation officer sent his report about the failure of conciliation with workers' union. On 25 February 1954, the management and employees' union, arrived at a settlement, which was recorded in a form of memorandum of settlement signed by them. Meanwhile on 13 February 1954, the workers' union went on strike which was alleged to be in contravention of the provisions of the Industrial Disputes Act. Accordingly, the members of the workers' union were prosecuted.

Here, we are concerned with a limited issue, namely, whether workers belonging to the worker's union were bound by the settlement arrived at between the workers-members of employees' union and the management. Answering the question in the affirmative, Justice Gajendragadkar observed:

> In order to bind the workmen it is not necessary to show that the said workmen belong to the union which was a party to the dispute before conciliator..... [Thus] if a conciliation proceeding is pending between one union and the employer and it relates to matters concerning all the employees of the employer, the pendency of the said conciliation proceeding would be a bar against all the employees of the employer employed in a public utility service to go on a strike during the pendency of the proceeding under Section 22 (1) (d). In our opinion, this construction would be consistent with the specific provisions as to the effect of conciliation settlements prescribed by Section 18 (3) (d) and is harmonious with the general policy of the Act; otherwise, it would unnecessarily disturb industrial peace, if one union employed in a public utility service is allowed to go on strike even though demands common to the members of the said union as well as the rest of the workmen are being considered in conciliation proceedings between the said employer and his other employees represented by another union.

The Court, accordingly, held that the settlement arrived at between the management and the employees' union in the course of conciliation proceedings on 25 February 1954 was binding not only upon the members of the said employees' union but on all the four categories of persons bound by such settlement as are specified in sub-section (3) of Section 18 including workmen employed by the management at that time.

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The aforesaid view was reiterated in *Tata Chemical Ltd* vs *Workmen*.

In *G M Security Paper Mills* vs *R S Sharma*, the Supreme Court once again laid down the scope and objective of Section 18 (3) of the Act in the following words:

> Even though a conciliation officer is not competent to adjudicate upon the dispute between the management and its workmen, he is expected to assist them to arrive at a fair and just settlement. He has to play the role of an advisor and friend of both the parties and should see that neither party takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the settlement, sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation proceeding under that Act shall be binding on (i) all parties to the industrial dispute (ii) where a party referred to in clause (i) is an employer, his heirs, successors or assignees in respect of the establishment to which the dispute relates and (iii) where a party referred to in clause (i) is comprised of workmen, all persons who were employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part. Law thus attaches importance and sanctity to a settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above. But in the case of a settlement not arrived at in the course of the conciliation proceeding, it has to be in writing and signed by the parties in the prescribed manner and a copy thereof should be sent to the officer authorized by the appropriate government in this behalf and to the conciliation officer. Such a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement as provided in Section 18 (1) of the Industrial Disputes Act, 1947. Such a settlement is not binding on the other workmen who are not parties to the settlement.

From the above, it is evident that a settlement arrived at in the course of conciliation proceeding shall be valid and binding on all the present and future employees of the establishment but not to past or retired workmen. It is not necessary that if there are several unions in the establishment, all the unions must be represented. It is enough if one of such unions enters into a settlement with the management in the course of conciliation proceedings.

The decision is, however, open to criticism. Assume that there are 4,000 workers employed in an establishment. Out of these 4,000 workers, 2,000 workers belong to Union A, 1,800 workers belong to Union B and 200 workers belong to a Union C (management sponsored union). Assume further that in an industrial dispute between labour and management, Union C arrived at a settlement with the management in the course of conciliation proceedings. According to the Supreme Court, the settlement entered into between the management and Union C representing 200 workers shall be binding on the other two unions representing 3,800 workers. Is it desirable in the interest of industrial peace and harmony that such a settlement should bind all the workmen? It is highly doubtful if the fate of 3,800 workers should be allowed to be determined by a management-sponsored union having only 200 workmen as its members.

In *Praga Tools Ltd* vs *Praga Tools Mazdoor Sabha*, the Court extended the aforesaid principle in cases where the conciliation officer arrived at a settlement between the workmen and management after the submission of the failure report. In this case,

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the issue was whether a settlement brought about after the submission of failure report by the conciliation officer binds all workmen including the workmen of the union which was not represented in a conciliation proceedings. The High Court answered the question in the affirmative and held that such a settlement was binding on all the workmen including the workmen of a union who did not join the conciliation proceedings. Be that as it may, the aforesaid view encouraged the minority union. This has invited the attention of the Supreme Court in *Herbert Sons Ltd* vs *Workman*, wherein the court ruled that a settlement arrived at with a majority union precludes a minority union from raising dispute on the same subject-matter thereby making such settlement binding even on members of the minority unions. However, if there is a dispute that the settlement is not *bona fide* in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it can be the subject-matter of an industrial dispute which an appropriate government may refer for adjudication after examining the allegation *prima facie*. The appropriate government must satisfy itself *prima facie* whether the allegation needs to be adjudicated, more so when there is a settlement which is reached with the help of the conciliation officer in which case, there is a basic assumption that the settlement must be fair and reasonable. A settlement which is sought to be assailed has to be scanned and scrutinized.

In *National Engineering Industries* vs *State of Rajasthan*, showing its concern about the above issue, the Supreme Court observed that every trade union registered under the Trade Unions Act, 1926 having a few members, if allowed to raise industrial disputes for reference, will defeat the very purpose of a settlement. That is why it is only a representative union which has been given the right to raise an industrial dispute. Under the Voluntary Code of Discipline and also under various state laws there can be, at a given point of time, only one representative union. Under the Rajasthan Act, a representative union means a union for the time being registered as a representative union under the said Act. Although, representative union is not defined in the Act but in common parlance, it means the union which has been registered as the majority union and thus entitled to represent all the workers and thereby precluding the minority union from raising an industrial dispute on the same subject-matter. Further, it is the representative union which alone can give notice under Section 19(2) of the ID Act terminating the settlement. Any notice given by a union which does not represent the majority of the persons bound by the settlement or which is not a representative union is illegal. The Court further held that merely because a settlement in the course of conciliation proceedings was arrived at between the majority union and the management on a holiday, it cannot render such a settlement invalid. There is no bar in having conciliation proceedings under the Act on a holiday. To arrive at a settlement, a holiday atmosphere is more relaxed and more congenial.

It may be noted that the Second National Commission on Labour has recommended that a union, which does not have at least 10 per cent membership amongst the employees in an establishment, should have no *locus standi* in that establishment.

The Supreme Court in *I T C Ltd. Workers' Welfare Association* vs *Management of I T C Ltd* decided five important issues connected with the settlement arrived at in the course of concilation proceedings namely, (*i*) Is it open to the industrial tribunal to ignore the settlement? (*ii*) What is the effect of a settlement arrived at in the course of conciliation proceedings? (*iii*) What presumption can be drawn if a settlement is arrived at in the conciliation proceedings? (*iv*) What weight should be attached to a settlement arrived at in the course of conciliation proceedings? and (*v*) Can the validity of the settlement

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arrived at in the course of conciliation proceeding be tested on the touchstone of Article 14 of the Constitution?

As to the first issue, the Supreme Court held that the industrial adjudicator has to keep in the forefront of his mind the settlement reached under Section 18(3) of the Act. Once it is found that the terms of the settlement operate in respect of the dispute raised before it, it is not open to the industrial tribunal to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be contrary to the mandatory provisions of the Act or unless there is non-conformity with the norms by which the settlement could be subjected to limited judicial scrutiny.

Regarding the second issue, the Court held that a settlement arrived at in the course of conciliation proceedings with a recognized majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To this extent, it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement.

Coming to the third issue, the Court observed that the settlement arrived at in the course of conciliation proceedings carries a presumption that it is just and fair. An unjust, unfair or *mala fide* settlement militates against the spirit and basic postulates of the agreement reached as a result of conciliation and, therefore, such settlement will not be given effect to while deciding an industrial dispute. Of course, the issue has to be examined keeping in view the presumption that is attached to the settlement under Section 12(3).

As to the fourth issue, the Court said that a settlement which is a product of collective bargaining is to be given due weight and consideration, more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional circumstances, *viz.*, if it is demonstrably unjust, unfair or the result of *mala fides* such as corrupt motives on the part of those who were instrumental in effecting the settlement. Keeping that apart, the settlement has to be judged as a whole, taking an overall view.

As regards the last issue, the Court held that there may be some facets which apply in common to determine the crucial issue whether the settlement on the whole is just and fair but that is not to say that the settlement is liable to be tested on the touchstone of Article 14 of the Constitution.

Court of Inquiry

A. Constitution

A procedure similar to the constitution of a board of conciliation is provided for bringing into existence a court of inquiry as well. While a board of conciliation may be constituted for promoting the settlement of an industrial dispute; the purpose for which a court of inquiry may be constituted is 'for enquiring into any matter appearing to be connected with or relevant to an industrial dispute.' The idea of a court of inquiry is borrowed from the British Industrial Courts Act, 1919. This Act enables the minister on his own motion and irrespective of the consent of the parties to a dispute, to set up a court of inquiry to enquire into the report on the causes and circumstances of any trade dispute, together with such recommendations as the court may make for the resolution of the dispute. Perhaps because of the extended field of operation of the court of inquiry, the legislature thought it fit to allow the parties to use instruments of economic coercion during pendency of proceeding before it.

B. Jurisdiction of the Court of Inquiry

The Act empowers the appropriate government to constitute a court of inquiry to inquire into any matter appearing to be connected with or relevant to an industrial dispute. The court of inquiry consists of one or more independent persons at the discretion of the appropriate government. Where a court consists of two or more members, one of them shall be appointed as a chairman. The court having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number. However, if the appropriate government notifies that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed. Court can inquire into matters 'connected with or relevant to an industrial dispute' but not into the industrial dispute.

C. Duties of the Court

It is the duty of the court of inquiry to inquire into matters referred to it and submit its report to the appropriate government, ordinarily within 6 months from the commencement of its inquiry. This period is, however, not mandatory and the report even after the said period would not be invalid.

D. Publication of the Report

The Act requires that the report of appropriate government shall be published within 30 days of its receipt.

6.3.1 Voluntary Conciliation

In case of voluntary conciliation, the disputes are referred to the conciliation officer or the Board of conciliation by both parties. This type of conciliation pertains to parties who agree to have their disputes settled by an outsider; however, they may or may not accept the decision. The ILO (International Labour Organization) Recommendation No. 92 concerning voluntary conciliation (and Arbitration) 1951 are as follows:

1. Voluntary conciliation machinery appropriate to national conditions should aid in the prevention and settlement of Industrial disputes between employers and workers.
2. There should be equal representation of employers and workers when voluntary conciliation machinery is composed on a joint basis.
3. (i) The procedure involved should be free of charge and expeditions. Time limits which may be prescribed by national laws or regulations for the proceedings should be fixed in advance and kept to the minimum.

   (ii) Provision should be made to enable the procedure to be set in million either on the initiative of any of the parties to the dispute or ex-officio by the voluntary conciliation authority.
4. If the dispute has been already submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lock outs while conciliation is in progress.
5. During conciliation procedure, all agreements which the parties may reach or as a result thereof should be drawn up in writing regarded as equivalent to agreement concluded in the usual manner.

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6.3.2 Compulsory Conciliation

Under compulsory conciliation, the disputes are referred to the board of conciliation. Here the situation is slightly different. The procedure is made compulsory by the inclusion of provisions such as the parties' attendance at conciliation proceedings or by empowering the conciliation authority to compel their attendance at such proceedings and by prohibiting strikes and lock-outs without prior resort to conciliation. Compulsory conciliation serves as a useful purpose even if the attitude of the parties involved exhibits that the possibility of a voluntary settlement is highly unlikely. This takes place especially in developing countries where management and trade unions have relatively little experience of labour relations. There is less chance that the parties would even agree to meet each other for direct negotiation. The management, even, may refuse to recognize or have any dealings with the trade union. In this situation, the compulsory attendance that is required of the parties at a conciliation meeting will help them meet each other and they would become used to joint discussions. Compulsory conciliation also serves a means of educating, raining and guiding the parties with regard to the nature and conduct of bilateral negotiations.

6.4 ARBITRATION – INVESTIGATION PROCEDURE, SUBMISSION OF AWARD

Voluntary Arbitration

Voluntary arbitration is one of the effective modes of settlement of an industrial dispute; it supplements collective bargaining. When negotiation fails, arbitration may prove to be a satisfactory and most enlightened method of resolving an industrial dispute. It provides 'a new focus for set-up animosities.' It has been found that in 'many arbitration cases, in which the parties start out by being angry at each other, they end up being less so. The winning party is satisfied, and the losing party is likely to feel aggrieved, not at the other party, but at the arbitrator.' Further, informal arbitration offers an opportunity to dissipate hard feelings which the industrial dispute may have aroused.

It is important because it is (*i*) expected to take into consideration the realities of the situation; (*ii*) expected to meet the aspiration of the parties; (*iii*) based on voluntarism; (*iv*) does not compromise the fundamental position of the parties and (*v*) expected to promote mutual trust. However, it is unfortunate that despite government's stated policy to encourage collective bargaining and voluntary arbitration, India adopted only compulsory adjudication system ever since independence and did not give legal sanctity to voluntary arbitration till 1956. The severe criticism of conciliation and adjudication led to the introduction of Section 10 A relating to voluntary arbitration through the Industrial Disputes (Amendment) Act, 1956. The 1956 Amendment to some extent has tried to give legal force to voluntary arbitration but still it stands on a lower footing than adjudication as it permits the parties to adopt recourse to arbitration prior to reference to adjudication. Further, 1956-Amendment also did not place an arbitrator on the same footing as that of adjudicators. The 1964 Amendment did try to bridge the gap but still the disparity lies in several respects.

Check Your Progress

3. What do you mean by conciliation?
4. State the composition of the Board of conciliation.
5. State one reason for the failure of conciliation machinery.

Processes Involved in Reference of Dispute to Voluntary Labour Arbitrator

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A. Choice of Dispute Settlement

Section 10A (1) of the Industrial Disputes Act, 1947 authorizes the parties to make reference to a voluntary arbitrator. But before the reference may be made to the arbitrator, four conditions must be satisfied:

1. The industrial dispute must exist or be apprehended
2. The agreement must be in writing
3. The reference must be made before a dispute has been referred under Section 10 to a labour court, tribunal or national tribunal
4. The name of arbitrator/arbitrators must be specified

B. The Conditions Precedent

A perusal of the aforesaid provision may conveniently be delineated with reference to:

1. **Parties to arbitration:** Under the Industrial Disputes Act, 1947, a reference to the voluntary arbitrator under Section 10 A can only be made if a dispute arises between employers and employers, or between employers and workmen, or between workmen and workmen.
2. **Subject-matter of reference:** The Industrial Disputes Act, 1947 seeks to resolve the industrial disputes. The parties can only make a reference of an 'industry dispute' to an arbitrator. If, for instance, parties refer a dispute, which is not an 'industrial dispute', the arbitrator will have no jurisdiction to make a valid award.
3. **Time for making the agreement:** Section 10A of the Industrial Disputes Act, *inter alia*, provides that the reference to the arbitrator should be made at any time before the dispute has been referred under Section 10 to a labour court, tribunal or national tribunal.

C. Selection of Arbitrator

The next phase is the selection of the arbitrator. The parties acting under Section 10A are required to select any person or persons including the presiding officer of a labour court, tribunal or national tribunal to arbitrate in a dispute. Further, the parties may select or appoint as many arbitrators as they wish. However, where a reference is made to an even number of arbitrators, the parties by agreement should provide for appointment of an umpire who shall enter upon the reference and if the arbitrators are equally divided in their opinion, the award of umpire shall prevail and be deemed to be the 'award'. However, Section 10A unlike the 'procedure for voluntary arbitration of labour disputes' as approved by the National Arbitration Promotion Board or Section 7 (1) of the Industrial Relations Bills, 1978, does not provide for any agreement if the parties on their own fail to agree to an arbitrator or arbitrators.

D. Arbitration Agreement

1. **Agreement must be in writing:** Once the parties agree to refer the dispute to arbitration, it is required to make such arbitration agreement in writing.
2. **Form of the agreement:** Section 10A (2)(d) requires that the arbitration agreement should be in the prescribed form and Rule 7 of the Industrial Disputes

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(Central) Rules, 1957, provides that it should be in Form C. How far and to what extent the aforesaid requirement should be complied with formed the subject-matter of dispute in *North Orissa Workers' Union* vs *State of Orissa*. The Court held that it is not necessary that the agreement must be made in the prescribed form 'C'. It would be enough if the requirements of that form are substantially complied with.

3. **Signature of the parties:** Section 10A (2) further requires that an arbitration agreement shall be signed by the parties thereto in such manner as may be prescribed in the rules framed by the appropriate government. However, decided cases reveal that the validity of the award or arbitration agreement has often been questioned on the basis of non-compliance of signature of all parties on the arbitration agreement. This has been a ground for not issuing the notification by the appropriate government and enabling the government to refer such dispute to labour tribunals. This tendency of appropriate government has, however, been scrutinized by the judiciary.
4. **Consent of arbitrator(s):** Even though the Act does not expressly require that the arbitration agreement must be accompanied by the consent of arbitrator, the Industrial Disputes (Central) Rule, 1957 provides that the arbitration agreement must be accompanied by consent, in writing, of the arbitrator or arbitrators. But for the purposes, it is enough if there is substantial compliance with this rule.
5. **Submission of the copy of arbitration agreement:** Once an arbitration agreement has been entered into and executed in the prescribed form under Section 10A, a copy of the arbitration agreement shall be forwarded to the appropriate government and the conciliation officer. Non-submission of a copy of the arbitration agreement to the appropriate government would make the award made thereon outside the purview of Section 10A of the Industrial Disputes Act, 1947 because Section 10A (4) is interlinked with Section 10A (3) and only on satisfaction of the mandates of Section 10A there would be an investigation into the dispute and the award would be made by the arbitrator and then forwarded to the appropriate government.
6. **Publication of arbitration agreement:** The appropriate government comes into picture in the process of reference to arbitrator only after the receipt of a copy of a valid arbitration agreement. If this is done:

> .... the appropriate government shall, within one month from the date of the receipt of such copy publish the same in the official gazette.

The aforesaid provision raises a question whether the publication of the agreement is mandatory or directory. A corollary of this issue is: whether the appropriate government can override the wishes of the parties to refer the matter for arbitration by making a reference to labour court, tribunal or national tribunal. This issue may be discussed under two heads:

(*i*) Publication of arbitration agreement, and

(*ii*) time of publication.

(*i*) **Publication of arbitration agreement:** In *Karnal Leather Karamchari Sangathan* vs *Liberty Footwear Co.*, the Supreme Court was invited to consider whether the publication of arbitration agreement under Section 10A(3) is obligatory. The Supreme Court answered the question in the affirmative and observed:

> The voluntary arbitration is a part of the infrastructure of dispensation of justice in industrial adjudication. The arbitrator thus falls within the rainbow

of statutory tribunals. When a dispute is referred to arbitration, it is therefore, necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately will bind them. They must know what is referred for arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary, place the same before the arbitrator.

The Court held that the arbitration agreement must be published before an arbitrator considered the merits of the disputes. Non-compliance of this requirement will be fatal to the arbitration award.

(*ii*) **Time for publication:** The high courts are divided on the issue: whether the requirement of publication of agreement within one month is mandatory or directory? While the division bench of the Madhya Pradesh High Court in *K P Singh* vs *S K Gokhale* and the Orissa High Court in *North Orissa Workers' Union* vs *State of Orissa* have taken the view that the requirement is mandatory, the High Court of Punjab and Haryana in *Landra Engineering and Foundary Workers* vs *Punjab State*, the Delhi High Court in *Mineral Industrial Association* vs *Union of India*, Madhya Pradesh High Court in *Modern Stores Cigarettes* vs *Krishnadas Shah* and *Aftab-e-Jadid, Urdu Daily Newspapers* vs *Bhopal Shramjivi Patrakar Sangh* has taken the opposite view and held that the requirement is only directory. The decisions of these three high courts which held the provisions to be directory said:

... on the true construction of ... Section 10A(3) that the other requirement namely, its notification within one month from its receipt is only directory and not imperative.

E. Voluntary Labour Arbitrator

1. **Nature of Voluntary Arbitrator:** It is exceedingly difficult to maintain a distinction between statutory and private arbitrator on the basis of nomenclature because both are products of statute: the former is made under the Industrial Disputes Act, 1947 while the latter under the Arbitration Act, 1940. But such a distinction has not come to stay through a series of judicial decisions. Thus, in *R V National Joint Council for the Craft of Dental Technicians*, Chief Justice Goodard drew such a distinction when he said:

   There is no instance of which I know in the books, where *certiorari* or prohibition has gone to any arbitrator, except a statutory arbitrator, and a statutory arbitrator is a person to whom by statute, the parties must resort.

   The aforesaid distinction was adopted by the Supreme Court in *Engineering Mazdoor Sabha* vs *Hind Cycles Ltd* wherein Justice Gajenderagadkar introduced the concept of 'statutory arbitrator' in India by holding:

   Having regard to several provisions contained in the Act and rules framed thereunder, an arbitrator appointed under Section 10A cannot be treated to be exactly similar to a private arbitrator to whom a dispute has been referred under an arbitration agreement under the Arbitration Act. The arbitrator under Section 10A is clothed with certain powers. His procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator in a loose sense, a statutory arbitrator.

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2. **Conduct of the Arbitrator:** The Industrial Disputes Act, 1947 does not prescribe how the conduct of the arbitrator can be regulated. However, the decided cases of the Supreme Court and high courts reveal that an arbitrator should be impartial and must build a relationship of confidence with both the parties. Thus, he or any of his near relatives should not accept any hospitality or favour from any party to the disputes before him because justice should not only be done but it must be seen to be done. If he does so, it would be an act of misconduct. Similarly, if he does not hear the party or exceeds his jurisdiction or fails to determine an important question referred to him, his decision is liable to be interfered.

3. **Jurisdiction of the Voluntary Arbitrator:** An arbitrator under Section 10A comes into existence when appointed by the parties, and he derives his jurisdiction from the agreement of the parties. If the arbitrator decides matters not referred to him by the parties, he acts beyond his jurisdiction. For instance in *Raza Textile Labour Union* vs *Mohan*, three disputes upon which the arbitrator gave the award were not covered by 167 matters of disputes which were referred to him. The Court quashed the award as these matters were beyond the jurisdiction of the arbitrator. Similarly, in *Rohtas Industries Ltd* vs *Workmen*, the Patna High Court held that the award regarding dearness allowance was vitiated by the fact that it was not in accordance with the terms of agreement. Likewise, the Madras High Court in *Vaikuntam Estate* vs *Arbitrator* quashed the interim award of arbitrator where he exceeded the terms of reference. Further, unlike the jurisdiction of adjudicatory bodies, the arbitrator cannot arbitrate upon matters 'incidental to' or 'any matter appearing to connected or relevant' to the dispute. But unlike adjudicatory authorities under the Act, the arbitrator has wider power to decide upon all 'industrial disputes' referred to him under an arbitration agreement irrespective of the fact whether they fall under Schedule II or III of the Industrial Disputes Act, 1947.

4. **Powers of Arbitrator: Section 11A merely provides:** Where an industrial dispute relating to the discharge or dismissal of a workmen has been referred to a labour court, tribunal or national tribunal for adjudication and, in the course of the adjudication proceedings, the labour court, tribunal or national tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

The aforesaid Section 11 A does not specifically mention 'arbitrator'. It, therefore, raises a question whether the arbitrator has the power to interfere with the punishment awarded by the management. Justice Krishna Iyer in *Gujarat Steel Tubes Ltd* vs *Gujarat Steel Tubes Mazdoor Sabha* answered the question in affirmative. He stated:

> Section 11 did clothe the arbitrator with similar powers as tribunals, despite the doubt created by the abstruse absence of specific mention of 'arbitrator' in Section 11 A.

In *Rajinder Kumar* vs *Delhi Administration*, the Supreme Court explained the powers of the arbitrator:

> 'In exercise of the jurisdiction conferred by Section 11A of the Industrial Disputes Act, 1947 both arbitrator and ... (the Supreme Court) can reappraise the evidence

led in the domestic inquiry and satisfy themselves whether the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the power to decide whether the conclusions reached by the inquiry officer were plausible or deducible from the evidence led in the inquiry and not to re-appraise the evidence itself and to reach the conclusion whether the conduct alleged against the workman has been established or not.

The Court added:

> Where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under Section 10A or this court in appeal under Article 136 can reject such findings as perverse. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.

F. Signing of an Award

Sub-section (4) of Section 10A requires that the arbitration award shall be signed by the arbitrator or all the arbitrators, as the case may be. The provisions of the section are mandatory. The award of arbitrator shall be void and inoperative in the absence of signature in view of mandatory term of the section.

G. Submission of an Award

Section 10A (4A) of the Act enjoins the arbitrator to investigate the dispute and submit its award to the appropriate government. The non-submission would render the award in-operative.

H. Publication

Sub-section (3) of Section 10A requires that a copy of the arbitration agreement shall be forwarded to the appropriate government and the conciliation officer and the appropriate government shall within one month from the date of receipt of such copy, publish the same in the official gazette.

Can the award of the arbitrator under Section 10A be set aside on its non-publication in the official gazette? The Supreme Court in *Karnal Leather Karmchari Sanghatan* vs *Liberty Footwear Company* answered the question in the negative and observed:

> Now look at the provisions of sub-section (3). It is with respect to time for publication of the agreement. But publication appears to be not necessary for validity of the agreement. The agreement becomes binding and enforceable as soon as it is entered into by the parties. Publication is also not an indispensable foundation of jurisdiction of the arbitrator. The jurisdiction of the arbitrator stems from the agreement and not by its publication in the official gazettee. Why then publication is necessary? Is it an idle formality? Far from it, it would be wrong to construe sub-section (3) in the manner suggested by counsel for the appellant. The Act seeks to achieve social justice on the basis of collective bargaining. Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion. The dispute is settled peacefully and voluntarily although reluctantly between labour and management. The voluntary arbitration is a part of infrastructure of dispensation of justice in industrial adjudication. The arbitrator thus falls within

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> the rainbow of statutory tribunals. When a dispute is referred to arbitration, it is, therefore, necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately would bind them. They must know what is referred to arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary to place the same before the arbitrator. This is the need for collective bargaining and there cannot be collective bargaining without involving the workers. The union only helps the workers in resolving disputes with their management but ultimately it would be for the workers to take decision and suggest remedies. It seems to us that the arbitration agreement must be published before the arbitrator considers the merits of the dispute. Non-compliance of this requirement would be fatal to be arbitral award.

The aforesaid view was followed in *S K M Sangh* vs *General Manager, W C Ltd*.

I. Power of Superintendence of the High Court: Article 227 of the Constitution over Voluntary Arbitrators

In addition to Article 226, Article 227 confers upon high courts the power of superintendence over all lower courts and tribunals within their jurisdiction. A question, therefore, arises whether a high court can interfere under Article 227 with an award of an arbitrator (under Section 10A). The Supreme Court in *Engineering Mazdoor Sabha* vs *Hind Cycles Ltd* answered it in negative and placed Article 227 at par with Article 136. It held: Like Art. 136, Art. 227 refers to courts and tribunals and what we have referred to the requirements of Art. 136 may *prima facie* apply to the requirements of Art. 227.

The net effect of the aforesaid statement is that the high court is not competent to have power of superintendence over voluntary arbitrators under Section 10A because the 'arbitrator' was not a 'tribunal'.

But in *Rohtas Industries Ltd* vs *Rohtas Industries Staff Union*, Justice Krishna Iyer even though conceded that the position of arbitrator under Section 10A (as it then stood) vis-a-vis Article 227 might have been different but in view of the changed situation after the amendment in the Industrial Disputes Act by XXXVI of 1964 observed:

> Today, however, such an arbitrator has power to bind even those who are not parties to the reference or agreement and the whole exercise under Section 10A as well as the source of the force of the award on publication derive from the statute. It is legitimate to regard such an arbitrator now as part of the methodology of the sovereign's dispensation of justice, thus falling within the rainbow of statutory tribunals amenable to judicial review.

The aforesaid view was reiterated in the majority judgement in *Gujarat Steel Tubes* case.

However, one is tempted to ask whether the Court's decision would have been different if the government did not issue a notification under sub-section 3A of Section 10A on the ground that persons making a reference do not represent the majority of each party. An answer in affirmative would revive the view stated in *Engineering Mazdoor Sabha (supra)*. Under the circumstances, it is suggested that the Parliament may clarify the position by legislative amendment.

J. Relief under Article 136 of the Constitution from Arbitration Award

The question that arose before the Supreme Court was whether an appeal would lie to it under Article 136 of the Constitution from an arbitration award under Section 10A of

the Industrial Disputes Act. The Supreme Court in *Engineering Mazdoor Sabha* vs *Hind Cycles* answered the question in negative. It stated:

> ..... the arbitrator is not a tribunal because the State has not invested him with its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement of the parties. His position thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal.

Accordingly, the Court held that the decision of arbitrator would not amount to 'determination' or 'order' for the purposes of Article 136. But, this position appears to have been changed in *Rohtas Industries* vs *Rohtas Industries Staff Union*. The Court in view of the amendment in 1964 of the Industrial Disputes Act appears to have extended the application of Article 136 to an award of an arbitrator under Section 10A. This view was reiterated in *Gujarat Steel Tubes Ltd* vs *Gujarat Steel Tubes Mazdoor Sabha*.

The aforesaid view removes one of the stated hurdles in the progress of arbitration, namely, that in law, no appeal is maintainable against the award of the arbitrator.

K. Recommendation of the (Second) National Commission on Labour

The (Second) National Commission on Labour felt that arbitration as a dispute settlement machinery is better than adjudication.

6.5 ADJUDICATION

The final stage in the settlement of industrial disputes (where the parties are unable to settle either through bipartite negotiations or through the good offices of the conciliation machinery or through voluntary arbitration) is compulsory arbitration which envisages governmental reference to statutory bodies such as labour court, industrial tribunal or national tribunal. Disputes are generally referred for adjudication on the recommendation of the conciliation officer who had dealt with them earlier. However, the appropriate government has discretion either to accept or not to accept his recommendation and accordingly, to refer or not refer the case for adjudication. The percentage of disputes referred to adjudication varied from state to state.

The system of adjudication by labour court, tribunal and national tribunal has perhaps been one of the most important instruments of regulating the rights of the parties in general and wages, allowances, bonus, working conditions, leave, holidays and social security provisions in particular. Such norms setting which in advanced countries is done through the process of collective bargaining between the employers and the trade unions, is done in India by adjudication system because the trade union movement is weak and is in no position to negotiate with the employer on an equal footing. However, this system has been criticized for its unfavourable effects on the trade union movement. Further, undue dependence on compulsory adjudication has deprived the trade unions of the incentive to organize themselves on a strong and efficient basis and has rendered the unions mere petitioning and litigant organizations arguing their cases before tribunals, etc. The system of adjudication has also been criticized because of long delays involved in the final settlement of disputes, particularly, where one or the other party chooses to go in appeal against an award. Such delays, it is argued, are themselves responsible for much industrial strife. Be that as it may, it is beyond doubt that the labour judges occupy a very important position in adjudicating the disputes between the management and the labour. The disputes which are brought before the labour judiciary involve huge stakes, both for the management as well as the workers.

Check Your Progress

6. Define voluntary arbitration.
7. Mention why is it exceedingly difficult to maintain a distinction between statutory and private arbitrator.

NOTES

A. Origin and Growth of Adjudication System

In the era of *laissez fair,* employers enjoyed unfettered right to 'hire and fire'. They had vastly superior bargaining powers and were in a position to dominate workmen in every conceivable way. They preferred to settle terms and conditions of employment of workmen and abhorred statutory regulation unless, it was to their advantage. However, this tendency coupled with rise in the incidence of strikes and lockouts made it necessary for the government to intervene in labour management relations. While voluntary and persuasive processes had been playing their role in settling industrial disputes since 1929, World War II marked the beginning of compulsory adjudication. Rule 81A of the Defence of India Rules, 1942 empowered the government *inter alia*, to refer any trade dispute to adjudicators and to enforce the awards. After the end of hostilities, these measures with a number of innovations and modifications were incorporated in the Industrial Disputes Act, 1947. The Act 'substitutes for free bargaining between the parties a binding award by an impartial tribunal'. The tribunal is not bound by contractual terms between the parties but can make a suitable award for bringing about harmonious relations between the employer and the workmen. 'The industrial tribunal is not fettered by any limitation on its power. The only limitation on its power is to bring about harmonious relationship between the employer and the workmen.' In the original Act only one constituting body, namely, industrial tribunal was designated for the compulsory settlement of industrial disputes. Within a short span of 9 years of its working, it was found that a large number of cases were referred to it. This led to the introduction of three-tier system, *viz.*, the labour court, tribunal and national tribunal in 1956.

B. Composition of Labour Court, Tribunal and National Tribunal

The issue of composition of labour courts and tribunals has an important bearing on their working. The present system of reference to adjudication is, however, open to several criticisms. *First*, from 'the workers' side it is often argued that with various restrictions placed on strikes, the recourse to judicial determination of disputes should not be barred by the government.' *Second*, the decision to refer disputes or to withhold reference is sometimes not made on any strict principle and the system is open to pressurization.

The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 introduces a three tier system for industrial adjudication. The machinery provided under the Act consists of labour courts, industrial tribunals and national tribunals. The appropriate government is empowered under Section 7 and 7A to constitute one or more labour courts and industrial tribunals with limited jurisdiction, to adjudicate 'industrial disputes', and the Central Government is authorized under Section 7B to constitute the national tribunal. The labour courts, industrial tribunals and national tribunals are *ad hoc* bodies and consist of a single member called presiding officer. The appointment of the tribunal may, however, be for a limited duration.

Appointment of Assessors: There is no provision for the appointment of assessors in labour courts, but in case of industrial tribunal or national tribunal, the appropriate government may appoint two persons as assessors to advise the tribunal in the proceedings before it. The assessors are supposed to be experts having special knowledge of the matter under consideration and can be appointed only when the dispute involves technical matters and requires expert knowledge for its settlement. This provision has hardly been used and for all practical purposes, this is defunct.

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Jurisdiction Powers

Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen: Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

http://labour.up.nic.in/labourcommissioner/theindustrialact47.htm#labourcourt

Composition and Appointment

Labour Courts

1. The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.
2. A Labour Court shall consist of one person only to be appointed by the appropriate Government.
3. A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless—
   (a) He is, or has been, a Judge of a High Court; or
   (b) He has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
   (c) He has held any judicial office in India for not less than seven years; or
   (d) He has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

Tribunals

1. The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.
2. A Tribunal shall consist of one person only to be appointed by the appropriate Government.
3. A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:
   (a) He is, or has been, a Judge of a High Court; or
   (b) He has, for a period of not less than three-years, been a District Judge or an Additional District Judge;

4. The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

National Tribunals

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1. The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.
2. A National Tribunal shall consist of one person only to be appointed by the Central Government.
3. A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a Judge of a High Court.
4. The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

C. Appointment, Qualifications and Disqualifications of Presiding Officer of Labour Court, Tribunal and National Tribunal

Industrial peace, prosperity and progress depend upon the efficiency of the labour judiciary. The labour judiciary is, thus the centre of the system of industrial adjudication in India. These appointments of the presiding officers of the labour judiciary are made by the appropriate Central Government. But at the same time, in a large number of industries, state is one of the parties taking the part as the employer. In this context, the method of appointment of the labour judiciary assumes great significance. It is absolutely necessary that the labour judges should be highly qualified, experienced, independent and committed to the Constitution of India. In other words, labour judiciary should be independent of the executive government as is the case of the judiciary under the Constitution. It is, therefore, desirable that the labour judiciary must be taken out of the control of the executive government.

The Supreme Court in the *State of Maharashtra* vs *Labour Law Practitioner's Association and Others* considered the relevant provisions of the Industrial Disputes Act and the Bombay Industrial Relations Act and came to the conclusion that the labour court judges and judges of the industrial court belong to 'Judicial Service', as that expression is understood in Charter VI of the Constitution of India. According to the Court, the expression 'District Judge' covers a judge of any principal civil court of original jurisdiction and includes the hierarchy of specialized civil courts, such as labour courts and industrial courts. The term 'Courts' will cover all tribunals, which are basically courts performing judicial functions, giving judgement, which are binding. They are exercising sovereign judicial power transferred to them by the state. Men, who could be described as 'independent' and having sufficient judicial experience, must alone according to their lordships, be selected as labour court judges. The court accordingly held that persons presiding over industrial and labour courts constitute a judicial service and their recruitment should be in accordance with Article 234 of the Constitution.

In case of labour courts, there is a wider range of alternatives in the qualifications for appointment. They are as follows: (*a*) he is, or has been, a judge of a high court; or (*b*) he has, for a period of not less than 3 years, been a district judge or an additional district judge; or (*c*) he has held any judicial office in India for not less than 7 years; (*d*) he has been the presiding officer of a labour court constituted under any Provincial Act

or State Act for not less than 5 years. (*e*) He is or has been a deputy chief labour commissioner (central) or joint commissioner of the state labour department, having a degree in law and at least 7 years' experience in the labour department including 3 years of experience as conciliation officer:

Provided that no such deputy chief labour commissioner of joint labour commissioner shall be appointed unless he resigns from the service of the Central Government or state government, as the case may be, before being appointed as the presiding officer; or he is an officer of Indian Legal Service in Grade III with 3 years of experience in the grade.

Qualifications for appointment to tribunals are the same as prescribed for labour courts in Section 7, clauses (a), (b), (f) and (g). Thus, the range of alternatives is narrower.

For national tribunals, the range of alternative qualifications for appointment is further narrower, namely, he is or has been a judge of a high court.

The requirements of Section 7C are applicable to all the three bodies, *i.e.*, labour courts, tribunals and national tribunals. Section 7C lays down disqualifications in regard to age and independence of persons appointed. It requires that the person to be appointed must be (*a*) an independent person and (*b*) less than 65 years of age.

In actual practice it is, however, found that insistence is made on judicial qualification in the appointment of presiding officer of labour courts and industrial tribunals. Further, generally retired personnel are chosen to serve as a presiding officer. It is submitted that the appointment should be made in consultation with the Chief Justice of the high court. This will ensure the appointment of independent persons by the appropriate government as presiding officer of labour courts and industrial tribunals. Further, the appointment should be made on a permanent basis with promotional avenues open to them.

D. Jurisdiction of Labour Court, Tribunal and National Tribunal

The labour court has jurisdiction to adjudicate industrial disputes which may be referred to it under Section 10 of the Act by the appropriate government and which relates to: (1) The propriety or legality of an order passed by an employer under the standing orders; (2) the application and interpretation of standing order; (3) discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed; (4) withdrawal of any customary concession or privilege; (5) illegality or otherwise of strike or lockout; and (6) all matters other than those specified in the Third Schedule.

The industrial tribunals have jurisdiction to adjudicate industrial disputes referred under Section 10 which relates to: (1) wages, including the period and mode of payment; (2) compensatory and other allowances; (3) hours of work and rest intervals; (4) leave with wages and holidays; (5) bonus, profit sharing, provident fund and gratuity; (6) shift working otherwise than in accordance with standing orders; (7) classification by grades; (8) rules of discipline; (9) rationalization; (10) retrenchment of workmen and closure of establishment; and (11) any other matter that may be prescribed.

The national tribunals have jurisdiction to adjudicate industrial disputes which in the opinion of the Central Government involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in or affected by such disputes and which may be referred to them by Central Government.

Under the Industrial Disputes Act, 1947, the labour court, tribunal and national tribunal can acquire jurisdiction only when there is existence or apprehension of an industrial dispute and a reference of such dispute has been made by the appropriate

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government under Section 10. The labour courts, tribunals and national tribunals are also required to deal with complaints. Labour courts are also required to decide the question of amount of money due under Section 33 C (2) of the Industrial Disputes Act, 1947.

E. Powers and Functions of Labour Court, Tribunal and National Tribunal

The labour court, tribunal and national tribunal have a statutory duty to hold the proceedings expeditiously and, as soon as it is practicable on the conclusion thereof submit its award to the appropriate government. They are empowered, subject to the rules in this behalf, to follow such procedure as they may think fit. The rules provide for place and time of hearing of the industrial dispute by adjudication or arbitration authorities as the case may be.

F. No Power to Pass 'No Dispute' Award

The Central Government in exercise of powers conferred by Section 38 of the Industrial Disputes Act, 1947 has framed the rules, namely 'The Industrial Disputes (Central) Rules, 1957'. Rule 10B(9) of the aforesaid Rules which is as under, prescribes that the labour court may proceed with the reference *ex-parte* in absence of any party and decide the reference:

10B. Proceeding before the labour court, tribunal or national tribunal. (1) …

(9) In case any party defaults or fails to appear at any stage, the labour court, tribunal or national tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.

Provided that the labour court, tribunal or national tribunal, as the case may be, shall submit its award to the Central Government within one month from the date of arguments, oral hearing or within the period mentioned in the order of reference, whichever is earlier.

From the aforesaid Rule, it is clear that it is obligatory on the part of the labour court to answer the reference after considering merits of the case. However, in *Satendra Singh Gujar* vs *Bank of India*, the labour court had no power to pass an award as 'no dispute award' on the ground that one party did not appear before the labour court. Further, the labour court committed an error of law in rejecting the application for restoration of dispute filed by the petitioner. Earlier, the division bench of the Madhya Pradesh High Court in the case of *Sital* vs *Central Government Industrial Tribunal-cum-Labour Court, Jabalpur* held that the labour court has no power to dismiss the reference in defaults. The Court observed:

We think that the work 'determination' used in the definition of 'award' under Section 2(b) implies adjudication upon relevant material by the labour court or the tribunal. So, it has been held that once a reference has been made under Section 10(1) of the Act, it cannot be rescinded or cancelled: *State of Bihar* vs *Ganguli.* It cannot also be dismissed for default because that would amount to putting an end to the proceedings otherwise than by adjudicating upon the dispute.

G. Power to Set Aside an Ex-parte Award

Even though there is no provision either in the Industrial Disputes Act to empower the labour tribunals to set aside an *ex-parte* award, the Supreme Court through the process

of judicial legislation has invested in them such powers. However, industrial tribunal becomes *functus officio* if the application is not moved within 30 days of the publication of the award in the official gazette. Thereafter, the interim award stands vacated.

H. Power to Cancel Order of Promotion and Grant ad hoc Increase in Wages

The tribunal may also cancel the promotion order passed by the management where it finds that persons were superseded on account of *mala fide* victimization. In this regard, the tribunal may also frame rules of promotion in consultation with the management and union and direct the management to give promotions or upgradation in accordance with those norms/rules. Industrial tribunal while deciding upon the wage scales of the employees of an establishment has full liberty to propose *ad hoc* increase of salaries as a part of the revision of wages. Further, figment into the revised scale is a part of revision of pay scales.

I. Power under Section 36A

The tribunal, however, under Section 36A has no power to determine the question about propriety, correctness or validity of any provision or the powers conferred under any statute. Further, the tribunal has no power to amend or modify its award after it became final except to correct clerical mistakes and the powers under Section 11(3) could be exercised by the tribunal after the proceedings pending before it have terminated.

J. Power to Grant interim Relief

The Supreme Court in *Hotel Imperial* vs *Chief Commissioner* ruled that interim relief may be granted (*i*) if there is a *prima facie* case, (*ii*) tribunal interference is necessary to protect a party from irreparable loss or injury, and (*iii*) the balance and convenience. The Bombay High Court in *Bharat Petroleum Corporation Ltd* vs *R J Tiwari* held that even full wages may be granted by way of interim relief.

But 'where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his *ipse dixit* or based on conjectures and surmises, the inquiry suffers from the additional infinity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.'

K. Powers of Tribunal under Section 11A

The labour court, tribunal, national tribunal and voluntary arbitrator are also empowered to go into the question of adequacy of the punishment. Under Section 11A, they may direct 'reinstatement of the workman on such terms and conditions, if any, as (they) think fit or give such relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case require.' The purpose for which Section 11A has been enacted is to enlarge the powers of the labour court, tribunal or national tribunal, as the case may be, so that in appropriate cases, even if they find that the inquiry had been held properly and the charge is borne out by the evidence, they may still give some relief to the worker if they find the punishment to be disproportionate to the charges held proved.

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- **Jurisdiction to Record Evidence under Section 11A**

  (i) It is exercisable even in cases where opportunity of hearing was given and principles of natural justice complied with before passing the order of dismissal but the appellate authority find it necessary to record evidence in order to draw its own conclusion as to whether the person dismissed was or was not guilty of the charges framed against him.

  (ii) Where the employer had filed an application to produce evidences in support of the charges and the appellate authority without disposing of that application set aside the order of dismissal merely on the omission to hold domestic inquiry, the appellate authority committed a grave error.

  (iii) Omission to afford opportunity during domestic inquiry is curable by adducing evidence before the appellate authority.

- **Scope of Consideration of Labour Court/Tribunal under Section 11A**

  (i) Where domestic inquiry conducted by management is found defective.

  (ii) Labour court may grant opportunity to the management and workmen to adduce evidence.

  (iii) On evidence, if labour court agrees with the management's conclusion that misconduct was proved, it may declare dismissal order justified.

- **Production of Additional Evidence**

The Supreme Court in *Bharat Forge Company Ltd* vs *A B Zodge* held that under Section 11A of the Industrial Disputes Act, 1947, employer is entitled to adduce evidence for the first time before the tribunal even if the employer had not conducted any inquiry or the inquiry conducted by him is found to be perverse. A domestic inquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated inquiry does not stand on a better footing than a disciplinary action with no inquiry. The right of the employer to adduce evidence in both the situations is well recognized.

- **When Can the Labour Court Permit Parties to Adduce Evidence**

In *Rajendra Jha* vs *Labour Court*, the Supreme Court held that even when the application for permission to adduce further evidence is not made in the pleading, labour court is empowered to permit the management to adduce evidence before it and to prove the misconduct. However, the court has observed that the request of the employer to adduce evidence should be made at the earliest opportunity or delay be explained. However, such request must be made before the closure of the proceedings.

- **No Obligation of Asking the Parties to Adduce Evidence**

The tribunal is neither under a duty to give opportunity to the parties to adduce evidence nor under an obligation to acquaint parties before it for their rights to adduce evidence under Section 11A.

- **Recommendation of the (Second) National Commission on Labour**

The Second National Commission on Labour has recommended that Section 11A of the ID Act 1947 may be retained. However, the law may be amended to the effect that

where a worker has been dismissed or removed from service after a proper and fair inquiry on charges of violence, sabotage, theft and/or assault, and if the labour court comes to the conclusion that the grave charges have been proved, then the court will not have the power to order reinstatement of the delinquent worker.

- **Powers of the High Court under Article 226**

The High Court, in exercise of writ jurisdiction, can exercise similar powers and discretion as exercised by labour court under Section 11A.

L. Powers of the Labour Court to Review the Award

The above power is restricted only to: (*i*) typographical mistake or (*ii*) accidental slip or omission.

M. Discharge or Dismissal of a Workman and the Date of its Effect

When domestic inquiry is found defective, it relates back to the date on which the management passed the order and not from the date of judgement.

N. Disposal of Preliminary or Technical Objections

It has been held in a catena of cases that all issues, preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interlocutory stage.

O. Discretion of Labour Court to Deny Relief to Workmen when the Claim was Made after a Long Time

In *Haryana State Co-operative Land Development Bank* vs *Neelam*, a typist was appointed on *ad hoc* basis in a bank. Her services were finally terminated after 17 months of service. She joined some other establishment and continued to work there. While this was so, some of the employees who were placed and terminated similarly as the said typist approached the labour court and got certain relief. After more than 7 years, the said typist also raised an industrial dispute. On reference, the labour court refused to grant any relief, *inter alia*, on the ground that there was no justification for such delay. Thereafter, the appellant filed an appeal before the Supreme Court. The Court upheld the award of labour court by observing that: (*i*) The Industrial Disputes Act does not contain any provision which mandates the industrial court to grant relief in every case to the workman. The extent to which a relief can be moulded will inevitably depend upon the facts and circumstances obtaining in each case. In the absence of any express provision contained in the statute in this behalf, it is not for the Court to lay down a law which will have a universal application, (*ii*) It is right that the courts and tribunals having preliminary jurisdiction have discretionary power to grant appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct, a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance *sub silentio*. The employee did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein. (*iii*) The conduct of the employee in approaching the labour court after more than 7 years is relevant

factor for refusing to grant any relief to her. Such a consideration on the part of the labour court cannot be said to be an irrelevant one.

P. Other Powers of Tribunals and Execution of Award

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Every labour court, tribunal and national tribunal enjoys the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit. It can enforce the attendance of any person and examine him on oath; compel the production of documents and material objects; issue commission for examination of witness, make discovery and inspection grant adjournment; and receive evidence on affidavit. Further, every award made, order issued or settlement arrived at by or before labour court or tribunal or national tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a civil court under order 21 of the Code of Civil Procedure, 1908. Moreover, the labour court or tribunal or national tribunal, as the case may be, is required to transmit any award, order or settlement to a civil court having jurisdiction and such civil court shall execute the award, order or settlement as if it were a decree passed by it.

The tribunal is required to abide by the provisions of the Indian Evidence Act in matters relating to the proof of a document and the claim for privilege. The labour court or the industrial tribunal while adjudicating industrial dispute referred to it by appropriate government, may summon a party other than employer and employee whose presence would help the concerned court in adjudication of dispute finally, effectively and completely. Every inquiry by a labour court, tribunal or national tribunal are judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973. But the legal practitioners are allowed to represent the parties before the adjudication authorities with the consent of the other parties to the proceedings and with the permission of the authorities. The proceedings are normally held in public, but the labour court, tribunal or national tribunal as the case may be can, at any stage, direct that any witness be examined or proceedings be held in camera. These provisions reveal that the tribunal in discharging functions is very near to those of a court, although, it is not a court in the technical sense of the word.

Q. Other Duties of Tribunal

In addition to the above, the labour court, tribunal and national tribunal act in a judicial capacity in settling industrial dispute, the functions and duties of the industrial tribunal are very much like those of a body discharging judicial functions, although it is not a court. The duty of the tribunal was best described by the Supreme Court in *Hindustan Lever Ltd* vs *The Management*. In this case, the Court held that it was the duty of the tribunal 'not to travel beyond the pleadings and is precluded or prohibited from raising to writ if the employer does not question the status of the workmen. It further added that the tribunal cannot *suo motu* raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the Act. In settling the industrial dispute, 'the functions of the tribunal are not confined to administration in accordance with law. It can confer rights and privileges on either parties which it considers reasonable and proper though they may not be within the terms of existing agreement. It is not merely to interpret to give effect to contractual rights or obligations of the parties but it can create new rights or obligations between them which it considers essential for them for keeping industrial peace.'

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R. Filling of Vacancies

Section 8 authorizes the appropriate government to fill vacancies when the presiding officers of labour courts and industrial tribunals cease to be available. If for any reason, a vacancy occurs, it is open to the government to fill the same whether the vacancy is permanent or temporary. In case of a national industrial tribunal, only the Central Government is empowered to fill the vacancy by appointing any person in accordance with the provisions of the Act. The high court cannot examine whether the services of a tribunal have ceased to be available. It is for the appropriate government to say so. Section 8 does not apply to such tribunals which are constituted for a limited period and whose proceedings could not be continued by the new tribunal from the stage at which the same was left by the previous tribunal.

S. Response of the National Commission on Labour

The [First] National Commission on Labour set up by the Government of India in 1966 found the working of the industrial relations machinery under the Industrial Disputes Act, 1947 unsatisfactory. It, therefore, emphasized the need for 'a formal arrangement which is independent in character, expeditious in its functioning and which is equipped to build up the necessary expertise.' The Commission, therefore, recommended: (*i*) the setting up of a National Industrial Relations Commission by the Central Government to deal with disputes which involve questions of national importance or which are likely to affect establishments situated in more than one state. (*ii*) The setting up of an Industrial Relations Commission at the state level for settlement of disputes for which the state government is the appropriate government. (*iii*) The proposed national and state industrial relations commissions would be presided over by a person having prescribed judicial qualifications and experience appointed by the Union and state government respectively in consultation with the Chief Justice of India or Chief Justice of the high court concerned as the case may be, and the Union Public Service Commission or the State Public Service Commission as the case may be. The Commission shall also constitute two non-judicial members, who will be officers in the field of industry, labour or management. The main functions of the proposed machinery are three-fold: (*i*) adjudication of industrial disputes; (*ii*) conciliation; and (*iii*) certification of unions as representative unions. However, no step has yet been taken to implement these recommendations. This line of approach was also reiterated by the Second National Commission on Labour with some modification.

T. Court Fee

The [Second] National Commission on Labour has recommended levy of a token court fee in respect of all matters coming up before labour courts and labour relations commissions.

U. Representation of Parties

Section 36 of the Industrial Disputes Act deals with the representation of a party to a dispute. Under sub-section 1 of Section 36, a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by (*a*) any member of the executive or other office-bearers of a registered trade union of which he is a member; or (*b*) any member of the executive or other office-bearers of a federation of trade unions to which the trade union referred to in clause (a) is affiliated; (*c*) where the worker is not a member of any trade union, by any member of the executive or other office bearers of any trade union connected with, or by any other workmen employed in the industry in which the worker is employed and authorized in the prescribed manner.

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Similarly, under Section 36(2), an employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by (*a*) an officer of an association of employers of which he is a member; (*b*) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated; (*c*) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged and authorized in such manner as may be prescribed.

Section 36 (3), however, imposes a total ban on representation of a party to the dispute by a legal practitioner in any conciliation proceeding or in any proceedings before a court of inquiry.

Section 36 (4) permits a party to dispute to be represented by a legal practitioner with the prior consent of the other party to the proceeding and with the leave of the labour court, tribunal or national tribunal as the case may be. Thus, a party to a dispute may be represented by a lawyer upon fulfilment of two conditions *viz.* (1) consent of the other party, (2) leave of the tribunal. These two conditions are mandatory in nature. Consent of the other party is a requirement which cannot be given a go by. Question of any inference in regard to the consent does not and cannot arise. The requirement is to be complied with in order to give effect to the provisions under Section 36 (4). However, the high courts are divided on the issue whether the consent should be express or implied. While the Calcutta High Court held that the consent must be express and not implied, the Kerala High Court held that the consent may even be implied. Thus, in the latter case when *Vakulathnama* was accepted by the Court on the first posting date and no objection was raised by the opposite party, there was implied consent of the opposite party and leave of the Court.

In *Laxmi Engineering Industries* vs *State of Rajasthan and Others*, the validity of section 36 of the Industrial Disputes Act, 1947 was challenged. It was contended that (*i*) Section 36 which provides that a lawyer cannot appear before the labour court/ industrial tribunal except with the consent of the opposite party and the leave of the labour court/industrial tribunal was violative of Article 14 of the Constitution of India and the principles of natural justice and (*ii*) Section 36 ran against Section 14(1)(*b*) of the Bar Council Act. The Rajasthan High Court answered the questions in the negative.

In *Prasar Bharati Broadcasting Corporation of India* vs *Shri Suraj Pal Sharma*, the workman had not objected earlier to the appearance of a legal practitioner on behalf of the management. On these facts, the Delhi High Court held that since the workman had not at any time given his consent under Section 36(4), the failure of the workman to object to the representation of the management by the additional central government standing counsel at early stages cannot preclude the workman from raising the objection at later stage.

In *Britannia Engineering Products & Services Ltd* vs *Second Labour Court & Ors.*, the company, after receiving notices of adjudication proceedings appeared before the labour court and filed letters of authority authorizing G S Sengupta, advocate along with A Dasgupta, manager (personnel and administration) of the company to represent the company. At no stage of the proceedings the workmen raised any objection disputing such representation by the company through the said advocate. Later, the company obtained no objections from their erstwhile advocate and filed fresh authorization in favour of D K Ghosh. At that stage, the workmen raised an objection and refused to give consent for representation of the company through this advocate. The labour court,

accordingly, refused to accept the authorities of representation by the present advocate of the company. Aggrieved by this order, the company filed a writ petition before the Calcutta High Court. The court observed that there was implied consent of workmen for representation of the company through its advocate. Once consent is given, it is not open to the workmen to withdraw such consent nor can the court or tribunal recall the lease granted to a party. Thus, at the time of change of the lawyer, a party need not obtain fresh leave nor does it require consent to be obtained from the other party; the choice of the legal practitioner lies with the party concerned and it is not open to the other side to object to change of lawyer.

V. Form of Consent

The consent need not be in a particular manner or in a particular form as there is no form prescribed either under the Act or the Rules. If that be so, the consent of a party which is the basis for the grant of leave to the other party for being represented by a lawyer in a proceeding under the Industrial Disputes Act can be inferred from the surrounding circumstances as also the conduct of the consenting party. Section 36(4) does not insist upon a written consent. Consent once given, cannot be withdrawn or revoked at a later stage because there is no provision in the Industrial Disputes Act enabling such withdrawal or revocation. To be represented in the proceeding by a lawyer would ensure to his benefit till the proceeding is finally disposed of. Thus, if sub-section (1), (2) and (3) of Section 36 foreclose the possibility of judicial discretion being exercised against granting audience to persons mentioned in clauses (a), (b), (c) of sub-sections (1), (2) and (3), sub-section (4) regulates the right of parties to authorize advocates to plead their cause and, thereby without coming in conflict with the provisions of Section 30 of the Advocates Act, sought to keep the arena of labour-management relations free from lawyers.

The scope of the aforesaid section has been delineated by the Supreme Court as well as the high courts. In particular, four issues have arisen: (*i*) Can there be representation by worker himself? (*ii*) Can there be representation of workman by trade unions for the purpose of Section 36? (*iii*) Whether an employee's right to be represented by any office-bearer in sub-section (1) is qualified or restricted on the ground that such an officer is a legal practitioner? (*iv*) Can Indian Chamber of Commerce be entitled to appear on behalf of employer?

Issue no 1. In *Ameteep Machine Tools* vs *Labour Court*, the Supreme Court decided the first issue. The Court ruled that Section 36 does not impose any obligation upon a workman who is a party to the dispute to be represented by someone else. He may participate in the conciliation proceedings and if a settlement is arrived at, then it is a valid settlement and binding on the parties even if the workmen who were parties to the dispute presumably participated in the proceedings and were not represented by any persons mentioned in Section 36 (1).

Issue no 2. *Modella Textile Workers Union* vs *Union of India* decided the second issue, namely, whether the trade unions have *locus standi* to file writ petition to challenge the government's order refusing to make a reference to adjudication pertaining to termination of employees. The Punjab and Haryana High Court held that not only a workman who is a member of a trade union but even in the absence of his membership of any trade union, a workman is entitled to obtain assistance from any trade union connected with the industry and observed:

> Thus, the trade union or any member of its executive or other office bearer is entitled to canvass the cause of the workman concerned for the purposes of pursuing conciliation proceedings, issuing a demand notice and making a demand

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> on the government to refer a dispute to the industrial tribunal or the labour court. If in pursuance of a demand notice, a dispute is referred to the tribunal or the court, as the case may be, under the Act the trade union concerned is also empowered to represent the case of the workman on whose behalf demand notice had been issued to the government by the union before the tribunal. In these circumstances, if a trade union has been given the power by the legislature to represent a workman and espouse his cause before the tribunal or the court, there is no reason to deprive such a union of the right to challenge the order of the government declining a reference by way of writ petition under Art. 226 of the Constitution.

The Court added:

The power of representation of the cause of another person is intended to be given its full scope at all stages. Thus, it cannot be held that the trade union, the present petitioner, was not interested in the industrial dispute which is the subject-matter of adjudication in this writ petition and was not aggrieved by the decision of the government declining to make a reference. In view of the wide scope of Section 36 of the Act, the trade union petitioner was widely interested in the dispute and there is no reason or warrant to deprive it of the *locus standi* to file the writ petition under Art. 226.

From the aforesaid decision, it is evident that courts are inclined to permit the workman himself to represent his case in any proceedings under the Industrial Disputes Act or may be represented through trade unions (even if he is not a member of such a trade union) even in writ proceedings.

Issue no. 3. The third issue was answered in the negative by the Supreme Court in *Paradip Port Trust* vs *Their Workmen*. Observed Justice Goswami:

> If however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay (roll) and under their control and is not a practising advocate, the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly, if a legal practitioner is an officer of an association of employers or of a federation of such association, there is nothing in Section 36(4) to prevent him from appearing before the tribunal under the provisions of Section 36 (2) of the Act. Again an office-bearer of the trade union or a member of its executive even though he is a legal practitioner will be entitled to represent the workman before the tribunal under Section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the associationin the case of an employer and in the capacity of an office-bearer of the union, in the case of workmen and not in the capacity of a legal practitioner.

He added:

> It must be made clear that there is no scope for inquiry by the tribunal into the motive for appointment of such legal practitioner as office-bearers of the trade unions or as officers of the employers' association.

The Court accordingly overruled the full bench decision of the labour appellate tribunal in *Hosiery Workers' Union* vs *J K Hosiery Factory*, *Kanpur* and Rajasthan High Court in *Duduwala and Co.* vs *LT.* and affirmed the ruling of Calcutta High Court in *Hall & Anderson Ltd* vs *S K Neogi* and Bombay High Court in *K K Khadilkar* vs *Indian Hume Pipe Co. Ltd.*

Quite apart from the aforesaid principles, it may be observed that neither the Industrial Disputes Act, 1947 nor any of the rules made thereunder provide for the form

or the manner in which the consent of the other party is to be given. Any leave granted by a court or a tribunal should ordinarily be in writing. Likewise, in ordinary cases, the consent of the other party should also be given in writing. This does not, however, mean that implied consent is negatived by Section 36 (4).

Issue no. 4. The last issue was decided in the negative by the Madras High Court in *R M Duraiswamy* vs *Labour Court*. In this case, the court held that employers can be represented by an (*i*) executive or office-bearers of the trade union, (*ii*) association of employers or an executive of association of employers, (*iii*) officers like deputy manager (law), assistant manager (law), who are qualified law graduates. But they cannot be represented by the Indian Chamber of Commerce.

6.6 SUMMING UP

- The need for joint management consultation was emphasized in the Government Industrial Policy Resolution, 1956.
- The scheme of joint management councils was evolved on voluntary basis to promote industrial peace and harmony between labour and management, ensure closer association between workers and management, increase production and share the responsibilities of management.
- Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision maker— he is merely a person who helps the disputants through persuasion to amicably adjust their claims.
- The statistics of the working of the conciliation machinery reveal that the conciliation machinery at central level is extremely high in many states. It has, however, made no remarkable success in several states.
- The Industrial Disputes Act 1947, draws a distinction between public utility services and non-public utility services. Thus, while in a public utility service, the conciliation officer is bound to hold conciliation, he is not bound to do so in a non-public utility service.
- The powers of the conciliation officer are not adjudicatory but are intended to promote a settlement of dispute. However, a special responsibility has been vested in conciliation officer to see that the settlement arrived at is fair and reasonable and he should then give his concurrence.
- A board to which a dispute is referred must investigate the dispute and all matters affecting the merits and the right settlement thereof and do all things for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute without delay.
- After having discussed the proceedings in conciliation, it is necessary to examine the settlement in conciliation. The settlement in conciliation requires consideration of several aspects such as concept and nature of settlement, form of settlement, publication of settlement, period of operation of settlement, persons on whom settlement is binding and enforceability of settlement.
- Voluntary arbitration is one of the effective modes of settlement of an industrial dispute; it supplements collective bargaining. When negotiation fails, arbitration

Check Your Progress

8. Which is the final stage in the settlement of industrial disputes?
9. State the only limitation of industrial tribunal.
10. Mention the three-tier system of industrial adjudication.
11. Mention the two conditions which a party to dispute must fulfill in order to be represented by a lawyer.

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may prove to be a satisfactory and most enlightened method or resolving an industrial dispute. It provides 'a new focus for set-up animosities.

- The final stage in the settlement of industrial disputes is compulsory arbitration which envisages governmental reference to statutory bodies such as labour court, industrial tribunal or national tribunal.
- The system of adjudication has been criticized for its unfavourable effects on the trade union movement. Further, undue dependence on compulsory adjudication has deprived the trade unions of the incentive to organize themselves on a strong and efficient basis and has rendered the unions mere petitioning and litigant organizations arguing their cases before tribunals, etc.
- The labour court, tribunal and national tribunal act in a judicial capacity in settling industrial dispute, the functions and duties of the industrial tribunal are very much like those of a body discharging judicial functions, although it is not a court.

6.7 KEY TERMS

- **Conciliation**: Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims.
- **Voluntary arbitration**: Voluntary arbitration is one of the effective modes of settlement of an industrial dispute; it supplements collective bargaining.

6.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Tripartite Committee on Labour Management Cooperation was appointed in November, 1960, to give advice and guidance on all matters pertaining to joint management councils, to collect and disseminate information relating thereto, and to explore possibilities of extending the scheme to new units.
2. The scheme of joint management councils was evolved on voluntary basis to promote industrial peace and harmony between labour and management, ensure closer association between workers and management, increase production and share the responsibilities of management.
3. Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision maker— he is merely a person who helps the disputants through persuasion to amicably adjust their claims.
4. The Board of Conciliation is constituted on an *ad hoc* basis. It consists of an independent person as chairman and one or two nominees respectively of employers and workmen as members. The chairman must be an independent person. A quorum is also provided for conducting the proceedings.
5. One of the causes of failure of conciliation machinery is lack of proper personnel in handling the dispute.

6. Voluntary arbitration is one of the effective modes of settlement of an industrial dispute; it supplements collective bargaining. When negotiation fails, arbitration may prove to be a satisfactory and most enlightened method or resolving an industrial dispute.
7. It is exceedingly difficult to maintain a distinction between statutory and private arbitrator on the basis of nomenclature because both are products of statute: the former is made under the Industrial Disputes Act, 1947 while the latter under the Arbitration Act, 1940.
8. The final stage in the settlement of industrial disputes is compulsory arbitration which envisages governmental reference to statutory bodies such as labour court, industrial tribunal or national tribunal.
9. The only limitation of industrial limitation on its power is to bring about harmonious relationship between the employer and the workmen.
10. The three-tier system of industrial adjudication is —the labour court, tribunal and national tribunal.
11. A party to a dispute may be represented by a lawyer upon fulfilment of two conditions *viz.* (1) consent of the other party, (2) leave of the tribunal. These two conditions are mandatory in nature.

6.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. 'The representation of employees in joint councils requires consideration of two issues'. Mention the two issues.
2. Mention the factors responsible for the failure of conciliation machinery.
3. Write a short note on compulsory conciliation.
4. Why is voluntary arbitration considered to be important?
5. Write a short note on the criticism that has been levelled against the system of adjudication.

Long-Answer Questions

1. Discuss the Joint Management Council under the three heads — a) Composition of the council b) Powers and functions of the council c) Working of the Joint Management Council.
2. Describe the functioning of the conciliation authorities under the following heads:
   (a) Constitution
   (b) Qualifications and experience
   (c) Filling of vacancies
   (d) Jurisdiction
   (e) Powers

(f) Duties of conciliation of authorities
(g) Duties of board of conciliation
(h) Conciliation proceedings.

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3. Explain the processes involved in reference of dispute to voluntary labour arbitrator.
4. Discuss the functioning of the Labour Court, Tribunal and National Tribunal.

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UNIT 7 LABOUR WELFARE AND SOCIAL SECURITY

NOTES

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7.0 INTRODUCTION

Labour welfare holds a very important position in the industrial advancement and economy of the country. It is a vital aspect of industrial relations; the additional component, providing satisfaction to the employee which may even surpass the satisfaction given by a good wage. While industrialization and mechanization progressed, it gained extra importance. An enthusiastic and satisfied workforce is an advantage for the industrial success of any country. Labour welfare can be suitably defined as the maintenance task of employees in such a way that it is aimed particularly at the safeguarding of employee health and attitudes.

To present it in a different way, it contributes to the upholding of employee self-esteem. The welfare services in an industry is intended to make the living and working environment of workers and their families better, because the workers well-being cannot be separated from that of his kith and kin.

Although expensive, it has been proved to add to the effectiveness of production. On the basis of their priorities, the extent of approach and inclination of all employers towards labour welfare is different. The reason for this is that the government is not sure that the management of every company is broad-minded and will provide the fundamental developmental measures that introduce periodic statutory legislation to give rise to some measure of consistency in the fundamental amenities available to industrial workers.

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Obviously, there is some creation and stimulation in the maintenance function just as there is some maintenance in all other operative personnel functions. However, the main stress within employee service programme has been on maintaining an employee's favourable attitude towards his performance and work environment.

Social benefits of labour welfare are as important as the economic ones. The availability of canteen, where healthy and hygienic food is available at subsidized rates, contributes to the health of the employees, recreation tends to diminish the prevalence of vices; medical facilities and maternity benefits improve the health of workers and cause a fall the rates of general, maternal and infant deaths and similarly, educational facilities widen their stance and make mental health better.

7.1 OBJECTIVES

After going through this unit, you will be able to:

- Define the concept of labour welfare
- Describe the salient features of the Workmen's Compensation Act, 1923
- Describe the salient features of the Maternity Benefit Act, 1963
- List the various characteristics of the Employees' State Insurance Act, 1948
- Interpret the concept of social security and the objectives of Worker's Education
- Give examples of unfair labour practices and related legislations

7.2 LABOUR WELFARE: CONCEPT AND SCOPE

Labour welfare is a dynamic concept; it varies and is bound to vary from time to time and from place to place. The growth and development of national economy will profitably affect the living standards and the welfare amenities of the people. In order to appreciate fully the nature and concept of labour welfare, it is necessary to examine the meaning given to it from time to time. According to the International Labour Organization (ILO), 'labour welfare' means:

> Such services, facilities and amenities as adequate canteens, rest and recreation facilities, arrangements for travel to and from work and for the accommodation of workers employed at a distance from their houses, and such other services, amenities and facilities as contribute to improve the conditions under which the workers are employed.

In 1953, the Governing Body of the ILO suggested that it was essential to define the scope of labour welfare in view of the fact that 'it was a very wide subject, covered a very broad field and was not limited to any one industry or occupation'. Subsequently, in 1956, the International Labour Conference extended the scope of labour welfare to include, inter alia:

(a) feeding facilities in or near the undertaking;

(b) rest and recreation facilities in or near the undertaking (excluding holiday facilities);

(c) transportation facilities to and from work where ordinary public transport is inadequate or impracticable.

In India the concept and scope of labour welfare has also undergone considerable change. In the pre-1947 period, the labour welfare activities included:

> anything done for the intellectual, physical, moral and economic betterment of the workers, whether by employers, by government or by other agencies, over and above what is laid down by law or what is normally expected as part of the contractual benefits for which the workers may have bargained.

Since then the scope and coverage of labour welfare has been widened. The Committee on Labour Welfare observed that labour welfare includes:

> such services, facilities and amenities as adequate canteens, rest and recreation facilities, sanitary and medical facilities, arrangements for travel to and from work and for the accommodation of workers employed at a distance from their homes, and such other services, amenities and facilities including social security measures/as contribute to improve the conditions under which workers are employed.

Thus, we see that labour welfare is a changing concept and includes all such amenities and facilities which improve the conditions of labour.

Legislative Response

Broadly speaking, the legislation relating to labour welfare may be divided into two categories: (i) welfare amenities within the plant or establishment, and (ii) welfare amenities outside the plant or establishment

Labour Welfare Legislation within the Plant or Establishment

(i) **Drinking Water:** The Factories Act, 1948, the Mines Act, 1952, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Plantations Labour Act, 1951 and the Contract Labour (Regulation and Abolition) Act, 1970 provide that effective arrangements should be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water. In addition to the above provisions Section 18 of the Factories Act, 1948 provides:

(2) All such points shall be legibly marked 'drinking water' in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six metres of any washing place, urinal, latrine, spitoon, open drain carrying sullage or effluents or any other source of contamination unless a shorter distance is approved in writing by the Chief Inspector.

(3) In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof.

(4) In respect of all factories or any class or description of factories the state government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

But, unfortunately, the statutory provisions relating to drinking water are inadequate. First, there are no provisions in the Plantations Labour Act, the Beedi and Cigar Workers (Conditions of Employment) Act, and the Contract Labour (Regulation and Abolition) Act like sub-sections (2), (3) and (4) of Section 18 of the Factories Act. These Acts should therefore be amended to contain provisions similar to

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those of the Factories Act. Second, the Mines Act, the Plantation Labour Act, and the Contract Labour (Regulation and Abolition) Act, do not provide for cold drinking water during hot weather. In order to rectify this shortcoming, these Acts should also be amended to contain a provision similar to sub-section (3) of Section 18 of the Factories Act. Third, the Factories Act, the Mines Act, the Plantation Labour Act, the Beedi and Cigar Workers (Conditions of Employment) Act, and the Contract Labour (Regulation and Abolition) Act do not provide for the source of drinking water. A study of facilities in mines reveals that the source of drinking water is mainly from shallow wells' and testing sometimes for fitness is no guarantee for the purity of drinking water.

A study of the existing facilities of drinking water in plantations also reveals that sometimes the main sources of supply of water are *kutcha* wells and tanks from which water is drawn by workers and the arrangements for disinfection are most unsatisfactory. Further, the earthen pots used for storage are not properly cleaned in some cases; water cups, where provided, are not kept cleaned either.' Under the circumstances, it is suggested that the Acts and the rules relating to labour welfare should be amended in such a way as to meet these deficiencies. Finally, the labour legislation should be strictly implemented.

(ii) **Washing Facilities:** The provision of suitable washing facilities is desirable for workers residing in crowded areas. These workers generally do not have adequate facilities for washing at their homes and the provision for such facilities would add to their comfort.

The Factories Act, the Dock Workers (Safety, Health and Welfare) Scheme, the Beedi and Cigar Workers (Conditions of Employment) Act, and the Contract Labour (Regulation and Abolition) Act, make it obligatory on employers to provide washing facilities. Section 42 of the Factories Act provides that adequate and suitable facilities for washing shall be provided and maintained for the use of the workers. It has been stated that washing facilities have not been properly maintained and have not been kept in good conditions.

(iii) **Facilities for Storing and Drying of Clothings:** The Factories Act provides for the facilities for storing and drying of clothings. Section 43 of the Act provides:

The state government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for drying of wet clothing.

Suitability of accommodation within the meaning of Section 43 includes giving protection from theft. Whether accommodation is suitable or not depends on whether the workers' clothes are exposed to risk of theft.

(iv) **Facilities for Sitting:** It 'is unusual for factory management to provide even seating arrangements to the operators during working hours. It would help to reduce fatigue consideration if high stools are provided, specially for women workers.' To make available such facilities, Section 44 of the Factories Act, inter alia, provides that in:

every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunity for rest which may occur in the course of their work.

(v) **Rest Shelters:** Rest shelter is of great use to the workers. It provides shelter where workers can take rest and refreshment during lunch intervals. The main

object is that the worker may take shelter or rest before the working hours. The necessity of providing for rest rooms and lunch rooms was emphasized by the Royal Commission on Labour in 1931. To give effect to its recommendations, legislative enactments were made providing for rest shelters and lunch rooms for workers employed in factories, mines, docks and motor transport. The Plantations Labour Act, however, does not provide for shelter, rest or lunch rooms. This is partly due to the statutory obligation of providing a canteen where 150 or more workers are employed.

An examination of the statutory provisions of rest shelters in factories, mines and motor transport reveals that there is no uniformity regarding minimum number of employees necessary for providing shelters, rest rooms and lunch rooms. While under the Factories Act, only factories employing 150 or more workers are required to provide shelter or rest rooms and suitable lunch rooms (with provisions for drinking water) where workers can have their meals, the rules framed under the Mines Act make it obligatory on the employer to provide such facilities as soon as the number of workers employed in a mine exceeds 50. However, the Dock Workers (Safety, Health and Welfare) Scheme, the Motor Transport Workers Act, and the Contract Labour (Regulation and Abolition) Act do not place any such limit. In addition, the Factories Act and the Motor Transport Workers Act state:

Shelters or rest rooms or lunch rooms . . . should be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

Further state governments are empowered under Section 47(3) of the Factories Act and Section 9 of the Motor Transport Workers Act to prescribe the standard in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this Section. Further, the State may by notification in the official Gazette, exempt any factory or class or description of factories from the requirements of this Section.

The foregoing provisions require a careful scrutiny. First, the coverage of the Factories Act regarding rest shelters is inadequate. If the object of providing 'shelter and rest room is that the workers may take shelter or rest before the working hours', the scope of Section 47 is too narrow and ignores many workers employed in a large number of factories employing less than 150 workers. Under the circumstances, it is suggested that the state governments should be empowered to extend the provisions of this section even to factories employing less than 150 workers. Second, the coverage of the Mines Act regarding rest shelters is also narrow. The Committee on Labour Welfare recommended that rest shelters should be provided in all mines irrespective of the number of workers employed therein. The type of rest shelters may be worked out according to the conditions obtainable locally. Third, the Plantations Labour Act, 1951 should also provide for shelter or rest room and lunch room for workers employed therein. Fourth, the 'rest shelter should be outside the workplace, preferably near the main gate, where the workers may come before the working hours'. Also, the provisions of rest shelter have not been properly implemented.

(vi) **Creches:** Creches are not uncommon in many countries of the world. The need for establishing creches in industrial establishments in India was emphasized as early as 1931, when the Royal Commission on Labour in India, inter alia, recommended that creches should be provided in every factory employing 250 or more women workers. At the same time, the Commission suggested that provincial

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governments should be empowered to extend the provisions of creches even in establishments employing less than 250 women. To give effect to its recommendations, Section 33 of the Factories Act, 1934 empowered the local governments to make rules so that a factory employing more than 50 women workers should provide suitable room or rooms for the use of the children below six years of such women, and lay down standards for the accommodation and the kind of supervision required for the children. The Factories Act was re-enacted in 1948. Section 48 of this Act and Section 14 of the Beedi and Cigar Workers (Conditions of Employment) Act make it obligatory on the employer to provide and maintain

(i) creches in every factory employing thirty or more women workers;
(ii) adequate accommodation in such rooms;
(iii) sufficient lighting arrangement and ventilation in the room;
(iv) clean and sanitary conditions in the room;
(v) trained nurses or ayas for looking after the children;
(vi) prescribed standards. The state government is empowered to frame rules on following matters:
    (a) location and standards in respect of construction, accommodation, furniture and other equipment of such places,
    (b) provision for facilities for washing and changing clothing of children or any other additional facility for their care,
    (c) provision of free milk or refreshment or both for children,
    (d) facilities for mothers of such children to feed them at suitable interval in the factory.

In practice, it is, however, found that creches have not been provided in many factories employing thirty or more women workers. Under the Contract Labour (Regulation and Abolition) Central Rules, 1971, standards of construction and maintenance of creches have been provided.

Creches however, did not find a place in the statute book regarding plantations till 1951. Section 12 of the Plantations Labour Act, 1951 imposes an obligation on the employer to provide and maintain creches in plantations employing thirty or more women workers or where there are twenty or more children of women workers'. However, sub-section (1-A) of the Section empowers the state government to direct the employer of plantation employing less than fifty women workers or where there are less than twenty children of such women workers to maintain creches. In practice, however, it is found that creches have not been provided in many plantations.

The Mines Act, for the first time, provided for creches in 1952. Under Section 58 of the Act, the Central Government is empowered to make rules concerning the maintenance of the mines. The rules also provide for :

requiring the maintenance in mines wherein any women are employed or were employed on any day of the preceding twelve months, of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women employed in the mine, the number and standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein.

The Mines Creches Rules, 1966 make it obligatory on the owner/agent/Manager of a mine to provide creches for children under six years of age. The rules also provide for the standards of construction and maintenance of creches at the mines.

A perusal of the statutory provisions relating to creches reveals that they are inadequate and unsatisfactory. First, the provisions cover only a small fraction of factories and plantations. The state governments should also be empowered to extend the provisions similar to the Factories Act and the Plantation Labour Act in other establishments employing fifty or more women workers. Second, the rules under the Acts should provide for fans in the creches. Third, an attempt should be made to provide for creches in all establishments employing less than 50 women workers by the government in its welfare schemes. Fourth, nursery and kindergarten facilities should also be provided in creches by the government, local bodies or social organizations. Fifth, if the creches are not well maintained, strict measures should be taken in this regard. Sixth, there is no provision in the Plantations Labour Act and the Mines Act, like the Factories Act, for the supply of free milk or refreshment or both for the children. These Acts should be amended to include such provisions. Seventh, since a large number of women workers are employed in ports, provision should be made for creches in the Dock Workers (Safety, Health and Welfare) Scheme. *Lastly*, the rules made under the Mines and the Plantations Labour Acts should also provide for facilities for mothers of eligible children to feed them at necessary intervals.

(vii) **Canteens:** Canteens for the workers are increasingly recognized all over the world as an essential part of the industrial establishment, providing undeniable benefits from the point of view of health, efficiency and well-being. In India, the need for setting up canteen(s) inside the work place was emphasized by the Royal Commission on Labour and the Labour Investigation Committee. The National Commission on Labour and the Committee on Labour Welfare have also stressed the need for setting up canteens.

There is no uniformity about the minimum number of workers required for providing and maintaining canteen(s) by the occupier under the Factories Act, the Mines Act, the Beedi and Cigar Workers (Conditions of Employment) Act, the Dock Workers (Safety, Health and Welfare) Scheme, the Motor Transport Workers Act, and the Plantations Labour Act. While the Factories Act, the Mines Act, and the Beedi and Cigar Workers (Conditions of Employment) Act make it obligatory on the part of the employer to run a canteen where 250 workers are ordinarily employed. The Plantations Labour Act lays down that in every plantation where 150 workers are ordinarily employed there should be a canteen in the workplace. The Contract Labour (Regulation and Abolition) Act empowers the appropriate Government to frame rules requiring the contractor to provide and maintain one or more canteens for the use of contract labour in every establishment Further, where (in a factory employing less than 250 employees) the management agrees to provide . a canteen to its workers in terms of the provisions of the Factories Act, it is obligatory under the settlement to maintain that canteen even if Section 46 by itself may not be attracted. The Factories Act, the Mines Act, and the Plantation Labour Act also require that (i) the date by which such canteen shall be provided; (ii) the standards in respect of construction, accommodation, furniture and other equipment of the canteen; and (iii) the foodstuff to be served therein and the charges which may be made therefor!

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The provisions relating to canteens raise two problems: (i) Whether a canteen attached to the factory is a 'factory' within the meaning of the Factories Act? (ii) whether an employee of the canteen is a 'worker' within the meaning of the Factories Act? Let us now discuss these problems.

As regards the first issue, conflicting views have been expressed by the British courts. The problem was initially raised under the (English) Factories Act, 1937 in *Luitman* v. *Imperial Chemical Industries Ltd.* In this case a canteen was attached to the factory. It was used for feeding and entertaining the, employees of the factory. The Court held that the canteen formed apart of the factory because the purpose of its running was identical to the process of manufacture carried on in the factory. But a contrary view was expressed in *Thomas* v. *British Thomson-Houston,* wherein it was held that a restaurant attached to the factory for the use of the employees was not a 'factory'.

The second problem also requires careful consideration. If the principle of the first case is applied to this problem, it may be said that the employees engaged in the canteen are 'workers' of the factory because the canteen is a 'factory' within the meaning of the Factories Act But a contrary view was expressed in *Umedsingh Hamrasingh* v. *Marsden Mills Ltd* In this case the cooperative society of workers of a textile mill managed a canteen in the factory premises. The factory was not statutorily obliged to provide a canteen. The management provided utensils and other equipment for the canteen. The society employed certain workers for the purposes. The question arose whether the employees of the canteen were 'workers' of the factory. The High Court of Bombay held that the employees of the canteen were not workers of the textile mill within the meaning of the Factories Act because there was no privity of contract between the society and the mill to engage the employees in the canteen.

The provisions relating to canteen in various legislative enactments also require further analysis. First, the requirement of notifying the establishment takes time. In view of this, it has been suggested that

the need for notifying the establishment should be done away with; it should be obligatory on the employers to provide canteens automatically as soon as the employment exceeds the prescribed limit.Second, workers should be encouraged to run the canteen on a cooperative basis. This may be done in two ways: (i) Employers should give subsidies in the shape of free accommodation, light, furniture and utensils, etc; (ii) Workers should be allowed to make credit purchases from the canteen and such dues should be recovered from their wages. The Payment of Wages Act, 1936 should be accordingly amended, permitting the deduction on account of canteen dues. Third, the statutory provision of providing a canteen should be strictly implemented.

(viii) **Uniform and Protective Clothing:** The Mines Act does not provide for uniforms and protective clothing to workers. The Plantation Labour Act and the Motor Transport Workers Act provide for free issue of uniforms or blankets and other protective materials to certain categories of employees.

(ix) **First-aid Appliances:** In industrial concerns, particularly where mechanical power is used, first-aid equipment and trained personnel are necessary to render primary medical aid. It would help injured persons to alleviate their pains and injuries. In order to meet this necessity, the Plantations Labour Act imposes an obligation on the employers to provide and maintain first-aid boxes. The Mines Act requires

that each first-aid box and cupboard 'shall be kept in the charge' of a separate responsible person who is trained in first-aid treatment and who shall always be readily available during the working hours of the factory'. In addition to this the Factories Act lays down that 'in every factory wherein-more than 500 workers are employed, there shall be provided and maintained an ambulance room of prescribed size containing the prescribed equipment and in charge of such medical and nursing staff as may be prescribed'. Similarly, The Mines Act also prescribes that in every mine wherein more than 150 persons are employed, a first-aid room in charge of prescribed medical and nursing staff should be provided.

In factories, the Report of the Committee on Labour Wefiare reveals that 'prescribed medicines are not generally stocked in the first-aid boxes and these boxes are not kept under the charge of trained persons'.

Labour Welfare Outside the Plant or Establishment

(i) **Recreational Facilities:** Recreation provides an opportunity for mental refreshment to workers who perform strenuous and mechanical jobs in factories, mines, plantations and other industrial establishments. Participation in recreation brings mental and psychological satisfaction in terms of self-expression, fun and frolic, relaxation and refreshment, joy and laughter. The. Committee on Labour Welfare observed:

Music, dance and drama, games and spoils, athletics and callisthenics, painting and carving are the forms of recreation which a worker can use to boost his morale to invigorate his mind and refresh his fatigued body. What is even more important, recreation affords him an opportunity to develop a sense of physical and mental discipline, so essential an ingredient of human relations, and a team spirit which enables him to take the problems of life in their proper stride.

Let us now examine the statutory measures adopted in this regard.

The Plantations Labour Act, 1951 and the Rules framed thereunder make it obligatory on the employers to provide recreational facilities for indoor and outdoor games for workers employed therein and for their children.

The Coal Mines Labour Welfare Fund (Repeal) Act, 1986, the Mica Mines Labour Welfare Fund Act 1946, Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976, the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Labour Welfare Cess Act, 1976 provide for finances for the welfare activities in major mineral mines like coal, mica, iron, manganese and chrome etc. The funds are used, inter alia, for providing recreational facilities, such as games and sports, cinema shows, excursions and holiday homes, to workers employed therein.

In factories there is no statutory provision for recreational facilities: Some of the enlightened employers of factories have on their own initiative provided for recreational facilities.

(ii) **Educational Facilities:** The need for providing educational facilities in industrial concerns was stressed as far back as 1931 by the Royal Commission on Labour. The Labour Investigation Committee also emphasized the need for educational facilities to the children of employees. Recently, the National Commission on Labour stressed the qualitative aspects of educational facilities.

Provisions for educational facilities have been made obligatory on employers in plantations. Section 14 of the Plantations Labour Act and the rules made therein

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prescribe the standards of primary schools provided in plantations where there are more than twenty-five children between the ages of six and twelve years. Further, there is scheme to provide for (Scholarship ranging between ₹ 15 to 125 per month to children of miners, beedi workers and cinema workers drawing ₹ 1600 or less per month.

(iii) **Housing Facilities:** The housing problem is related to urbanization, which is the outcome of industrialization and migration of labour from villages to towns. Urbanization affects various sections of society differently and the worst sufferers are the industrial workers. If we can place the industrial workers in a healthier and more wholesome environment, their thrift and moral restraint will be revived and they, now repressed by the denial of the elementary attractions and amenities associated with their homes in the villages, will have a new desire for improvement of their standard of living. Now seldom do we find a two-room village cottage with thatched roof overhanging a comfortable verandah situated outside the bazar or bustee in an industrial town. Here the man and woman can live a real family life, but the rent charged is much higher than in the mills line or bustee. Improved housing is the first step towards an improvement in the standards of living, behaviour and morals of the Indian industrial workers. With all these will come the conquest over preventable diseases and avoidable mortality and improvement of health and output. The problem of housing is, undeniably, the most crucial one for the efficiency and well-being of the Indian worker. To those who assert that India cannot afford to spend more money on industrial housing, there can be only one reply which is that it can no longer afford to delay such expenditure.

The measures suggested by the National Commission on Labour to meet the situation are:

(i) State governments and local authorities should undertake the responsibility for speedy development of land for housing and make it available to approved construction agencies at economic cost.

(ii) Housing boards should be set up in those States where they are not in existence. The Central government should provide financial assistance to such boards. A Central Housing Board should also be set up to coordinate the activities of the State Boards.

(iii) The states should encourage the development of cooperative housing and provide loans at a concessional rate of interest.

(iv) The existing subsidized industrial housing schemes should continue but on a large scale.

(v) Housing activities of the Coal Mines Labour Welfare Fund Organization should be supplemented by those of the State Housing Boards or local bodies.

(a) *The Plantations Labour Act, 1951:* The Plantations Labour Act requires employers to provide and maintain necessary housing accommodation of the prescribed standard to every worker and his family 'residing in the plantation', and for every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed desire in writing to reside in the plantation.

Liability of the employer to pay compensation: If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided under Section 15, and the collapse is not solely and directly attributable to a fault on the

part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation in accordance with the provisions of Section 4 and Schedule IV of the Workmen's Compensation Act, 1923.

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7.3 WORKMEN'S COMPENSATION ACT, 1923

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained by him.

7.3.1 Scope and Coverage

The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in the railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges, and so on electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II to the Act. Under sub-section (3) of Section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months notice in the Official Gazette. The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employee's State Insurance Act, 1948, as disablement and dependants' benefits are available under this Act.

(i) Dependant—This term has been defined under Section 2(1) (d) to mean any of the following relatives of the deceased workman:

(i) A widow, a minor legitimate son, an unmarried legitimate daughter or a widowed mother

(ii) A son or daughter who is wholly dependent upon the earnings of the workman, who at the time of his death has attained the age of eighteen years and who is infirm

(iii) If wholly or in part, dependant on the earnings of the workman at the time of his death;

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter, legitimate if married and a minor or if widowed and minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a predeceased son,

(g) a minor child of a predeceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive.

The basic principle behind dependency is that a person can claim compensation when he was really dependent on the earnings of the workman at the time of his death. It may be pointed out that the dependents mentioned in the first class need

Check Your Progress

1. How does the International Labour Organization (ILO) define labour welfare?
2. The legislation relating to labour welfare may be divided into two categories. Which are these categories?

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not prove that they were dependants on the earnings of the deceased workman but the persons mentioned in the second and third class must have to prove that they were wholly or partly dependent on the earnings of the deceased workmen at the time of his death. This is quite just and equitable to make provisions for the payment of compensation in the event of death of a worker to the persons who do not have other means of subsistence.

(ii) Partial Disablement—This means that where the disablement is of a temporary nature such disablement reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement; and, where the disablement is of a permanent nature, such disablement reduces his earning capacity in every employment that he would have been capable of undertaking at the time, subject to the provision that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement (Section 2(1) (g).

Two disablements have been dealt with under Clause (g)—temporary partial disablement and permanent partial disablement. Any injury sustained by the worker during his employment resulting in loss of this earning capacity is called disablement. If such earning capacity is reduced in the particular employment in which the worker was engaged while he met with an accident, it is called temporary partial disablement. But if his capacity is reduced in every employment, it is called permanent partial disablement. There are forty-eight injuries specified in Part II of Schedule I, and it is expressly laid down that all of them shall be deemed to result in permanent partial disablement. Some such injuries are: amputation through shoulder joint, loss of thumb, loss of one eye without complications, the other being normal, and so on.

(iii) Total Disablement—This means such disablement, whether of a temporary or permanent nature, that incapacitates a workman for all the work he was capable of performing at the time of the accident resulting in such disablement; provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100 per cent or more (Section 2(1) (g).

(iv) Workman—Section 2(1) (n) defines 'workman' to mean any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district, or subdivisional office of a 'railway' and not employed in any such capacity as specified in Schedule II, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral, or in writing, but does not include any person working in the capacity of a member of the Armed Forces of the Union; any reference to a workman who has been injured, shall, where the workman is dead, include a reference to his dependants or any of them.

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7.3.2 Liability of an Employer to Payment Compensation

Section 3 of the Workmens' Compensation Act lays down conditions under which a workman is entitled to claim compensation. An employer shall be liable to pay compensation in accordance with the provisions of Sections 3 to 18-A to the workman if, firstly, personal injury is caused to him and, secondly, if he contracts any occupational disease or diseases in conditions stipulated in sub-sections (2), (3) and (4) of Section 3 of the Act.

Personal Injury—Such personal injury:

(i) must have been caused during the course of his employment, and

(ii) must have been caused by an accident arising out of his employment.

An accident alone does not give a workman a right to compensation. For him to be entitled to compensation at the hands of his employers, the accident must arise out of and in the course of his employment. Any workman while undertaking a work which is not during the course of employment, if involved in an accident, is not entitled to compensation. An occurrence which is sudden and unexpected, and without any design on the part of the workman is an accident. In *G.A.R.* vs *Bombay Port Trust*, it was held that a workman suffering from heart disease, if dies on account of strain by standing and walking, the accident arose out of employment. Death from heat stroke is a personal injury.

The employer is liable to pay compensation under the following conditions:

(i) The personal injury must have been caused by an accident.

(ii) The accident must have arisen out of and in the course of his employment.

(iii) The personal injury caused to the worker must have resulted either in total or partial disablement of the workman for a period exceeding three days, or it must have resulted in the death of the worker.

(iv) Personal injury sustained by the workman may be a physical one; it may be mental strain and disbalance as well.

Occupational Diseases—Section 3(2) lays down that if a workman employed in any occupation specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease, specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of the employment:

Provided that if it is proved—

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

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(b) that the disease has arisen out of and in the course of the employment; the contracting of such Disease shall be deemed to be an injury by accident within the meaning of this section.

Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule for a continuous period specified under this sub-section for that employment, and he has, after the cessation of such service, contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease, peculiar to the employment, and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this Section.

Section 3(2-A) provides that if a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this Section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the commissioner may, in the circumstances, deem just.

Section 3(3) lays down that the state government in the case of employment specified in Part A and Part B of Schedule III and the Central government in the case of employment specified in Part C of that Schedule, after giving, by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by a similar notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added, the diseases which shall be deemed for the purposes of this Section, to be occupational disease peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply as if such disease had been declared by this Act to be occupational disease peculiar to those employments.

As is clear from the provisions of sub-section (2) of Section 3, the list of occupational diseases is contained in Schedule III of the Act. This Schedule is divided into three parts— A, B, and C. The disease contacted must be an occupational disease peculiar to the employment as specified in Schedule III. A list of several employments is given in relation of every such disease, described as occupational diseases in Schedule III. No specified period of employment is necessary for a claim for compensation with respect to occupational diseases mentioned in Part A, but for diseases mentioned in Part B, the workman must be in continuous service of the same employer for a period of six months in the employment specified in that Part. For diseases in Part C, the period of employment would be such as is specified by the Central government for each of such employment, whether in the service of one or more employers. The contracting of any disease specified in Schedule III shall be deemed to be an injury by accidents arising out of and in the course of employment, unless the contrary is proved.

Provisions to sub-section (2) of Section 3—The first proviso says that if it is proved that—

(a) a workman whilst in the service of one or more employers in any employment contracts a disease specified as an occupational disease peculiar to the employment, during a continuous period which is less than the period specified under sub-section (2), for that employment, and

(b) the said disease has arisen out of and in the course of the employment, then the contracting of such disease shall be deemed to be an injury by accident as contemplated by this section.

The second proviso to sub-section (2) lays down that if it is proved that a workman who—

(i) having served under any employer in any employment specified in Part B of Schedule III; or

(ii) having served under one or more employer in any employment specified in Part C of Schedule III

for a continuous period specified under sub-section (2), for that employment, and he has, after the cessation of such service, contacted any disease (in the said Part B or the said Part C), as the case may be, as an occupational disease peculiar to the employment, and such disease arose out of the employment, the contacting of the disease shall be deemed to be an injury by accident.

Liability of All Employers—Sub-section (2-A), reproduced above, provides that if a workman employed in any employment mentioned in Part C of the Schedule III contacts any occupational disease peculiar to that employment, the contacting whereof is deemed to be an injury by accident within the meaning of Section 3, and such employment was under more than one employers. Then, in such a case, all employers shall be liable for the payment of compensation in such proportion, as the commissioner, in the circumstances may deem just.

We have already noted that sub-section (3) empowers the Central government with respect to Part C and the state governments with respect to Parts A and B of Schedule III to make additions to the employments and occupational diseases in the prescribed manner.

Non-occupational Disease—Sub-section (4) of Section 3 provides that save as provided by sub-section (2) (2-A), and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of the employment.

It is a substantial question of law whether a workman who was suffering from a disease and died when he was in employment would come under Section 3(4) of the Act.

When is the Employer Not Liable for Compensation?

The employer shall not be liable for personal injury caused to a workman by accident in the following cases:

(a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days

(b) In respect of any injury, not resulting in death, caused by an accident which is directly attributable to–

(i) The workman having been at the time thereof under the influence of drink or drugs.

(ii) The wilful disobedience of the workman to an order expressly given, or to rule expressly framed, for the purpose of securing the safety of workmen.

(iii) The wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

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No compensation shall be payable to a workman in respect of any disease, unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment, save as provided by sub-sections (2), (2-A) and (3) of Section 3.

Doctrine of Notional Extension of 'Time' and 'Place'

The doctrine of notional extension has been mostly applied to four types of cases of injury to workmen employed in: (i) workshops, factories or other such establishments; (ii) harbours or on ships; (iii) transport services; (iv) mines. In some cases, the basis of the notional extension is considered to be an implied term of the contract, while in others it is the proved a practical necessity.

Saurashtra Salt Manufacturing Co. v. *Bai Velu Raja* laid down the following principles of notional extension of time and place:

As a general rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area in which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in course of the employment of the workman, keeping in view at all times the theory of notional extension.

The aforesaid principle was extended in *B.E.S.T. Undertakings* v. *Mrs Agnes* to cases where the employer offered the facility of bus service to its drivers for them to come to their depots and go back to their homes, as employees as of right and in interest of efficiency of service. The court accordingly held by a majority judgement that when a driver when going home from the depot or coming to the depot uses the bus provided as a means of transport any accident in such bus that happens to him is an accident in the course of his employment. The I.L.O. also adopted a convention in 1964 which defines more explicitly the kind of trips which are to be covered under workmen's compensation systems. They include trips between the place of work and (1) the employee's permanent or temporary residence; (2) the place where the employee takes his meals; and (3) the place where the employee ordinarily receives his salary.

In *Union of India* vs *Mrs Noor Jahon*, a railway gangman, while working at one place of his duty, was asked by his employer to shift to another place for some cleaning purposes. While he was proceeding to another place with another gangman, he was knocked down by a motor lorry on the public street and he died ultimately. The Allahabad High Court held that the deceased workman was in the course of his employment at the time of the accident. Justice Shukla observed:

The accident having taken place within the hours of duty at [the] time when the deceased was proceeding to discharge his duty at the behest of his employers at the second site, the conclusion cannot be escaped that the accident occurred in the course of employment.

Travelling by special means of transport provided by the employer—If the journey after work is made in the truck, bus, car or other vehicle provided by the employer,

an injury during that journey is incurred in the 'course of employment'. The justification for this holding is that the employer himself expanded the range of the employment and the attendant risks. He has, in a sense, sent the employee home in a small ambulatory portion of the premises. As Lord Wrenbury in *St. Helens Colliery Co. Ltd.* v. *Hewiton* said:

If the employer (being entitled so to do) says 'come to work by a particular route' the employer is on the risk when the man is coming by that route. This is so because in each of these cases there is an obligation. The man enters the assigned route because he has received and is obeying an order to do so.

In *B.E.S.T. Undertakings* vs *Mrs Agnes,* a bus driver who was injured while going from the depot to his home by a public bus of his employer, was held by the Supreme Court 'in the course of his employment' even though other alternative means were available to him and he was not obliged to travel by it. This decision was followed in *Indian Rare Earths Ltd.* v. *A. Subaida Beevi.*

Non-contractual or causal provision of transportation—In Patel Engineering Co. v. *Commissioner, Workmen's Compensation*, the workmen employed under the contractor used to travel by a departmental lorry because the contractor had no lorry of his own for the purpose of carrying these workers. One day, while they were so travelling, the lorry met with an accident in which four workmen employed under the contractor died. The Andhra Pradesh High Court held them in the 'course of employment' at the time of the accident. The question arose before the Court whether it was obligatory on the part of the deceased workmen to travel in that lorry? While answering the question, the court stated:

> ..... it is not necessary that the workmen concerned should either travel in a conveyance provided by the employer or that it would be obligatory on their part to do so in order to conclude that they were in the 'course of employment' while travelling in that conveyance.

Amount of Compensation and Method of Calculation

Subject to the provisions of this Act, the amount of compensation shall be as follows:

(a)	Where death results from the injury	An amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of ₹ 80,000, whichever is more.
(b)	Where permanent total disablement results from the injury	An amount equal to 60 per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of ₹ 90,000, whichever is more.

Explanation 1: For the purposes of Clause (a) and Clause (b), 'relevant factor' in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

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Explanation 2: Where the monthly wages of a workman exceed ₹ 4,000 his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be ₹ 4,000 only;

(c) Where permanent partial disablement results from the injury	(i)	in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
	(ii)	in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation 1: Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation 2: In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.

(d) Where temporary disablement, total or partial, results from the injury	A half-monthly payment of the sum equivalent to 25 per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

(1) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

(2) The half-monthly payment referred to in Clause (d) of sub-section (1) shall be payable on the sixteenth day—

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more; or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that—

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the

workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation 1: Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of Clause (a) of the proviso.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1) deposit with the Commissioner a sum of ₹ 2,500 for payment of the same to the eldest surviving defendant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependent or was not living with his dependent at the time of his death to the person who actually incurred such expenditure.

Calculation of Wages for Compensation: Section 4 of the Act provides that where the monthly wages of a workman exceed ₹ 2,000, his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be ₹ 4,000 only. Now, therefore, all workmen except managerial and clerical staff without any wage limit are covered under the Act, the total lump sum compensation is determined by first determining the monthly wages, then finding out the relevant multiplying factor given in Schedule IV pertaining to the age of the workman at the time of accident and then dividing it by the percentage payable vide section 4(a) for death and 4(b) for permanent total disablement.

Practical example

A workman aged 22 years becomes 30 per cent disabled while at work. His monthly wage is ₹ 3,600. His compensation amount would be calculated as follows:

$3600 \times 60/100 \times 30/100 \times 221.37 = ₹ 143447$

Explanation: While assessing the compensation under the Workmen's Compensation Act in injury cases we take 60 per cent of the monthly wage of the workman and the figure 221.37 is relevant factors as per Schedule IV of the Act which is different according to age. For example, if the age of the workman is 20, then relevant factor would be 224. It increases as the age declines and decreases as the age of the workman increases.

Compensation to Be Paid When Due and Penalty for Default

(1) Compensation under Section 4 pertaining to the amount of compensation shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

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(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct the employer to, in addition to the amount of the arrears, pay simple interest thereon at the rate of 12 per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct the employer to, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding 50 per cent of such amount by way of penalty.

Provided that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation: For the purposes of this sub-section, 'scheduled bank' means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

The interest payable under sub-section (3) shall be paid to the workman or his dependant as the case may be.

Method of Calculating Wages

Under the Workmen's Compensation Act and for the purposes thereof, the expression 'monthly wages' means the amount of wages deemed to be payable for a month's service, whether the wages are payable by the month or by whatever other period or at piece rates and calculated as follows:

(a) Where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period.

(b) Where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation, was less than one month, the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed by the same employer or, if there was no workman so employed, by a workman employed on similar work in the same locality.

(c) In other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under Clause (b), the monthly wages shall be thirty times the total wages earned in respect of last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation: A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Distribution of Compensation

(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a workman or a

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person under legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:–

Provided that, in the case of a deceased workman, an employer may make to any dependent, advances on account of compensation of an amount equal to three months' wages of such workman and so much of such amount as does not exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ₹ 10 which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman, the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4) be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, on his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause as to why the order

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should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

If an employer is in default, in the payment of compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of 6 per cent per annum on the amount due. If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 per cent of such amount, may be recovered from the employer by way of penalty (Section 4-A).

Claims and Appeals

If the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation. The claim shall be filed within a period of two years of the occurrence of the accident or death. The application which is filed after the period of limitation can be entertained if sufficient cause exists. An appeal will lie to the high court against certain orders of the Commissioner if a substantial question of law is involved. An appeal by an employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, the appeal cannot be regarded as having been validly instituted. The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

Administration

The Act is administered by state governments. The state governments are required to appoint a Commissioner for Workmen's Compensation. The functions of the Commissioner include the following:

(i) Settlement of disputed claims

(ii) Disposal of cases of injuries involving death

(iii) Revision of periodical payments (Section 20)

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise (Section 31).

The Act made provision for the framing of the rules by the state governments and the central government and also their publication (Section 32-36).

Disposal of Cases of Injuries

All cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability that he accepts, and such payment must be deposited with the Commissioner or paid to the workman. In such cases, the Commissioner may, after such enquiry as he thinks fit, inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to three months' wages. He is also empowered to deduct an amount not exceeding ₹ 50 from the amount of compensation in order to indemnify the person who incurred funeral expenses. The

employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars (Sections 4A, 8 and 16).

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workman. The amount of compensation is to be apportioned among the dependants of the deceased workman or any of them in such section the Commissioner thinks fit (Sections 2 and 8), therefore, the employer is liable to pay compensation (*Director DNK Project* v. *Smt. D. Buchitalli* 1989 I LLJ 259).

A jeep driver of Maharashtra State Land Development Bank took the officers of the bank to a village in connection with recovery proceedings conducted by the bank. He rested the jeep in the rest house and went to the market where he was assaulted by some unknown persons in the crowd and was found dead. It was held to be an accident arising out of and in the course of employment and the bank is liable to pay compensation (*Salmabegum* vs. *D.B. Manager* 1990 I LLJ 112).

PWD engaged a contractor for the construction of a canal. The contractor engaged workmen to do the work. Two workmen died in a landslide while at work. PWD as principal, is liable to pay compensation and workmen or their dependants cannot claim compensation from either of them at their option (*K. Koodalingam* v. *S.E. & Ors.* 1995 I LLJ 334).

7.4 THE MATERNITY BENEFIT ACT, 1961

Maternity care and benefits for women workers form an integral part of social security. The main features of the Act are:

(i) The Act prohibits the employed woman to work during a certain period of her pregnancy and for six weeks immediately after the delivery of child.

(ii) The Act also provides for the maternity benefit in the form of leave with wages for a maximum period of twelve weeks when the employed woman delivers a child.

(iii) The Act also provides for leave with wages in case of:
   (a) Miscarriage
   (b) Medical termination of pregnancy
   (c) Tubectomy operation of the employed woman

(iv) The Act also prohibits the dismissal of an employed woman by her employer if her absence is due to her pregnancy.

(v) The Act also provides for the Inspector to ensure the implementation of the Act. The Inspectors are also empowered to direct the employer to pay maternity benefit and other amounts to the woman on the complaint of the woman to the Inspector.

Object of the Act

The Supreme Court in *Municipal Corporation of Delhi* v. *Female Workers (Muster Roll)* (2000) I LLJ 846 held the object of the Act as follows:

> The Maternity Benefit Act, 1961 aims to provide all the facilities to a working woman in a dignified manner, so that she may overcome the state of motherhood honourably, peacefully, undeterred by the fear of being victimized for forced absence during the pre- or post-natal period.

Check Your Progress

3. What is the object of the Workmen's Compensation Act, 1923?
4. What is total disablement?

NOTES

The Supreme Court further observed that to become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her. The employer must realize the physical difficulties that a working woman would face in performing her duties at the work while carrying a baby in the womb or while rearing the child after birth.

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society, have to be honoured and treated with dignity at a place where they work to earn their livelihood.

Applicability of the Act

The Maternity Benefit Act applies (i) to every establishment being a factory, mine or plantation including any such establishment belonging to the Government (ii) to every establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performances, (iii) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state, in which ten or more persons are employed, or were employed on any day of the preceding twelve months.

Power to Extends the Coverage of the Act

The Act empowers the state governments, (with the approval of the Central government) after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette to declare that all or any of the provisions of the Act shall apply also to any other establishment or (class of establishment, industrial, commercial, agricultural or otherwise). Save as otherwise provided in Sections 5A and 5B pertaining to the continuance of or the payment of maternity benefit in certain cases, nothing contained in this Act shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 apply for the time being.

7.4.1 Definitions and Concepts

(i) 'Child' includes a still born child.

(ii) 'Delivery' means the birth of a child.

(iii) 'Prescribed' means prescribed by rules made under this Act.

(iv) 'State government', in relation to a Union Territory, means the Administrator thereof.

(v) 'Wages' means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes 'such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to; incentive bonus; and the money value of the concessional supply of foodgrains and other articles', but does not include:

  (a) Any bonus other than incentive bonus

  (b) Overtime earnings and any deduction or payment made on account of fines

  (c) Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force

  (d) Any gratuity payable on the termination of service

NOTES

(vi) 'Woman' means a woman employed, whether directly or through any agency, for wages in any establishment.

(vii) 'Employer' means the following:

(a) In relation to an establishment which is under the control of the government, a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed, the head of the department.

(b) In relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority.

(c) In any other case, the person who, or the authority, which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name.

(viii) 'Small establishment' means the following:

(a) A factory

(b) A mine

(c) A plantation

(d) An establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances

(e) A shop or establishment

(f) An establishment to which the provisions of this Act have been declared under sub-section (1) of Section 2 to be applicable

(ix) 'Factory' means a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948).

(x) 'Maternity benefit' means the payment referred to in sub-section (1) of section 5.

(xi) 'Mine' means a mine as defined in Clause (j) of Section 2 of the Mines Act, 1952 (35 of 1952).

(xii) 'Miscarriage' means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860).

(xiii) 'Plantation' means a plantation as defined in Clause (f) of Section 2 of the Plantation Labour Act, 1951 (69 of 1951).

7.4.2 Salient Provisions

Prohibition of employment work by women during a certain period

(i) The employer is prohibited to employ a woman in an establishment during the six weeks immediately following the day of her delivery or her miscarriage.

(ii) The woman shall not work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

(iii) On a request made by the pregnant woman, the employer shall not allow her to do work which is (i) of an arduous nature or (ii) which involves long hours of standing or (iii) which in any way is likely to interfere with her pregnancy or the normal development of the foetus or (iv) is likely to cause her miscarriage or otherwise to adversely affect her health.

NOTES

(iv) The above period shall be:

(a) the period of one month immediately preceding the period of six weeks before the date of her expected delivery

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under Section 7.

Right to payment of maternity benefit

Section 5 of the Act confers right to payment of maternity benefit to every women worker. It provides:

(i) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, this is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and the period immediately following that day.

Explanation: For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months, immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or received under the Minimum Wages Act, 1948 (11 of 1948).

(ii) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

Provided that the qualifying period of eighty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation: For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(iii) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days upto and including the day of her death.

Provided further that where a woman having been delivered of a child dies during her delivery or during the period immediately following the date of her delivery for which she is entitled to maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then for the days upto and including the date of the death of the child.

Continuance of payment of maternity benefit in certain cases

Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948),

to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under Section 50 of the Act.

NOTES

Payment of maternity benefit in certain cases

Any woman

(a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948) apply;

(b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of Clause (9) of Section 2 of the Act; and

(c) who fulfils the conditions specified in sub-section (2) of Section 5; shall be entitled to the payment of maternity benefit under this Act.

Notice of claim for maternity benefit and payment thereof

(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or such persons as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(3) Any woman who has not given the notice while she was pregnant may give such notice as soon as possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount, and in any such case, an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

Payment of maternity benefit in case of death of a woman

Section 13 provides:

If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under second proviso to sub-section (3) of Section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under Section 6 and in case there is no such nominee, to her legal representative.

NOTES

Payment of medical bonus

Under Section 8, every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of two hundred and fifty rupees, if no pre-natal confinement and post-natal care is provided for by the employee free of charge.

Leave for miscarriage, medical termination of pregnancy and tubectomy operation

In case of miscarriage, a woman shall on production of such proof as may be prescribed, be entitled to leave with wages of the same amount as the maternity benefit, for a period of six weeks immediately following the day of her miscarriage.

In case of miscarriage or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy.

In case of a tubectomy operation, a woman shall, on the production of such proof as may be prescribed, be entitled to leave with wages of the same amount as the of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.

Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage

Under Section 8, a woman suffering from illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under Section 6, or as the case may be, under Section 9, to leave with wages of the same amount as maternity benefit for a maximum period of one month.

Nursing breaks

Under Section 13(b), every woman who returns to duty after the delivery of her child shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

Prohibition for dismissal during absence due to pregnancy

Section 12 prohibits the dismissal of a woman during absence on account of maternity leave. It provides the following:

(i) When a woman absents herself from work in accordance with the provisions of the Maternity Benefit Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(ii) The discharge or dismissal of a workman, at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in Section 8 of the Act, shall not have the effect of depriving her of the maternity benefit or medical bonus:–

Provided that where the dismissal is for any prescribed gross misconduct, the

employer may, by order in writing communicate to the woman, deprive her of the maternity benefit or medical bonus or both. However, any woman deprived of maternity benefit or medical bonus or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the day on which the order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both or discharged or dismissed, shall be final.

Wages not to be deducted

The employer cannot make any deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act by reason only of—

(a) the nature of work assigned to her by virtue of the provisions contained in sub-section (3) of Section 4, or

(b) breaks for nursing the child allowed to her under the provisions of Section 11 of the Maternity Benefit Act, 1961.

Forfeiture of maternity benefit

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of Section 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.

Exhibition of abstracts of the act

An abstract of the provisions of this Act and the rules made thereunder in the language of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

Maintenance of muster-rolls by establishment of mines and circus

(a) The employer of every mine or circus in which women are employed shall prepare and maintain a muster-roll in Form 'A' and shall enter therein particulars of all women workers in the mine or circus.

(b) All entries in the muster-roll shall be made in ink and kept up-to-date and it shall always be available for inspection by the Inspector during working hours.

(c) The employer may enter in the muster-roll such other particulars as may be required for any other purpose of the Act.

Submission of returns by mines and circus

(a) The employer of every mine or circus shall on or before the 21st day of January in each year submit to the Competent Authority a return in each of the Forms 'L', 'M', 'N' and 'O' giving information as to the particulars specified in respect of the preceding year.

(b) If the employer of a mine or circus to which the Act applies sells, abandons, or discontinues the working of the mine or circus, he shall, within one month of the date of sale or abandonment or four months of the date of discontinuance, as the case may be, submit to the Competent Authority a further return in each of the said forms in respect of the period between the end of the preceding year and the date of sale, abandonment or discontinuance.

NOTES

Penalties

If an employer fails to pay any amount of maternity benefit to a woman who is entitled under this Act or discharges or dismisses such woman on account of her absence from work in accordance with the provision of this Act, he shall be punished with imprisonment of not less than three months but which may be extended upto one year and also be liable to fine of not less than ₹ 200 and up ₹ 5000.

Cognizance

The cognizance of the offences can be taken on the complaint filed by (i) an aggrieved woman, (ii) an office-bearer of a registered trade union of which such woman is a member or (iii) a registered voluntary organization or (iv) an inspector. No such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.

7.5 THE EMPLOYEES' STATE INSURANCE ACT, 1948

The object of the Act is to provide sickness, disablement and medical benefits, and maternity benefits to the employees of factories and other industrial establishments as well as to their dependants.

The Act extends to the whole of India. In the first instance, the Act applies to all factories, including the government-owned factories. However, the Act is not applicable to seasonal factories. But the government may extend the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. The Act covers workers employed directly, as well as the clerical staff.

The Act covers employees drawing wages upto ₹ 10,000 per month engaged either directly or through a contractor.

7.5.1 Definitions

Employee

The term 'employee' as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies. It has a wide connotation and includes within its scope clerical, manual, technical and supervisory functions. Persons whose remuneration (excluding the remuneration for overtime work) does not exceed ₹ 6500 a month are covered under the Act. The Act does not make any distinction between casual and temporary employees or between technical and non-technical employees. There is also no distinction between those employed on time-rate and piece-rate basis. Employees employed directly by the principal employer and those employed by or through a contractor on the premises of the factory and those employed outside the factory premises under the supervision of the principal employer are all included under the Act. It also covers administrative staff and persons engaged in the purchase of raw materials or the distribution or sale of products and similar or related functions. However, the definition of 'employee' does not include any member of the Indian naval, military or air force.

Check Your Progress

5. How did the Supreme Court define the object of the Maternity Benefit Act, 1961, in Municipal Corporation of Delhi vs. Female Workers (Muster Roll) (2000) I LLJ 846?
6. What is the provision for payment of medical bonus, under Section 8 of the Maternity Benefit Act, 1961?

Wages

'Wages' means all remuneration paid in cash if the terms of the contract are fulfilled. It includes any payment in any period of authorized leave, lockouts or strike which are not illegal layoffs, and also includes other remuneration paid at intervals not exceeding two months. It does not, however, include the following:

(i) Contributions paid to the provident fund or pension funds

(ii) Travelling allowance or the value of travelling concession

(iii) Sum paid to defray special expenses

(iv) Gratuity payable on discharge

Contributions

The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by state governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages paid/payable for every wage period. The employers' contribution, however, may be calculated at the rate of 4.75 per cent of the total wages paid to all the employees covered under the ESI Scheme in each wage period, rounded to the next higher multiple of five paise. The total value of the combined employers' and the employees' share has to be deposited in the State Bank of India or in any other authorized bank or branch through a challan in quadruplicate as per the proforma on or before the 21st of the month following the calendar month in which the wages fall due. An employer who fails to pay his contribution within the periods specified shall be liable to pay interest and damages for late payment under Section 85(B) of the Act. The Act has laid down the purposes for which the fund may be expended. The accounts of the corporation shall be audited by auditors appointed by the Central government.

Employees whose average daily wage is below ₹ 15 are exempted from payment of their contribution; only the employer's contribution will be payable at 4.75 per cent in respect of such employees.

'Contribution period' and 'benefit period' are fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1 April to 30 September, the corresponding benefit period shall be from 1 January of the year following to 30 June, and in respect of the contribution period from 1 October to 31 March of the year following, the corresponding benefit period shall be from 1 July to 31 December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date of his employment, and the corresponding first benefit period shall commence on the expiry of nine months from the said date (Rule 2 and Regulation 4). The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called 'standard benefit rate'.

Practical Example of Calculation of Contribution to ESI

Contributions to ESI come from both the sides: the employee as well as employer. It is calculated on the basis of gross salary per month and the maximum ceiling is ₹ 10000 per month. The employee's contribution is 1.75 per cent of his gross/monthly salary. So, if gross salary of an employee is ₹ 8000/month, then his/her contribution to ESI would be 8000×1.75 per cent = ₹140. The employer, on the other hand, has to contribute 4.75 per cent of gross/monthly salary of the employee. So, in the given case, the employer's contribution would be 8000× 4.75 per cent = ₹ 380.

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Registration

The registration of a factory/establishment with the Employees' State Insurance Corporation is a statutory responsibility of the employer under Section 2-A of the Act. The owner of a factory/establishment to which the Act applies for the first time is liable to furnish to the appropriate regional office, within fifteen days after the Act becomes applicable, a declaration of registration in Form 01. On receipt of Form 01, the regional office will examine the coverage it and, after is satisfied that the Act applies to the factory/establishment, will allot a code number to the employer.

The forms for the registration of employees are the declaration form and the return of declaration form (covering letter). The principal employer should get the declaration form filled in by every employee covered under the scheme.

The statutory registers to be maintained up to date are the following:

(a) Register of Employees

(b) Accident Book in which every accident of employees during the course of employment is recorded

(c) Inspection Book (to be produced before an Inspector or any other authorized officer)

As and when required, certain other forms, such as ESIC 32, ESIC 37, ESIC 53, ESIC 71, ESIC 72, ESIC 86, ESIC 105, shall be filled up.

7.5.2 Benefits

The following benefits are granted to all insured workers under the Act:

- Maternity benefit
- Disablement benefit
- Sickness benefit
- Medical benefit
- Dependants' benefit
- Funeral benefit

Maternity Benefit

Section 50 which provides the following with regard to maternity benefit:

(1) An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur during a benefit period, if the contribution in respect of her were payable for not less than half the number of days of the corresponding contribution period.

(2) Subject to the provisions of this Act and the regulations, if any, an insured woman who is qualified to claim maternity benefit in accordance with sub-section (1) noted above, shall be entitled to receive it at the daily rate specified in the First Schedule for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six shall precede the expected date of confinement.

There are cases where death may come to an insured woman during her confinement, or during the period of six weeks immediately following her confinement for which she is entitled to maternity benefit. Two other situations may arise: she may expire leaving the surviving child or both the mother and the

child may die. In all such contingencies, maternity benefit will be granted. The maternity benefit shall be paid for the whole of that period mentioned above. If the child also dies during the said period, then, the maternity benefit shall be paid for the days upto and including the day of the death of the child, to the person nominated by the insured woman in such manner as may be specified in the regulations; and if there is no such nominee, to her legal representative.

(3) An insured woman who is qualified to claim maternity benefit in accordance with sub-section (1), is in case of miscarriage, entitled, on production of such proof as may be required under the regulations, to maternity benefit at the rates specified in the First Schedule for all days on which she does not work for remuneration during a period of six weeks immediately following the date of her miscarriage.

We may note here that no woman is entitled to claim maternity benefit for miscarriage, the causing of which is punishable under the Indian Penal Code. An intentional miscarriage is an offence under I.P.C. Section 2 (14-B).

(4) Sub-section (4) of Section 50 lays down special protection to working women. Sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage entitles her to maternity benefit at the rates specified in the First Schedule, for all days on which she does not work for remuneration during an additional period not exceeding one month.

Thus, the maternity benefit protects the health of the mother and her child and helps in reducing the financial hardship caused by the birth of the child.

Practical example

How to Determine Maternity Leave for Employees

For an organization to run successfully, it is vital that the employees feel satisfied at work. Hence, it is essential to determine maternity leave for expectant and new mothers who are presently working in your organization and how to deal with the transition of their returning to work.

Preceding and Following Maternity Leave

The government has made it mandatory to provide leave for 12 weeks. However, an organization may provide a longer leave period. Some organizations choose to grant female employees up to six months of paid maternity leave. Also, an organization might consider of reducing the employees' duties pre and post delivery. This should certainly be the case if the work of the female employee involves physical labour. In addition, new mothers may also require more flexible working hours when they return to work. As a result, an organization might have to provide the work from home policy.

Disablement Benefit

Section 51 lays down that:

(a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment in accordance with the provisions of the First Schedule;

(b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment for such disablement in accordance with the provisions of the First Schedule.

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But in case the permanent disablement—whether total or partial—has been assessed provisionally for a limited period or finally, the benefit provided under Clause (b) shall be payable for that limited period or, as the cause may be, for life.

Presumption as to Accident Arising in the Course of Employment— Section 51-A provides that for the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

Accidents happening while acting in breach of regulation, law, and so on (Section 51-B), accidents happening while travelling in employers transport, and accidents happening while meeting an emergency—all shall be deemed to arise out of employment and in the course of an insured person's employment (Sections 51-C and 51-D).

Sickness Benefit

According the Section 47 of the Act, a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period if the contribution in respect of him were payable for not less than half the number of days of the corresponding contribution period.

Section 49 provides that subject to the provisions of the Act and the regulations, if any, a person qualified to claim sickness benefit in accordance with Section 47 shall be entitled to receive such benefit for his sickness.

But he shall not be entitled to the benefit for the first two days of sickness in the case of a spell of sickness following at an interval of not more than fifteen days, for which sickness benefit was last paid.

The benefit shall not be paid to any person for more than fifty-six days in any consecutive benefit periods.

Medical Benefit

Section 56 provides that an insured person or where such medical benefit is extended to his family, a member of his family whose condition requires medical treatment and attendance, shall be entitled to receive medical benefit. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

A person shall be entitled to medical benefits during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or if he is entitled to such disablement benefit that does not disentitle him to medical benefit under the regulations.

But a person in respect of whom contributions ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations.

Dependant's Benefit

Section 52 lays down that if an insured persons dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependant's benefit shall be payable in accordance with the provisions of the First Schedule to his dependants specified in sub-clause (i) and sub-clause (ii) of Clause (6-A) of Section 2.

If the insured person dies without leaving behind him the dependants as aforesaid, the dependants benefit shall be paid to other dependants of the deceased in accordance with the provisions of the First Schedule.

It is clear from these provisions that a dependant's benefit will be payable if the insured employee dies on account of an employment injury or an occupational disease arising out of and in the course of employment.

Funeral Benefit

Under Section 46 (f), funeral expenses are payable to the eldest surviving member of the family or an insured person who has died. If the insured person did not have a family or was not living with his family at the time of his death, it shall be payable to the person who actually incurs the expenditure on the funeral. Such amount shall not exceed ₹ 100. The claim should be made within three months from the date of death or within the extended period.

Administration of the Employees' State Insurance Corporation Scheme

The Corporation shall be a body corporate with perpetual succession and a common seal and shall be competent to sue and be sued in its name [Section 3(2)].

Composition

According to Section 4 the Corporation shall consist of the following:

- A Chairman to be nominated by the Central government
- A Vice-chairman to be nominated by the Central government
- Five persons to be nominated by the Central government
- One person each representing each of the states in which this Act is in force to be nominated by the state government concerned
- One person representing the Union territories
- Five persons representing the employers to be nominated by the Central government in consultation with such organizations of the employees as may be recognized for the purpose by the Central government
- Five persons representing the employees to be nominated by the Central government in consultation with such organizations of employees as may be recognized for the purpose by the Central government
- Two persons representing the medical profession to be nominated by the Central government in consultation with such organization of the medical practitioners as may be recognized for the purpose by the Central government
- Three persons to be elected by the Parliament—two by Lok Sabha and one by Rajya Sabha
- The Director General of the Corporation, ex-officio

Terms

The term of the members of the Corporation, mentioned above at No. 6, 7, 8, 9 and 10, shall be four years. The members of the Corporation referred to above at Nos. 1, 2, 3, 4 and 5, shall hold office during the pleasure of the Government nominating them.

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Under Section 8, a Standing Committee of the Corporation shall be constituted from among its members, consisting of the following members:

(a) A chairman, nominated by the Central government

(b) Three members of the Corporation, nominated by the Central government

(c) Three members of the Corporation representing such three state governments thereon as the Central government may, by notification in the Official Gazette, specify from time to time

(d) Eight members elected by the Corporation as follows:

(i) Three members from among the members of the Corporation representing employees,

(ii) Three members from among the members of the Corporation representing the employers,

(iii) One member from among the members of the Corporation representing the medical profession,

(iv) One member from among the members of the Corporation elected by the Parliament.

(e) The Director General of the Corporation, ex-officio.

According to Section 9 (i), save as otherwise provided expressly in this Act, the term of office of a member of the Standing Committee other than a member referred to above under Clauses (a), (b), or (c) of Section 8 shall be two years from the date on which his election is notified.

Provided that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue till the election of his successor is notified.

Provided further that a member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.

Sub-section (2) of Section 9 provides that a member of the Standing Committee referred to above in Clause (a), or (b) or Clause (c) of Section 8 shall hold office during the pleasure of the Central Government.

(f) Powers and functions of the Standing Committee is subject to the general superintendence and control of the Corporation. The Standing Committee administers the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation. It shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf. The Standing Committee may in its direction, submit any other case or matter for the decision of the Corporation (Section 18).

7.5.3 Medical Benefit Council

This is constituted under Section 10. It advises the Corporation on matters connected with the administration of medical benefits. The Director General, Health Services will be its chairman, ex-officio.

Composition

Under Section 10(1), the Central government shall constitute a Medical Benefit Councial consisting of the following:

(i) The Director General, Health Services, ex-offico, Chairman

(ii) A Deputy Director General, Health Services, to be nominated by the Central Government

(iii) The Medical Commissioner of the corporation, ex-officio

(iv) One member each representing each of the state (other than Union territories in which this Act is in force) to be nominated by the state government concerned

(v) Three members representing employers to be nominated by the Central government in consultation with such organizations of employers as may be recognized for the purpose by the Central government

(vi) Three members representing employees to be nominated by the Central government in consultation with such organizations of employers as may be recognized for the purpose by the Central government

(vii) Three members of whom not less than one shall be a woman, representing the medical profession to be nominated by the Central government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central government.

Under sub-section (2) of Section 10, it is further provided that save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses above from (i) to (iv), shall be four years from the date on which his nomination is notified, provided that a member of the Medical Benefit Council shall, notwithstanding the expiry of the said period of four years, continue to hold office until the nomination of his successor is notified. Sub-section (3) of Section 10 provides that a member of Medical Benefit Council referred to above under Clause (ii) and (iv) shall hold office during the tenure of the Government nominating him.

For resignation, cessation, and disqualification of the memberships of the Medical Benefit Council, they are the same as for the membership of the Corporation.

Duties of Medical Benefit Council

Under Section 22, the duties of the Medical Benefit Council areas as follows:

(a) Advise the Corporation and the Standing Committee on matters relating to the administration of Medical Benefit, the Certification for the purposes, grant of benefit and other connected matters.

(b) Have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendances.

(c) Perform such other duties in connection with medical treatment and attendance as may be specified in the regulations of the Corporation.

Adjudication of Disputes and Claims

Chapter VI of the Employees' State Insurance Act contains Sections from 74 to 83. The whole chapter is devoted to adjudication of disputes and claims.

Constitution of Employees Insurance Court

(1) Under Section 74 (1), the State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance court for such local area as may be specified in the notification.

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(2) The court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a Judicial Officer or is a legal practitioner of five years standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the State Government may by general or special order, regulate the distribution of business between them.

Matters to be decided by Employee's Insurance Court

Under Section 75(1), if any question or dispute arises as to:

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employees' contribution; or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act; or

(c) The rate of contribution payable by a principal employer in respect of any employee; or

(d) The person who is or was the principal employer in respect of any employee; or

(e) The right of any person to any benefit and as to the amount and the duration thereof; or

(f) Any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefits; or any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute, subject to the provisions of Sub-section (2-A), shall be decided by the Employees' Insurance Court, in accordance with the provision of this Act.

Subject to the provisions of sub-section (2-A) the following claims shall be decided by the Employees' Insurance Court:

(a) Claims for the recovery of contributions from the principal employer

(b) Claims by a principal employer to recover contributions from any immediate employer

(c) Claim against a principal employer under Section 68

(d) Claim under Section 70 for the recovery of the value of amount of the benefits received by a person when he is not lawfully entitled thereto, and

(e) Claim for the recovery of any benefit admissible under this Act.

Check Your Progress

7. What is the object of the Employees' State Insurance Act, 1948?
8. List the benefits granted to all insured workers under the Employees' State Insurance Act, 1948.

7.6 SOCIAL SECURITY

The most significant contribution of the current period has been in the area of social security. The Employees State Insurance Act, 1948 (amended in 1951), introduced a

scheme of compulsory health insurance and provides, in the first instance, for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work of non-seasonal factories. The language of the statute is sufficiently wide to provide, at a later stage, for other benefits such as unemployment, compensation, and to extend the coverage to all workers—industrial, commercial, agricultural or otherwise. Two statutes, the Coal Mines Provident Fund and Bonus Schemes Act, 1948, and the Employees Provident Fund Act, 1952, seek to insure the economic security of industrial workers after they retire from active service and of their dependents in case of premature death. The initial success of the Coal Mines Labour Welfare Fund Ordinance, 1944, led the government to replace it by the Coal Mines Labour Welfare Fund Act, 1947. Earlier, the Parliament had enacted the Mica Mines Labour Welfare Fund Act, 1946. These statutes provide for the levy of a cess on the output of the industry to finance housing and such other welfare projects as the improvement of nutrition, provision for water supply, and medical, educational and recreational facilities.

7.6.1 Health Programmes

Cleanliness

Section 11 of the Factories Act, 1948, provides for general cleanliness in the factory. It lays down that dust, fumes and refuse should be removed daily; floors, staircases and passages should be cleaned regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in fourteen months and where these are painted with washable water paint, be repainted after every three years and where oil paint is used at least once in five years. Further, all doors and window-frames and other wooden or metallic framework and shutters should be kept painted or varnished and the painting or varnishing shall be carried out at least once in five years.

Disposal of Wastes and Effluents

Section 12 makes it obligatory on the occupier of every factory to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

Ventilation and Temperature

Section 13 of the Act provides:

(i) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom:
   (a) adequate ventilation by the circulation of fresh air, and
   (b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health, and in particular.

(ii) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable.

(iii) where the nature of the work carried on in the factories involves, or is likely to involve, the production of excessively high temperatures, such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process, which produces such temperatures, from the workroom, by insulating the hot parts or by other effective means.

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Dust and Fumes

Section 14 of the Act provides for elimination of dust and fumes. It reads:

(1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

Artificial Humidification

The Act empowers the state government to make rules in respect of all factories in which the humidity of the air is artificially increased, that is to (i) prescribe standards of humidification, (ii) regulate the methods used for artificially increasing the humidity of the air, (iii) direct prescribed tests for determining the humidity of the air to be correctly carried out and recorded, and (iv) prescribe methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

Overcrowding

No room of any factory shall be overcrowded to the extent it is injurious to the health of the workers. The Act further prescribes that in every workroom, each worker should be provided with a minimum space of 9.9 cubic metres which was there on the commencement of this Act and 14.2 cubic metres in the factories built after the passing of the Factories Act, 1948. No account shall however be taken of any space which is more than 4.2 metres above the level of the floor of the room for the aforesaid purpose.

Lighting

The Factories Act, requires that sufficient and suitable natural or artificial lighting should be provided and maintained in every part of the factory. Further, all windows and skylights used for lighting should be kept clean and free from obstruction. Moreover, glare, either from source of light or by reflection from a smooth or polished surface, and formation of shadows causing eye-strain or the risk of accident are to be prevented. In addition to these provisions, the state government is empowered to prescribe standards for sufficient and suitable lighting.

Conservancy Arrangements

The Act makes it obligatory on the employer to provide separately for male and female workers in every factory a sufficient number of toilets of the prescribed type. Further, it should be situated at a place so at to be convenient and accessible to the employees. Moreover, it should be enclosed, adequately lighted, ventilated and cleanly maintained.

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For the purposes of sanitation, sweepers should be employed to clean toilets and washing places. But in factories employing more than 250 workers all latrines and urinals shall be of prescribed sanitary types and the floors and internal walls, 90 centimeters tall. The sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface.

7.6.2 Occupational Safety Programmes

Fencing of Machinery

Section 21(1) requires that in every factory, the following must be securely fenced by safeguards of substantial construction while the machinery are in motion or use:

(i) every moving part of a prime mover and fly-wheel connected to prime mover, whether the prime mover or fly-wheel is in the engine house or not;

(ii) the headrace and tailrace of every water-wheel and water-turbine;

(iii) any part of stock-bar which projects beyond the head stock of a lathe; and

(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,

(a) every part of electric generator, a motor or rotary convertor,

(b) every part of transmission machinery, and

(c) every dangerous part of any other machinery

shall be securely fenced by safeguards of substantial construction which shall be consistently maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

Work on or Near Machinery in Motion

Section 22(1) requires that, where in the factory it is essential to examine any part of the machinery (referred to in Section 21) while it is in motion or as a result of such examination, it is necessary to carry out:

(a) ... lubrication or other adjusting operation; or

(b) ... any mounting or shipping of belts or lubrication or other adjusting operation.

... Such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight-fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged:

(a) Such worker shall not handle a belt at a moving pulley unless:

(i) the belt is not more than fifteen centimeters in width;

(ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance-wheel (in which case a belt is not permissible);

(iii) the belt joint is either laced or flush with the belt;

(iv) the belt, including the joint and the pulley rim, are in good repair;

(v) there is reasonable clearance between the pulley and any fixed plant or structure;

(vi) secure foothold and, where necessary, secure handhold, are provided for the operator; and

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(vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person.

(b) Without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel, or pinion, and all spur, worm and other toothed or friction grearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

Employment of Young Persons on Dangerous Machines

Section 23 prohibits the employment of a young person on a dangerous machine unless he has been fully instructed as to the dangers arising from the machine and the precautions to be observed and (i) has received sufficient training in work at the machine, or (ii) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

This provision applies to those machines which, in the opinion of the state government, are of such a dangerous nature that young persons ought not to work at them unless the foregoing requirements are complied with.

Striking Gear and Devices for Cutting off Power

In order to move the driving belts to and from fast and loose pulleys in transmission machinery and to prevent the belt from creeping back onto the fast pulley, suitable striking gear or other efficient mechanical appliance shall be provided, maintained and used. No driving belt when unused shall be allowed to rest or ride upon shafting in motion. Suitable devices are also maintained in every workroom for cutting off power in emergencies. But in factories operating before the commencement of the Act, this precaution is taken only where electricity is used as power for machines. Further, when a device, which can inadvertently shift from 'off' to 'on' position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

Self-acting Machines

Section 25 of the Factories Act provides further safeguards to workers being injured by self-acting machines. It provides:

> No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty-five centimeters from any fixed structure which is not part of the machine.

The chief inspector, is however, empowered to permit the continued use of a machine installed before the commencement of this Act which does not comply withe the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

Casing of New Machinery

Section 26(1) provides that in all machinery driven by power, after the commencement of the Factories Act, 1948, every set screw, bolt or key on any revolving shaft, spindle,

wheel or pinion shall be sunk, encased or effectively guarded as to prevent danger. Further, all spur, worm and other toothed or friction gearing not requiring frequent adjustment while in motion shall be completely encased, unless they are safely situated. Furthermore, Section 26(2) provides that whoever sells or lets on hire or, as agent of the seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1) or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ₹ 500 or with both. Under the Act, the state government is empowered to make rules for the safeguards to be provided from dangerous parts of machinery.

Prohibition of Employment of Women and Children Near Cotton Openers

The Factories Act, 1948, prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work. But if the feed-end of the cotton-opener is in a room separated from the delivery and by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

Hoists and Lifts

Hoists and lifts cause numerous accidents. Section 28(1) therefore requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength. They should not only be properly maintained but also thoroughly examined at least twice a year by competent persons. A register should also be maintained for the particulars of examination. Further, every hoistway and liftway must be sufficiently protected by enclosures fitted with gates. Every hoist, lift and enclosure must be constructed in such a way as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part. Moreover, the maximum safe working load should be marked clearly on every hoist or lift and no load greater than that shall be carried thereon. The cage of hoists or lifts used for carrying persons must have interlocking devices on the gates so as to secure that the gates cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

According to Section 28(2), the following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of the Act, namely:

(a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

(b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;

(c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

The Act empowers the chief inspector to permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of Section 28 upon such conditions for ensuring safety as he may think fit to impose.

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Lifting Machines, Chains, Ropes and Lifting Tackles

Section 29(1) requires that all lifting machines, such as cranes, crabs, winches, teagles, pulleys blocks, gin wheels, transporters or runways (other than hoists or lifts), chains, ropes or lifting tackles (such as chain slings, rope slings, hooks, shackles and swivels) should be of good construction, sound material, adequate strength and free from defects. These lifting machines, chains, ropes or lifting tackles must be properly maintained and examined by competent persons at least once a year or within such intervals as prescribed by the chief inspector. Further, the lifting machine, chain, rope or lifting tackle should not be overloaded, and 'shall be entered in the prescribed register; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises'. The travelling crane should be 6 metres away from the person working on or near its wheel track.

The state government is empowered to make rules providing for additional requirements to be observed. It is also empowered to exempt from compliance with all or any of the requirements of this section, where in its opinion, such a compliance is unnecessary or impracticable.

Section 29(3) lays down that for the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

Revolving Machinery

Section 30(1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel, the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on. The speeds indicated in notices under sub-section (1) shall not be exceeded. Similarly, care shall be taken not to exceed the safe working peripheral speed of every revolving machine like revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliances run by power.

Pressure Plant

Section 31(1) provides that effective measures should be taken to ensure safe working pressure of any part of the plant or machinery used in the manufacturing process operating at a pressure above the atmospheric pressure.

Section 31(2) empowers the state government to make rules for the examination and testing of any plant or machinery operated above atmospheric pressure and to provide for other safety measures. Sub-section (3) empowers the state government to exempt, by making rules, subject to such conditions as may be specified therein any part of any plant or machinery referred to in sub-section (1) from the provisions of the section.

Pit, Sump, and Opening in Floors

Section 33(1) of the Factories Act, 1948, requires that every fixed vessel, sump, tank, pit or opening in the ground or in the floor in every factory should be covered or securely fenced, if by reason of its depth, situation, construction or contents, they are or can be a source of danger.

Section 33(2) empowers the state government to grant exemption from compliance of the provision of this section (i) in respect of any item mentioned in the section, (ii) to any factory or class of factories, and (iii) on such condition as may be provided in the rules.

Precautions against Dangerous Fumes and Gases

In order to protect factory workers from dangerous fumes, special measures have been taken under the Factories Act. Thus Section 36(1) prohibits entry in any chamber, tank, vat, pit, pipe, flue, or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present, to such an extent as to involve risk to persons being overcome thereby, except in cases where there is a provision of a manhole of adequate size or other effective means of egress. Section 36(2) provides that

> no person shall be required or allowed to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to actually remove the gas, fumes or dust, which may be present so as to bring its level within the permissible limits.

Precaution against Using Portable Electric Light

The Act prohibits any factory to use portable electric light or any other electric appliance of voltage exceeding 24 volts in any chamber, tank, vat, pipe, flue or other confined space unless adequate safety devices are provided. The Act further prohibits the factory to use any lamp or light (other than that of flame-proof construction) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pet, pipe, flue or other confined space.

Explosives or Inflammable Materials

Experience shows that in day-to-day working, manufacturing in certain factories produces dust, gas, fume or vapour of such character and to such extent as is likely to explode on ignition. This causes danger to the personnel and property of the factory. It is with this view that several measures have been adopted under the Factories Act to prevent any such explosion. These measures include: (i) effective enclosures of the plant or machinery used in the process; (ii) removal or prevention of the accumulation of such dust, gas or vapour; (iii) exclusion or effective enclosure of all possible sources of ignition. However, where in any factory the plant or machinery used in a process referred above is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other appliances.

Further,

> where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely: (a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop-value or other means; (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure; (c) where any such fastening as aforesaid has been loosened or removed, effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part of pipe until the fastening has been secured, or, as the case may be, securely replaced.

These provisions shall, however, not apply in the case of plant or machinery installed in the open air.

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Moreover, Section 37(4) provides that,

> no plant tank or vessel which contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be allowed to enter such plant tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

The state government is, however, empowered to exempt by framing rules any factory or class or description of factories from compliance with all or any of the provisions of Section 37.

Precaution in Case of Fire

Section 38 provides that 'in every factory all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain (i) safe means of escape for all persons in the event of a fire, and (ii) the necessary equipment and facilities for extinguishing fire'. Further, under sub-section (2), effective measures should be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been trained in the routine to be followed in such cases. The state government under sub-section (3) is empowered to make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the aforesaid provisions.

Safety of Building and Machinery

According to Section 40(1) 'if it appears to the Inspector that any building or part of building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date'.

The inspector may serve upon the manager or occupier (or both) of the factory prohibiting the use of any building or part of a building or any part of the ways, machinery or plant in a factory which involves imminent danger to human life or safety until it has been properly repaired or altered.

Maintenance of Buildings

In order to ensure safety, the inspector is empowered to serve on the occupier or manager (or both) of the factory an order specifying the measures to be taken and requiring the same to be carried out if it appears to him that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers.

Safety Officers

In order to prevent accidents, the Act provides for the appointment of safety officers in factories employing 1,000 or more workers or where any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to the health of the persons employed in the factory. The state government may prescribe the duties, qualifications and conditions of service of safety officers.

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Power to Make Rules to Supplement

The state government is empowered to make rules requiring the provision in any factory or in any class or description of factories of such further devices and measures for securing the safety of persons employed therein as it may deem necessary.[12]

7.7 OBJECTIVES OF WORKERS' EDUCATION

In a developing economy, trade unions are required to play a major and constructive role in the nation's development. Inevitably, strong democratic and enlightened trade union movement is essential. Workers' education naturally, has to play a key role in streamlining trade unions in our country. Under the circumstances, the need for workers' education programme appears to be indispensable for the economic development of a country like India. This has become all the more important in view of the illiteracy of workers. A study of literacy in the working class reveals that out of 2.815 million workers engaged in tea plantation, coal mines, jute and cotton textiles, iron and steel, 2.08 million workers are illiterate.

7.7.1 Objectives and Contents

There can hardly be any precise definition of workers' education which can fit in every analysis of this programme. Workers' education varies from situation to situation and country to country. There is, however, some resemblance in almost all the programmes of workers' education. It is aimed to make the workers more responsible and better citizens and trade unionists. In India the aims and objectives of workers' education scheme are, '(i) to develop strong and more effective trade unions through better trained officials and more enlightened members; (ii) to develop leadership for the rank and file and promote the growth of democratic processes and tradition in trade union organization and administration, (iii) to equip organized labour to take place in a democratic society and to fulfil effectively its social and economic functions and responsibilities; and (iv) promote among workers a greater understanding of the problems of their economic environment and their privileges and obligation as union members and officials and as citizens.'

In India, the task of imparting education has been undertaken by the various agencies, e.g. (i) Trade union agencies, e.g., local and national trade unions (ii) International trade union agencies, e.g., ICFTU—Asian Trade Union College (iii) Semi-autonomous bodies like the Central Board of Workers' Education. Further, help has also been rendered by various agencies, namely (1) International Labour Organization; UNESCO, (2) governmental agencies and (3) educational institutions and universities.

The movement of workers' education in India since 1958 –1959 on a national basis represents our awareness of challenges faced now and to be faced in the future in this regard.

7.7.2 The Scheme of Workers' Education

In order to run the scheme, the Government of India appointed a semi-autonomous board, viz., the Central Board of Worker's Education to administer the scheme. The Board has on it representatives of the Central and state governments, organizations of employers and workers, and educational institutions, with a maximum of twenty representatives. To give it an orientation in favour of labour, workers' organizations have been given a relatively greater representation. While the Board normally meets once a year, mostly for an annual review of its work and adoption of the budget, a smaller body,

Check Your Progress

9. Which section of the Factories Act, 1948, provides for general cleanliness in the factory?
10. What are the obligations of disposal of wastes and effluents in Section 12 of the Factories Act, 1948?

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the Board of Governors, consisting of not less than six but not more than ten members, meets four times a year. The administrative functions, training and induction of new officers, and preparation of literature, audiovisual aids, etc., are centralized in the Board's office. The educational activity is decentralized. Regional and subregional centres which conduct educational work in the local area have now been opened in almost all important industrial centres. To guide the policies at the regional level, a local committee, on the same model as the Board itself, is set up at each centre.

The programme is mainly run by the Central Board of Workers' Education. It has three systems. In the first, education officers selected by the Board by open competition are given training at a central place by the staff of the Board. This staff is but only the nucleus; with it are mixed guest lecturers who are trade union leaders, employers' representatives, educational experts, administrators and the like. On successful completion of the training, the education officers are posted to regional centres on the basis of the languages with which they are familiar. The language factor has necessarily to be kept in mind in the initial selection itself. With each batch of education, officers, so trained, the Board's practice has been to include a fair number of trade union workers nominated by the Central organizations. This provides an opportunity to the trainees to be acquainted with trade union problems, albeit in a small way. The union nominees also get facilities to widen their interests and add theoretical knowledge to the practical background they possess.

The next stage in the programme is to prepare selected workers as teachers. The local committee is in charge of choosing workers from among those who are initially nominated by unions. If an employer releases a worker for training, the period of training is considered as duty and payment is made by him on that basis. Cases have occurred where an employer finds difficulties in complying with the requests of the local committee for releasing selected workers. By and large, these issues are settled by mutual accommodation. For this training, though the bulk of the educational programme is the responsibility of education officers, 'guest lecturers' are invited with a view to improve the quality of training. A study tour to places of industrial importance also forms part of the education programme.

At the third stage, worker and teachers, on completion of their training return to the establishments and conduct programme for the rank and file of workers in their respective units, workplaces or localities. This activity is supervised by the education officer located at the centre.

Participation of the unions in the Workers' Education Programme takes place in two ways. We have already referred to the inclusion of trade union nominees in the course organized for the initial preparation of education officers. The Board also expects unions which send their nominees for the course to undertake educational work on completion of their participation in the training programme. For programmes approved by the Board, the union is entitled to financial assistance through 'grant-in-aid.'

Working of the Scheme

Describing the impact of the scheme, the Seventh Annual Report of the Central Board points out:

'The impact of workers' education is now beginning to be felt in the field of trade union and industrial relations... The impact has naturally been best felt in areas where workers' education programmes have received the required cooperation from both the unions and the managements. Workers have on the whole responded with lively interest..,

Trade Unions nave been gradually showing greater awareness of the usefulness of the scheme and taking advantage of the programmes conducted by the Board.

The workers' trained are now in a better position to understand their responsibilities and duties towards their unions and establishments. Industrial relations have improved in the establishments concerned.'

The Third Five Year Plan has also stated that the courses of workers' education programmes 'have helped to raise the self-confidence of workers, increased their ability to take advantage of protective labour laws, reduced their dependence on outsiders and inculcated in them an urge for material and economic welfare.'

7.7.3 The Current Problems

Trade Unions, have however, not satisfactorily responded to this programme. The reasons for trade unions not being effective agencies for running workers' education programme are as follows:

(i) Weak financial position of trade unions

(ii) Illiteracy amongst working class

(iii) Inter-union rivalries

(iv) Absence of full-time paid office bearers in many industries

(v) Lack of proper incentives

(vi) Absence of organized life

(vii) Employers' unwillingness to release suitable workers sponsored by trade unions to undergo the necessary training

(viii) Indifferent attitude of union leaders towards this programme

(ix) Lack of interest of workers towards this programme

(x) Lack of proper wages

(xi) Lack of trade unions and industry-oriented programmes

7.7.4 Concluding Remarks

After having discussed some of the shortcomings of the trade unions' participation in the programme, it is desirable to suggest some of the measures which may be helpful in making the programme successful:

1. Trade unions should play an active role towards the workers' education programme and should help the government in framing and revising the training and syllabi so that the programme may be made more effective.
2. The managements are also required to encourage trade unions to be effectively associated in the workers' education programme by providing necessary facilities.
3. Selection of the worker-teacher should be made on the basis of qualifications, experiences and aptitude of workers. The trade unions with the help of the government may insist the management to relieve such workers.
4. Experienced and qualified trade unionists should be appointed as education officers and such (trade unionist) education officers should be placed at various regional centres as suggested by ILO expert Dr Orr. It may further be suggested that academic qualifications for the appointment of education officers should be relaxed

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in cases of experienced trade unionists. This will serve an impetus for them and will encourage them in assisting the workers' education programme.

5. The syllabi and duration of courses may also be revised after certain intervals keeping in view the changing needs of industrial society.
6. The syllabus of training' courses should also be oriented in such a manner that it may become more interesting to workers and beneficial for the trade unions work and to the industry to which they belong. The worker-trainee should not be economically handicapped during the period of training.
7. The university and educational institutions should be brought in close contact with the programme of the Central Board for Workers' Education in order that they may start such courses as may be helpful to educate the trade unionist.
8. The regional and subregional centres should directly associate themselves in the unit level classes run by worker-teachers. This may be done by organizing special classes, seminars and discussions after certain intervals by the education officers of the respective centres.
9. The honorarium of the worker-teachers of unit-level classes should be enhanced as recommended by the Committee on Workers' Education of National Commission on Labour.
10. More guest lectures and seminars of experts on various topics of workers' interest should be organized by the regional and subregional centres.
11. The quality and contents of the training programme should be improved and the duration may be extended as suggested by the Committee on Workers' Education,
12. The trade unions should be encouraged to impart training to workers. This can be done by providing more financial assistance and technical and expert guidance to them by the Central Board for Workers' Education. Here, it might be added that the formalities for getting the grants from the Central Board for Workers' Education should be relaxed and simplified.
13. Trade unions and the Central Board for Workers' Education should run a separate scheme to eradicate the illiteracy of workers.
14. The cooperation and views of the trade unions should be sought on matters connected with the workers' training.

7.8 UNFAIR LABOUR PRACTICE AND RELATED LEGISLATIONS

Check Your Progress

11. What are the aims and objectives of workers' education scheme in India?
12. Which agencies in India have undertaken the task of imparting education?

The expression 'unfair labour practices' has not been exhaustively defined in any of the enforced legislative enactments in India. However, Section 28 (k) of the Trade Unions (Amendment) Act, 1947 enumerated the following to be an unfair labour practice on the part of the employer:

(*a*) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organize, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection;

(*b*) to interfere with the formation or administration of any trade union or to contribute financial or other support to it;

(*c*) to discharge, or otherwise discriminate against any officer of a recognized trade union because of his being such officer;

(*d*) to discharge, or otherwise discriminate against any workman because he has made allegations or given evidence in any inquiry or proceeding relating to any matter such as is referred to in sub-section (i) of Section 28 F;

(*e*) to fail to comply with the provisions of Section 28 F.

Unfair Labour Practices on the Part of Trade Unions under the Trade Unions (Amendment) Act, 1947

Section 28 J of the Trade Unions (Amendment) Act, 1947, (which is unenforced) dealt with unfair labour practices by trade unions:

(*a*) for a majority of the members of the trade union to take part in an irregular strike;

(*b*) for the executive of the trade union to advise or actively support or instigate an irregular strike;

(*c*) for an officer of the trade union not to submit any return required by or under this Act containing false statements.

7.8.1 Judicial Delineation of 'Unfair Labour Practice'

In the absence of any enforced statutory definition, the courts have tried to fill this gap. The judicial interpretation of the expression 'unfair labour practice' has given rise to two main views, *viz*., the narrow and the extensive.

A. Narrow View

Some of the early adjudicators confined the expression 'unfair labour practice' to trade union activity. In other words, 'no trade union activity, no unfair labour practice.' This view was evidently supported by the provisions of Section 28 K of the Trade Unions (Amendment) Act, 1947. However, later, decision-makers refused to accept the narrow interpretation on at least two grounds. *First*, if unfair labour practice is confined merely to trade union activities, then the worker who is not the member of any union and as such, having no trade union activities will not be entitled to any relief under the Industrial Disputes Act, 1947 when he is discharged. The result will be that either the employer would try to engage non-union men or that non-union men will be forced indirectly to join a union. This will be in the words of the tribunal, an interference with the natural rights of workmen. *Second*, the narrow interpretation limits the scope of tribunal's jurisdiction to intervene only in cases where the management has dismissed or discharged workmen for trade union activities.

B. Extensive View

A few of the earlier decisions and later decisions generally emphasize extensive view. For instance, Shri A G Gupta in *Alexandra Jute Mills Ltd* vs. *Their Workmen* illustrated unfair labour practice:

> any order made in bad faith with an ulterior motive arbitrarily or with harshness is an instance of unfair labour practice.

There are other illustrations, *e.g*., hasty action of company without giving the employee any notice or holding an inquiry provided that the refusal by an employer to permit his workmen to engage in trade union activities during their hours of work shall not be deemed to be unfair practice on his part. And Section 32A of the Trade Unions

(Amendment) Act, 1947 prescribed the penalty for committing unfair labour practices. Thus it provides that '(1) any employer who commits any unfair practice set out in Section 28 K shall be punishable with fine which may extend to ₹1,000. (2) Where a criminal court imposes a fine, or confirms in appeal, revision or otherwise a sentence of fine imposed on an employer for committing an unfair labour practice set out in clause (c) or clause (d) of Section 28 K, it may when passing judgement, order the whole or any part of the fine to be applied in the payment to any person as compensation for lessor injury caused by the unfair practice.'

Code of Discipline in Industry

The Code of Discipline, 1958 contains a list of unfair labour practices to be avoided by unions and management:

(1) Management agrees... not to support or encourage any unfair labour practice such as:
   (*a*) interference with the rights of employees to enrol or continue as union members
   (*b*) discrimination, restraint or coercion against any employee because of recognized activity of trade unions
   (*c*) victimization of any employee and abuse of authority in any form

(2) Unions agree to discourage unfair labour practices such as:
   (*a*) negligence of duty
   (*b*) careless operation
   (*c*) damages to property
   (*d*) interference with or disturbance to normal work
   (*e*) insubordination

Response of the (first) National Commission on Labour

The (First) National Commission on Labour has also recommended that the law should enumerate various unfair labour practices on the part of employers and on the part of workers' unions; and provide for suitable penalties for committing such practices. Complaints relating to unfair labour practices will be dealt with by the labour courts. They shall have the power to impose suitable punishments/penalties which may extend to de-recognition in case of unions and heavy fine in case of an employer found guilty of such practices.

Unfair Labour Practices on the Part of Employers and Trade Unions of Employers under the Industrial Disputes (Amendment) Act, 1982

Section 2 (ra) read with the Fifth Schedule of Industrial Disputes (Amendment) Act, 1982 defines and enumerates unfair labour practices on the part of employers to mean:

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 purposes of collective bargaining or 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 union is organized;
   (*c*) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermine the efforts of the trade union organization.

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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 favour to one of 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 promotions to certain workmen with a view to create 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 the colourable exercise of the employer's rights;
   (*c*) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
   (*d*) for patently false reasons;
   (*e*) on untrue or trumped up allegations of absence without leave:
   (*f*) in utter disregard of the principles of natural justice in the conduct of domestic inquiry or with undue haste;
   (*g*) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
6. To abolish the work of a regular nature being done by workmen and to give such work to contractors as a measure for breaking a strike.
7. To transfer a workman *mala fide* from the 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 pre-condition to allowing them to resume work.
9. To show favouritism or partiality to one set of 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 inquiry or proceeding relating to any industrial dispute.

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12. To recruit workmen during a strike which 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 trade unions.
16. Proposing or continuing a lockout deemed to be illegal under this Act.

And Section 25 T of the Act prohibits employers (whether registered under the Trade Unions Act, 1926 or not) to commit any of the aforesaid unfair labour practices. Violation of the provision is punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to ₹1,000 or with both.

A perusal of item 7 of the Fifth Schedule read with Section 25 T of the Act reveals that there is a statutory prohibition engrafted in the Industrial Disputes Act prohibiting transfer of a workman *mala fide* from one place to another under the guise of management policy. Thus, a valued right has been created by the statute in favour of the workman from being subjected to by his employer to transfers *mala fide* under the guise of following the management policy. This is a right which has been created by the Industrial Disputes Act in favour of the workmen restricting the unfettered right of the management in the matter of effecting transfers of his employees. The obligation not to transfer a workman *mala fide* from one place to another under the guise of management policy was not recognized under common law. That right it now created by the statute. The remedy has been provided in Section 10 of the Act. There are several conditions which are to be satisfied for invoking the remedy provided under Section 10 of the Act. When the statute prescribes a remedy and also prescribes the conditions for availing of that remedy, if the conditions for invoking the remedy cannot be complied with, it does not mean that the statute has not provided the remedy. Thus, the right as well as the remedy have been provided by the Industrial Disputes Act in the matter of transfer by the management. In such a case, the jurisdiction of the civil court is by necessary implication barred.

From the above, it is clear that (i) management is not expected to interfere with the rights of the workmen to organize themselves into a trade union. (ii) The management is also not supposed to dominate, interfere with or support, financial or otherwise, to any trade union. (iii) The management is not expected to establish employer-sponsored trade unions of workmen, and it is also not supposed to encourage or discourage membership to any union by taking the various steps which are mentioned above, clearly speaks of a recognized trade union. (iv) To refuse to bargain collectively even in good faith with a recognized trade union is an unfair labour practice.

Discouragement of Badli workmen to join a trade union—an unfair labour practice. In *Panyam Cement Employees Union affiliated to INTUC, Kurnool District* v. *Commissioner of Labour, Hyderabad,* the High Court of Andhra Pradesh held that a reading of clause 4 of Part 1 of the Fifth Schedule reveals that any action on the part of the employer/workmen to discourage a workman from participating in a trade union activity is unfair labour practice. *Badli* workmen are workmen and, therefore, if any employer disapproves of a 'trade union of *badli* workers' or discourages *badli* workers to join a trade union or denies voting right to *badli* workers, the same would amount to unfair labour practice.

Temporary appointment for successive fixed tenure with artificial breaks—an unfair labour practice. The Supreme Court in *Regional Manager*, *SBI* v. *Raja Ram* ruled that when an employee is appointed temporarily for successive fixed tenures

with artificial breaks in between so as to deny the employee the right to claim permanent appointment, such action would be an unfair labour practice within the meaning of the phrase in Section 2(ra) of the Act. Section 2(ra) says that unfair labour practice means any of the practices specified in the Fifth Schedule the Act. The Fifth Schedule to the Act contains a list of unfair labour practices which have been classified under two heads, namely:

(I) on the part of the employer and trade unions of employers; and

(II) on the part of the workmen and trade unions of workmen. The principle that we have referred to earlier finds place in Item 10 of Part I under which:

> '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,' is an unfair labour practice.

In other words, before an action can be termed as an unfair labour practice, it would be necessary for the labour court to come to the conclusion that the *badlis,* casuals and temporary workmen had been continued for years as *badlis,* casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasized that for the practice to amount to unfair labour practice, it must be found that the workmen had been retained on a casual or temporary basis with the object of depriving the workmen of the status and privileges of a permanent workman.

The aforesaid view was reiterated in *Krishna Lal* v. *General Manager, Haryana Roadways, Rohtak*. The Punjab and Haryana High Court held that where the services of a workman are terminated before the expiry of 240 days in order to give artificial break for a few days and after some time, he is again re-employed, it amounts to unfair labour practice under Section 2(ra) of the Industrial Disputes Act, 1947.

Contravention of Model Standing Orders — an unfair labour practice. In *R P Sawant* v. *Bajaj Auto Ltd.*, the Bombay High Court held that the contravention of the Model Standing Order is an unfair labour practice within meaning of item 9 of Schedule IV in respect of which industrial court was competent to grant relief to the complainants.

Unfair Labour Practices on the Part of Workmen and Trade Unions of Workmen Under the Industrial Disputes (Amendment) Act, 1982

Section 2 (va) read with the Fifth Schedule of the Amendment Act also enumerates the following unfair labour practices on the part of workmen and their trade unions:

1. To advice or actively support or instigate any strike deemed to be illegal under this Act.
2. To advice workmen in the exercise of their right to 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 picket in such a manner that non-striking workmen are physically debarred from entering the work places;
   (*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.

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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 wilful 'go slow', squatting on the work premises after working hours or '*gherao*' of any of the members of the management or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

The commission of aforesaid unfair labour practices are prohibited under Section 25 T and whosoever commits any such unfair labour practice is punishable under Section 25 U of the Industrial Disputes (Amendment) Act, 1982 with imprisonment which may extend to 6 months or with fine which may extend to '1,000 or with both.

7.8.2 Proof of Unfair Labour Practice

The charge of unfair labour practice should be specifically levelled so that the employer is able to meet it. It should also be proven by clear evidence. It is undoubtedly correct that sometimes, the facts may speak for themselves and it may be possible to infer that the employer was acting unfairly but there should be some evidence which should indicate an improper motive so as to enable the court to arrive at a finding of unfair labour practice.

Victimization

Victimization and unfair labour practice always go together. According to some, unfair labour practice can stand by itself, but victimization is always a part of unfair labour practice. For instance, where the employer interferes with employees' right to self organization or with the formation of any labour organization, or where the employer bangs the door on any settlement by negotiation, there may be unfair labour practice. In such cases, no punishment need be inflicted on any employee. It cannot be said that there is any victimization. Thus, separate existence of unfair labour practice is conceivable. 'In other words, the dividing line between victimization and unfair labour practice is very thin and what is unfair labour practice may also be a victimization and *vice versa*.'

Like unfair labour practice, the word 'victimization' has not been defined either in the Trade Unions Act, 1926 or in the Industrial Disputes Act, 1947. The Supreme Court in *Bharat Bank Ltd* v. *Employees of Bharat Bank Ltd*, has, however, defined the word 'victimization' to mean:

> a certain person has become a victim, in other words, that he has been unjustly dealt with.

The aforesaid meaning was followed in *Bharat Iron Works* v. *Bhagubhai Balubhai Patel,* wherein the Supreme Court observed that a person is victimized, if he is subjected to persecution, prosecution or punishment for no real fault or guilt of his own, in the manner, as it were a sacrificial victim. The Supreme Court said that victimization may partake various types. For example, pressurizing an employee to leave

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the union or union activities, treating an employee unequally or in an obviously discriminatory manner for the sole reason of his connection with union or his particular union activity; inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like.

The Supreme Court in *Workmen of M/s Williamson Magor and Co. Ltd* v. *M/s Williamson Magor and Co. Ltd,* accepted the normal meaning of 'victimization', namely, being the victim of unfair and arbitrary action, and held that there was 'victimization of the superseded workmen. The tendency of the Court to safeguard the interest of workmen, is also evident from the observation of the Court, that whenever, the word 'victimization' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to that of management.

Justice Dhawan in *L H Sugar Factories & Oil Mills (P) Ltd,* expressed the view that unfair labour practices or victimization are to be decided by the tribunal, upon the circumstance of each case. However, from the mere fact that the concerned workmen were office-bearers of the union, it cannot be inferred that the company was actuated by any improper motive to victimize them, when the charge of misconduct was proved against them.

Ludig Teller has enumerated and given seven instances where the employees may be held guilty of unfair labour practice. These are, for instance, sit down strikes, to compel members to join the union, strikes in violation of collective bargaining agreement, strike during 'cooling-off', obstruction of lawful works, the commission of misdemeanours in connection with labour disputes, unlawful picketing, etc.

In *RBS Jain Rubber Mills*, the tribunal listed the following as outward manifestation to be taken into account for victimization or unfair labour practice:

- Discrimination between workers
- Singling out union leaders or members
- Anti-union statement made at the time of discharge or shortly prior thereto
- Relative significance of the alleged infraction
- Whether others ever committed the same infraction without similarly being punished to the extent of discharge
- Failure without explanation to introduce specific evidence in support of a general accusation or reason for discharge or to call witnesses who have personal knowledge of the basis of denial
- Failure of the employer to hold an investigation
- Failure to afford an employee the opportunity to defend himself
- Uneven application of the company's rule

A. Proof of Victimization

Victimization 'is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded, giving all particulars upon which the charge is based, to enable the employer to fully meet them. The charge must not be vague or indefinite, being as it is an amalgamation of facts as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is *per se* no crucial instance.'

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B. Burden of Proof

The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the tribunal and a conclusion should be reached on a totality of the evidence produced.

Again, victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him... A proved misconduct is antithesis of victimization as understood in industrial relations.

7.8.3 Scope of Interference by Industrial Tribunal

It was established in *Indian Iron and Steel Co.* v. *Their Workmen* that industrial tribunal can interfere, *inter alia*, in management's order when there is victimization or unfair labour practice.

Again, in *Ananda Bazar Patrika* v. *Their Employees*, the Supreme Court dealt with the extent of jurisdiction of a labour court or an industrial tribunal and observed as follows: If on the one hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the tribunal would be entitled to give adequate protection to the employees by ordering his reinstatement, or directing in his favour the payment of compensation. But if the inquiry has been proper and the conduct of the management in dismissing the employee is not *mala fade*, then the tribunal cannot interfere with the conclusions of the inquiry officer, or with the orders passed by the management after accepting the said conclusions.

In Bengal Bhatdee Coal Co. v. *Singh,* the Supreme Court ruled:

> [T]here is no doubt that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of management, there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of offence that the tribunal may be able to draw an inference of victimization merely from the punishment inflicted.

The Supreme Court in *Hind Construction and Engineering Co. Ltd* v. *Their Workmen* has put the position of law as follows:

> It is now settled law that the tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the tribunal as it is ordinarily before a court of appeal. The tribunal's powers have been stated by this court in a large number of cases and it has been ruled that the tribunal can only interfere if the conduct of the employer shows lack of *bona fides* or victimization of employee or employees or unfair labour practices. The tribunal may, in a strong case, interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic inquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the inquiry is so perverted in its procedure as to amount to no inquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the Standing Orders, if any, is a matter for the management

to decide and if there is any justification for the punishment imposed, the tribunal should not interfere. The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment and the past record are such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

7.9 SUMMING UP

- Labour welfare means activities that are done for the welfare and betterment, educational and collective, of the employees, in addition to the wages paid which are not essential for the industry.
- Labour Welfare observed that labour welfare includes:
  - o Such services, facilities and amenities as adequate canteens, rest and recreation facilities
  - o Sanitary and medical facilities
  - o Arrangements for travel to and from work and for the accommodation of workers employed at a distance from their homes
  - o Other services, amenities and facilities including social security measures/as contribute to improve the conditions under which workers are employed.
- The object of the Workmen's Compensation Act, 1923, is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment.
- The Maternity Benefit Act, 1961, is an Act to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.
- The object of the Employees' State Insurance Act, 1948, is to provide sickness, disablement and medical benefits, and maternity benefits to the employees of factories and other industrial establishments as well as to their dependants.
- Social Security benefits are paid out on a monthly basis to retired workers and their surviving spouses. They are also paid to those who are partially or completely disabled according to the strict criteria set forth by the Social Security Administration.
- In India, the task of imparting education has been undertaken by the various agencies, e.g.
  - o Trade union agencies, e.g., local and national trade unions
  - o International trade union agencies, e.g., ICFTU—Asian Trade Union College
  - o Semi-autonomous bodies like the Central Board of Workers' Education
- Section 28 (k) of the Trade Unions (Amendment) Act, 1947 enumerated the following to be an unfair labour practice on the part of the employer:
  - o To interfere with, restrain, or coerce his workmen in the exercise of their rights to organize, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection;
  - o To interfere with the formation or administration of any trade union or to contribute financial or other support to it;
  - o To discharge, or otherwise discriminate against any officer of a recognized trade union because of his being such officer;

Check Your Progress

13. Which section deals with unfair labour practices by trade unions?
14. What does the Code of Discipline, 1958 contain?

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- To discharge, or otherwise discriminate against any workman because he has made allegations or given evidence in any inquiry or proceeding relating to any matter such as is referred to in sub-section (i) of Section 28 F;
- To fail to comply with the provisions of Section 28 F.

- Section 28 J of the Trade Unions (Amendment) Act, 1947, (which is unenforced) dealt with unfair labour practices by trade unions:
  - For a majority of the members of the trade union to take part in an irregular strike;
  - For the executive of the trade union to advise or actively support or instigate an irregular strike;
  - For an officer of the trade union not to submit any return required by or under this Act containing false statements.

7.10 KEY TERMS

- **Labour welfare:** Activities that are done for the welfare and betterment, scholarly and collective, of the employees in addition to the wages paid which is not a essential for the Industry.
- **Workman:** Any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business).

7.11 ANSWERS TO 'CHECK YOUR PROGRESS'

1. According to the International Labour Organization (ILO), 'labour welfare' means: 'Such services, facilities and amenities as adequate canteens, rest and recreation facilities, arrangements for travel to and from work and for the accommodation of workers employed at a distance from their houses, and such other services, amenities and facilities as contribute to improve the conditions under which the workers are employed.'
2. Broadly speaking, the legislation relating to labour welfare may be divided into two categories: (i) welfare amenities within the plant or establishment, and (ii) welfare amenities outside the plant or establishment.
3. The object of the Workmen's Compensation Act, 1923, is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment.
4. Total Disablement means such disablement, whether of a temporary or permanent nature, that incapacitates a workman for all the work he was capable of performing at the time of the accident, resulting in such disablement.
5. The Supreme Court in Municipal Corporation of Delhi v. Female Workers (Muster Roll) (2000) I LLJ 846 held the object of the Act as follows:

   The Maternity Benefit Act, 1961 aims to provide all the facilities to a working woman in a dignified manner, so that she may overcome the state of motherhood

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honourably, peacefully, undeterred by the fear of being victimized for forced absence during the pre- or post-natal period.

6. Under Section 8, every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of two hundred and fifty rupees, if no pre-natal confinement and post-natal care is provided for by the employee, free of charge.
7. The object of the Employees' State Insurance Act, 1948 is to provide sickness, disablement and medical benefits, and maternity benefits to the employees of factories and other industrial establishments as well as to their dependants.
8. The following benefits are granted to all insured workers under the Employees' State Insurance Act, 1948:
   (i) Maternity benefit
   (ii) Disablement benefit
   (iii) Sickness benefit
   (iv) Medical benefit
   (v) Dependants' benefit
   (vi) Funeral benefit
9. Section 11 of the Factories Act, 1948, provides for general cleanliness in the factory.
10. Section 12 makes it obligatory on the occupier of every factory to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.
11. In India the aims and objectives of workers' education scheme are, '(i) to develop strong and more effective trade unions through better trained officials and more enlightened members; (ii) to develop leadership for the rank and file and promote the growth of democratic processes and tradition in trade union organization and administration, (iii) to equip organized labour to take place in a democratic society and to fulfill effectively its social and economic functions and responsibilities; and (iv) promote among workers a greater understanding of the problems of their economic environment and their privileges and obligation as union members and officials and as citizens.'
12. In India, the task of imparting education has been undertaken by the various agencies, e.g. (i) Trade union agencies, e.g., local and national trade unions (ii) International trade union agencies, e.g., ICFTU—Asian Trade Union College (iii) Semi-autonomous bodies like the Central Board of Workers' Education. Further, help has also been rendered by various agencies, namely (1) International Labour Organization; UNESCO, (2) governmental agencies and (3) educational institutions and universities.
13. Section 28 J of the Trade Unions (Amendment) Act, 1947, (which is unenforced) dealt with unfair labour practices by trade unions.
14. The Code of Discipline, 1958 contains a list of unfair labour practices to be avoided by unions and management.

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7.12 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What were the extensions introduced within the scope of labour welfare by the International Labour Conference, in 1956?
2. What obligations do Section 48 of this Act and Section 14 of the Beedi and Cigar Workers (Conditions of Employment) Act place on the employers?
3. What are the requirements of the Plantations Labour Act, 1951?
4. Who are the people falling in the category of dependants of an employee under the Employee's State Insurance Act, 1948?
5. Differentiate between partial and total disablements.

Long-Answer Questions

1. Explain the concept of labour welfare in detail.
2. Describe the salient features of the Workmen's Compensation Act, 1923.
3. Give a detailed account of the characteristics of the Maternity Benefit Act, 1963.
4. List and explain the various aspects of the Employees' State Insurance Act, 1948.
5. Write a note on the concept of social security and the objectives of Worker's Education.
6. Discuss unfair labour practices and the legislations related to them.

7.13 REFERENCES AND SUGGESTED READINGS

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UNIT 8 ILO AND WTO

NOTES

Structure

8.0 Introduction
8.1 Objectives
8.2 ILO – Conventions and Recommendations
  8.2.1 Structure and Activities
  8.2.2 Making of International Labour Standard
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8.6 Answers to 'Check Your Progress'
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8.8 References and Suggested Readings

8.0 INTRODUCTION

Over the years, the role of the WTO and the relationship between WTO agreements and ILO labour standards have been debated intensively. There is a body of legal opinion that says the two cannot be examined in isolation because countries have to comply with all their international obligations.

All WTO member governments are committed to a narrower set of internationally recognized 'core' standards — freedom of association, no forced labour, no child labour, and no discrimination at work.

In this unit, you will learn about the conventions and recommendations adopted by the ILO and the issue of trade and labour standards developed by the WTO.

8.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the labour standards that were converted into conventions and recommendations
- Explain the right to collective bargaining
- Recognize the key role played by the ILO in promoting international labour standards

8.2 ILO – CONVENTIONS AND RECOMMENDATIONS

Certain fundamental principles of the ILO were laid down at the time of its inception. These principles are known as the Charter of Freedom of Labour. The main principles of the ILO are as follows:

- Labour is not a commodity
- Freedom of expression and of association are essential to sustained progress

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- Poverty anywhere constitutes danger to prosperity everywhere
- The war against want requires to be carried on with unrelenting vigour within each nation and by continuance and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of the governments, join with them in free discussion and democratic decision with a view to promotion of common welfare.

The aforesaid principles were modified at the 26th session of ILO held in Philadelphia in 1944. It also adopted a declaration that concerns with the aims and purposes of the organization. This declaration is known as the Philadelphia Charter.

By 2008, ILO had adopted 190 conventions and 198 recommendations. India had ratified 42 of the 190 conventions and one protocol. The Constitution of India and labour legislation uphold all the fundamental principles envisaged in the 8 core international labour standards. It ratified 4 of the 8 core conventions of ILO. With regard to the others, India seeks to proceed with progressive implementation of the concerned standards and leave the formal ratification for consideration at a later stage when it becomes practicable.

The ILO has influenced labour legislation in India. Most labour legislation has been enacted in conformity with ILO conventions.

Today, the ILO stands as one of the specialized agencies of the United Nations with longer history than any of its sister organizations.

8.2.1 Structure and Activities

The ILO is a tripartite organization consisting of representatives of governments, employers and workers of the member-countries. There is parity of representation as between government and non-government groups and also between employers' and workers' groups. The structure of the organization has helped in welding together employers and workers in various countries (including India) into independent organizations. In our country, for a long time now the representatives of employers and workers have secured, through their respective constituencies, elective posts on the Governing Body of the ILO.

The ILO operates through its (*i*) Governing Body; (*ii*) International Labour Office; and (*iii*) the International Labour Conference, which meets once a year to review the international labour scene.

8.2.2 Making of International Labour Standard

The annual conference sets normative standards on important matters such as regulation of hours of work and weekly rest in industry, equal remuneration for equal work, abolition of forced labour, discrimination in employment, protection of workmen against sickness, disease and work-injury, regulation of minimum wages, prohibition of night work for women and young persons, recognition of the principle of freedom of association, organization of vocational and technical education, and many areas concerning labour management relations. The standards are evolved after a full debate in the conference. Usually the standards are accepted after discussions in the conference over two successive years. Agreed standards on a specified subject are then converted into an international instrument, a 'Convention' or a 'Recommendation', each having a different degree of compulsion. A 'Convention' is binding on the member-state which ratifies it; a 'Recommendation' is intended as a guideline for national action.

8.2.3 ILO Declaration on Fundamental Principles and Rights at Work

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The ILO declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in June 1998, declares *inter alia* that all member states, whether they have ratified the relevant conventions or not, have an obligation to respect, promote and realize the principles concerning the fundamental rights which are the subject of those conventions, namely:

- freedom of association and the effective recognition of the right to collective bargaining
- elimination of all forms of forced or compulsory labour
- effective abolition of child labour
- elimination of discrimination in respect of employment and occupation

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The goal is not just the creation of jobs but the creation of jobs of acceptable quality.

The Government of India has ratified Convention 122 on Employment and Social Policy in 1998. Article 1 of the Convention lays down:

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.
2. The said policy shall aim at ensuring that:
    - There is work for all who are available for and seeking work
    - Such work is as productive as possible
    - There is freedom of choice of employment and fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.
3. The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.

The aforesaid convention was ratified by India at a time when unemployment levels were high. One, therefore, has to presume that the government is now committed to pursue an active policy designed to promote full, productive and freely chosen employment.

From the commitments made by the Government of India, it can be deduced that the following rights of workers have been recognized as inalienable and must, therefore, accrue to every worker under any system of labour laws and labour policy. These are:

- Right to work of one's choice
- Right against discrimination
- Prohibition of child labour
- Just and humane conditions of work

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- Right to social security
- Protection of wages including right to guaranteed wages
- Right to redressal of grievances
- Right to organize and form trade unions and right to collective bargaining
- Right to participation in management

At an international level, the concern felt by the International Labour Organization for evolving an international instrument for recognition of trade unions resulted in ILO Convention No. 87 on 'Freedom of Association and Protection of the Right to Organize' in 1948 and Convention No. 98 concerning the right to organize and bargain collectively in 1949. The former states:

> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organization of their own choosing without previous authorization. The convention empowers the workers' organization to frame their constitution, to elect representatives and among others to organize their activities. To establish and join federations, Article 8 of the Convention requires that workers and employers and their respective organizations, like all other, shall respect the law of the land. The law of the land shall not be such as to impair nor shall it be so applied as to impair, the guarantees provided for in the constitution. The latter confers protection to workers against acts of anti-union discrimination in respect of their employment. The protection is, directed in respect to acts calculated to: (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; and (b) cause the dismissal of, or otherwise prejudice a worker by reason of union membership or because of his participation in union activities outside working hours.

8.2.4 ILO Principles on the Right to Collective Bargaining

The standards and principles emerging from the ILOs conventions, recommendations and other instruments on the right to collective bargaining, and the principles set forth by the Committee and the Freedom of Association may be summarized as follows :

- The right to collective bargaining is a fundamental right endorsed by the members of the ILO in joining the organization, under which they have an obligation to respect, to promote and to realize, in good faith (ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up) the right to collective bargaining.
- Collective bargaining is a right of employers and their organizations, on the one hand, and organizations of workers, on the other hand (first-level trade unions, federations and confederations); only in the absence of these latter organizations, may representatives of the workers concerned conclude collective agreements.
- The right to collective bargaining should be recognized throughout the private and public sectors and it is only the armed forces, the police and public servants engaged in the administration of the state who may be excluded from the exercise thereof (Convention No. 98).

Check Your Progress

1. When and where were the principles of the ILO modified?
2. How does the ILO operate?
3. How many recommendations had been adopted by the ILO by 2008?

8.3 WTO - LABOUR STANDARDS

The International Labour Organization (ILO) has played a key role in promoting international labour standards. It was set up in 1919 under the Treaty of Versailles. India is a founder member of the ILO.

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Labour standards are those that are applied to the way workers are treated. The term covers a wide range of issues: from use of child labour and forced labour, to the right to organize trade unions and to strike, minimum wages, health and safety conditions, and working hours.

There is a clear consensus: all WTO member governments are committed to a narrower set of internationally recognized 'core' standards — freedom of association, no forced labour, no child labour, and no discrimination at work (including gender discrimination).

At the 1996 Singapore Ministerial Conference, members defined the WTO's role on this issue, identifying the International Labour Organization (ILO) as the competent body to negotiate labour standards. There is no work on this subject in the WTO's Councils and Committees. However the secretariats of the two organizations work together on technical issues under the banner of 'coherence' in global economic policy-making.

For several years the issue of trade and core labour standards has been the subject of intense debate among and within some World Trade Organization member governments.

Currently, labour standards are not subject to WTO rules and disciplines. But some WTO member governments in Europe and North America believe that the issue must be taken up by the WTO in some form if public confidence in the WTO and the global trading system is to be strengthened. These member governments argue that the rights such as: the freedom to bargain collectively, freedom of association, elimination of discrimination in the workplace and the elimination workplace abuse (including forced labour and certain types of child labour), are matters for consideration in the WTO. Several member governments have suggested that the issue be brought into the WTO through the formation of a working group to study the issue of trade and core labour standards. Bringing the matter to the WTO, these member governments believe, will provide incentives for WTO member governments to improve conditions for workers around the world.

This proposal is among the most controversial currently before the WTO.

Most developing countries and many developed nations believe that the issue of core labour standards does not belong in the WTO. These member governments see the issue of trade and labour standards as a guise for protectionism in developed-country markets. Developing-country officials have said that efforts to bring labour standards into the WTO represent a smokescreen for undermining the comparative advantage of lower-wage developing countries.

Many officials in developing countries argue that better working conditions and improved labour rights arise through economic growth. They say that if the issue of core labour standards became enforceable under WTO rules, any sanctions imposed against countries with lower labour standards would merely perpetuate poverty and delay improvements in workplace standards.

The issue of trade and labour standards has been with the WTO since its birth. At the Ministerial Conference of the General Agreement on Tariffs and Trade held in Marrakesh in April 1994 to sign the treaty that formed the WTO, nearly all ministers expressed a point of view on the issue. The Chairman of that conference concluded there was no consensus among member governments at the time, and thus no basis for agreement on the issue.

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At the first WTO Ministerial Conference in Singapore in December 1996 the issue was taken up and addressed in the Ministerial Declaration. At Singapore, Ministers stated:

'We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.'

Existing collaboration between the WTO and the ILO includes participation by the WTO in meetings of ILO bodies, the exchange of documentation and informal cooperation between the ILO and WTO Secretariats.

Since the Singapore Ministerial Conference, the ILO has taken two significant steps in addressing the issue of workers' rights. In 1998, ILO member governments adopted the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up. Under this declaration, ILO member governments endorsed some basic principles which are included in the core ILO Conventions which have been discussed in detail in the previous unit.

8.4 SUMMING UP

- The ILO has influenced labour legislation in India. Most labour legislation has been enacted in conformity with ILO conventions.
- Today, the ILO stands as one of the specialized agencies of the United Nations with longer history than any of its sister organizations.
- The ILO is a tripartite organization consisting of representatives of governments, employers and workers of the member-countries. There is parity of representation as between government and non-government groups and also between employers' and workers' groups.
- The structure of the organization has helped in welding together employers and workers in various countries (including India) into independent organizations.
- The ILO operates through its (i) Governing Body; (ii) International Labour Office; and (iii) the International Labour Conference, which meets once a year to review the international labour scene.
- The annual conference sets normative standards on important matters such as regulation of hours of work and weekly rest in industry, equal remuneration for equal work, abolition of forced labour, discrimination in employment, protection of workmen against sickness, disease and work-injury, regulation of minimum wages, prohibition of night work for women and young persons, recognition of the principle of freedom of association, organization of vocational and technical education, and many areas concerning labour management relations.
- The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security

Check Your Progress

4. What issues are addressed by the standards set down for labour?
5. What was discussed at the 1996 Singapore Ministerial Conference?

and human dignity. The goal is not just the creation of jobs but the creation of jobs of acceptable quality.

- The right to collective bargaining is a fundamental right endorsed by the members of the ILO in joining the organization, under which they have an obligation to respect, to promote and to realize, in good faith (ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up) the right to collective bargaining.
- The International Labour Organization (ILO) has played a key role in promoting international labour standards. It was set up in 1919 under the Treaty of Versailles. India is a founder member of ILO.
- At the 1996 Singapore Ministerial Conference, members defined the WTO's role on this issue, identifying the International Labour Organization (ILO) as the competent body to negotiate labour standards.
- There is no work on this subject in the WTO's Councils and Committees. However the secretariats of the two organizations work together on technical issues under the banner of 'coherence' in global economic policy-making.
- Currently, labour standards are not subject to WTO rules and disciplines. But some WTO member governments in Europe and North America believe that the issue must be taken up by the WTO in some form if public confidence in the WTO and the global trading system is to be strengthened.
- Most developing countries and many developed nations believe that the issue of core labour standards does not belong in the WTO. These member governments see the issue of trade and labour standards as a guise for protectionism in developed-country markets.

8.5 KEY TERMS

- **Labour standards:** Labour standards refer to conventions agreed upon by governing bodies, resulting from a series of value judgments, set forth to protect basic worker rights, enhance workers' job security, and improve their terms of employment on a global scale.
- **ILO**: The International Labour Organization (ILO) is a United Nations agency dealing with labour issues, particularly international labour standards and decent work for all.

8.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The aforesaid principles were modified at the 26th session of ILO held in Philadelphia in 1944.
2. The ILO operates through its (*i*) Governing Body; (*ii*) International Labour Office; and (*iii*) the International Labour Conference, which meets once a year to review the international labour scene.
3. By 2008, ILO had adopted 190 conventions and 198 recommendations.
4. Labour standards cover a wide range of issues: from use of child labour and forced labour, to the right to organize trade unions and to strike, minimum wages, health and safety conditions, and working hours.

5. At the 1996 Singapore Ministerial Conference, members defined the WTO's role, identifying the International Labour Organization (ILO) as the competent body to negotiate labour standards.

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8.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the main principles of the ILO?
2. Write a short note on the making of international labour standards.
3. State the ILO principles on the right to collective bargaining.

Long-Answer Questions

1. 'Conventions and recommendations have a different degree of compulsions.' Discuss.
2. The International Labour Organization (ILO) has played a key role in promoting international labour standards. Discuss the standards.

8.8 REFERENCES AND SUGGESTED READINGS

Mehrotra, S.N. 1976. *Labour Problems in India*. New Delhi: S. Chand Publishers.

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UNIT 9 CASE STUDIES

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CASE STUDY I

Workmen's Compensation Act, 1923—Section 3(1)

In Jyothi Ademma v. *Plant Engineer, Nellore, 2006 III LLJ (324)*

A workman who was working in a thermal station died at the work spot. His wife claimed compensation stating that the death was due to stress and strain closely linked with the employment of the deceased workman and, therefore, attributable to an accident arising out of and in the course of employment. The Commissioner for Workmen's Compensation accepted the said plea and directed payment of compensation. The employer challenged the direction of the Commissioner before the High Court of Andhra Pradesh. The stand of the employer before the High Court was that the workman did not die on account of any injury sustained by him 'in any accident arising out of and in the course of his employment'. The High Court noted that there was no injury as such, but he died due to heart attack at the work spot and found that the nature of the job that the deceased workman was doing could not have caused any stress and strain and, therefore, the death due to heart attack could not be said to have been caused by any accident arising out of and in the course of his employment. Now, the wife of the deceased workman challenged the judgement of the High Court before the Supreme Court. The Supreme Court, however, dismissed the appeal by holding that:

(i) Under Section 3 (a) of the Act, it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease that he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

(ii) In the present case, it has been brought on record that the deceased was suffering from chest disease and was previously being treated for such disease. The High Court also noted that the job of the deceased was only to switch on or off and, therefore, the doctor had clearly opined that there was no scope for any stress or strain in his duties. In view of the factual findings recorded, the High Court's judgement does not suffer from any infirmity provisions for specific penalties in case of violation of the provisions of the Act. Thus, Section 13(1) prescribes a fine extending to ₹ 5000 on those employers who fail to submit draft Standing Orders under Section 3, or who modifies his Standing Orders otherwise than in accordance with Section 10. If the offence is a continuing one, he shall be liable for further fine extending to ₹ 200 every day after the first during which the offence continues. The Act also imposes a fine extending to ₹ 100 upon the employer who contravenes any provision for the finally certified Standing Orders under the Act. If the offence is a continuing one, he shall be liable to a further fine extending to ₹ 25 everyday after the first during which the offence continues.

But, in order to be prosecuted for the aforesaid offence, the prior sanction of the appropriate government is essential. However, no Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the second class shall try any offence under this Section.

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CASE STUDY II

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Employees' State Insurance Act, 1948—Sections 2 (15-A) and 54-A

In ESI Corporation, Kanpur and Others v. *Lallan, 2006 III LLJ* 595, a workman suffered injury in his right ear and he was hence referred by the Corporation to the Medical Board for medical examination for determination of disablement, if any. The Medical Board held that the test does not reveal hearing loss and there was no disablement injury, and therefore, the workman was not entitled to any disablement benefit.

However, the workman without appearing before the Medical Appellate Tribunal, got examined himself by a private hospital, which stated that there was approximately loss of 40 decibels. of hearing because of the injury. With the report of the private hospital, the workman approached the ESI Court. Accepting the said report, the ESI Court set aside the decision of the Medical Board. The Corporation went in appeal against the decision of the ESI Court before the Allahabad High Court. The High Court upheld the appeal and set aside the decision of the ESI Court, and ruled:

(i) The Act does not provide for the examination of the injured person to decide disablement benefit by any other doctor or hospital except the Medical Board constituted under the Act. If reports from a private doctor or of hospital are allowed, it will open the floodgates for diverse reports and there will be chaos and confusion and it will be difficult for the Court to decide the matter. Since the Act has provided for a Medical Board and also for an appearance before the Medical Appellate Tribunal, it is these two only which have the authority to give reports with regard to injury of an employee.

(ii) Where an Act provides procedure and forum, it is only the same which is to be accepted and no other procedure or forum can be sustained. There is no provision in the ESI Act, 1948 about the report of Private Medical Practitioner being admissible, unlike that of the Workmen's Compensation Act, 1923.

(iii) The ESI Court was, therefore, wrong in accepting the private hospital's report. Since the report of the Medical Board constituted under the Act says that there was no disablement of any kind, appeal has to be allowed.

CASE STUDY III

NOTES

Employees' State Insurance Act, 1948—Sections 2 (15-A) and 54-A

In ESI Corporation, Kanpur and Others vs *Lallan, 2006 III LLJ* 595, a workman suffered injury in his right ear and he was, hence, referred by the Corporation to the Medical Board for medical examination for determination of disablement, if any. The Medical Board held that the test does not reveal hearing loss and there was no disablement injury, and, therefore, the workman was not entitled to any disablement benefit.

However, the workman without appearing before the Medical Appellate Tribunal, got examined himself by a private hospital, which stated that there was approximately loss of 40 dts. of hearing because of the injury. With the report of the private hospital, the workman approached the ESI Court. Accepting the said report, the ESI Court set aside the decision of the Medical Board. The Corporation went in appeal against the decision of the ESI Court before the Allahabad High Court. The High Court upheld the appeal and set aside the decision of the ESI Court, and ruled:

(i) The Act does not provide for the examination of the injured person to decide disablement benefit by any other doctor or hospital except the Medical Board constituted under the Act. If reports from a private doctor or of hospital are allowed, it will open the flood-gates for diverse reports and there will be chaos and confusion, and it will be difficult for the Court to decide the matter, since the Act has provided for a Medical Board and also for an appearance before the Medical Appellate Tribunal, it is these two only that have the authority to give Reports, with regard to injury of an employee.

(ii) Where an Act provides procedure and forum, it is only the same which is to be accepted and no other procedure or forum can be sustained. There is no provision in the ESI Act, 1948, about the report of private medical practitioner being admissible, unlike that of the Workmen's Compensation Act, 1923.

(iii) The ESI Court was, therefore, wrong in accepting the private hospital's report. Since the report of the Medical Board constituted under the Act says that there was no disablement of any kind, appeal has to be allowed.

CASE STUDY IV

NOTES

Delhi HC DB: Management of Brahmaputra Board vs Ashok Kumar and Another 2006 III LLJ 461

Industrial Disputes Act, 1947—Sections 2 (oo) and 25-F—Abandonment of job by the workman amounts to 'voluntary retrenchment' and, hence, it would not be 'retrenchment' of service.

Facts of the case: A woman workman working in the Irrigation and Public Health Department of the State of Himachal Pradesh remained absent for little more than two years. The Department sent two notices to the workman advising her to join the duty but there was neither any response from her nor did she join the duty. One day, she approached the Department with a certificate that she was under treatment all those days and now she wants to report for duty. The Department, however, did not allow her to join duty stating that she had abandoned her job. She challenged her discharge. Finally, the matter reached the premise of the Himachal Pradesh High Court.

Treating her unauthorized absence as voluntary abandonment of service, the High Court held that voluntary abandonment of his own volition, but the disengagement or discharge of the employees is caused on account of some act or event over which the employer has no control, then it cannot be said to be retrenchment of services of a workman within the meaning of Section 2(oo) of the Act. The essence of retrenchment is the termination of workman's services by some act on the part of the employer. In this case, the employer was not expected to wait for two years for the workman to return who had also sent notice at her admittedly known address.

(a) It is true that the Supreme Court observed in *L Robert D'Souza* vs *Executive Engineer*, *Southern Railway and Others AIR* 1982 SC 854 = 1982 (1) SCC 645=1982 I LLJ 330 that termination of service for unauthorized absence from duty would amount to retrenchment. However, in this case, the question of workman being on unauthorized absence, it does not arise. There was no communication to the department about the absence of the workman. It is only after more than two years that the workman comes and says that she was unwell and, therefore, did not come to the job.

(b) In the present case, the workman remained absent without any information to the employer or communicating any reasons for her absence and suddenly wanted to join her duties after two years with a certificate that she was advised to live with her husband during this period. Voluntary absence which amounts to voluntary abandonment and voluntary retirement from the work would not amount to retrenchment within the meaning of Section 2.

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CASE STUDY V

Employees' Provident Fund and Miscellaneous Provisions Act, 1952— Section 6 – Employees' Provident Funds Scheme, 1952 Paras 26, 26-A and 39

In *Vijayan* vs *Secretary to Government* (2006) III LLJ 337 the Kerala (Cooperative Milk Marketing Federation Limited, allowed all its employees whose salary exceeds ₹ 1,600/- per month to the Employees' Provident Fund Scheme and contributed its share without imposing any upper limit. The ceiling limit prescribed under the Act was raised to ₹ 5,000 and again to ₹ 6,500 and the percentage of contribution prescribed under the Scheme was raised from per cent to 10 per cent and again to 12 per cent. As there was an audit objection, the Federation discontinued remitting its excess share of provident fund. The union challenged the decision of the Federation. A question arose as to whether an employer who has been contributing in excess of the minimum prescribed under the statutory limits even though on the basis of a joint application filed by the employer and the employees before the authorities under the Act, can discontinue from the remittance of such excess share of provident fund ? The Division Bench of Kerala High Court answered the question in negative and ruled:

(i) When the employer had agreed to make a contribution in excess of the statutory limits, it did not mean that it was forever. When the salary was revised or when the ceiling limits had been enhanced or modified, naturally the employer was also entitled to reconsider or revise or withdraw from its earlier decision. There was no prohibition under the scheme for the management to withdraw from their earlier decision making the employer's share of contribution in excess of the statutory limit or limiting the contribution to the statutory limits.

(ii) A combined reading of Section 12 of the Act and Paragraphs 26-A and 29 and in particular proviso to sub-paragraph (2) of Paragraph 29 would make it clear that the employer is not obliged to make contributions in excess of the statutory limits regarding the rate of contribution and also on the amount of contribution in excess of the prescribed wage limits, and in that event, all that the employer has to do is to give an undertaking that he shall pay the administrative charges. It is clearly mentioned that the mere fact that the employee may make contributions in excess of the statutory limits would not create a corresponding duty with the employer to match such contributions.

CASE STUDY VI

NOTES

Workmen's Compensation Act, 1923 Section 3(1)

In *Jyoti Ademma* vs *Plant Engineer, Nellore*, 2006 III LLJ 324, a workman who was working in a thermal station died at the work spot. His wife claimed compensation stating that the death was due to stress and strain closely linked with the employment of the deceased workman and, therefore, attributable to an accident arising out of and in the course of employment. The Commissioner for Workmen's Compensation accepted the said plea and directed payment of compensation. The employer challenged the direction of the Commissioner before the High Court of Andhra Pradesh. The stand of the employer before the High Court was that the workman did not die on account of any injury sustained by him 'in any accident arising out of and in the course of his employment'. The High Court noted that there was no injury as such, but he died due to heart attack at the work spot and found that the nature of the job, which the deceased workman was doing could not have caused any stress and strain and, therefore, the death due to heart attack could be said to have been caused by any accident arising out of and in the course of his employment. Now, the wife of the deceased workman challenged the judgment of the High Court before the Supreme Court. This Supreme Court, however, dismissed appeal by holding that:

(i) Under Section 3 (1) of the Act, it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease that he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. However, if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

(ii) The expression 'accident' means an untoward mishap, which is not expected or designed. Injury means physiological injury. *In Fenton* vs *Thorley Co. Ltd* (1903) AC 448, it was observed that the expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed.

(iii) In the present case, it has been brought on record that the deceased was suffering from chest disease and was previously being treated for such disease. The High Court also noted that the job of the deceased was only to switch on or off and, therefore, the doctor had clearly opined that there was no scope for any stress or strain in his duties. In view of the factual findings recorded, the High Court's judgment does not suffer from any infirmity.

CASE STUDY VII

Oberoi Hotel

NOTES

MSKS (Maharashtra Samarth Kamgar Sanghatana), a new union that was set up in the year 2005, has a trade union that is present in the Oberoi Hotel (Mumbai). The staff members would get a 65 day holiday package annually. In the year 2010, stating specific management related problems, the hotel's administration wanted to cut down this package to a 15 day duration.

As and when more and more employees got to know about this, they unhesitatingly and fervently opposed the plan. They resorted to the MSKS to help them in resolving the issue. A meeting was scheduled in which the MSKS approached the management with the suggestion that it was prepared to persuade the employees, but in return the management must pay 20 days extra salary in the month of December to the workers. The management accepted the proposal.

The employees were also satisfied with the resolution and accepted it. Ever since, each year, the workers wait enthusiastically for the month of December to approach, so that they would receive a handsome of salary in that month. This was one of the successful endevours of MSKS.

A crisis faced by the Oberoi hotels was the frequent occurrences of instances of stealing and pilferages, within their premises, of various items like clothes, towels, tissues, napkins, stationery, etc. With the intent of keeping up its reputation and goodwill in the market, the hotel began providing these items to its clientele. For this, the hotel had to incur an additional expenditure of ₹50 lakhs to satisfy the customers. This amount directly added to their losses.

After a span of time, the management fixed a meeting with the secretary of MSKS to solve this issue with the help of a research and hence find an appropriate solution to the same. As a result of the survey it became evident that the account statement of the hotel exhibited a profit of ₹1 crores on one side and on the other side, it had a provision for loss of ₹50 lakhs. The management requested MSKS to get to the root of the problem and find the cause for this. Further examination revealed the following facts:

1. From the 3 furnished oil tankers received by the hotel on paper, only one oil tanker practically reached the hotel premises. On the other hand, the remaining 2 furnished oil tankers were found to be missing.
2. Bombay Dyeing used to dispatch 4000 bulk products for the hotel, but in reality, the hotel only got 2500 products. There was no trace of the remaining 1500 items.

As the matter was investigated more stringently, the thefts came to light. Two employees of the hotel were liable for this crime and got exposed as culprit for this state of the hotel. This was yet another feather in the cap of the Maharashtra Samarth Kamgar Sanghatana.

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