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UNIONS AND THE RIGHT TO STRIKE

[*A Comparative Socio-legal Study In Labour-Management Relations*]

By

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To my dear wife
Pushpa Dhyani
Whose willing sacrifices and inspiration
enabled me to undertake this study

PREFACE

The present study on 'Trade Unions and Strikes' is a critical and evaluative assessment of the existing labour-management relations of India. Trade unions in India have grown up without a sound trade union philosophy. There has been over emphasis on industrial development without sound trade union development. It has led to lopsided development of trade unions and indiscriminate use of strikes and other forms of industrial conflicts even though there are numerous laws, codes, resolutions and understandings which restrict, regulate, control and even prohibit strikes. This study, therefore, proposes to examine some of the important areas of labour-management relations in India and elsewhere. A comparative study of labour-management relations framework and public policy of U.S.A., U.K. and other developed countries has been made for the benefit of our planners and policy makers. Thus it is a comparative socio-legal study of trade unions, legal basis of right to strike, industrial relations machinery and other state regulatory processes, voluntary choice-processes including collective bargaining, voluntary arbitration etc., of U.S.A., U.K., Germany and other countries with special reference to India. It is with this view that the experience of other countries in the field of labour-management relations might be useful in bringing about the necessary changes in the patterns and perspectives of existing labour-management problems in India.

A socio-legal examination of the above areas aims to justify the view that trade unions in India must re-orientate their basic philosophy to suit primarily the economic and social needs of the workers and combine together as a single force in the industry without aligning themselves to different

political parties. It is suggested that the unions must adapt themselves to new social milieu conditioned by science, technology and other social processes. This is absolutely necessary in the interest of the workers themselves and in the larger interest of the society as well.

The Indian trade union movement is still resisted by the employers and is controlled mainly by outsiders, politicians, lawyers and social reformers. As a result of this India has witnessed a spate of strikes and other forms of industrial conflicts. This has created a psychosis of acrimony and ill feeling between the worker and his employer. Also, the community as a whole has become conscious of the social dangers that follow such strikes etc. To prevent such contingencies the State embarked on compulsory adjudication process in the interest of industrial peace and social justice. But that too has not fulfilled the avowed objectives. The techniques of the highly developed countries like the United States and the United Kingdom were not initially considered efficacious for India in so far as maintenance of industrial peace was concerned. The exigencies of social needs, however, made it necessary for India to take the benefit of the experinece of other countries. It was to evolve suitable self-regulatory processes without State or third party interventions. These are, amongst others, the code of discipline in industry, the code of inter-union harmony, voluntary arbitration and workers' participation in management. These processes are conducive to collective bargaining and industrial democracy.

New experiments like the above too have belied the hopes of ensuring healthy labour-management relations. The State continues to retain its grip over labour-management relations, for the strikes may impede industrial development. Outsiders continue to enjoy their unassailable position in the unions; employers have not accepted trade unions as partners in the industry so far and the workers too have not acquired the dependable organizational and economic solidarity in the industry. In such a situation opinions differ whether or not the existing pattern of labour-management relations be continued. Or, a rational scientific and socially viable system of labour-management relations be evolved. For more than two

decades the system of compulsory adjudication has not yielded fruitful results. It was hoped that the National Commission on Labour would provide purposeful and easy guide-lines to intricate labour-management problems but in spirit the Commission seems to have been haunted by interests which did not like change in this sensitive area. This study, therefore, is an attempt to analyse the existing anomalies of Indian labour-management relations to indicate some new guide-lines which may shape and guide Indian labour policy and make labour-management relations more functional.

As regards the genesis of this book in its original form, it was submitted as a dissertation for the degree of doctor of laws of University of Rajasthan, Jaipur and is published with its kind permission. My debt to those who have helped me in one way or another is heavy indeed. While I take this opportunity to thank all of them, I would like to acknowledge my deep sense of gratitude to Dr. G. S. Sharma, Professor and Director, University School of Law, Rajasthan University, Jaipur. As my teacher and supervisor his guidance alone steered me through this study. To Dr. P. K. Tripathi, Professor and Dean Faculty of Law, University of Delhi, I am too deeply obliged for encouraging me and helping me to make this study possible.

Thanks are due to Prof. Robert E. Mathews, Professor Emeritus Labour Law, University of Texas and visiting Professor Indian Law Institute, New Delhi and Prof. Bertram F. Willcox, Professor Emeritus Cornell University and Visiting Professor Indian Law Institute, New Delhi, for their constant encouragement. I would also like to acknowledge my thanks to Shri N. K. Bhatt and Shri H. D. Mukerji of INTUC, Shri K. G. Srivastava of AITUC, Shri Jatin Chakravorty of UTUC, the head office staff of HMS Bombay for supplying me necessary information. Likewise thanks are due to All India Organization of Industrial Employers, New Delhi and Employers' Federation of India, Bombay for supplying me the material, particularly the All India Organization of Industrial Employers for providing me library facilities.

Mention must also be made of the help rendered by

Shri B. K. Akhori, my student of the Post Graduate-Diploma Course of Labour Laws, Labour Welfare and Personnel Management. Shri Akhori was a source of strength to me during the publication of this work. It is due to his constant efforts and pains that it was possible to publish the book without much difficulty. Thanks are due to Shri R. K. Shrivastava, Shri B. L. Thareja and Shri B. N. Sharma (ILO India Branch) for helping me in many ways. The author is grateful to the Library Staff of Indian Law Institute, University Law School and Central Library, Rajasthan University, Jaipur, who rendered me full library facilities and assistance in the completion of the book.

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University of Rajasthan
JAIPUR (INDIA)

S. N. Dhyani

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CHAPTER I

Introductory

In the wake of economic planning assisted by technological skill in harnessing natural resources, industrialism in India has made marked impact on society after independence. One major problem of contemporary Indian society has been to reconcile the impact of emerging industrialism with Indian values, traditions and institutions and involves large-scale functional studies followed by careful adaptations. The success of any adaptation will largely depend upon how human relations are handled in an industry, eliminating inherent strifes and social conflicts.

A study of various state regulatory devices and of other voluntary adjustment choice-processes for securing industrial peace is thus called for. Comparisons with the experiences of highly industrialized countries in the sphere of labour-management relations considerably help in evaluating the viability of the system as extant in our country.

The present study deals with the origin, growth and development of trade union movement and central trade union organizations of workers and employers in India in the background of the nature, scope and extent of strikes in the United Kingdom of Great Britain, the United States of America and Australia.

The experience of the developed countries shows that economic growth is dependent, to a great extent, upon the existence of independent, non-political and economic trade unionism. The stratification of the Indian trade union movement on political and ideological basis has made it evident that quick economic growth is not possible without the exist-

ence of non-political trade unionism. Our policy-makers even now fail to recognize their responsibility and obligation towards the labour movement. Conversely, the labour movement has been conditioned by political interests and rival factions to suit largely their respective policy programmes instead of furthering the genuine interests of the working class. No objective effort to separate the political unionism from trade unionism has been made so far. By and large the views of the various trade unionists, labour economists and politicians have largely been coloured by their political philosophy or ideology.

The presentation of the problems arising from the existing pattern of trade unionism and industrial relations has been inadequate and arbitrary. Some recklessly condemn trade unions for strike activity, others dramatize the collective power of the union for mutual protection and preservation, still others regard trade unions as instruments of political change. Coupled with this is also a cultural lag between the elites and social institutions like the trade unions which are branded as having only nuisance value. The trade unions have also not fully realized their social obligation in bringing about industrial peace in the country. The employers too are mainly guided by economic motivations even at the cost of human considerations.

Although concerted attempts have been made to improve the employee-employer relationship, especially after 1958, there have been no appreciable changes in the law and practice of the State in India and in the attitude of the parties. As such, industrial strife, ill-will, hatred and narrow sectarian political opportunism have continued unabated, except for a superficial improvement in industrial relations in times of national stress and strains. Industrial conflicts have been carried from the factory premises to courtroom and political forums resulting in excessive work-stoppages, losses in the earnings of workers and loss of production. The relations between the parties often reach a point of no return from where it is difficult to return to normal relations.

Moreover, the absence of an objective analysis and evaluation of the system of industrial relations in India makes

it difficult for the average participant to understand the basic problem involved and strive for workable solutions to adjust the individual interest to the social goals. The interests of the society at large are made subservient to the pressure groups of vested interests. Thus, the existing system of labour-management relations is at best a sort of make-believe. This study seeks to present the trade union movement in its societal perspective transcending mere political and other considerations. The presentation of the subject of trade union movement has to be of necessity historical in character for putting the existing forces and counter forces in appropriate perspective.

Trade union movement has now become an integral part of our social and economic life. A basic change in the attitude of the state towards the trade unions is called for. Trade unions at present are legally recognized and constitutionally protected institutions but are not considered capable to work out their own conditions of employment with employers. The state policy has adversely affected the sense of urgency among the workers to unite and strengthen their bonds of common consciousness or overlapping interests. They have been virtually rendered helpless; they invariably look to state for the solution of their problems with management. This has made the trade unions inherently weak. The employers too take the benefit of the existence of divided, disunited and factionally torn unions. Industrial strikes, conflicts, **bundhs** and even violence shroud the industrial relations. The attempts of the state to regulate, restrict and even prohibit strikes in some situations by obliging the conflicting parties to resort to state-devised rigid framework of quasi-judicial character for resolving their conflicting interests have not been successful.

This state of affairs is continuing since 1942 when for the first time compulsory adjudication system was imposed to meet war challenges and war efforts. In the interest of planned economy and social justice the advantages of the compulsory adjudication system are exaggerated. Minor efforts to encourage collective bargaining and voluntary arbitration, grievance procedure, workers' participation in manage-

ment, etc., have been made towards internal settlement of labour-management problems. Yet, they are like constellations orbiting round the compulsory adjudication system. For tackling these basic problems of labour-management a fresh approach is necessary which could strengthen trade unionism, diminish strikes and other forms of industrial tensions and establish genuine understanding among the labour, capital and the community. A systematic and gradual shift from the present compulsory adjudication of industrial relations policy would not only have social and economic significance but also political implications of far-reaching importance.

This study, therefore, proposes to examine the following areas of labour-management relations with reference to Indian scene :

(a) Origin and growth of trade union movement in India from 1875 when the workers for the first time started combining together to present-day.

(b) Existing central organizations in India including the non-affiliated unions and employers' associations.

(c) Legal basis of trade unions in India in the background of United Kingdom of Great Britain and United States of America.

(d) Prerogative of strike and analysis of the right to strike in the United Kingdom of Great Britain, the United States of America and other countries with particular reference to India.

(e) Industrial relations and the state regulatory processes in the United Kingdom of Great Britain, the United States of America, etc., with special emphasis on India.

(f) Recent voluntary adjustment processes, e.g., the system of collective bargaining, code of discipline in industry, voluntary arbitration and workers' participation in management, etc., and their impact upon labour-management relations.

(g) Gherao and its impact on labour-management rela-

tions with suggestions for reducing its recrudescence in industry.

(h) Main suggestions and recommendations of the National Commission on Labour regarding trade unions and strike etc., including the newly proposed industrial relations machinery for the settlement of industrial disputes.

(i) Appraisal of the Indian Labour-management problems with suggestions which might be useful in bringing about the necessary changes in the patterns and perspective of existent labour-management problems in India.

CHAPTER II

Origin and Growth of Trade Unions in India

This chapter presents in historical perspective the origin and growth of the trade union movement in India. An attempt has been made to study the movement and its manifold problems in the socio-economic context of the country.

1. INDUSTRIAL REVOLUTION AND SOCIAL CHANGE

A. Emergence of Trade Unions

Industrial Revolution has brought about changes everywhere and given rise to new social problems. The institutional arrangements of the old industrial order have been displaced with those relating to the factory system depending on huge capital investment, natural resources and manpower. The new scientific inventions, processes and machines which were employed in the factories, have changed the entire course of production having far-reaching social, economic and political effects on the life of the community. The theory of free contract,[1] based on free play of human will, did not take into

1. Industrial Revolution gave birth to three outstanding concepts—the individual, the state and the basis of wealth. Individual liberty or freedom whether economic or political based on theory of natural rights became the corner-stone of eighteenth and nineteenth century legal philosophy. Ludwig Teller in his monumental work I **Labour Disputes and Collective Bargaining** 6-10 (1940) quotes from Dean Pound's **The Spirit of Common Law** 37 (1921) that "what is peculiar to Anglo-American thinking, is an ultra-individualism, an uncompromising insistence upon individual interest and individual prosperity as the focal point of our jurisprudence." See Paton, **A Text-Book of Jurisprudence** 88 (3d. 1964); Friedmann, **Legal Theory** 479-80- (3d. ed. 1953).

account the social or economic justice for economically weaker sections of society. The social and political challenges of the impact of industrial capitalism were regarded as natural phenomena arising out of expanding economy. **Laissez-faire** principles offered a very welcome pretext for doing nothing where nobody knew what to do. The economists, the social scientists, and the jurists faithfully reflected their environment and produced convincing arguments in favour of unbridled competition. Hence this economic and social hiatus created the problem of relationship between employer and employee. Consequently, workers combinations emerged to prevent exploitation and obtain better conditions of service. Modern trade unionism as a positive ideal of combining workers collectively for subserving their common needs, aspirations, interests and security with their collective strength is, therefore, the direct outcome of both the capitalist and the factory system.[2] The three movements in the western countries are almost simultaneous in origin and growth.

B. Trade Union Movement and Early Impediments

India, however, seems to be an exception in this regard.[3] Trade unions[4] did not grow for nearly three quarters of the

2. S. B. Webb in his classical work **History of Trade Unionism** 41 (1950) says: "The massing together in factories of regiments of men all engaged in the same trade facilitated and prompted the formation of journeymen's trade societies." Holdsworth, on the contrary, observes: "It was the spread of the capitalistic organization of industry rather than the factory system which caused, because it created the needs for these permanent trade unions. But there is no doubt that introduction and growth of factory system enormously accelerated their progress." See Holdsworth, **A History of English Law**, 494-95 (1938). Also see Lindsay, **The Modern Democratic State** 167-74 (1959).

3. The old economic structure was affected about 1850 with the introduction of factory system in India although dominant feature of Indian economy continued to remain non-industrial. However, the factory system which took the place of handicrafts finds its beginning during this period. See Gadgil, **The Industrial Evolution of India** 51-52, (1959).

4. K. M. Saran in **Labour in Ancient India** 77 (1957) observes that trade union methods and activities like collective bargaining and concerted action were not unknown to ancient India. K. T. Shah in **Ancient Foundations of Economics in India** 49 (1954) also supports this view. R C. Mazumdar in **Corporate Life in Ancient**

(Continued on next page)

nineteenth century after the introduction of the factory system in the country. Trade unionism in India as elsewhere[5] developed as a reaction to the situations of conflict.[6] This retardation in India can be explained through the following main factors. First, India was and is still dependent on agricultural production while it is common knowledge that trade unionism is the direct result of modern industrial economy. Second, the British-Indian government deliberately ignored, discouraged and delayed the normal development of trade union movement. Third, the freedom of association[7] was not recognized early enough in India to facilitate the organization of workers. Fourth, the waivering policy[8] adopted deliberately by alien government towards agricultural and non-agricultural handicrafts with a view to retaining India as a permanent market for articles manufactured in Great Britain. Fifth, the attempts on the part of the previous rulers to keep away workers from the current ideas of socialism,[9] trade unionism and Marxism—especially after the Russian Revolution of 1917. To these five factors may be added socio-cul-

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(Continued from previous page)

India 18-19 (1920) enumerates a comprehensive list of guilds. It may be on the contrary stated that these guilds or panchayats in ancient India cannot be regarded as the direct predecessors of modern trade unions. The trade unions are really new combinations which originated in the new industrial surroundings which emerged on account of commercialization of economy in India during the Victorian period. The labour guilds of ancient India may be equated to guilds of medieval Europe which were suited altogether to a different sort of political and socio-economic order. The scope of their activities were not only confined to economic spheres but to religious, social and political matters. Unlike the modern trade unions they did not have the right of collective action. See Karnik, **The Indian Trade Union** 2 (1960).

5. The Combinations of Workmen Acts 1799-1800 made the formation of trade unions in any trade illegal. See Ashton, **The Industrial Revolution 1760-1830**, at 133-42 (1958).

6. The Indian Penal Code, 1860, § 120; The Companies Act, 1913, § 26.

7. The Trade Unions Act, 1926, § 17, 18.

8. Lorenzo, **Indian Labour in Primary Industries** 48 (1948); M. N. Roy, **India in Transition** 23 (1922).

9. The Home Member in the Government of India raised the bogey of Communism as a pretext to suppress labour unrest in the country. See Ahmad Mukhtar, **Factory Labour in India** 5 (1930).

tural traditions—the absence of trade union traditions[10] in the past is one of the chief characteristics of the people of India—with the result that militant combinations for the assertion of political or economic rights have been practically unknown in the history of the country.[11]

The history of the Indian trade union movement forms an integral part of the history of modern India itself. It is really difficult to appreciate the former without considering the political, economic and social developments which were taking place in the latter half of the nineteenth century. Especially the period after 1850 has been one of continuous transition from the indigenous rural culture to a new industrial civilization based on science and technology. The establishment of direct British rule undoubtedly effected revolutionary changes. The political hegemony of the British led to the establishment of large industrial enterprises[12] and gradually disrupted the primitive feudalistic and non-industrial economy which was largely dependent on human labour and organic energy resources.

The establishment of textiles (cotton and jute), plantations (tea, coffee, indigo), minings of coal and railways brought substantial number of workers together which provided them an opportunity to discuss among themselves matters of mutual

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10. The ancient Indian civilization had no place for huge modern industrial concern. Economically, it was based on agriculture or some small collective industries. The joint family system continues to be one of the major characteristics of the majority of Indian homes, the property being a family possession and the working members have to support the sick and the feeble. The family group is a part of larger doctrine of karma which seeks to vindicate the justice of the universe. In India, the holyman is always poor wearing outward signs of poverty, and content to depend on gifts from others. For details, see Kelman, **Labour in India: A Study of the Conditions of Indian Women in Modern Industry** (1923).

11. See supra note 4.

12. For a vivid account of the beginning of modern industry see Gadgil, **The Industrial Evolution of India** 47-58 (1959); Romesh Dutt, **The Economic History of India—In the Victorian Age 1837-1900**, at 73-116 (1960); Rajani Kant Das, **History of Labour Legislation in India** 51 (1941); Kelman, **Labour in India—A Study of the Conditions of Women in Modern Industry** 55 (1923).

interests. In those establishments the working conditions were extremely bad.[13]

On the other hand, the political and economic doctrine of **laissez-faire**, like many other countries of the west, held full sway in India also. The relations between the employer and his worker were, therefore, governed by the ordinary law of contract which regarded labour a commodity the price of which was determined by the law of demand and supply. For instance, the Workmen's Breach of Contract Act, 1859,[14] the Employer and Workmen (Disputes) Act, 1860[15] and the Indian Penal Code, 1860[16] are some of the instances of **laissez-faire** philosophy which governed labour-management relations. Further, Indian labour, mostly casual, could not acquire solidarity or class consciousness because of its predominantly rural bias. The failure of the mutiny in 1857 stifled altogether the chances of the emergence of labour movement in the near future without being suppressed by the British Indian Government. It is natural, therefore, that labour movement did not make any appreciable headway although quite a number of factories were slowly coming into existence during 1850-1875.

II. THREE PHASES OF TRADE UNION MOVEMENT

The year 1875 is a landmark in the history of Indian

13. See Kelman, **op. cit., supra** note 12, at 220. According to Dr. Ahmad Mukhtar: "The Indian factory labourer lives in an atmosphere which compared to that of England, stinks destitution, diseases and ignorance. He is under-fed, under-clothed and badly housed. His life is a continuous struggle against poverty." See Ahmad Mukhtar, **op. cit. supra** note 9, at 5-6. Also see **Report of the Indian Industrial Commission 1916-18,** at 10-17.

14. The Act consisted of only five sections and provided punishment for breach of contract by artificers, workmen and labourers. This Act was amended by Workmen's Breach of Contract (Amendment Act) 1920.

15. It provided for the settlement of disputes regarding wages, a price of work by magistrate. This Act was, however, repealed on March 15, 1932, on the recommendations of the Royal Commission on Labour. See **Report of the Royal Commission on Labour in India,** 1931 at 337.

16. Sections 490 and 492 related to criminal penalties for breach of contract. These two sections, however, were repealed by the Workmen's Breach of Contract (Repealing) Act, 1925.

trade union movement. For the first time the factory workers in India united together for securing better working conditions in the factories. The growing consciousness of a common cause for amelioration brought the working class closer despite several hindrances. Since then trade union movement has been expanding and consolidating itself. This period can be studied under three well-defined stages—each with its distinct characteristic of growth and evolution. The first period between 1875-1919 indicates the slow growth of trade union movement under the leadership of social reformers and humanitarian philanthropists. The second period between 1919-1947 witnesses the emergence of militant trade unionism and is conspicuous for its strike consciousness. The third period between 1947-1970 marks the emergence of a trend showing the greater participation of trade union movement in sharing the powers and responsibilities for planned economic development —a trend hitherto practically unknown.

A. The Period Between 1875-1919

(1) Efforts of Humanitarians and Social Reformers

Before 1875 there were no trade union organizations in India to unite, educate, and protect the collective interests of industrial workers. The advent of trade unionism, therefore, was the result of long and protracted efforts made by humanitarians, political and social reformers. Such persons were not the representatives of the working class community as such. In fact, they were mainly the harbingers of new intellectual awakening in India. Various multipurpose associations, namely, the Brahma Samaj, the Theosophical Society, the Servants of India Society, the Home Rule League and the Social Service League were doing constructive service for the weaker sections by engendering in them values of life, liberty and material advancement. During 1872 Brahma Samaj preacher P. C. Mazumdar had established night schools for the benefit of the workers in different parts of the city of Bombay. Likewise, in Calcutta and other places night schools were conducted by the Working Men's Association which was founded by Brahma Samaj to inculcate the spirit

of self-reliance and self-assertion among the working community.

The beginnings of trade union movement in India can be traced in an agitation of 1875 which took place under the leadership of Sorabjee Shapurjee Bangalee. He launched a movement against manufacturers and factory owners[17] in order to draw attention of the government and the public towards the deplorable conditions of workers, especially of women and children. He stressed the need for factory legislation. As a result of his concerted efforts the Indian Factories Act, 1881, was enacted. In practice, the Act was, however, found far from being satisfactory with regard to protection of women, children, reduction of their hours of work, holidays, absence of safety and sanitary provisions, etc. The Government of Bombay, finding many flaws[18] in the Act, appointed in 1884 a seven-member Mulock Commission[19] in which factory workers had no representation and included mainly factory owners. The Commission was mainly to report on the advisability of extending Mr. Meade King's suggestions[20] to textile and other factories.

(i) **Social Setting for State Intervention.** Simultaneously there were moves and counter moves in Britain[21] and

17. John R. Commons rightly observes: "The labour movement is always a reaction and a protest against capitalism and banker capitalism." See Commons, "Labour Movement," 8 **Encyclopaedia of Social Sciences** 682 (Seligman ed. 1951).

18. Mr. Meade King was deputed by the Secretary of State to report on the working of the Indian Factories Act, 1881. His investigations continued over six months. He noticed many glaring defects, like, the total absence of sanitary provisions, employment of children below seven years and employment of women even during night hours, 7 **Parliamentary Papers** 321 (1888).

19. Mr. W.D. Mulock, Collector of Bombay was the chairman of the Commission.

20. Mr. Meade King had suggested the necessity of an half-an-hour rest interval, prohibition of employment of women and children before 6 a.m. and after 6 p.m., prohibition of employment of children below eight years and their medical examination and the creation of a young persons' class between the ages of thirteen and sixteen with limitations of their hours of work.

21. The Manchester Chamber of Commerce urged in its own interest as well as on humanitarian grounds the necessity of check-

(Continued on next page)

India[22] respectively for and against state interventions in industrial situation. It was during this period of impending governmental interference that the Indian labour woke up under the distinguished leadership of Narayan Meghjee Lokhande who himself was a factory worker. On September 23 and 26 of 1884 he organized two meetings of factory workers in Bombay for drawing and presenting a memorandum to the Bombay Factory Commission which was signed by 5,500 workers. The representation[23] contained several demands, namely, a weekly holiday, half-an-hour's rest interval on working day, limitation on working hours from 5.30 a.m. to sunset, payment of wages not later than 15th of every month and adequate compensation for industrial accidents.

(ii) **International Labour Conference of Berlin, 1890.** In the meantime, the International Labour Conference of 1890 was held at Berlin which **inter alia** emphasized the necessity of certain agreed international standards for securing appropriate conditions of work in the industry of the participating member states.[24] The Berlin Conference had world-wide influence and affected India also. Consequently, Lokhande and Bengalee again organized a mass meeting of over 10,000 factory workers of Bombay some time in April 1890 for submitting a representation to the Bombay Millowners' Association stressing on a weekly holiday. This demand was at once conceded.

(Continued from previous page)
ing evils in the Indian Factories. See Ahmad Mukhtar, **op. cit., supra** note 9, at 25.

22. The Indian manufacturers on the other hand protested against any external interference in India. See Ahmad Mukhtar, **op. cit., supra** note 9, at 26; Gadgil, **op. cit., supra** note 3, at 82.

23. 79 **Parliamentary Papers 106-08** (1890-91).

24. The Conference of Berlin (March 15-29) 1890 was represented officially by France, Germany, Austria, Hungary, England, Holland, Spain, Switzerland, Norway, Sweden, Portugal, Denmark, Belgium and Luxemburg. The Conference recommended ameliorative measures such as 14 years as age-limit for the employment of children in factories; exclusion of females from working in mines; preventive steps against accidents; insurance against old age and diseases and voluntary negotiation between workers and employers including arbitration, etc. Lowe, **The International Protection of Labour 31-34 (1935).**

(iii) **Bombay Mill-Hands' Association, 1890.** Encouraged by this singular achievement the two founding fathers established in 1890 Bombay Mill-hands' Association. This was the first organized combination of workers under the leadership of Lokhande for ventilating their grievances. With this end in view he started a labour journal **Dinabandhu** or the "Friend of the Poor." Doubts have been expressed[25] as to whether the Bombay Mill-hands' Association was a trade union properly so called or a voluntary service league merely. These unions were merely sporadic strike committees imbued only with a desire to improve their condition. Nevertheless, these and various other organizations, movements, and agitations were proscribed[26] with a view to suppressing all possible anti-British elements. The reasons for such an extreme step seemed to be purely political as the workers as a class were becoming strike conscious for the attainment of their economic and political ends.

(iv) **First World War (1914-1918).** Meanwhile, the First World War broke out. It necessitated the establishment of new industrial undertakings and manufacturing concerns to meet war efforts of Great Britain. The Government of India in 1915 also felt the necessity of a definite and self-conscious policy[27] of improving the industrial capabilities of India. Industrial expansion would be apparent[28] from the fact that in 1912-1913 there were 2,500 registered joint-stock

25. Punekar, **The Trade Unionism in India** 59 (1948); Soman, **Peaceful Industrial Relations—Their Science and Technique** 47 (1957); Gadgil, **op. cit., supra** note 3, at 277; Mukerjee, **The Indian Working Class** 352-53 (1951); Kumar, **Development of Industrial Relations in India,** 87-88 (1961); Ghosh, **Trade Unionism in the Underdeveloped Countries** 31-32 (1959).

26. The Indian Penal Code, 1968, §§ 120A, 120B. These two sections were added by the Indian Criminal Law Amendment Act 1913, to punish criminal conspiracies.

27. Lord Hardinge's Government Industrial Policy of November 26, 1915, led to the appointment of Industrial Commission on May 19, 1916, to inquire inter alia as to the manner the Government could usefully give encouragement to industrial development. The Commission submitted its report in 1918 calling on the Government to follow a vigorous policy of industrial intervention, expansion and development. See **Report of the Indian Industrial Commission 1916-18.**

28. Gadgil, **op. cit., supra** note 3, at 226.

companies in India with a paid-up capital of Rs. 72 crores; in 1913-1914 the total number was 2,681 with a paid-up capital of nearly Rs. 76 crores; in 1918-19 it was 2,713 with a paid-up capital of about Rs. 106 crores and in 1921-22 the number was 4,781 with a paid-up capital of Rs. 223 crores. Likewise, this period also witnessed[29] a rapid increase of working class population in India.

(a) **Awareness of Trade Unionism.** The Indian labour, therefore, at the end of the First World War acquired a vital position in the industry and could not be easily ignored by the employers. A realization of the imperative necessity of maintaining unity or privity, among themselves, as the only guarantee of their security of service, continuity of employment and of moral-cum-material progress against external onslaughts became so powerful that it eventually manifested itself in the establishment of strong trade union movement in the country. However, the labour movement before 1919 was characteristically marked for its docility and subservience to employers; it depended for improving their working conditions more on indirect peaceful methods, namely, petitioning by way of representations rather than on direct collective action. The indirect methods must not be equated with the modern technique of collective bargaining; they were only in the nature of unilateral demands the acceptance of which depended on the caprice of the employers. The employers, the government and the labour were guided by the simple law of ordinary master and servant unaffected by socio-economic involvements of the times. The early unions, therefore, were living in isolation hardly having the character and quality of modern trade unions.[30]

(b) **Strike Consciousness.** The strike movement, which began in 1918 and swept the country in 1919 and 1920, was overwhelming in its intensity. The end of 1918 saw the first big strike in Bombay affecting many cotton mills. By January 1919, about 125,000 workers, covering practically all

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29. See Ahmad Mukhtar, op. cit., supra note 7, at 4. Particularly see Annexure No. 1.

30. See Punekar, op. cit., supra note 25, at 59.

the textile mills, were on strike. The response to the **hartal** against the Rowlatt Act in 1919 showed the political role of the workers in the forefront of the common national struggle. During 1919 strikes spread all over the country. By the end of 1919 and the first half of 1920 the strikes assumed startling proportion. According to an eminent author:

> Some conception of intensity and extent of the strikes of this period may be had from the following data: November 4 to December 2, 1919 woollen mills, Cawnpore, 17,000 men out; December 7, 1919 to January 9, 1920 railway workers, Jamalpur, 16,000 men out; January 9-18 jute mills, Calcutta, 35,000 men out; January 20, 31 mill workers of Rangoon, 20,000 men out; January 31, British India Navigation Company, Bombay, 10,000 men out; February 24 to March 29, Tata Iron and Steel Workers, 40,000 men out; March 9, mill workers of Bombay, 60,000 men out; March 20-26 mill workers, Madras, 17,000 men out; May, 1920, mill workers, Ahmedabad, 25,000 men out.[31]

B. The Period Between 1917-1947

(1) **The Formative Era of Strikes and Struggles.** The trade union movement acquired a fresh stimulus on account of economic, political and social unrest which ensued immediately after the end of the First World War. The movement began with a series[32] of successful strikes organized by workers to secure higher wages, payment of bonus, reduction of working hours, etc. Economic restlessness led workers towards a combined action of forming labour unions which came prominently before the notice of general public on account of the magnitude and frequency of strikes resorted to by them. Some of these unions were merely **ad hoc** committees which sprang up in connection with isolated grievances

31. Das, **The Labour Movement in India** 36-37 (1923).

32. Broughton, **Labour in Indian Industries** 189-92 (1924); Mukhtar Ahmad, **op. cit., supra** note 9, at 89-100; Government of India, **The Indian Year Book 1945-46,** at 480 (1946); Government of India, **India in 1921-22,** at 204 (1922). See also the report of the Bengal Enquiry Committee on Industrial Unrest, 1922, and the Bombay Industrial Disputes Committee, 1922.

and dwindled away with the success or failure of each successive strike.[34] Although there was little cohesion, awareness and solidarity in the rank and file of workers, the time was nevertheless ripe in India for the growth of trade union movement on account of acute[33] economic depression. The statement of the Bombay Industrial Disputes Committee of 1922 is one of great significance in this regard:

> We are fully aware that the early days of a trade union movement are often full of difficulty. Strike committees arise, calling themselves trade unions and demanding the privileges of trade unions without any means of discharging the responsibilities thereof....But these are the growing pains of trade unionism, it is far better to treat them than to inflame them. We, therefore, express the very sincere hope that there will be neither on the part of the State nor industry, any hostility to the free evolution of the trade union movement.[34]

The period after 1920 witnessed a phenomenal growth[35] of the trade union movement. In 1920, the number of unions which were affiliated to the All India Trade Union Congress, was sixty-four with a membership of 1,40,854. There were forty-three other unions[36] which had expressed their sympathy but did not affiliate with the central body. The movement became socialist, nationalist and anti-colonial-

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33. The cost of living index compiled by the Bombay Labour Office showed that prices had risen steadily for two years after the end of the War. The annual average of the monthly index numbers for the year 1920 was 183; for 1921 this average fell to 173 and for 1922 to 164. The year 1923 opened with a sharp decline to 156 but for the next five years the index number varied between 150 and 161. See Government of India, **The Indian Year Book 1945-46,** at 450 (1946).

34. See Report of the Bombay Industrial Disputes Committee 3 (1922).

35. K. B. Panikkar, **An Outline of the History of the AITUC** 3-4 (1959); See also Mathur & Mathur, **The Trade Union Movement in India** 18 (1957).

36. According to census statistics of 1921 the total number of establishments in 1921 enumerated was 15,606 employing 2,681,125 persons—1,994,314 males and 686,811 women—Gadgil, **op. cit., supra note 3,** at 273.

ist in ideology in regard to political organization of India. Many reasons can be advanced to explain the rapid strides that the trade union movement made during this period. First, in India industrialization had fairly advanced which necessitated increase in the number of industrial workers imbued with new consciousness and ideals. Second, in the post-First World War period cost of living[37] went on rising without a corresponding increase in the wages—although the industry was still making profits—which forced the workers to launch industrial strikes for an increase in their wages and other fringe benefits. Consequently, several unions were formed. But some of these unions had no regular constitution or definite system of auditing and publishing accounts and it was believed at that time that they were only strike committees.[38] Third, the success of wage earners in their wage-strike in Ahmedabad against the unyielding millowners under the leadership of Gandhiji in March 1918 showed workers the prize of united action which finally paved way towards formation of Ahmedabad Textile Labour Association[39] in 1920. Fourth, India's permanent membership[40] of International Labour Organization and as one of the eight states[41] of major indus-

37. See supra note 33.

38. **The Indian Year Book 1940-1941**, at 508.

39. As early as 1916, Mrs. Anasyyabenn Sarabhai, the sister of a leading millowner, had been trying to organize the textile workers of the city. On December 4, 1917, the workers of the textile mill went on a strike for improved conditions of work and greatly succeeded in their demands with the moral support of Gandhiji. The Ahmedabad Textile Unions later on were federated into the Textile Labour Association of Ahmedabad. See **Planning for Labour—A Syposium 117** (1948); **Report of the Royal Commission on Labour in India** 1931, at 318.

40. Article 393, part XIII of Treaty of Peace, 1919.

41. **India in 1929-30** at 168-169. According to the memorandum of the Government of India to the Labour Commission, the India Office mentioned 20 millions as number of Indian workers engaged in industries, mines, and transport. See **Labour Commission, Evidence** Vol. II Part I, 160. The list of eight most important industrial countries framed by the International Labour Conference in 1919 did not include India. Thereupon, the India Office protested to the Council of the League of Nations in 1920 and the criteria on which the selection had been made and the list framed were examined. In 1920 the Council granted India's claim to representation on the governing body of the International Labour Organization.

trial importance gave workers' organizations the right of participation[42] in the deliberations of the International Labour Conference and of the Governing Body of the Organization. It was, therefore, not only desirable but an incumbent duty to form an hierarchy of local, regional and central unions for the purposes of workers' representation[43] in the Organization.

(i) **India's Membership of I.L.O.** The International Labour Organization, therefore, left a lasting psychological impression on the urgency of trade unions as the only institutions for the vindication of workers' cause. Further, India's membership of the International Labour Organization had a catalytic affect in the formation of All India Trade Union Congress on October 31, 1920. With the establishment of AITUC the trade union movement began to acquire momentum, stability and institutional cohesiveness on firmer basis The nationalist movement also infused[44] a sense of mission of self-respect, self-reliance and self-sacrifice among workers for the attainment of Swarajya—the only wayout for the eradication of their economic, social and political ills. The workers' conviction for Swarajya was further strengthened by the Workers' Revolution in Russia which generated new hopes and promises of a new social-economic order for average man. The establishment of Labour Government in England in 1924, the nomination of N. M. Joshi, then General Secretary of All India Trade Union Congress, in the Central Legislative Assembly under Montague Chelmsford Reforms Act, 1919 forced the pace of trade union movement in the country.

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42. Articles 3, 4 and 7 of the Constitution of International Labour Organization.

43. The First Session of International Labour Conference met at Washington on October 29, 1919, India, as original member of the League of Nations was among thirty-nine countries represented. The Indian delegates were Sir Louis Kershaw and Sir Atul Chatterjee representing Indian Government, Sir Alexander Murray representing Indian employers and N.M. Joshi representing Indian Labour. See **The Indian Year Book 1945-46,** at 478.

44. "Once self-government is attained there will be prosperity enough for all, but not till then" was the central theme of Dadabhai Naoroji's presidential speech at the Indian National Congress of 1906.

(ii) **The Madras Textile Labour Union.** The immediate fillip to the movement came from a strike by the Madras Textile Labour Union which had come into existence under the presidentship of B. P. Wadia in 1918. The Madras Labour Union was thus actually formed on April 27, 1918, on lines laid down by B. P. Wadia. The lines which he laid down were peacefulness, honesty, straightforwardness and truthfulness. He maintained dignity of labour, assuring the workers of their importance in furthering the prosperity of the motherland. During the workers' struggle against the mill-owners he observed:

> We do not remain content altogether with mere increase of wages or shortening of hours of work, but our life to be guided by something that's more abiding.....more lasting which comes to us with the widening of our mental horizon and the deepening of our spiritual perception.[45]

B. P. Wadia, one of the pioneers of Home Rule Movement and also for some time the editor of **New India,** had successfully organized the Madras Labour Union on basic lines of genuine trade unions. Following this strike Messrs Binny and Co., the managing agents of Buckingham Mills, resorted to lock-out and sued B. P. Wadia and other members of the union in the Madras High Court that

> he induced some of the workers in the Buckingham Mills to commit a breach of their contract and induced others not to enter into contract of service with that Company.[46]

The company made a claim of Rs. 75,000 as damages on account of loss suffered by way of strike and applied for an injunction prohibiting him from associating with the activities of the trade union. The Madras High Court, thereupon, adhering to the English common law principles of illegal conspiracy[47] and combination in restraint of trade, declared the union illegal and issued an injunction also. The granting

45. **The Times of India,** New Delhi, August 16, 1959.
46. 1 **Legislative Assembly Debates** 488 (1921).
47. **See supra note 26.**

of an injunction appeared as a bolt from the blue for trade union movement in the country. Trade union leaders suddenly discovered that they were liable to prosecution and imprisonment for **bona fide** union activities and it was apparent that some legislation for the protection of trade unions was necessary. This judgment created a great stir in the political and labour circles of India and Great Britain. The suit, however, was withdrawn subsequently at the instance of political leaders and trade union sympathizers. But the precipitation of an issue so grave before the main lines of union development had time to settle themselves is certainly regrettable.

It may be observed here that there was no irregularity or illegality in the judgment of the Madras High Court. As the law then existed[48] it was possible to obtain an injunction restraining a trade union official or organizer from influencing labourers to break their contract with their employers by striking to obtain an increase of wages. Workmen who had accepted a monetary advance and signed a contract were liable, on leaving work without valid excuse, not only to civil damages but to fine and imprisonment. In England, however, the law in this regard became certain only after 1906. Before 1906 trade unions in England were also held liable for civil conspiracy. As regards criminal conspiracy the Conspiracy and Protection of Property Act, 1875, had exempted the trade unions from this doctrine insofar as act done were[49] in contemplation or furtherance of trade dispute between employers and workmen if such act committed by one person would not be punished as crime. The **Quinn** v. **Leathem**[50] and **Taffe Vale Railway Co.** v. **Amalgamated Society of Railway**

48. See supra notes 14, 15 and 126. (1901) A.C. 495. **Taffe Vale Railway Company** v. **Amalgamated Society of Railway Servants,** (1901) A.C. 426.

49. Section 3 of the Conspiracy and Protection of Property Act, 1875, was mainly enacted to reverse the decision in **R. V. Bunn,** 12 Cox. 316 (1872) in which the Court held that a threat by London Gas Stokers to strike unless the employers reinstated a workman discharged for union activity, was a criminal conspiracy at common law to force the employers to carry on their business contrary to their will.

50. (1901) A.C. 495.

Servants[51] decisions were "a smashing blow"[52] to trade union movement in England. In order to reverse the **Taffe Vale** decision, the Trade Disputes Act, 1906, was passed to protect trade unions and their officials from civil liability by a breach of contract. Section 3 of the Act provides:

> An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other persons to break a contract of employment or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or labour as he will.

(iii) **Agitation for Protection of Trade Unions:** In India, therefore, agitation started for the legal protection of trade unions in 1920 as their counterparts enjoyed in Great Britain. S. Saklatwala, who was then a Communist member of British Parliament, waited in a deputation upon Montague, then Secretary of State for India, and urged upon him the need of trade union legislation in India. An assurance was given by Montague to the effect that early steps in this direction would be taken. Thenceforward the question became one of great public interest and concern. On September 3, 1921, Lord Reading, the Viceroy of India stated:

> The recent industrial unrest accompanied by a growth in the number of trade unions and that question of giving adequate protection and legal status to these unions which are genuine labour organizations is at present under consideration.[53]

In March 1921, N. M. Joshi moved the following resolution in the Legislative Assembly:

> This Assembly recommends to the Governor General in Council that he should take steps to introduce, at an early date, in the Indian Legislature such legislation as may be necessary for the registration of trade unions

51. (1901) A.C. 426.

52. Citrine, **Trade Union Law** 17 (1960).

53. Speech delivered on September 3, 1921. in inaugurating at Simla the Second Session of the Central Legislature. See **India in 1921-22,** at 80.

> and for the protection of trade unionists and trade union officials from civil and criminal liability for **bona fide** trade union activities.[54]

In the Legislative Assembly, Sir Thomas Holland, Member for Industries, opposed the resolution, averring that the number of existing trade unions was small in India unlike their counterparts in England. He observed:

> There are some associations, it is true in this country, but possibly they could be counted on the fingers of one hand, that have a clearly defined constitution and a recognized membership, with audited accounts .... The English legislation which Mr. Joshi quoted as our guide is not only legislation which we dare not undertake in India, but legislation which could never be passed in England, if Bill were put before Parliament today.[55]

Sir Holland suggested that a few unions that existed could be registered under the Indian Companies Act, 1913, which provided[56] for registration of associations formed for promoting commerce, art, science, religion, charity or any other useful object, and applies or intends to apply its profits without any claim or pretence of a dividend. An interesting debate ensued in which the employers also vehemently opposed Joshi's resolution. Consequently, the following resolution, as amended by Sir Holland, was passed by the Legislative Assembly:

> This Assembly recommends to the Governor-General in Council that he should take steps to introduce, as soon as practicable, in the Indian Legislature such legislation as may be necessary for registration of trade unions.[57]

(a) **Industrial Unrest.** During the year 1921, when the legal issues of trade union rights and privileges were actively

54. 1 **Legislative Assembly Debates,** 486 (1921).

55. **Id.** at 419.

56. Section 26.

57. 1 **Legislative Assembly Debates** 506 (1921); **Report of the Royal Commission on Labour in India, 1931** at 318.

engaging the attention of the legislature, political leaders and social reforms there were no fewer than four-hundred strikes in the country. Of these strikes, the majority were due to economic reasons, but in some cases political issues were confused with economic grievances. The year 1922 was a period of acute depression in all industries and the cost of prices were soaring[58] year after year. The Ahmedabad Millowners' Association made the first organized post-War move in India for wholesale reductions in wages. A cut of 20 per cent was announced with effect from April 1, 1923. The strike of the Ahmedabad Cotton Mill workers which followed[59] was by far the largest ever occurred in that city. It involved 45,000 workers and resulted in a total time loss of nearly two and a half million man days. A compromise was eventually arrived at by the terms of which wages were to be reduced by 15-5|8 per cent instead of by 20 per cent. The Bombay Millowners' Association had met demands for higher wages between 1917 and 1920 partly by the grant of dearness and food allowances and partly by the payment of an annual bonus of one month's pay dependent on profits. In 1924, the Bombay Millowners' Association decided that profits for 1923 would not justify the payment of bonus. The workers of all mills in the city struck work. The Government of Bombay appointed a committee of enquiry under the chairmanship of Sir Norman Macleod, Chief Justice of Bombay High Court. The committee's report was entirely against the workers. This bonus strike was largest in magnitude until that year which resulted in a loss of nearly eight million working days. In 1925, the Government of India came to the rescue of cotton and textile industry and the workers employed therein by abolishing the excise duty of 3½ per cent, which had been levied on cotton manufacturers in India for many years. In that year millowners in Bombay announced a cut of 12½ per cent in wages. This announcement was followed by a general strike which lasted for over two months, resulting in a time loss of nearly eleven million working days. This strike "was a great victory for workers and showed that

58. See supra note 33.
59. See supra note 39.

in spite of their illiteracy and inadequate organization they were able to take concerted action and to offer a stubborn resistance against any attack on their wages."[60]

(b) **Outside Elements in Trade Unions.** The Industrial unrest led to mushroom growth of trade unions organized by outsiders, namely intellectuals, politicians, lawyers and social reformers. They, however, organized these bodies primarily for political ends. The trade union movement from its very inception did not have a chance to be guided by genuine trade union leaders who were themselves workers. Therefore, it passed in the hands of outsiders.[61] A. R. Burnett Hurst has criticized the association of outsiders with early trade unions on the ground that the latter became instruments of some political end rather than for the amelioration of conditions of workers. Social workers did not take the initiative, but allowed the lawyer-politician class to capture and control these bodies.[62] Perhaps the association of outsiders was inevitable because of hostility of employers who regarded trade union movement "as the enemy of industry and would not talk or negotiate with the moderate elements like Sir Narain Chandvakar, Joseph Baptista, N. M. Joshi....."[63]

It may also be stated, on the other hand, that employers were partly correct in their attitude[64] towards trade unions inasmuch as there had been hitherto few organizers of the right type and many so-called trade unions had been formed by political agitators who had instigated strikes in pursuance of purely political ends with callous disregard of the subsequent sufferings and losses.

In India, the association of social reformers on the one hand and politicians and lawyers on the other could not be avoided because of very special difficulties of workers to

60. **The Indian Year Book 1945-46, at 480.**

61. **Kelman, Labour in India—A Study of the Conditions of Indian Women in Modern Industry, 238 (1923).**

62. **1 Indian Journal of Economics 492, 503 (1920).**

63. **Kanji Dwarkadas, Forty-Five Years with Labour 290 (1962).**

64. **India in 1926-67, at 145.**

unite themselves independently of outsiders.[65] It was extremely difficult to disentangle politics from social conscience and community interests of Indian masses. According to the emerging new post-First World War philosophy, industry could not be treated as a one-man show. Labour no longer remained a servant but a partner with capital as a social function. Consequently, political ideas and experiments[66] started through which it was possible to secure fair, humane, and just conditions of work for the workers. This entailed, no doubt, great danger inasmuch as labour was being used as a tool to secure political power by interested persons. The Royal Commission on Labour in this context observes:

> The influence of nationalist politics on the movement had mixed results. It added intensity, but it also tended to increase bitterness and to introduce in the minds of many employers a hostile bias against the movement. This, in its turn, tended to obscure justice of many genuine and pressing demands.[67]

(c) **Formation of Federation of Unions.** As already mentioned, in India before 1920 most of the trade unions were

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65. In the memorandum submitted by the Madras Labour Union, it was alleged that the attitude of the employers was consistently unfriendly towards the movement which found expression in intimidation and victimization. The result was that men were afraid to join union and did not come to the meetings until it was dark. The employers' objection, in the first place, was that, there was no need for it. And, secondly, they could not recognize an institution in which there were outsiders. Similarly at Kanpur workers, who came forward to give evidence, made strong allegations against their employers' conduct towards them. With regard to the attitude of the officials towards union, they stated that it could be known by threats they received when came to give evidence before the Commission. In Bombay, Ahmedabad, Calcutta and Jamshedpur, the employers were even more hostile towards the unions and tried their best to crush these organizations by refusing to negotiate with them for the simple reason that they were being guided by outsiders well knowing that without the help and guidance of these outsiders they could have never come into existence and that in the present stage of development they could never hope to carry on for long. See 1 **Indian Industry and Its Poblems —Factors in Industrial Development** 286-87 (1932).

66. The First Trade Union Congress was organized in 1920. It became a spearhead in forging trade union movement on socialist ideology.

67. **Report** 317.

ad hoc committees of workers having ephemeral existence only. However, during 1921-1922 several genuine trade unions,[68] namely postal and telegraph unions, railway workers' unions, Indian Seamen's Union, Burma Labour Union, Jamshedpur Labour Association, Ahmedabad Textile Labour Association, etc., had come into being. This period also witnessed the movement towards federation of unions like the All India Trade Union Congress which served "as a link between trade unionism in India and in Europe."[69] It was formed with the twin objects of dispelling apathy and ignorance that existed in public mind about trade union activity and to unite workers by awakening them from their old slumber and ignorance in order to demand better wages and lesser hours of work, etc. Further, to re-organize the existing unions, the All India Railwaymen's Federation, the All India Postal and Telegraph Employees' Federation, the Bombay Central Labour Federation (later on replaced by the Bombay Central Labour Board), the Bengal Labour Federation and the Madras Central Labour Board came into existence. The first two were independent[70] neutral federations while the rest[71] were affiliated to the All India Trade Union Congress. The position and strength of the trade unions in different industries in 1924 in India would be clear from the table on the next page.[72]

By the end of 1925 there were eight federations and 167 labour trade unions in India. Nearly half of these were[73]

68. Trade Union movement advanced more particularly in two industrially advanced provinces of Bombay and Bengal. During 1922-1923 there were nine unions in Ahmedabad with a total membership of 19,785 persons. See **Bombay Labour Gazette,** March, 1923, p. 29. In Bombay there were nine unions with a membership of 24,500 persons, clerks and seamen. Messrs. Joseph, Baptista, Jhabwalla and Ginwalla were the labour leaders who were themselves not workers. See **Bombay Labour Gazette,** March, 1923, page 28. In Bengal also similar unions were in existence. The Committee on Industrial Unrest in Bengal in 1921 stated that "any organizations found among employers are of the loosest description while, except in a few special cases, such as those of the telegraph and the railway workers, who are outside the ranks of ordinary industry organized bodies of labour hardly exist." **Report** 4.

69. **Report of the Royal Commission on Labour in India,** 1931, at 318.

70. Giri, **Labour Problems in Indian Industry** 17 (1960).

71. Boughton, **Labour in Indian Industries** 191 (1924).

72. **Punekar, Trade Unionism in India,** 82 (1948).

73. **India in 1926-27,** at 144-45.

Group	*Total number of Unions*	*Unions furnishing returns*	*Membership*
1. Transport			
Railway	25	10	97,702
Shipping	6	3	14,500
Other Transport	6	3	6,300
2. Textile			
Cotton & Jute	23	17	30,795
3. Engineering and Allied Industries			
Chemicals, Glass and Pottery, etc.	3	1	500
Iron, Steel, Metals	3	2	9,000
Other Engineering	5	2	825
4. Non-Manual			
Banking	3	2	1,610
Currency	4	3	1,120
Clerks Teachers	4	1	500
Commercial	4	1	2,600
5. Miscellaneous			
Government and Municipal Servants	37	4	9,150
Mining	2	1	400
Paper and Printing	18	14	37,625
Posts & Telegraph	5	3	710
6. General			
Labour	19	1	10,000
Total	167	62	2,23,337

organizations either of government servants or of persons connected in some way or the other with government employment while some of the others were ephemeral or obscure.

As compared to previous years the years 1926[74] and 1927[75] were of relative calm and peace in Indian industries. Labour with a singular unity of purpose had conducted many hard battles for the maintenance of the standard of life which it had secured but it paid dearly for the victories it had won

74. There were 128 strikes which were reported during 1926. See **India in 1926-27**, at 22-23.

75. In 1927, there were 129 strikes involving 1,31,655 people. See Ahmad, **Factory Labour in India**, 122, (1930).

owing to the wages it had lost during periods of protracted stoppages of work caused by strikes. The two years 1926 and 1927 were spent in a quiet consolidation of their respective positions both by the employers and employed and also by the government who were contemplating a heavy programme of labour legislation.

(2) **Necessity of Trade Union Legislation.** The government took a long time to make up their mind in evaluating the pros and cons of trade union legislation. Although the move for such a legislation had been taken on March 1, 1921, when N. M. Joshi moved the resolution in the Central Legislative Assembly for registration of trade unions and which the Government of India had accepted in principle, it was as late as January 22, 1925, that the Trade Union Bill was introduced in the Central Legislative Assembly. The intervening period for four years elapsed in ascertaining the views[76] of all the interested parties, e.g., the employers' and employees' associations, all the provincial governments and private individuals. These views were at complete variance with one another as is evident from the statement of Bhupendra Nath Mitra:

> There are some who consider the proposed legislation to be premature, and would prefer that we should not proceed with it at all. There are some others, while recognizing the need for the proposed legislation, apparently consider the trade unions to be dangerous and pernicious growths, whose activities should be controlled rigidly, so that they may not eventually overwhelm the Commonwealth. There are others again who regard trade unionism as a new religion which, given sufficient licence, would bring about the millennium

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76. The Government of India prepared a schedule of questions relating to (a) the principles of such legislation, (b) the objects aimed at similar legislation with special reference to (1) compulsory as optional legislation, (2) the extent to which their objects should be specified, (3) recognition of strikes, (4) recognition of picketing, (5) age qualification, (6) protection of trade unions from civil and criminal liabilities, (7) management of unions and (8) trustees and trust funds. **Labour Gazette**, October, 1924, p. 187. Das, **History of Indian Labour Legislation**, 246, (1941).

much more rapidly than any existing religious promises to do."[77]

In the face of such conflicting views the Government of India aimed[78] at the adoption of certain preliminary measures (in the Bill) to foster the growth of trade unions in India on the right lines. The Bill was purely of permissible character giving option to the trade unions to register. A great controversy had centred around this point in that some of the provincial governments and employers were pressing for compulsory registration of trade unions on a misconception that they would not register without compulsion.

Likewise, differences of opinion existed with regard to inclusion of political objects upon which funds could be spent. The Government of India, therefore, after a careful consideration decided to exclude such objects from the list of trade unions objects. The rationale behind this idea was perhaps that the funds be primarily spent on trade union objectives rather than on political one. The Bill also afforded trade unions immunity from civil and criminal liability in order to further their trade union purposes. The Bill was referred to a Select Committee on February 4, 1925, where it was examined clause by clause. The first important change made by the Select Committee[79] in the original Bill was the insertion of the clause which is now numbered 16. This clause provides for the constitution of a separate fund to be formed from optional contributions and to be utilized for expenditure on specified objects for the promotion of civil and political interests of the members of trade union. Another important change suggested by the committee was regarding the officers of a registered trade union. The original Bill proposed that majority of the officers of a registered trade union should be persons actually engaged in the industry with which the trade union is concerned. The low educational standard of the ordinary worker compelled the majority of the Select Committee to change the words "a majority" in the beginning of the clause to "not less than one third."

77. 5 **Legislative Assembly Debates,** 78, (1925).
78. **Ibid.**
79. 7 **Legislative Assembly Debates, 1926,** at Part I.

The Bill was reported back by the Select Committee for reconsideration in the Legislative Assembly. The Assembly considered the Bill in January 1926 and passed it into an Act in February 1926. It came into force from May 1, 1927. The Indian Trade Unions Act, designed to meet the needs of infant movement,

> differs from British and Dominion Legislation on the subject mainly in the fact that the application of its provisions is confined to those unions which seek registration under it. Registered unions incur certain obligations, the most important of these are the requirement to furnish audited accounts and the necessity of including in the executive a majority of actual workers. At the same time registration confers on trade unions and their members a measure of immunity from civil suits and criminal prosecutions, the provisions in this respect follow approximately the recommendations of the Royal Commission on Trade Disputes and Trade Combinations that sat in England in 1905.[80]

(3) **Trade Unions' Evolving Status.** The Indian Trade Unions Act, 1926, greatly enhanced the status of trade unions in the workers' imagination and in the public minds. Before 1926 trade unions were treated as illegal bodies; it was only after 1926 onwards that the movement acquired a big spurt and dynamism in bringing together the elements which were hitherto scattered, divided and disunited. It was a great success—rather a leap forward—which they achieved after a prolonged struggle, suffering and sacrifice. The Royal Commission rightly observes that

> the stimulus given by the Act to trade unionism resulted, not so much from any rights or liabilities that created, as from the enhanced status in the Statute Book.[81]

The Act, however, was conspicuously silent with regard to provisions regarding compulsory recognition of unions by

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80. **Report of the Royal Commission on Labour in India, 1931, at 318.**

81. **Ibid.**

employers for the purposes of negotiation and bargaining on account of employers' stiff opposition who were not still reconciled with the trade unions. The Trade Unions Act, 1926, which would be critically evaluated and referred later on covers mainly three sets of matters, namely, the conditions governing registration of trade unions, the obligation to which a trade union is subjected after registration and the rights and privileges accorded to registered unions. The Act, however, was amended by the Indian Trade Unions (Amendment) Act, 1928, defining the procedure regarding appeal against the decision of a registrar refusing to register a trade union or withdrawing certificate of registration. It would not be out of place to state at this stage that the trade union law in India made no provision with regard to compulsory recognition of unions of workers by their employers for the purposes of negotiation or settlement of disputes and thereby deliberately created unbridgeable gulf which is constantly creating acrimony, fear and war of nerves between the labour and capital.

(4) **Rise of Militant Unionism.** With the beginning of the year 1927, the trade union movement had consolidated itself and had achieved prestige, power and status in law and public imagination. It was first in May 1927 that the Indian workers for the first time celebrated in Bombay a labour Day—the symbol of opening a new era of Indian labour movement as conscious part of the international labour movement. It revealed the emergence of militant leadership within the trade unionism. The unionism was expanding within the rank and file of labour which itself was rapidly making new strides in emerging industries, factories, companies and mills. The year 1928 witnessed the outbreak of industrial strife of an intensity which had been hitherto unknown to India. Two causes were directly responsible for this. First, was the recommendation of the Indian Tariff Board regarding introduction of "rationalized" methods of work. The second, was the formation of the "Workers and Peasants Party"—a communist organization guided by the principle of the class struggle.

Following the recommendations of the Tariff Board several industries introduced rationalization. This was at once

met by prolonged strikes—important of them were in the textile mills of Bombay, Kanpur, Tata Iron and Steel Company's work at Jamshedpur, and on the East Indian and South Indian Railways. In 1928 the communists formed a new union also called the Bombay Girni Kamgar (Red Flag) Union with a membership of 50,000 of textile workers. This union was responsible for a series of strikes in railways, port trusts and public utilities. It also initiated political strikes and demonstration against the arrival of the Simon Commission in Bombay. This resulted in riots and disturbances so much so that thirty-one union leaders were arrested on charges of organized conspiracy and were taken to Meerut for trial.

(i) **Royal Commission on Labour in India.** Consequently, to meet the grave situation arising out of industrial conflicts the Government of India enacted the Indian Trade Disputes Act, 1929, for the prevention and settlement of industrial disputes. The British Government, in consultation with the Government of India, also appointed on May 24, 1929, a Royal Commission to inquire into and report on the existing conditions of labour in industrial undertakings in British India. The Report of the Commission is of great significance and continues to be a repository of social legislation and labour welfare for Indian labour. The recommendations of the Commission cover a very wide field including industrial relations and trade unions. The recommendations relating to trade union were:

> Every employers' organization should set up a special committee for the purpose of giving continuous consideration to the improvement of the well-being and efficiency of the workers in establishments controlled by its members.[82]
>
> Recognition should mean that a union has a right to negotiate with employer in respect of matters affecting either the common or industrial interest of its members. The fact that a union consists only of a minority of employees or the existence of rival unions are not sufficient grounds for a refusing recognition.[83]

82. Id., at 317.
83. Id., at 324.

> Government should take the lead, in the case of their industrial employees, in making recognition of unions easy and in encouraging them to secure registration. Union leaders should endeavour to give as many members as possible some share in the work of the Union.[84]

The Royal Commission on Labour also felt the urgency of strong trade union movement and insisted that the employers should recognize the trade unions as the bargaining agency and should not deter them from recognizing the unions only on the ground that the union is a minority one or there is another rival union in existence. The Commission observed:

> Everything we have seen in India has forced upon us the conviction that the need of organizations among the Indian workmen is great and that unless industry and state develop along entirely different lines from those at present followed, nothing but a strong trade union movement will give the Indian worker adequate protection. Legislation can act as a palliative and prevent the graver abuses, but there are strict limitations to the power of government and the public to protect workmen who are unable to protect themselves.[85]

(ii) **The First Split.** In 1929 the trade union movement was at the crossroads of Indian horizon. Many of its leaders had been removed from the scene on account of the **Meerut Conspiracy** case. It was becoming class conscious, militant and dangerous both in ideology and organization. This was clear from the tenth session of the All-India Trade Union Congress which was held at Nagpur in 1929. A split occurred between the moderates and extremists on political and ideological grounds. The reasons for the split—the controversy over the affiliation of Girni Kamgar Union to A.I.T.U.C., the affiliation of the A.I.T.U.C. to League against Imperialism[86]—a communist international organization; the

84. **Id., at 526.**
85. **Id., at 526.**
86. **The Indian Year Book 1940-41, at 514.**

boycott of the International Labour Conference and the boycott of Round Table Conference were the main reasons for the split.)

(The moderates finding themselves in minority refused to accept the above resolutions. They seceded from the A.I.T.U.C. and set up a separate federation under the name of the All India Trade Union Federation in order to coordinate activities of non-communist trade unions.) Messrs N. M. Joshi, B. Shiva Rao, V. V. Giri, R. R. Bakhale and Dewan Chamanlal were its founders and leaders. (The All-India Railwaymen's Federation which was affiliated to A.I.T.U.C. also left that body in 1929. It remained outside, uninvolved and neutral till 1935, when it formed together with the All-India Trade Union Federation another united platform called the National Trade Union Federation.) The Labour unions in Ahmedabad which drew their inspiration from Gandhiji did not show any desire to be affiliated to the A.I.T.U.C. Thus, during 1930 the trade union movement in India was at very low ebb on account of trade union split of 1929. The movement lacked dynamic leadership to keep it strong and united when it was most needed.

(iii) **The Second Split.** (At the eleventh session of A.I.T.U.C. in 1931 further disintegration took place within the trade union movement. At this time the communist-dominated Girni Kamgar Union had split in two groups both opposed to each other. This time also, split took place on ideological and political grounds, namely on the question of the political role of trade union movement.) One of the extreme leftwing led by Messrs S. V. Deshpande and B. T. Randive regarded the movement as an instrument for political power of the working class. The section which held this view formed the All-India Red Trade Union Congress. The Red Trade Union Congress remained in wilderness with no influence and a negligible membership. It was in 1935 that the All-India Red Trade Union Congress composed its differences with the A.I.T.U.C. and merged in it.

These splits obviously undermined the trade union movement. None of the three national labour organizations realized the futility of their internal ideological dissensions which

caused grat damage to the workers in the economic front. The All-India Trade Union Congress had already decided to boycott the International Labour Conference. The Government of India thereupon recognized the Indian Trade Union Federation as the representative body competent to recommend delegates for the International Labour Conferences. Thus the trade unionists lost their hold on the workers.

(iv) **The "Unity Moves".** An urgent need was felt on all sides to unite, rehabilitate and consolidate the movement which hitherto had been weakened by internal feuds and external onslaughts. Efforts were, however, not wanting in view, restoration of the trade union unity. With this end in view, the Trade Union Unity Committee was appointed on May 10, 1931, under the auspices of the All-India Railwaymen's Federation. This committee found that three different and distinct sections of labour were in existence in India: (i) the communist group; (ii) the liberal group; and (iii) the rest. Also, the gulf which divided communists from other sections was not bridgeable. The committee, therefore, recommended a platform of unity for the remaining section of labour in India. All the Unions which accepted this platform of unity formed a new federation to be called the National Federation of Labour, with a view to bringing about its amalgamation with the Indian Trade Union Federation which had come into existence after the split in Nagpur session of 1929. The two federations were amalgamated and the new organisation was named National Trade Union Federation.[87] Its objects were, **inter alia,** (1) to establish a socialist state in India; (2) to ameliorate the economic and social conditions of working class and (3) to support and actively participate in the struggle for India's political freedom by all legitimate, peaceful and democratic methods.[88]

The National Trade Union Federation also entered into an agreement with the All-India Congress Socialist Party[88]

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87. **The Indian Year Book 1935-36, at 545.**

88. It had been founded in 1934 by some socialist leaders led by Acharya Narendra Dev and Jai Prakash Narayan.

for joint action on certain specific political and economic matters. This agreement gave further impetus to unity efforts. In 1935, an agreement was reached between the representatives of A.I.T.U.C. and the National Trade Union Federation to appoint a joint committee of the two organizations for finding ways and means with a view to exploring the possibilities of a common action in the trade union matters. It is interesting to note that the labour unions of Ahmedabad remained aloof from these bodies. In 1937, the National Trade Union Federation decided to merge with A.I.T.U.C. It was in 1938 that the Federation was finally merged with the All-India Trade Union Congress.

(v) **Trade Unions and the Provincial Autonomy.** The trade union movement got a new lease of life in 1938 for it had by then realized the value of unity as the only way out for promoting and safeguarding the interest of workers more effectively. The proposals of the Indian Delimitation Committee[89] with regard to formation of certain constituencies for return of representatives of labour to the Provincial Legislative Assemblies on the basis of registered trade unions had a considerable affect both on the formation of new unions and on the registration of such of those as had not registered under the Indian Trade Unions Act. The advent of new reforms under the Government of India Act, 1935, and the introduction of provincial autonomy gave fresh impetus to the movement. Finally, the manifesto[90] of the Indian National Congress on Labour Policy to secure to the industrial workers a decent standard of living, hours of work and conditions of labour in conformity, as far as economic conditions in the country permit, with international standards, and the right of the workers to form unions and to strike for the protection of their interests was an outstanding event in the rapid expansion of trade unionism in country. The uniform policy was followed in all Congress provinces during 1937-1939. The governments of Bombay, Bihar, United Provinces appointed

89. The Indian Delimitation Committee was set up in 1935 to examine the question of enfranchisement of labour under the Government of India Act, 1935.

90. **Indian Year Book 1940-41, at 522.**

Committees of Inquiry to examine the existing levels of wages and conditions of employment. There was a spate of activity for legislative measures for the amelioration of trade union position in all the provinces.

Strikes, however, continued to be frequent, most of them short and sporadic but some bitter and prolonged. The reasons for all these strikes were rather baffling. On the one hand with the advent of Congress Ministries the workers had hoped to get their all legitimate rights and demands fulfilled. They got an opportunity to put forward their demands for higher wages, lesser hours of work and better standard of living. While ventilating for the redress of their grievances they were faced by a **fait accompli**—the new legislation[91] which declared a strike illegal in certain circumstances. This created a difficult situation. As the trade union movement spread powerfully and unitedly the number of strikes also correspondingly increased. Some of the important strikes were the Kanpur Textile strike (1937-39), the Bengal Jute Strikes (1938-39), the Digboi Oil Fields strikes, 1939, the GIP Railway strike 1940, etc. To meet and to check such strikes the Indian Trade Disputes (Amendment) Act, 1938, was passed empowering the Provincial Governments to declare strikes illegal and to appoint conciliation officers for mediating in or promoting the settlement of trade dispute. The Bombay Industrial Disputes Act, 1938 also sought to make all strikes and lockouts illegal until such time as the procedure provided in the Act for conciliation and arbitration is exhausted.

(5) TRADE UNION MOVEMENT AND THE SECOND WORLD WAR

(i) **Congress Ministers Resign.** The Congress Ministries resigned from office in November, 1939, on a protest against proclaiming India a belligerent state without consulting Indian political leaders. In March, 1939, at the Tripura Session the Indian National Con-

91. The Indian Trade Disputes (Amendment) Act 1938; the Bombay Industrial Disputes Act, 1938.

gress declared that India would not participate in such a war unless the right to freedom is acknowledged. The trade unions also by now had consolidated their influence and prestige and could not remain aloof from the political life of the country. They followed the call of the Indian National Congress and staged anti-War demonstrations and strikes in 1939. The Second World War was also responsible for further division within the trade union movement in India. In 1940 there was once again another split in the All-India Trade Union Congress.

(ii) **The Third Split.** The unity within the ranks of the A.I.T.U.C. did not last long and at the eighteenth session of the A.I.T.U.C. sharp differences arose with regard to the policy and attitude of trade unions to be adopted towards the Second World War. Some of the trade unionists were strongly in favour of the workers' co-operation to meet the War efforts whereas a large section of trade union leaders were opposed to the policy of conditional co-operation with the British Government without latter's acceptance of India's demand for freedom and independence. However, the A.I.T.U.C. adopted a resolution of neutrality towards war but at the same time gave a free-hand to such of its affiliated members as desired to support war. The resolution on war which was moved by Mr. V. V. Giri and adopted by the A.I.T.U.C. in the Bombay session declared:

> As the present war between Great Britain on the one side and the Fascist powers on the other is claimed by British to be waged for the vindication of the principles of freedom and democracy and not for any imperialistic purposes, India, without any sympathy either for imperialism or fascism, naturally claims for herself freedom and democratic Government before she can be expected to take part in the war. Participation in a war, which will not result in the establishment of freedom and democracy in India, will not benefit India, much less will it benefit the working class.[92]

92. K. B. Panikkar, **An Outline of the History of AITUC,** 12 (1959); Giri, **Labour Problems in Indian Industries,** 20 (1960).

The policy of the A.I.T.U.C. did not satisfy Messrs. Aftab Ali, V.B. Karnik, M. A. Khan, S. Guruswamy and M. N. Roy who wanted wholehearted support for the War. Aftab Ali, therefore, disaffiliated his Indian Seamen's Union, Calcutta as he was in disagreement with 1940 resolution of the A.I.T.U.C. Another section headed by M. N. Roy, the leader of the Radical Democratic Party, resigned from the A.I.T.U.C. in 1941 and formed a separate new central organization known as the Indian Federation of Labour with its head office at Delhi.

(iii) **The Indian Federation of Labour.** The Indian Federation of Labour was established in November, 1941 to support the war efforts of the British Government in its fight for democracy and freedom against Facism and Nazism. Jamnadas Mehta was appointed its President and M. N. Roy its General Secretary. It was estimated that two hundred trade unions in India with a total membership of over a quarter of a million had affiliated themselves to the federation. The federation grew in strength rapidly. It had the full material and moral assistance of British Indian Government. A monthly grant[93] of Rs. 13,000 was given to it for carrying out its policy, programmes and propaganda among the workers for War efforts. The federation was also given an exalted position through recognition by the Government of India as the representative organization of workers. The representatives of the federation were nominated as delegates of the I.L.O. Conference held at Philadelphia in 1944.

The federation claimed to build up an independent trade union movement on democratic basis leading to collective bargaining. It claimed to free the movement from party politics and governmental patronage which it said stood in the way of trade union movement. However, it is difficult to reconcile the position of the federation which practically became an arm of the Government in the industry. It was criticized by the Congressmen, the Communists, the Congress Socialists and Forward Blockists for its depen-

93. Kumar, **Development of Industrial Relations,** 116 (1961); **Trade Unions—A Survey,** 108 (1960).

dence and co-operation with Government without making sacrifices for national independence. The Indian Labour Federation continued to hold its annual sessions until it merged with Hind Mazdoor Sabha in December, 1948.

(iv) **Defence of India Rules : Rule 81-A.** During all these years 1939-1945 there were numerous notifications and ordinances[94] both by Central and Provincial Governments restraining strikes and lockouts by providing compulsory conciliation and adjudication of industrial disputes between employees and employers. The Government imposed a ban on strikes by Rule 81-A of the Defence of India Rules which were promulgated in January, 1942. The object of this was the avoidance of strikes and lockouts.

(v) **The A.I.T.U.C. and the Second World War.** While the trade unions at this period were primarily engaged in their fight for political independence, there was a sudden change in the attitude of the Communists at the Kanpur session of the A.I.T.U.C. 1942 in which they started advocating unconditional support to War. For the Communists the imperialist war became a just defensive war overnight. No sooner Russia joined the Allied Powers in June, 1941 against the Axis Powers for the Communists, the imperialist war became peoples' war. This led to the legalisation of the Communist Party in 1942 after eight years of illegality. The nationalist elements within the fold of the A.I.T.U.C. continued to give their active and unstinted support to the avowed policy of non-cooperation of the Indian National Congress. Thus, during 1943 there were only two sections of the trade union movement—the Royists and the Communists—permitted to carry on their normal trade union activities.

The impending invasion of Japan on India had also a great effect on the Indian economy in general and on trade unions in particular. There was an insistent cry for more production of commodities, articles and munition of war.

94. Rule 81-A, Defence of India Rules, 1942; National Service (Technical Personnel) Ordinance, 1940; Essential Services (Maintenance) Ordinance, 1941.

There was at the same time a short supply of daily articles of consumption which affected the labour like other members of the community. Bengal also witnessed a dangerous famine in 1943 on account of acute shortage and high prices of articles of daily consumption. There were also bitter struggles and disputes between employers and employees for higher wages, for higher rates of dearness allowances, for greater participation in war profits. Some of these disputes were settled by courts of inquiry or boards of conciliation or by adjudicators appointed under Rule 81-A of the Defence of India Rules. On the other hand, the Government of India gave important priority to implementing the recommendations of the Royal Commission[95] regarding workers' participation through industrial councils and production councils and works committees. Accordingly, the Government of India convened a tripartite conference in 1942 consisting of the representatives of employers, workers and Government on ILO pattern for resolving differences or economic interests peacefully.

(vi) **Trade Unions Movement at the End of Second World War.** During this period of stress and strain the trade union movement in India was in confusion. It was exposed to national politics as well as external influences. In 1945, a world conference of trade union organizations was held in Paris in 1945, in which Indian Labour Federation and the AITUC also took part.

The rest of the trade union movement in India, however, continued to expand despite the suppression of legitimate trade union activities. The AITUC held its session in 1945 at Madras with Mrinal Kanti Bose as its President. In 1945, the AITUC consisted of three distinct groups: (1) the Communists; (2) the Nationalists (including the Indian National Congress and the Congress Socialist Party and the pure trade unionists like N. M. Joshi) and (3) Hindustan Mazdoor Sevak Sangh, which was the offspring of a labour sub-committee, established by Gandhi Seva Sangh, Wardha,

95. **Report of the Royal Commission on Labour,** 1931, at 467-72.

in 1937, to organize labour on Gandhian principles. Hindustan Mazdoor Sevak Sangh was established in 1938 in Bombay to conduct trade union activities on non-violent lines.

(a) Termination of War and Social and Economic Condition of India

After the termination of War the political and economic situation of India was uncertain, unstable and indecisive. Although there was all-round enthusiasm for national freedom and independence yet at the same time there was also misery, suffering, unemployment and economic insecurity in the wake of national independence. This was partly due to partition and partly due to acute shortage and high prices of consumer goods which in turn was further responsible for numerous strikes during the year[96] of 1946 and 1947. The notable strikes were railway and postal employees strikes, the U.P. primary school teachers strikes, the dock workers strikes, and other numerous strikes at various places all over the country. Consequently, the Government of India appointed the First Pay Commission on May 10, 1946, with Srinivasa Varadachariar, a Judge of the Federal Court, as its chairman to inquire into and report on the conditions of service of Central Government employees with particular reference, amongst others, to the structure of their pay-scales, standards of remuneration, etc. The commission recommended the adoption of uniform scales of pay and dearness allowance all over India with house rent allowance and compensatory allowance in big towns and industrial undertakings. It also recommended the payment of dearness allowance in accordance with the rise of prices. The commission recommended that the Government should aim at achieving

96. The Labour Investigation Committee, also known as Rege Committee, appointed by the Government of India in 1944 also observed: "Our surveys, however, will bring home to the reader the fact that the basic wage level in most Indian industries is extremely low. As a matter of fact, considering the question broadly, little or nothing has been done by the principal industries in this country to revise in an upward direction the basic wages of their operatives except where the employers have been forced either by Government or by labour."

living wage principle for its employees who were virtually on the poverty line, and thereby suggested Rs. 30 per month as minimum wage for the lowest paid employees in addition to Rs. 25 as dearness allowance. The Government of India accepted all the major recommendations regarding uniform scales of pay, dearness allowance, house rent allowance and compensatory allowance.

(b) Polarization of Trade Union Movement

The political uncertainty and confusion created during pre-independence era no less contributed confusion within the trade union movement itself. The process of polarization within trade unions started on the basis of different political ideologies and programmes. The Communists within the AITUC could not see eye to eye with those trade union workers who advocated positive and co-operative attitude towards the labour policies of the Congress ministries formed in 1946.[97] The Communists, however, were blamed for fomenting and organizing strikes in all parts of the country by taking advantage of post-War unsettled conditions. The Indian National Congress also realized the imperative necessity of organizing trade unions under their control on Gandhian lines to fulfil the aims and programmes of the Congress Government. It became, therefore, apparent that the trade union movement was heading soon towards further split on political and ideological grounds. However, the trade union movement had come to stay and was steadily developing despite differences, dissensions and splits. The progress achieved thus far can be seen during 1938-1948 from the following table :[98]

Year	*No. of registered trade unions*	*Number of unions submitting returns*	*Membership of unions submitting returns*
1938-39	562	394	3,99,159
1939-40	667	450	5,11,138
1940-41	727	483	5,13,832
1941-42	747	455	5,73,520
1942-43	693	489	6,85,299
1943-44	761	563	7,80,967
1944-45	865	573	8,89,388
1945-46	1087	584	8,64,631
1946-47	1833	998	13,31,962
1947-48	2766	1620	16,62,929
1948-49	3150	1848	19,60,107

97. **Planning For Labour—A Symposium, 138 (1947).**
98. **The Indian Labour Year Book 1950-1951, at 161.**

c. The Period Between 1947-1970

(1) Post-Independence Period: Alignment of the Trade Union Movement with Political Parties

The year 1947 was full of new hopes and promises for all sections of masses including the working people. But along with this optimism there was uncertainty, instability and insecurity arising out of partition, and economic crises due to high prices of foodgrains, scarcity of essential commodities, large-scale retrenchment and unemployment.[1] The major industries in the country, namely cotton, jute, coal and plantations were affected by rationalization and recession and economy drive. There was intense and widespread labour unrest which involved numerous industries and services with large-scale and prolonged stoppages entailing heavy national losses and serious hardships to the community as well as working class. The Working Committee of the Indian National Congress while viewing the unrest with deep concern was

> aware of the fact that the labour upheaval through which the country has been passing is largely occasioned by serious privations to which workers have been subjected in consequence of the tremendous economic maladjustments created by the war, especially the excessive rise in cost of living that has remained uncompensated to a very large extent.[99]

(i) **Revolutionary and Militant Policies of the AITUC.** The All-India Trade Union Congress in the post-independence period launched a revolutionary programme of radically changing the social, economic and political structure of the country by way of strikes and direct actions for establishing social and economic equalities. In his Presidential address to twenty-second session of the AITUC at Calcutta in 1947 Mrinalkanti Bose remarked :

> The economic system as it obtains in India, has proved to be too wooden to be adjusted to the needs of a rapidly changing social fabric. Governments all

99. 2 **The Indian Annual Register, 1945,** at 197.

over the country have resorted to repression as the only effective means of checking upheaval. There have also been arrests on mass scale.[100]

While stressing that strike should not be resorted to on flimsy grounds, Bose recalled the words of Sardar Vallabhbhai Patel : "If all normal business and activity throughout the length and breadth of India were suspended for just one week, the British will have to quit in no time." He suggested that such an action may have to be taken to abolish inequalities of which Mahatma Gandhi has spoken even after the British regime has ended. Thus during this period a series of strikes took place for which the AITUC[101] was mainly responsible. The number of industrial disputes in 1946 and 1947 increased[102] to 1,629 and 1,811 in which 19,61,948 and 1,840,784 workers were involved with 1,27,17,762 to 19,61,948 man-days lost.

(ii) **Attempt to Check Unrest: Industrial Truce Resolution, 1947.** Therefore, serious attempts were made to maintain industrial peace for higher production in order to raise resources of the country for rebuilding a new India. Consequently, attempts were made to check the tide of industrial unrest. The Government at the centre and in the provinces enacted[103] legislation putting procedural limitations and restrictions on the right to strike. At the Tripartite Industries Conference held on December 18, 1947, the management, labour and Government came to an agreement on the necessity of peace and reconstruction which led to the adoption of the Industrial Truce Resolution. The Resolu-

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100. 1 **The Indian Annual Register, 1947,** at 184.

101. Mr. Jawaharlal Nehru in a speech delivered on December 18, 1947, at the Industries Conference, New Delhi, observed: "I think it is perfectly true to say that there has been a tendency on the part of labour or certain labour groups to take advantage of certain difficulties which the nation has had to face, to organize strikes and stoppages of work and slowing down of work at a time when it meant hitting the nation hard." 1 **Jawaharlal Nehru's Speeches,** 93 (1946).

102. **Indian Labour Year Book, 1948-49,** at 140.

103. The Industrial Disputes Act, 1947, SS 22, 23, 24, 25; The Bombay Industrial Relations Act, 1946, SS 97, 97A, 98, 98A, 99.

tion called upon labour and management to agree to maintain industrial peace and to avert lockouts and strikes or slowing down of production for a period of three years. The Resolution affirmed :

> The increase in industrial production which is so vital to the economy of the country cannot be achieved without the fullest co-operation between labour and management and stable friendly relations between them. The employer must recognize the proper role of labour in industry and the need to secure for labour fair wages and working conditions; labour for its part must give equal recognition to its duty in contributing to the increase of the national income without which a permanent rise in national standard of living cannot be achieved. Mutual discussions of all problems common to both and a determination to settle all disputes without recourse to interruption in or slowing down of production should be the common aim of employer and labour. The system of remuneration of capital as well as labour must be so devised that while in the interests of consumers and primary producers excessive profits should be prevented by suitable measures of taxation and otherwise, both will share the product of their common effort after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking.[104]

(2) The Final Split 1947-1950

The nationalist wing within the fold of the AITUC was restive and revolting against its impervious and obdurate attitude towards the programmes of the Congress Governments. The nationalist element, therefore, decided to organize and form a separate central trade union organization to counter the influence of the AITUC and to forge the unity of workers on democratic principles with a view to strengthen effectively

104. **Indian Labour Year Book 1947-48 at 119-20.**

the policies and plans of the Congress Governments. It clearly realized[105] that the Communist leadership in the AITUC was highly undesirable and exceedingly detrimental to the interest of the working class and the country. Thus, the Indian National Trade Union Congress (INTUC) was founded[106] on May 3, 1947, with the blessings and support of the Congress Party and Government. The Congress Socialists also seceded from the National Congress and the AITUC Communist dominated in order to form their own trade union organization—Hind Mazdoor Panchayat. The merger of Indian Federation of Labour with Hind Mazdoor Panchayat in December, 1948, led to the establishment[107] of a new federation known as Hind Mazdoor Sabha (HMS). The emergence of Hind Mazdoor Sabha as a third force in the trade union politics was of great significance inasmuch as it was an attempt to keep the trade union movement both outside governmental patronage and pressure tactics of communists. During the same period there were some trade union workers who were striving to keep trade union movement free from party politics. For the establishment of neutral, independent and co-operative trade union movement, they convened Conference during Easter Holidays at Calcutta with Mrinal Kanti Bose as its President. The new organization in 1949 came to be known[108] as the United Trade Union Congress (UTUC) with a view to keeping the movement on strictly trade union lines in co-operation with all the parties.

Henceforward the trade union movement was rigidly polarized on political and economic issues, each section striving hard to capture and consolidate their respective position in all sectors of industries. At the same time the Industrial Truce Resolution had its effect in reducing disputes and unrest in the coming year. The industrial relations statistics of the industrial disputes reveal a great improvement dur-

105. **Planning for Labour—A Symposium,** 168 (1949).
106. **Some Facts About INTUC,** 1 (1947).
107. **The Indian Labour Year Book, 1948-1949,** at 138.
108. **Indian Labour Year Book, 1948-1949,** at 138.

ing the years under review.[109]

Year	*Number of disputes*	*Number of Workers*	*Number of man-days lost*
1947	1811	1,840,784	16,562,666
1948	1259	1,059,120	7,837,173
1949	914	6,84,188	6,580,887

As compared to 1947, the year 1948 was one of the comparative industrial peace. There was, at the same time, a sharp increase in the number of trade unions as compared to the year 1946-47 the percentage of registered unions and membership of unions submitting returns increased by 63.5 and 24.9 respectively in 1947-1948. The trade union movement made a headway despite cleavages and dismemberment of the AITUC in 1948. The number of affiliated unions and membership claimed by the various central labour organizations[110] in 1949 was as follows :

Organizations	*Date to which information relates*	*Number of Unions affiliated*	*Membership*
INTUC	June 1949	847	1,023,117
HMS	July 1949	419	679,287
AITUC	1949	745	741,035
UTUC	May 1949	254	331,991

(i) **Trade Union Rivalry.** During ensuring period all the central trade union organisations started competing with one another by way of forming their parallel trade unions in one and the same industry. The existence of more than one trade union in the same industry and also in the same unit of the industry owing allegiance to different and sometime conflicting ideologies further hampered the growth of strong trade union movement.

(ii) **The Trade Unions Bill, 1950.** In 1950 industrial relations in India were at a critical stage. Trade unions as

109. 2 **Indian Labour Gazette, 783 (1950).**

110. **The Indian Labour Year Book, 1948-1949, at 138.**

the arms of various political parties were ideologically and politically pitted each against the other in every units of industrial undertakings for establishing their respective sway and securing recognition from the employers. Meanwhile, the Constitution of India in 1950 had conferred upon the workers the freedom of association and trade unions. The Government of India at this time also felt the imperative need of overhauling of the trade union law. A new Trade Unions Bill was introduced in Parliament in 1950. The most important provisions of the Bill were relating to recognition[111] of the trade unions. Apart from recognition by agreement,[112] a trade union could seek compulsory recognition if it fulfilled certain conditions.[113] Labour Courts were set up for this purpose which were empowered to direct employers to grant recognition to trade unions which fulfilled conditions laid down in the Bill. The Bill conferred upon the recognized trade unions the right to negotiate[114] with employer in respect of matters connected with employment or terms of employment of its members. It penalized[115] unfair practices[116] on the part of both employers and trade unions. The Bill debarred[117] the outsiders from the unions of the Government employees. In respect of other unions, the proportion of outsiders was reduced to four or one-fourth of the total number of executives. Similarly the Government of India also introduced in 1950 the new Labour Relations Bill as a comprehensive measure to remove the defects in the existing machinery created for conciliation and adjudication of disputes. The Bill was intended to apply to all kinds of workers except[118] civil servants, defence forces personnel and domestic servants. The Bill sought to lay special emphasis[119]

111. The Trade Unions Bill, 1950, Ch. IV.
112. The Trade Unions Bill, 1950, § 32.
113. Section 33.
114. Section 35.
115. Section 45.
116. Sections 40 & 41.
117. Section 24.
118. The Labour Relations Bill, 1950, § 2 (14).
119. The Labour Relations Bill, 1950, Ch. IV.

on negotiations at an early stage and introduced[120] the system of collective bargaining so far not known to India. It simplified the procedure[121] for negotiations and collective bargaining and provided for three new authorities,[122] namely, the Standing Conciliation Board, the Labour Courts and the Appellate Tribunal. Further, it prohibited[123] certain strikes and made provision[124] for implementation of the awards of the tribunals.

(iii) **Bills Lapsed.** These two Bills although pending for one year in the Parliament were allowed to lapse because of united opposition of all trade union federations.[125] The trade unions demanded for the employees of the Government, local bodies, and statutory authorities, the same machinery for settlement of disputes by negotiation and adjudication as in the case of workers employed in the private industries. The trade unions further envisaged the paramount importance of freedom of association and the right to strike as a necessary corollary for collective bargaining which were impugned by the new Bills. Lastly, the political parties also did not savour the Bills as they were not willing to part with their leadership of the unions for pursuing their different political and ideological interests. Therefore, such controversies on the eve of 1951 elections gave great fillip to the further growth and increase of trade unions in this country. The contributory factors which led to increase in their numbers may be (1) advent of a new awak-

120. Chapter V.

121. Chapter VI.

122. Section 3.

123. Sections 95, 96, 98 and 99.

124. Sections 65(5), 64, 65 and 66.

125. At its second annual convention HMS adopted a resolution which stated that the Sabha, backed by 1,750,000 organized workers, had already condemned the two Labour Bills as reactionary and detrimental to the working class interest and the free democratic trade union movement. The INTUC while supporting the basic principles of the Bills expressed disapproval of provisions conferring unfettered rights on employers to retrench or dismiss workers and denial of the right of recourse to conciliation and arbitration machinery to civil servants and certain sectors of industrial workers. See 6 ILO: **Industry and Labour,** 451 (1951).

ening in the working class also on account of the dawn of political independence, (2) formation of rival unions in the industry by all political parties as a catch vote device, (3) the existence of Constitutional guarantee[126] for all legitimate trade activities, (4) introduction of economic planning and social and economic policies of the state towards maintaining industrial peace for achieving higher production and thereby to raise national income and standard of living gave workers a correct perspective of their place and importance in the planned economy of India and (5) the consciousness among the workers on account of economic hazards and hardships resulting in the formation of new unions to secure higher wages and better working conditions.

III. Some Trends

However, the most of the trade unions had no constructive positive approach to certain basic problems which the country was facing. The horizon of their activities was largely confined to their opposition sometime to Government policies, and at times towards employers' alleged highhandedness. The unions, however, till today have been unable to free themselves from governmental patronage or pressure of political parties. The prospect of trade union unity is an eldorado for those who claim to establish trade union movement in India on economic considerations only. The general strikes of 1955, 1960, and 1966 have amply shown the extent to which all the political parties are involved in the industrial world. The Government have been making efforts to prevent strikes and maintain industrial peace by way of compulsory adjudication, voluntary agreements and voluntary arbitration. The trade unions have, therefore, been swinging like the pendulum of a clock between compulsory adjudication and collective bargaining knowing not which is desirable or expedient for them. The INTUC admits:

> Adjudication is not an ideal means of settling industrial disputes. But then in the context of our condi-

126. The Constitution of India, 1950, art. 19 (c).

tions after independence, it would have been a dangerous folly to discard it.[127]

HMS and the AITUC on the other hand have been consistently opposing compulsory adjudication machinery as it abridged[128] the workers' right of direct action and undermined the basis of collective bargaining. (The awareness of the impossibility of strikes and the inevitability of arbitration thus reduced the traditional techniques of collective bargaining like negotiations and conciliation to mere formalities to be gone through before the inevitable tribunal sits to adjudicate upon disputes.[129])

The Government of India while initiating economic planning for raising national wealth also realized the imperative necessity of evolving voluntary devices for resolving industrial disputes. These alternate methods which were not faithfully adhered to included a variety of methods from voluntary settlement of disputes as envisaged in the Code of Discipline in Industry 1958 to compulsory adjudication of disputes. Attempts were made to stimulate and strengthen trade unionism through the Code of Discipline and Code of Inter-Union Harmony. These voluntary measures could not succeed on account of the failure of the parties to abide by the spirit and letter of the codes, strikes and other forms of unrest, rivalries amongst trade unions, and intra union factions go on unabated irrespective of the undertakings of the parties. There have been also general strikes of Government employees in 1960 and 1966 all over India. The trade unions after a temporary setback after the general strike of 1960 have recovered steadily. But the chances of unity[130] of HMS,

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127. **Some Facts About INTUC—An INTUC Publication** 17 (1947).

128. **New Deal for Labour—A Socialist Publication,** 6 (1951).

129. **Id.** at 6.

130. Mr. M. John in his presidential address to the Sixth Annual Session of the INTUC at Jalgaon on December 31, 1953 and Jan. 1, 1954, observed: "We have resisted up till now the attempts of the Communists, socialists and other political parties to utilise working class as a pawn in their political game. I would like to make clear that there is no talk of trade union unity with the Com-

(Continued on next page)

AITUC, INTUC and UTUC in forming a single all-India trade union organization are remote if not impossible.[131] Nevertheless, the trade union movement despite ideological and political differences has been making steady progress. The progress of the movement from 1950 onwards may be seen from the following table:[132]

Year	*Number of registered trade unions*	*Number of unions submitting returns*	*Membership of unions submitting returns*	*Average membership per union*	*Percentage of women to total membership*
1949-50	3,150	1848	19,60,107	1061	6·1
1950-51	3,522	1919	18,21,132	949	6·6
1951-52	4,623	2556	1,996	781	6·8
1952-53	4,934	2718	2,099	772	7·5
1953-54	6,029	3295	2,113	641	8·4
1954 55	6,658	3545	2,170	612	10·6
1955-56	8,095	4006	2,275	568	10·6
1956-57	8,554	4399	2,377	540	11·8
1957-58	10,045	5520	3,015	546	11·0
1958-59	10,228	6040	3,647	604	10.8
1959-60	10,811	6588	3,923	596	11·0
1960-61	11,312	6813	4,013	589	9·8
1961-62	11,476	7044	3,728	529	8·6
1962-63	11,679	7147	3,565	499	9·2

(Continued from previous page)

munists. Let us hope that the coming year will bring the HMS and the INTUC nearer to one another towards the building up of a strong and united democratic trade union movement." 12, ILO: **Industries and Labour,** 166 (1954).

131. Recently the Jan Sangh has sponsored Bhartiya Mazdoor Sangh while the SSP and the left Communists have formed their separate splinter trade union organizations.

132. The figures have been taken from the **Indian Labour Year Books,** published by the Government of India till the year 1965.

CHAPTER III

Central Trade Union Organisations in India

Trade unions, in the popular sense, are known as organizations of industrial workers only. Employers' associations are other kind of trade unions organized by the employers to deal with labour problems in accordance with their interests. The organizations of workers and employers interact and thus balance each other. This chapter purports to examine their respective structure and role in the development of trade union philosophy in India.

I. CENTRAL FEDERATION OF WORKERS' UNIONS

At present there are mainly[1] four all-India Central federations of workers recognized by the Government of India for the purposes of representing Indian workers on the various bodies of the Indian Labour Conferences and ILO meetings. These are: AITUC, INTUC, HMS and UTUC. It would be useful to study the objectives and trade union philosophy of these organizations to appreciate their trade union policies and programmes.

1. Recently three more central federations of workers have been established in India. They are (i) the Bhartiya Mazdoor Sangh (BMS) established in 1959 which is affiliated to Jan Sangh—a communal political party of the Hindus; the Hind Mazdoor Panchayat (HMP) affiliated to Samyukta Socialist Party of India and the Indian Federation of Independent Trade Unions which is not affiliated to any political party. These three new organizations of workers are seeking recognition from the Government of India for the purposes of representation on the Indian Labour Conference—7 **Indian Labour Journal**, 35 (Government of India, 1966). See **Statesman**, March 25, 1967.

A. The All India Trade Union Congress (AITUC)

This organization was originally formed on October 31, 1920, for two main purposes: to co-ordinate the activities of individual labour unions in India which till then remained inchoate and were unable to take concerted action and to recommend the workers' delegates to International Labour Conference. It was the only central representative co-ordinating body of trade unions in the country. Till 1947 it consisted of the communists and nationalists including Indian National Congress and the Congress Socialist Party and pure trade unionists. With the attainment of independence the nationalists did not agree with the policy and working of the All India Trade Union Congress. Consequently with the secession of the nationalists trade unionists the others from the AITUC the latter has become now politically and ideologically the part of the Communist Party of India and is also affiliated to World Federation of Trade Unions.

(1) Aims and Objects

The aims and objects of the AITUC as enumerated in its constitution of[2] 1961 are (a) to establish a socialist state in India; (b) to socialize and nationalize the means of production, distribution and exchange as far as possible; (c) to ameliorate the economic and social conditions of the working class; (d) to watch, promote, safeguard and further the interests, rights and privileges of the workers in all matters relating to their employment; (e) to secure and maintain for the workers: (i) the freedom of speech: (ii) the freedom of press; (iii) the freedom of association; (iv) the freedom of assembly; (v) the right to strike, and (vi) the right to work or maintenance; (f) to co-ordinate the activities of the trade unions affiliated to the AITUC and (g) to abolish political or economic advantage based on caste, creed, community, race or religion.

(2) Means to Achieve Objects

The aforesaid objects are to be achieved[3] by all legiti-

2. Section 2, **Constitution of the AITUC** as amended by the 26th Session of the All India Trade Union Congress, Coimbatore, January, 1961.
3. Article 3 Id.

mate, peaceful and democratic methods such as legislation, education, propaganda, mass meetings, negotiations, demonstrations and in the last resort by strikes and similar other methods as the AITUC may from time to time decide. Simultaneously the constitution embodies numerous demands, which the AITUC has to further or achieve. These demands are: a statutory enactment providing for six-hour working day; minimum living wage; weekly payment of wages; equal wages for equal work, without racial or sex discrimination; one month's leave with full pay, or an equivalent amount of compensation when leave is not granted; unemployment, sickness, old age, accident and maternity insurance; pension for widowed mothers and dependent children; proper housing; formation through trade unions of workers' committees in factories, workshops, business houses and all other places where collective work is performed with a view to control conditions of work inside these places; abolition of unemployment of children under 15 years of age; payment of wages to women workers six weeks before and six weeks after child births; abolition of all other system of recruiting labour except through trade unions; abolition of fines and debts and effective control of the subscribers of the provident funds.

(3) **Reduced Strength**

As already stated the trade unions that remained in the AITUC after the splits were working under the control of the communists. The splits greatly reduced the strength of the AITUC and it ceased to be the most representative central organization of workers in the country as early as 1948. It was in 1948 that the Government of India[4] despite the protest of AITUC recognized the most representative character of INTUC for representing Indian workers at the International Labour Conference at San Francisco. Thus the membership of AITUC and INTUC was 8,62,216 and 9,68,940—the difference in favour of INTUC being 106,724. The above figures may be clear from the statement[5] prepared

4. Report of the Indian Government Delegation to the Thirty-First Session of the International Labour Conference, 86 (San Francisco, June-July, 1948).

5. Id., See Annexure No. I.

by the Government of India in order to ascertain the representative character of the central trade union organizations in 1948 for nominating workers' delegates to International Labour Conferences.

The AITUC had been weakened due to its communist tendencies and revolutionary policies. In the early period of Independence the policy of the communists was to oppose the Government of India in all spheres and on all fronts which had been openly declared ever since their South-East Asian Communist Congress held in Calcutta in March 1947. In pursuance of this policy communists have been using their influence to obstruct, if not to sabotage, the production drive and proper functioning of transport services. Although the AITUC was a party to Industrial Truce Resolution which it openly supported but a few days after called for general strikes. The promotion of strikes became part of a deliberate campaign in order to create chaos, upheaval and confusion. They proclaimed that they have no faith in constitutional means for achieving their ends. Consequently the Government of India had to take action against the communists with a view to stopping their subversive activities. However the arrests of the communists had nothing to do with communist trade unionists who were engaged in the pursuit of legitimate trade union activities. The AITUC, therefore, had only[6] 754 total number of affiliated unions with total membership of 741,035 in 1949. In Industrial field it was altogether opposed to conciliation or compulsory arbitration.

After a lapse of five years in 1952 the AITUC held its special convention at Calcutta on May 24 and 25, 1952. The convention adopted a fourteen-point charter of demands which comprised[7] a wide range of subjects—minimum monthly wage, consolidation of all dearness allowances with basic pay, equal pay for equal work, eight hour day and forty-eight hour week, security of employment, full social security and repeal of all restrictive legislation concerning freedom of association and the right to strike. It is said that the AITUC

6. **The Indian Labour Year Book, 173 (1950-1951).**
7. **ILO: 8 Industry and Labour, 399 (1962).**

supports the five-year plans with two objects, namely,[8] to help in the development of economy and to defend the interest of working masses in that economy. It stands for the recognition of trade unions and trade union unity irrespective of political and other affiliations, for an end to suppression of trade union and democratic rights, to the preventive detention law[9] and the Government service conduct rules, etc. The general strike of 1960 although gave a temporary setback to it but it still remains the second largest workers' organization in the country even to this day.

B. Indian National Trade Union Congress (INTUC)

The Hindustan Mazdoor Sevak Sangh is the main[10] Labour body from which the Indian National Trade Union Congress takes its origin, ideology and functions. The former was established in 1938 on the recommendations of a Labour Sub-committee which was set up in 1937 by Gandhi-Seva Sangh, Wardha. The objectives[11] of the Hindustan Mazdoor Sewak Sangh were to train workers on constructive and peaceful lines The Hindustan Mazdoor Sangh, therefore, endeavoured at first to reorientate the AITUC for achieving the legitimate and reasonable aspirations of labour in accordance with its ideals and objectives. But its success was far from satisfactory. Especially in the wake of India's independence the AITUC in no uncertain terms advocated[12] a revolutionary programme of violence and organized strikes to impede production and create industrial unrest all over the country. Therefore, a conference was organized by Hindustan Mazdoor Sevak Sangh at New Delhi on May 3, 1947 under the presidency of Sardar Patel. It was in this conference that a decision was taken to form a separate and a new central trade union organization in India under the name of

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8. K. B. Panikkar, **An Outline of the History of the AITUC,** 19 (1959).

9. Report of the Secretary to the Silver Jubilee Session of AITUC held at Ernakulam in 1957.

10. Mitra, I. **The Indian Annual Register,** 187 (1947).

11. Myres, **Industrial Relations in India,** 112 (1960).

12. See **supra** note 10 at 184.

"Indian National Trade Union Congress" or **Rashtriya Mazdoor Congress**—popularly known as INTUC.

(1) **Aims and Objects**

The aims and objects of the INTUC as enumerated in its constitution adopted at the twenty-third Madurai session in 1957 are:

I

(i) to establish an order of society which is free from hindrance 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 exploitation and inequality, the profit-motive in economic activity and organization of society and anti-social concentration of power in any form;

(ii) to place industry under national ownership and control in suitable form in order to realize the aforesaid objective in the quickest time;

(iii) to organize society in such a manner as to ensure full employment and the best utilization of its man-power and other resources;

(iv) to secure increasing association of workers in the administration of industry and their full participation in its control;

(v) to promote generally the social, civic and political interest of the working class.

II

(i) to secure an effective and complete organization of all categories of workers including agricultural labour;

(ii) to guide and co-ordinate the activities of the affiliated organizations;

(iii) to assist in the formation of trade unions;

(iv) to promote the organization of workers of each industry on a nation-wide basis;

(v) to assist in the formation of regional or pradesh branches of federation.

III

(i) to secure speedy improvement of conditions of work and life and of status of workers in industry and society;

(ii) to obtain for workers various measures of social security including adequate provision in respect of accidents, maternity, sickness, old-age and unemployment;

(iii) to secure a living wage for any work in normal employment and to bring about a progressive improvement in the workers' standard of living;

(iv) to regulate hours and other conditions of work in keeping with requirements of the workers in the matter of health, recreation and cultural development;

(v) to secure suitable legislative enactments for ameliorating the conditions of workers and to ensure the proper enforcement of legislation for the protection and uplift of labour.

IV

(i) to establish just industrial relations;

(ii) to secure redressal of grievances, without stoppage of work by means of negotiation and conciliation and failing these by arbitration or adjudication;

(iii) to take recourse to other legitimate methods including strikes or any suitable form of **satyagraha** where adjudication is not applied to settlement of disputes within a reasonable time or where arbi-

tration is not available for the redress of grievances;

(iv) to make necessary arrangements for the efficient conduct and satisfactory and speedy conclusion of authorized strikes or satyagraha.

V

(i) to foster the spirit of solidarity, service, brotherhood, co-operation and mutual help among the workers;

(ii) to develop in the workers a sense of responsibility towards industry and community; and

(iii) to raise the workers' standard of efficiency and discipline.

(2) **Means to Achieve Objects**

The means to be adopted for furthering the objects mentioned above are to be peaceful and consistent with truth. The rise of the INTUC was inevitable due to loss of leadership by the nationalist leaders within the All India Trade Union Congress during and immediately before independence. The nationalist leaders having seceded from AITUC formed a new central organization to co-ordinate, guide and conduct the activities of the unions affiliated to it as well as organize workers into trade unions where they were not organized. The INTUC which thus emerged gained strength as a workers' organization for the following reasons. These are:

(i) The existence of the Ahmedabad Textile Labour Association with a membership of 659,003 textile workers organized on the basis of the doctrines of truth and non-violence which formed the nucleus of the INTUC.[13]

(ii) The sponsors of the Indian National Trade Union Congress were no strangers to the trade union movement and because of their mature experi-

13. **Planning for Labour—A Symposium,** 117 (1947).

ence the working class made a good response to their call."[14]

(iii) Its organizers and leaders declared that it was the special mission of the INTUC to help in building upon new India on the basis of the ideology of Gandhiji which sought to create a just and happy social order in which exploitation and anti-social concentration of power or wealth would not exist.[15]

(iv) The emergence of INTUC coincided in point of time with the growing rift in the world trade union movement between its communist and non-communist wings. The World Federation of Trade Unions which was founded in 1945 as a central linked body of workers' organizations included within it the communist and non-communist trade unions the world over. But the gradual ideological rifts between the West and the East had its repercussions on the World Federation of Trade Unions also leading towards rifts and finally split between its communist and non-communist wings. The foundation of INTUC in India, therefore, was a protest as well as a challenge to communist leadership[16] of trade unions which fomented insurrections, violence and revolutions against existing social set-up in India. Prime Minister Nehru also blamed the communists who indulged not in strikes of the normal type but

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14. The leaders of the INTUC were not entirely new to labour work and important leaders who were at one time presidents of AITUC came over to the INTUC. They are Mr. H. Shastri, President of AITUC in 1933-35, Dr. Suresh Banerjee, President, AITUC, 1936—1939, Mr. V. V. Giri, President, AITUC, 1942 and Dewan Chamanlal, one of the founders of AITUC, etc.

15. 2 ILO: **Industry and Labour,** 377-378, (1949).

16. Ever since the Second Congress of the Communist Party which was held at Calcutta in March, 1947, the communists had started organizing subversive actions against Government of India. No. 1 Report of the India Government Delegation to Thirty-first Session of International Labour Conference, San Francisco, June-July, 1948, 104.

something far worse—sabotage, destruction and disruption.[17]

Therefore, the INTUC became at once the harmonizing[18] centre of all labour unions which were politically and ideologically dedicated to democratic and peaceful methods to achieve their legitimate goals. Consequently as soon as International Confederation of Free Trade Unions was formed in December 1949 as the world body for the non-communist trade union movement the INTUC promptly joined it. Finally, the moral support[19] and patronage of the Government of India went a long way in making the INTUC within the very next year of its formation the most representative organization of workers nominated by the Government of India for International Labour Conferences. To the other unions it must be conceded that this decision did not come as a surprise. The HMS accepted[20] it as the culmination of the process of collaboration in a joint enterprise between the Government and the INTUC. However, it is clear that INTUC is a labour wing of the Indian National Congress in the industry to guide the labour movement in the country on the policies and programmes of the Congress Party. At its thirteenth session held at Calcutta in June 1962 it was stated that:

The INTUC has the same ideals as the Indian

17. Speech delivered at the twenty-second annual meeting of the Federation of Indian Chamber of Commerce and Industry, New Delhi, March 4, 1949.

18. According to Mr. G. L. Nanda, the then Labour Minister of Bombay (and later on Labour Minister for Government of India) said that the urgent need of the movement was, therefore, to provide machinery for co-ordinating the scattered forces of workers who are in fundamental opposition to the Communists. See K. B. Panikkar, **An Outline of the History of the AITUC,** 14 (1959).

19. Mr. Kanji Dwarkadas in **Forty-five Years with Labour,** 1962 at 292 observes: "It is a patent well-known fact that the INTUC is spoon-fed and sponsored by Union and State Governments...." The Ex-General Secretary of the AITUC N. M. Joshi said: "that newly formed organization really an adjunct of the Indian National Congress is in no sense a non-party or non-political labour organization...." Quoted from K. B. Panikkar: **An Outline of the History of the AITUC,** 14 (1959).

20. **Labour on March 37** (1948).

21. See Appendix B, **INTUC Report Thirteenth Session, Calcutta, 1962.**

> National Congress in achieving the goal of a socialist society with democratic way of life. The INTUC is a specialized organization for the service of the working class which has many common ideological bonds with the Indian National Congress.[21]

It is a common knowledge that the INTUC always echoes the language of the Congress Governments on vital issues like conciliation, arbitration, adjudication, strikes, trade unions rights, etc. The INTUC attitude towards Labour Relations Bill and Trade Unions Bill 1950 as well as towards general strikes of 1957 and 1960 are some of the striking examples of this kind. However, the INTUC during the last twenty years of its existence has played a major role in evolving peaceful and democratic methods of settling disputes in the industry by voluntary mutual negotiations or conciliation or on its failure by arbitration. Its unflinching support to economic policies and five year plans, its emphasis on the need of peaceful and planned progress without strikes or lockouts, its objectives to remove the vestiges of social and economic disparities by just means has made it the foremost labour organization of workers in the country.

C. The Hind Mazdoor Sabha (HMS)

A new Indian central trade union body, the Hind Mazdoor Sabha (Indian Labour Congress) was set up at Calcutta at a conference held on December 24 and 25, 1948. This was a grouping of trade unions with a socialist tendency. It was announced at the conference that the Indian Federation of Labour had been merged in the new body and that it also included some trade unions that formerly belonged to the AITUC as well as a number of hitherto independent unions. The conference was attended[22] by some 600 delegates representing 427 trade unions with an aggregate membership of 606,472.

As above noted during 1948 the trade union movement had been bifurcated into two opposite extremes—one section totally docile to Government for their existence and support

22. ILO: I Industry and Labour, 376 (1949).

and the other advocating open violence and hatred against the existing socio-economic policies. Therefore, the necessity of founding another central organization of workers was felt to save the trade union movement from these great dangers, i.e. to establish the independence of trade unions from the government, the employers and the political parties.

The conference adopted a manifesto which declared that past experience has proved the necessity of keeping trade unions free from domination by governments, employers, or political parties. The safeguarding of this fundamental freedom was the foremost task of the new organization. One of the reasons for the weakness of the Indian trade union organization, the manifesto stated, was the large number of numerically weak unions; the intention of the new body was to build up nationwide unions on an industrial basis.

(1) Aims and Objects

It was agreed that, while the main object of socialism should be kept in view, objects of the new organization should include participation of the workers in the control and regulation of industry; nationalization of key industries and banking; effective recognition of the right to bargain collectively; a living wage for all workers and a guarantee of the right to work; adequate social security measures; reasonable hours of work, adequate spare time and holidays with pay; free, compulsory, elementary and adult education and facilities for vocational training; provision for child welfare and maternity benefits and a close working relationship with Indian co-operative movement. The HMS also joined the International Confederation of Free Trade Unions in 1949.

Besides the above-mentioned goals of the HMS, its constitution[23] clearly provides that the aims and objects of the Sabha shall be:

(i) to promote the economic, political, social and cultural interests of the Indian working class;

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23. The H.M.S. Constitution (as amended up to December 26, 1958).

(ii) to guide and co-ordinate the activities of affiliated organizations and assist them in their work;

(iii) to watch, safeguard and promote the interests, rights and privileges of workers in all matters relating to their employment;

(iv) to promote the formation of—(a) federations of unions from the same industry or occupation, and (b) national unions of workers employed in the same industry or occupation;

(v) to secure and maintain for the workers—(a) freedom of association, (b) freedom of assembly, (c) freedom of speech, (d) freedom of press, (e) right to work or maintenance, (f) right to social security, (g) right to strike;

(vi) to organize for and promote the establishment of a democratic, socialist society in India;

(vii) to promote the formation of co-operative societies and foster workers' education; and

(viii) to co-operate with other organization in the country and outside having similar aims and objects.

In the promotion and realization of these aims and objects, the Sabha shall employ all legitimate peaceful and democratic methods.

(2) Opposed to AITUC and INTUC Unions

The HMS started its career to save the trade union movement from the clutches of the governmental control and the communists' domination. It dubbed the INTUC a stooge labour organization—that owes its existence to the government and is therefore subservient to it—the fifth column technique. It also in vehement terms characterized the AITUC an anti-labour, anti-national and anti-democratic labour organisation having extra-territorial loyalties.

The HMS as a labour wing of the Praja Socialist Party thus represented a third force in the venture of building a society of peace and prosperity in India. Such was also the

goal of the Praja Socialist Party which recognizes the value of organized working[24] class as a social institution, sharing with government the tasks of the regulation of the economic life, enriching the fabric of the social and political life of the community and guaranteeing the democratic order by its strength and will to resist any totalitarian tendencies in the government or anti-democratic activities and aspirations of reactionary vested interests.

Thus socialist sponsored HMS although ideologically at par with the INTUC, opposed[25] the Labour Relations and Trade Unions Bill, 1950; expressed[26] dissatisfaction at the dilatory, complicated and expensive character of the compulsory adjudication machinery which has only resulted in doing away with collective bargaining which is the very fundamental principle of trade unionism. Thus there exists conflict of interests[27] between the INTUC and the HMS and a clash of ideologies between the HMS and the AITUC. The HMS resents the growing dependence of INTUC upon the government and at the same time has no illusion about the character of the AITUC which differs from the INTUC only in that the party which dominates it is not in power today.

With such vital differences between the rest of the central labour organizations, the HMS had 419 affiliated[28] unions in 1949 with membership of 679,287. During 1950 its strength increased to 460 unions representing 698,720 workers. In 1951 the number of affiliated unions with membership was 517 and 804,337, respectively. In 1952, there was a sudden fall in the number of unions to 267 and membership dropped to 3,98,499. This decrease in number of unions and their membership continued also in 1953 to 220 and 3,73,459 respectively. In 1954 the HMS had 331 affiliated trade unions with 492,362 total membership. In 1955 there was sudden decrease in the number of affiliated unions to 157

24. **New Deal for Labour—A Socialist Publication,** 5 (1951).
25. **New Deal for Labour—A Socialist Publication,** 16 (1951).
26. ILO: 8 **Industry and Labour,** 304-05 (1951).
27. ILO: 8 **Industry and Labour,** 297-98 (1962).
28. **The Indian Labour Year Books,** 1950-1951 & 1952-1953.

with 2,11,315 membership. This decrease further continued in 1956, 1957, 1958 and 1959 to 119, 138, 185 and 190 affiliated unions with 203,789; 233,990; 241,636; and 286,202 total membership respectively.

The general policy of the HMS has been to oppose governmental interference in trade union movement especially the labour policy of the government regarding compulsory adjudication of disputes, prohibition or legislative restrictions on strikes and collective bargaining, etc. This attitude is discernible from the following statement:

> Restrictions placed by the government on the workers' freedom to strike and the consequent undermining of the processes of collective bargaining have resulted in weakening the foundations of our labour movement, for a trade union can no longer extend any direct protection to the worker. It can only do what a lawyer can do for his client. The status and significance of trade unions have fallen from those of the instruments of organized collective strength of the workers to those of a legal advice bureau.[29]

Although the HMS is opposed to INTUC and AITUC as well but so far as ideology and means to achieve its object is concerned it is at par with INTUC. Both these sister central organizations[30] are also affiliated to International Confederation of Free Trade Unions.

D. The United Trade Unions Congress (UTUC)

The Socialist Party of India being aware of the long association of the AITUC with Communist Party of India and of INTUC with the Indian National Congress convened a conference at Calcutta to be held on December 24, 25 and 26, 1948 which led to the founding of Hind Mazdoor Panchayat later on known as Hind Mazdoor Sabha. Some of the dissatisfied

29. See **The Indian Labour Year Books,** 1954 and 1955.

30. The Samyukta Socialist Party (SSP) led by Dr. Ram Manohar Lohiya and others have organized a new central organization of workers known as Hind Mazdoor Panchayat. The HMP is not still a recognized central federation of unions.

leaders who had assembled in connection with conference held at Calcutta convened another meeting under the presidentship of Mrinal Kanti Bose and passed a resolution emphasizing the need for building up an independent democratic central organization of labour. The meeting was unanimously of the opinion that it was not possible to work in the communist-dominated AITUC, nor it was possible for them to support the newly set up organization which according to them had become a Praja Socialist Party show. So it was decided to form an "United Trade Union Committee" and to call a conference of trade unionists during the Easter holidays. The conference which met at Calcutta on April 29 and May 1, 1949 established a new organization called the United Trade Union Congress known as UTUC.

(1) **Aims and Objects**

Section 2 of the constitution of the United Trade Union Congress provides its aims and objects which shall be:

(a) to establish a socialist society in India;

(b) to establish a Workers' and Peasants' State in India;

(c) to nationalize and socialize the means of production, distribution and exchange;

(d) to safeguard and promote the interests, rights and privileges of the workers in all matters—social, cultural, economic and political;

(e) to secure and maintain for the workers freedom of speech; freedom of press; freedom of association; freedom of assembly; right to strike; the right to work or maintenance and the right to social security; and

(f) to co-ordinate the activities of unions affiliated to UTUC and to bring about unity in the trade union movement.

In the promotion and realization of the above aims and objects, the UTUC shall employ all legitimate, peaceful, democratic methods such as education, propaganda, mass

meetings, negotiations, demonstrations, legislation, and the like, and in the last resort, by strikes and similar other methods, as the UTUC may, from time to time, decide.

The UTUC, therefore, stands in mid-way between HMS and AITUC in its policy and programmes. Its founding fathers did not agree to qualify socialist society by the word democratic, inasmuch as according to them[31] that would create an absolutely false notion that socialism is something which is a negation of democracy. In other words the UTUC also like the HMS stands for the establishment of socialist society in India without bothering for a doctrinnaire rigidity. On the contrary unlike HMS and like AITUC it recognizes trade unions as instruments of class struggle to achieve its aims and objectives. However, it differs from rest of the central organizations as it disapproves the use of trade unions for serving the ends of different political parties or groups. Thus UTUC strictly adheres to subscribe its trade union policies only to labour matters.

(2) UTUC and Political Trade Unionism

The UTUC is the youngest central trade union body[32] of socialist leftist tendency representing the independent Marxist and unattached leftist trend and is affiliated to World Federation of Trade Unions. In 1949 the UTUC claimed[33] the support of 254 unions in India with a total membership of 331,991. The resolution setting up the new body declared that unlike other Indian trade union federations, it had been formed to conduct trade union activity on broadest possible basis of trade union unity, free from sectarian party politics. Among the resolutions adopted was on condemning[34] the rapidly growing fascist tendency of the Government of India, which denied fundamental rights and civil liberties. K. T. Shah was elected president of the new body and Mrinal Kanti Bose, a former president of AITUC, general secretary.

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31. See **United Trade Union Committee—Why?**—printed by Mrinal Kanti Bose, Secretary, UTUS.

32. **Report of the UTUC Fourth Annual Session, 5 (1960).**

33. **The Indian Labour Year Book, 138 (1949).**

34. ILO: 1 **Industry and Labour, 377 (1949).**

As such it is not the mouthpiece of any political party and so does not reflect partisan character in its policies and programmes. However, this does not mean that the UTUC has no political ideology or shuns politics. While refraining from partisan politics the UTUC nevertheless believes that:

> The trade union movement as such cannot remain outside the ambit of politics and cannot shun politics, it will be totally against the basic interests of movement as it has developed until now to get involved into the rut of partisan politics. If we allow the functioning of the trade unions to get bogged into the mire of political rivalry between the conflicting political trends in the country the cause of the working class is bound to suffer.[35]

In other words UTUC adheres[36] to keeping the militant trade union and working class movement in the country independent of any kind of narrow partisan policies (as distinguished from basic class-politics of the workers and the toiling people fighting against the ruling capitalist class). The UTUC, therefore, has a leftist orientation alike the HMS and the AITUC. It is, however, critical of the INTUC which it is said to act as labour and trade union wing of the ruling party, the Indian National Congress. According to it:

> The programme and policies of the INTUC as well as the pattern of its activities for securing the legitimate demands of the workers are largely dependent on the basic social and economic lines of policy followed by the Congress at a particular period.[37]

The UTUC has also been critical[38] of the existing labour policies of the Government of India. Equally the UTUC has not spared[39] the AITUC and the previous communist Government of Kerala for foisting AITUC rival unions on workers

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35. **Report UTUC**, 20-21 (1958).
36. **Ibid.**, 3 (1960).
37. **Report UTUC**, 4 (1960).
38. ILO: 2 **Industry and Labour**, 37 (1949).
39. **Supra**, note 35 at 33 (1958).

by giving undue favouritism to them in the matter of recognition.

The UTUC unions are found mainly in West Bengal, Bihar, Madras, Kerala and Delhi. But its unions are being gradually established in other states as well. In 1953 the UTUC had 154 unions[40] with total membership of 1,29,242 whereas in 1955 it had 237 unions with total membership of 1,59,109. In 1957 the UTUC claimed[41] 567 unions with 5,74,539 membership.

E. Non-Affiliated Unions

Apart from the four central trade union organizations there are some of the national unions like the two Railwaymen's Federations, the Federation of Post and Telegraph Employees' Union, the Port and Dock Workers' Federation or the unions of Bank and Insurance employees, etc., which are outside the four central organizations. The total combined strength of the membership of these non-affiliated unions would come between 2 to 2.5 lakhs. Thus out of a total[42] strength of 170 lakhs of workers and wage earners of all categories employed in organized industries and government services, not more than a little over 17 lakhs represented the total verified strength of the membership of the four central trade union organizations in the country in 1957-58.

The total membership of organized trade union movement in the country represent not more than 10 to 11 per cent of the total strength of workers and wage earners in organized industries and government services, without counting wage earners in unorganized industries, handicrafts and agriculture. The total membership of all-India central federations of workers available between 1953-1960 further supports the above statement.[43]

So far as the political inclinations of national trade unions

40. **Indian Labour Year Book 1952-53,** 162.
41. See **supra** note 37, appendix A-42.
42. **Quoted from UTUC Report, 3 (1950).**
43. See, Annexure No. 2.

is concerned, generally the INTUC represent the Congress Party, and the AITUC the Communist Party, the HMS represents the Praja Socialist trends and the UTUC the Revolutionary Socialist Party. The three latter unions may be described as "opposition" or leftist unions and are generally opposed to INTUC. But their opposition to INTUC is not dogmatic or blind. It is interesting to note the way in which the INTUC, HMS and UTUC united together for ousting the Communist Government of Kerala in 1959. Hence this alliance between INTUC and UTUC for protection of their basic interests clearly shows that trade unions belonging to different political parties can work together whenever the trade union rights are at stake irrespective of party affiliation or ideology.

F. Newly Formed Central Federations of Workers

In addition, there are three more newly constituted central federation of workers—Bhartiya Mazdoor Sangh—the labour wing of the Jan Sangh, Hind Mazdoor Panchayat—the labour wing of the Samyukta Socialist Party (SSP) of India and the Indian Federation of Independent Trade Unions which is not affiliated to any political party. The main political and economic philosophy of Bhartiya Mazdoor Sangh is to thwart the increasing influence of the communist unions in the industry and co-operate with non-communist unions in furthering the just cause of the workers. The Hind Mazdoor Panchayat is more or less akin to HMS in its trade union philosophy and programmes. The Indian Federation of Independent Trade Unions is a non-political trade union organization of workers independent of all political parties. Among all-India political parties, Swatantra Party is the only exception of not having its labour wing presumably because its basic philosophy and programmes are anti-labour, anti-planning and pro-management. Among the regional political parties such as Dravida Munnetra Kazhagam "non-Brahmin," Akali Party "non-Hindu Communal," the Ram Rajya Parishad "orthodox Hindu grouping," the Republican Party "the former Scheduled Castes' Federation," the Muslim League 'Kerala' and the Gantantra Parishad "a conservative

grouping of landlords and Maharajas in Orissa," only the Dravida Munnetra Kazhagam of Madras and the Akali Party of Punjab have their labour wings in the industry. Whenever occasions arise no political party loses the opportunity of using the labour to further its pre-meditated political goal. The recent food agitation or 'Bundhs' in Kerala, West Bengal, Delhi, Bangalore, Nagpur, Jaipur and other parts of the country are a testimony to it. The working class have not economically gained much as a result of 'Bundhs.' Having dissipated their energy on 'Bundhs' workers found themselves locked in a judicial battle with management on the issue of bonus" before the Supreme Court. The management in India has not reconciled as yet with the idea of compulsory sharing of profits with workers. How the big monopolists unite together to defeat a socialist labour measure like the Payment of Bonus Act, 1965, every time and everywhere in India is a signal warning to Indian working class that they cannot have economic security without solidarity and unity amongst themselves. Political parties cannot stand against monopolists for political parties themselves depend for their functioning on financial contributions of the monopolists. In this way the Monopolists indirectly not only control the political, commercial and industrial life of the State but also trade union movement which is dominated by politicians and outside element. Therefore, all the trade unions of whatever flag or political segment or region, must come together and ponder seriously over this basic issue and find out some agreed method in the interest of trade union unity and working class welfare. As long as trade unions are not imbued with a real trade union spirit the experiments and schemes as envisaged in the Five Year Plans would remain a distant dream.

II. EMPLOYERS' ORGANIZATIONS

A. Historical Background

The combinations of employers previously known as trade or industrial associations of producers, masters or entre-

44. **Jalan Trading Co. v. Mill Mazdoor Union,** (1965-66), 29 F.J.R. 463 (S.C.).

preneurs are basically the products of the factory system. The functions of these associations in the beginning were to provide statistical, technical and scientific Assistance to their members and to regulate employee-employer relations. According to Adam Smith:

> Masters are always and everywhere in a sort of tacit, but constant and uniform combination, not to raise the wages of labour above their actual rate.....We seldom, indeed, hear of this combination, because it is the usual, and one may say, the natural state of things which no body ever hears of. Masters too sometimes enter into particular combinations to sink the wages of labour even below the (actual) rate. These are always conducted with utmost silence and secrecy, till the movement of execution.....Such combinations, however, are frequently resisted by a contrary defensive combination of workmen, who sometimes, too, without any provocation of this kind, combine of their own accord to raise the price of their labour.[45]

Marshall observes:

> A single employer is a combination himself even where the employers are not in a combination, tacit, or avowed, to regulate wages, each large employer is in his own person a perfectly firm combination of employing power. A combination of a thousand workers has a very weak and uncertain force in comparison with that of a single resolute employer of a thousand men.[46]

(1) Trade Associations—Challenge to Trade Unions of Workers

The trade associations, however, emerged only after a century and a half (1700 to 1850) of free competition, of unrestrained and unregulated rivalry which led the enterprisers for protection of their common trade and commercial

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45. Quoted from Holdsworth, **History of English Law,** 486 (1938.).

46. **Economics of Industry,** 370 (1919).

interests to organize into groups. In addition trade associations sprung for more effective resistance to the challenge of trade unions, sometimes also to facilitate collective bargaining. These organizations were also needed for exchanging credit information, standardizing credit terms and competing fraud, securing legislative favours by way of protection from foreign competition, or winning judicial or administrative recognition for trade standards usages etc.

(2) Trade Associations in India

Such associations had been in existence in India much before the East India Company established itself in the country. However it were the Europeans who were first to organize sectional associations along modern lines to deal with problems specific to the trade or industry they represented. The Indigo planters of Bihar organized themselves into an association as early as 1801. The second half of the nineteenth century witnessed the promotion of tea, jute and coal industries by Europeans in India. This was responsible for the formation of the Indian Tea Association in 1881, the Indian Jute Manufacturers' Association in 1884, the Indian Mining Association in 1892 and the United Planters' Association of Southern India in 1893.

(i) Bombay Mill-Owners' Association 1875

Consistent with the economic and political conditions of the time the development of local interest in the field of industry and commerce originated only in the last decades of the nineteenth century. The success in the manufacture of cotton textile in India led to the formation of the Bombay Millowners' Association as a result of the joint efforts of the European and Indian industrialists in 1875. The aims and objects of the Bombay Millowners' Association were to protect the interests of millowners; to promote and protect the trade, commerce and manufacturers of India in general and of cotton trade in particular; to establish or aid in the creation of funds to benefit employees of the Association and to subscribe, donate or guarantee for charitable or benevolent purposes at the discretion of the Association and to promote

good relations between employers and employees. Later years witnessed the growth of a number of other such associations. Of such associations, the Ahmedabad Millowners' Association was formed in 1891, the Baroda Millowners' Association in 1918, the Indore Millowners' Association in 1931 and the Southern India Millowners' Association in 1942.

(ii) Industrial Associations—Their Development 1919-1947

But it was only after the stimulus given by the First World War that a resurgent economic nationalism combined with private business initiative widened the activity of Indian interests in industry. Meanwhile the growth of industries led to the formation of the Delhi Factory Owners' Federation, 1922; the Bengal Hosiery Manufacturers' Association 1923; the East India Jute Association 1927; the Indian National Steamship Owners' Association 1930; the Indian Mining Federation 1930; The Indian Sugar Mills' Association 1933; the Indian Colliery Owners' Association 1934; the Punjab Federation of Indian Chemical Manufacturers' Association 1938; and the Indian Paper Mills Association 1939. It was at this stage that the Second World War broke out stimulating industrial growth to an extent unknown before. Besides, the fillip given to existing industries, a host of other industries grew up under conditions of artificial scarcity and the unprecedented demand created by the war. This led to the formation of a large number of organizations, which include the Steel Re-Rolling Mills' Association of India, 1940; the Indian Paint Manufacturers' Association, 1941, The Indian Foundry Association, the Builders' Hardware Industries' Association of India, the Federation of Woollen Manufacturers in India 1942; the Federation of Electricity Undertakings of India 1943; the Indian Plywood Manufacturers' Association 1945; the Indian Non-Ferrous Metals Manufacturers' Association 1945; the Tincan and Sheet Container Manufacturers' Association 1946; the Automatic Manufacturers' Association 1947 and the Indian Rope Manufacturers' Association 1948. In addition there are associations in the field of insurance companies, and in joint-stock enterprises, etc. Today in

India trade and industrial associations play a vital role in the development of Indian economy.

Modern trade associations analogous to medieval guilds have been formed primarily by independent enterprisers producing or distributing goods or services for their own private advantage regardless of any social responsibility towards either consumers or workers. Their general purpose is to allay the rigours of trade competition or to increase profits by raising or maintaining or reducing prices of their produce. In India the aims and objects of above mentioned trade associations are generally to advance and to protect various trades and to stimulate their development, to collect, classify and circulate information relating to trade and commerce and to foster and develop friendly relations, mutual help and common understanding among all who are directly or indirectly interested in or concerned with such trade and to make representations to various authorities affecting such trade and commerce etc. Consequently these associations are primarily concerned with the growth of their trade and do not deal intimately with labour matters although they employ large number of persons. Ancillary to their general functions is also the duty recognized by some of the trade associations to take steps to improve relationship between capital and labour by helping all well-considered schemes for the general uplift of labour.

B. Central Federations of Employers' Associations in India

With the expansion of large-scale industry in the country have grown up other type of organizations—the employers' organizations devoted primarily to dealing collectively with questions arising from labour-management relations. Employers' associations, therefore, is a group which is composed of fostered and controlled by the employers' interests in labour matters. It is, therefore, to the employer what the trade union is to the employee. In fact employers' associations and trade unions of workers are the balancing wheels of modern industrial adjustment-mechanism which play a significant role in the formulation of social and labour policies. Accordingly both of them have been reacting and counteracting against each other regulating in a restraining influence

upon their policies and programmes. This counter-action is the heart of modern labour problems which is defying effective solution in India.

(1) Employers' Organizations and the Trade Associations

No hard and fast distinctions can be made for distinguishing employers' associations from that of trade associations, chamber of commerce, industrial associations, exchanges and pools. No clear cut functional division can be made between the two. Conversely in the initial stages when the labour problems emerged as a concomitant to the growth of industry, the general trade associations and chamber of commerce dealt with such matters. But these associations created to deal with matters of common interest had neither the wish nor the power to enter into matters affecting the internal working of industrial concerns since their primary object was to promote different set of interests e.g. expansion of trade and commerce. The Bombay Millowners' Association, 1875, the Indian Jute Millowners' Association, 1891 were an exception since their activities covered a wide range of functions concerning commerce, trade and labour as well. Otherwise rest of the trade associations were dealing with labour problems only in a casual or incidental manner.

Later on when the labour problem became of wider social implications and labour legislation in the field became more detailed, permanent and separate employers' organizations[47] were set up in India for the purpose of collective bargaining. The All-India Organization of Industrial Employers was formed in December 1932 and the Employers' Federation of India in 1933. Besides these organizations which have an all-India basis, regional employers' organizations have also been formed with similar objects. Among these are the Employers' Federation of Southern and of Northern India established in 1937. These regional associations are affiliated to all-India bodies.

47. The All-India Manufacturers' Organization, as it appears from its constitution as adopted and amended in 1962, is a trade association which is not concerned with labour-management relations.

(2) All-India Organization of Industrial Employers (AIOIE)

As stated above, the All-India Organization of Industrial Employers was founded in 1932. It is affiliated to the Federation of Indian Chamber of Commerce. Its aims and objects are:[48]

(1) to take all steps which may be necessary for promoting, supporting or opposing legislation or other measures affecting directly or indirectly, industries in general or particular industries;

(2) to nominate delegates and advisers to represent the employers of India at the International Labour Conference and other conferences and committees affecting the interests of trade, commerce and industries;

(3) to take up, consider, formulate and give effect to views on subjects coming up before such conferences and committees;

(4) to take all steps which may be necessary for promoting, supporting or opposing recommendations or conventions of the International Labour Conference;

(5) to secure wherever possible, organized or concerted action on all subjects involving the interests of members including regulating conditions of employment of industrial labour in various industries represented by the members of the organizations;

(6) to take such action as may be called for, as may be practicable, in all labour disputes affecting industries represented by the members; and

(7) to take all possible steps for counter-acting the activities inimical to the trade and industries of the country and to promote and support all schemes for the general uplift of labour and to

48. Article, Constitution of All-India Organization of Industrial Employers, Federation House, New Delhi.

take all possible steps to establish harmonious relations between labour and capital.

The organization claims membership of 28 associations which among others include Indian Sugar Mills' Association, the Delhi Factory Owners' Association and the Bihar Chamber of Commerce and 145 individual members during the year 1953. In 1954 the figures of membership of associations and industrials were 27 and 152 respectively.

(3) **The Employers' Federation of India**

The Employers' Federation of India was formed in 1933. Its aims and objectives are:[49]

(1) to encourage the formation of Employers' Association and to foster cooperation between them;

(2) to promote and protect the interests of member employers engaged in trade, commerce, industries and manufacturers of India;

(3) to take up, consider, and discuss questions connected with or affecting the interests of such employers;

(4) to promote or oppose legislative or other measures affecting the interests of such employers and to make representations to local, state, central, international or other authorities on matters concerned with such interests;

(5) to nominate delegates and advisers to present the employers of India at the national and International Labour Conferences; to take up, consider and formulate ideas on the subjects which are on the agenda of such conferences;

(6) to take suitable action in promoting, supporting or opposing recommendations or conventions of International Labour Conferences;

(7) to secure wherever possible, organized or concerted action on all subjects involving the interests of the members; to promote or support all well-

49. Article 3, Constitution of Employers' Federation of India as amended up to April 17, 1963.

considered schemes for the general uplift of labour and to take all possible steps to establish harmonious relations between labour and capital;

(8) to advise employers on labour matters, to assist them in the settlement of labour disputes and to represent or arrange for the representation of employees in any proceedings before conciliation officers, conciliation boards, courts of enquiry, industrial tribunals, labour courts etc.; and

(9) to carry on propaganda for the purpose of educating the public with regard to the character, scope and importance and needs of industrial enterprisers as represented by the Federation.

The membership of the Federation in 1960 included 94 associations or individuals.

(4) Role of Employers' Organization and Their Attitude Towards Trade Unions of Workers

The Employers' Federation of India and All-India Organization of Industrial Employers are members of the International Organization of Employers and are entitled to nominate Indian Employers' delegates to the International Labour Conference. Their delegates take an active role in the evolution of labour policy in the forum of International Labour Conferences and regional conferences. At the national level also employers' organizations play an equally important part in the Indian Labour Conferences and other tripartite bodies constituted for an exchange of views on all matters concerning labour problems. Since the inception of the Indian Labour Conference in 1942 the Employers' Federation of India and All-India Organization of Industrial Employers have been associating with labour and government representatives to resolve all outstanding problems of industrial development and avoidance of strikes and lockouts. The Royal Commission on Labour[50] in 1931 was also not unmindful for formation of industrial council on the lines of tripartite bodies. In 1951 a further advance has been made when the employers, and em-

50. **Report of the Royal Commission on Labour in India, 343-44 (1931).**

ployees representatives were invited to constitute the Joint Consultative Board of Industry and Labour for ensuring their cooperation in planning of country's economy. This is bipartite body under the chairmanship of the Planning Minister. The Board makes an attempt to achieve an agreed solution on vexed problems affecting employee-employer relations. In 1958, the central organizations of employers agreed on a series of voluntary codes or conventions, viz., the Code of Discipline in Industry, the Agreed Criteria for Recognition of trade Unions, the Code of Inter-union Harmony, the Grievance Procedure, the Model Agreement for Joint Management Councils, the Code of Efficiency and Welfare, the Industrial Truce Resolution etc. These codes represent broad principles of action for capital and labour in exercise of their duties and responsibilities towards each other and the society.

Indisputably the growth and development of employers' organizations is largely one of counter-attack[52] on the trade unions. In India also the law and the government in the beginning was on the side of the employers.[52] Still today the employers' organizations enjoy an advantageous position for negotiating with the trade unions of workers, that is, from a position of strength coupled with the threat to hire and fire if need be. The industrial workers have been hitherto living on the verge of existence as they were disunited and divided Their weakness was and still is a source of strength to the employers. The employers refuse to recognize the trade unions as bargaining agents in the industry. There is no law concerning compulsory recognition of representative trade unions. The situation is further aggravated on account of outside leadership of trade union bodies. This is often used as a pretext for not recognizing the unions[53] of workers. This attitude of employers is to some extent responsible for continuance of compulsory adjudication in India.

51. Knowles, **Strikes a Study in Industrial Conflict**, 61 (1954).

52. Section 120-B Indian Penal Code 1860, **The Employer and Workmen (Disputes) Act** (IX of 1860), **Workmen Breach of Contract Act 1859**; see also Order XXI with rules 37 to 40 providing imprisonment for debt of the **Code of Civil Procedure.**

53. **Report of the Royal Commission on Labour in India**, 323-26 (1931); see the **Code of Discipline in Industry**, 1958.

CHAPTER IV

Legal Basis of Trade Unions in India

I. EVOLUTION OF THE TRADE UNION CONCEPT

A. Conceptual Framework

(1) Definition and Meaning of Trade Union

Trade unions, as we understand, are now generally the consequence of economic hiatus created by industrial revolution between employers and the employees who were divided by social, economic and psychological barriers. The emergence of trade unionism is, therefore, one of the most powerful and challenging[1] problems of our contemporary social and economic institutions. It is challenging because its practice and policy vitally affects the efficient operation of productive enterprise; it is a major instrument for establishing price relationship and affecting distribution of income; it is a powerful instrument for the re-arrangement of economic rights; it can contribute greatly either to industrial peace and social stability or to industrial or social conflict; it can help either to make effective processes of democracy or to destroy the processes; and it offers its members a basic adjustment of the economic, social and political problems of working class life.

It, therefore, becomes necessary to understand the concept and meaning of trade union. The concept of trade union is analogous to concept of man and concept of democracy and therefore cannot be easily defined. Professor Cole

1. Bakke and Kerr, **Unions, Management and the Public,** 3 (1949).

in this context rightly observes:

> .....in each country trade unionism is shaped not only by the form and stage of economic development, but also by the political conditions and by the general structure of the society in which it has to act.[2]

Trade unions influence and are themselves influenced by social, moral, material and environmental factors which determine the practice, policy and programme of the working class. When Sidney and Beatrice Webbs wrote their classic work in 1894, they defined[3] the trade union as a continuous association of wage-earners for the purpose of maintaining and improving the conditions of their working lives. This definition was correct when it was written. However, after First World War the nature, scope and philosophy of trade unions have undergone a change encompassing every phase of human activity. In India, as in England and United States, trade unions not only resorted to large scale strikes for seeking economic concessions for their members but also actively aligned with the political groups or parties outside their sphere with a view to have representation in the legislative bodies. Webb's definition of 'trade union' does not include the association of employers and of 'White Collar' employees which are generally regarded by English[4] and Indian[5] law as trade unions. But in the popular sense of the term the definition of trade union given by Sidney and Beatrice Webbs is still valid. Trade unions, as generally understood,[6] are "combination of workmen of the same trade or of several allied trades, for the purpose of securing by united action the most favourable conditions as regards wages, hours of labour, etc., for its members." The essence of trade union is found in the

2. **An Introduction to Trade Unionism,** 134 (1953).

3. **The History of Trade Unionism,** 1 (1956).

4. Section 23, Trade Union Act, 1871; Section 16, Trade Union Amendment Act, 1876; Sections 1 & 2, Trade Union Act, 1913.

5. Section 2(b) Indian Trade Unions Act, 1926; Section 2(18), the Trade Unions Bill, 1950.

6. **6 Corpus Juris,** 655 (1933); Section 778, **American Re-statement—Torts,** 104 (1939); **4 Judicial and Statutory Definitions of Words & Phrases, Second Series,** 961; **31 American Jurisprudence,** 394 (1940) and **2 Indian Worker,** Oct. 1, 1962.

solidarity among its rank and file as a security against the right of hire and fire of the employers. Webb rightly states[7] that 'the fundamental purpose of the trade union is the protection of the Standard of Life—that is to say, the organized resistance to any innovation likely to tend to the degradation of the wage earners as a class.'

In essence the fundamentals of trade unionism—freedom of association, right to bargain with employers, right to strike, ethic of mutual co-existence between the conflicting interests in the industry forbidding unfair labour practice and the participation of labour in management—are some of the trends which originated in Anglo-Saxon countries. These principles and practices have become a model for the democratic countries of Asia and Africa which intend to establish social justice by securing industrial peace with the co-operation and consent of both the labour and management. For instance in India the Indian Trade Unions Act, 1926, the Indian Trade Unions (Amendment) Act, 1947, the Code of Discipline in Industry, 1958 in spirit embody the rights and privileges of the trade unions which their counterpart in Great Britain and U.S.A. secured after a prolonged struggle and suffering. As regards India the existing law and practice concerning trade unions and the machinery of joint consultation and workers' participation in management is taken mainly from England and the concept of collective bargaining, the notion of one union in one industry, the idea of recognized representative union for collective bargaining and the philosophy of unfair labour practice is borrowed from the United States. As such for an appraisal of the Indian trade union law and for a background study an examination of the developmental trends of the trade union principles and practices of Great Britain ad U.S.A. becomes imperative.

(2) Trade Union Law and Practice in U.K., U.S.A. and other Countries—Background

Trade unionism in England and U.S.A. as everywhere else is a concomitant of industrialism and factory system. In

7. Sidney and Beatrice Webbs, **The History of Trade Unionism,** 20 (1956).

the beginning state created[8] for the labour a legal duty to work under contract of hire with fixed wages. Criminal and Civil penalties faced a worker who acted contrary to employer-employee contracts. Still workers formed combinations in response to new problems created by repressive legislation[9] and hostile employers. The employers sought to prevent the growth of trade unionism through many devices. The doctrines of restraint in trade, civil and criminal conspiracy coupled with Combinations Acts[10] of 1799 and 1800 made it difficult for the trade unions to organize for the purpose of increasing their wages or improving the conditions of labour.

In 1824-25 these laws[11] were repealed. While the trade unions could exist legally, this legality provided only limited protection in practice. Both in England and U.S.A. the existence and continuance of trade unions was still precarious. From two sides the trade unions were being hedged by common law. From the civil side any association in restraint of trade was considered illegal as it interfered with the freedom of individual worker to strike a bargain with his employer. On the criminal side the trade union leaders and members of the unions were subjected to misdemeanour of conspiracy in case they obstructed or molested or induced workers to do something against the employers.

Nevertheless trade unions continued to grow in size and numbers although they remained mainly local organizations. In 1850's both in Great Britain and U.S.A. a number of craft unions emerged. In the United States especially after the civil war a number of national unions—the abortive National Labour Union, 1866, the Knights of Labour, 1869 and the American Federation of Labour, 1886—were formed. The Noble and Holy Order of the Knights of Labour began in 1886 as a secret society with its marked accent on violence,

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8. Willcox, A Sketch in the Federal Law of the Labour Relations in the United States, 2 **Aligarh Law Journal,** 22 (1965).

9. The Statutes of Labourers, e.g., 23 Edw, 3 (1349); 25 Edw. 3 St. 1 (1351); 5 Eliz., C. 4.

10. 39 Geo. 3, C. 81; 40 Geo. 3 C. 106.

11. 5 Geo. 4, C. 95.

the National Labour Union was also founded in 1866 which despite its dominant trade union objectives had other than trade union goals. The period was marked by intense industrial unrest in U.S.A. Both these unions waned due to their political character. However the first effective national federation of trade unions was the American Federation of Labour (AFL) which was founded in 1886. Its chief aim was to organize separate craft unions for skilled workers—bricklayers, plumbers, carpenters, electricians, bakers, etc. Samuel Gompers, the father of American labour movement, was a great statesman who founded economic trade unionism within the existing economic system. He refused to form a separate political party. Under his leadership the AFL generally avoided supporting any political party or endorsing political candidates. In England also a central trade union federation called the Trade Union Congress had been established in 1886 to meet the challenges of employers. The sole object of the formation of Labour Representation Committees in 1900, which finally paved the way for the founding of Labour Party in 1906, was to secure legislation for the working class and to seek protection of their unions against common law doctrines of civil and criminal conspiracy. In the beginning both in England and U.S.A. trade unions were more concerned[12] about their existence and continuance as legally recognized institutions rather than instruments of economic coercion.

(i) Trade Unions—Legal Basis in England

In England the Trade Union Act,[13] 1871, gave legal recognition and protection to unions from criminal conspiracy. But the Criminal Law Amendment Act, 1871, rendered the Trade Union Act, 1871, ineffective by imposing penalties for picketing and other strike activity as was evident from the case of **Reg. v. Bunn.**[14] In this case the fellow workers of a gas company had been held liable for 'molesting' the employ-

12. **Reg. v. Druitt, Lawrence and others, 10 Cox's Criminal Law Cases 592; Hornby v. Close 10 Cox's Criminal Law Cases, 393 1864-67).**

13. **Sections 2, 3 & 4.**

14. **12 Cox's Criminal Cases, 316 (1871-74).**

ers because they had threatened to go on strike for dismissal of their fellow worker. Trade unions, therefore, made a determined effort for the repeal of the Criminal Law Amendment Act. As a result the Conspiracy and Protection of Property Act, 1875, was passed to reverse, the law as laid down in **Reg. v. Bunn.** It provided[15] that the doctrine of criminal conspiracy was no longer to extend to acts done in contemplation or furtherance of a trade dispute unless the act itself, if done by one person, would amount to a crime. The Act of 1875 while legalising peaceful picketing had limited its scope.[16] In **Lyons v. Wilkins**[17] the court held picketing illegal on the ground of "watching and besetting" the premises of the employer.

In **Quinn v. Leathem**[18] the court refused to uphold the right of the union and its official to enforce a close union shop in the trade and held the union liable in damages for inducing customers and servants of Leathem for breaking their contracts. This decision although hostile to trade union interests and activities did not arouse much stir in political and trade union circles. However **Taff Vale**[19] judgment showed that the courts of law were determined to finish to the end the trade unionists. According to Lord Asquith[20] the effect of the 'judicial coup d'etat' was to destroy all the gains made during the period of 1871-76 and to make strike for all practical purposes illegal. The effect was that, while the trade unions remained protected by criminal law, any strike might be held to be a conspiracy to injure, for which employer (**Quinn v. Leathem**) might be able to recover damages and the damages could be enforced (**Taff Vale Case**) against the

15. Section 3 the Conspiracy and Protection of Property Act, 1875.

16. Section 7 (4) **Id.**

17. (1896) 1 Ch. D. 811.

18. (1901) A.C. 495.

19. (1901) A.C. 426. In 1900 the Taff Vale Railway Company, following a strike, brought an action for damages against the railway union concerned. The House of Lords held that a trade union could be sued in respect of any tortious act through its registered name.

20. Quoted in Allen Hutt, **British Trade Unionism,** 47 (1952).

funds and property of the union. The trade unions through intensified political action sought to remove these restrictions and this was achieved in the Trade Disputes Act, 1906. In 1909 another judgment[21] of the House of Lords made it difficult for trade unions to pursue political ends and accumulate political funds but again the judgment was overruled by the Trade Union Act, 1913,[22] which permitted to take political action provided the costs were met from special fund[23] and administered under specified conditions.[24]

During the War 1914-1918 British Government sought the co-operation of trade unions in maintaining industrial peace. In 1916, the Government set up the famous Whitley Committee to examine industrial relations. The Committee made a number of recommendations,[25] including one for the establishment in each industry of joint industrial council representing employers and workers. After the First World War trade union movement suffered some serious setbacks: (1) the loss of many members during the period of mass unemployment; (2) the decline in the number and significance of the joint industrial councils set up following the Whitley Report; (3) the failure[26] of a General Strike in 1926, and (4) the passage of the Trade Disputes and Trade Unions Act, 1927, which made certain forms of strike action illegal, restricted the capacity of the unions to raise political funds and imposed limitations on the trade union membership of civil servants. The position of the trade union movement was again enhanced by circumstances of the World War II and also by period of full employment which followed it. Joint industrial councils grew in numbers—there are now about 200; the 1927 Act was repealed by the Trade Disputes and Trade Unions

21. **Amalgamated Society of Railway Servants v. Osborne** (1910) A.C. 87.

22. Section 1 Trade Union Act, 1913.

23. Section 3 (1) (a) **Id.**

22. Section 3(3) **Id.**, See also **Birch v. National Union of Railway and others,** (1950) 2 All E.R. 253.

25. ILO: **The Trade Union Situation in the United Kingdom,** 15 (Geneva 1961).

26. **National Sailors' and Firemen's Union v. Reed, L.R. (1926) 1 Ch. 536.**

Act, 1946, which restored the pre-1927 position recognizing the right of the workers to form unions as usual. In short during the middle of the nineteenth century trade unions in England had secured fairly reasonable position and legal status in English society to carry out the purposes for which they existed.

In the United Kingdom of Great Britain in the post Second World War period joint consultation has become in vogue between employers and trade unions. Trade unions are independent of state control or employer. The dock strike of 1948 and 1949, the recent strike against wage freeze are the testimony of trade union freedom and independence in England. Judicial pronouncements have sometimes acted as a palliative against arbitrary actions[27] of the trade unions to wards its own members. Recently the House of Lords had invented a new tort of intimidation[28] at common law holding that a threat to break contract was a tort—a tort of intimidation not protected by section 3 of the Trade Disputes Act, 1906. In effect this judgment had brought all the trade union activities to a stand still for every concerted attempt to strike or to induce others to strike in furtherance of a trade dispute had been made illegal and actionable as a tort of intimidation. The trade unions, therefore, demanded legislative protection which led to the passing of the Trade Disputes Act, 1965. The statute has reversed the judgment of **Rookes v. Bernard**[29] providing that a breach of contract or inducing others to break a contract of employment in furtherance of trade dispute will not be actionable.

(ii) Trade Unions—Legal Basis in U.S.A.

While in England trade unions had consolidated their legal position the trade unions in the United States throughout the nineteenth century failed to secure legal status for themselves. The trade union movement suffered greatly at

27. **Bonsor v. The Musicians' Union,** (1956), A.C. 104.

28. **Rookes v. Bernard,** (1964) 1 All E.R. 367, See also **Stratford & Co. v. Lindley,** (1964) 2 All E.R. 209.

29. Sections 1 & 2 Trade Disputes Act, 1965.

the hands of the employers, judges and the administration. According to Professor Bertram F. Willcox,[31] "During that hundred[32] years the factory system grew mighty nevertheless, and with that growth industrial relations continued to change from personal to the extremely impersonal. Many national unions were born; most died young. Strikes and violence marred labour disputes. Companies used a brutal, repressive measures against labour against odds, replied in kind. Violence was used by both sides. Detectives infiltrated labour union organizations and obtained evidence, good or bad, for the conviction of labour leaders on criminal charges. Civil war, open or guerilla, became almost the rule."[33]

Perhaps ever increasing importance of big business corporations[33] in American industry and Government thwarted the normal growth and development of trade unions in the United States. The American employer unlike his counterpart in England remained wholly unrestricted in his dealings with labour unions and opposed unions by a variety of techniques, including lockout, strike breaking, private police system, labour spies, black-listing and company dominated unions. On the other hand there was no statute till 1931 regu lating labour-management relations and the governmental regulation mainly consisted of court rulings. The most common weapon in labour disputes was the court injunctions which were widely used[34] between 1890-1930 and could be secured by action of federal and state courts.

Thereafter, the labour unions in U.S.A. started a campaign against what is popularly called 'government by injunc-

30. See **supra** note 8 at 22.

31. The period between 1820 and 1927 U.S.A. witnessed seven economic depressions.

32. The observations of Professor Willcox are further supported by E. E. Witte, **The Government in Labour Disputes,** 185-86 (1932).

33. For detailed study see Florence Peterson, **American Labour Unions—What They are and How they work,** 1963.

34. In **in re Debs,** 158 U.S. 564 (1895) the leader of the American Railway Union had been enjoined from interfering with business of several railroads which handled Pullman cars. Debs did not obey the injunction and was subsequently convicted and imprisoned for contempt.

tions.' The Clayton Act, 1914, provided[35] that 'labour of human being is not a commodity or article of commerce' and that trade unions shall not be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws' The Act also curtailed[36] the use of injunctions in labour disputes. But as interpreted by the courts appeared to increase [37] the number of injunction suits against labour. The labour unions, therefore, raised their opposition against the anti-union policies of American Government. It led to the enactment of Norris-La Guardia Act, 1932, which prohibited[38] the federal courts to issue injunctions in labour disputes, guaranteed full freedom of self-organization[39] without interference, restraint or coercion of employers.

These were the days of world-wide economic depression[40] which also brought misery and unemployment to American workers, which greatly affected the trade union movement in U.S.A. This period also ushered in the beginning of New Deal era for the common man. With a view to relieve unemployment, to establish social security and to protect the right to organize a series of legislative measures[41] were enacted. However section 7(a) of the National Industrial Recovery Act, 1933, which recognized the right of the employees to organize and bargain collectively through representatives of their own choosing free from interference on the part of the employers, was declared unconstitutional[42] by the United States Supreme Court in 1935. Immediately after the **Schechter case** Congress passed the National Labour Relations Act, 1935—known also the Wagner Act—which once again guaranteed the workers' right to organize and bargain collec-

35. Section 6.

36. Section 20.

37. **Duplex Printing Co. v. Deering,** 254 U.S. 442 (1921); **Coronado Coal Co. v. United Mine Workers,** 268 U.S. 295 (1925); **Bedford Cut Stone Co. v. Journeyman Stone Cutters' Association,** 274 U.S. 37.

38. Sections 1 & 4.

39. Section 2.

40. ILO: **The Trade Union Situation in U.S.A.,** 18-19 (1961).

41. National Industrial Recovery Act, 1933, Social Security Act, 1935, and the Wagner Act, 1935.

42. **Schechter Poultry Corp. v. United States,** 295 U.S. 495 (1935).

tively. The Supreme Court also upheld the constitutional validity[43] of the Act. The statute among other things prohibited[44] certain practices of the employer as unfair and established an independent agency[45]—the National Labour Relations Board—for designating[46] unions to represent employees in bargaining collectively with employers over the terms of employment. These measures at once increased the importance of the trade unions in American society. However a split in the trade union movement became imminent on account of a conflict between two groups within the AFL. The minority group favoured industrywise industrial unions while the dominant group continued to adhere craft unions. The minority group under the leadership of John L. Lewis, President of the United Mine Workers' formed the Congress of Industrial Organizations (CIO) with a view to form industrial unions[47] in the mass production industries. During the World War II there was acute inter-union rivalry accompanied with strikes, and other forms of industrial strife. Employers have been pressing for the prevention of unfair labour practices by the unions. In 1947 the Congress, therefore, passed the Labour-Management Relations (Taft-Hartley) Act which in effect amended the Wagner Act, 1935. The Taft-Hartley Act retained the restrictions on management but also undertook to prevent unions from committing unfair labour practices.

The two central unions, however, became conscious that inter-union rivalry did not promote the welfare of the workers. Efforts were, therefore, made to bring the two unions together. By the end of war both unions realized that their differences could be resolved and unity could be achieved by merging the Congress of Industrial Organizations (CIO). Finally the merger of the AFL and CIO became a fact[48] on

43. Section 7.

44. **National Labour Relations Board v. Jones and Laughlin Steel Corp,** 301 U.S. 1 (1937).

45. Section 10.

46. Sections 3, 4, 5 and 6.

47. An industrial union is composed of all the workers in a particular industry no matter what kind of work they do.

48. **See supra note 40 at 23.**

December 5, 1955. Thus ended the twenty year rift in the ranks of labour movement in U.S.A. The new combined central federation was called the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO). There are several independent unions[49] not affiliated to AFL-CIO in U.S.A. Further there are workers employed in various kinds of services, e.g., government employees, salespersons in wholesale and retail establishments, bank and insurance company employees etc. who are not organized in unions. In short, only one-fourth of the 70 million workers in the United States belong to unions. In 1959, the Congress has enacted the Landrum-Griffin (Reporting and Disclosure) Act which has imposed many new restrictions on union activities concerning their dealings with employers, election and removal of union office bearers, use of union funds and protection of union members who criticize their union officers.

(iii) Constitutional Basis—Freedom of Trade Unions in Other Countries

The growth and development of trade union movement in the Western countries had international consequences of far reaching importance. The right to form associations of trade unions became the leading object of such documents as the Virginian Declaration of Rights 1776, the Declaration of Rights of Man and Citizen in France 1789, the Constitution[50] of the International Labour Organization, the Charter[51] of the United Nations, the Declaration of Human Rights,[52] 1948 and the European Convention of Human Rights,[53] 1950. In England,[54] United States[55] of America and Australia[56] there

49. The largest independent union is the United Mine Workers of America (UMW).
50. Articles 1, 3(1), 3(1), 3(5), 24, 25, 26 and 41.
51. Articles 1(3), 13(1), 55(c), 56, 62(2), 68 and 76(c).
52. Article 20(1).
53. Article 11.
54. Section 23, Trade Union Act, 1871; Section 16, Trade Union Amendment Act, 1876; Sections 1 and 2, Trade Union Act, 1913.
55. Section 2, Norris-La Guardia Act, 1932; Section 4 Railway Labour Act, 1926; Section 7(a) National Labour Relations Act, 1935 and Section 7 Labour-Management Relations Act, 1947.
56. Section 2(3) Conciliation and Arbitration Act, 1904-1959.

is no such recognition of this fundamental right by their respective constitutions except by statutory enactments which have legalized the right of the workers to combine for trade purposes. Since 1919, however, much water has flown insofar as social status, importance and prestige which the trade unions stored for themselves. Consequently the right of the workers to combine has been incorporated invariably in all the post-Second World War Constitutions.[57]

The guarantee of the constitutional safeguards became imperative on account of the part played by trade unions in increasing production and meeting demands of consumers. According to International Labour Organization:

> Democratically controlled trade unions have an essential part to play in achieving these objectives. The

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57. Article 37(10) Const. **Argentine 1949**; Article 20 Const. **Belgium** 1831; Article 126 Const. Bolivia 1945; Article 141(12) Const. **Brazil** 1946; Article 17(111) Const. **Burma** 1947; Article 10 Const. **Kingdom of Combodia** 1947; Article 10(5) Const. **Chile** 1925; Article 14 Const. **Republic of China** 1947; Art. 44 Const. **Republic of Colombia** 1945; Article 25 Const. **Republic of Costa Rica** 1949; Article 69 Const. **the Republic of Cuba** 1940; Article 24 Const. **the Republic of Czechoslovakia** 1948; Article 78(1) Const. **Kingdom of Denmark** 1953; Article 6(6) Const. **Dominican Republic** 1947; Article 185(g) Const. **Republic of Ecuador** 1946; Article 192 Const. **El Salvador** 1950; Article 10 Const. **Finland** 1919; Article 91 Const. **Nicaragua** 1950; Arti-67 Const. **Panama** 1946; Article 19 Const. **Republic of Paraguay** 1940; Article 27 Const. **the Republic of Peru** 1935; Article 72 Const. **the Polich People's Republic** 1952; Article 6 Const. **Republic of Philippines** 1947; Article 86 Const. **Rumanian People's Republic** 1952; Article 17 Const. **Syria**; Article 70 Const. **Turkey** 1945; Article 26 Const. **Thailand** 1952; Article 70 Const. **U.S.S.R.** 1936; Article 39 Const. **Urugay** 1951; Article 10 Const. **Venezula** 1953; Article 27 Const. **People's Republic of Yugoslavia** 1946; Preamble, **French Republic** 1946; Article 19(1) **Basic Law for the Federal Republic of Germany** 1955; Article 11 Const. of **Greece** 1952; Article 15(g) **Political Statute of the Republic of Guatemala** 1954; Article 17 Const. **Republic of Haiti** 1950; Article 73 Const. **Iceland** 1944; Article 20 Const. **Republic of Indonesia** 1950; Article 18 Const. **Italian Republic** 1948; Article 21 Const. **Japan** 1946; Article 16 Const. **Hashemite Kingdom of Jordan** 1952; Article 13 Const. **Republic of Korea** 1948; **Preamble** Const. **Kingdom of Laos** 1947; Article 13 Const. **Lebanon** 1926; Article 26 Const. **Libya** 1951; Article 41 Const. **Principality of Liechtensten** 1921; Article 26 Const. **Grand Duchy of Luxembourg** 1868; as amended in 1948; Article 9 Const. **Mexico** 1917 as amended in 1946; Article 9 Const. **Mexico** 1917 as amended in 1946; Article 16(a) Const. **Nepal** 1951; and Article 9 Const. **Netherlands** 1947.

> right to organize democratically without interference by employers and to bargain collectively through representatives of his own choosing are essential without which, in an industrialized society, the worker is at an impossible disadvantage and the orderly development of satisfactory industrial relations unattainable. In large-scale industry wages and other conditions of work are normally governed by collective agreement or some form of state regulation, and the method of collective agreement permits of greater flexibility, readier adaptation to changing needs and more industrial self-government than that of legislative regulation."[58]

Increasingly in the modern times the trade unions and the corresponding organization of employers have been called upon to discharge, in addition to their primary functions, wider responsibilities to advise in the preparation of social legislation, to participate in its administration, to collaborate in the formation and execution of economic policies, and to share in the organization of national defence. The recognition of the right to labour to organize and the right to bargain collectively, therefore, find their appropriate place in constitutional declarations policy. In view of this International Labour Organization has restated and reaffirmed its solemn faith in the freedom of expression and of association of workers essential for sustained progress in the Declaration of Philadelphia 1944 and in a series[59] of conventions and recommendations.

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58. Quoted from **Labour on March 3** (issued by the Socialist Party of India (1948).

59. **The Right of Association** (Agriculture) **Convention** 1921; **the Right of Association** (Non-Metropolitan Territories) **Convention** 1947; **The freedom of Association and Protection of the Right to Organize Convention** 1948; **the Right to Organize and Collective Bargaining Convention** 1949; **the Collective Agreements Recommendation** 1951; **the Voluntary Conciliation and Arbitration Recommendation** 1951 and **the Co-operation at Level the Undertaking Recommendations 1952.**

B. Trade Unions—Legal Basis in India

(1) Statutory Meaning of Trade Union

Except of few birth-pangs the trade union movement in India unlike its counterpart in England and U.S.A. had a easy path to tread without much struggles, sacrifice and sufferings. As soon as the law and law courts in India came in its way during the post-First World War period the trade unionists started emulating the example of British trade unions and agitated for the same legal status, privileges and protection which the latter had gained during the last two centuries. The Indian Trade Unions Act, 1926, in this regard distinctly embodies all such provisions which make the institution of trade unions legally invulnerable and socially acceptable. Consequently the question arises as to legal definition and interpretation of the term 'trade union' in the Indian law.

The statutory definition of the term 'trade union' in India is borrowed from the British Trade Union Acts of 1871, 1875 and 1913. The Indian Trade Unions Act, 1926 defines this expression:

> 'Trade Union' means any combination, whether temporary or permanent formed primarily for the purpose of—
>
> (a) regulating the relations between
>
> (i) workmen and employers or
>
> (ii) workmen and workmen
>
> (iii) employers and employers
>
> (b) for imposing restrictive conditions on the conduct of any trade or business and includes any federation or two or more trade unions....'[60]

Likewise the trade union laws[61] of Burma, Ceylon, Malay-

60. Section 2(h) Indian Trade Unions Act XVI of 1926; Section 2(18) of the abortive Indian Trade Unions Bill, 1950 also follows the above definition.

61. Section 2(b) Burma Act, XVI of 1949; Ordinance No. 14 of 1935 as amended by Act No. 15 of 1948 (Ceylon); Federation of

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sia, Hongkong and Pakistan define the term 'trade union' on the pattern of Indian law. The Japanese trade union law which was revised in 1949 also defines trade unions as:

> those organizations, or federations thereof, formed autonomously and substantially by the workers for the main purpose of maintaining and improving the conditions of work and for raising the economic status of the workers.[62]

However, the Ceylon Trade Unions Ordinance as amended by Act No. 15 of 1948 seems to be more precise and clear describing as to whether a combination of workmen or of employers is a trade union or not. It provides that it must have among its objects one or more of the following objects:[63]

(a) the regulation of relations between workmen and employers, or between workmen and workmen or between employers and employers; or

(b) the imposing of restrictive conditions on the conduct of any trade or business; or

(c) the representation of either workmen or employers in trade disputes; or

(d) the promotion and organization of financing of strikes or lockouts in any trade or industry or the provision of pay or other benefits for its members during a strike or lockout.

It follows that the term 'trade union' includes not only combinations of workmen[64] (its meaning in popular sense) but also an employers' federation.[65] Again it may be an asso-

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Malaya Enactment No. 11 of 1940 as modified up to January 18, 1950; Hongkong Trade Disputes Ordinance No. 6 of 1948; India Act XVI of 1926 and the (Pakistan) Adaptation of Central Acts and Ordinances Order, 1949.

62. Article 2, Law No. 174 of 1949.

63. Section 2.

64. Section 3(38) Bombay Industrial Relations Act of 1947 excludes from the definition of 'union' a trade union of employers.

65. **All India Bank Employees' Association** v. **Industrial Tribunal,** (1961-62) 21 F.J.R. 73(S.C.)

ciation of non-manual[66] or manual workers. According to Chambers' Encyclopaedia[67] a trade union is an association of wage earners or salary earners, formed primarily for the purpose of collective action for the forwarding or defence of its professional interests.

(i) Trade Unions—Principal Objects

It is in the principal objects of a combination which determine whether the combination is a trade union or not. It is principal objects of the combination which must be statutory objects, namely, the regulation of relations between workmen and workmen or between workmen and employers or imposing restrictive conditions on the conduct of any trade or business of its members. Thus in the definition of the term 'trade union' the regulation of relationship contemplated is in regard to the conditions of service of the employees which postulates the existence of an employer who is concerned with the business, trade or industry. Thus an association of persons employed by the Raj Bhawan[68] of a State which included among its members such as household staff, peons, chauffeurs, tailors, carpenters, maistries, gardeners, sweepers etc., was refused registration as a trade union under the Trade Unions Act on the ground that the employees are not 'workmen' engaged in any industry, trade or business of the employers. The services rendered by such employees were purely of a personal nature since the employer was not carrying any trade or business. In other words the members of a trade union must be 'workmen' of the employer engaged in the conduct of any trade or business in a commercial undertaking. This is evident from the definition of the term 'trade union' itself. The term 'workmen'[69] would include any one employed in trade or

66. **Buckingham and Carnatic Co. Ltd. v. Buckingham Carnatic Mill Union,** A.I.R. 1960 Mad. 105; **Corporation of Nagpur v. Its Employees,** (1960-61) 18 F.J.R. 28; **All India Bank Employees' Association v. National Industrial,** 21, F.J.R. 63 (1961-62) **State of Bombay v. Hospital Mazdoor Sabha,** 17 F.J.R. 423 (1959-60).

67. Vol. XIII, 725.

68. **Rangaswami v. Registrar of Trade Unions, Madras** A.I.R. 1962 Mad. 231.

69. **Cochin Naval Base Civilian Employees' Union v. Registrar of Trade Unions, Trivandrum,** (1956) 2 L.L.J. 560.

'industry'[70] with whom the trade dispute[71] arises. However, the Act is silent insofar as the definition of 'industry' is concerned. In the Industrial Disputes Act, 1947, the expression 'industry'[72] means 'any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.' Under the Industrial Disputes Act, 1947, the Courts in India have included in the term 'industry' all trade or business whether of a commercial[73] or non-commercial[74] nature irrespective of profit motive.[75]

On the contrary the Indian Trade Unions Act, 1926 is conspicuously silent with regard to the definition of 'industry'. The question arises: Can we import the definition of 'industry' from the Industrial Disputes Act for the purpose of understanding the interpretation of the term 'trade union' under the Trade Unions Act, 1926? The answer perhaps may be in the negative. Ramchandra Iyer J. of the Madras High

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70. **S. P. Wanjarkar** v. **Registrar of Trade Unions,** Nag. 1957 Nag. L.J. (Notes) 155; see **supra** note 69.

71. Section 2(g) Indian Trade Unions Act defines 'trade dispute' means any dispute between employers and workmen and between workmen and workmen or between employers and employers which is connected with employment or non-employment or terms of employment of any person....

72. Section 2(j) Indian Trade Unions Act, 1926.

73. **D. N. Banerjee** v. **P. B. Mukerjee,** A.I.R. 1953 S. C. 58; **Industrial Employees' Union, Uttar Pradesh** v. **Price Water-House, Peat and Co., Kanpur,** (1955) 2 L.L.J. 273; **Baroda Municipality** v. **Its Workmen,** A.I.R. 1957 S.C. 110; **Corporation of the City of Nagpur** v. **Its employees,** (1960-61) 18 F. J. R. 28; **Superintending Engineer, Machkund** v. **Workmen of Machkund Hydro-Electric Project,** A.I.R. 1960 Orissa, 205.

74. **Shri Vishudhanda Saraswati Marwari Hospital** v. **Its Workmen,** (1952-53) 4 F.J.R. 295 (1952) L.L.J. 55; **College Pharmacy** v. **Its Workers' Union,** (1952) A. I. R. 1960 S. C. 126; **State of Bombay** v. **Hospital Mazdooor Sabha,** 7 F.J.R. 433 (1959-60); **Ahmedabad Textile Industrial Research Association** v. **State of Bombay,** A.I.R. 1961 S.C. 484.

75. **Province of Bombay** v. **Western Indian Automobile Association,** (1949-50) 1 F.J.R. 12, **Palace Board** v. **State;** A. I. A. 1950 Ker. 1951; **State of Bombay** v. **Hospital Mazdoor Sabha,** (1959-60), 17 F.J.R. 423 at 432 (S.C.).

Court in this context rightly observes:

> The object behind the Industrial Disputes Act is to secure industrial peace and speedy remedy for labour discontent or unrest. A comprehensive meaning of the term 'industry' was evidently thought necessary by the legislature in regard to the Act. But the same thing cannot be said of the Trade Unions Act. The history or object of that enactment show that it was intended purely to render lawful organization of labour to enable collective bargaining. The provisions of the Act contemplate the admission of even outsiders as members and participation in political activities. That would itself dictate that the benefits conferred by the Act should be enjoyed by a clearly defined category of unions. I am very doubtful whether it would be said that the Industrial Disputes Act and the Trade Unions Act form as it were a system or code of legislation so that either could be read together as in **pari materia** that is as forming one system and interpreting one in the light of another.[76]

(ii) Trade Union—Criteria

The criteria for determining whether a particular association or persons is a trade union or not would depend on some of these factors—(1) the existence of employer and employees engaged[77] in the conduct of a trade or business which yields[78] in increasing or satisfying material human wants; (2) the association must be formed[79] for the purposes of col-

76. See **supra** note 68.

77. Id.

78. In **Dundardale and others** v. **Mukherjee,** (1958) 2 L.L.J. 183 and 189 it was held a thinker of statesman or a philosopher who produces a work which embodies the result of his research, study and idea does not carry industry. Similarly a University was held not 'industry' because there is neither co-operation of capital and labour nor are its activities directly connected with or attendant upon production or distribution of wealth. **Osmania University** v. **Industrial Tribunal,** (1960-61) 18 F.J.R. 440 (S.C.); **Federated State School Teachers' Association** v. **State of Victoria,** 41 C.L.R. 569 (1928-29); **University of Delhi** v. **Ram Nath,** A.I.R. 1963 S.C. 1873.

79. **Swadeshi Industries Ltd.** v. **Its Workmen,** A.I.R. 1950, S.C. 1958; see **supra** note 70.

lective bargaining which is for securing improvements on matters like basic pay, dearness allowance, bonus, provident fund, gratuity, leave and holidays etc....(3) the members of association must be 'workmen'[80] employed in the trade or industry. In this context a question arose whether the occupation[81] of primary school teachers could be said to be employment in any trade or industry so as to entitle the Federation of Primary School Teachers to ask for registration as trade union. It was held the context in which the term 'trade' was used in the Act, it was not intended to convey a wider meaning of some practice or some occupation or business or profession as a means of livelihood or gain as defined in the Oxford Dictionary but that it was the intention to use it in the more specific connotation of a mercantile occupation or a skilled handicraft as distinct from a profession. The use of the words 'conditions of labour' in the definition of 'workmen' in section 2(g) clearly indicated that the emphasis is on some mercantile occupation or skilled handicraft and those words could not possibly refer to the occupation of a teacher. The association of a teacher could in no case be said to be an employment in industry. Consequently a federation of primary school teachers seeking registration could not be deemed to be a trade union.

(iii) Government Employees' Associations—If Trade Unions

Likewise certain ameliorative departments of the government might or might not be 'industry' and the employees in these departments might or might not be 'workmen'[82] in 'industry.' However it is clearly laid down that those activities of the government which should be properly described as regal or sovereign activities were outside the scope of 'industry.' These are functions which a constitutional government can and must undertake. Their Lordships of the Supreme Court also quoted the reference of Lord Watson in **Coomber**

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80. Section 2(g) Indian Trade Unions Act, 1926; **Citrine Trade Union Law** 312 (1960).

81. See **supra** note 70.

82. **State of Bombay v. Hospital Mazdoor Sabha,** (1959-60), 17 F.J.R. 423 at 431 (S.C.)

v. **Justice of Berks,**[83] to "the primary and inalienable functions of a constitutional government." Again the dicta of Issacs J. in **Federated State School Teachers' Association Australia** v. **State of Victoria**[84] were quoted by Supreme Court in **Corporation of Nagpur** v. **Its Employees,**[85] the "Regal functions are inescapable, and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power."

Following the above principles the Madras High Court has, therefore,[86] held that an association of non-gazetted officers of a government which include among its members persons who are employed by the government in its regal or sovereign activities such as sub-magistrates, teachers, officers in charge of treasuries, officers of civil courts etc., cannot be said to be an association of 'workmen' in an 'industry' which can be registered as a trade union under the Trade Unions Act, 1926. To such a relationship, the concept of 'collective bargaining' is utterly[87] inappropriate and foreign. Collective bargaining is a right conceded to labour organizations within the contractual field of the employer and employees relationship. It would become a grotesque anomaly that if the civil services for instance were permitted to raise a trade dispute with regard to the dismissal of a civil servant. It was further stated[88] that although the "test for a trade union is its objects and not its personnel." But that does not imply that persons who are not workmen in a industry can form a trade union at all, obviously they cannot, for the definitions in sections 2(g) and 2(h) could not apply to them, and they could neither

83. L.R. 9 A.C. 61 at 74 (1833-34).

84. 41 C.L.R. 569 at 585 (1928-29).

85. (1960-61) 18 F.J.R. 28 at 36.

86. **Tamil Nad Non-Gazetted Officers' Union** v. **The Registrar of Trade Unions,** A.I.R. 1962 Mad. 234.

87. Id. See also the Police Forces (Restriction of Rights) Act, 1966 passed for restricting the right of the policemen to form a trade union or political association—**Statesman** November 15, 1966. In England the Police Act, 1919 also prohibits the police either membership of or affiliation to any trade union or political organization.

88. See supra note 86.

raise a 'trade dispute' nor form a 'trade union.' Thus the persons must have a nexus with the 'trade or business' for being legally competent to form trade union for the purposes of regulating the relations or 'imposing restrictive conditions' which must be the statutory objects and not merely ancillary or subsidiary to the primary or principal object. For in **Radhakrishan Jaikishan Ginning and Pressing Factory** v. **Jamanadas Nursery Ginning and Pressing Co. Ltd.**[89] where the objects of a combination of business were to keep up prices and not to benefit members held to be a trade union and not partnership within the definition of Trade Unions Act inasmuch as its object was 'for imposing restrictive conditions on the conduct of any trade or business.' Hence the nature of a combination as to whether it is a trade union or not has to be determined together from its objects, constitution, bylaws or rules. Vester and Gardner[90] remark that "there is only one test: not the desire of the members, not registration or any other formality, but what are the principal objects of the combination." Likewise under the English law several combinations whose objects were either protecting their copyright[91] in music, songs and other dramatic works or to acquire patent rights[92] in an automatic machine or for resolving controversies[93] between persons engaged in the same cotton trade were held not to be trade unions.

(2) Constitutional Basis—Freedom of Trade Unions in India

The framers of the Indian Constitution also fully realized the necessity of incorporating important provisions of labour welfare in the basic law[94] of the country. To achieve the development of organizational ability and capacity of the trade unions for the purposes of collective bargaining the

89. A.I.R. 1940 Nag. 228.

90. **Trade Unions and the Law** 26 (1955).

91. **Performing Right Society** v. **London Theatre of Varieties,** (1924) A.C. I.

92. **British Association of Glass Manufacturers** v. **Nettlefold,** 27 T.L R. 527 (1911).

93. **Merrifield Zeigler & Co. v. Liverpool Cotton Association Limited,** 105 L.T. 97 (1911).

94. Arts. 39, 41, 42 and 43 Const. of India.

workers have been conferred as elsewhere the constitutional guarantee of the benefits of the right[95] of association. The Constitution provides that all citizens shall have the right to form association or unions. Under article 19(4), however, the legislature can impose reasonable restrictions[96] by law in the interests of public order or morality.

Sub-clause (c) of clause (1) of article 19 expressly guarantees the right to form trade unions. Hence if the legislature should enact a law which while normally allowing formation of a union, makes the right to form a union illusory[97] by preventing the union from doing anything in the interest of its members, then the right guaranteed under article 19(1)(c) would be infringed. The right to form labour unions and trade unions is specifically and in terms guaranteed by the Constitution. The workers, therefore, have the right to organize and select representatives of their own choosing[98] for collective bargaining or other mutual protection without restraint or coercion by their employer. Labour may combine for the purposes of improving labour conditions,[99] for the pur-

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95. Article 19(1) (c).

96. The existing statutes in India relating to formation, organization and regulation of association or unions are:

(1) **Co-operative Societies Act, 1912; the Companies Act, 1956; The Insurance Act, 1938; The Partnership Act, 1938; The Red Cross Society Act, 1920; The Religious Societies Act, 1889; The Societies Registration Act 1860; The Universities Act, 1904;** and **The Trade Unions Act, 1926.**

(2) The restrictive laws in this connection are:

(a) Section 120-A, Indian Penal Code, 1860.

(b) Indian Criminal Law Amendment Act, 1908;

(c) Indian Trade Unions Act, 1926 and

(d) Industrial Disputes Act, 1947.

97. **Raja Kulkarni v. State of Bombay,** A.I.R. 1951 Bom. 105, See also A.I.R. 1954 S.C. 73 at 75.

98. **Amalgamated Util. Workers' v. Consol. Edison Co.,** 309 U.S. 261 (1939); **National L.R.B. v. Jones and Steel Corp.** 301 U.S. 1 (1936).

99. **Sitaram Mills Ltd. v. Rashtriya Mill Mazdoor Sangh,** (1954) 2 L.L.J. 737; **Pannalal Silk Mills Ltd. v. Mill Mazdoor Sabha and others,** (1954) 2 L.L.J. 51; **Godawari Sugar Mills Ltd. v. Kopargaon Taluka Sakhar Kamgar Sabha,** (1954) 2 L.L.J. 768.

pose of obtaining such[100] wages as they choose to agree to demand, or promoting their common welfare,[101] interest,[102] safety,[103] fixing hours of work[104] or for improved relations[105] with the employer or for the purpose of protecting and conserving their rights against possible aggression[106] by the employer or demanding bonus[107] or for compelling the employers to recognize[108] the trade unions. The right to organize and form association has been declared fundamental independently of the Indian Trade Unions Act, 1926. The right of the workers to organize unions or associations is an exercise of the constitu-

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100. **Express Newspapers Ltd. v. Union of India, A.I.R. 1958 S.C. 578; Standard Vacuum Refining Co., Ltd. v. Its Workmen, A.I.R. 1961 S.C. 895; the Management of Birla Cotton Spinning and Weaving Mills Ltd. v. Its Workmen, A.I.R. 1961 S.C. 1179.**

101. **Management of All Tea Estates in Assam v. Indian National Trade Union Congress, A.I.R. 1957 S.C. 206; Rajlaxmi Textiles v. Surat Silk Mills Workers' Union, (1958), 2 L.L.J. 522; Kishoresingh and Vijay Singh v. New Maneek Chowk Spinning and Weaving Co., Ltd., Ahmedabad, 1957 I.C.R. (Bombay) 295; National Iron and Steel Co. v. The Workmen, A.I.R. 1963 S.C. 325.**

102. **M/s. Jeewanlal Ltd., Calcutta v. Its Workmen, A.I.R. 1961 S.C. 1567; M/s. Crown Aluminium Works v. Their Workmen, A.I.R. 1958 S.C. 30.**

103. **G. Mekenzie & Co., Ltd. v. Its Workmen, (1959) I L.L.J. 285; Bombay Chronicle Co., Ltd. v. Its Workmen, (1960) 1 L.L.J. 727; National Tobacco Co. of India Ltd. v. Fourth Industrial Tribunal, A.I.R. 1960 Cal. 240.**

104. **Venkataswami Naidu & others v. Jai Hind Motor Service, (1958) 2 L.L.J. 530; Shridharan Motor Service Attur v. Industrial Tribunal, Madras, (1959) 1 L.L.J. 380.**

105. **Shree Meenakashi Mills Ltd. v. State of Madras, A.I.R. 1951 Mad. 974; Raja Kulkarni v. State of Bombay, A.I.R. 1954 S.C. 37.**

106. **Buckingham & Carnatic Co. Ltd. v. Their Workmen, (1951-52) 3 F.J.R. 265; Sitalpur Sugar Works Ltd. v. State of Bihar & others, (1958) 2 L.L.J. 95.**

107. **The Millowners' Association, Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay, (1950-51) 2 F.J.R. 107; Associated Cement Companies Ltd. v. Their Workmen, A.I.R. 1961 S.C. 967; Standard Vacuum Refining Co. Ltd. v. Its Workmen, A.I.R. 1961 S.C. 895; The New Maneek Chowk Spinning and Weaving Co. Ltd., Ahmedabad v. The Textile Labour Association, Ahmedabad, A.I.R. 1961 S.C. 817; see also A.I.R. 1961 S.C. 917; A.I.R. 1961 S.C. 941.**

108. **Dyer Meakin Breweries Ltd., Lucknow v. Distillery Brewery Workers' Union, Lucknow, (1951-52) 3 F.J.R. 367.**

tional right for lawful ends. The Allahabad High Court also observed:

> The right to form associations or unions under article 19(1)(c) of the Constitution include the right of the workmen to form trade unions for a lawful purpose. The purpose of an association is an integral part of the right, and if the purpose is restricted, the right is inevitably restricted. The right to form an association is not a right to be exercised in the vacuum or any empty or paper right. Citizens do not begin to enjoy this right effectively immediately after forming an association or a union on paper. The enjoyment and fulfilment of the right begins with the fulfilment of the purpose for which the association is formed.[109]

The word 'form'[110] means not the right to commence but the right of continuance of the association as well. Further, the freedom to form an association carries with it a negative right of not joining[111] an association but it does not follow that the negative right[112] must be regarded as a fundamental right.

(i) Freedom of Trade Unions in India—Restrictions

Article 19(1)(c) guarantees the right to form association or unions but clause (4) permits the state to impose legal restrictions on the right insofar as such restrictions may be reasonably required in the interest[113] of public order or morality. The question whether a particular statute imposing restrictions on any fundamental right is reasonable or not the court has to consider[114] the 'prevailing conditions' at a particu-

109. **U.P. Shramik Maha Sangh v. State of U.P.,** A.I.R. 1960 All. 47.

110. **Row v. State of Madras,** A.I.R. 1961 Mad. 147; **In re Kerala Education Bill,** A.I.R. 1958 S.C. 956 at 985; A.I.R. 1960 All. 47 at 49.

111. **Suryapal Singh v. U.P. Government,** A.I.R. 1951 All. 674.

112. **Tika Ramji v. State of U.P.,** A.I.R. 1956 S.C. 625 at 651; **Siharamachary v. Sr. Dy. Inspector of Schools,** A.I.R. 1958 Andh. Pra. 78.

113. **Bidhu Bhusan v. State of West Bengal,** A.I.R. 1952 Cal. 901.

114. **U. P. Shramik Maha Sangh v. State of U.P.** A.I.R. 1960 All. 47 at 51.

lar time. The words 'prevailing conditions' include the state of affairs in the realm in all their aspects, political, social, economic as well as the urgent needs of the society and the public interest at any given time. The makers of the Constitution deliberately refrained from enclosing the word reasonable in any rigid, unchanging encasement. They intended it to be as elastic as possible and capable of changing with the needs of the society from generation to generation. What was reasonable yesterday may not be so today and what is reasonable today may cease to be so tomorrow. The Supreme Court of America also echoes similar cord that:

> Society itself is an organization and does not object to organizations for social, religious, business, and all legal purposes. The Law, therefore, recognizes the right of the workingmen to unite and invite others to join their ranks, thereby making available the strength, influence and power that come from such association. By virtue of this right powerful labour unions have been organized. But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, then unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to the terms which involve the sacrifice of rights protected by the constitution; or by standing on such rights, and appealing to the preventive powers of the court of enquiry. When such appeal is made, it is the duty of the government to protect the one against the many as well as many against one."[115]

In India where a state law authorizing a government by notification in the official gazette to declare unlawful any association on the ground that such an association constitutes a danger to the public peace or interferes with the maintenance of public order or the administration of the law was

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115. **Gompers v. Buck's Stove & R. C.,** (1911) 221, U.S. 418 at 438-441.

questioned, the Supreme Court held that:

> Section 15(2)(2) of the Criminal Law Amendment (Madras) Act 1950 fell outside the scope of authorized restrictions under clause (4) of this article (article 19) and was therefore unconstitutional and void. The Court pointed out that the (fundamental) right to form associations or unions has such a wide and varied scope for its exercise and its curtailment is fraught with such potential reactions in the religious, political and economic fields, that the vesting of the authority in the executive government to impose restrictions on such right, without allowing a factual and legal aspects to be tested in judicial inquiry, is a strong element which should be taken into account in judging the reasonableness of restrictions imposed on the fundamental right under article 19(1)(c).[116]

There is nothing sacrosanct about the trade unions and their privileges. In **Raja Kulkarni** v. **State of Bombay**[117] Section 30 of the Bombay Industrial Relations Act, 1947 which provided that only a representative trade union representing at least 15% of the total number of workers employed in any industry in any local area can represent the interest of the entire body of workers in their relations with employers was challenged on the ground that it gave preference to a trade union the artificial test of having a percentage of membership and therefore violated article 19(1)(c). The Bombay High Court held:

> There is nothing in the Act (Bombay Industrial Relations Act) which renders the right guaranteed by article 10(1)(c) to form associations or unions illusory. The right to form union does not carry with it the right to represent, when there is an industrial dispute before a conciliator or the court of voluntary or compulsory arbitration, those persons or members of the trade union. There is consequently no abridgment

116. **State of Madras** v. **Row**, A.I.R. 1952 S.C. 196 at 201; **Hazi Mohammad** v. **District Board, Malda**, A.I.R. 1951 Cal. 401; **Ram Krishna** v. **President, District Board**, A.I.R. 1952 Mad. 253.

117. A.I.R. 1951 Bom. 105.

of the right guaranteed by article 19(1)(c) by sections 27 and 30 of the Industrial Relations Act.[118]

The Supreme Court also upheld the above view and observed:

> The Act imposes no restrictions either upon the freedom of speech and expression of the textile workers or their right to form association or unions; indeed it is not denied that workers have already formed as many as three unions, though they do not exhaust the number of workers in Bombay, for it leaves as many as 65 per cent of workers unorganized who do not belong to any trade union.....The Act makes no discrimination between textile workers as a class but lays down a reasonable classification to that effect that a certain percentage of membership possessed by a union will be allowed to represent the workers as a class to the exclusion of others but there is nothing to prevent the other unions or other workers from forming a fresh union and enrolling a higher percentage so as to acquire the sole right of representation.[119]

The above judgment of the Supreme Court has been followed in **Janardan** v. **Management H.H. Ltd.** It says:

> the impugned provisions of sections 27A, 32 and 33 of the Bombay Industrial Relations Act, 1946 are not directly in conflict with article 19(1)(c) as the Act does not aim at abolition of the unions nor does it refuse to recognize them. There is also no conflict between the Act and article 19(1)(a).....Formation of unions is expressly recognized and there is provision in the Act for registration. The underlying idea of the framers of the Act seems to be that so far as the employees are concerned, there should be a united stand as they should not be allowed to bargain with their employers individually. The provisions of these sections are also in consonance with the doctrine of collective bargaining which the Act intended to achieve

118. Id., at 115.

119. **Raja Kulkarni** v. **State of Bombay,** A.I.R. 1954 S.C. 73 at 75.

> and foster, therefore, it cannot be contended that the Act is in conflict with the provisions of article 19(1)(a) because it does not permit an individual employed to conduct his own case. In this there is neither denial of justice nor is there any encroachment on any of the fundamental rights. Again when the labour is represented by a representative union, it cannot be argued that when such a union is representing it and the individuals are not permitted to appear, the proceedings are vitiated on the ground that they are opposed to the principles of natural justice.[120]

But where an officer of a federation of unions[121] is prevented from representing the workers in an industrial dispute unless a period of two years has elapsed since its formation was held ultra vires of section 6(13) of the U.P. Industrial Disputes Act, 1947 and ultra vires of article 19(1)(c) of the Constitution as an unreasonable restriction on the right of workmen to form an association. In this regard the position of this constitutional right of the trade unions has again been made clear by the Supreme Court of India[122] that the right guaranteed by article 19(1)(c) extends to the formation of a trade union, and, insofar as activities of a trade union are concerned or as regards the steps which the trade union may take to achieve purpose of its creation, like collective bargaining or strike. These rights may be controlled or restricted by appropriate industrial legislation, the validity of which would have to be tested not with reference to the criteria laid down in article 19(4) but by totally different considerations.

(ii) Civil Servants—Freedom of Association

Constitutionally speaking government servants in India have the right[123] to form an association for the protection and

120. A.I.R. 1956 Madh. Bha. 199.

121. See supra note 114.

122. **All India Bank Employees' Association v. Industial Tribunal,** (1961-62) 21 F.J.R. 63; further affirmed in **Kameshwar v. State of Bihar,** (1962) 1 L.L.J. 294 (S.C.). See also **S. Vasudevan & others v. S. D. Mittal,** (1961-62) 21 F.J.R. 441 (S.C.).

123. Article 19(1)(c).

promotion of their legitimate claims and interests. It is, therefore, perfectly in accord with the Freedom of Association and Protection of the Right to Organize Convention 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention[124] which surprisingly enough have not been ratified by India on account of peculiar trade union situation. But the freedom of government servants to form association or union guaranteed by article 19(1)(c) does not include the right to strike or the right to demonstrate. Herein more deeper and fundamental issues are involved with respect to harmonizing and balancing of the over all interests of society, namely maintenance of impartiality, independence and efficiency of civil services along with freedom of speech and association of civil servants. Obviously the interests of government servants must give way before the larger interest of the whole community.

(a) Restrictions on Freedom of Association

The history of civil service unionism in India is of recent past. With the introduction of dyarchy in the Provinces in 1919 and the struggle for freedom also awakened the government employees to form their own associations. The Government of India Act, 1919 for the first time put restriction on the doctrine of **Pleasure Tenure**[125] and provided[126] that a servant under the Crown could not be dismissed by an authority subordinate to the appointing authority. Under section 96-B, therefore, a set of rules were framed called the Funda-

124. This convention does not deal with the position of the Public Servants engaged in the administration of the State, but the text stipulates that it should not be construed as prejudicing their rights or status in any way. These two conventions have been ratified only by three countries in Asia, Japan, Pakistan and Philippines.

125. The doctrine of pleasure tenure was introduced in India by the Statute of William IV which inter alia laid down that 'nothing in this Act shall take away the power of the said Court of Directors to remove, dismiss any of the officers or servants of the said company, but that the said court shall and may at all times have full liberty to remove or dismiss any such officer or servant at their will and pleasure. See also Government of India Act, 1858.

126. Section 96-B.

mental Rules. Soon after the Act came into force, India saw great upheaval[127] and the non-cooperation movement under the leadership of Gandhiji. The Government of India was alarmed and the government servants conduct rules 1926 were framed. Consequently the All India Railwaymen's Federation, the National Union of Railwaymen of India and Burma, the All India and Burma Covenanted Non-gazetted Railway Services Association, the All India Postal and RMS Association, the All India Postmen's Lower Grade Staff Union, the All-India Post and Telegraph Administrative Staff Association etc., were established. In 1934 the Central Government issued an Executive order[128] providing for the conditions and procedure for the recognition of associations of non-industrial civil servants. These conditions were:

(a) Association must ordinarily consist of distinct class of employees.

(b) Ordinarily, government will not object to non-officials being office-bearers but it reserved the right in particular cases to refuse recognition to associations having non-officials as its office bearers.

(c) Representation were to be received only on general questions of common interest to the class concerned.

(d) Office-bearers could be granted special leave to attend duly constituted meetings of the recognized association.

(e) Government require the regular submission for its informations of copies of the rules of association and the annual statement of its accounts and of lists of its members.

With the granting of provisional autonomy under the Government of India Act, 1935, the civil service associations

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127. The Jallianwala Bagh Tragedy 1919.

128. Home Department's Endorsement No. F. 16/8/27-Public dated September 10, 1934.

became more active and they started ventilating their grievances in the press and the legislature for improving their working conditions. The Government of India[129] therefore, in 1937 issued another set of instructions to various departments and offices requiring them to discourage recognized associations of government servants from furthering the interests of their members by such objectionable means as seeking the help of members of legislature, holding of public meetings, ventilation of grievances in the press, approach to political parties or to political candidates during elections. Two more rules were added subsequently to the above conditions, namely (i) recognition was to be accorded for the purpose of enabling the employees of the government to communicate their needs to government or to government officers, and it could be withdrawn by government, if an association adopted other methods of ventilating those needs, and (ii) government could specify the channels through which representations from the association shall be submitted and authority by whom deputations may be received.

(b) Civil Service (Conduct) Rules, 1955

Despite these limitations on the right to organize the trade unionism made great strides among the government employees. These associations became quite vocal in focussing their grievances and demands by means of public demonstrations, press statements and threats of direct action. The mounting pressure of threat to strike by civil servants led to the appointment of the First and Second Pay Commissions, Commissions on dearness allowance, bonus etc. It was in 1955 that President issued Central Civil Service (Conduct) Rules affecting the fundamental rights of persons employed in the government service **inter alia** being as follows:

> Section 4(a): No government servant shall be a member of or be otherwise associated with any political party or any organization which takes part in politics, nor shall he take part in, subscribe in and of or assist

129. Home Department's Memo No. 16/1/37 Public dated August 25, 1937.

in any other manner, any political movement or activity.

Section 4(2): No government servant shall canvass or otherwise interfere or use his influence in connection with, or take part in, an election to any legislature or local authority. Provided that a government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted...

In fact the Conduct Rules of 1955 are based on Conduct Rules 1937 and the former were amended so as to outlaw strikes and demonstrations.

Rule 4-A says:

No government servant shall participate in any demonstration or strike in connection with any matter pertaining to the conditions of service.

Rule 4-B says:

No government servant shall join or continue to be a member of any Service Association of Government Servants, (a) which has not within a period of six months from its formation, obtained the recognition of the government under the rules prescribed in that behalf, (b) recognition in respect of which has been refused or withdrawn by the government under the said rule.

(c) **Restrictions—If Reasonable**

The underlying idea of the said rules is to keep aloof public servants from politics. However, these Rules have been disliked by the Government servants as it deprived them of trade union rights including their right to demonstrate. Further, the next question arises whether the said rules are reasonable restrictions as are laid down in article 19(4) of the Constitution? Are the rules in question violative of fundamental rights guaranteed by article 19(1)(c) and, therefore, be declared ultra vires. The constitutionality of Rule 4-A was,

therefore, subsequently challenged[130] by the Patna Secretariat Ministerial Officers' Association on the ground that it interfered with the rights guaranteed to the members of the association by sub-clauses (a), (b) and (c) of clause (1) of article 19 of the Constitution and that in consequence the rule was in excess of the rule making power conferred by article 309 of the Constitution which was the source of authority enabling the service rules to be framed. It prayed for an order restraining the State from giving effect to the rule and to desist from interfering with petitioners' right to go on a strike or to hold demonstrations. The High Court of Patna had held that freedom guaranteed under articles 19(1)(a) and 19(1)(c) of the Constitution did not include a right to resort to a strike or the right to demonstrate so far as servants of government are concerned. It further held that the rule impugned was saved as being reasonable restraints on these freedoms. While dismissing the petition the Court granted a certificate under article 132 of the Constitution to appeal to Supreme Court. The Supreme Court affirming its own previous decision in **All India Bank Employees' Association** v. **National Industrial Tribunal** held that:

> right to form an association guaranteed by article 19(1)(c) of the Constitution does not involve or imply the right to resort to strike. Hence the provisions of Rule 4-A so far as it prohibits a government servant from resorting to any form of strike in connection with any matter pertaining to his conditions of service must be held valid.[131]

Regarding the right to demonstrate peacefully their Lordships opined that:

> provisions of rule 4-A insofar as it lays down a ban on every type of demonstration—be the same however innocent and however incapable of causing a breach of public tranquillity could not be saved under article 19(2) or 19(3) of the Constitution as amounting to

130. **Kameshwar Pd. v. State of Bihar,** (1962) 1 L.L.J. 294 (S.C.).

131. (1961) 2 L.L.J. 385 (S.C.).

reasonable restrictions.[132]

As regards Rule 4-B of the Central Civil Services (Conduct) Rule, 1955 is concerned, it lays down that no government servant shall join or continue to be a member of any service association of government servants which has not been recognized by the government or recognition in respect of which has been refused or withdrawn by the government. The validity of this rule was challenged before their Lordship of the Supreme Court[133] as violative of fundamental rights guaranteed under article 19(1)(a), (b), (c) and (g) of a citizen who was a government servant. It was contended that in deciding the question about the validity of the rule clause (4) in article 19 will have to be taken into consideration. This clause provides that article 19(1)(c) will not affect the operation of any existing law insofar as it imposes, in the interest of public order or morality, reasonable restrictions on the exercise of the right conferred by the said clause. It was held a restriction be said to be in the interests of public order only if the connection between the restriction[134] and public order is proximate and direct. Indirect or farfetched or unreal connection would not fall within the perview of the expression "in the interests of public order." Article 33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens including government servants are entitled to claim the rights guaranteed by article 19. Thus the validity of the impugned rule has to be judged on the basis that respondent and his co-employees are entitled to form associations or unions. It is clear that rule 4-B imposes a restriction on this right. It virtually compells a government servant to withdraw his membership of the service association of government servants as soon as recognition accorded to the said association is withdrawn or if after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned

132. See **supra** note 130.

133. **O. K. Ghosh v. E. X. Joseph,** (1963-64) 24 F.J.R. 115 (S.C.).

134. **Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia,** A.I.R. (1960) S.C. 633.

by the existence of the recognition of the said association by the government. If the association obtains recognition and continues to enjoy it, government servants can become members of the said association, if the association does not secure recognition from the government or recognition granted to it is withdrawn, government servants must cease to be members of the said association. Can this restriction said to be in the interests of public order and can it said to be a reasonable restriction? The only answer to these questions would be in the negative It is difficult to see any direct or proximate or reasonable connection and the discipline amongst, and the efficiency of the members of the said association. Similarly it is difficult to see any connection between recognition and public order.

(d) **Rationale of Restrictions**

However, freedom of association of government servants does not include the right to solicit moneys by sale[135] of tickets to members of public or to be continued in the employment[136] of the state or to an illegal act[137] in pursuance to any resolution of such association or to choose an outsider[138] as its office-bearer. The question arises what is the rationale behind Government Servants' Conduct Rules which restrict the activities of one segment of the population while permitting them to the remained? The obvious reason for the distinction is the objective of the state to provide a sound public service and the fact that the government as an employer can and must frequently impose restrictions and regulations regarding its employees which are not applicable to the public at large. And so long as such restrictions are not arbitrary and bear a reasonable relation to the legitimate ends to be attained, no question as to their constitutionality can arise. In **Sethu Madhava Rao v. Collector of South Arcot**[139] the question arose

135. **Sethu Madhova Rao v. Collector of South Arcot,** (1955) 2 L.L.J. 473.

136. **Balakotaiah v. Union of India,** A.I.R. 1958 S.C. 232.

137. **Banchey Lal v. State of U.P.,** A.I.R. 1959 All. 614.

138. **Divakaran Nair v. State of Travancore Cochin,** (1959), 2 L.L.J. 77.

139. See **supra** note 134.

whether the government could not take disciplinary action against a member of the revenue subordinate service for selling tickets for a dramatic performance in aid of an association without the previous sanction of the head of the department, in contravention of the Rule 6 of the Madras Government Servants' (Conduct) Rules which prohibited the same. Refuting the contention on behalf of the government servants that the right to collect funds by all lawful means was incidental to the right to form an association guaranteed by article 19(1)(c) of the Constitution, Rajagopala, J. held that no such right was included and its exclusion did not also imply a practical deprivation of the fundamental right of the government servant to join the association. Likewise in the United States also the right to form association is not absolute—whether of the public servants[140] or members of the public.[141]

But where a government order empowered the Director of Public Instruction to forbid[142] the existence of, and dissolve any Teachers' union not conforming to the rules and compelling teachers in local and municipal board or council to obtain the permission of the board or council concerned before forming unions and insofar as they prohibit teachers in recognized elementary schools from becoming members of teachers' unions or other teachers' organizations not constituted in accordance with orders of the government are void as constituting an abridgment of the right of freedom of association guaranteed by Article 19(1)(c) of the Constitution. It was further observed that:

> The exercise of any of the fundamental rights like the right of free speech, right of freedom of religion or the right of freedom of association cannot be made subject to the discretionary control of administrative or executive authority which can grant or withhold permis-

140. **United Public Workers v. Mitchel,** (1946), 330 U.S. 75.

141. **Whitley v. California,** (1926) 274 U.S. 356; **New York Ex Rel v. Zimmerman,** (1928) 278 U.S. 63.

142. **Ramakrishnaiah v. President, District Board,** A.I.R. 1952 Mad. 253; **Sitharamacharya v. Dy. Inspector of Schools,** A.I.R. 1958 Andh. Pra. 78.

sion to exercise such right at its discretion. It is equally well established that there cannot be any restriction in the exercise of such a right which consists in the previous restraint on such exercise and which is in the nature of administrative censorship. The guaranteed freedoms cannot be abridged or abrogated by the exercise of official discretion.

(c) **Applicability of Service Conduct Rules**

The Central Civil Service Conduct Rules are not applicable to the staff to which the Trade Unions Act and the Industrial Disputes Act apply. There are, however, certain classes of staff to whom Industrial Disputes Act is applicable but who are still subject to all provisions of the Central Civil (Conduct) Rules. They are staff employed in the posts and telegraphs, and telephone services are specifically mentioned among the public utility services in clause (n) of section 2 of the Industrial Disputes Act and transport for carriage of passengers and goods by air is included in the first schedule to the Act among the industries which may be declared public utility services. The Railway Service (Conduct) Rules 1956 which have provisions corresponding to those of Rules 4(A) and 4(B) require that no recognized union shall maintain a political fund except with the general or special sanction of government. In fact, all the central government employees' associations are eligible for registration as trade union, are precluded[143] from taking advantage of section 16 of the Trade Unions Act, because of the provision in the Conduct Rules applicable to them which debar them from political activity.

(iii) **Recognition of Service Association**

In the matter of recognition of service associations of government employees the executive instructions which were issued in 1937 continue to regulate the practice concerning such recognition. The Central Civil Service (Recognition of Service Associations) Rules 1959,[144] have now replaced those executive instructions. However, the provisions of the Rules

143. **Report of Central Pay Commission 538 (1957-59).**

144. These rules are made under article 309 and clause 5 of article 148 of the Constitution.

do not differ from those of the 1937 and recognition continues to be subject to the fulfilment of observance of the following conditions:

(a) that no person who is not a government servant is connected with the affairs of the associations;

(b) that the executive of the association is appointed from amongst the members only;

(c) that the association shall not espouse or support the cause of individual government servant; and

(d) that it shall not maintain any political funds or lend itself to propagation of views of any political party or politician.

Association of non-gazetted railway employees has to comply with the following[145] rules:

(a) it must consist of a distinct class of government employees;

(b) all government employees of the same class must be eligible for membership; and

(c) it must be registered under the Indian Trade Unions Act, 1926.

It is further provided that no recognized association shall maintain political fund without the special sanction of the government. 'Outsiders' are excluded from the membership of a service association as well as from the executive of such association. There is no such corresponding provision in the Railway rules. Again there is complete ban on service associations for maintaining political funds, while in the Railway rules there is no such absolute ban on political fund, but only certain restrictions.

Granting of recognition is a matter of discretion for the Government of India. For instance the Government of India withdrew recognition of the service associations of its employees during July strike of 1960 and again regranted it unconditionally in the October of the same year. There are unions

145. **Report of the Central Pay Commission, 537 (1957-59).**

of government employees in Railways, Posts and Telegraphs, Civil Aviation Department, Ministry of Defence (Civil Employees), Government of India Presses, Central Public Works Department, India Government Mints, Audit and Accounts Department, Departments under Central Board of Revenue and various other departments. The federations which have representative status with Ministries of Railway, Transport and Communications and Defence are National Federation of Posts and Telegraphs Employees and the All-India Defence Employees' Federation.

II. UNFAIR LABOUR PRACTICE

A. Concept and Meaning in India

The concept of unfair labour practice is of recent origin in this country. Thus far it has not been defined statutorily by the existing labour law except by way of enumeration of specific instances in the Indian Trade Unions (Amendment) Act, 1947 which till today remains unenforced. Therefore unlike U.S.A., the industrial tribunals and courts in India have weaved out a fairly workable theory of unfair labour practice through judicial pronouncement, decisions and awards or decisions have been largely in conformity with the basic needs of the welfare programme of the State for protecting the legitimate trade union activities and aspirations, the necessity of enacting a fresh statutory legislation for achieving above objects have been quite logically obviated. The question arises as to the meaning of the term 'unfair labour practice' which is applied particularly to employers who refuse to employ members of a trade union or refuse to recognize the organized labour—its rules and regulations for conducting his business as desired by the union. In the usual sense, however, the expression 'unfair labour practice' need not be confined to trade union activities only and also may include all such unjust acts of the management committed with a dishonest motive or bad faith to oppress or intimidate all those employees who do not submit to such arbitrary and vindictive orders of the employers.

The definitive difficulty of 'unfair labour practice' is a

genuine one nevertheless the industrial tribunals and other higher courts have gone into the question as to what constitutes an 'unfair labour practice'. In a dispute between **Cox and Kings (Agents) v. Their Employees,** the industrial tribunals remarked:

> Any action prejudicial to workers taken on some pretext other than real reason is unfair labour practice. Any order made in bad faith with an ulterior motive arbitrarily or with harshness is also....an instance of unfair labour practice.[146]

This concept has again been explained as:

> Any order made in bad faith with an ulterior motive arbitrarily or with harshness....Tangible evidence of unfair practice is not possible. In all cases of unfair labour practice and victimization attempts are made by the employers to make out an apparent 'cause'. We are (Tribunal) to find whether the apparent cause is real cause but to have been ascribed with some ulterior motive is undoubtedly an instance of unfair labour practice. To arrive at a correct conclusion on this point some outward manifestations of the feelings of the employers should be taken into account.[147]

The Tribunal went further in this connection and listed the following as outward manifestations to be taken into account:

> (1) discrimination between workers; (2) singling out union leaders or members; (3) anti-union statement made at the time of discharge or shortly prior thereto; (4) relative significance of the alleged infraction;

146. (1949) 1 L.L.J. 796; e.g., an encroachment of any natural, contractual, statutory or legal rights of employees: **J.K. Industries v. Their employees,** (1951) L.L.J. 1; Getting rid of an employee because he was a member of a union; **Eastern Industries Ltd. v. Their Employees,** (1951) 1 L.L.J. 44; factory closed to avoid the payment of wages at a higher rate in order to bring pressure upon the workers to accept lower rates: **J. B. Tile Works v. State of Madras,** A.I.R. 1953 Mad. 30.

147. **Messrs. R. B. S. Jain Rubber Mills, Howrah, Calcutta Gazette,** dated December 21, 1950.

(5) whether others ever committed the same infraction with similarly being punished to the extent of discharge; (6) failure without explanation to introduce evidence in support of general accusation or reason for discharge or to call witness who have personal basis of denial; (7) failure of the employer to hold an investigation; (8) failure to afford an employee the opportunity to defend himself and (9) uneven application of company's rules.

(1) **Need of Wider Interpretation**

Subsequently the term 'unfair labour practice' has been given a wider interpretation to cover the case of an employee unfairly discharged simply because there was no union activity on his part. The tribunal observed that:

> Some of the adjudicators appear to have taken a restricted view of the term 'unfair labour practice'. They appear to have proceeded on the definition of the term given in the National Labour Relations Act of the United States of America than in India. Trade Unions are much advanced in America than in India. In comparison with trade unions in industrially advanced countries like America, trade unions in India are still in infancy. They have not as yet been able to command the same respect as those in America and other industrially advanced countries. Very few employers in India are agreeable to recognize the unions of their employees.[148]

This view was further upheld by the Allahabad High Court which observed:

> The meaning of the expression 'unfair labour practice' in the context of industrial law could not be...restricted to cover the categories of conduct mentioned in provisions of sections 28-J and 28-K of the Indian Trade Unions (Amendment) Act (XIV of 1947).... But the definition of 'unfair labour practice' in section 28-K

148. **Turner Morrison & Co., Ltd. v. Their Workmen,** (1950) 2 L.L.J. 122.

> has no application in the matter of employers' relations with his individual employees. The Act was not intended to regulate the employers' relations with the employees arising out of the terms of employment which is the purpose of the Trade Disputes Act.... Furthermore the weight of authority is against the argument that unfair labour practice should be limited to any act discouraging trade union activities.[149]

Mr. A. Das Gupta in his award made it categorically clear that:

> I am not inclined to put a narrow interpretation on the terms 'victimization' and 'unfair labour practice.' If there cannot be any victimization or unfair labour practice except in relation to union activities, employees of a firm who have no union will not be entitled to any relief under the Industrial Disputes Act, 1947. The result will be that either the employer would try to engage non-unionmen or that non-unionmen will be forced indirectly to join the union. If industrial courts refuse to give relief to an employee unfairly discharged simply because there is no union activity on his part and hence no victimization or unfair labour practice on the part of the employer, he will be compelled to join an union. This will be interfering with his natural rights. The theory of natural rights was at the basis of industrial legislation which prohibit interference with the formation of unions, collective negotiation, and collective bargaining and such other union activities as have not been expressly prohibited by the legislature. If the theory of natural rights permits a man to join an association which is not illegal and against public policy in its purpose, why should not the same theory permit him not to join the association. I am clearly of the opinion that disregard of the principles of natural justice and punishment for protest against the abuses of a superior officer is an

149. **Everready Flash Light Co. v. Labour Court,** (1961), 2 L.L.J. 204.

instance of unfair labour practice.[150]

Victimization or vindictiveness is also said to be another variety of unfair labour practice. Victimization literally means one of the two things.[151] The first is when the workman concerned is innocent and yet he is being punished because he has in some way displeased the employer, for example, by being an active member of an union[152] of workmen who were acting prejudicially to the employers' interest. The second case is where an employee has committed an offence but he is given a punishment quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer in a similar manner as mentioned above. So it is for the industrial tribunal to see whether the employer is acting bona fide or is motivated by some improper object directed against victimization of employees.[153] For this purpose the industrial tribunal is not fettered[154] by the law of contract or the terms of the agreement between employer and employee and it may create new obligations or modify contracts in the interest of industrial peace to protect legitimate trade union activities and prevent unfair labour practice or victimization. Therefore what is 'unfair labour practice' or victimization is a question[155] of fact to be decided by a labour tribunal upon the circumstances of each case. In such cases onus[156] of victimization or unfair labour practice initially rest on the union that employees had indulged in trade union activities. Again the dividing line[157] between victimization and

150. See supra note 148.

151. **National Tobacco Company of India Ltd. v. Fourth Industrial Tribunal,** (1960) 2 L.L.J. 175.

152. **D. N. Banerji, Administrator of Budge Budge Municipality v. P. R. Mukerji,** 1953 S.C.J. 19.

153. **Caltex (India) Ltd. v. Damodar Rajaram Bhonsale,** (1953) 10 F.J.R. 98.

154. **Rohtas Industries Ltd. v. Brijnandan,** (1956) 2 L.L.J. 444 (S.C.).

155. **L. H. Sugar Factories and Oil Mills (Private) Ltd. v. State of U.P.,** (1961) 1 L.L.J. 686.

156. **Indian Cycle Mfg. Co. Ltd. v. Their Workers** (1951) 1 L.L.J. 390.

157. See supra note 149.

unfair labour practice is very thin and what is unfair labour practice might also be a victimization and vice versa. Thus unjust dismissal,[158] unmerited promotion,[159] dismissal for union activities[160] and partiality towards one set of workers regardless of merits are illustrations of unfair labour practice.

B. Legal Position in India

(1) Absence of Legislative Measures

In India, unlike U.S.A. there is no legislative measure in force prohibiting unfair labour practices except few judicial pronouncements. The Indian Trade Unions (Amendment) Act, 1947 enumerated[161] unfair labour practices of employers and labour organizations. But till today this Act has not been brought into force mainly because of absence of cohesive, strong and stable trade union organizations. The unfair labour practices of labour organizations under the Act are:

(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 to submit any return required by or under this Act containing false statement.

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158. **Atherton West & Co., Ltd. v. Suti Mills Mazdoor Union,** A.I.R. 1953 S.C. 241; **Automobile Products of India v. Rukamji Bala,** A.I.R. 1955 S.C. 258; **Indian Iron Steel Co., Ltd. v. Their Workmen,** A.I.R. 1958 S.C. 130; **G. M. C. Kenzie & Co., Ltd. v. Its Workmen,** A.I.R. 1959 S.C. 389; **Laxmi Devi Sugar Mills Ltd.,** A.I.R. 1957 S.C. 82; **Punjab National Bank v. All India Bank Employees Federation,** A.I.R. 1960 S.C 160.

159. **L. H. Sugar Factories and Oil Mills Ltd. v. State of U.P.,** (1961) 1 L.L.J. 686; **Caltex (India) Ltd. v. Damodar Rajaram Bhonsale,** (1955) 10 F.J.R. 719; **Kaliprasad Mazumdar v. Brook Bond (India) Ltd.,** (1953) 5 F.J.R. 719.

160. **Fashion Industries Ltd v. Their Employees,** (1951) 1 L.L.J. 44; **Indian Cycle Mfg., Ltd. v. Their Workers,** (1951) 390; **Bengal Ignot Co. Ltd., v. Their Employees,** (1949) L.L.J. 108; **Buckingham and Carnatic Mills Ltd. v. Their Workmen,** (1951) 2 L.L.J. 314.

161. Chapter III-B.

The Act enlists five unfair labour practices for the employers which are:

> (a) to interfere with, restrain or coerce his workmen in the exercise of their right 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 workmen because they have made allegations or given evidence in an inquiry or proceeding relating to any matter such as is referred to in sub-section (1) of section[162] 28-F; (e) to fail to comply with the provisions of section 28-F.[163]

The Act also contains provisions for withdrawal[164] of recognition of trade union where an unfair labour practice is committed by the executive or members of such a recognized trade union or where it has failed to submit any return as is provided in the Act. Similarly an unfair labour practice on the part of the employer[165] is made a penal offence. These all provisions seem to be borrowed[166] from the Labour Management Relation Act, 1947 (Taft-Hartley Act). As already stated that trade unions in United States today are strong economic units capable enough to bargain with their counterparts. In India the trade unions have not acquired economic invulnerability on account of poverty, illiteracy, caste and social inhibitions. Unlike United States trade unions in

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162. Section 28(F) (1) confers the right to negotiate with employers in respect of matters connected with employment of labour.

163. It provides right of a recognized trade union to negotiate, to seek replies of letters or seek interview and to confer with employer on matters of mutual concern.

164. Section 28-G(I) (a) and (b), Indian Trade Unions (Amendment) Act, 1947.

165. Section 32-A Id.

166. Japan has also borrowed provisions similar to those of Wagner Act of U.S.A.—Trade Union Law, 1949 (Section 7).

India are neither self-reliant nor financially self-sustaining organizations without which collective bargaining is not possible and desirable. Perhaps this factor has deterred the Government of India in enforcing the amended law.

(2) **Industrial Disputes Legislation**

In the absence of statutory measures concerning unfair labour practice, law indirectly makes an attempt to protect workers against employers' right to 'hire and fire' in discharging or dismissing an employee. Statutory restrictions on this right are found in the Industrial Disputes Act[167] 1947 and the Industrial Disputes (Appellate Tribunal) Act,[168] 1950 (now repealed) and the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 which provides[169] comprehensive safeguards to employees who are arrayed against an employer in industrial dispute pending for settlement and award. The latter statute provides that if an employer[170] wants to alter the conditions of service of any employee or to discharge or punish him by dismissal with regard to any matter connected with a dispute pending in any proceedings under the Act, he has to obtain the sanction or approval of the authorities[171] before which the proceedings are pending. Such authority—whether a conciliation[172] officer or tribunal[173]—has to see whether the employer is acting bona fide or is resorting to unfair labour practice or victimization. If the dismissal is a colourable exercise of the power or as a result of victimization or unfair labour practice the industrial tribunal would be justified to intervene and set aside such dismissal. The object of

167. Section 33 and 33-A Industrial Disputes Act, (XIV of 1947).

168. Sections 22 and 23 Industrial Disputes (Appellate Tribunal) Act, (XLVIII of 1950).

169. Sections 9-A and 33 Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956.

170. **S. K. G. Sugar Ltd. v. Ali Hasan,** A.I.R. 1959 S.C. 230.

171. **Batuk K. Vyas v. Surat Municipality,** A.I.R. 1953 Bom. 133.

172. **M/s. Sasa Musa Sugar Works v. Shobrati Khan & Others,** A.I.R. 1959, S.C. 923.

173. **The Chartered Bank Co. v. The Chartered Bank Employees' Union,** A.I.R. 1960 S.C. 919.

section 22 of the Act of 1950 like that of section 33 of the Industrial Disputes Act as amended was to protect[174] the workmen concerned in disputes which form the subject matter of pending proceedings against victimization by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of those proceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relation between the employer and the workmen. To achieve this object a ban[175] has been imposed on the ordinary right which the employer has under the ordinary law governing a contract of employment. Section 33 of the Act which imposes the ban also provides for removal of that ban by granting express permission in writing in appropriate cases by the authority mentioned therein. The purpose of this section being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under the section is to accord[176] or withhold permission to employers to discharge or dismiss workmen. Before permission to punish or dismiss workmen is granted under section 33 of the Act, the Industrial Tribunal must be concerned with two matters,[177] namely (a) whether the act of the

174. **Automobile Products of India Ltd. v. Rukamji Bala & Others,** A.I.R. 1955 S.C. 258; **Serampore Belting Mazdoor Union v. Serampore Belting Co.,** (1951) 3 F.J.R. 251.

175. **The Management Hotel Imperial, New Delhi v. Hotel Workers Union,** A.I.R. 1959 S.C. 1342.

176. **Carlasbad Mineral Water Mfg. Co. Ltd. v. Their Workmen,** (1953) 1 L.L.J. 85; **Indian Iron and Steel Co. Ltd. v. Their Workmen,** (1958) 1 L.L.J. 260; **Laxmi Devi Sugar Mills Ltd. v. Pt. Ram Swaroop,** (1957) 1 L.L.J. 17; **Sri Hanuman Jute Mills v. Amindas,** (1956) 2 L.L.J. 454; **National Tobacco Co. of India Ltd. v. Fourth Industrial Tribunal,** (1960) 2 L.L.J. 175; **Martin Burn Ltd. v. R.N. Banerjee,** (1958) 1 L.L.J. 247.

177. **Benney Miranda v. Marikar Engineers Ltd.,** (1958) 2 L.L.J. 540; **Gordon Woodrofee & Co. v. Venugopal & Others,** (1958) 1 L.L.J. 300; **National Tobacco Co. of India Ltd. v. Fourth Industrial Tribunal and Others,** (1960) 2 L.L.J. 175.

employer was bona fide or whether it was intended to victimize the workman for his act in raising the dispute or in continuing it; (b) whether there was prima facie misconduct on the part of the workman justifying the employer in inflicting the punishment. And if there was no victimization and the act of the employer was bona fide and if there was prima facie misconduct on the part of the workman the action of the management has to be approved. If on the other hand the enquiry proceedings do not disclose a prima facie case of misconduct or if it is shown that the action of the management was intended to victimize the workman, the approval sought for should not be granted.[178]

(3) Employers' Prerogatives—Curtailed

Consequently protection of workers against victimization and unfair labour practice is carefully elaborated in sections 33-A and 9-A of the Industrial Disputes Act. Section 33-A provides[179] an exclusive right to aggrieved workmen to directly approach the authorities for prohibiting the employer from unilaterally changing the conditions of service for which the dispute is pending for conciliation or award. Section 9-A also restricts the discretion of the employer in introducing a change in the conditions of service applicable to workmen in respect of any matter specified in the fourth schedule[180] without a notice of change. Therefore it is obligatory for an employer to give notice of twenty-one days of any change in the condi-

178. **See Lakshminarayana Rao v. State of Madras and Others,** (1959) 2 L.L.J. 487; **Titagarh Jute Factory Co., Ltd. v. Third Industrial Tribunal and Others,** (1962) 2 L.L.J. 328.

179. **Northbrook Jute Co. v. Their Workmen,** (1960) 1 L.L.J. 580.

180. Conditions of service for change of which notice is to be given: wages, including the period and mode of payment; contribution paid or payable by employer to any provident fund or for the benefit of the workmen under any law for the time being in force; compensatory and other allowances; hours of work and rest intervals; leave with wages and holidays; starting, alternation or discontinuance of shift working otherwise than in accordance with standing orders, classification of grades, withdrawal of any increase or decrease in the rationalization and any increase or decrease in the number of persons employed. See Rule 34 of the Industrial Disputes (Central) Rules 1957.

tions of service concerning any workmen. It has been observed:

> What is important to notice is that in making this provision for notice the legislature was clearly contemplating three stages. The first stage is the proposal by the employer to effect a change; the next stage is the stage when he gives a notice and the last stage is when he effects change in the conditions of service on the expiry of 21 days from the date of the notice. The conditions of service do not stand changed, either when the proposal is made or the notice is given but only when the change is actually effected. That actual change takes place when new conditions are actually introduced.[181]

Where employer intended to introduce rationalization scheme by giving a notice of change dispute regarding which was pending for adjudication and where after the expiry of 21 days the employer attempted to introduce such scheme, the court held introduction of rationalization scheme was clearly an alteration of conditions of service to the prejudice of workmen.

(4) Protected Workmen—Unfair Labour Practice

The Industrial Disputes Act[182] also takes special care of those employees who are designated as 'protected workmen', for raising a dispute pending for proceedings against employer's unfair labour practice. 'Protected workmen' are said to be those workmen who are officers of a registered trade union which is connected with the establishment in question. In all such cases as governed by sections 33 and 33-A of the Industrial Disputes Act the labour tribunal is faced to concede the power of the management to direct its own internal administration and discipline to the extent that this power is exercised judiciously in good faith without any motive or victimization or unfair labour practice and in consonance with

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181. See supra note 179 at 584.

182. Section 33(3).

the principles of natural justice. But tribunal can interfere:

> (a) where there has been no fair enquiry and there has been a violation of the principles of natural justice; (b) where there is malafides. The harshness or otherwise of the punishment insofar as it may go to establish malafides may be considered; (c) where there is vindictiveness or victimization; (d) where there is unfair labour practice; (e) where there has been a basic error and/or upon the materials on record the findings of the domestic enquiry are completely baseless or perverse.[183]

Likewise, the Bombay Industrial Relations Act.[184] 1946, the C.P. and Berar Industrial Disputes Settlement Act,[185] 1947, the Kerala Industrial Relations Bill,[186] 1959 and the Madhya Pradesh Industrial Relations Act,[187] 1960; provide for protection of employees in certain circumstances against unfair labour practice of employers. All these provisions also prescribe the penalty for such unfair labour practices. Any employer committing unfair labour practice is punishable with fine which ranges between one thousand to five thousand rupees. The court ordering the fine may direct that the fine realized shall be paid to the employees who were injured by such unfair labour practice by way of compensation.

(4) Code of Discipline in Industry

In this connection it would be useful to mention the relevant provisions of the Code of Discipline in Industry, 1958. In order to maintain peace, harmony and discipline in industry the Code formulates certain provisions which are in the nature of 'don'ts' both for management and trade unions.

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183. **National Tobacco Co. of India Ltd. v. Fourth Industrial Tribunal and Others,** (1960) 2 L.L.J. 175; at 182; **Laxmi Devi Sugar Mills Ltd. v. Ram Sarup and Others,** (1957) 1 L.L.J. 17; **G. M. C. Kenzie & Co. Ltd. v. Its Workmen,** (1959) 1 L.L.J. 285.

184. Sections 101 and 106.

185. Sections 42 and 47.

186. Clause 29.

187. Sections 83 and 86.

Accordingly the management **inter alia** agrees[188] not to support or encourage any unfair labour practice such as:

> (a) interference with the right of the employees to enroll or continue as union members; (b) discrimination, restraint or coercion against any employee because of recognized activity of trade unions and (c) victimization of any employee and abuse of authority in any form. The unions agree[189] to discourage unfair labour practice such as (a) negligence of duty, (b) careless operation, (c) damage to property, (d) interference with or disturbance to normal work and (e) insubordination.

The Code lays down specific obligations on employers and trade unions not to engage or encourage unfair labour practices. On the other hand it casts a duty on both sides not to resort to any unilateral action such as strikes and lockouts resulting in coercion, intimidation, victimization and litigation. It requires them to abide voluntarily in good faith with the norms of conduct laid down in the Code with a view to maintain goodwill and understanding between them for achieving increased output, and higher standard of efficiency. To secure the observance of the Code both sides are, therefore, obliged to take prompt action to implement awards, settlements and decisions and to take proper action against those indulging in action against the spirit of the Code. The success or failure of the Code depends upon the willing co-operation, understanding and goodwill of the employer and the employees the strict adherence of which may evolve new dimensions and patterns of industrial ethic suited to our social needs and genius as well.

188. Clause III (11) Code of Discipline.
189. Clause IV (IV) Id.

CHAPTER V

Prerogative of Strike in Indian Law

I. Labour-Management Conflicts in the West and India

The growth and establishment of combination of workers with a right to strike for raising wages and improved conditions is a result of conflicts between labour and management. On account of industrial conflict workers acquired two basic rights—the right to form associations to protect their economic interest and the right to resort to strike as a means for enforcing their demands. These two rights were secured by the workers after great suffering and sacrifice. Not only the employers were hostile to workers' interest but the law courts and the state[1] too did not favour trade unions and strike by them. However in the west labour unions achieved a social position and legal status with distinct privileges in the process of industrialization. In India industrialization as a means of accelerating economic progress started only recently. In this process of industrialization India is faced with similar labour management problems which the industrially advanced western countries confronted much earlier. In such an economic and social setting India can benefit with the experience of these countries—particularly of U.K. and U.S.A. —for modelling labour-management relations in accordance with the needs and goals of our dynamic society. A study of the prerogative of strike in Great Britain and U.S.A. becomes, therefore, necessary for an understanding of the efficacy of strike processes and problems in India.

1. e.g., Sherman Anti-Trust Law 1890 (U.S.A.); Statute of Apprentices 1662, the Combination Acts 1799, 1800 and Combination Repeal Act 1825 (English); Workmen's Breach of Contract Act 1859 (India).

A. Strike—Position in U.K.

(1) Strikes Legalized

In England the struggle for the right to strike has been an arduous one as most of the strikes were made illegal by statutes. The common law doctrines of freedom of contract, restraint in trade and conspiracy prevented workers from going on a strike for the purposes of bargaining with their employers. The Combinations[2] Acts of 1799 and 1800 were enacted to eliminate[3] both trade unions and strikes to meet the threats from French Revolution. However, these measures could not stop the emergence of trade unions and the incidence of strikes which were inevitable off-springs of factory system. The Combination Laws Repeal Act,[4] 1824 repealed the earlier law by legalizing combination of trade unions to alter wages or conditions of work by means of strikes without making them liable at common law for conspiracy. Soon followed the Combination Repeal (Amendment) Act,[5] 1825 which placed stringent restrictions on industrial unrest and strikes[6] by providing penalties for use of violence, threats, intimidation, molestation,[7] obstruction etc. It was the Trade Union Act,[8] 1871 which made an indirect attempt to legalize[9] strikes. A strike could no longer be treated as a conspiracy as being restraint in trade. However this attempt was frustrated on account of judicial hostility[10] which held that strike still amounts at common law to a criminal conspiracy to coerce or molest the employer in the interest of his trade or business. This judgment was reversed by the Conspiracy

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2. 39 Geo. III, Ch. 81; 39 & 40 Geo. III, Ch. 90.
3. Dicey, **Law and Public Opinion in England** 63 (1948).
4. 5 Geo IV, Ch. 95.
5. 6 Geo. IV, Ch. 129.
6. **Reg. v. Druitt and Others,** 10 Cox's Criminal Cases 592 (1864-67).
7. Although the molestation of Workers Act, 1859 had made peaceful picketing legal.
8. 34 and 35 Vict. Ch. 31.
9. Sections 2, 3 and 23 **Id.**
10. **R. v. Bunn, 12 Cox's Criminal Law Cases,** 316 (1872).

and Protection of Property Act,[11] 1875. The Act conferred[12] legal immunity on trade unions for going on strikes. The Act[13] did not remove the legal dangers of picketing. In the **Lyons** v. **Wilkins**[14] the trade unions were held liable for picketing and breaking contracts of employment for exercising their right to strike. The judicial attitude stiffened further in **Quinn** v. **Leathem**[15] where the House of Lords held that it was an offence to inflict damage on the employer by persuading others not to enter into his service even if no question of breach of contract arise. This decision proved a serious threat to the right to strike of trade unions. **Again Taff Vale** Case[16] the House of Lords held that any incitement to breach of contract in furtherance of a trade dispute constitute an offence for which organizers of strike, viz., the trade union could be held liable. These judgments were reversed by the Trade Disputes Act,[17] 1906 which relieved the trade unions from liability for tortious acts committed[18] by them in furtherance of a trade dispute. In 1964 the House of Lords once again invented the new tort of intimidation holding[19] threat to strike in furtherance of a trade dispute actionable in tort. The Trade Disputes Act,[20] 1965 has overruled the above judgment by making certain acts of trade unions, e.g., breach of contract of employment or inducing others to break a contract of employment not actionable in tort.[21]

(2) **Right to Strike not Absolute**

In England now the right to strike is an essential ele-

11. 38 and 39 Vict. Ch. 86.
12. Section 3 **Id.**
13. It annulled the provisions of Criminal Law Amendment Act, 1871 which made strikes punishable on the ground that they involve coercion.
14. (1896) 1 Ch. 811.
15. (1901) A.C. 495.
16. (1901) A.C. 426.
17. 6 Edv. VII, Ch. 47.
18. Section 3 **Id.** See **Reyonolds** v. **Shipping Federation,** (1924) 1 Ch. 40.
19. **Rookes** v. **Bernard,** (1964) 1 All. E.R. 367 See **Stratford** v. **Lindley,** (1964) 3 All. E.R. 162.
20. 1965 Ch. 48, 892.
21. Section 1 **Id.**

ment[22] in the principle of collective bargaining. However, the right to strike is not absolute or unconditional. It is rationalized in the interest of public safety, health and peace. In fact in the interest of social good right to strike has been modified in public utilities,[23] public employment,[24] during emergency[25] and war[26] etc.

B. Strike—Position in U.S.A.

(1) Suppression of Strikes

The social and economic conflicts in U.S.A. developed more or less on the pattern in the United Kingdom of Great Britain. The common law principles of restraint in trade and criminal conspiracy and the Sherman Anti-Trust Act, 1890 were used[27] to prevent workers from going on a strike. In the **Pullman strike** of 1894 the American Railway Union faced the combined opposition of Pullman Company, and the Railway Managers' Association. The federal courts issued injunctions to prevent the workers from going on strike and President Cleveland sent troops to Chicago to suppress strike. This device of the use of 'labour injunctions' to prohibit strikes proved more effective and convenient[28] from 1890 to 1930. The Clayton Act, 1914 was enacted to meet the un-

22. **Crofter Hand Woven Harris Tweed Co. v. Veitch,** (1942) A.C. 435 at 463.

23. Section 4, Conspiracy and Protection of Property Act, 1875; Section 225, Merchant and Shipping Act, 1894; Section 31, Electric Supply Act, 1919; Section 6(4), Trade Disputes Act, 1927; Section 17 Fire Service Act, 1947, etc. See 11-12 **Encyclopaedia of the Social Sciences** 674 (edit. Seligman 1957).

24. Whitley system has been devised as a substitute of strike for civil servants in U.K. See The Trade Disputes and Trade Unions Act, 1927, the Police Act, 1919. For detailed study, see Knowles, **Strikes—A Study in Industrial Conflict,** 105 (1954).

25. Emergency Powers Act, 1920.

26. The Munitions of War Act, 1916, Emergency Powers (Defence) Act, 1939 and Rules 58AA made thereunder, etc.

27 Before 1887 unlawful activities of labour concerning any dispute were dealt by the Criminal Courts or by self-help on the part of the employers. 50 **Harv. L. Rev.** 193 (1936-37).

28. Witte, Early American Labour Cases (1926) 35 **Yale L.J.** 825, 832.

compromising hostility[29] of the employers towards organized labour by making unions free from the common law doctrine[30] of restraint in trade and to prevent courts from using injunctions in cases of peaceful picketing. The Act proved inadequate on account of restricted judicial[31] interpretation. This led to the passing of the Norris-La Guardia[32] Act, 1932 prohibiting injunctions[33] in labour disputes. The Act recognized[34] the right of the workers to organize and to take all concerted measures including strike for mutual help and protection. The National Industrial Recovery Act, 1933 also provided[35] for the employees to organize unions and bargain collectively with their employers. The Act was, however, declared unconstitutional.[36]

(2) **Right to Strike—Guaranteed**

In 1935 the National Labour Relations Act[37] (the Wagner Act) guaranteed[38] to workers the right to organize labour unions and to bargain collectively with employers. During the World War II, the organized labour gave a voluntary 'no-strike' pledge.[39] Of course this pledge was not legally binding on unions. Strikes did take place during the War, e.g., the soft coal miners strike, 1943. After the end of the World

29. 42 **Harv. L. Rev.** 766 (1928-29); 44 **Law Q. Rev.** 164 (1928).

30. Section 20 Clayton Act 1914.

31. **Duplex Printing Press Co. v. Deering,** 254 U.S. 443 (1921) **Traux v. Corrigan,** 257 U.S. 312 (1921); **Dorchy v. Kansas,** 272 U.S. 306 (1926).

32. 47 Statute 70 (1932).

33. Section 4 **Id.**

34. Section 2 **Id.**

35. Section 7(a).

36. **Schechter Poultry Corp. v. United States,** 295 U.S. 495 (1935).

37. **National Lab. R.B. v. Jones and Laughlin Steel Corp.,** 301 U.S. 1, 33 (1937) the Supreme Court upheld constitutional validity.

38. Sections 7, 8, 13 and 49.

39. The War Labour Disputes Act (Smith Connally Act) 1943 of course as a temporary measure prohibited strikes in war industries.

War II a necessity was felt to enact a new legislation to meet the new strikes affecting general health, welfare and national security. The result was the passing of the Labour-Management Relations Act (the Taft-Hartley Act), 1947. The Act tried to resolve the new situations without taking away the basic right to strike of workers. It still affirms:

> There is nothing in the Act, except as specifically provided for herein, shall be construed so as either to interfere or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.[40]

(3) **Right to Strike Not Absolute**

Nevertheless the right to strike is not absolute[41] in the United States also and may be modified if abused.[42] The scheme of Act seeks to avoid or settle strikes by these methods: (1) certain delays or 'cooling off' periods (but not ban) are required in situations in which a strike may result in a national emergency. The Act provides[43] that a party to the dispute may negotiate a change in the contract only by giving sixty days' 'cooling off' period or until the contract expires whatever period is longer employees are prevented from going on a strike; (2) strikes which involve breach of contract,[44] restraint of interstate commerce, secondary boycotts,[45] violence and intimidation and (3) strikes[46] which affect entire industry and imperil national health or safety such as a railroad strike may be subject to injunction for a maximum period of eighty days. In short strike is prohibited in the United States in essential services or public utility industries[47]

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40. Section 13.
41. **Dorchy** v. **Kansas,** 272 U.S. 306 (1926).
42. **National Lab. R.B. v. Fan Steel Metallurgical Corp.,** 306 U.S. 240 (1939), it was held that protection of Act is denied when violence or destruction of property results from a strike.
43. Section 8(7)(d)(1); Section 2(10) Railway Labour Act.
44. Section 301.
45. Section 8(6)(b).
46. Section 206.
47. Section 201.

—coal, steel, power, electricity, railroad, air transportation and space industries—which are connected with national defence or supply of basic necessities to the public. In the coal and steel industries the right to strike is directly related to the size of stockpile.[48] Likewise a strike is not permitted in aerospace[49] and missiles industry.[50] Government employees are also forbidden[51] to strike by the Taft-Hartley Act. This prohibition extends to employees of a private employer[52] engaged in government work. Apart from these situations the right to strike is till a recognized right of workers forming the part of collective bargaining process.

C. Strike—Position in India

(1) Strikes Legalized

In India unlike U.S.A. the right to strike is not expressly recognized by law. Before 1926 there was no statutory law in India concerning industrial strikes for reasons that such strikes were not common in this country. As the frequency of industrial strikes increased after the first World War the Indian Trade Unions Act, 1926 for the first time indirectly recognized[53] the right to strike by legalizing certain activities

48. Williams, the Steel seizure—A Legal Analysis of a Political Controversy, 2 **J. Pub. L.** 29, 35 (1953).

49. J. Williams, Settlement of Labour Disputes in Industries affected with a National Interest, 49 **American Bar Asso. J.** 862, (1963).

50. W. Willard Wirtz, The Future of Collective **Bargaining in** America, 12 **Indian Worker,** 8 (Feb. 10, 1964).

51. Section 305, see 12 **Lab. L.J.** 1070 (1961) U.S.A.

52. **U.S. v. United Mine Workers' of America,** 330 U.S. 258 (1946).

53. Sections 17 & 18. So was the position in many Asian countries, e.g.

Ceylon: Sections 20 and 21. Trade Union Ordinance No. 14 of 1935 as amended by Act No. XV of 1948, Section 9, Industrial Disputes Ordinance No. 3 of 1931 as amended by Ordinance No. 22 of 1944.

Burma: Sections 23, 24, 25 and 26 Trade Disputes Act, 1950.

Singapore: Section 3, Trade Disputes Ordinance No. 59 of (1941).

Hongkong: Sections 3, 4, 5, Illegal Strikes and Lockouts Ordinance, 1949.

Malaya: Sections 20 and 21 Federated Malaya States Enactment No. 11 of 1940 (Trade Unions Act).

of registered trade unions in furtherance of trade disputes. The Indian Trade Unions Act, therefore, confers the right to strike which otherwise would have been a breach of common law[54] and thus actionable. Today while the right to strike is recognized[55] as a legitimate economic weapon of trade unions its exercise is so circumscribed so as to give to the government freedom to determine its legal or illegal character. It is thus a recognized weapon of the workmen to be resorted to by them for asserting their bargaining power and for backing up their collective demands upon an unwilling employer. During its continuance a strike has, however, an adverse effect upon production and upon the industry. It is, therefore, to be used as a last resort where all other avenues for settlement of industrial disputes, as provided for in the statutory machinery have proved futile. It is, therefore, necessary to discourage its misuse and to control and minimize the baneful consequences of its misuse in respect of the industry as far as possible. One of the methods of preventing such misuse would be to impose appropriate disabilities. The Industrial Disputes Act has to a certain extent proceeded on the lines by drawing a sharp line of demarcation between strikes which are legal and those which are illegal and the circumstances under which a strike is to be considered illegal have been precisely defined therein.

(2) Right to Strike—Not Absolute

Ordinarily it is open to a trade union to go on strike or withhold labour. However in the Constitution of India there is fundamental[56] right to form trade unions and any undue restriction on the right of the employees to form unions is

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54. **Buckingham Carnatic Company's Case** 1920.

55. **Central**: Indian Trade Unions Act, 1926, the Trade Disputes Act, 1929, the Industrial Disputes Act, 1947, the Indian Trade Unions (Amendment) Act, 1947, the Industrial Disputes (Appellate Tribunal) Act, 1950; the Code of Discipline in Industry, 1958 (non-statutory).

States: The Bombay Industrial Relations Act, 1946, the Madhya Pradesh Industrial Relations Act, 1960 and C.P. Berar Industrial Disputes Settlement Act, 1947.

56. **Raja Kulkarni v. State of Bombay,** A.I.R. 1951 Bom. 105.

unconstitutional."[57] In **All India Bank Employees' Association v. Industrial Tribunal** it was contended that right to 'form an union' carries with it as a concomitant right a guarantee that such unions shall achieve the objects for which they are formed. If this concomitant rights were not conceded, the right guaranteed to form unions would be an idle right, an empty shadow lacking all substance. The Supreme Court did not support this argument and observed:

> On the construction of the article, we have reached the conclusion that even a very liberal interpretation of sub-clause (e) of clause (1) of article 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or right to declare lockout may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations.[58]

Likewise, the High Court of Bombay[59] held that the right to go on a strike is of a different character. It is not joint or collective expression of views but is joint or collective action. By its very nature it is fraught with possibilities of leading to violence. Our Constitution is an elaborate one. If the Constitution-makers had intended to confer a fundamental right on the citizens to go on strike, they would have expressly said so. In these circumstances the right to go on a strike is not included in article 19(1)(c). The law which seeks[60] to obtain industrial peace by prohibiting strikes and lockouts cannot be said to be an unreasonable restriction on the right to go on strike even if such right was guaranteed by the Constitution. What the legislature had rendered illegal is to go

57. **Ramkrishniah v. President, District Board, Nellore,** A.I.R. 1952 Mad. 105.

58. (1961-62) 21 F.J.R. 63 at 74 and 75 (S.C.).

59. **Vasudevan v. S. D. Mittal,** A.I.R. 1962 Bom. 52 at 64-65.

60. **Janerdan v. Management H.M. Ltd.,** A.I.R. 1956 Madh. **Bharat** 195.

on a strike during a limited period and without first availing of the machinery of conciliation and arbitration. This is not an abridgment of the fundamental rights.

Thus there is a guaranteed fundamental right to form association or labour unions. But the activities of such associations to achieve their objects may be subjected to reasonable restrictions. Therefore under our Constitution the right to strike is not a fundamental right of the trade unions. Sections 22 and 23 of the Industrial Disputes Act forbid strikes in public utility or other undertakings as well as in the event of a reference of the dispute to adjudication[61] under section 10 of the Industrial Disputes Act; the strikes are also prohibited and such restrictions have been conceded as reasonable[62] one on the right guaranteed by sub-clause (c) of clause (1) of article 19. In other words the right to strike is relative right which can be exercised with due regard to the rights of the others. So neither statutory law nor common law nor Constitution confers an absolute right to strike.

(3) Strikes—Permissibility

As the Industrial Disputes Act now stands strike by itself is not illegal or unlawful. It becomes illegal only if it is in contravention of sections 22, 23 and 24 of the Act. The right to strike, therefore, in India is subjected to procedural requirements of notice or pendency of conciliation or adjudication proceedings or period covered by settlement, award or voluntary arbitration. Strike is permissible provided it is exercised judiciously, peacefully, reasonably and as a last resort within the framework of statutory industrial laws. Such a right to strike does not authorize[63] workers to indulge in acts of vandalism, sabotage, intimidation, obstruction, violence or destruction of life and property. Consequently industrial law grants no immunity for offences committed during the

61. The Industrial Disputes (Amendment) Bill 1963 also seeks to prohibit strikes during arbitration proceedings—**Hindustan Times**, December 3, 1963.

62. **Sree Meenakshi Mills v. State of Madras**, A.I.R. 1951 Mad. 974.

63. **R. S. Ruikar v. Emperor**, A.I.R. 1935 Nag. 149 at 152.

course of strike. Every strike is not illegal[64] and workers enjoy the right to resort to strike whenever they are so pleased in order to express their grievances or to make certain demands. This right cannot in any way be limited by standing orders. Strikes are illegal under Indian law only when penalties have been imposed for them for contravention of the provisions of sections 22, 23 and 24 of the Act. It cannot be said with any justification that constitutional guarantee of freedom of speech would tend to the claim of the trade unions that picketing be included in it.

(4) **Right to Picketing**

As the Constitutional guarantee of the freedom of association does not carry with it the right to strike[65] it may equally be stated that the right to strike in its turn does not legalize picketing and other incidental acts of omission and commission during strike. Unlike U.S.A. peaceful picketing is not a legitimate weapon of workers in India and may come in conflict with the rights enumerated in article 19(1) of the Constitution. The right to picketing, therefore, is subject to the right of persons who are subjected[66] to picketing to carry on their trade or business without obstruction or hindrance In **Damodar Ganesh** v. **State of Bombay**[67]—restriction on peaceful picketing was construed as reasonable in the interest of general public as it sought to interfere with freedom of movement of other citizens. The freedom of speech under the Constitution which includes freedom of press, publication, communication and discussion is not absolute[68] and reasonable restrictions can be imposed by law.[69] So picketing at the place of employment during a strike which is legal as publicizing the grievances of the employees may obstruct the employers and other non-striking employees in the perfor

64. **State of Bihar v. Deodar Jha,** A.I.R. 1958 Pat. 51 at 52.
65. See **supra** note 58.
66. **State v. Mahajani,** 7 D.L.R. 32 (Bom. 1952).
67. A.I.R. 1951 Bom. 459.
68. **A. K. Gopalan v. State of Madras,** 1950 S.C.R. 88, at 253.
69. **Ramjilal v. State of U.P.,** A.I.R. 1957 S.C. 620, at 623.

mance of their duties and may tend to disturb public as a result of conflict between the picketers and non-picketers. Therefore the State can restrict even peaceful picketing by workers if it encroaches upon the fundamental right of the employers to pursue their trade or business or their right of movement[70] due to physical obstruction[71] caused by picketing. In case of an illegal strike the justification of picketing is out of question both in U.S.A.[72] and India.[73] In other words where the law seeks to prohibit[74] strikes for a limited period in the interest of industrial peace and harmony the prohibition of such strikes cannot be said to be an unreasonable restriction on the right to go on a strike if such right was guaranteed. Therefore there has been no abridgment of the right of freedom of expression—including picketing.[75]

(i) **Criminal Law Amendment Act 1932—Picketing**

Sub-section (1) of section 7 of the Criminal Law (Amendment) Act[76] 1932 prohibits certain activities of picketers in furtherance of a trade dispute and makes them punishable even though such picketing may be peaceful. It thus runs:

> Whoever—(a) with the intent to cause any person to abstain from doing or to do any act which such person has a right to do or abstain from doing, obstruct or use violence to or intimidate such person or any member of his family or person in his employ, or loiters it or near a place where such person or member of employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him deprives him or hinders him the use thereof, or (b) loiters or does any similar act at or

70. Article 19(1)(d), Constitution of India.
71. See **supra** note 66.
72. Teller, I **Collective Bargaining**, 344 (1940).
73. See **supra** note 67.
74. See **supra** note 67.
75. Assumed by implications by the author.
76. For further reading see **Damodar Ganesh v. State**, 1951 Bom. 459; **Inre**: Swami Arunagirinatha, 1939, Mad. 21.

> near the place where a person carries on business, in such a way or with intent that any person may thereby be deterred from entering or approaching or dealing at such place shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

The above statute prohibits a number of activities of the picketers even in the course of peaceful picketing. It makes an offence to loiter about near and about the place of employment for publicizing the facts of or disputes and hence to be in conflict with article 19(1)(a) of the Constitution. In **Damodar Ganesh v. State**[77] wherein peaceful picketing in a mill area during a period of strike was prohibited under section 7(a) of the Criminal Law (Amendment) Act, 1932 was held to be valid and not ultra vires of article 19(1)(c) of the Constitution. In this connection Rajadhyaksha and Vyas J.J. observed that:

> The conflict is between the only way in which one section of the public can exercise its right of pursuing its occupation and one of the numerous ways in which the other section of the public can exercise its right of freedom of movement, but which interferes or is likely to interfere even in a small number of cases with the former. In such a case, in our opinion, the latter must necessarily give way to the former. A restriction which fractionally interferes with the right of freedom of movement of some section of the public in the interest of the only way in which another section of the public can exercise its right of pursuing its occupation, cannot be said to be unreasonable.....In conjunction with the right of freedom of movement given to the citizens by clauses (a) and (d) of article 19(1) of the Constitution, it is also necessary to consider the right to carry on any occupation, trade or business which is also given by the Constitution to all the citizens by clause (g) of that article. For just

77. See supra note 67.

> as a person has a right of freedom of movement and freedom of speech in the exercise of which he wants to carry on a peaceful picketing at the gate of the mill, the employees who wish to go to the mill and pursue their occupations have also the right to move freely and to carry on their occupation, trade or business.[78]

The constitutionality of section 7 was again challenged in **Vimal Kishore Mehrotra** v. **The State of U.P.**[79] when a general secretary of the Suti Mill Mazdoor Sabha—the petitioner—was arrested thereunder during the course of a strike of workers at a textile mill of Kanpur in May 1955. It was proved that while Janerdan Pande and other loyal workers were going to J.K. Jute Mill for work the petitioner said to labourers who were on strike: "**Note these men. They are all rebels. They will not listen to verbal persuasion, until their hands and feet are broken.**" In other words petitioner incited his friends to violence. It was held that:

> Section 7 of the Criminal Law (Amendment) Act prohibits several acts. It may be that prohibition of some of these acts is unconstitutional. But that does not follow that prohibition of other acts is also unconstitutional. It is possible to separate the valid part from the invalid parts. So assuming (without deciding) that certain parts of sub-section (1) of section 7 of the Act are ultra vires of the Constitution, the entire section 7 cannot be condemned on that ground.

(ii) Picketing—if Illegal

It may be submitted that picketing per se is not unconstitutional or illegal under section 7 of the Criminal Law (Amendment) Act, 1932. It merely prohibits[80] acts of intimidation, coercion, violence, incitement or abatement of an offence in the conduct of a strike.[81] The statute does permit

78. Id. per Rajadhyaksha J. at 634 and 464.
79. A.I.R. 1956 All. 56.
80. See **supra** note 63.
81. **Standard Vacuum Oil Co. v. Ganaseelan,** (1954) 2 L.L.J. 656.

picketing as such without intimidation, coercion or molestation and such restrictions can legitimately be said to be protected by the Constitution First (Amendment) Act, 1951. Since no picketing is possible without the use of coercion or intimidation as the law stands now the possibility of picketing is remote without contravening the provisions[82] of law. The Supreme Court of India in future may strike a balance[83] in this connection, viz., the liberty of the striking unions to resort to peaceful picketing and the norms of social control. Right of peaceful demonstration within limits may be conceded not on the basis of the right to strike but as conducive to freedom of association.

(5) Rationale of Restrictions on Strikes in Public Utilities

The term public utility service is commonly used to designate those industries and services which are vital to the welfare of the general community. For instance supply of water, gas, electricity, telephone, mail, railway and motor transportation, food stuffs etc. may be such services or industries. The law, therefore, in India makes it a penal offence for workers employed in public utility services to go on a strike without a previous notice. The rationale behind such law is that persons whose work is vital to the welfare of the community generally should not be entitled to go on a strike before sufficient time had been given to examine the merits of their grievances and to explore the possibilities of arriving at a settlement. A similar observation has been made by the Kansas Court of U.S.A. that:

> Heretofore the industrial relationship has been tacitly regarded as existing between two members—industrial manager and industrial worker. The have joined whole-heartedly in excluding others. The legislature proceeded on the theory that there is a third member

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82. Art. 19(2), Constitution of India, Sections 17 and 18, Indian Trade Unions Act, 1926 and Section 7 Criminal Law Amendment Act, 1932.

83. The observation is made on the analogy of **Kameshwar Prasad** v. **State of Bihar**, A.I.R. 1952 S.C. 1166; **Ramrao Laxmikant Shirkhedkar** v. **A.G. Maharastre**, (1963) 1 L.L.J. 428 at 447.

> of those industrial relationships which have to do with production, preparation and distribution of the necessaries of life—the public....Whenever the dissensions of the two become flagrant, the third member may see to it the business does not stop.[84]

(i) **Public Utility Service—Industrial Disputes Act**

Section 2(a) of the Industrial Disputes Act, 1947, which has been substituted for section 2(g) of the old Trade Disputes Act, 1929, enumerates:

> (i) any railway service; (ii) any section of industrial establishment on the working of which the safety of the establishment of the workmen employed therein depends; (iii) any postal, telegraph or telephone service; (iv) any industry which supplies power, light or water to the public; (v) any system of public conservancy or sanitation and (vi) any industry as specified in Schedule III which if the appropriate government may if satisfied that public emergency or public interest so requires by a notification declare to be public utility service for the purpose of this Act. The industries specified in Schedule III are transport (other than railway) for the carriage of passengers or goods by land, water or air, banking, cement, cotton textiles, foodstuffs, iron and steel, defence establishments, hospitals and dispensaries and fire-brigade service.

The list given in the above section is exhaustive and no other service which does not fall within any one of the sub-clause of (1) to (vi) of section 2(n) can be declared a public utility service. Again, the period of declaring such industries as specified in sub-clause (vi) as public utility service cannot exceed six months. But power is given to the government to extend by a like notification from time to time by any period not more than six months if it is of the opinion that public emergency or public interest requires such extension.

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84. **State v. Howat, 109 Kans. 376 (U.S.A.)**

(a) **Strikes Interdicted**

Section 22 of the Industrial Disputes Act, 1947, sets out the circumstances when a strike is deemed to be illegal. In other words certain conditions have to be fulfilled before resorting to a strike (or lockout) in a public utility undertaking. These conditions are: (1) notice of strike to the employer within six weeks before striking, or (2) no strike within 14 days of giving such notice, or (3) no strike before the expiry of the date specified in the notice, or (4) no strike during pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings. No notice, however, is necessary for a strike if it is already in existence. A strike, therefore, shall be illegal if it is commenced or declared in contravention of the aforesaid conditions. The avowed object of section[85] 32 is to interdict strikes in the interest of general public. The employee or worker is not restrained from going on a strike by the section but it is required of him to fulfil certain conditions as enumerated in four different clauses. In other words, there is no strike ban but only certain procedural mandatory requirements are laid down which the employees are to abide for the compliance of statutory conditions.

(b) **Strikes in Public Utility Service—if Breach of Contract**

It is clear that employees in a public utility service cannot go on a strike in breach of contract, without complying certain formalities. The question arises whether such strike results in a breach of contract between the employer and the employee? It is generally agreed[86] that industrial matters are not entirely governed by ordinary law of contract of master and servant. The expression[87] 'breach of contract' does not mean breach of a condition of service, and it is not incumbent on the prosecution to produce and prove the standing rules in order to establish that the employees were guilty of breaking the contract.

85. See supra note 65.

86. **Shri Meenakshi Mills** v. **State of Madras,** A.I.R. 1951 Mad. 974.

87. See supra note 84.

However, the phrase 'breach of contract' as used in sections 22 and 23 means[88] breach of contract of service or employment and not of a special contract not to go on strike. While there must necessarily be a contract of service, express or implied between a workman and his employer, a special contract not to go on a strike does not constitute an essential part of the contract between a workman and his employer. Besides if the expression 'breach of contract' in sections 22 and 23 really referred to a contract not to strike, the prohibition in these two sections would be almost meaningless. For there could not possibly be any strike in breach of contract where there is no such special contract at all.

(c) **Notice—Requirements**

The requirement of notice of strike by employees in the public utility service to the employer within specified period of six weeks is one of the prerequisites for a strike to be valid under section 22(1)(a) of the Industrial Disputes Act. The notice so required to be given by the employees must conform to **Form N** appended to the Industrial Disputes (Central) Rules,[89] 1957. Where notice[90] of public utility service was not in the form prescribed for the same inasmuch as it did not mention the date of the proposed strike, the notice must be ineffective and the strike launched in pursuance to such notice consequently would be illegal. If the notice[91] of the strike is not legal because it does not conform to the requirements of section 22 government have no power to make it legal.

(d) **Time Limitation Requirement**

The employees in the public utility service cannot go on a strike within fourteen days of six week notice period. That is to say, they can go on strike only after the expiry of

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88. **Ram Naresh v. State,** A.I.R. 1958 Cal. 445 at 447.

89. Rule 73.

90. **Employees of Dewan Bahadur Ramgopal Mills Ltd. v. Dewan Bahadur Ramgopal Mills Ltd.,** (1958) 2 L.L.J. 115.

91. **Papanasam Labour Union v. State of Madras,** (1959-60) 16 F.J.R. 80 at 84.

fourteen days, viz., within the period of twentyeight days only. Where fourteen days notice[92] was not given to the employer by the union and there is no controversy about the non-fulfilment of the four conditions as in the four clauses following sub-section (1) a strike of the employees or workers will automatically become as one under section 26 of the Act. The fourteen days notice as contemplated by section 22(1)(b) of the Act is to be counted[93] from the date of the receipt of the notice by the employer.

Strike in public utility service cannot be legal also if it takes[94] place before the expiry of the date of strike specified in any such notice. So it is necessary that the notice[95] must specify a date from which strike would commence. Thus a strike[96] which was to have commenced after the date fixed in the notice, having begun on the date of the notice was illegal.

(e) **Strikes—Pendency of Conciliation Proceedings**

Section 22(1)(b) prohibits strikes during the pendency of conciliation proceedings before a conciliation officer and seven days[97] after the conclusion[98] of such proceedings. The object of this clause is to preserve industrial peace during the settlement of the industrial dispute by amicable means through conciliation. The effect of section 12(6) which deals with submission of conciliation report within 14 days is not that, as soon as 14 days expire, the conciliation officer virtually becomes **functus officio**[99] and the proceedings which were validly pending before him till then become wholly invalid

92. See supra note 84.

93. **Modi Industries v. Their Employees,** 1949 L.L.J. 822.

94. Section 22 (1) (c) Industrial Disputes Act.

95. See supra note 92.

96. **Indian Leaf Tobacco Development Co, Ltd. v. Their Workmen,** 1950 L.L.J. 305 (Reprint); **Colliery Mazdoor Congress v. New Beerbhum Coal Co.,** 1952 L.A.C. 219.

97. **Indian General Navigation and Railway Co. Ltd. v. Their Workmen,** (1959-60) 17 F.J.R. 241 at 246.

98. **Kirkee Cantonment Board v. Kirkee Cantonment Board Kamgar Union,** (1951) 2 L.L.J. 621; **Contra Chunnilal Mehta and Co. Ltd. v. Workers Employed in it,** (1950) 1 C.R. 1191.

99. **State v. Andheri-Marol Kurla Bus Service,** A.I.R. 1955 Bom. 324.

thereafter. In considering the question as to the effect of the provisions of section 12(6), it would be relevant to bear in mind the provisions of section 20 which gives artificial denotation to the expressions 'commencement' and 'conclusion' of the proceedings which is to be found in section 20(2) is applicable to the conciliation proceedings pending before the conciliation officer. That provides an additional ground in favour of the construction that the proceedings beyond 14 days do not become invalid. The pendency of these proceedings continue until the report is received in fact by the appropriate government. Therefore unilateral change by the employer when conciliation proceedings are pending beyond 14 days is illegal and is guilty of an offence under section 31(1) and 33 of the Industrial Disputes Act. Similarly a strike commenced during the pendency of conciliation proceedings contravenes[100] the provisions of the clause (d) of section 22(1) of the Act and is illegal. The Supreme Court also observed:

> The Act requires that conciliation officer must submit his report within 14 days from the commencement of conciliation proceedings and then on receipt of the report by the appropriate government the conciliation proceedings are to be deemed to have concluded. Although factually the conciliation proceedings terminate when a settlement is arrived at before the conciliation officer or when it is found that no settlement can be arrived at, the Act by a legal fiction prolongs the conciliation proceedings until the actual receipt of the report by the appropriate government and goes on to provide that appropriate government must have seven days' time to consider what further steps it would take under the Act. Up to the expiry of this period of seven days the Act permits no strike but after that period is over the employees are left free to resort to collective action by way of strike. Indeed, it is on the basis of these provisions that date of strike has to be carefully selected and specified in the notice of strike to be

100. **Colliery Mazdoor Congress v. New Beerbhum Coal Co.,** (1952) I.A.C. 219; **C.B. Sarma v. State,** (1961) 1 Cr. L.J. 810 (Assam).

given by the employees under section 22(1) of the Act.[101]

The failure to send report to the government in contravention of section 12(6) may be a breach of duty on the part of the conciliation officer[102] but does not affect the legality of conciliation proceedings which terminate in a settlement as provided by section 20(2) of the Act. Conversely unless a notice of strike in a public utility service is given under section 22 of the Act it is not obligatory on the conciliation officer to hold conciliation proceedings. It is discretionary[103] with him. Section 22(3) provides that no notice is required for a strike if a strike is already in existence in a public utility concern. The employer, however, must send information of such strike on the day on which it is declared to such authorities as are specified[104] by the government.

(iii) Illegal Strikes in Public Utility Service—if Justified

A strike[105] in respect of a public utility service, which is clearly illegal, cannot at the same time be characterized as 'perfectly justified.' These two conclusions cannot in law coexist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between the illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Therefore, the tendency to condone what has been declared illegal by statute must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers.

101. **Works of the Industry Colliery v. The Management of the Industry Colliery,** (1953) 16 S.C.J. 109 at 113-14.

102. **State of Bihar v. Kripa Shankar Jaiswal,** A.I.R. 1961 S.C. 304.

103. **Tata Collieries Labour Association v. The Management Digwadih Colliery,** 1953 L.A.C. 638.

104. Rule 72, Industrial Disputes (Central) Rules, 1957.

105. **India General Navigation and Railway Co. Ltd. v. Their Workmen,** A.I.R. 1960 S.C. 219.

(6) General Prohibition of Strikes

Section 23 of the Industrial Disputes Act prohibits strikes both in ordinary and public utility service during certain periods. It says:

> No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout—(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings, (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings, or (c) during any period in which settlement or award is in operation in respect of any of the matters covered by the settlement or award.

In the interest of industrial harmony it is necessary that proceedings before Conciliation Board, Labour Court or National Tribunal should be conducted in an atmosphere of understanding, co-operation and peace. For this purpose strikes (lockouts also) during the pendency of proceedings[106] and after the conclusion of conciliation and adjudication proceedings are prohibited. Strikes are prohibited in respect of those matters covered by the settlement or award for the period during which such settlement or award is in operation.

(i) Pendency of Proceedings

The scheme of clauses (a) and (b) of section 23 prohibits all strikes during the pendency of conciliation and adjudication proceedings with a view to maintain calm atmosphere essential for the adjudication of industrial disputes. Clauses (a) and (b) prohibit workmen[107] striking during the pendency of conciliation proceedings and seven days after the conclusion of such proceedings and during the pendency of proceed-

106. There was no such provision in the Trade Disputes Act, 1929.

107. **Provat Kumar Kar v. William Trevelyan Curties,** A.I.R. 1950 Cal. 116, at 118; **State of Bihar v. Deodar Jha,** A.I.R. 1958 Pat-51, at 67.

ings before a tribunal and two months after the conclusion of such proceedings. There is nothing in these clauses from which the court can infer that a strike is permissible where subject-matter of the dispute is different from the subject-matter of the dispute pending before a tribunal or before a conciliation authority. The words of clauses (a) and (b) cover all strikes (and lockouts) relating to the industrial establishment which originally gave rise to the dispute which has been referred to a tribunal or to the conciliation authorities. The Supreme Court has, however, observed[108] that a pen down strike which is found to be illegal because it was commenced in contravention of section 23(b), mere participation in an illegal strike cannot necessarily involve the rejection of the strikers' claim for reinstatement. Likewise the prohibition against strike in a concern as to which reference has been made is absolute and is not qualified by any circumstances like the employees having other grievances which have not been referred to adjudication. The strike, therefore, with reference to matters[109] not referred to adjudication is illegal under section 23 of the Act.

(ii) Matters Covered by Settlement or Award

Section 23(c) prohibits strikes by workmen in respect of any matters covered by the settlement or award. It was held[110] that the words "in respect of any matters covered by the settlement or award" have been deliberately inserted in clause (c) of section 23 to limit its operation. During the period in which a settlement or award is in operation the workmen cannot strike (or the employers cannot lockout)[111] in respect of any matters covered by the award or settlement. Strikes (and lockouts) in respect of other matters are permissible. Clause (c) therefore, shows a clear distinction between strikes (and lockouts) connected with matters not cover-

108. **Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation,** A.I.R. 1960 S.C. 160, at 178.

109. **Rama Dhondadu Lambade and Others v. Bombay Gas Co** Ltd., (1953) 1 L.L.J. 750.

110. See supra note 105.

111. **Workmen of Sri Hanuman Jute Mills v. Sri Hanuman Jute Mills,** (1953-54) 5 F.J.R. 546, at 547.

ed by any award or settlement. But no such distinction is made in clauses (a) and (b) of section 23.

(iii) Matters Not Covered by Settlement or Award

However strikes in respect of other matters not covered by the settlement or award which are not in contravention of section 23(c) of the Act are not illegal. Thus where the union[112] gave an undertaking as a part of settlement before a conciliation officer that there would not be any strike till the next crushing season. During the period when the settlement was in force workmen went on a strike as a measure of protest against an assault of a workman by an officer of the company. It was held that the strike was not illegal within the meaning of section 23(c) of the Act as it was not in contravention of the terms of settlement. It could never be in contemplation of the parties that there would be such a dispute over an alleged assault of the secretary of the union by the chief engineer and the management had, therefore, no power to dismiss the concerned workmen for participating in the strike under the standing orders. Similarly where[113] the award of the industrial tribunal was modified by Labour Appellate Tribunal latter granting something in excess of the award of the industrial tribunal and the award of the Labour Appellate Tribunal having been stayed by the Supreme Court workers went on a strike demanding the implementation of the decision of the Labour Appellate Tribunal. It was held since, however, implementation of decision of Labour Appellate Tribunal was stayed by the Supreme Court, modified award of industrial tribunal could not be said to be in operation during period of strike. Hence strike resorted to by the workmen for grant of above demands could not be said to have been resorted during the period in which award with respect to those matters was in operation and as such was not illegal under section 23(c) read with section 24 of the Industrial Disputes Act.

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112. **Jeypore Sugar Company Ltd. v. Their Workmen (1955) 2 L.L.J. 744.**

113. **The Management of New Jamehari Khas Colliery v. Chairman, Central Government Industrial Tribunal,** A.I.R. 1960 Pat. 542, at 545.

The Industrial Disputes (Amendment) Act, 1964 also seeks to prohibit strikes (and lockouts) during the arbitration proceedings.[114] The Act provides for the appointment of umpires in cases of difference of opinion between an even number of arbitrators.

(7) Illegal Strikes

Section 24(1) enumerates the circumstances when a strike (lockout also) shall be illegal if—

(1) (i) it is commenced or declared in contravention of sections 22 or 23; or (ii) it is continued in contravention of an order made under sub-section (3) of section 10; [illegible] look out the next page

(2) where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, Labour Court, Tribunal or National Tribunal, the continuance of such strike (or lockout) shall not be deemed to be illegal, provided that such strike or lockout was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10.

(3) a lockout declared in consequence of an illegal strike and a strike declared in consequence of an illegal lockout shall not be deemed to be illegal.

Clause (1) of section 24(1) applies to persons employed in public utility service and prohibits their strikes in contravention[115] of section 22. It also prohibits strikes of all employed persons in contravention of section 23 during the pendency of proceedings before a board, labour court or tribunal or during the operation of an award or settlement. Subclause (ii) of section 24(1) provides that continuance of

114. Sections 23, 24 of Act 36 of 1964.

115. **Sirka Colliery Ltd. v. South Karanpura Mines Workers' Union,** (1951-52) 3 F.J.R. 210; **Mahalaxmi Cotton Mills Workers' Union,** (1952-53) 4 F.J.R. 248 at 257; **Sridharan Motor Service v. Industrial Tribunal,** (1959) 1 L.L.J. 380 at 383.

strike contrary to section 10(3) of the Industrial Disputes Act is also illegal.[116] Section 10(3) confers a power upon the appropriate government to make an order to prohibit[117] the continuance of a strike (or lockout) in connection with such disputes as may be in existence on the date of the reference. The strike (or lockout) continued in contravention of such an order shall be illegal.[118] But in two cases strikes are not illegal, namely, a strike (or lockout) in pursuance of an industrial dispute not in contravention of any provision of the Act and not prohibited by section 10(3) of the Act and a strike declared in consequence of an illegal lockout.[119]

(i) Liability

If the workers resort to strike in contravention of sections 22, 23 and 24, resulting in loss to the employer, the question arises whether in such a case has the employer rights to maintain civil action for damages against the employees participating in an illegal strike within the meaning of section 24(1) of the Industrial Disputes Act. To this the answer has been in the negative. It has been observed that:

> Upon the consideration of the various provisions of the Act it is manifest that overriding purpose of the Act is the benefit of the community and not the benefit of the employees or employers. It is true that section 24 imposes a statutory duty on the employees not to commence or declare an illegal strike. But it is manifest that if there is a breach of this statutory

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116. **Workmen of Swadeshi Industries Ltd. v. Swadeshi Industries Ltd.,** (1955) 2 L.L.J. 404.

117. **Carlasbad Mineral Water Mfg. Co. Ltd. v. P.K. Sarkar,** A.I.R. 1956 Cal. 6; **Fire-Bricks and Potteries Ltd. v. Fire Bricks and Potteries Workers' Union,** A.I.R. 1957 Mys. 7; **Bharat Glass Works Pvt. Ltd. v. State of West Bengal,** A.I.R. 1957 Cal. 347; **Sri Sankara Allan Ltd. v. State of T.C.** A.I.R. 1953 T.C. 622; **P. K. Pillai v. Burmah Shell Oil Storage & Distributing Co.,** A.I.R. 1956 Kutch 9.

118. **Maharaja Krishangarh Mills Ltd. v. State of Rajasthan,** A.I.R. 1963 Raj. 188, at 191.

119. **Feroz Din v. State of West Bengal,** (1960) 1 L.L.J. 241, at 249.

duty on the part of the employees, the employer has no right of civil action against the employees in default apart from statutory penalty provided by section 26(1) Similarly, if the employer declares an illegal lockout, there is a breach of the statutory obligation created by section 24, but the employees have no right of civil action. The exclusive remedy open to them is criminal prosecution under section 26(2) of the Act. For these reasons the duties imposed by sections 22, 23 and 24 of the Act are statutory duties owed to the public which can be solely enforced by criminal prosecution under section 26(1) of the Act.[120]

(ii) Penalties

Section 26(1) provides that if any workman who commences, continues, or otherwise acts in furtherance of strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees or with both. Therefore, for attracting the above statutory liability the prosecution has to prove that workmen commenced or continued or acted in furtherance of a strike; that the said strike was illegal in contravention of the various provisions of the Act. For the purpose of considering the question whether section 26 is applicable[121] or not legality or illegality of the strike will be taken into account. If it is illegal strike the penalty under the section can be imposed. An illegal lockout[122] by the employer is punishable with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees, or with both. It has been observed that penalties under section 26 are different from penalties[123] mentioned in section 31 for the contravention of section 33. The penalties

120. **Rohtas Industries Staff Union v. State of Bihar,** A.I.R. 1963 Pat. 170, at 176-77. **Contra: Rookes v. Bernard,** (1964) 1 All E.R. 367 (British).

121. **Jute Workers' Federation v. Clive Jute Mills,** (1951) 2 L.L.J. 344.

122. Section 26(2).

123. **Sun Rolling Mills v. Their Workmen,** (1949) L.L.J. 382.

for illegal strikes and lockouts are provided by section 26 read with section 24. Section 33 lays down that during the pendency of proceedings the conditions of service in respect of an industrial dispute will remain unchanged. Therefore contravention of section 33 will not bring the employer[124] under the mischief of section 26 read with sections 23 and 24.

(a) Penalty for Instigation of Illegal Strikes

Any person who instigates[125] or incites others to take part in, or otherwise acts in furtherance of a strike or lockout which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to one thousand rupees or with both. It, therefore, provides penalty for instigation of and incitement of any strike or lockout which is illegal under the Act and the penalty imposed is not derogatory to the fundamental rights under the Constitution. The Supreme Court observed:

> The Industrial Disputes (Appellate Tribunal) Act, 1950 imposed no restriction either upon the freedom of speech and expression of the textile workers or their right to form associations or unions. Hence section 27 of the Act is not void as being opposed to the fundamental rights under article 19(1)(a) and (c) of the Constitution of India. The provisions of section 27 of the Industrial Disputes Act are the same as section 27 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (now repealed).[126]

It has, therefore, been held[127] that there can be an incitement to a strike even on Sunday if workers who are willing to work are incited to do so. Conviction[128] has been justified under

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124. **Ganges Jute Mfg. Co. Ltd. v. Their Employees,** 1950 L.L.J. 19.

125. Section 27, Industrial Disputes Act.

126. **Raja Kulkarni v. State of Bombay,** A.I.R. 1954 S.C. 73.

127. **Ram Naresh Kumar v. The State,** (1958) 59 Cr. L. J. 1018.

128. **C. B. Sharma v. The State,** (1961) 1 Cr. L.J. 810.

section 27 for instigating a strike in a public utility service. As to the meaning of words 'instigates' and 'incites' it has been observed[129] that those terms should be read to signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement under section 27 of the Act. The words seems to convey the meaning to goad or urge forward or provoke or encourage the doing of an act. The words 'instigates and incites' appear to be synonymous and there must be something tangible in evidence to show that the persons responsible for such action were deliberately trying to stir up other persons to bring about a certain object.

(b) Penalty for Aid to Illegal Strikes

Section 25 of the Industrial Disputes Act prohibits financial aid to illegal strike and section 28 provides penalty punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.

II. Right to Strike of Civil Servants in India

All the persons in the civil services of the Government of India and State governments or holding civil posts[130] under the said governments and paid out of the consolidated funds[131] may be said to be employees of the union or state governments. Those in the service of public corporations[132] or other semi-autonomous[133] bodies are excluded from this

129. **State of Bihar** v. **Ranen Nath**, A.I.R. Pat. 259.

130. **Subodh Ranjan** v. **Callaghan**, A.I.R. 1956 Cal. 532; **Venkata Rao** v. **Secretary of State**, A.I.R. 1937 P.C. 31; **Atindra Nath Mukherjee** v. **G. F. Gillot**, A.I.R. 1955 Cal. 543.

131. Articles 309-311, Constitution of India.

132. **Subodh Ranjan** v. **Sindri Fertilizers and Chemicals Co. Ltd.**, A.I.R. 1957 Pat. 10; **Nagendra Kumar** v. **Commissioner of Government of India, Calcutta**, A.I.R. 1955 Cal. 56; **Bibhuti Bhushan Ghosh** v. **Damodar Valley Corporation**, A.I.R. 1953 Cal. 581; **Tejbhari Chowdhari** v. **Rajpura Development Board**, A.I.R. 1953 Pepsu 99; **R. Srinivasan** v. **President, District Board Coimbatore**, A.I.R. 1958; J. & K. 6; **Mohd. Ahmed** v. **Chairman, Improvement Trust**, A.I.R. 1958 All. 353.

133. **Rebecca Chanda Pillai** v. **State of Kerala**, (1963) 1 L.L.J. 362; **Era Ghosh** v. **State of West Bengal**, (1963) 1 L.L.J. 138; **Barada Kanta** v. **State of West Bengal**, A.I.R. 1963 Cal. 161.

category.

In short the term 'civil servant' is of wide connotation covering all persons employed by the government for civil and non-industrial administration or non-industrial activities.

A. Fundamental Rights And Government Employees' (Conduct) Rules

One of the important traditional characteristic features of the government employees is their neutrality in their relations with the general public. In the words of Masterman Committee[134] which was appointed to review the restrictions laid down by clause IV of the British Trade Disputes and Trade Unions Act,[135] 1927 on the political activities on the civil servants:

> The characteristic which has long been in the British administrator and extolled as a special virtue is his impartiality, and, in his public capacity, a mind intinged by political pre-possession.

The law imposes severe restrictions on manifold activities of government employees. The Constitution of India authorizes[136] the appropriate legislatures to regulate the conditions of persons appointed in public services and posts connected with the affairs of the Union and of the States. Article 309 provides:

> Subject to the provisions of this Constitution, Act of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the Union or of any State.
>
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the

134. 2 **Indian Journal of Public Administration** 5 (1958).

135. Clause IV forbade civil servants from becoming member of organizations whose primary object is to influence or affect the remuneration and conditions of employment of their members and which had association with any political party or organization.

136. Article 309.

> Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate legislature under this Article, and any rules so made shall have affect subject to the provisions of any such Act.

The Constitution also requires that these restrictions[137] be 'reasonable' and applied 'in the interest of the State.' Obviously the interest of the State demands from public employees honesty, impartiality, integrity, efficiency, discipline and like such qualities with perfect neutrality and anonymity in public life. It is, therefore, expedient in public interest that state should, without depriving public servants of their fundamental rights altogether, regulate their conduct. The Government of India has defined its relationship with its employees:

> It is necessary to emphasize that relationship between the government and civil services rests on contractual basis. In some cases the contract is evidenced by a formal document executed, there is nevertheless a contract implied by conduct of parties (see **Gould v. Stewart,** 1896 A.C. 576 where such relationship is referred to as a contract of service.) The provisions of the Constitution and the various Rules (and residuary powers of the Government to alter those rules) together comprise the terms and conditions of that contract of service, and define the rights, duties and obligations of the government on the one hand and the civil servants on the other. A person who voluntarily enters government service, therefore, accepts these rules in his own interest. The Government Servants Conduct Rules, moreover, have reference exhaustively to the duration of this contract. Any breach of these

137. Article 19, Clause (2).

rules is punishable, at worst by his removal from service.[138]

The imposition of these restrictions upon the conduct of civil servants is not, as a matter of fact, an abrogation of their fundamental rights because the said Memorandum explains:

> the restrictions imposed by the rules are not in truth and substance imposed upon externally, but he accepts and abides by them voluntarily in his own interest. The operation of these rules, therefore, cannot be said to be an invasion of any of the fundamental rights. If the civil servant does not exercise these fundamental rights to the fullest, he does so merely because he considers it in his interest not to do so. But it is open to him at any time to exercise his fundamental right by resigning from civil service. He has no fundamental right to insist that he should be retained in government service and that he should have the benefit of all the rights and privileges of the contract of service, if on his own part, he does not abide by his own obligations and duties from that very contract.[139]

In the exercise of powers conferred by the proviso to article 309 the President issued the Central Civil Services (Conduct) Rules, 1955, affecting the fundamental rights to persons employed in government service. For example Rule 4-A[140] of the Central Service (Conduct) Rules, 1955 says:

> No government servant shall participate in any demonstration or resort to any strike in connection with any matter pertaining to his condition of service.

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138. M.H.A. Memorandum No. 141/51-Est., dated 11-8-1952.

139. **Id.** See **Sarafatulla v. Suraj Kumar,** A.I.R. 1955 Cal. 382.

140. In Commonwealth of Australia, Section 26 of the Public Servant Act, 1922 officers taking part in a strike against the Government are liable to summary dismissal. The Preamble of the French Constitution of 1946 although recognizes the rights to strike subject to laws which regulate it. Parliamentary debates, however, show that civil servants are exempted from the application of this constitutional guarantee of the right to strike—Mankiewkj, The Right to Strikes of Civil Servants, 4 **American Journal of Comparative Law** 89 (1955).

Unlike the industrial employees of the public and private sectors, the government employees whether of the Union or the States[141] are not free to participate in any demonstration or resort to strike for ameliorating their conditions of service. For under article 310 of the Constitution the tenure of office of the civil servant is during the pleasure[142] of the Head of the Union or the State, as the case may be, and article 311 provides for statutory safeguards,[143] against certain penalties, such as dismissal, removal or reduction in rank, etc. Consequently the concept of collective bargaining[144] in its entirety cannot be applied to public servants. The question, therefore, arises as to whether Rule 4-A is unreasonable restriction violative of fundamental rights guaranteed to citizens under article 19(i)(a), (b) and (c) of the Constitution. This is because article 33 provides an exception to fundamental rights which would not extend to the armed forces and to ordinary police charged with the maintenance of 'public order,'[145] only and not the public employees which derive benefits of the fundamental rights like ordinary citizens.

(1) Constitutional Validity of Rule 4-A

(i) Right to Demonstration

The constitutional validity of Rule 4-A did not go unchallenged.[146] Rule 4-A prohibited two types of activities of public servants, namely, the holding of demonstration and resort to strike. With regard to first type of activity—the

141. **Megraj v. State of Rajasthan,** A.I.R. 1956 Raj. 28.

142. **Parshottam Lal Dhingra v. Union of India,** A.I.R. 1958 S.C. 36; **State of Bihar v. Abdul Majid;** A.I.R. 1954 S.C. 245.

143. **Mahesh Pd. v. State of U.P.,** A.I.R. 1955 S.C. 70; **Parshottam Lal Dhingra v. Union of India,** A.I.R. 1958 S.C. 36; **Gopi Kishore Pd. v. State of Bihar,** A.I.R. 1955 Pat. 372; **A.R.S. Chaudhary v. Union of India,** A.I.R. 1958 S C. 300; **Karam Chand v. State of Punjab** A.I.R. 1959 Pan. 401; **State v. Gajenan Mahadeva,** A.I.R. 1954 Bom. 351.

144. **Tamilnad Non-Gazetted Government Officers' Union v. Registrar of Trade Unions, Madras,** (1962-63) 22 F.J.R. 1 at 11.

145. **Chaterjee v. Sub-Area Commander,** A.I.R. 1951 Mad. 777.

146. **Kameshwar Pd. v. State of Bihar,** (1962-63) 22 F.J.R. 50 (S.C).

right to demonstration—the question whether it is covered by either or with both of the two freedoms guaranteed by articles 19(1)(a) and 19(i)(b) the Supreme Court observed:

> A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of a group—which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by article 19(i)(a) and 19(i)(b). It is needless to add that from the very nature of things a demonstration may take various forms. It may be noisy and disorderly; for instance stone throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within arrticle 19(i)(a) and (b). It can equally be peaceful and orderly, such as happens when the members of the group merely wear some badge drawing attention to their grievances. A demonstration such as is prohibited by the rule may be of the most innocent type—peaceful, orderly such as the mere wearing of a badge by a government servant or even by a silent assembly say outside office hours—demonstration which could in no sense be engaged to involve any breach of tranquillity, or of a type involving incitement to or capable of leading to disorder. If the Rule had confined itself to demonstration then the validity of that rule could have been sustained but what the rule does is the imposition of a blanket-ban on all demonstrations of whatever type—innocent as well as otherwise—and, in consequence, its validity cannot be upheld.[147]

(ii) The Right to Strike

With regard to second type of activity, namely, the right to resort to strike of government servants, the Supreme Court held that this part of the rule cannot be struck down for the reason that the right to form association[148] guaranteed by arti-

147. **Id.** at 58.

148. See **supra** note 58.

cle 19(i)(c) does not imply the right to resort to strike. In other words rule 4-A in the form in which it now stands prohibiting 'any form of demonstration' is violative of government servants' rights under article 19(i)(a), (b) and should, therefore, be struck down. The rule insofar as it prohibits a strike cannot be struck and therefore the rule is not violative of article 19(a) or (b) of the Constitution. Where the charge against a government servant[149] is not that he participated in any strike but in various demonstrations in connection with strike the Supreme Court held it cannot be said that he took part in the strike as such and so the charge cannot be construed to mean that his conduct amounted to a contravention of the rule which prohibits strike. Again the mere passing of a resolution of a strike[150] in a properly constituted union cannot amount to a breach of disciplinary rule. If in pursuance of such a resolution the members in fact resort to a strike, the question stands entirely on a different footing.

B. Exemption from Rule 4-A

Rule 4-A of the Central Civil Service (Conduct) Rules, 1955 as originally framed was applicable to all servants of the government whether industrial or non-industrial. But by subsequent amendment effected in 1959 a second proviso was added to Rule I which exempted certain categories of employees of government who are not subject to the prohibition of Rule 4-A. This amendment in Central Civil Service (Conduct) Rules was effected[151] as a result of the recommendation of Second Pay Commission.

The Commission was of the view that public servants should not resort to strike or threaten to do so. Public servants entrusted with the responsibility for operating services essential to the community should not seek to disorganize or interrupt these services in order to protect their interest.

149. **O. K. Ghosh v. E.X. Joseph**, A.I.R. 1963 S.C. 812; **V.S. Menon v. Union of India**, A.I.R. 1963 S.C. 1160.

150. **Banchey Lal v. State of U.P.**, A.I.R. 1959 All. 614.

151. **Report of the Commission on Enquiry on Emoluments and conditions of service of Central Government Employees**, 540-41 (1957-58).

Government of India, therefore, added categories of—employees in ports, wharves or jeeties, defence installations except training establishment, public works establishment insofar as they relate to work charged staff, irrigation and electric power establishment, mines as defined in clause (j) of section 2 of the Mines Act, 1952, factories as defined in clause (m) of section 2 of the Factories Act, 1948 and the field units of the Central Tractor Organization employing workmen governed by labour laws.

The employees who are taken out of the application of Rule 4-A show that they are employees in the establishments which are of the nature of industrial establishments and therefore are governed by industrial laws with a machinery available to the government for enforcing discipline and rules of conduct so far as resort to strike is concerned.* There are also government employees to whom the Industrial Disputes Act is applicable but who have not been excluded from the provisions of the Conduct Rules. These are employees in posts and telegraphs, the civil aviation department of Government of India. Also the railway staff to which Trade Unions Act and Industrial Disputes Act is applicable is subject to certain conduct rules. Those employees who are subject to industrial relations laws, viz., railway and postal staff are restricted[152] from resorting to strike.

III. Public Emergency and the Right to Strike in India

In India there is no specific statute[153] prohibiting strikes during public emergency. However, in public interest and public safety the Industrial Disputes Act[154] empowers the appropriate governments if satisfied that public emergency or public interest so requires, by a notification in the official gazette, to declare any industry specified in the Schedule to be a public utility service for the purposes of this Act, for such period as may be specified in the notification. The period so

152. Sections 22 and 23, Industrial Disputes Act, 1947.

153. See Emergency Powers Act, 1920 (British); Section 208, Taft-Hartley Act, 1947 (U.S.).

154. Section 2(n), Industrial Disputes Act, 1947.

specified in the first instance shall not exceed six months but may by a like notification be extended from time to time by any period not exceeding six months at any time if in the opinion of the appropriate government public emergency or public interest so requires.

But the Industrial Disputes Act does not define 'public emergency' or 'public interest' and invests the governments concerned to be satisfied to determine emergency on account of a particular strike situation in any industry so specified in the Schedule I which is likely to imperil public interest, safety or health. Therefore, appropriate governments by a notification declare an emergency prohibiting strikes (or lockouts) in such industry. For example on two occasions during the central government employees' strike in 1957 and 1960 the Government of India and several State Governments of U.P., Bihar, Andhra Pradesh, West Bengal, Kerala etc. during the state governments employees strikes of 1966 forbade strikes by the Essential Services Maintenance Ordinance for providing supply of certain essential services for normal life of the community.

Public emergency created by a strike may be local, regional or nationwide. The danger to the country is produced from within rather than from without. Consequently the right to strike in such industries is subjected to the overriding interest of public as indicated by the Industrial Disputes Act. These measures are designed to safeguard the interest of the community for such industrial strikes are likely to endanger public interest, safety and health.

IV. National Emergency and the Right to Strike in India

(1) Rule 81-A Defence of India Rules, 1942

Like United States, United Kingdom, Canada, Australia and New Zealand[155] the right to strike in India was also greatly affected by the Second World War for intensifying the war efforts and to safeguard security of India which was threatened by external aggression. In January 1942, the

155. 9 Law and Contemporary Problems 372 & 522 (1942).

Government of India by a notification added Rule 81-A to the Defence of India Rules to restrain strikes[156] (and lock-outs) and to maintain industrial peace and increased production. It empowered the Government to make, by special or general order:

> provision for (a) prohibiting, subject to the provisions of the order, a strike or lockout in connection with any trade disputes; (b) requiring employees and workmen to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the orders; (c) referring any trade dispute for conciliation or adjudication in the manner provided in the orders; and (d) enforcing for such period as may be specified in the order all or any of the decisions of the authority to which a trade dispute has been referred for adjudication; provided that no order made under (b) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those existing in the undertaking at any time within three months preceding the date of the orders.

Further in 1943 the Government of India amended the Defence of India Rules by adding a new Rule 56-A for the prevention of **Hartals** in places of employment. The **Hartals** or stoppages of work for prolonged periods in many industrial units in several centres in India were caused with the arrest of Gandhiji in 1942. **Hartal,** therefore, for the purposes of Rule 56-A was defined as any concerted cessation of work or refusal to work by a body of persons employed in any place of employment, except a cessation or refusal in furtherance of a trade dispute with which such body of persons is directly concerned. Contraventions of the provisions of any order made under Rule 56-A of the Defence of India Rules were liable to be punished with imprisonment for a term which could extend to five years or with a fine extendable to five lakhs of rupees or with both.

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156. **The Indian Year Book,** 518 (1945-46: The Times of India Press, Bombay).

(2) Rule 126 Defence of India Rules 1962

In 1962 the Communist China and in 1965 Pakistan launched unprovoked aggression on India. To meet the external aggressions national emergency was declared by the President of India on 26th of October 1962. The Defence of India Act[157] was passed to ensure public safety and interest, the defence of India and civil defence etc. Under section 3 of the said Act, the central government may by notification in the official gazette make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, public safety, maintenance of public order or efficient conduct of military operations or for maintaining supplies and service essential to the life of the community. Therefore to avoid strikes (and lockouts) completely and for maintenance of industrial peace the relevant provisions have been provided[158] in the Defence of India Rules 1962. Rule 126 **inter alia** provides that:

> (1) If in the opinion of the central government or of the state governments it is necessary or expedient so to do for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations or for maintaining supplies or services essential to the life of the community notwithstanding contained in any other provisions of these rules the central government may, by general or special order, applying generally to any specified area and to any undertaking or class of undertakings, make provisions—(a) for prohibiting subject to the provisions of the order, a strike or lockout in connection with any industrial dispute; (b) for requiring employees, workmen or both to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order: Provided that no

157. Act No. 51 of 1962.

158. Rules 35(6) (i); 36(i) (d); 67 (i) (2) (3) (4) (5) (6); 81 (i) to (5); 125 (3) (g) (h) (i); (4) and (5); 126 (1) (2) (3) and 145 (1) and (2).

order made under clause (b) shall require any employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order, (2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

During the present national emergency arising out of external aggression on India strikes and lockouts are banned in all industries whether public or private. The object of strike ban is to maintain peace and harmony in the industry to increase higher production of armaments and other commodities so vitally needed for the armed forces in particular and the public in general. With this avowed goal the representatives of governments, industry and labour on November 3, 1962, had agreed to maintain industrial peace during the present emergency. The Truce Resolution passed at the tripartite conference provided that all complaints relating to industrial workmen, not settled mutually, should be settled through arbitration giving thereby no chance to strikes and lockouts. The Industrial Truce Resolution indeed had a profound effect upon industrial relations. However, after the cessation of hostilities frequency of strikes have greatly increased.

V. Political Strikes—Indian Scene

Industrial law affords adequate protection to workers resorting to strike in contemplation or furtherance of a trade dispute. The position, however, is reverse in case of strikes with political end. For dealing with such strikes the government has to adopt means and methods which are outside the ambit of industrial jurisprudence. These measures depend to a great extent upon the nature, purpose and dimension of the strike which has to be ascertained and determined. Is strike for a political purpose or political motive or both? Is the economic object only ancillary or incidental to the general politi-

cal game? An assessment of such a situation is really difficult[159] one.

(1) Political Strikes—Legal Position

In India there is no law concerning political strike. The existing law deals with industrial strikes only. The Trade Disputes Act, 1929 dealt with prevention of industrial strikes having objects other than furtherance of a trade dispute and in this regard closely followed the British Trade Disputes and Trade Unions Act, 1927. The Indian Trade Disputes Act, 1929 provided:[160]

> A strike (or lockout) shall be illegal which has any object other than (or in addition to) the furtherance of a trade dispute within trade or industry in which the strikers (or employers locking out) are engaged; and (b) is designed or calculated to inflict severe and general hardship upon the community and thereby compel any government in British India, the Federal Railway Authority or the Crown representative to take or abstain from taking any particular course of action.

The reason for inserting this provision was that perhaps the Government of India was obsessed by the vicissitudes of the British general strike of 1926 and the non-co-operation movement which was sweeping India under the leadership of Gandhiji and other nationalist leaders. It was in the year 1929 that the Indian National Congress proclaimed the goal of full independence for India. Strikes were plaguing the industry in India. The Trade Disputes Act accordingly provided:

> If any person declares, instigates or incites others to take part in or otherwise acts in furtherance of, a strike (or lockout) which is illegal under the provisions of section 16, he shall be punishable as therein provided.[161]

159. Sections 8(b) (4) and 9(h) **Taft-Hartley Act, 1947**; Section 504, Labour Management Reporting and Disclosure Act, 1959 (U.S.A.)

160. Section 16.

161. Section 17, **Indian Trade Disputes Act, 1929.**

During the late thirties on account of world wide economic unrest political parties got a foothold in the trade union bodies[102] and directed the trade union movement both for economic and political ends. The purpose of the aforesaid legal provisions was to illegalise such industrial strikes having political object or motive. Consequently political strikes having objects beyond the furtherance of a particular trade dispute were made illegal. Thus where some of the demands of the workers were of a political character which could not be granted by the government resulting in a general strike, the court observed:

> The class of strike, therefore, which is rendered illegal, is one, which is designed or calculated to coerce government by inflicting hardship upon the community.....Difficulties may no doubt sometimes arise, because the persons responsible for a strike may not all have the same design or plan.
>
> Some of them may design that the strike should have objects which would render it illegal under section 16, whilst others may be in favour of a particular trade dispute. But whatever the difficulties may be, the court has to determine what the design of those responsible for the strike was at the time when they instigated it or did other acts specified in section 17... In order to show that the strike was calculated to have the effect referred to in sub-section (1)(b) of section 16, the court must hold, having regard to the nature of the strike and the circumstances prevailing at the date of the instigation or other acts specified in section 17, that the natural and probable consequences of the strike will be to inflict such severe, general and prolonged hardship upon the community that either the Government of India or the local government may reasonably be expected in consequence thereof to be compelled to take or abstain from taking any particu-

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162. A split occurred in trade union movement in India in 1929 at Nagpur Session of the Trade Union Congress under the Presidentship of Pandit Jawaharlal Nehru.

lar course of action.[163]

The Industrial Disputes Act, 1947, has omitted to incorporate the above provisions concerning non-industrial strikes. It has merely confined itself to the regulation and control of ordinary industrial disputes. In essence industrial relations law in India is silent on this important matter.

(i) July Strike 1960—Character

(a) Strike—Political

The general strike of July 1960 which involved huge number of central employees raised controversy about its character. Prime Minister in his broadcast on July 7, 1960 on the strike notice served by the central government employees union spoke:

> For this is no small matter and it has nothing to do with the normal industrial disputes and strike. A general strike of the kind is a blow to the nation and at the community as a whole and can never be justified. The proposed general strike is not a normal industrial dispute but something different in quality and different in intent.[164]

He was of the view that such an action could only lead to weakening of defence, economy and in darkening the future for which we are labouring. In the same way Vasavada, General Secretary of INTUC, declared:

> The strike from all points of view was not only illegal, but unjustified, unwarranted and harmful to the working class as a whole. However much the other central trade union organizations try to whitewash their misdeeds and their dis-service to the cause of labour movement, one cannot fail to realize that the strike was entirely brought about on account of political opportunism. The strike was an unholy attempt on the part of some political leaders who wanted to

163. **Emperor** v. **A.A. Alwe**, A.I.R. 1936 Bom. 5, at 6-7.

164. Quoted from **Five Glorious Days** July 12-16 (AITUC Publication 1960).

take advantage of alleged discontent amongst the government employees.[165]

The INTUC at its 12th session held at Jamunanagar in April, 1961, characterized the general strike as harmful to the security of the country. It said[166] the way in which demands were formulated and the manner in which the agitation was sought to be conducted and the role of various political parties were direct indicators to the point that the strike was inspired by political motives than by trade union purposes. A general strike of the entire executive wing of governmental machinery would in effect amount to political action throwing in jeopardy the established system of government in the country.

(b) Strike not Political

On the other hand it was said that the general strike was resorted merely for two major demands—raising the minimum wage and linking of dearness allowance with the cost of living. It was, therefore, purely an economic dispute without any political motive or purpose. The HMS urged[167] the people of India not to permit national security to be made a bogey to deprive the employees of their legitimate demands. Prem Bhasin then the Joint Secretary of the Praja Socialist Party contradicted the Prime Minister's comment that the strike was a 'civil rebellion' and stated[168] that the move to strike was not a challenge to the government of the day but an assertion of their right to carry on a peaceful struggle in support of legitimate demands.

(c) Strike—An Objective View

The true character of the July strike of 1960 can be assessed only from a study of its background[169] and other re-

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165. Quoted from **Central Government Employees Strike in Retrospect—An** INTUC Publication, 1960.

166. **INTUC 12th Session Report** 34-35 (1961).

167. The text of the Resolution of the Working Committee of the Hind Mazdoor Sabha which met at Nagpur on July 5, 1960.

168. Statement issued to the Press on July 12, 1960.

169. The recent general strikes by Government Employees of U.P., Maharashtra, West Bengal and Bihar have been given similar colour.

lated circumstances. It must be conceded that neither any political party controlling the striking unions nor their union leaders could be depicted anti-national or less patriotic than the ruling party or the non-striking unions. In fact the strike events are clear testimony to it. The issue was centred round the demand of a living wage only. The Government of India, however, viewed the strike as an attempt to upset civil authority by means other than democratic means. This indeed was responsible in creating confusion and uncertainty in public minds also. But it may be observed that the July strike by no stretch of imagination be deemed political or subversive to national security. Its avowed object was purely economic. It is not uncommon for the governments[170] to treat general strikes as a facade for political ends in order to enlist public sympathy.

(ii) Political General Strike—Ban

It has been noticed that while the word 'strike' has received both statutory and judicial definition the expression general strike lacks any exact denotation. What are called general strikes[171] may be either very extensive sympathetic strikes or concerted stoppages over a wide range of industries for a common object. The political general strikes are of this type, it can be either or mere protest strike or 'bundh' called for a single day or for a limited period or a strike designed to last until it has achieved its purpose or failed, as in German general strike against the Kapp Pustch of 1920 or the abortive strike of 1920 against British participation in Soviet-Polish War. Conversely strikes designed to bring about a social revolution and establish a workers' society are of this kind. Such strikes directed against the governments have been fairly frequent, since the end of Second World War in countries[172] like India, Japan, France, Italy, Indonesia and Ceylon etc. The recent general strike of Paris as a protest demonstration of sympathy for the victims of anti-OAS clash with the police, the 1960 strikes in Japan against the U.S.-

170. Dhyani, General Strike in India Labour Law—A Study in Trends, 17 **Law Rev.** (Pan.) 91 (1965).

171. 21 **Encyclopaedia of Britannica,** 469, at 470 (1965).

172. **The Hindustan Times,** March 16, 1962.

Japan Security Pact and the general strikes in many parts of the world against American bombing of North Vietnam are typical examples of trade unions using their powers for a political protest. In India also a similar strike took place on August 1, 1959, when the workmen of various industries of Delhi struck[173] work as a protest against the intervention of the Government of India for dismissing the communist ministry in the State of Kerala. Such political strikes[174] are illegal and all would agree that such general strikes be proscribed by law.

Harold Laski also seems to agree[175] that revolutionary strikes having sole political objectives like over-throw of constitutional government by force or compelling to change its foreign or domestic policy to achieve desired ends of political character generally considered and declared illegal and be suppressed with all the might of the state. But other industrial actions motivated by predominant economic factors and bearing partly the political colour also be permitted as last resort for social change. Such social disturbances are not the likings of the trade unions nor of the community but erupt slowly and unconsciously for eradicating the deep seated social economic maladies to adjust the economic values as impelled by circumstances. So there is nothing just or unjust about such general strikes. Industrial law nowhere provides a true guidance to adjudge their legality. The observations of Lord Asquith[176] that a community whose law gives no clear answer to the question whether a general strike is legal or not deserves a succession of general strikes to concentrate its mind appear axiomatic inasmuch as general strikes are not engineered but are interaction of a number of economic forces which call for a change and resistance which inevitably and adversely affect the normal life of the community and functioning of the government. Thereby a general strike is nobody's creation but the outcome of aggravating social factors which cause so much of disequilibrium.

173. **Matchwel Electricals (India) Ltd. v. Chief Commissioner, Delhi,** (1962) 1 L.L.J. 545.

174. See 8 **Indian Labour Journal** 40 (Labour Bureau, Government of India, January, 1967).

175. **Liberty in the Modern State** 106 (1921).

176. Quoted by Vester and Gardner, **Trade Unions and the Law** 99 (1952).

Therefore State must continually make changes to avoid such calamities which entail great hardship both upon the community and the working class. Mere banning of such strike would not be fair. Conversely State should have the right to ban such strikes where the purpose of the strikes is the overthrow of existing social order. To quote Laski in this regard, the learned writer says:

> Obviously the quality of liberty depends very largely upon the powers we give to the State in this realm. I take it as elementary that the State has a right to protect itself from attack. It must as a State, assume that its life is worth preserving. It must demand that changes in its organization be the outcome of peaceful persuasion and not the consequence of violent assault. A State must, therefore, assume that its duty to maintain peace and security lies at the very root of its existence. The liberty which associations enjoy must, therefore, be set in the context that they cannot have a liberty to overthrow the State. To that extent any denial of freedom to them is justified.[177]

(2) **Strike Ban—No Panacea**

The kinds of industrial strikes of economic character still remain to be formulated. The problem is, can we abolish such strikes through legislation without creating an alternative effective and equitable device acceptable to all concerned? Does the function of the State end only with the prevention of strikes through the **modus operandi** of an internal or external machinery? Can this machinery come to a grinding halt when those who live by wages are threatened with sub-human conditions? Should the State concentrate on creating new social conditions and proper economic mileu instead of emphasizing on industrial moratoriums? These vital and cognate questions which one may face while confronted with strike-ban. We need not to be rigid in our attitude on this highly sensitive issue. It should be resolved through rational, just and consistent efforts in the light and experience of our constitutional background and social philosophy.

177. **Op. Cit. supra** note 175 at 120-121.

CHAPTER VI

Labour-Management Regulatory Processes in United Kingdom and U.S.A. : Its Impact on India

1. DEMOCRATIC SOCIETIES OF ANGLO-AMERICAN TRADITIONS

In democratic societies of Anglo-American countries with liberal economic and political traditions, strike is merely an extension of individual's liberty of freedom of contract to work on terms acceptable to him or to his union. These societies while recognizing strike as a necessary concomitant of industrialization have evolved self-regulatory or state-guided norms and institutions for the regulation and adjustment of labour-management problems. This necessarily postulates the acceptance of pressure-groups like trade unions and organizations of employers by the community for mutually resolving their conflicting interests without outside aid or intervention. These regulatory processes **inter alia** consist of parliamentary negotiating bodies in which both groups meet; the institutions of voluntary mediation and arbitration; labour participation in management and absence of coercion in free collective bargaining except in abnormal times of war and national emergency. A study of these regulatory processes and institutions as exist in U.K. and U.S.A. is made for understanding the labour-management regulatory processes in India.

A. Labour-Management Regulatory Processes in U.K.

For maintaining amity in industry and settling disputes therein United Kingdom presents a novel machanism which

characteristically has become a model for several countries. It is because the basic foundations of industrial relations system in that country have been laid solidly after a long process of struggle, evolution and adaptation as necessitated by the exigencies and requirements of labour and management. Indeed this system comprising of collective bargaining process supplemented by statutory machinery for the settlement of trade disputes does not rest as elsewhere upon the coercive powers of the State but on consent, agreement and co-operation of trade unions and employers exclusively. There is not much state regulation of trade disputes which are resolved democratically through the participation of employers and representatives of employees on an equal and friendly footing. Where the parties fail to settle disputes voluntarily or desire assistance in the form of state conciliation, arbitration or inquiry for the avoidance of strikes or lockouts, state participation for maintaining peace in industry becomes self-evident and justified as well.

1. Collective Bargaining

Acceptance of trade unions as fundamental factor in maintaining peace and stability in the industry led to the emergence of collective bargaining, as an alternative to direct action, for the voluntary regulation of wages and working conditions through direct negotiations between employers and unions representing employees. In England the right of the trade unions to act as bargaining agents for their members and, if necessary, to resort to strike, without exposing themselves to legal action for criminal or civil conspiracy had been established by Conspiracy and Protection of Property Act, 1875, the Trade Disputes Act, 1906 and the Trade Disputes Act, 1965. However, there are no legal provisions in United Kingdom to compel employers and unions to bargain with each other or to enforce a collective agreement when either party violates such an agreement. There is no statute like the U.S. Taft-Hartley Act in United Kingdom to compel employers to bargain with trade unions, no law requiring the choice of a 'bargaining agent,' no legislation like Collective Agreement Act, 1949 of Federal Republic of Germany con-

cerning collective agreements, no statute borbidding unfair labour practice such as 'yellow dog"[1] contract or 'closed shop"[2] agreement. Similarly there are no statutes restricting the right to strike by trade unions although workers in certain public utility services and public servants are in one way or another precluded from taking strike action. Collective agreements are not in general legally enforceable. But if the negotiations fail then there is statutory machinery of conciliation or arbitration etc., which comes to the rescue of the parties. State leaves it entirely to the employers' and workers' organizations to negotiate agreements and to ensure continuity of such agreements for their mutual benefit. The observance of such collective agreements is voluntary. It is only in the case where trade union organization is imperfect that the State has intervened. It has been concluded[3] that some twenty-five per cent of people work in engineering and ship-building, building and civil engineering, cotton and railways have evolved distinctive collective bargaining machinery of their own. A similar percentage is covered by whitley system of national joint industrial councils. Another twelve per cent of workers' wages are covered by one or other form of voluntary or statutory machinery.

There are three types[4] of negotiating arrangements which are prevalent in the United Kingdom: firstly, those existing mainly in a number of old established industries of national importance; secondly, joint industrial council of whitley machinery which was developed in many industries after the first and second World Wars; thirdly, statutory wages councils. The first two are voluntary arrangements between employers and workers and the third is a statutory arrangement. These arrangements provide terms and conditions both for employers and employees. However, voluntary negotiating

1. Whereby an employee undertakes in his contract of employment not to join a union.

2. Whereby an employer undertakes to hire only union members to fill the vacancies in his plant.

3. **British Trade Unionism**, 39 (Political and Economic Planning 1949).

4. Flenders and Clegg, **The System of Industrial Relations in Great Britain**, 288 (1960).

machinery for the regulation of terms and conditions of employment has been evolved according to the varying needs and circumstances of the different trades and industries. The most important of these industries[5] are coal, iron and steel, engineering, ship-building, building and civil engineering, cotton and railways. Each of these has evolved its own characteristic machinery of negotiation over a long period of time and the machinery which they have established differs considerably from one industry to the other. It may be noted that none of them apart from government, engineering and dockyard establishments, uses the whitley machinery known as joint industrial councils.

2. **Statutory Wage Fixing Machinery**

Although terms and conditions of employment in Great Britain are for the most part settled by collective agreements reached by voluntary methods without governmental intervention statutory regulation has been applied to certain trades or industries where machinery for regulating remuneration does not exist or is not and cannot be made adequate for that purpose. Therefore in such industries and occupations statutory wage regulating machinery has been set up.

The Trade Boards Acts of 1906 and 1918 and the Wages Council Act, 1945 are the instances of statutory wage regulation in the United Kingdom. Besides the Act of 1945, there are Road Haulage Wages Act, 1938, Catering Wages Act, 1943, Wages Councils Act, 1948 and Terms and Conditions of Employment Act,[6] 1959, providing for wages councils or wages commissions concerning workers employed in connection with vehicles, catering industry etc. However the most important statute in this connection is Wages Councils Act, 1959, which consolidated the provisions of the Wages Councils Acts of 1945 and 1948 and the Terms and Conditions of Employment Act, 1959 so far as it relates to wages councils. Approximately three and a half million workers are within the field of operation of wages councils established under the Act.

The Wages Council Act, 1959, provides three methods

5. **Handbook of Industrial Relations,** (London, 1961).
6. The Statute repealed the Catering Wages Act, 1943.

under which the Minister may make an order establishing wages council. These methods are: (1) that the Minister may, on his own initiative, make an order providing for the establishment of a council, if he is of the opinion that there is no adequate machinery for the effective regulation of the remuneration of any workers; (2) on an application made to the Minister by a Joint Industrial Council or other similar body, or jointly by organizations of employers and workers which habitually take part in the settlement of wages on the ground that the existing machinery is likely to cease to exist or be inadequate; (3) the Minister may on his own initiative ask Commission of inquiry to consider whether a wages council should be established if he considers that adequate machinery for the effective regulation of the remuneration of any workers does not exist or is likely to cease to exist or be adequate and that a reasonable standard of remuneration will not be maintained.[7]

A wages council consists[8] of members representing employers and workers in equal numbers, together with not more than three independent members. One of the independent persons acts as chairman. It may be observed that wages councils are the part of collective bargaining apparatus which is to take the place of the former only when the voluntary machinery becomes strong enough. This is possible when the trade unions become sufficiently developed, united and mature in those industries for bargaining purposes.

3. State Dispute Settlement Machinery

The cardinal feature of the British industrial relations system is that both the parties to the dispute—employers and trade unions—settle their differences through the voluntary methods of collective bargaining existing in each industry without any outside interference. However the State generally makes available to the parties methods of settling labour

7. Section (1) Wages Councils Act, 1959.
8. Second Schedule, Wages Councils Act, 1959.

disputes only in those cases where such dispute cannot be resolved by voluntary action or where the parties themselves desire government intervention. State intervention is accordingly avoided as far as possible because it runs counter to the spirit of industrial democracy existing in the United Kingdom. Nevertheless the State is a third party in the field of industrial relations and has the ultimate responsibility to the public for maintaining peace and order in the industry. It, therefore, provides agencies for conciliation, inquiry, investigation and arbitration to supplement the process of voluntary arrangements for maintaining industrial peace. In essence these methods are merely ancillary and do not involve any coercion or compulsion to parties for settling disputes.

(i) **Conciliation**

Before 1896 there was the system of compulsory arbitration[9] for the settlement of industrial disputes. However it became ineffective and unpopular with the emergence of strong trade unionism during the last decades of the nineteenth century. This led to the passing of the Conciliation Act, 1896. The Act provides for the conciliation boards for the purpose of settling disputes[10] between employers and workers by conciliation and arbitration. The dispute can be referred[11] to a board of conciliation or a single conciliator if the parties ask for it. The conciliation authority is bound to enquire into the causes and circumstances of the dispute and endeavour to bring about a settlement of the difference and finally to report its proceedings to the Ministry of Labour.

Of course conciliation or arbitration as envisaged in the Act is purely voluntary and there is no provision in the statute to compel an unwilling party to go to arbitration. The awards are also not binding under the Act.

(ii) **Arbitration**

Another fundamental principle governing industrial rela-

9. The Cotton Arbitration Act, 1800; The Arbitration Act, 1824; The Councils of Conciliation Act, 1867; The Arbitration (Masters' and Workmen's) Act, 1872.

10. Sections 1(1) and 4.

11. Section 2(1) **Id.**

tions in Great Britain is arbitration of trade disputes which is provided both under the Conciliation Act,[12] 1896 and the Industrial Courts Act,[13] 1919. This method is available only if the existing machinery has been fully used and has failed to resolve the dispute. Moreover the Minister of Labour is under an obligation to avoid reference to conciliation and arbitration unless there has been a failure to obtain a settlement by means of any agreed arrangements. It seems Parliament is over-anxious to avoid state interference in labour disputes as far as possible and allow the parties to the dispute to decide their dispute amicably and voluntarily without coercion or interference. In this regard arbitration forms an integral part of the collective bargaining process—former supplementing the latter. Arbitration awards under both the Acts are not legally binding or enforceable on the parties. However once an award has been accepted or acted upon it forms a term or condition of the contract of employment. On the other hand as awards result from voluntary agreement of the parties to go to arbitration, they are almost invariably accepted.

The machinery of arbitration under both the Acts is of three kinds: (1) the industrial court, (2) a single arbitrator and (3) a board of arbitration. The industrial court and the board of arbitrations are of tripartite character.

(iii) Court of Inquiry

The alternative method of settlement of trade disputes in England is investigation or inquiry for elucidating and finding of facts related to the dispute in issue. The Conciliation Act, 1919 empowers[14] the Minister of Labour to enquire into the causes and circumstances of a trade dispute and to report its findings. The Industrial Courts Act, 1919 provides[15] for the establishment of a Court of Inquiry for the elucidation of facts in the hope that once the difficulty is overcome the parties of their own accord will be able to settle dispute. The

12. Section 2(3).
13. Section 2(2).
14. Section 4.
15. See Part II of the Act.

decision to constitute a court of inquiry rests with the Minister and the consent of the parties to the appointment of the court is not required. Courts of inquiry are, therefore, a means of informing Parliament and the public of a dispute. Courts of inquiry are constituted sparingly and are constituted for matters affecting the general interest.

(iv) **Compulsory Arbitration**

The system of compulsory arbitration is not in vogue in England unlike its counterpart in India or Australia. It was introduced in England only as a war time measure[16] in 1940 to prevent work-stoppages by providing resort to compulsory adjudication. If the negotiations failed to resolve a particular trade dispute reference to compulsory arbitration was without the voluntary action of the parties. The National Arbitration Tribunal—a tripartite body—was established in 1940 for the purpose of settling trade disputes which could not otherwise be determined. The matter dealt with by the tribunal concerned claim for higher wages, bonus, other conditions of service, etc.

The trade unions traditionally hostile to compulsory arbitration voluntarily agreed in 1946 to its continuance and it was only in 1951 that the compulsory arbitration of labour disputes was discontinued[17] and the old machinery was revived.

However, in spite of the internal and external elaborate provisions British industrial life is not free[18] from strikes and lockouts. Nevertheless British system of industrial relations puts reliance only on voluntary methods without state intervention. As we have noted above the State machinery is not a substitute but a supplement to free collective bargaining machinery. On the other hand whenever exigencies of situation or the nature of the problem needs direct State intervention the employers and trade unions acquiesce to it also.

16. Employment and National Arbitration Order, 1940 (S.R.O. No. 1305) framed under the Defence Regulation 56-AA of 1939.

17. S.R.O. No. 1376, 1951.

18. **The Statesman's Year Book** 118 (Centenary Ed. 1963).

There is no doctrinaire adherence or rigidity in such critical situations.

B. Labour-Management Regulatory Processes in the U.S.A.

The existing methods for dealing with labour disputes in the United States vividly reflect the concepts and principles inherent in its socio-economic and political system. Indeed the philosophy of non-intervention in the social and economic field is also perceptible in the practice and procedure of collective bargaining, arbitration, mediation and conciliation for the adjustment and settlement of labour disputes.

1. Collective Bargaining

In United States collective bargaining[19] is the characteristic feature of labour-management relations. It is fundamentally a voluntary process, springing from the attitudes[20] of free association of management and work-people involving no compulsion or sanction for settling the terms and conditions of employment. It is at best a system of industrial self-government.[21] It is the system of free negotiation for establishing terms and conditions of employment in which workers participate through a representative of their unfettered choice—normally their trade union. The object of collective bargaining process is to chart-out a framework without any external aid or intervention for regulation and maintenance of conditions of service as agreed to between management and union representatives without recourse to industrial warfare.[22] It, therefore, is not an end for the either parties but is merely choice-process for reaching agreements and settling disputes. It simply provides **modus operandi** and procedure through which industrial matters are changed and maintained with the consent of the interested parties in the industry In the United States the unions in co-operation with employers have

19. Shister, **Readings in Labour Economics and Industrial Relations** 148 (1951).

20. 4 **Indian Labour Journal** 260 (1963).

21. Beatrice Webb first used this expression some sixty-six years ago.

22. 49 **Michigan Law Review**, 787 at 788 (1950-51).

converted the process of collective bargaining[23] from warfare into a highly sophisticated and peaceful method of industrial relations. Collective contracts (or agreements) are achieved without resort to strikes through labour-management diplomacy. Collective bargaining, therefore, is the process and collective contract is the outcome of it. United States in its policy towards labour-management relations is avowedly committed[24] to collective bargaining. The duty to bargain collectively is not a matter of choice or ethics. It is rather a positive obligation enforceable under the Act.[25]

It is the duty of the employer to bargain in good faith[26] with the representatives chosen freely[27] by majority of employees and comprising an appropriate bargaining unit as such certified by the National Labour Relations Board. The representative status of a labour organization is determined by the National Labour Relations Board and continues to be for at least one year. The outcome of the negotiation or accord between the Union and the company is the collective agreement which concerns ordinarily with union security, wages, hours, working conditions, etc. In United States it was estimated[28] that in 1958 the number of collective agreements exceeded 150,000 covering 18.2 million workers Collective bargaining is conducted at the level of undertaking. Of course industry-wide bargaining is not unusual and an example of this form of industry-wide bargaining is furnished[29] by the steel industry in the United States. But for the other industrial and occupational areas plant-level bargaining is still the normal procedure.

23. **Indian Worker,** 33 (Republic Special 1964).

24. Section 1, Taft-Hartley Act, 1947. See The Railway Act, 1926; the Norris-LaGuardia Act, 1932 and the Wagner Act, 1935.

25. See Section 8(d) Taft-Hartley Act. However the Government employees in United States do not possess the right of collective bargaining or right to strike, etc. See Hart, **Collective Bargaining in Federal Services** 264 (1961).

26. Section 8(7) (d), Taft-Hartley Act.

27. Section 9(a).

28. 83 **Monthly Labour Review** 9 (U.S. Deptt. of Lab. No. 1 January, 1960).

29. **Labour Disputes and Settlement in the United States Steel Industry.**

(i) Grievance Procedure

Among other things provisions regarding interpretation, application and settlement of grievances, complaints and other difficulties are integral part of the collective agreement and are administered in accordance with justice and fairness. A grievance is a human problem and is bound to arise in day-to-day working of the contract. A worker may feel that employer has violated the contract or treated him unfairly or vice versa. Further an arbitrary interpretation of collective agreement whether by management or union may result in industrial conflict. Therefore such agreements contain no-strike and no-lockout clause until the grievance or negotiation machinery has been exhausted. The grievance procedure agreed upon by the parties and embodied in the contract establishes a means for settling individual or collective disputes concerning the application and interpretation of the contract through direct negotiation of the parties. It does not apply to those matters involving the establishment of a new agreement or to the modification of a clause[30] of a collective agreement.

(ii) Grievance Arbitration

Grievance procedure is a usual and reasonable feature of invariably all the collective agreements which also provide for voluntary arbitration as a last resort in the settlement of disputes concerning interpretation and application of collective agreements. Although most of the differences or grievances are settled mutually between the parties at the various levels it is only the unresolved ones which are referred voluntarily to outsiders for arbitration. The use of voluntary arbitration as a method of settling grievances is one of the more mature developments of collective bargaining process.

In the United States arbitrators are chosen by a committee on which labour and management are equally represented. They are chosen out of the panels maintained by the American Arbitration Association, the federal and state

30. Collective Bargaining Provisions, 9 (U.S. Bureau Labour Statistics Bulletin 1908-16, 1950).

mediation conciliation agencies. There is no legal requirement that parties must refer a dispute to arbitration and abide by its decision. The arbitration procedure has succeeded because of the willingness of the U.S. Government to keep aloof from the process of collective bargaining.

(iii) Collective Bargaining—New Trends

Traditionally speaking collective bargaining is a two party procedure for negotiating peaceable settlement of the labour matters without any outside assistance or intervention. It is the sacred cow of the Americans—round which revolve the labour-management relations. Its success depend upon the attitude and experience of the parties concerned.

If collective bargaining cannot produce peaceable settlement[31] the public cannot remain aloof as a passive onlooker between labour-management controversies especially in industries affected with a national interest. To this end employers and unions are voluntarily availing the good offices of 'third party' in bargaining for renewal of contracts etc. For example Kaiser Steel Company and the United Steel Workers have associated in 1959 the 'public' for the settlement of their bargaining disputes. Similar tripartite committees are being utilized in the construction, meatpacking, coal, plate, glass industries, at the missile sites and at numerous other companies. This new development is more than collective bargaining in the old sense of the term. It is constructive bargaining or perhaps, even better, creative bargaining. There is a necessity of enlightened collective bargaining in face of automation, unemployment and technological innovations which are greatly affecting the prevailing concepts and institutions. There are forces at work in the United States which are either suggesting governmental participation[32] in collective bargaining process from early stage to final one or for 'a potent competent consultative machanism capable of providing on authoritative consensus' to make wage restraints effective. The Taft-Hartley Act itself limits collective bargaining in

31. Writz, The Future of Collective Bargaining in America (Indian Worker, February 10, 1964).

32. 49 American Bar Asso. Jour. 862 (1963).

public employment[33] and in strikes creating national emergencies.[34] During the Second World War also freedom of collective bargaining was restricted[35] in public interest. Therefore if institution of collective bargaining has to be a going concern it must adapt itself to changing requirements of society.

2. Conciliation and Mediation

Most of the labour disputes are adjusted or settled through collective bargaining. However when disputes cannot be resolved by mutual negotiations settlement is attempted through conciliation or mediation. According to Keltner:

> When such deadlocks threaten to be harmful both to the parties themselves and to the general public, some means are obviously needed of bringing about a solution; these should not curtain the freedom and responsibility of the parties unduly and yet should effectively protect the economy from faltering or being handicapped by the failure of the parties to find reasonable and workable solution to their problems. It is in this context that mediation or conciliation play a significant role in the resolution of differences.[36]

In order to help the parties in their efforts to come to a amicable settlement legislation in all countries[37] generally provide for the establishment of conciliation or mediation machinery. In United States conciliation is used as having the same meaning as mediation. These expressions[38] are used inter-

33. Section 305 Labour Management Relations Act, 1947.

34. Section 206-10 **Id.**

35. War Labour Disputes Act, 1943.

36. The U.S. Mediation and Conciliation Service, 88 **International Lab. Rev.** 476 at 477 (1963).

37. E. Jackson, **Meeting of Minds—A Way to Peace Through Mediation** 5 (1952).

38. Etymologically and historically the two terms have distinct meanings, mediation connecting a more active form of third party intervention. A conciliator seeks to bring the parties together into a common council and having done so, he may leave them alone to carry on their joint discussion or sit down with them to guide-

(Continued on next page)

changeably to mean an attempt by a third party typically government officials to bring disputants together by persuasion and compromise. The federal government and many state governments have created mediation machinery to avoid industrial strife. But the mediation or conciliation is voluntary like collective bargaining and the mediator is not vested with power to force a settlement. As Keltner again observes:

> It retains the essential characteristic of voluntariness; it does not take away from the contending parties the right or the responsibility to make the decisions that effect their own welfare; and it provides them with assistance by way of decision-making methods and techniques in reaching agreement.....It is the last stage in the process which protects the rights of the parties to make their own decisions affecting their own welfare. It is at best a difficult process.[39]

With the rapid industrialization and increasing volume of mediation work, the United States Conciliation Service was established in 1917 as a division of the Department of Labour. In 1947 the Taft-Hartley Act created the Federal Mediation and Conciliation Service headed by a director[40] responsible to President of United States and independent of the Department of Labour in place of United States Conciliation Service.

Section 201 of the Taft-Hartley Act reiterates national policy of the United States regarding collective bargaining. Section 203 demarcates its duties and functions. It is to assist parties to labour disputes in industries affecting commerce to settle such disputes through conciliation and mediation.[41] In other words it is to make facilities of conciliation and media-

(Continued from previous page)

the discussion. A mediator 'comes between' the disputants, seeks to keep them sufficiently apart to prevent them from exchanging blows, in the process may himself receive the blows and which he cannot restrain. Under the legislation and practice in a number of countries a distinction is made between the two procedures but under more general practice they come to be used inter-changeably.

39. 56 **International Lab. Rev.** 176 (1947).

40. Section 202 (a) Taft-Hartley Act.

41. Section 203 (a).

tion available for bringing about collective agreement between parties to the dispute.[42] If the Service is unable to bring the parties to agreement by conciliation or mediation it shall seek to induce the parties voluntarily to seek other means of settling disputes without resort to strike, lockout, or coercion including submission to employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. However the Taft-Hartley Act specifically provides[43] that any failure or refusal of either party to agree to any procedure suggested by the Director shall not **be deemed a violation of any duty or obligation imposed by this Act.**[44] The efforts of the parties to settle their disputes themselves is the fond hope of the government and the Service is to assist 'only as a last resort and in exceptional cases.'[45]

Thus the function of this agency in the prevention of labour disputes is significant. In this respect the Service provides special services of various types other than straight mediation of disputes. Consultation, training, assistance in interpreting collective agreements and advisory services are all available to interested parties at any time need arise that cannot be met adequately by the parties themselves. Again the principle of voluntary recourse to the services is paramount. The Service does not force itself upon the parties but is available without charge for these additional services. Mediators have been instrumental in many instances in the establishment of joint labour-management committees to deal with local problems at the plant level. They have in many cases maintained a year-round liaison with the parties in order to detect and prevent disruptions where possible.[46] In order to assist the parties in reaching collective agreements, the Service also maintains a panel of arbitrators who are not employees of the Service, selected mainly on the basis of proven acceptability.

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42. Section 203(b).
43. Section 203(c).
44. Emphasis by the author.
45. Section 203(d).
46. Supra note 36 at 482.

3. Board of Inquiry

Fact finding boards have been used in the prevention and settlement of disputes as a last resort technique in cases of national emergency strikes. The Taft-Hartley Act provides compulsory investigation when a threatened strike or lockout imperils the national health or safety. The President may appoint a board of inquiry to examine the issues involved in the dispute and report them to him and to the public. Upon receiving a report from a board of inquiry the President may direct[47] the Attorney General to obtain an injunction from the federal district court prohibiting the strike or lockout. After the injunction is granted the parties to the dispute are obliged to make every effort to adjust and settle their differences with the assistance of the Federal Mediation and Conciliation Service. Of course any proposal of settlement made by the Service is not binding upon them. If these efforts fail the board of enquiry is reconvened[48] to investigate the facts further and at the end of 60 days the board of inquiry reports the fact of the case without making any recommendations and the report is made public. Within the succeeding 15 days the National Labour Relations Board takes a secret ballot of the employees and of each employer involved in the dispute on the question of whether they wish to accept the final offer of the employer. The National Labour Relations Board thereafter must certify the results within five days to the Attorney General Upon the certification of the results or upon a settlement being reached whichever occurs first, the Attorney General[49] asks the court to discharge the injunction. Then President submits complete report to Congress together with any recommendation he thinks fit to make for consideration and appropriate action.

The injunction, therefore, delays emergency strike affecting national health for eighty days. After that, law does not prohibit strikes or lockouts. Strikes occur even after the

47. Section 208, Taft-Hartley Act, 1947.
48. Section 209.
49. Section 210.

emergency procedure is exhausted. In the several states[50] of U.S. laws are designed to prevent or delay emergency strike by means of fact finding, seizure or compulsory arbitration etc.

4. The National Labour Relations Board (NLRB)

The National Labour Relations Board is another independent quasi-judicial agency of the United States which also plays an important[51] part in the maintenance of industrial peace through collective bargaining. The Taft-Hartley Act has enlarged[52] the National Labour Relations Board from three to five members. It has also created[53] the office of an independent general counsel within the Board in order to meet the objections of those who had been opposed to a procedure under which the same individuals served both as prosecutors and judges. In effect the general counsel has become the prosecuting attorney on behalf of the NLRB with the authority to decide on the investigation of charges and issuance of complaints and in respect of the prosecution of such complaints before the Board. Under the Act prosecuting and judicial functions of the NLRB have now been separated with general counsel as prosecutor and the NLRB as judge. The functions of the NLRB broadly speaking cover two areas, namely, determination of an appropriate bargaining unit by conducting elections to determine which union, if any, shall be certified as bargaining agent[54] and enforcing the unfair labour practice provisions of the Taft-Hartley[55] and Labour-Management Reporting and Disclosure Acts.[56]

5. Compulsory Arbitration

The Kansas Industrial Relations Act,[57] 1920 was the

50. M. G. Heneman, **Employment Relations Research** 158, (Industrial Relations Research Association Series, 1963).

51. Shanklin, The United States National Labour Relations Board, 82 **International Lab. Rev.** 491 (1960).

52. Section 3, Taft-Hartley Act, 1947.

53. Section 3(d).

54. Section 9(a).

55. Section 10.

56. Sections 401, 402 and 403.

57. 1920 Kan. Laws. Ch. 29.

only law before World War II which provided for compulsory arbitration of labour disputes similar to those provided by the Australian Commonwealth Conciliation and Arbitration Act, 1904. For this purpose the statute created a Court of Industrial Relations similar to Australian Industrial Court with wide powers of enforcing industrial arbitration. It was given power to decide by adjudication, after hearing all labour disputes in industries affected with public interest and strikes and lockouts were prohibited by law not only pending adjudication but afterward also.

The Court of Industrial Relations functioned actively within the entire field of its statutory jurisdiction for four years when the Act by which it was created declared unconstitutional by the Supreme Court of the United States in the **Wolff Packing Company Case.**[58] The Supreme Court held the Kansas Industrial Relations Act unconstitutional as it violated the provisions of the fifth and fourteenth amendments as to due process of law[59] and the provisions of the thirteenth amendment as to involuntary servitudes.[60]

The observations of the Court concerning compulsory arbitration were decisive:

> The system of compulsory arbitration which the Act establishes is intended to compel, and if sustained will compel, the owner and the employees to continue the business on terms which are not of their making. It will constrain them not merely to respect the terms if they continue the business, but will constrain them to continue the business on these terms. True the terms have same qualifications, but as shown in the prior decision the qualifications are rather illusory and do

58. 262 U.S. 522 (1922).

59. ....Nor (shall any person) be deprived of life, liberty, or property, without due process of Law." **U.S. Const. Amendment V** '....nor shall any state deprive any person of life, liberty or property without due process of Law." **U.S. Const. Amendment XIV.**

60. "Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction" **U.S. Const. Amendment XIII.**

not substract much from the duty imposed. Such a system infringes the liberty of contract and rights of property guaranteed by the due process of law clause of the 14th Amendment.[61]

In the case of **Dorchy** v. **Kansas**[62] it reached the same conclusion on the ground that fixing of wages or prices in an ordinary competitive industry, even though it be one of great importance to the public, involves an unwarranted interference with liberty of contract.

6. War Labour Boards

Like the First National Labour Board of 1918 a Second National War Labour Board was established on January 12, 1942 for the duration of war. It was given statutory power on June 25 by the War Labour Disputes Act,[63] 1943. It was authorized to settle labour disputes by mediation and arbitration. Dispute which could not be satisfactorily settled by the United States Conciliation Service were referred to the National War Labour Board. Compulsory arbitration became a standard procedure[64] concerning Fair Labour Standards Act, the National Labour Relations Act (Wagner Act), the Emergency Price Control Act of 1942 and the Wage Stabilization Act of 1942. Refusal by a company to accept to an order of the Board was sometimes followed by governmental seizure[65] and operation. The decisions of the Board were based on the law, precedent or on compromise. The National War Labour Board by an executive order was replaced[66] on December 31, 1945, by the National Wages Stabilization Board which was established in the Department of Labour. The Taft-Hartley Act rejected[67] the compulsory arbitration as

61. **Wolff Packing Co. v. Court of Industrial Relations,** 267 U.S. 550 at 569 (1924).

62. 267 U.S. 550 at 569 (1924).

63. 57 Stat. 163 (1943).

64. Stat. 1060 (1938); 49 Stat. 449 (1935); 56 Stat. 23 (1942); and 56 Stat. 765 (1942).

65. Section 3 War Labour Disputes Act, 1943.

66. Executive Order 9672, 2 **Federal Register** 221 (1946).

67. 93 **Congressional Record** 3835-3836 (1947).

a measure for the maintenance of industrial peace.

However new trends are emerging in the United States towards the direction of compulsory arbitration despite the bitter opposition both from labour and management. Serious restrictions are placed on the right to strike of the employees[68] in the interest of general public which is deprived of goods from the market. Professor Williams observes in this connection:

> The compulsory arbitration of wages and working condition to settle a dispute in an industry in which a work stoppage would be disastrous to the national interest is a proper procedure to have available. We used compulsory arbitration in war time, because we could not tolerate strikes. It needs to be an available ultimate weapon in those instances in which right to strike simply cannot exist.[69]

7. Absence of Labour Courts

The National Labour Relations Act, the Fair Labour Standards Act, the Railway Labour Act, Clayton Anti-Trust Act and the Norris-La Guardia Act, the Labour-Management Relations Act and the Labour-Management Reporting and Disclosure Act are major federal statutes regulating the labour-management relations. It is interesting to note that none of these statutes provide for labour courts which are common in all systems. The subject of labour courts[70] was one of the questions considered by the Congressional Joint Committee on Labour-Management Relations Act, 1947. Senator H. Alexander Smith, a member of the Judicial Committee of Senate, indicated that the functions of the labour courts might be of a dual character: one, the interpretation

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68. Teller, Government Seizure in Labour Disputes, 60 **Harv. L. Rev.** 1017 (1947).

69. Settlement of Labour Disputes in Industries affected with a National Interest, 49 **American Bar Ass.** Jr. 862 (1963).

70. A Bill for the establishment of Labour Courts was referred to judicial committee of the Senate but nothing is known about it. JLO: **Labour Courts in Latin America** 15 (1949).

of contracts; and the other, dealing with situations of national paralysis brought about by nation-wide strikes. But nothing is known about committee's findings.

In essence the method of dealing with disputes in the United States is basically based on voluntary choice-process be it collective bargaining or arbitration or mediation or conciliation. Of course new trends are seen on the horizon with new dimensions which may modify these methods but basically framework would remain the same conducive to the economic and political system of the United States.

II. Anglo-American Labour-Management Processes—Impact on India

The above regulatory processes for the adjustment of labour-management disputes in the United Kingdom of Great Britain, and the United States and other countries did not emerge out of sheer impulse or chance. Like the rules of games or rules of warfare, the regulation of industrial conflict became institutionalized slowly over a long period of experience which provided the system social significance and vitability for the justification and adherence for resolving human conflicts in industry. While labour-management regulatory processes varied from country to country depending upon its social philosophy and economic development. Still the methods and norms which have evolved in English speaking countries are becoming with some modifications a model to the democratic countries of Asia[71] including India.[72]

For India before 1947 the British labour-management pattern was the sheet anchor for resolving social conflicts in Indian industry. Such institutions were of quasi-parliamentary character wherein conflicting groups of their representatives met to resolve conflicts in a relatively peaceful and organized manner. Before the First World War there were no such autonomous institutions of workers and employers in

71. Isaokikuchi, Industrial Relations in Japan, 80 International Lab. Rev. 150 (1959); C.D. Calderson, From Compulsory Arbitration to Collective Bargaining in the Philippines, 81, International Lab. Rev. (1960).

72. 73 International Lab. Rev. 551 (1956).

India invested with the right to reach decisions without any outside intervention. The reasons for this state of affairs are that there were no trade union bodies in India before 1918. Industrialism was just beginning and the philosophy of direct action had not so far caught the imagination of Indian workers. Therefore normal judicial machinery and civil laws[73] were the sole **modus operandi** for settlement of employer-employee dispute. In other words legislative clogs, administrative apathy and judicial hostility combined with employers' opposition to any organized activity of the workers were responsible for the absence of suitable machinery and laws for better employee-employer relations in the country.

1. Quasi-Parliamentary Processes in India before 1947

The attention of the State in India to devise special laws and methods for the maintenance of industrial peace became certain only after First World War. This period saw the beginning of intense industrial conflicts and strikes by trade unions for higher wages and better working conditions. The establishment of I.L.O. as a body of world-wide labour reforms[74] and social justice compelled the State in India to consider desirable means for the adjustment of relations between labour and management. Meanwhile in England an attempt had already been made to establish industrial court, courts of inquiry in connection with trade disputes. The British Industrial Courts Act,[75] 1919 provided the idea of industrial court, courts of inquiry, boards of arbitration and conciliation for the voluntary settlement of labour disputes. In India also, therefore, an agitation[76] started for similar legislation for labour-management disputes. The Bengal and Bombay inquiry committees on industrial unrest and disputes

73. The Regulation VII of 1819, the Workmen's Breach of Contract Act, 1859, the Employers' and Workmen's (Dispute) Act, 1860; Indian Penal Code 1860 (Sections 490 and 492).

74. 73 International Lab. Rev. 551 (1966).

75. 9 and 10 Geo. 5, Ch. 69.

76. Dufty, **Industrial Relations in India** 47 (1964).

recommended[77] the joint workers committees, conciliation boards, court of inquiry by incorporating the basic features of the British Industrial Courts Act, 1919 and the British Trade Disputes and Trade Unions Act, 1927. As a result of the recommendations of the industrial disputes inquiry committees followed intense industrial unrest and strikes. At this time there was no law and machinery in India for the settlement of industrial disputes. The result was the passing of the Indian Trade Disputes Act, 1929.

(i) Trade Disputes Act, 1929

The main object of the Act was to make provision for the settlement and investigation of trade disputes which the employers and the employees could not resolve themselves. For this purpose the Act provided[78] for the establishment of a Board of Conciliation and a Court of Inquiry to be appointed[79] by the appropriate governments. The Act empowered the government to refer[80] any trade dispute to a Court of Inquiry or Board of Conciliation on its own initiative or on the initiative of both the parties to the dispute In case of public utility services[81] no employee or employer could resort to strike or lockout without giving 14 days previous notice in writing of strike or lockout.

The Trade Disputes Act was an **ad hoc** measure of experimental character for a period[82] of five years only. The Royal Commission on Labour in India had recommended[83] for the establishment of permanent courts in place of **ad hoc** tribunals. Consequently the Trade Disputes (Extending) Act was enacted to make it permanent. The Royal Commission on Labour in India had made adverse remarks on the

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77. Mukhtar, Trade Unions and Labour Disputes in India 12 (1922).
78. Section 2(a) (b) Act VII of 1929.
79. Section 3(a) (b) **Id.**
80. Section 3.
81. Section 15 (1) (2).
82. Section 1(4).
83. **Report of the Royal Commission on Labour in India** 346 (1931).

neglect of conciliation saying[84] that committees and tribunals were set up only when dispute had attained considerable magnitude and when the strike was either imminent or in being. It categorically stated:

> India has tried to copy the less valuable part of the machinery employed in Great Britain whilst ignoring the most valuable part. There less reliance is placed on **ad hoc** public enquiries of the kind contemplated by the Indian Trade Disputes Act than in efforts of conciliation officers and others to bring the parties privately to agreement.[85]

The Trade Disputes Act, 1929 was, therefore, amended in 1938 to provide that the government concerned may appoint conciliation officers[86] charged with the duty of mediating in or promoting the settlement of trade disputes to cover differences between employers and employees. As in England, Government of India also promulgated Rule 81-A of the Defence of India Rules in January 1942 to meet the war exigencies. These rules were amended several times during the war. The main object of Rule 81-A was to empower[87] the Central Government to make provisions for the prohibition of strikes or lockouts, referring trade disputes to compulsory conciliation and adjudication, preventing persons from going on strike without having given to employer, a previous notice of fourteen days and requiring employees to refrain from going on a strike either during the conciliation or adjudication proceedings and until the expiry of two months after the conclusion of the proceedings upon such reference.

(ii) Tripartite Non-Statutory Machinery

The impetus to labour legislation was given by the Gov-

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84. Report 347.

85. Id. 348.

86. I. L. O.: **War Time Labour Conditions and Reconstruction Planning in India** 39 (1946).

87. The Bombay Trade Disputes Conciliation Act, 1939 and the Bombay Industrial Disputes Act, 1938 had made provision for the appointment of conciliation officers, etc.

ernment of India Act, 1935 in which labour was in the concurrent legislative list. In many provinces as Madras, Bihar, U.P, Bombay Congress ministries declared to secure to the industrial workers a decent standard of living with a suitable machinery for the settlement of disputes. Therefore, to avoid confusion and to evolve a labour policy for uniform labour legislation for country the Government of India convened an All India Labour Conference[88] in January, 1940. The main anxiety of the Government of India was two-fold[89] in this regard, namely, statutory regulation of industrial relations through the Defence of India Rules and Orders made thereunder, and bringing all the interests—labour, management and government—together in a common forum for shaping labour policy. Therefore, Government of India convened the first All India Labour Conference in January, 1940 for avoiding lopsided growth of labour legislation with a view to evolve uniform labour standards and policy conducive to industrial peace for maximizing production vital to the war efforts. However from 1942 onwards the tripartite consultations on the I.L.O. model between labour, management and government have become a permanent special feature of Indian labour scene. The major plank of this policy was declared to be the promotion of uniformity of labour legislation; the laying down of a procedure for the settlement of industrial disputes; and the discussion of matters of all India importance arising between employers and employees, including matters relating to labour welfare and maintenance of labour morale. No institutional device even the industrial tribunals have succeeded so much in India as the tripartite machinery in the realm of industrial relations and industrial peace. From a small but sure beginning it has grown and developed into an important mechanism endeavouring to resolve industrial conflicts with the consent of the labour and management. Indeed it has expanded in its ambit

88. The Institution of Tripartite Organization in India, 43 **International Lab. Rev.** 21 (1943).

89. **Consultative Machinery in the Labour Field**, 1 (Labour Bureau, Ministry of Labour and Employment, Govt. of India, 1959).

and succeeded in laying down the foundations of industrial democracy in India.

2. Emerging Labour Management Framework—Adaptations

Before 1947 there were no permanent labour courts or tribunals in India. The idea of such labour courts and tribunals was mainly derived from the Commonwealth Conciliation and Arbitration Act, 1904. Such hierarchy of labour courts and tribunals was enacted in the Industrial Disputes Act, 1947 which repealed the Indian Trade Disputes Act, 1929. The new Act of 1947 has provided a broad-based industrial framework of quasi-parliamentary character consisting of negotiating, mediating, investigating, arbitrating and adjudicating bodies of bewildering character borrowed from different countries. The philosophy of compulsory adjudication with permanent tribunals is borrowed from Australian industrial system, the institution of mediation, conciliation and inquiry from United Kingdom of Great Britain, the scheme of workers' participation in management from West Germany, Yugoslavia and Scandinavian countries and the concept of collective bargaining, voluntary arbitration, grievances procedure, is being borrowed from the United States of America. Therefore, the industrial relations machinery and methods as exist to-day in India present a scene of uncertainty and confusion both to the dismay of workers and management. A study of the existing statutory and voluntary adjustment processes is made for an appraisal of labour-management relations system of India.

CHAPTER VII

State Regulatory Processes of Labour-Management Relations in India

1. Historical Perspectives

Before 1947 in India labour-management disputes were regulated by the Trade Disputes Act, 1929 and Rule 81-A of the Defence of India Rules, 1942—the latter being a temporary measure.[1] The Trade Disputes Act although placed restrictions on the right to strike and lock-out in public utility services but made no provision for the settlement of such disputes by labour courts or conciliation agency. Therefore a new Industrial Disputes Act was enacted[2] which have incorporated the provisions concerning prohibition on strikes and lockouts and settlement thereof by conciliation and adjudication machinery. Also the Industrial Disputes (Appellate Tribunal) Act,[3] 1950 was enacted to provide for the establishment of an Appellate Tribunal in relations to industrial disputes with jurisdiction over all industrial tribunals, labour courts, wage boards etc. The need of such a central appellate authority was felt for reviewing the divergent and conflicting decisions of the large number of industrial tribunals established by the central and state governments and to co-ordinate their activities It was hoped by the framers of this Act that Labour Appellate Tribunal (LAT) would deal with labour-management problems from a new canvas of social

1. The Defence of India Rules were due to lapse on October 1, 1946 but Rule 81-A was kept in force for a further period of six months by the Emergency Powers (Continuance) Ordinance, 1946.
2. Act No. XIV of 1947.
3. Act No. XLVIII of 1950.

justice[4] and fair play whereby justice would be done quickly, cheaply and objectively. However all such hopes were belied soon as the Labour Appellate Tribunal could not maintain these high standards. Labour became dissatisfied with it as it was undoing quite a large number of the pro-labour decisions of the lower industrial tribunals and demanded its abolition. The employers on the other hand resisted it. Government also thought fit to start a new experiment by creating tribunals decisions of which would be non-appellable.[5] But again there was a demand at the seventeenth session of the Indian Labour conference at Madras for the revival[6] of Labour Appellate Tribunal in view of the large number of appeals pending before the Supreme Court.

While the consensus of opinion was in favour of the revival of the Labour Appellate Tribunal it was emphasized that mere existence of Labour Appellate Tribunals could not by itself eliminate appeals being taken to Supreme Court. Other suggestions made at the conference included the creation of a Special Labour Bench in the Supreme Court and similar Benches in the High Courts. However nothing formally has been done thereto so far.[7]

A. State Regulatory Processes of Labour Disputes---Non-adjudicating Agencies

The Industrial Disputes (Appellate Tribunals) Act providing for the Labour Appellate Tribunal was repealed by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act,[8] 1956. The amending Act **inter alia** substituted the then existing system of tribunals by a three-tier system of tribunals, viz., Labour Courts, Tribunals and National Tribunals. The Industrial Disputes Act as it stands today, there-

4. **Muir Mills v. Suti Mills Mazdoor Union, (1955) 7 F.J.R. 483 at 489 (S.C.).**

5. The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956.

6. See **Seventeenth Tripartite 39 (ATTUC Publication, 1959).**

7. The newly appointed National Labour Commission might consider this question.

8. **Act No. XXXVI of 1956.**

fore, provides for the works committees, conciliation officers, conciliation boards, courts of inquiry, voluntary arbitration and compulsory adjudication machinery consisting of labour courts, tribunals and national industrial tribunals for the settlement and adjudication of labour-management disputes. A functional appraisal of this process is necessary for purposes of critical evaluation and assessment. In the first instance a study of non-adjudicating machinery is made which includes works committees, conciliation, investigating and voluntary arbitration agencies etc.

(1) Works Committee

The Trade Disputes Act, 1929 did not provide for the establishment of works committees. The Royal Commission on Labour in India recommended[9] the formation of works committees for establishing day-to-day contacts to prevent misunderstanding and disputes at the plant level. The Commission was of the view that the ideal place for settling disputes should be factory place itself and not the labour courts or tribunals etc. The Commission restated[10] that the success of the works committee would depend largely upon the co-operation of labour and management and should in no way be considered as substitute for trade unions.

The Industrial Disputes Act,[11] 1947 for the first time introduced this novel device consisting of equal number of representatives of employer and workmen for settling industrial disputes.[12]

(i) Functions—Works Committee

The reason de tour of the works committee is to start in India the principle of labour participation in management through joint consultation. Obviously the idea is to create

9. Report 342-343.

10. **Id.**

11. Section 3; See Section 48 Bombay Industrial Relations Act, 1946; Section 21 Central Provinces and Berar Industrial Disputes Settlement Act, 1947; Section 36 Madhya Pradesh Industrial Relations Act, 1960.

12. See Gazette of India, 239-240 (Part V, 1947).

psychological and emotional unity between workers and employers for resolving their mutual conflicting interests in an orderly and democratic method. Appropriate governments are empowered[13] to require those establishments employing one hundred or more workers on any day in the preceding year to constitute works committees. The duties of the works committee are confined:[14]

> to promote measures for securing and preserving amity and good relations between the employer and the 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.

As to the functions of the works committee the Labour Appellate Tribunal observed:

> there is no subject concerning employees which the works committee is precluded from considering. The Industrial Disputes Act has been designed to allow for a maximum of negotiation and settlement before a dispute is transferred to the sphere of adjudication, and the very first body constituted for the purpose of negotiation and settlement is the works committee, it therefore follows that agreed solutions between the works committee and the management are always entitled to weight and should not be readily disturbed, and in our views this would be particularly so in the matters like classification, grades and scales which are peculiarly within the personal knowledge of the members of the works committee.[15]

The Labour Appellate Tribunal further commented:

> the functions of the works committee are to ascertain the grievances of the employees and when occasion arises to arrive at some agreement also. But the func-

13. See also Rules 38-57 of the Industrial Disputes (Central) Rules, 1957.

14. Section 3(2).

15. **Metal Box Co. v. Their Workmen,** (1952-63) 4 F.J.R. 164.

> tion and the responsibility of the works committee as their very nomenclature indicates cannot go beyond recommendation and as such they are more or less bodies who in the first instance endeavour to compose the differences and the final decision rests with the union as a whole. In other words the decisions of the works committee are merely directory and not mandatory in character and are purely in the nature of recommendations.[16]

While agreeing with the above views of the Labour Appellate Tribunal the Supreme Court of India has made clear[17] that workers' representatives on the works committee do not represent the workmen for all purposes, but only for the purposes of the function of the works committee. The language used in section 3(b) makes it clear that the works committee is not intended to supplant or supersede the unions for the purposes of collective bargaining, and is not entitled to consider real or substantial changes in the conditions of service; their task is to smoothen away frictions that might arise between labour and management in day-to-day work. By no stretch of imagination can it be said that the duties and functions of the works committee includes the decision on such important matters as the alteration in the conditions of service by rationalization.

Various works committees which have been set up are functioning to resolve differences and maintain industrial peace and friendly relations. The first five year plan also envisages that works committees should[18] be the best vehicle for improving labour relations and promoting employer-employee collaboration in the interest of high production and greater well being of workers through the progress of industry. The successful functioning of the works committee rests a good

16. **Kemp and Co., Ltd. v. Their Workmen** (1955) I. L.L.J. 48, 53; **U.P. Electric Supply Co. v. Bijli Mazdoor Sangh,** (1952) L.A.C. 346.

17. **Northbrook Jute Co. v. Their Workmen** (1960) 1 L.I.J. 580 (S.C.)

18. **First Five Year Plan** 576-577 (Planning Commission, Government of India, 1952).

deal on the initiative, sympathy and interest of the management.

The working of the works committee has come for review constantly before the Indian Labour Conference. At the seventeenth session of the Indian Labour Conference also the functioning[19] of the works committee in the public sector came for analysis. A small tripartite body was formed[20] to examine the material on the subject and draw-up guiding principles relating to the composition and functioning of the works committees. The tripartite committee on works committees submitted its report on November 30, 1959. The conclusions reached in the committee reveal that it is not practicable to draw up an extensive functions of works committee. It was agreed that there should be some flexibility of approach for the system to work properly. It was felt that items like conditions of work such as ventilation, lighting, temperature, sanitation including latrines and urinals, amenities such as drinking water, canteens, dining rooms, creches, rest rooms, medical and health services, safety and accident prevention, occupational diseases and protective equipment, adjustment of festival and national holidays; administration of welfare and fine funds; educational and recreational activities, such as libraries, reading rooms, cinema shows, picnic parties; community welfare and celebrations; promotion of thrift and savings and implementation and review of decisions arrived at meetings of committees should normally be dealt with by the works committees. Items which were excluded from the purview of the works committees were: wages and allowances, bonus and profit sharing scheme, rationalization and matters connected with the fixation of work-load, programmes of planning and development, matters connected with retrenchment and lay-off, provident fund, gratuity schemes and other retiring benefits, victimization of trade union activities, quantum of leave and national and festival holidays, incentive schemes and housing and transport services.

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19. The subject matter was also discussed in 1948 and 1958.

20. **Tripartite Conclusions 1942-1962**, 64 (Ministry of Labour and Employment, Government of India, 1962).

(ii) **Difficulties—Works Committee**

It was found, however, that many decisions of the works committee are not implemented. The reasons furnished are that they involve huge financial outlay, non-availability of raw material, lack of co-operation, friction and local politics, procedural difficulties, and matter beyond the financial or administrative powers of the head of the establishment etc. The general difficulties in the function of these committees are lack of appreciation on the part of the management,[21] illiteracy and lack of understanding amongst the workers, disinclination of workers' representatives on the works committee to participate in the deliberations of the committee, workers expect too much out of these representatives and they being unable to deliver the goods became unpopular, lack of co-operation and opposition of the trade union leaders and opposition of trade unions towards the formation of works committee due to inter-union rivalry.

(2) **Conciliation Service**

India also has a statutory agency[22] for bringing about a friendly settlement of labour-management disputes which cannot be resolved by direct and mutual negotiations involving intervention in the dispute of an outside element appointed by the government. Such a body is invariably the government conciliation service—the conciliation officers and the conciliation boards—which assist the disputant groups in composing, compromising and settling differences in a peaceful and friendly manner. It is an institution which has been used to reconcile all sorts of disputes[23] including industrial.

(i) **Initiation of Conciliation Proceedings—Non-Public Utility Services**

In India prior to 1947 the whole conciliation machinery

21. It is said that non-functioning of the works committee at the Durgapur Steel Plant was responsible for seven days' strike in August, 1966. The committee had fallen into disfavour with the management—**The Statesman**, August 19, 1966.

22. Sections 4 and 5, Industrial Disputes Act, 1947.

23. I.L.O.: **Conciliation and Arbitration in Industrial Disputes** 41 (Geneva, 1933); Jackson, **Meeting of Minds—A Way to Peace Through Mediation** (1952).

was of voluntary character.[24] In the Industrial Disputes Act, 1947 resort to conciliation[25] machinery—conciliation officers and conciliation boards—is obligatory where dispute relates to public utility service[26] and where a notice of strike or lockout is given under section 22 of the Act and optional in other cases.[27] Obviously when the parties fail to reach an agreement and the dispute continues the State has to intervene with an offer of conciliation. Under the Industrial Disputes Act, 1947 the appropriate government may[28] appoint conciliation officers either for specific industries or for specified area charged with the duty of mediating in or promoting settlement of industrial disputes. In cases of disputes in public utility services as soon as the conciliation officer receives strike notice he is required to make an endeavour to bring about a settlement of the dispute. However, no such immediacy is envisaged for settling disputes in non-public utility services. Nevertheless in disputes in non-public utility services where the conciliation officer has the absolute discretion to hold or not to hold conciliation proceedings he usually makes preliminary investigation before commencing conciliation proceedings. The duty[29] of the conciliation officer is to satisfy himself before undertaking conciliation proceedings as to whether the grievance which the union has put forward is genuine or not. Since the law confers a discretion upon the conciliation officer whether he should enter upon conciliation or not, it is only right and proper that he should satisfy himself by all means available to him about the propriety of undertaking conciliation. If after satisfying himself in this respect, he holds preliminary discussions with the representatives of the parties and even conveys proposals made by one of the parties

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24. Section 7, Trade Disputes Act, 1929 (Act VII of 1929).

25. Section 12(1).

26. Section 2 (n) defines the term 'public utility service.'

27. **Tata Collieries Labour Asso. v. The Management of Digwadih Colliery,** (1953) L.A.C. 638, See Rule 10, Industrial Disputes (Central) Rules, 1957.

28. Rules 4, 5, 6 and 9, The Conciliation Officers (Central) Recruitment Rules, 1958.

29. **East Asiatic and Allied Cos. v. Shelke,** (1961) 1 L.L.J. 162.

to the other, it could not be said that he has commenced conciliation proceedings.

(ii) Initiation of Conciliation Proceedings—Public Utility Services

The initiation of conciliation proceedings is essential[30] in case of public utility services when notice of strike is received and discretionary[31] in case of other industrial establishments. The jurisdiction[32] of the conciliation officer under section 12 is founded upon the existence or apprehension of an industrial dispute. If there is no industrial dispute the conciliation officer has no jurisdiction to initiate proceedings under Industrial Disputes Act and the proceedings can be quashed as being without jurisdiction. The duties of the conciliation officer are not judicial but administrative. His main task is to go from one camp to another and find out the greatest common measure of agreement. He is neutral and independent agency[33] created with a view to promote industrial peace by making available governmental facilities in the process of collective bargaining. He has to do a variety of things,[34] namely, investigate the dispute and do all such things for the purpose of inducing the parties to arrive at a fair and amicable settlement.

The conciliation proceedings start[35] as soon as the conciliation officer starts investigation of the dispute in the manner as provided by section 12(2) of the Act. Legally proceedings commence[36] on the date on which a notice of strike or lockout under section 22 is received by the conciliation officer or on the date on which government makes a reference. The conciliation officer[37] whether he succeeds or fails in arriving at a

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30. **Poona Mazdoor Sabha v. G. K. Dhutia,** (1957) 12 F.J.R. 169.
31. **Tata Collieries Labour Association** v. **The Manager, Digwadiah Colliery,** (1953) L.A.C. 638.
32. **K. H. Gandhi v. R. N. P. Sinha,** A.I.R. 1956 Pat. 320.
33. **Workers of Buckingham and Carnatic Co.** v. **Commissioner of Labour,** (1964) 1 L.L.J. 253.
34. **Royal Calcutta Golf Club Mazdoor Union** v. **State of West Bengal,** A.I.R. 1956 Cal. 550.
35. **National Tobacco Co.** v. **Its Workmen,** (1953) L.A.C. 620.
36. Section 20, Industrial Disputes Act.
37. Section 12(3) and (4) **Id.**

settlement has to send a report of the proceedings and steps taken by him together with all the facts and circumstances relating to the dispute. If a settlement of the dispute is arrived at in the course of conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate government. Again, if no settlement of dispute is arrived at he must report. The Act does not give him the power to give a final decision even when settlement is arrived at between the parties and much less where no settlement is arrived at between them. In either case he has only to report the matter to government. If the conciliation proceedings are allowed to be protracted beyond the prescribed[38] period of 14 days the conciliation proceedings are not rendered invalid. The conciliation officer does not become **functus officio**[39] after the expiry of the aforesaid period.

A settlement may be arrived at with or without the aid of conciliation officer. Section 18 of the Act makes a distinction between these two situations. The settlement arrived at without the intervention[40] of the conciliation officer only binds the parties thereto and in other case it binds all the workers whether parties or not. A strike contrary to a no-strike clause[41] of a collective agreement is a violation of the term of settlement and is in contravention of section 23(c) of Industrial Disputes Act. The idea is to achieve industrial peace and harmony during the period of operation of settlement or collective agreement or award of an arbitrator.

(iii) Boards of Conciliation

The institution of boards of conciliation for settling industrial disputes in a fair and amicable manner dates back to 1929.[42] Under the Industrial Disputes Act, 1947, boards of

38. Section 12(6).

39. **State of Bombay v. Andheri Kurla Bus Service**, A.I.R. 1955 Bom. 324; **Workers of Buckingham & Carnatic Co. v. Commissioner of Labour**, (1964) 1 L.L.J. 253.

40. **Workers of Buckingham & Carnatic Co. v. Chief Commissioner of Labour**, (1964) 1 L.L.J. 253.

41. **Jeypore Sugar Co. Ltd. v. Their Workmen**, (1955) 2 L.L.J. 744.

42. Section 6, Trade Disputes Act, 1929.

conciliation appointed ad hoc are composed[43] of a chairman, who is an independent person and two or four members appointed in equal numbers on the recommendations of the parties. The duties of boards are analogous to that of a conciliation officer. They have the duty of investigating disputes referred to them and endeavouring to effect a settlement. When a settlement is reached the terms are incorporated in a memorandum and filed with the appropriate authority. If it is unable to effect a settlement, the board files a report, similar to that of a conciliation officer, but in addition includes recommendations for the determination of the disputes.

(iv) Agreements without Conciliation Proceedings

In order to encourage direct settlement of dispute between the employers and workers the Act recognizes[44] any written agreement between the parties as a settlement for the purpose of the Act. Voluntary agreements made outside conciliation proceedings, therefore, are binding upon the persons[45] only who are parties thereto. In other words persons not covered by such agreements are not bound by them Further agreement arrived at without the concurrence of the conciliation officer is not settlement[46] with respect of workmen not covered by the settlement. Also of the existence of separate provision[47] for settlement arrived at in the course of conciliation proceedings takes away the sanctity of agreements made outside the conciliation proceedings. This is perhaps one of the reasons why the system of collective bargaining could not become effective and popular in the settlement of disputes in India.

(3) Court of Inquiry

Statutory provision for establishment of court of inquiry

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43. Section 3.

44. Section 18(1).

45. **Standard Coal Co.,** (1952) 1 L.L.J. 493; **Burmah Shell Workers' Union v. State of Kerala,** A.I.R. 1960 Ker. 190; See contrary view in **Ramnagar Cane and Sugar Co. v. Jatin Chakravorty,** (1960-61) 19 F.J.R. 99 (S.C.).

46. **Bata Shoe Co. v. D. N. Ganguly,** A.I.R. 1961 S. C. 1158.

47. Section 18(3) Industrial Disputes Act, 1947.

to inquire into and report on specific matters referred to was first made in the Trade Disputes Act,[48] 1929. The court of inquiry as established under the Trade Disputes Act was not put to frequent use as it was merely ad hoc in character and its recommendations were not binding. In the Industrial Disputes Act, 1947 courts of inquiry[49] are retained and re-modelled on a permanent basis for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

A court of inquiry may consist of one independent person or of such number of independent persons as the appropriate government may think fit to inquire into any matter relating to an industrial dispute. It is incumbent on the court to inquire into the matter referred[50] to it and report thereon to the appropriate government ordinarily within a period of six months[51] from the commencement of its inquiry. The powers[52] of a court of inquiry for inquiring a matter are the same as those of the board of conciliation. However the rights of the parties to an industrial disputes concerning strike and lockout are not affected by the pendency[53] of conciliation proceedings. Likewise a reference to a court of inquiry is not a subsidiary proceeding which is dependent upon the existence of any proceedings relating to the industrial dispute before an industrial tribunal. It is altogether independent proceeding which can be pursued to its conclusions whether the proceedings, if any, before industrial tribunal in respect of an industrial dispute are pending or not. The only thing necessary for setting up of a court of inquiry is the existence of an industrial dispute. In short the main object of establishing a court of inquiry is for investigation and elucidation of facts concerning a dispute and to make the facts known to the government and the general

48. Section 4, Trade Disputes Act. The courts of inquiry, however, were set up in Madras in 1920, in Burma in 1924 and in Bengal in 1928. See **Report of the Royal Commission on Labour in India,** 339 (1931).

49. Section 6.

50. Section 10 (b).

51. Section 14.

52. Section 11.

53. Sections 22 and 23.

public with a view to bring pressure upon labour and management to reach an amicable settlement of the dispute. The practice of setting up of such courts is not very frequent under the new Act because it is not as effective as conciliation or adjudication machinery for the prevention and settlement of industrial dispute. Its recommendations are not binding upon the government or parties to the dispute as well.

B. State Voluntary Arbitration Machinery

Voluntary arbitration is a mode of settling labour-management disputes whereby parties voluntarily submit their differences to arbitrator or board of arbitrators chosen by them and agree in advance to abide[54] by the award except where the arbitrators exceed their powers or show gross partiality etc. It differs from industrial adjudication insofar as in the latter case the agency for settling disputes is a permanent body not chosen by the parties but existing independently of them. Industrial arbitration also can be distinguished from commercial arbitration. According to Ludwig Teller:

> The kernel of the distinction between commercial and industrial arbitration is said to be found in the fact that commercial arbitration is an aspect of the administration of justice, and more particularly, a substitute for judicial process, while the arbitration of labour disputes is more often an extension of the process of collective bargaining.[55]

Voluntary arbitration in essence is not a substitute of compulsory adjudication nor a private system of adjudication but a decision making method—an instrumentality to achieve larger goals of industrial democracy[56] and collective bargaining.

In India voluntary arbitration[57] played no major part in

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54. See I.L.O. Recommendation No. 92 of 1951.

55. I **Labour Disputes and Collective Bargaining** 434 (1940).

56. It has been in vogue only at Ahmedabad since 1920—See the **Report of the Royal Commission on Labour in India** 336 (1931).

57. **Gazette of India Extraordinary** 411 (Part II, 1955).

the settlement of disputes before 1956. One of the objects, therefore, of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 was to make provision for voluntary reference of disputes to arbitration by the parties themselves by written agreement and for the enforcement of agreements between employers and workmen reached otherwise than in the course of conciliation. The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 **inter alia** provides[58] that parties to a dispute can, by written agreement, refer the dispute to an arbitrator or arbitrators for arbitration, before it has been referred for adjudication to labour court, tribunal or national tribunal. A copy of the agreement is to be forwarded to the appropriate government and conciliation officer. The arbitrator or arbitrators are to investigate the dispute and submit the arbitration award to the appropriate government. Before 1964 an arbitration award was binding only on the parties to the arbitration.

(1) Statutory Arbitrators

To encourage voluntary arbitration section 10-A has been further amended for the establishment of an efficient arbitration machinery. The Industrial Disputes Act[59] as amended in 1964 provides[60] for the appointment of umpires in case of difference of opinion between an even number of arbitrators, for prohibition[61] of strikes and lockouts during arbitration proceedings and for making award binding on those workers who are not party to the arbitration agreement provided the appropriate government is satisfied that parties to the arbitration agreement represent the majority of each party. Of course mandatory provision also exists whereby workmen, who are not party to such agreement are to be given an opportunity[62] for presenting their case before the arbitrator or arbitrators. Also the Arbitration Act, 1940 is not applicable to arbitrators under the Industrial Disputes Act.

58. Section 10-A.
59. Act No. 36 of 1964.
60. Section 10-A (1A).
61. Sub-Section (4-A) **Id.**
62. Sub-Section (3-A) **Id.**

The arbitrators are appointed by the parties and their power to determine, adjudicate and decide a dispute is at once derived from the arbitration agreement of the parties and not from any statute. The parties are free to submit their all or certain kinds of differences to arbitration. The agreement itself lays down the general framework according to which the arbitrators have to give their award. Particularly an arbitrator has to confine his award strictly with reference to submission only then it can be binding upon the parties. However, there is nothing to prevent an arbitrator from adding to his award recommendations of a non-binding character. An arbitration award is final if the arbitration agreement does not stipulate to the contrary and is thereby binding upon the parties. It is obvious, therefore, that arbitrators must fulfil their duty as umpires with perfect independence[63] and impartiality without being bribed, coerced and influenced in any manner.

(2) **Arbitrators—Powers**

The arbitrator derives his authority from the arbitration agreement and does not exercise judicial powers usually exercised by civil courts. The Industrial Disputes Act simply lays down[64] that an arbitrator shall follow such procedure as he may think fit. It means the statute does not expressly confer[65] upon him power of enforcing attendance of any person and examining him on oath, issuing commissions for the examination of witnesses, entering the premises[66] of the establishment, etc. The arbitrator must investigate[67] the dispute and submit to the appropriate government the arbitration award signed by the arbitrator or arbitrators. The government have to publish[68] the arbitration award within thirty days of its receipt and such award becomes enforceable[69] on the expiry of

63. **Air Corporations Employees' Union** v. **Vyas** (1962) 1 L.L.J. 31.
64. Section 11 (1).
65. Section 11 (2).
66. Section 23.
67. Section 10(4).
68. Section 17. **Id.**
69. Section 17-A.

thirty days of its publication. The arbitration agreement is usually binding[70] on the parties to the agreement who referred the dispute to arbitration. However where the appropriate government is satisfied[71] that persons making reference represent the majority of each party, it may within fourteen days issue a notification to such employers and workers who are not parties to the arbitration agreement but are concerned with the dispute. In such a situation the arbitration award shall be binding[72] on all other parties summoned to appear in the proceedings as parties to the dispute unless the arbitrator records the opinion that they were summoned without proper cause.

(3) Legal Position of Arbitrators

There was controversy among the High Courts as to the legal character of arbitrators. The Kerala High Court was of the view[73] that arbitration itself as well as the choice of the arbitrators under section 10-A is dependent on the consent and choice of the parties to the dispute and, therefore, arbitrator appointed in pursuance of section 10-A of the Act could not be considered to be a statutory[74] arbitrator. The Kerala High Court was of the view that no certiorari or prohibition could be issued to arbitrator set up by agreement.

The Bombay and the Patna High Courts[75] have held a contrary view. The Bombay High Court was of the view that:

> the proceedings before the arbitrator are quasi-judicial proceedings and that the arbitrator must function within the limits of his powers as defined by the Act and the rules. We are, therefore, of the opinion that the arbitration contemplated by section 10-A has all the

70. Section 18(2).

71. Section 10-A (3-A).

72. Section 18 (3).

73. **A.T.K.M. Employees' Association v. Musaliar Industries,** (1961) 1 L.L.J. 81.

74. **Id.** 83.

75. **Air Corporations Employees' Union v. Vyas** (1962) 1 L.L.J. 31; **Rohtas Industries Staff Union v. State of Bihar,** (1962) 2 L.L.J. 420.

> essential attributes of a statutory arbitration under section 10-A of the Act. Even assuming that the word 'tribunals' in article 227 of the Constitution means statutory tribunals, it must be held that the High Court would have under article 227 of the Constitution the power of superintendence over arbitrator who functions under section 10-A of the Industrial Disputes Act.[76]

Finally the Supreme Court has made somewhat the legal position clear in this regard. According to the Supreme Court an arbitrator under Section 10-A is not a 'tribunal' within the meaning of article 136 of the Constitution. Yet it has observed that:

> having regard to several provisions contained in the Act and the rules framed thereunder, an arbitrator appointed under section 10-A 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 10-A 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 an arbitrator, as in a loose sense, statutory arbitrator.[77]

The Supreme Court in this connection also remarked:

> It appears that in enacting section 10-A the legislature probably did not realize that the position of an arbitrator contemplated therein would become anomalous in view of the fact that he was not assimilated to the status of an industrial tribunal and was taken out of the provisions of the Indian Arbitration Act That,

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76. **Supra note 63 at 40.**

77. **Engineering Mazdoor Sabha v. Hind Cycles,** (1962) 2 L.L.J. 760 at 761.

however, is a matter for the legislature to consider.[78]

After the **Engineering Mazdoor Sabha** judgment law concerning judicial review by the High Courts under article 226 of the Constitution of the acts of the arbitrators is definite and clear. The Punjab High Court is of the view[79] that the law does not intend to confer on the arbitrator under the Act wholly uncontrolled and absolute power to make the award completely bare of reasons so as to render it incapable of judicial security by the High Court under article 226 of the Constitution. The Kerala High Court also reiterated[80] similar view.

II. Compulsory Adjudication Process

In India settlement of Industrial disputes by direct and mutual negotiations is the primary responsibility of the parties involved in it. However if settlement by negotiation is not possible the good offices of conciliation officers are made available. And if conciliation also fails to induce the parties to come to a settlement, then the provision is made for settlement by voluntary arbitration. It is only when the conciliation machinery has failed and when the parties do not agree to voluntary arbitration, they are left with two alternatives, namely, a strike or lockout or compulsory adjudication at the instance of the government. Resort to compulsory adjudication, therefore, is the main but not the exclusive alternative for the settlement of industrial disputes in India.

Obviously when the government is convinced that a serious disorder or breach of public peace or serious and prolonged hardship to a large section of community is likely to be caused, it has the discretionary power to interfere in labour-management disputes and ask labour and management to submit their disputes to labour courts and industrial tribunals constituted by it for settlement.

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78. Id. at 771.

79. **Rohtak Delhi Transport Ltd.** v. **Risal Singh,** (1964) 1 L.L.J. 89.

80. **Koru** v. **Standard Tile and Clay Works,** (1964) 1 L.L.J. 102.

A. Compulsory Adjudication Machinery—Objects

Induction of compulsory adjudication machinery in 1947 for the settlement of industrial disputes appeared at the first glance an anachronism in normal times but exigencies of period were the only correct explanation therefor. Mr. Jagjivan Ram, then Union Labour Minister, explained in the Central Legislative Assembly on November 1, 1946, the Government's policy underlying the Industrial Disputes Bill, 1946 in these words:

> Trade disputes are in reality a recrudescence of the economic warfare between the capital and the labour and in this warfare the community at large is no less affected than the employer and workmen engaged in the industry.....Government being responsible for the maintenance of services and supplies essential to the health, safety and welfare of the community and the maintenance of the national economy, it becomes imperative for Government to intervene in industrial disputes, especially where in consequence any severe hardship is entailed on the community. The principle underlying compulsory arbitration is thus clear and unimpeachable where public interests are jeopardized, I maintain that it is incumbent upon Government to intervene with a view to securing the re-adjustment of relations between the employers and the workmen, if possible by private negotiation and conciliation, and if necessary by compulsory adjudication. I must make it clear that in providing for compulsory adjudication our intention is not to oust or in any way minimize the importance of the methods of voluntary negotiation and conciliation in the settlement of disputes. Industrial disputes being disputes on interests rather than on rights, I need hardly stress that voluntary negotiation will offer more effective and lasting solution than conciliation or arbitration.....It is only where conciliation has no reasonable chance of success, that disputes will be referred to adjudication as being a neces-

> sary expedient for securing readjustment of industrial relations.[81]

The Government of India being conscious of their responsibility towards labour, industry and consumer adopted the system of compulsory adjudication as a substitute of the trial of strength by way of strikes or lockouts for the settlement of labour-management disputes. Besides, the helplessness and lack of solidarity among the rank and file of workers to bargain with employers, presence of a strong sector of a labour dominated by the communists and considerations of maintaining industrial peace, increased productivity and of social justice were the impelling factors responsible for compulsory adjudication in India. With the initiation of first five year plan reliance[82] on compulsory adjudication was heavier for achieving the socio-economic goals enshrined in the economic directives of the Directive Principles of State Policy of the Constitution. As the Government of India was in hurry to develop the country economically it could not have afforded the interruption of production. Governmental intervention in the form of compulsory adjudication was, therefore, the logical outcome of the concern of it to safeguard the interests of the working class regarding wages, other conditions of employment and the welfare of the general public which was vitally interested in production and supply of wherewithals of daily life. According to Justice Gajendragadkar:

> Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted co-operation in the task of production. It is obvious that co-operation between capital and labour would lead to

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81. Quoted by the **Abolition of Labour Appellate Tribunal** 11 at 12 (New Delhi, 1963).

82. **The First Five-Year Plan** 672 (Planning Commission, Government of India, 1952).

more production and that naturally helps national economy and progress.[83]

The principal objective of industrial adjudication is, therefore, to resolve social tensions and economic conflicts between labour-management in accordance with the social philosophy of emerging India. The Supreme Court of India has correctly re-stated the goals of industrial adjudication[84] in these clear terms:

> Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice

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83. **Crown Aluminium Works v. Their Workmen,** A. I. R. 1958 S.C. 30; See **Venkataraman Ayyar J. in Workmen of Burn and Co. v. Burn and Co.,** A.I.R. 1957 S.C. 38 at 43.

84. The term 'adjudication' is nowhere defined in the Industrial Disputes Act, 1947. For its meaning and Philosophy see I.L.O., **Conciliation and Arbitration in Industrial Disputes** 80 (1933); Gajendragadkar, **Law, Liberty and Social Justice** 107 (1965).

Meaning of the term 'adjudication' has, however, been judicially analysed in: **Western Indian Automobile Association v. The Industrial Tribunal,** (1949) L.L.J. 245 at 256 (Reprint); **Bharat Bank v. Employees of Bharat Bank,** A.I.R. 1950, S.C. 188 at 209; **Millowner's Association, Bombay v. R.M.M. Sangh,** (1950) 2 L.L.J. 1247 at 1258; **Bhakthavatsalm Nayudu v. The Chrome Leather Co. Ltd.,** A.I.R. 1951 Mad. 656; **Shree Meenakshi Mills v. State of Madras,** A.I.R. 1951 Mad. 974; **P. G. Brooks v. Industrial Tribunal,** (1953) 2 L.L.J. 8; **J.K. Iron and Steel Co. v. I.A.T.** (1953) 2 L.L.J. 10; **Purtabpur Sugar Factory v. Its Workmen,** (1954) 1 L.L.J. 78; **Alembic Chemical Works v. P. D. Vyas,** (1954) 2 L.L.J. 148 (S.C.); **J. K. Iron and Steel Co. v. Iron and Steel Mazdoor Union,** (1956) 1 L.L.J. 227 (S.C.); **Rohtas Industries Ltd. v. Brijnandan,** (1956) 2 L.L.J. 444 (S.C.); **Neimla Textile Finishing Mills Ltd. v. The Second Punjab Tribunal,** (1957) 1 L.L.J. 460 (S.C.); **P. N. B. v. Shri Ram Kunwar and Industrial Tribunal, Delhi,** (1957) 1 L.L.J. 455 (S.C.); **Badjampura Salt Factory, Naupada v. Its Workers,** (1959) 1 L.L.J. 544; **Rashtriya Mill Mazdoor Sangh v. Appolle Mills Ltd.,** (1960) 2 L.L.J. 263; **New Manek Chowk Spg. and Weaving Co., Ltd., Ahmedabad v. Textile Labour Association,** (1961) 1 L.L.J. 521 (S.C.); **All India Bank Employees' Association v. National Industrial Tribunal,** (1961) 1 L.L.J. 227 (S.C.); **Bidi, Bidi Leaves and Tobacco Merchants' Association v. State of Bombay,** A.I.R. 1962 S.C. 486; **Hindustan Times Ltd. v. Their Workmen,** (1963) 1 L.L.J. 108 (S.C.); **Harinagar Cane Farm v. State of Bihar,** A.I.R. 1964 S.C. 903; **Workmen v. Sriram Chandra B.M.C. Hospital,** (1965) 1 L.L.J. 187.

in dealing with industrial disputes. The concept of social justice is not narrow or one-sided or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of disparities and inequalities, nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions but adopts realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair play and justice.[85]

(1) **Three-Tier System—Reference**

The Industrial Disputes Act as modified by Industrial Disputes (Amendment and Miscellaneous Provisions) Act,[86] 1956 provides for a three-tier system of adjudication agencies,[87] namely, labour courts, industrial tribunals and national tribunals. The first two may be appointed by both the Central and State Governments—the last, that is, national industrial tribunals can only be appointed by the Central Government. All these adjudicating authorities[88] consist of only one person only to be appointed by the appropriate governments. Qualifications for appointment as presiding officer of these authorities are that they should have held any judicial office in India like judge of a high court or district court or chairman or member of the Labour Appellate Tribunal or any judicial office in India for a certain period.

85. **J. K. Cotton Spg. and Weaving Mills Co. v. L. A. T.,** (1963) 2 L.L.J. 435.

86. (XXXVI of 1956).

87. Sections 7, 7-A, 7-B, Industrial Disputes Act, 1947.

88. **Id.**

On the failure of conciliation proceedings the appropriate government have to decide[89] whether a reference of dispute is necessary to a labour court, industrial tribunal or national tribunal. The appropriate government is further empowered by the Act to refer[90] any industrial dispute to adjudicating authorities whenever it is of the opinion that an industrial dispute exists or apprehended. Section 10 deals with the question of reference of disputes to courts or tribunals by the appropriate government. The appropriate government may make a reference to labour court in respect of any matter specified in the second schedule or dispute[91] where it relates to any matter specified in the third schedule which is not likely to affect more than one hundred workmen. It may refer a dispute to tribunal[92] for adjudication where the dispute relates

89. Section 12(5).

90. At the 17th session of the Indian Labour Conference held in 1959 at Madras some model principles for reference of disputes were approved. These model principles were: (1) All disputes may ordinarily be referred for adjudication on request; (2) Disputes may not, however, be ordinarily referred for adjudication: (i) unless efforts at conciliation have failed and the parties are not agreeable to arbitration; (ii) if there is a strike or lockout declared illegal by a court or a strike or lockout resorted to without seeking settlement by means provided by law and without proper notice or in breach of the Code of Discipline as determined by the machinery set up for the purpose unless such a strike (or direct action) or lockout, as the case may be, is called off; (iii) if the issues involved are such as have been the subject matter of recent judicial decision or in respect of which unduly long time has elapsed since the origin of the cause of action, and (iv) if in respect of demands other legal remedies are available, i.e., matter covered by the Factories Act, Workmen's Compensation Act, Minimum Wages Act, etc. The conference agreed that industrial disputes raised in regard to individual cases of dismissal, discharge or any action of management on disciplinary grounds may be referred for adjudication when legality or propriety of such action is questioned and, in particular:

(a) if there is a case of victimization or unfair labour practice;

(b) if the standing orders in force or the principles of the natural justice have not been followed;

(c) if the conciliation machinery reports that injustice has been done to the workmen....see **Tripartite Conclusions 1942-62, 63** at 64 (Ministry of Labour and Employment, Government of India, 1962).

91. Section 10(1)(c) and proviso of Section 10(1)(d).

92. Section 10(1)(d).

to any matter specified in the second schedule or the third schedule. The Central Government may refer a dispute to a national tribunal[93] for adjudication if the dispute involves any question of national importance or is of such nature that industrial establishments situate in more than one States are likely to be interested in or affected by such dispute. Also where the parties to the dispute consent jointly or separately for a reference of the dispute to court or tribunal or national tribunal, the appropriate government on being satisfied that persons applying for reference represent the majority of each party, shall refer[94] the dispute accordingly and the adjudication authority may make what can be described as 'consent award.'

(i) **Reference of Disputes—When Obligatory**

The question arises[95] whether or not the appropriate government is bound to make the reference of the dispute to the authorities constituted under the Act. Under section 10(1) the making of reference is discretionary with the government where dispute relates to non-public utility service as distinguish from public utility service. However in case of public utility service[96] the government is bound to refer and such a reference can only be refused only on any of these grounds, such as, that the notice under section 22 has been frivolously or vexatiously given or that it would be inexpedient to make a reference. Again the obligation to refer a dispute relating to public utility service under proviso to section 10(1) is independent of the duty of the government to refer a dispute under section 12(5). Under the proviso a reference may be made notwithstanding that any other proceedings under the Act in respect of the dispute may have commenced so that on a notice being given under section 22 with regard to dispute relating to a public utility service, although conciliation proceedings may start before the conciliation officer or before the conciliation officer has made the report relating to dispute, the gov-

93. Section 10(1-A).

94. Section 10(2).

95. Dhyani, Machinery for Industrial Relations in India, 1 Indian Journal of Labour Economics 319 (1958).

96. Proviso to Section 10(1).

ernment have the power to refer the industrial dispute to one of the authorities mentioned in section 10. Further under the proviso to section 10(1) there is no obligation cast upon the government to communicate its reasons as to why it has decided not to make a reference to one of the adjudicating authorities as prescribed. Under section 12(5) there is an obligation cast upon the government to communicate its reasons to the parties concerned. The reasons must be connected with the failure on the part of the government to be satisfied that there was a case for reference.

(ii) Reference of Industrial Disputes—Judicial View

Making of a reference of a dispute to labour court, tribunal or national tribunal is an administrative act.[97] The court, therefore, cannot canvass the order of reference closely to see if there was any material before the government to support its conclusion as if it was a judicial or quasi-judicial determination. The duty to refer in section 10 is, however, subject to two qualifications:[98] (1) it has to arrive at a subjective opinion as to whether an industrial dispute exists or is apprehended; (2) even if it does come to such a conclusion or even the facts are so patent that the existence of a dispute cannot be denied, still the expediency to refer to adjudication is left open to government. In other words because a dispute exists it does not follow that it must be referred. As framed section 10 does not even speak of the existence of an industrial dispute but to the opinion of the government Whether an industrial dispute exists or is apprehended government cannot make a dispute which is not an industrial dispute into an industrial dispute because that is an objective fact. But it is the sole arbiter in deciding whether an industrial dispute exists.

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97. **State of Madras v. C.P. Sarathry,** A.I.R. 1953 S.C. 53; **Radhakrishna Mills Ltd. v. State of Madras,** A.I.R. 1956 Mad. 113; **The Travancore Sugar and Chemicals Ltd. v. State of Kerala,** (1958) 11 L.L.J. 208; **News Papers Ltd. v. State Industrial Tribunal, U.P.,** (1957) 2 L.L.J. 1 (S.C.); **State of Bihar v. D. N. Ganguli,** (1958) 2 L.L.J. 634 (S.C.); **Sri Ram Vilas v. State of Madras,** A.I.R. 1956 Mad. 115.

98. **Royal Calcutta Golf Club Mazdoor Union v. State of West Bengal,** A.I.R. 1956 Cal. 550.

or is apprehended. That is purely subjective. The government, therefore, cannot be compelled[99] by a constitutional writ of mandamus to make a reference. Government is sole judge of making reference and such a reference would not become invalid or void[100] just because in considering the expediency of making a reference the government took an unusually long time (two years). Of course government has no right[101] to take upon itself the duty of adjudicating a dispute. The reference can be in general terms[102] and it does not preclude other workmen if they want to be represented by any other union to apply to the tribunal for such representation or even apply for being made parties individually. A reference can, however, be challenged on the ground that what has been referred is not an industrial dispute[103] within the meaning of the Act or that the undertaking of the management is not an 'industry' or dispute referred for adjudication was subject matter of a prior sttlement or award[104] in force between the parties.

The next question arises whether the government can refuse to make a reference to labour court or tribunal. As already stated that under section 10(1)(c) government may refuse to refer a dispute to tribunal concerning non-utility service. But there is a duty cast upon the government to refer public utility dispute and a reference of such disputes can be

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99. **Madam Gurang v. State of West Bengal,** A.I.R. 1958 Cal. 271.

100. **J. K. Cotton Spg. and Weaving Mills Ltd. v. Textile Mills, Kanpur,** (1956) 2 L.L.J. 278.

101. **S.D.T. Workers' Union v. State of Madras,** A.I.R. 1963, Mad. 392.

102. **Hotel Imperial, New Delhi v. Chief Commissioner,** (1959) 2 L.L.J. 553 (S.C.).

103. **Radhakrishna Mills Ltd. v. State of Madras,** A.I.R. 1955 Mad. 113; **State of Madras v. C.P. Sarathy,** A.I.R. 1953 S.C. 53; **E. Sefton & Co. v. Textile Mill Mazdoor Union,** A.I.R. 1958 All. 80; **New India Assurance Co. v. Central Govt. Industrial Tribunal,** A.I.R. 1953 Pat. 321; **The Travancore Sugar & Chemical Ltd. v. State of Kerala,** (1958) 2 L.L.J. 206.

104. **Lister Antiseptics & Dressing Co. v. Their Workmen,** (1953) 1 L.L.J. 581; **National Tobacco Co. of India Ltd. v. Fourth Industrial Tribunal,** A.I.R. 1960 Cal. 249.

refused only on certain grounds.[105] It is left to consideration of the government as to whether a notice has been frivolously or vexatiously given. Further the word 'inexpedient' is very wide and despite the use of the word 'shall' it gives a complete discretion to government and no writ of mandamus[106] can be issued to direct the government to the dispute under the proviso to section 10(1). Likewise under section 12(5) the government can refuse to refer a dispute for adjudication but then it has to communicate reasons therefor. The reasons contemplated under section 12(5) are reasons which must be germane to the issue before the government. It must be relevant to the industrial dispute and to the demands made by the workers, to the answer given by the employer and all matters with which in substance the conciliation officer is concerned. However, when the court is satisfied that reasons given by the government are not proper or not the reasons contemplated by law, court can compel[107] the government to give reasons. But it would be idle to suggest[108] that in giving reasons to a party for refusing to make a reference under section 12(5) the appropriate government has to write an elaborate order indicating extensively all the reasons that weighed in its mind in refusing to make a reference. If it appears that the reasons given show that the appropriate government took into account a consideration which was irrelevant or foreign that no doubt may justify the claim for a writ of mandamus. It has been further held that when government is functioning under section 12(5) it is not functioning in the interest of employer or of employees. It is functioning in the interest of industrial peace and in order to bring about a fair and equitable settlement in the dispute between the parties. Therefore it must not be assumed that in any dispute to which the government as emp-

105. **Ram Chandra Abaji v. State of Bombay,** A.I.R. 1952, Bom. 293; **Firestone Tyre and Rubber Co. of India v. K. P. Krishnan,** A.I.R. 1956 Bom. 273. See supra note 97.

106. **Bagaram v. State of Bihar,** A.I.R. 1950 Pat. 387.

107. **Engineering Staff Union v. State of Bombay,** (1959) 1 L.L.J. 479.

108. **Bombay Union of Journalists v. State of Bombay,** (1964) 1 L.L.J. 351 (S.C.); **Pandya (S.N.) v. State of West Bengal,** (1962) 2 L.L.J. 457.

loyer is a party would not act with that sense of duty and responsibility which the legislature required of it. Further initiation of conciliation proceedings[109] is not an essential preliminary to the making of an order of reference. Government is free to refer disputes whether concerning public utility service[110] or otherwise[111] by seriatum and piecemeal and is not bound to refer all the items involved in a dispute.[112] Also reference does not become invalid merely on the ground that the government had declined[113] to refer the dispute previously. Nevertheless if a party to the industrial dispute proved that government was actuated by malafides[114] in making a reference or it is not made within a reasonable[115] period the reference is liable to be quashed.

Once a reference has been made the question arises whether the appropriate government can withdraw the dispute. In fact there were conflicting views. The industrial court of Madhya Pradesh held that appropriate government has the right[116] to withdraw a reference of an industrial dispute while the Patna Court held a contrary[117] view. The Supreme Court has finally laid down the law that a reference once made can-

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109. **B. N. Elia & Co. v. G. P. Mukherjee,** A.I.R. 1959 Cal. 339.

110. **Papanasam Labour Union v. State of Madras,** A.I.R. 1959 Mad. 360.

111. **Engineering Staff Union v. State of Bombay,** (1959) 1 L.L.J. 479.

112. **Papanasam Labour Union v. State of Madras,** A.I.R. 1959 Mad. 360.

113. **Gurumurthi v. Ramulu,** (1959) 1 L.L.J. 20; **Panipat Woollen & General Mills Co. v. Industrial Tribunal, Punjab,** (1962) 1 L.L.J. 555.

114. **British India Corporation Ltd. v. Industrial Tribunal Punjab,** A.I.R. 1957 S.C. 354; **Jaipur Spinning and Weaving Mills Ltd. v. President, Jaipur Spinning and Weaving Mills Ltd., Mazdoor Union,** (1959) 2 L.L.J. 656.

115. **Shalimar Works Ltd. v. Its Workmen,** (1959) 2 L.L.J. 26 (S.C.)

116. **Raigarh Jute Mills Ltd. v. Their Workmen,** (1955-56) 9 F.J.R. 31. See **J. S. Cohen and Co. v. S. K. Bhattacharyya,** (1956) 2, L.L.J. 205.

117. **Bata Shoe Co. v. State of Bihar,** (1956-57) 10 F.J.R. 205.

not be withdrawn[118] by the government. Similarly there is no power in the government to cancel[119] the reference or amend the reference for amendment of a reference is not an administrative[120] act and is a quasi-judicial or judicial act beyond the scope of the authority of the government.

(2) Adjudicating Authorities—Procedure

The procedure, powers and functions of the adjudicating authorities including the conciliation[121] and arbitration machinery are stated in the Industrial Disputes Act. The industrial tribunals and the labour courts on getting seisin, of disputed matter referred by the appropriate government, proceed to inquire into and settle the dispute so referred. For this purpose they are armed with the powers of civil court in some matters and the aid of assessors[122] in the form of advice. While deciding the dispute the tribunals follow such procedure subject to the rules that may be made in this behalf as they think fit.[123] The tribunals exercise plenary discretion within the limited field consisting of rules made by the government under section 38 of the Act. The tribunals[124] if so desire may split up the disputes, for the sake of convenience and clarity. The procedure, however, should conform to the principles[125] of natural justice. The tribunal should deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it and should give the parties an opportunity[126] to meet their respective evidence From a reading of the section 18(3) (b) of the Act it may further be implied

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118. **State of Bihar v. D.N. Ganguli,** (1958) 2 L.L.J. 634 (S.C.).

119. **Bata Shoe Co. v. State of Bihar,** (1956) 2 L.L.J. 358.

120. **J. S. Cohen & Co. v. S. K. Bhattacharyya,** (1956) 2 L.L.J. 205.

121. **State v. Andheri Marol Kurla Bus Servive,** A.I.R. 1955 Bom. 324.

122. Section 11 (5) Industrial Disputes Act.

123. Section 11 (1) **Id.**

124. **New Bhopal Textile Ltd. v. State of Madhya Pradesh,** A.I.R. 1960 Madh. Pr. 358.

125. **Delite Cinema & Other v. Rameshwar Dayal,** A. I. R. 1959 Punj. 189.

126. **Ritz Theatre v. Its Workmen,** (1962) 2 L.L.J. 498 (S.C.)

that tribunal has the power to summon parties[127] other than parties to the order of the reference which need not necessarily belong to the category of employers and workmen.

There are, however, express provisions in the Act in respect of the procedure of the adjudicating authorities. The Industrial Disputes Act provided **inter alia that** labour court, tribunal and national tribunal shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 when trying a suit in respect[128] of enforcing the attendance of any person,[129] examining him on oath, compelling the production of documents and material objects; in issuing of commissions for examination of witnesses etc. Section 11 (8) of the Industrial Disputes Act further provides that every labour court, tribunal or national tribunal shall be deemed to be civil court for the purpose of sections 480, 482 and 484 the Code of Criminal Procedure, 1898. However industrial tribunals are not hampered by the rules of evidence,[130] estoppel[131] or res judicata.[132]

(3) Adjudication Machinery—Jurisdiction

The jurisdiction of the national tribunal, labour courts and the industrial tribunals is defined and delimited by the statute which has created them. Section 10(4) of the Industrial Disputes Act also provides **inter alia** the labour court

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127. **Radhakrishna Mills Ltd. v. The Special Industrial Tribunal,** A.I.R. 1954 Mad. 686.

128. Section 11 (3) Industrial Disputes Act.

129. **See B. N. Elia & Co. Private Ltd. v. Fifth Industrial Tribunal,** (1961) 2 L.L.J. 14.

130. **Electro Mechanical Industries v. Industrial Tribunal,** A.I.R. 1950 Mal. 839; **Mehnga Ram v. L.A.T.,** A.I.R. 1956 All. 644; **L.H. Sugar Factory v. L.H. Sugar Factory Mazdoor Union,** (1952) 2 L.L.J. 591; **Leonard Bierman's Workers' Union v. Second Industrial Tribunal,** (1962) 1 L.L.J. 68; **H. Tea Estate v. L.A.T.,** (1961) 1 L.L.J. 174; **Union of India v. T.R. Verma,** (1958) 2 L.L.J. 259 (S.C.)

131. **Guest Keen Williams v. P. J. Sterling,** A.I.R. 1959 S. C. 1279; **The Associated Cement Cos. v. Their Workmen,** A.I.R. 1959 S.C. 967.

132. **Burn and Co. v. Their Employees,** A.I.R. 1957 S.C. 38; **Walford Transport Ltd. v. First Industrial Tribunal,** A.I.R. 1963 Cal. 275; **R. S. Navigation Co. v. Labour Court,** A.I.R. 1963 Ass. 36.

or tribunal or national tribunal as the case may be, shall confine its adjudication to those points referred to it and matters incidental thereto.

(i) **National Industrial Tribunal**

The jurisdiction of the national tribunal extends only to those disputes which involve questions of national importance or are of such nature that industrial establishments situated in more than one State are likely to be affected by or interested in. Such disputes can be referred to national tribunal by the central government. So if a dispute is referred to a national tribunal no labour court or tribunal will have jurisdiction[133] to adjudicate upon any matter which is under adjudication before it. And any reference insofar as it relates to such a matter pending before a labour court or an industrial tribunal will be void.

Where it is contended[134] that matter in adjudication before the national tribunal is the same as one before the industrial tribunal, the reference made to the latter can be quashed. The determination of that question depends on the meaning of the words 'matter in adjudication'. These words only refer to the substantive question for the determination of the tribunal. The adjudication contemplated by section 10 is of a dispute and it follows that for the purpose of applying clause (6) of section 10 the dispute pending before the industrial tribunal and that before the national tribunal should be the same so that concerned workers may obtain the relief sought in the local tribunal from the national tribunal. Unless there is an identity between the two references one cannot replace or supersede the other.

(ii) **Labour Court**

However matters within the jurisdiction of labour courts and industrial tribunals are specified in the second and third schedules to the Act. The labour courts[135] are to deal with

133. Section 10(6), Industrial Disputes Act.

134. **Indian Bank Ltd. v. Industrial Tribunal,** (1963) 2 L.L.J.. 195.

135. Section 10(1)(c).

day-to-day matters like propriety or legality of an order passed by an employer under the standing orders, application and interpretation thereof, discharge or dismissal of workmen including reinstatement of or grant of relief to workmen wrongfully dismissed; withdrawal of any customary concession or privilege, illegality or otherwise of any strike or lock-out, and all matters other than those specified in the third schedule.

(iii) Industrial Tribunal

Matters within the jurisdiction of a labour court and those specified in third schedule to the Act also come within the jurisdiction[136] of the industrial tribunals. Matters relating to wages, allowances, loans, gratuity, provident fund, shift working otherwise than in accordance with standing orders rules of discipline, rationalization, retrenchment of workmen, closure of establishments and any other matter that may be prescribed are covered by the third schedule.

(iv) Jurisdictional Issues

Whenever a reference under section 10 is challenged on the ground that there is no 'industrial dispute'[137] or employee-employer relationship between the contending parties the industrial tribunal must first determine the points so raised. The question whether there is a relationship of employer and employee is a jurisdictional issue[138] upon the correct decision of which depends the further jurisdiction of the industrial tribunal to adjudicate upon the disputes referred to it. In other words the determination of the relationship between the management and the worker is an essential preliminary to the industrial tribunal entering into the main questions referred to it. If it were found that the workers were employed by the management it could then go into the merits of the dispute; if not, the industrial tribunal has merely to throw out

136. Section 10(1)(d).

137. **Titaghur Paper Mills Co. v. Workmen,** (1959) 2 L.L.J. 9 (S.C.); **M. K. Textile Mills v. Punjab State,** (1962) 1 L.L.J. 650.

138. **United Beedi Workers' Union, Salem v. Ahmed Hussain,** (1964) 1 L.L.J. 285.

the reference as not one within the Act and therefore not within its competence.

A tribunal functioning under the Industrial Disputes Act has no power to finally decide whether there is that relationship of master and servant between the parties which would justify its assumption of jurisdiction but it has necessarily to decide that point wherever there is a controversy about it. The existence of the relationship of master and servant can, therefore, be only a matter for objective and not mere subjective satisfaction of the tribunal. If the tribunal comes to a correct decision on that question there can be no doubt that its jurisdiction to seize the main matter with which it is entrusted by the statute cannot be assailed. If on the contrary, that collateral question is erroneous, it will mean that tribunal has, by an erroneous decision, given to itself a jurisdiction which it does not really possess.

This view has been consistently upheld by the High Courts[139] and the Supreme Court of India[140] that before an industrial tribunal or labour court[141] or any other authority[142] starts adjudication of disputes so referred, it must first correctly decide its jurisdiction[143] if challenged by the contending parties. The industrial tribunal have jurisdiction to decide[144] such questions whether the dispute is an industrial dispute or particular employee is a 'workman' or not. Of course it is discretionary for the labour court or tribunal to decide any issue as preliminary issue. If it has refused to decide a certain issue as a preliminary issue, the High Court in its writ

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139. **Kaleswari Handloom Factory** v. **State of Madras,** (1958) 1 L.L.J. 587; **A. K. Appanna Setty & Sons** v. **Industrial Tribunal,** (1962) 2 L.L.J. 516.

140. **Uttar Pradesh State** v. **Mohd. Noor,** A.I.R. 1958 S.C. 86, at 94.

141. **Pappammal Annachatram** v. **Labour Court,** (1964) 1 L.L.J. 493.

142. **George Peter** v. **Its Workmen,** (1962) 1 L.L.J. 494.

143. **Burmah Shell Workers' Union** v. **State of Kerala,** (1960) 1 L.L.J. 323.

144. **Hailey Glass Works Mills** v. **Deputy Labour Commissioner,** (1962) 2 L.L.J. 698.

jurisdiction[145] would not direct the labour court etc to decide a particular issue as a preliminary issue.

(v) Jurisdictional Limits

The jurisdiction of the adjudicating authorities under the Industrial Disputes Act is circumscribed[146] by the order of reference and the tribunals cannot travel beyond the issues specified and cannot add any thing beyond the claims stated but it does not take away the right[147] of the tribunal to make an award on matters incidental[148] or relating to the points referred. If after the reference the workmen enlarge the claim beyond what it was at the time of reference the excess[149] must be deemed not to have been referred.

Also whether a dispute or issues involved herein are with in the jurisdiction of an industrial tribunal is to be ascertained on the basis of the various definitions contained in the Industrial Disputes Act[150] only. Therefore it must be kept in view that the jurisdiction of a labour court or labour tribunal is not a general jurisdiction[151] like that of an ordinary civil court, it is a limited jurisdiction, limited by statute which has created it. The statute confers on it powers to deal with disputes of a particular class, viz., industrial disputes, and once a dispute goes out of that category, it would normally lose its jurisdiction to proceed further in the matter. The industrial tribunals and labour courts have evolved principles of industrial jurisprudence while exercising jurisdiction in settlement of labour disputes. These courts have laid down some norms or standards which they would follow in resolving disputes referred to them. Thus their jurisdiction being wide still

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145. **Agarwal Iron Works, Agra** v. **Labour Court, Meerut,** (1962) 2 L.L.J. 334.

146. **Chandra Vilas Hotel,** 1955 I.C.R. 145.

147. **Bengal Bus Syndicate,** (1953) I.C.R. 145-2 L.L.J. 37.

148. For the expression 'incidental' see **Jaipur Spinning and Weaving Mills Ltd. v. Jaipur Spinning and Weaving Mills Mazdoor Union,** (1959) 2 L.L.J. 656.

149. **Abraham** v. **Industrial Tribunal,** (1958) 2 L.L.J. 725.

150. **Caltex (India) Ltd.** v. **E. Fernandes,** A.I.R. 1957 S.C. 328.

151. **'Hindu', Madras** v. **Its Working Journalists,** (1959) 2 L.L.J. 348.

they must act within the confines of law[152] and not on fanciful notions[153] of social justice. Through judgments of the Supreme Court, High Courts and industrial tribunals there exist clear law as to when industrial tribunals or labour courts can interfere, with the findings[154] of an employer arrived at the domestic inquiry concerning alleged misconduct of an employee or reinstate due to unjustified[155] dismissal and retrenchment[156] or wages[157]—bonus[158] etc.

B. Power of Adjudicating Authorities

The adjudicating authorities are to adjudicate disputes between employers and workmen and in the course of such adjudication they have to determinne the 'rights' and 'wrongs' of the claims made keeping in view the socio-economic goals of contemporary industrial jurisprudence. However there is no express provision in the Industrial Disputes Act concerning powers and functions of the adjudicating tribunals. Section 7A of the Act merely provides that appropriate government may constitute such tribunals for adjudication of industrial disputes relating to matters specified in the second and third schedules. Section 15 relates to the duties of the tribunals and provides that they shall hold proceedings expedi-

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152. **Jawahar Mills v. Industrial Tribunal,** A.I.R. 1965 Mad. 92.

153. **Muir Mills Co. Ltd. v. Suti Mill Mazdoor Union,** A.I.R. 1955 S.C. 170.

154. **Indian Iron Steel Co. Ltd. v. Their Workmen,** (1958) 1 L.L.J. 260 (S.C.); **Doom Dooma Tea Co., Ltd. v. Assam Chan Karamchari Sangh,** (1960) 2 L.L.J. 56 (S.C.); **Pure Drinks (Private) Ltd. v. Kirat Singh Mungatt,** (1961) 2 L.L.J. 99 (S.C.); **General Navigation and Railway Co. Ltd. v. Their Workmen,** (1960) 1 L.L.J. 23 (S.C.).

155. **Calcutta Jute Mfg. Co. v. Calcutta Jute Mfg. Workers' Union,** (1961) 2 L.L.J. 686 (S.C.).

156. **Nagercoil Electric Supply Corporation v. Industrial Tribunal,** (1953-54) 5 F.J.R. J. K. Iron Steel Co., A.I.R. 1956 S.C. 231.

157. **Express News Paper Ltd. v. Union of India,** A.I.R. 1958 S.C. 579; **Crown Aluminium Works v. Their Workmen,** A.I.R. 1958 (S.C.) 3.

158. **Supra note 154.**

tiously and shall as soon as it is practicable on conclusion thereof submit their awards to the appropriate governments. There is no other provision in the Act concerning duties and powers of the tribunals. Yet they have very wide powers in respect of the settlement of all kinds of industrial disputes.

(1) Consideration of Policy

The powers vested in the industrial tribunals in the matter of industrial disputes referred to them for adjudication are no doubt wide but they are not legislative powers since they are guided by considerations of policy.[159] In the absence of any provision in the Act which confers on tribunals either to make rules which would have statutory effect or the power to legislate in regard to certain matters which crop up between employers and employees the mere fact that the tribunals while pronouncing awards lay down certain principles or rules of conduct for the guidance of employers and employees does not amount the exercise of any legislative power or of the tribunals being invested with such powers by Act. Therefore the powers of the industrial tribunals are circumscribed by the subject matter of reference and so far determining the scope[160] and nature of the points referred the order or reference itself must be looked into. It is only the subject matter of reference with which an industrial tribunal can deal.

The industrial tribunal which is a creature of the statute has no powers[161] except those can be traced to the statute and in this respect it differs from ordinary civil court whose inherent powers are expressly saved for them by section 151 of the Code of Civil Procedure. The industrial tribunals cannot deal with questions as mere abstract questions of law. It is, therefore, not the function[162] of the industrial tribunal to

159. **N. T. F. Mills Ltd. v. 2nd Punjab Tribunal,** A.I.R. 1957 S.C. 329-338; **Crown Aluminium Works v. Their Workmen,** (1958) 1 L.L.J. 1 (S.C.)

160. **The Calcutta Electric Supply Corporation Ltd. v. The Calcutta Electric Supply Workers' Union,** A.I.R. 1959 S.C. 1191.

161. **Management of K. A. Ltd. v. Industrial Tribunal,** A.I.R. 1959 Mad. 364.

162. **Workmen of D.T. Estate v. D.T. Estate,** A.I.R. 1958 S.C. 1026.

decide the abstract question of law whether on transfer of management consequent on sale of, the staff or labourers are automatically put an end to. The answer to such an abstract question must depend on diverse circumstances relating to and arising out of the contractual relation between the parties.

(2) **Powers Wide—Not Absolute**

It has been consistently held by the courts in India that the industrial tribunal does not settle a dispute in accordance with strict rules of law. It must necessarily settle the dispute in the best way to secure[163] future peace in the industry concerned and for that purpose can override the rights which an employer has under ordinary law. For example, it can order the reinstatement of a dismissed worker even though the employer has a legal right to dismiss an employee after giving him wages in lieu of such notice. The Supreme Court also stated[164] that an adjudication under this Act need not necessarily be in strict accordance with the law of master and servant and hence an award under the Act may contain provisions for settlement of a dispute which no court bound by ordinary law can order. The scope of adjudication of industrial tribunals is much wider than that of an arbitrator. All the same wide as their powers are these tribunals are not absolute though they are not courts in the strict sense of the term. They have to discharge quasi-judicial functions and as such are subject to the overriding jurisdiction of the Supreme Court under article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. These provisions invest them with many of the 'trappings' of a court and deprive them of arbitrary or absolute discretion and power. The adjudicator and tribunals cannot act as benevolent despots. The Supreme Court in its numerous judgments[165] have made ob-

163. **Budge Budge Municipality v. P. R. Mukerjee,** A.I.R. 1950 Cal. 457.

164. **J. K. Iron and Steel Co. v. Mazdoor Union,** A.I.R. 1956 S.C. 231.

165. **Western India Automobile Association v. Industrial Tribunal, Bombay,** A.I.R. 1949, F.C. 111 at 120; **India Paper Co. Ltd.**

(Continued on next page)

servations on the scope and authority of an adjudicator under the Indusrial Disputes Act. It would be useful to quote further the observations of the Supreme Court with respect to the ambit of the powers of the industrial tribunals. According to Gajendragadkar, J:

> It is well settled that industrial adjudication under the provisions of the Industrial Disputes Act, 1947, is given wide powers and jurisdiction to make appropriate Awards in determining industrial disputes brought before it. An award made in an industrial adjudication may impose new obligations on the employer in the interest of social justice and with a view to secure peace and harmony between the employer and his workmen and full co-operations between them. Such an award may even alter the terms of employment if it is thought fit and necessary to do so. In deciding industrial disputes the jurisdiction of the tribunal is not confined to administration of justice in accordance with the law of contract. As Mukherjea, J., as he then was, has observed in **Bharat Bank Ltd., Delhi v. Employees of Bharat Bank Ltd., Delhi** (A.I.R. 1950 S.C. 188 at 209) the tribunal 'can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations between them which it considers essential for keeping industrial peace'. Since the decision of the

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(Continued from previous page)

v. **India Paper Pulp Workers' Union**, A.I.R. 1949 F.C. 148; **State of Madras v. C. P. Sarathy**, A.I.R. 1953 S.C. 53 at 58; **Punjab National Bank v. Shri Ram Kunwar, Industrial Tribunal, Delhi**, A.I.R. 1957 S.C. 276; **Rohtas Industries Ltd. v. Brijenandan**, A.I.R. 1957 S.C. 1; **Caltex (India) Ltd. v. E. Fernandes** A.I.R. 1957 S.C. 326; **Messrs Indian Iron and Steel Co. v. Their Workmen**, A.I.R. 1958 S.C. 138; **Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia, v. State of Bombay**, A.I.R. 1962 S.C. 486; **Engineering Mazdoor Sabha v. Hind Cycles Ltd.** A.I.R. 1963 S.C. 874 at 882. **Hindustan Times Ltd. v. Their Workmen**, A.I.R. 1963 S.C. 1332, **McLeod & Co. v. Its Workmen**, (1964) 1 L.L.J. 387 (S.C.)

> Federal Court in **Western India Automobile Association v. Industrial Tribunal, Bombay** (A.I.R. 1949 F.C. III) it has been repeatedly held that the jurisdiction of the industrial tribunals is much wider and can be reasonably exercised in deciding industrial disputes with the object of keeping industrial peace and progress (vide **Rohtas Industries Ltd v. Brijnandan Pandey,** A.I.R. 1957 S.C. 1), **Patna Electric Supply Co. Ltd. v. Patna Electric Supply Workers' Union,** (A.I.R. 1959 S.C. 1035). Indeed, during the last ten years and more industrial adjudication in this country has made so much progress in determining industrial disputes arising between industries of different kinds and their employees, that the jurisdiction and authority of industrial tribunals to deal with such disputes with the object of ensuring justice is no longer seriously disputed.[166]

In this connection Subba Rao, J. (as he was then of Madras High Court) while dealing with the powers of the industrial tribunal to order reinstatement of workers, stated that:

> The Industrial Disputes Act substitutes for free bargaining between the parties and binding award by an impartial tribunal. The tribunal is not bound by contractual terms between the parties but could make a suitable award for bringing about hamonious relations between employers and workers. The tribunal is not fettered by any limitation on its powers. The only limitation on its power is to bring about harmonious relationship between employers and workmen. Having regard to all the circumstances, the tribunal can direct reinstatement if it thinks that it is necessary in the interest of industrial peace.[167]

The power of adjudicating disputes is alone the power

166. **Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia v. State of Bombay,** A.I.R. 1962 S.C. 486.

167. **M.K. Ranganathan & Other v. The Madras Electric Tramways,** (1952-53) 4 F.J.R. 77.

and duty of the industrial tribunal. The government has no right to take upon itself the duty of adjudicating a dispute on the merits which has got to be left to the appropriate labour court or tribunal for adjudication. On an analysis of the decisions of the tribunals, High Courts and Supreme Court the following powers seemed to have rest with the industrial tribunals.

(1) Power to Create Obligations or Modify Contracts

An industrial tribunal can create[168] obligations or modify contracts[169] in the interest of industrial peace to protect legitimate trade union activities and to prevent unfair practice or victimization. It is not, like the courts, fettered by the contract between the parties. The underlying object of enforcing new obligations and modifying the old ones is to relieve the workmen of the rigours of contractual obligations which would otherwise be harsh and to which the workmen would not have agreed, if they were in a position to bargain on equal terms with the employer.[170] The industrial tribunals in adjudication on the disputes between employers and their workmen are free[171] to apply the principles of justice, equity and good conscience keeping in view the further principle that their jurisdiction is involved not for enforcement of mere contractual rights but for preventing labour practices regarded as unfair and for restoring industrial peace on the basis of collective bargaining. Also wherever it is expedient the tribunals have refused to impose new obligations[172] upon the em-

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168. **The S.D.T. Workers' Union v. State of Madras,** A.I.R. 1963 Mad. 392.

169. **Western India Automobile Association v. Industrial Tribunal, Bombay,** A.I.R. 1949 F.C. III; **Ranganathan v. Madras Electric Tramways,** A.I.R. 1952 Mad. 659; **Working Journalists of Tamil Nadu v. Management Tamil Nadu,** A.I.R. 1959 Mad. 501 **Workmen of M/s. Turpentine and Rosin Co. v. Indian T. & B. Co.** A.I.R. 1961 S.C. 1365.

170. **Abdul Khader v. Consolidated Coffee Estates Ltd.** (1957 58) 13 F.J.R. 325.

171. **N.T.F. Mills Ltd. v. The Second Punjab Tribunal,** A.I.R 1957 S.C. 329, at 339.

172. **Patna Electric Supply Company Ltd. v. Patna Electric Supply Workers' Union** (1959) 2 L.L.J. 366.

ployers in view of the present economic condition of Indian industries.

(2) Power to Grant Interim Relief

The tribunal has the power[173] to grant interim relief as incidental to its power to grant final relief. The Supreme Court has observed that:

> under section 10(4), Industrial Disputes Act the industrial tribunal has the power to grant interim relief, where it is admissible, is a matter incidental to the main question referred to the tribunal without itself being referred in express term. There can be no doubt that if, for example, question of reinstatement and compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under section 10(4).[174]

Interim awards, however, are not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted[175] under the power conferred on the tribunal under section 19(4) with respect to dispute for adjudication. But the power to grant interim relief must be sparingly exercised[176] in really fit cases where the unavoidable delay in the proceedings would cause hardship to the workmen and where the workmen have a **prima facie** case at least for some minimum interim relief.

(3) Power in Cases Involving Questions of Discipline

Under common law governing relations between emp-

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173. **Nagercoil Electric Supply Corporation v. Industrial Tribunal, Trivandrum,** A.I.R. 1953 T.C. 167.

174. **Hotel Imperial v. Hotel Workers' Union,** A.I.R. 1959, S.C. 1342.

175. **Coir Cottage Industries v. Its Workmen,** (1956-57) 10 F.J.R. 168.

176. **Guest, Keen, Williams (Private) Ltd. v. Sterling (P.J.),** (1959) 2 L.L.J. 405 (S.C.).

loyers and employees an employer is entitled to discharge or dismiss his employee unless a binding contract regarding security of tenure is conferred. An employer at least may be liable to pay to his employee damages for wrongful termination of employment but normally he cannot be compelled to retain an employee whom he does not desire to retain in his employment. Certain statutory provisions have, however, been made which have considerably altered the common law which governs the relations of an employer and employee. For instance the right of 'hire and fire' of an employer has been subjected to certain specific restrictions so as to avoid hardship and unfairness to workmen and give them some security of service. The rationale[177] for these restrictions is that an industrial worker must be placed in such a position that security of his service may not depend upon the caprice or arbitrary will of the employer; that industrial peace should be maintained and that industry should be efficiently managed. So the labour court or industrial tribunal, therefore, has the power to adjudicate whether termination of service is justified or order reinstatement of a dismissed workman. This decision of the Bombay High Court[178] had been subsequently confirmed[179] by the Federal Court of India.

The Madras and Calcutta High Courts while following the decision of the Federal Court held[180] that an industrial tribunal has the power to direct reinstatement. It has been decided that tribunals have the power[181] to interfere with managements' function in relation to the charges against an employee if there is want of bona fides or it is a case of victimization or unfair labour practice or there is a basic error

177. **Buckingham and Carnatic Co. Ltd. v. Their Workmen,** (1951-52) 3 F.J.R. 265, 269.

178. **Province of Bombay v. Western India Automobile Association,** A.I.R. 1949 Bom. 141.

179. **Western India Automobile Association v. L. T. Bombay,** A.I.R. 1949 F.C. 111.

180. **East India Industries Ltd. v. Industrial Tribunal, Madras,** A.I.R. 1955 Mad. 242; **Bank of India Ltd., v. L.A.T. of India,** (1955-56) 8 F.J.R. 451.

181. **Buckingham and Carnatic Co. Ltd. v. Their Workmen,** (1951-52) 3 F.J.R. 265, 272.

on facts or there has been perverse finding on the materials. The Supreme Court has affirmed[182] these tests as the guiding principles for the tribunals while dealing with cases of punishment by way of dismissal and discharge.

However in cases involving questions of discipline the tribunal does not act[183] as a court of appeal and substitute its own judgment for that of management. In such cases it will interfere only when there is a want of good faith, or victimization or unfair labour practice or the management has been guilty of a basic error or violation of a principle of natural justice, or the finding is completely perverse on the materials. It is not open to the tribunals[184] to completely ignore the proceedings taken by the management under the standing orders or the evidence recorded in such proceedings or to pass order on the fresh evidence allowed to be given before it. Otherwise where there is a defect in the domestic inquiry and inquiry is biased or there is a violation of the principles of natural justice the labour court is entitled to go into the question[185] whether the dismissal was justified on the evidence led before it.

(4) The Power to Give Retrospective Operation to Awards

There is a controversy whether the tribunals have the power to give retrospective operation to their awards. The Federal Court of India was of the affirmative view[186] as it said that an award does not become invalid as being **ultra vires**

182. **Indian Iron and Steel Company v. Their Workmen,** (1958) 1 L.L.J. 260 (S.C.); **G. Machenzie & Co. v. Its Workmen,** (1959) 1 L.L.J. 285 (S.C.); **Delhi Cloth and General Mills v. Kushal Bhan,** (1960) 1 L.L.J. 520 (S.C.); **Assam Oil Co. v. Its Workmen,** (1960) 1 L.L.J. 587 (S.C.).

183. **Indian Iron Steel Co. v. Its Workmen,** (1958) 1 L.L.J. 260 (S.C.); **All-India Spring Mfg. Co. v. First Labour Court,** (1962) 1 L.L.J. 324; **Avinash Chandra Sagar v. Divisional Supdt. Central Railways,** (1962) 1 L.L.J. 7.

184. **Belsund Sugar Co. Ltd. v. Labour Appellate Tribunal,** A.I.R. 1958 Cal. 456.

185. **P.H. Kalyani v. Air France, Calcutta,** (1963) 1 L.L.J. 679 (S.C.); **Khardan & Co. Ltd. v. Workmen,** (1963) 2 L.L.J. 452 (S.C.)

186. **Roberts Melean and Co. v. A.T. Das Gupta,** A.I.R. 1949 F.C. 151, at 152.

the jurisdiction of the tribunal because by retrospective effect given to it by the tribunal its period of operation exceeds one year. The tribunal has jurisdiction to determine and make an award up to the date it passes its order and this jurisdiction should not be confused with power of the government under section 19 to make the award operative for one year after it has become binding on the parties. Section 19 in no way controls the jurisdiction or powers of the tribunal in making its award. The Mysore High Court has held[187] that tribunal has the jurisdiction to direct that its awards shall have retrospective operation even though the question as to the date from which the award has come into operation was not referred to it. The Calcutta High Court has held[188] the opposite view on the ground that a tribunal in exercising its jurisdiction is bound by the terms of the reference only. The Supreme Court on the other hand did not take a rigid view in this regard. According to it in awarding retrospective effect to an award the industrial tribunal should take into consideration[189] all the necessary disputed facts and awards should not be made retrospective prior to the date on which the specific demands which resulted in the industrial disputes were made. Similarly on account of very large number of demands retrospective effect to award[190] was held to be beyond the jurisdiction of the tribunal. However on the whole the Supreme Court has accepted[191] in principle the power of

187. **Management of Bangalore Woollen, Cotton and Silk Mills v. State of Mysore,** A.I.R. 1958 Mys. 85; See **General Motors (India) Ltd. v. Their Workmen,** (1952) 1 L.L.J. 865; **Associated Cement Companies, Bihar v. Khelari Cement Workers' Union,** (1953-54) 5 F.J.R. 9; **Workmen Employed under Ahmedabad Municipal Corporation v. Ahmedabad Municipal Corps.,** A.I.R. 1955 NUC 5137; **Caltex (India) Ltd. v. Industrial Tribunal,** (1961) 1 L.L.J. 85.

188. **M/s. Rifle Factory Society Ltd. v. Fourth Industrial Tribunal,** A.I.R. 1959 Cal. 349; See **Vasant Industrial Engineering Works,** (1954) L.A.C. 816.

189. **Jhagrakhand Collieries (Private) Ltd. v. Central Govt. Industrial Tribunal, Dhanbad,** (1960) 19 F.J.R. 128; **Bharat Barrel & Drum Mfg. Co. v. Govind Gopal,** (1960) 2 L.L.J. (S.C.).

190. **Lipton Ltd. v. Their Employees,** (1959) 1 L.L.J. 431 (S.C.).

191. **Raj Kalamandir Private Ltd. v. Indian Motion Pictures Employees' Union;** (1962-63) 23 F.J.R. 74; **Management of Wegner Co. v. Their Workmen,** (1953) 2 L.L.J. 403 (S.C.).

the tribunals to make awards with retrospective operation provided the tribunal considers the matter with judicial discretion.

(5) Power to Make Interim Awards

Under section 2(b) of Industrial Disputes Act, 1947 the tribunal is empowered to make interim or final awards.[192] However the interim award is not final determination of some points but relief granted under all or some of the points in dispute till final award[193] is made. It is a provisional or temporary arrangement made in matter of urgency and is subject to final adjustment on the final determination of a dispute.[194] While affirming the power of the tribunals to make an interim award the Supreme Court observed[195] that interim awards and interim reliefs are not the same.

(6) Power to Punish for Contempt

There is no specific provision in the Industrial Disputes Act empowering industrial tribunals to punish for their contempts. The industrial tribunals, however, do not hesitate to exercise this power[196] on the ground that the tribunal is a court[197] and it would thereby attract the provision of the Contempt of Courts Act, 1952. As such where the judge of the High Court is appointed as the sole member of an industrial tribunal under the Act he has no powers[198] as a judge of the

192. Section 15 does not contemplate the making of interim awards. **See Nagarcoil Electric Supply Co. v. Industrial Tribunal,** A.I.R. Trav. Co. 167.

193. **Bennett Coleman & Co. Ltd. v. Their Employees,** (1954) 1 L.L.J. 341.

194. **Nagarcoil Electric Supply Corporation v. Industrial Tribunal,** (1953) 1 L.L.J. 208; **Punjab Bank Ltd. v. Their Workmen,** (1952) 1 L.L.J. 791; **Punjab National Bank Ltd. v. A. N. Sen and Others,** (1952) 1 L.L.J. 371; **Thakur Jugal Kishore Sinha v. The State of Bihar,** (1950) 2 L.L.J. 539; **Allen Berry & Co. Ltd. v. Their Workmen,** (1951-52) 3 F.J.R. 347.

195. **Hotel Imperial v. Hotel Workers' Union,** A.I.R. 1959 S.C. 1342. See **Prakash Cotton Mills v. Athalye,** (1966) 2 L.L.J. 21.

196. **In re K. N. Joglekar,** (1956-57) 10 F.J.R. 265.

197. **Vishwamitra Press (Karayala), Kanpur v. Their Workmen,** A.I.R. 1953 S.C. 41.

198. **In the matter of Mr. Hayles, Editor of "The Mail" and another,** A.I.R. 1955 Mad. 1.

High Court to punish persons for contempt of the tribunal under article 215 of the Constitution.

(7) Miscellaneous Powers—Limitations

In the exercise of their duties of adjudicating disputes industrial tribunals exercise manifold powers, e.g., awarding[199] of costs of proceedings, right to vary[200] or adjust increments, to implead[201] any person or proper parties other than parties to the industrial dispute, to record a compromise[202] by any lawful agreement, power to decide jurisdictional[203] issues, power to decide cases of misconduct[204] not connected with pending dispute and power to order reinstatement[205] of such workmen. They have also powers to deal with issues concerning standing orders[206] to correct clerical[207] errors, to grant compensation[208] for loss of working hours and to lay down general principles regarding bonus,[209] revision of wages and also to interpret[210] any provision of the award where any difficulty or doubt arises etc. However the powers of the tribunals are

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199. **Punjab National Bank** v. **Industrial Tribunal,** (1956-57) 11 F.J.R. 474 (S.C.).

200. **Chandra Vilas Hindu Hotel** v. **Hotel Mazdoor Sangh,** (1955-56) 8 F.J.R. 292.

201. **Hochtief Gammon** v. **Industrial Tribunal,** A.I.R. 1964 S.C. 1746.

202. **Krishnakutty Nair** v. **Industrial Tribunal,** (1957) 2 L.L.J. 45.

203. **P. P. M. S. Nagarathnam** v. **State of Madras,** (1965) 1 L.L.J. 85.

204. **Batuk K. Vyas** v. **Salim M. Merchant,** (1952-53) 4 F.J.R. 471.

205. **Kamarhatty Co. Ltd.** v. **Ushanath,** A.I.R. 1959 S.C. 1399.

206. **Guest, Keen Williams (Private) Ltd.** v. **Sterling and Others,** (1959) 2 L.L.J. 405 (S.C.).

207. **Lipton Ltd.** v. **Their Employees,** (1959) 1 L.L.J. 431 (S.C.).

208. **Rashtriya Mill Mazdoor Sangh** v. **Appollo Mills Ltd.,** (1960) 2 L.L.J. 263 (S.C.).

209. **Niemla Textile Finishing Mills** v. **Industrial Tribunal,** (1957) 1 L.L.J. 460 (S.C.).

210. **Central Bank of India** v. **P. S. Rajagopalan,** (1963-64) 25 F.J.R. 46 (S.C.).

limited by the reference and they cannot exercise[211] their powers in an arbitrary fashion. Likewise they neither can exercise power to impose penalty for non-implementation[212] of an award nor have the power to create jurisdiction for themselves with the consent[213] of parties to the dispute. For the purpose of enforcement of award the tribunal becomes functus[214] officio.

(8) Judicial Review—Tribunal if Court

Labour courts and industrial tribunals although are not courts of law yet they are clothed with powers of a court of law. For instance, the proceedings before them are deemed to be judicial proceedings within the meaning of section 11 of the Industrial Disputes Act, 1947. The idea is that they should discharge their functions effectively and at the same time may not act arbitrarily in performing their statutory duties. However, they are not courts of law in specific sense of the term. According to Kania, C.J.:

> 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 rules framed by the tribunal require evidence to be taken and witnesses to be examined, cross-examined and re-examined. The Act constituting the tribunal imposes penalties for incorrect statements made before the tribunal. While the powers of the industrial tribunal in some respects are different from those of an ordinary civil court and it has jurisdiction and powers to give reliefs which a civil court administering the law of the land (for instance) ordering the reinstatement of

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211. **Walford Transport Ltd. v. First Industrial Tribunal,** (1961) 2 L.L.J. 25.

212. **H. R. Sugar Factory Ltd. v. Sri Saktoo,** (1953-54) 5 F.J.R. 682.

213. **Shew Sakti Oil Mills v. Industrial Tribunal,** (1961-62) 21 F.J.R. 247.

214. **Hall and Anderson Ltd. v. Mohd. Salim,** (1955) 2 L.L.J. 287, **Straw Board Mfg. Co. v. Gutta Mill Workers' Union,** A.I.R. 1953 S.C. 95.

> a workman does not possess in the discharge of its duties, it is essentially working as a judicial body. The fact that its determination has to be followed by an order of the government which makes the award binding, or that in cases where government is a party, the legislature is permitted to revise the decision, or that government is empowered to fix the period of the operation of the award do not, to my mind, alter the nature and character of the functions of the tribunal. Having considered all the provisions of the Act, it seems to me clear that the tribunal is discharging functions very near those of court, although it is not a court in the technical sense of the word.[215]

An industrial tribunal is although invested with extraordinary powers[216] of adding or altering the terms or conditions of the contract of service. These powers, however, are derived from the statute. So powers of such a nature do not affect the question that they are exercising judicial powers as quasi-judicial bodies and are within the ambit[217] of article 136 of the Constitution. In other words the tribunals would be subject to the appellate control[218] of the Supreme Court and High Courts in the interest of justice. An industrial tribunal constituted under the Industrial Disputes Act is a tribunal within the meaning of article 136. The only courts or tribunals which are expressly exempted[219] from the purview of article 136 are those which are established by or under any law relating to the Armed Forces as laid down in clause (2) of article 136. An industrial tribunal, therefore, is a quasi-judi-

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215. **Bharat Bank Ltd., Delhi** v. **Employees of Bharat Bank,** A.I.R. 1950 S.C. 188, at 189.

216. **Western India Automobile Association** v. **Industrial Tribunal,** A.I.R. 1949 F.C. 111.

217. Per Mahajan J. in **Bharat Bank Ltd.** v. **Employees of Bharat Bank,** A.I.R. 1950, S.C. 188, 195, 196.

218. **Muir Mills Co.** v. **Suti Mills Mazdoor Union,** A.I.R. 1955 S.C. 170; **J.K. Iron Co. Ltd.** v. **Iron Steel Mazdoor Union,** A.I.R. 1956 S.C. 281; **Buckingham and Carnatic Co.** v. **Workers of B.I.C.,** A.I.R. 1953, S.C. 47.

219. **Durga Shankar Mehta** v. **Raghunath Singh,** A.I.R. 1954 S.C. 250.

cial[220] body to act in accordance with the procedure laid down in the Act and natural justice.

Likewise an industrial tribunal is a 'tribunal'[221] within the meaning of article 227 of the Constitution and an application for writs under article 226 against such a tribunal can lie to a High Court. However a High Court cannot sit in judgment upon the views of the tribunal except where tribunal has conducted itself contrary to all principles of natural justice.

(11) Tribunals and Writ Jurisdiction of High Courts

High Courts in India are empowered under the articles 226 and 227 to issue writs, directions and orders to any person or authority or quasi-judicial tribunals where they act without jurisdiction or refuse to exercise jurisdiction or act in violation of principles of natural justice. In doing so the High Court does not sit in appeal over the decision of the tribunal yet it can interfere where the decision[222] of the lower tribunal is erroneous, without jurisdiction or is vitiated by an error of law apparent on the face of the record. It has been held that the High Court has jurisdiction under article 226 of the Constitution to determine whether an industrial tribunal has correctly decided the question of its jurisdiction etc. It has been held[223] that High Courts have the power under article 226 to issue writs of certiorari for quashing the decision of a tribunal notwithstanding that it became functus officio after pronouncing the decisions. The Supreme Court observ-

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220. **Indian Mining Association** v. **Koyla Mazdoor Panchayat & Others,** (1952-53) 4 F.J.R. 139; **United Commercial Bank Ltd.** v. **Kartar Singh,** A.I.R. 1953 Cal. 39; **Basti Sugar Mills Ltd.** v. **State of U.P.,** A.I.R. 1954. All. 539; **Rohtas Industrial Ltd.** v. **Brijnandan,** A.I.R. 1957 S.C. 1; **Jaswant Sugar Mills** v. **Laxmi Chand,** (1963) 1 L.L.J. 5, at 4 (S.C.)

221. **Municipal Commissioner of Budge Budge** v. **P. R. Mukerjee,** (1952-53) 2 F.J.R. 80 (S.C.).

222. **T. Prem Sagar** v. **Standard Vacuum Oil Co. Mad.,** (1964-65) 26 F.J.R. 1 (S.C.).

223. **D. P. Dunderdale** v. **G.P. Mukherjee,** (1958-59) 14 F.J.R. 486.

ed[224] that the certiorari will be issued for correcting errors of jurisdiction as and when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it; or when tribunal acts illegally in the exercise of its undoubted jurisdiction and to correct error of law on the face of the record. The superintendence vested in the High Courts by article 227 of the Constitution is both judicial and administrative. While in a certiorari under article 226 the High Court can only annul the decision of the tribunal, it can under article 227 do that and also issue further directions in the matter. Similarly the fact that the Supreme Court has refused[225] special leave under article 136 of the Constitution of India to appeal from an order of an industrial tribunal is no bar to a petition under article 226 to the High Court, though the refusal may be taken into account in considering the relief to be granted. Of course writs can only be issued to quasi-judicial,[226] judicial acts and not administrative acts.

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224. **H. V. Kamath** v. **Syed Ahmed Ishqaue,** (1954-55) 7 F.J.R. 521 S.C.; **New Gujarat Cotton Mills Ltd.** v. **L.A.T. of India,** (1957-58) 12 F.J.R. 251; **Rambhadhan Dariyan** v. **Second Labour Court,** (1957-58) 13 F.J.R. 467; **Atlas Cycle Industries Ltd.** v. **State of Punjab,** (1961-62) 20 F.J.R. 253; **Iyyappan Mills** v. **Iyyapan Mills Workers' Union,** (1962-63) 22 F.J.R. 147; **Workmen of Madras Pinjarapole** v. **Management of Madras Pinjarapole,** (1962-63) 23 F.J.R. 93; **S. P. Worsted Mills** v. **Labour Courts,** (1962-63) 23 F.J.R. 205; **Batuk Vyas** v. **Salim Merchant,** (1952) 2 L.L.J. 178; **G. Veerappa Pillai** v. **Raman and Raman Ltd.,** A.I.R. 1952 S. C. 192; **J. V. Kale** v. **M. I. Ahmadi,** (1958-59) 15 F.J.R. 105 H.C.; **Hendrick & Sons** v. **Industrial Tribunal,** (1959) 1 L.L.J. 235 **(H.C.); Malabar Products Ltd. V.I.T. Ernakulam,** (1958) 1 L.L.J. 47; **Deoria Sugar Mills** v. **U.P. Government,** (1954) 2 L.L.J. 269 (H.C.); **Mehnga Ram & Others** v. **L.A.T.,** (1967) 1 L.L.J. 603 (H.C.); **Gordon Woorroffe & Co. Ltd. Madras** v. **Appa Rao,** (1955) 2 L.L.J. 541 (H.C.); **Workmen of Rice Oil Mills** v. **I.T.,** (1959) 1 L.L.J. 563 (H.C.); **Ramoorthy** v. **T. & N. P. Workers' Union,** (1963) 1 L.L.J. 508 (H.C.); **West Coast Motors** v. **District Magistrate, Ernakulam,** (1963) 1 L.L.J. 196 (H.C.); **Fort William Jute Mills Co.** v. **First Labour Court,** (1963) 1 L.L.J. 734; **Abdul Motaleb** v. **Gero Hills District Council,** (1963) 2 L.L.J. 1 (H.C.); **Daljeet Co. Ltd.** v. **State of Punjab,** (1963) 2 L.L.J. 17 (H.C.); **United Bidi Workers Union** v. **Ahmed & Sons,** (1964) 1 L.L.J. 285; **Bird & Co.** v. **State of West Bengal,** (1964) 2 L.L.J. 186.

225. **Jai Hind Motor Service** v. **Venkitaswami,** (1959-60) 16 F.J.R. 45 (S.C.).

226. **Employees in Caltex (India)** v. **Commissioner of Labour,** (1959) 1 L.L.J. 520 (H.C.).

(12) **Tribunals and Interference by Supreme Court**

As stated above industrial tribunals are 'tribunals'[227] within the meaning of article 136. The Supreme Court is invested by article 136 with extra-ordinary and over-riding powers to interfere with the judgments or awards of courts or tribunals within the territory of India to see that injustice[228] is not caused by the decisions or awards because these decisions are made by statute conclusive and final.[229] It being an exceptional and over-riding[230] power naturally has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond this it is not possible to fetter the exercise of this power by any set formula or rule. Further where certain matter was referred for adjudication to an industrial tribunal but both the parties and even the tribunal overlooked the matter the Supreme Court in exercise of its jurisdiction under article 136, cannot[231] do what the tribunal should have done and go into the matter.

So article 136 of the Constitution does not confer[232] a right of appeal to any party from the decision of any tribunal but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any tribunal in the territory of India. It is implicit in the discretionary reserve power that it cannot be exhaustively defined. It cannot obviously be so construed as to confer a right to a party where he has none under the law. The Industrial Disputes Act is intended to be a self-contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given in circumstances peculiar to each dispute and the tribunals are, to a large ex-

227. **Associated Cement Companies v. P. N. Sharma,** (1964-65) 27 F.J.R. (S.C.).

228. **Burn & Co. v. Their Employees,** A.I.R. 1957 S.C. 39.

229. **India General Navigation & Railway Co. v. Their Workmen,** (1960) 1 L.L.J. (S.C.).

230. **Dhakeswari Cotton Mills v. Commissioner of Income-Tax,** A.I.R. 1955 S.C. 65.

231. **May and Baker (India) Ltd. v. Their Workmen,** (1961-62) 20 F.J.R. 147 (S.C.).

232. **Bengal Chemical & Pharmaceutical Works Ltd. v. Their Employees,** (1959) 1 L.L.J. 413 (S.C.).

tent, free from the restrictions of technical considerations imposed on courts. A free and liberal exercise of the power under article 136 may materially affect the fundamental basis of such decisions, namely, quick solutions to such disputes to achieve industrial peace. Though article 136 is couched in wide terms, it is necessary for Supreme Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice causing substantial and grave injustice to parties or raises an important principle of industrial law requiring elucidation and final decision by Supreme Court or discloses such other exceptional or special circumstances which merit the consideration of Supreme Court.

The Supreme Court, therefore, does not sit in appeal over the awards of the industrial tribunals; it would not interfere where the Supreme Court is of the view that there has been no failure[233] of justice even where it appears that tribunal acted without jurisdiction[234] or where no principle[235] of law is involved.

However, it would interfere where the tribunal acts in excess of jurisdiction conferred upon it under the statute or regulation creating it or where it obstensibly fails to exercise a patent jurisdiction; or where there is an apparent error on the face of the decision and where the tribunal has erroneously applied well accepted principles of jurisprudence.[236] It is only when errors of this nature exist that interference is called for. Otherwise the Supreme Court does not act as a court of appeal on facts, it is only where general questions[237] of law are raised that the Supreme Court feels called upon to pronounce its decisions on them for guidance of industrial adjudication.

233. **Balvant Rai Chimanlal Trivedi v. M. N. Nagrasnna,** (1961-62) 21 F.J.R. 558 S.C.

234. **Balwantrai Chimanlal Trivedi v. M. N. Nagrassna,** (1961-62) 21 F.J.R. 563 (S.C.).

235. **Indian Iron and Steel Co. v. Their Workmen,** A.I.R. 1958 S.C. 130.

236. **Clerks and Depot Cashiers of the Calcutta Tramways Co. Ltd. v. Calcutta Tramways Co. Ltd.,** A.I.R. 1957 S.C. 78; **Agnani (W.M.) v. Badri Das** (1963) 1 L.L.J. 685 (S.C.); **Engineering Mazdoor Sabha v. Hind Cycle,** (1962) 2 L.L.J. 760 (S.C.).

237. **Management of Wanger & Co. v. Workmen,** A.I.R. 1964 S.C. 864.

CHAPTER VIII

State Controls and Adjustment of Industrial Relations in India

I. NEED FOR ADJUSTMENT OF INDUSTRIAL RELATIONS

In India the regulation of labour-management relations through state devised, guided and controlled, compulsory adjudicating machinery had become the main plank of government labour policy before 1956 to preserve industrial peace and to build national economy. However in the successive four five year plans and in the various tripartite agreements and understandings the awareness[1] of adjusting labour-management disputes internally and voluntarily by the representatives of the parties to the dispute has been emphasised increasingly without recourse as far as possible to existing adjudication machinery. To this end a series of voluntary adjustment processes have been evolved not as substitute to existing machinery but as alternate recourse providing voluntary settlement of labour-management disputes. All such norms have now proved the soundness of 'Giri Thesis' which appeared anachronistic in the beginning. According to 'Giri thesis'[2]

1. Industrial Truce Resolution, 1947; the Labour Relations Bill, 1950; the Trade Unions Bill, 1950; the Code of Discipline in Industry, 1958; the Code of Inter-Union Harmony, 1958; the Schemes for Workers' Education Programme, 1958; Workers' participation in management, 1958; the Industrial Truce Resolution, 1962, etc.

2. V. V. Giri—a former Union Minister—had been in favour of internal settlement of labour disputes since 1947 when the Government of India introduced statutory compulsory adjudi-

(Continued on next page)

so long as compulsory adjudication remains on the statute book genuine industrial democracy founded on mutual understanding, mutual negotiations and voluntary settlement of labour disputes without external intervention or participation is not possible. The five year plans, therefore, assiduously strive to evolve a new pattern of labour-management relations without seriously relegating compulsory adjudicating framework altogether. These emerging patterns[3] are in the nature of collective bargaining, internal settlement, grievance procedure, voluntary arbitration, workers' participation in management etc., have gained acceptability of labour and management and the general public for maintenance of human relations in industry. A critical analysis has been made in this chapter for evaluating the role of new adjustment-processes towards securing industrial peace and harmony in the interest of planned economic development and social justice.

II. CHANGING PATTERNS OF LABOUR-MANAGEMENT RELATIONS

It is true that industrial relations in the highly developed countries have, through the time and long experience, taken on specific patterns based on well-known principles and traditions respected by both parties. But a developing country like India has to adapt such procedure and methods which suit the tempo of its economic development, its social and political structure, its cultural heritage etc. Such factors have their bearing on the conduct of the individuals and the extent

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(Continued from previous page)
cation machinery. He said: "I am Enemy No. 1 to courts, tribunals and the adjudication machinery of the Government. I would like to avoid these courts and the adjudication machinery, which is compulsory and which compels parties to come together. I lay more emphasis on the parties themselves coming together." 4 **Indian Factory Journal** 53 (1952-53); **Dhyani, Indian Trade Union Laws and Industrial Relations**, 4, **Indian Journal of Labour Economics**, 52 at 66 (1958).

3. **First Five Year Plan** 1951-56 (Planning Commission 1952); **Second Five Year Plan** 1956-61, at 571-76 (Planning Commission 1956); **Third Five Year Plan** 1961-66 at 250-56 (Planning Commission 1961); **Fourth Five Year Plan—A Draft Outline** 1966-71 at 386-92 .(Planning Commission 1966).

and speed of their adjustment to the quick and continual changes which usually accompany industrialization.

Industrial relations in India uptill 1958 reached a stage of stagnation and needed modifications and innovations to conform to the new changing patterns of social and political maturity. It is indeed heartening that a body of principles and practices has grown[4] up as a product of joint consultations in which representatives of government, the working class and employers have been participating at various levels. The legislation and other measures adopted by the government in this field represent the consensus of opinion of the parties vitally concerned and thus acquire the strength and character of a national policy operating on a voluntary basis. Joint committees have been set up to assist the formulation of policies as well as their implementation. At the appex of this tripartite machinery is the Indian Labour Conference. This new approach had already been introduced during the course of the second five year plan with a view to counteract the unhealthy trends and to give a more positive orientation to industrial relations based on moral rather than legal sanctions. The stress now is on the prevention of unrest by timely action at the appropriate stages and giving adequate attention to root causes. This involves a basic change in the attitude and outlook of the parties and the new set of readjustments in their mutual relations. A brief examination and analysis of these major developments in industrial relations in India may be useful and necessary to all concerned with labour-management problems.

III. Collective Bargaining

After a perusal of the industrial adjudication machinery it appears in the first instance as if collective bargaining system in India has been 'written off' as a mode for determining conditions of employment in the industry. Nevertheless conclusion of collective agreements has been taking place in the

4. See **Fourth Five Year Plan—A Draft Outline, 386** (Planning Commission, Government of India 1966).

recent past[5] and is currently quite in vogue in this country. But there is no denying of the fact that collective bargaining process has been greatly hampered by legislative fiat[6] as well as due to immature growth of trade union movement. However collective bargaining received a fresh impetus with the establishment of machinery for negotiations, conciliation and voluntary arbitration.

Indeed for the solution of common problems labour and management have to come together. For this purpose a tripartite Joint Consultative Board[7] of Industry and Labour has been set up in 1951 which is functioning purely on a voluntary basis. An important objective of the Board is to endeavour to establish healthy conventions, create conditions for the avoidance of disputes through collective agreements for promoting industrial harmony and economic growth. The development of personnel management[8] in India too have contributed in popularizing this process for maintaining human relations in industry.

(1) Settlement of Disputes—Collective Bargaining

With the introduction of economic planning in India and especially in the second, third and fourth five year plans greater attention now is being given to collective bargaining which ensures industrial peace, obliges labour-management to abide faithfully to an agreed compromise as well as retain the freedom of action of both parties consistent

5. The Ahmedabad experiment concerning internal settlement of disputes and a reference of unsettled disputes to voluntary arbitration is one of such examples which found favour in the **Report of the Royal Commission on Labour in India** 1931 at 336-37. In 1940 a collective agreement was entered into between Coir Factory Workers' Union and Coir Mats and Matting Manufacturing Association settling disputes regarding terms and conditions of employment. In 1946 a similar agreement was reached between Joint Streamer Companies and Bengal Marines Union deciding matters like pay, dearness allowance and other allowances.

6. Rule 81-A Defence of India Rules 1942; Section 10 Industrial Disputes Act, Rule 126, Defence of India Rules 1962.

7. I.L.O. **Record of Proceedings** 61 (38th session I.L. Conference, Geneva, 1955).

8. I.L.O. **Report of the Director General,** 54 Fourth Asian Regional Conference, New Delhi (1957); **Fourth Five Year Plan—A Draft Outline** 389-90, (Planning Commission, Government of India 1966).

with known democratic values and traditions of Indian society. The Delhi Agreement, 1951 concerning rationalization, the Bata Agreement, 1951 concerning recognition of union as sole bargaining agent, the Indian Aluminium Agreement of 1951 relating to joint consultation, terms and conditions of employment are the earliest agreements which have laid the foundation for future settlement of industrial disputes. The agreements[9] which were entered into between the period 1955-57 cover matters like bonus,[10] recognition of unions,[11] settlements of disputes[12] by negotiation, voluntary arbitration[13] concerning wages,[14] dearness allowance, provident fund and other fringe benefits etc. Further, the Industrial Disputes Act itself has stimulated collective bargaining between labour-management through the good offices of the conciliation officers. Collective agreements arrived as such are called 'settlements' i.e. agreements drawn up by the parties with the assistance of the conciliation officer. However, after the Industrial Disputes (Amendment and Miscellaneous Provisions) Act,[15] 1956 a private settlement not arrived in the course of conciliation proceedings is included within the purview of the sections 2(p), 18 and 19 of the Act if such an agreement satis-

9. Collected by the Author from the office of All-India Organization of Industrial Employers, Federation House, New Delhi.

10. **The Indian Tea Association Agreement** 1955; the **Joint Streamer Companies Agreement** 1955; the **Belur Agreement** 1956; the **Ahmedabad and Mill Owner's Agreement** 1956; the **Hindustan Lever Agreement** 1956; the **Mysore Iron Steel Works Agreement** 1956 etc. are a few instance.

11. **The Bata Agreement** 1955; the **Tata Iron and Steel Works Agreement** 1956, etc.

12. **The Bata Agreement** 1955; the **Hindustan Chemicals Agreement** 1955; the **Belur Agreement** 1956; the **Tata Iron and Steel Works Agreement** 1956; the **Muri Bihar Agreement** 1957; the **Scindia Workshop Agreement** 1957 etc.

13. **The Ahmedabad Mill Owners' Agreement** 1956; the **Tata Iron and Steel Works Agreement** 1956 etc.

14. **The Hindustan Heavy Chemicals (West Bengal) Agreement** 1955; the **Hindustan Lever Agreement** 1956; the **Tata Iron and Steel Works Agreement** 1956; the **Mysore Iron Steel Works Agreement** 1956; the **Kundra (Kerala) Agreement** 1957, etc.

15. As amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, a private settlement still has no legal force under the Industrial Disputes Act, 1947.

fies two conditions, namely, that the agreement is drawn up in the prescribed form and copies of it are sent to the appropriate government and conciliation officer as well. All settlements, whether arrived at in the presence of the conciliation officer or not, provided they are registered are binding[16] on the parties even if there are more than one union in the industry. In effect these statutory changes in the Industrial Disputes Act have gone a long way in promoting collective bargaining in India. The courts have not ordinarily[17] interfered with such agreements nor the government have inclined to refer[18] matters covered by the settlement for adjudication. In India many problems which are generally involved with collective bargaining process have been quite often raised much before 1956—the demand for a plebiscite[19] in the industry to determine representative character of the union, or agreement for evading inter-union rivalry[20] or agreement of the management with company sponsored[21]-union or no-strike[22] clause, enforceability[23] of such agreements, etc. The emergence of this new pattern of industrial modality as one of the vehicles for improvement of economic and job conditions of workers is of great significance for founding of industrial democracy in India. Indeed the collective bargaining process have brought labour-management together for determining employment conditions which hitherto have been decided exclusively by the outside machinery and thereby

16. **Ramnagore Cane and Sugar Co. Ltd. v. Jatin Chakravarty,** A.I.R. 1960, S.C. 1012.

17. **Muzaffarpur Electric Supply Co. v. Muzaffarpur Electric Supply Workers' Union** (1951-52), 4 F.J.R. 171; **Jaya Cafe Coimbatore v. Their Workmen** (1952-53), 4. F.J.R. 267.

18. **Sasamusa Workers' Union v. The State of Bihar** (1952-53), 4 F.J.R. 47.

19. **The Indian National Coal Mine Workers' Federation v. Tata Iron Steel Co.,** (1954), 1 L.L.J. 761.

20. **Standard Coal Co. v. S. P. Varma,** (1952), 1 L.L.J. 493.

21. **Certain Tanneries Dingul v. Their Workmen,** (1953), 1 L.L.J. 440.

22. **Jeypore Sugar Co. Ltd. v. Their Workmen,** (1955), 2 L.L.J. 744.

23. **Bidi Manufacturing Concern Jhansi v. Their Workmen,** (1953) 1 L.L.J. 255.

paving a way for understanding in the industry to fill the psychological and emotional gulf that have existed and divided labour and management.

(2) Collective Agreements—Types

In India collective agreements can be classified in four categories. First there are those agreements which are negotiated by officers during the course of conciliation proceedings—called settlements under the Industrial Disputes Act. Second there are agreements which are concluded by the parties themselves otherwise than in the course of conciliation proceedings and are signed by them and also copies of such agreements are sent to the appropriate governments and to the conciliation officers. Third there are agreements which are negotiated by the parties on voluntary basis when the disputes are sub-judice and which are later on submitted to industrial tribunals, labour courts or labour arbitrators for incorporation as part of awards. These are called as 'consent awards.' The three aforesaid types of collective agreements possess legal force and are binding on the parties thereto under section 18 of the Industrial Disputes Act. Strictly speaking these are not collective bargaining agreements but are memorandum of settlements. The fourth type of agreements, however, are those drawn up after direct negotiations between labour and management and are purely voluntary in character depending for enforcement on the moral force, mutual good will and cooperation of the parties to the agreement.

(i) Plant Level Agreements

Most of the collective agreements in India have been drawn up at the plant or company level. In fact collective bargaining in principle should take place only between the interested parties at the plant level who are directly and immediately concerned and responsible for peace and productivity in the industry. Obviously the scope and extent of such agreements is limited only to particular units or companies so covered. They provide certain common norms of conduct for regulating labour-management relations and eliminate mutual hatred and misunderstanding. Plant level agreements, there-

fore, provide an easy and quick solutions for intricate issues requiring immediate and direct negotiations between the parties for finding an equitable solution of the issues involved. The agreements so arrived provide a detailed framework for future conduct of the parties with respects to controversial issues. Though the pattern of such collective agreements varies from factory to factory their number is swelling increasingly and this is extremely encouraging for the future of collective bargaining in India. From the point of view of companies entering into collective agreements with unions also it is obvious that others can learn to build a similar sound foundation for human relations in industry.

In the recent past some of the important collective agreements have been drawn up at the plant or company level. The Bata Shoe Company Agreement of 1955, the Tata Iron Steel Company Agreement of 1956, the Modi Spinning and Weaving Mills Company's Agreement of 1956, the National Newsprint and Paper Mills Nepanagar Agreement of 1956, the Belur Agreement of 1956, the Metal Corporation of India Ltd. Agreement 1960 etc., are a significant landmark in the growth and development of collective bargaining process in India. Thousands of such agreements are being drawn up every year without being properly recorded. The collective agreements concluded by Bata Shoe Company and Tata Iron Steel have laid down the basis for future settlement of industrial disputes rather than a mere settlement of the old grievances. For example, the preamble[24] of the agreement between Bata Shoe Co. Ltd. and the Bata Mazdoor Union declares that:

> the agreement is to promote and improve industrial and economic relationship between the company and its workmen and employees and to improve machinery for prompt and equitable disposition of grievances and to establish and maintain satisfactory conditions and to set forth herein the basic agreement concerning terms and conditions of employment for all workmen and employees. The governing factor throughout this

24. Emphasis supplied.

> Agreement shall be at all times the continuing safety of the corporate undertaking and general welfare of those dependent thereon.[25]

As such the company recognizes[26] the union as the sole and exclusively collective bargaining agency for the workmen and employees of the company engaged in its factory at Batanagar. The Company agrees[27] that it will not indulge in unfair labour practices and will not discriminate, interfere, coerce or restrain any workman and employee because of membership in the union and it will not permit non-union workmen and employees to engage in anti-union activities during working hours or in company's premises. The union agrees that neither it nor any of its officers or members will intimidate or coerce workmen and employees into membership of the union or engage in any activity or demonstration or intimidation or interfere against the non-union workmen. The union further acknowledges[28] that it is the right of the company to maintain order, discipline and efficiency or hire, discharge, retrench, classify, transfer, promote or discipline workmen and employees. The company[29] ensures that it will not cause or direct any lockout as long as the workmen or employees collectively or individually do not commit any breach of this Agreement. The union also agrees that while retaining its right to go on a strike, it and its members individually or collectively will not cause, permit or take part in any strike, picketing, sit-down, stay in, slow-down or other curtailment or restriction on production or interfere with the work in or about the company's premises until procedure provided herein for the settlement of grievances had been fully complied with. The company agrees that before effecting mass retrenchment namely fifty or more men at a time or in a year, such question will be subject to negotiation, voluntary arbitra-

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25. Article 1 of Bata Shoe Co. Private Ltd. Agreement, 1958 (By courtesy of All India Organization of Industrial Employers, Federation House, New Delhi).
26. Article 2.
27. Article 3.
28. Article 4.
29. Article 5.

tion or conciliation or adjudication in case the company and the union are unable to effect an agreement. There are also provisions for grievance procedure, joint consultation, amendment of the agreement and recourse for voluntary arbitration for interpretation of the terms and conditions of the agreement etc. In short the Bata and Tata agreements have broken new grounds by providing a democratic, just and positive modus operandi for settling all industrial tensions and conflicts without external interference.

(ii) Industry Level Agreements

Agreements have been also entered into both at the national and industry level. Questions like bonus, productivity, rationalization, wage, dearness allowance, provident fund, recognition of unions by employers have been agreed with or without governmental initiative. For instance the Delhi Agreement of 1951 concerning rationalization covered grounds like standardization of working conditions, work-load, prohibition of fresh recruitment, installation of new machinery, gratuities and inducement to workers to retire voluntarily, retrenchment, training schemes for workers thrown out of employment, incentives for sharing the gains of rationalization etc. Iikewise a bonus agreement for plantation workers had been concluded in January 1956 between the representatives of Indian Tea Association and the Indian Tea Planters' Association on the one hand and the HMS and INTUC on the other for the payment of bonus.

The Bombay and Ahmedabad textile industry provide clear instance where agreements are drawn up between textile millowners and their workers through their representatives organized on industrywise. Such agreements usually cover all the textile workers of industrial centres of Bombay and Ahmedabad respectively by adjusting the total situation in the industry by considering the psychological, emotional, social and economic factors which need balancing in industrywise bargaining. The agreement of June 27, 1955 between the Ahmedabad Millowners' Association and the Ahmedabad Textile Labour Association—the representative trade union

under the Bombay Industrial Relations Act, 1946—is an example[30] of collective agreement at the level of industry.

(3) Collective Agreements—Content

Although the items covered in each collective agreement signed by the parties before conciliation agency or arrived at by mutual negotiations are not the same yet they display a spirit of urgency, compromise and understanding. The management seems to have conceded certain demands for which they were reluctant and unions have also not pressed for certain other demands for which they were agitating. Of course the Jamshedpur Agreement[31] of 1956 is an exception inasmuch as a liberal management went far ahead in bringing under collective agreement a number of items which have not been touched elsewhere even today.

(i) Collective Agreements—Matters Covered

The collective agreements in India cover a very wide field of labour-management relations in industry. These relate to recognition[32] of trade unions, rights and privileges of trade unions, prohibition of unfair labour practices, no strike[33] clause, wages,[34] gratuity, provident fund, dearness allowance,

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30. By courtesy of AIOIE, Federation House, New Delhi.

31. I.L.O. **Recent Developments in Certain Aspects in Indian Economy**, III at 116 (1956).

32. **Recognition:** The Indian Aluminium Co., Belure 1951; the Tata Iron and Steel Co., Jamshedpur, 1956; the Bata Shoe Co., the Indian Aluminium Co., Muri, Kundra and Alipuram, 1957; the Scindia Workshop Private Ltd., 1957; the Bata Shoe Co., 1958; the Hirakud Works of Aluminium Industries Ltd., 1961, etc.

33. **No-strike-no-lockout:** The Hirakud Works of Aluminium Industries Ltd., 1961; the Swadeshi Cotton Mills Co. Ltd., Kanpur, 1961.

34. **Wages etc.:** The Delhi Cloth Mills, 1952; Heavy Chemicals, West Bengal, 1955; Hindustan Lever Ltd., Bombay, 1956; Cooper Engineering Ltd., Bombay, 1957; the Sirdar Carbonic Gas Co. Ltd., Delhi, 1958; the Man Industrial Corporation, Jaipur, 1959; the Hindustan Machine Tool, Bangalore, 1961; the Hirakud Aluminium Industries Ltd., 1961; the Swadeshi Cotton Mills, Kanpur, 1961; the Ahmedabad Mill Owners' Association, 1962, etc.

fringe benefits, bonus,[35] job evaluation,[36] job description, work study, rationalization and productivity,[37] disciplinary proceedings,[38] rights of management[39] to discipline workers, grievance procedure,[40] joint consultation,[41] voluntary arbitration,[42] machinery for the settlement of disputes,[43] welfare,[44] workers' participation[45] in management, terms and conditions of employ-

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35. **Bonus:** The Indian Tea Association Co., Assam, 1955; Ahmedabad Mill Owners' Association, Ahmedabad, 1955; Hindustan Heavy Chemicals, West Bengal, 1955; the Tata Iron and Steel Co., 1956; Mysore Iron Steel Works, Bhadrawati, 1956; the Hindustan Lever Ltd., Bombay, 1956; Silk and Art Silk Mills Association, Bombay, 1956; the Tata Iron and Steel Co., 1957; the Scindia Workshop Private Ltd., 1957; the Bata Shoe Co., 1958; the Tea Association of India, Calcutta, 1960; the Hirakud Works of Aluminium Industries Ltd., 1961; the United Planters' Association, Coonoor, 1962; Delhi Cloth and Swatantra Bharat Mills, 1962; Indian Iron and Steel Co., 1962.

36. **Job evaluation:** The Hindustan Heavy Chemicals, West Bengal, 1955; the Hindustan Lever Ltd., Bombay, 1956; the Tata Iron and Steel Company, 1956.

37. **Rationalization and productivity:** The Tata Iron and Steel Co, Jamshedpur, 1956; the Scindia Workshop Private Ltd., 1957; the Bikaner Gypsums Ltd., Calcutta, 1960.

38. **Disciplinary Proceedings:** The Calcutta Stevedores Association, 1954; the Tata Iron and Steel Co., Jamshedpur, 1956, etc.

39. **Rights of Management:** The Scindia Workshop Ltd., 1957; the Bata Shoe Co., 1958; the Hirakud Works of Aluminium Industries Ltd., 1961, etc.

40. **Grievance Procedure:** The Modi Spinning & Weaving Mills Co. Ltd., 1956; the Tata Iron and Steel Co., 1956; the Bata Shoe Co., 1958; the Bikaner Gypsums, Calcutta, 1960, etc.

41. **Joint Consultation:** The Indian Aluminium Co., Belure, 1951; the Tata Iron and Steel Co., 1956; the National Newsprint and Paper Mills, Nepanagar, 1956; the Bata Shoe Co., 1958.

42. **Voluntary Arbitration:** The Tata Iron and Steel Co., 1956; the Bata Shoe Co., 1958; the Ahmedabad Millowners' Association, 1955; Modi Spinning and Weaving Mills, 1956; the Bikaner Gypsums, Calcutta, 1960; the Hirakud Works of Aluminium Ltd., 1961.

43. **Machinery for the settlement of disputes:** The Bata Shoe Co., 1951, and 1955; the Indian Aluminium Co., Belure, 1951; Ahmedabad Millowners' Association, 1955; Modi Spinning and Weaving Mills Co., 1956; the Fertilizers and Chemical Travancore Ltd., 1958; the Swadeshi Cotton Mills, Kanpur, 1961.

44. **Welfare:** National Newsprint and Paper Mills, Nepanagar, 1956.

45. **Workers' Participation in Management:** The Tata Iron and Steel Co. Ltd., Jamshedpur, 1956.

ment,[46] recruitment,[47] promotion[48] and contract labour[49] etc. However the collective agreements do not provide for workers' education which can greatly help in promoting collective bargaining in India.

As a method of settling disputes collective bargaining is becoming increasingly popular in India. For instance in India in 1961 out of 1,291 total number of terminated disputes[50] 334 were terminated by mutual settlement, 324 by direct negotiation, 4 by third party, 6 by arbitration and 7 by compulsory adjudication. In 1962 out of 410 awards there were 261 collective agreements on questions of basic wage, dearness allowance and bonus. It is gratifying[51] to note that as many as 64% of the total awards were settled by the parties mutually through collective agreements. In 1963 as many as 266 collective agreements[52] were reached between labour and management concerning basic wages, dearness allowance and bonus etc. of which 124 agreements were concluded alone on bonus.

(ii) Attitude of Courts

Now the government[53] and judicial[54] apathy towards collective bargaining is undergoing a gradual modification and

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46. **Terms and Conditions of Employment:** The Indian Aluminium Co., Belure, 1951, the Delhi Cloth General Mills, 1952; The Fertilizers and Chemicals Travancore Ltd., 1958; Messrs Metal Corporation of India, 1963.

47. **Recruitment:** The Joint Steamer Co., 1955; the Scindia Workshop Private Ltd., 1957; Jaipur Udyog Ltd., Sawaimadhopur, 1963.

48. **Promotion:** Mysore Iron and Steel Works, Bhadravati, 1956; the Scindia Workshop Private Ltd., 1957.

49. **Contract Labour:** Jaipur Udyog Ltd., Sawaimadhopur, 1963.

50. **Indian Labour Journal** 157 (Feb. 1963, Labour Bureau, Simla).

51. **Indian Labour Journal** 375 (April, 1963).

52. **Indian Labour Journal** 586 (July, 1964).

53. **Imperial Tobacco Employees' Association v. State of West Bengal** (1963), 1 L.L.J., 601.

54. **Cochin Power Light Corpn. v. Its Workmen** (1964), 2 L.L.J. 100 (S.C.): **Natwarlal Vithaldas Patel v. Municipality Vadnagar** (1965), 1 L.L.J., 609.

the necessity of collective bargaining for adjusting labour-management relations is urgently felt. The new trends appear to be one of non-interference especially in those labour matters which are covered by the settlement or agreement. To foster collective bargaining[55] courts have started envisaging the feasibility of trade unionism among the workers holding that individual disputes to become an industrial dispute must be espoused by the trade union. According to Supreme Court:

> This view recognizes the great importance in modern life of collective bargaining between the workmen and the employer. As trade unions developed in the country and collective bargaining became the rule, the employers found it necessary and convenient to deal with representatives of workmen, not only for making or modification of contracts but also in the matter of taking disciplinary action against one or more workmen and as regards all disputes.[56]

In the interest of collective bargaining the courts have also further stressed the need of one union[57] in one industry. Of course the courts are against compulsory unionism contrived through 'closed shop'[58] agreements which have neither legal validity nor moral justification. The courts, however, in India have also confronted with many issues like the validity of trade union elections;[59] the question of representation[60] of workers who are members of an unregistered trade union;

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55. **Ram Prasad Vishwakarma v. Industrial Tribunal** (1961), 1 L.L.J., 504 (S.C.).

56. Per Das Gupta, J. **in Ram Prasad Vishwakarma v. Industrial Tribunal** (1961), 1 L.L.J. 504 at 507; See **Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation** (1959-60), 17 F.J.R. 199 at 299 (S.C.); **Tamiland Non-Gazetted Government Officers Union, Madras v. Registrar of Trade Unions** (1962-63), 22 F.J.R. 1 at 3, 11.

57. **Workers of Buckingham and Carnatic Co. v. Commissioner Labour** (1964), 1 L.L.J. 253.

58. **M/s. Tulsidas Paril v. Second Labour Court, West Bengal,** (1964), 1 L.L.J. 516.

59. **Mukand Ram Tanti v. Registrar of Trade Unions,** (1963), 1 L.L.J. 60.

60. **Ram Kapil Singh v. Labour Court,** (1963), 1 L.L.J. 65.

modification[61] of agreements and policy of encouraging collective bargaining by requiring that an industrial worker[62] should not appear in any proceeding himself where there is a representative trade union etc.

IV. The Code of Discipline in Industry

India made fresh major attempt in 1958 in the matter of promoting collective bargaining. This was beside the existing legal arrangements of conciliation and adjudication. Presiding over the 15th session of the Indian Labour Conference in July 1957 in New Delhi, Mr. G. L. Nanda, who had taken over as Union Labour Minister only three months ago, referred to the existence of industrial indiscipline on the part of labour and management and emphasized the need of voluntary, non-statutory and non-legal measures for the solution of labour-management disputes. Consequently certain broad principles of practical conduct for labour-management were evolved and drawn up in a Code called the Code of Discipline in Industry. The principles embodied in the Code were adopted at the 16th session of the Standing Labour Committee held in October 1957. The Code was finally ratified by the Indian Labour Conference at its Nainital session in May 1958 and was amplified by the Union Ministry of Labour in September, 1958 by making certain amendments.[63] The Code has been ratified by the Central Organizations of employers and workers.

The Code aims at bringing about greater industrial harmony and as such expects:

> a just recognition by employers and workers of the rights and responsibilities of either party as defined by law and agreements (including bipartite, tripartite agreements arrived at all levels from time to time) and

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61. **Mohamadmiya Kasammiya v. Industrial Court,** (1965), 1 L.L.J. 535.

62. **Subodhchandra Himtlal v. Thakore,** (1965), 1 L.L.J., 593.

63. It was clarified that as the Code came into effect from June 1, 1958, it would not be correct to apply sanctions of the Code to cases of infringements that occurred prior to the date.

a proper and willing discharge by either party of its obligations consequent on such recognition. The Central and State governments, on their part, will arrange to examine and set right any shortcomings in the machinery they constitute for the administration of labour laws."[64]

(1) **Code—Provisions**

The provisions of the Code of Discipline can be divided into two broad categories. The first category consist of positive obligations placed on the employers and unions. These obligations are, namely, settlement of disputes or grievances by mutual negotiations, conciliation and voluntary arbitration; promotion of constructive co-operation between workers themselves and abide by the spirit of agreements mutually entered into; the establishment of mutually agreed grievance procedure to ensure speedy and full investigation leading to settlement, recognition of trade unions by employers etc.

The other category of provisions of the Code are in the nature of 'don'ts' which can be regarded as negative obligations of both the unions and management in general. These are, namely, (1) not to take unilateral action in connection with any industrial matter; (2) no strike[65] or lockout without notice; no coercion, intimidation, victimization or go-slow. In particular the management is not to increase work load without agreement; not to interfere in legitimate trade union activities and not to contravene labour laws, agreements etc. Likewise the union is not to resort in any form of physical duress, rowdyism in demonstrations, damage to property, interference with normal work and insubordination etc.

In the context of industrial relations in India the provisions of the Code with respect to positive obligations are far more important than the negative ones. The negative obligations are already covered by existing industrial legislation while the positive ones depend for their validity and authority

64. The Code of Discipline in Industry, 1958.

65. **Main Conclusions** 22—Indian Labour Conference, (19th Session, Bangalore, 1961).

upon the given good will and wisdom of the parties to the Code. It has placed manifold obligations of the unions and management and the success of the Code, therefore, must depend to a great extent upon the efforts of the labour and management to sincerely discharge their mutual obligations in good faith and in their mutual awareness and constant vigilance in bringing erring unions and management to the notice of the machinery for the implementation of the Code.

(2) Code—Applicability

The Code of Discipline came into operation with effect from June 1, 1958 and is now applicable to both public and private sectors. In 1964 Port Trusts, Life Insurance Corporation, the General Insurance Council and the Indian Banks Association accepted the Code with certain clarifications.[66] But the Code still does not cover Railways, Post and Telegraph Works, Defence undertakings and Reserve Bank. The reasons attributed for its exception[67] are that the employing ministries[68] of the Government of India and their workers' organizations have not asked for it.

The employers and unions which are not affiliated to any central organizations are to be persuaded constantly by central and state implementation divisions to accept the Code on a voluntary basis. In case if any organization or unit does not accept the Code, it will not be entitled to benefits under the Code.

66. I Report 12 (1963-64), Ministry of Labour and Employment.

67. Summary of the Proceedings, Indian Labour Conference 16 (18th Session, New Delhi, 1960).

68. To avoid direct action a joint consultative machinery with compulsory arbitration is being introduced for unresolved differences between central government and its employees. There will be a joint council each at the national, regional and departmental level to deal with matters affecting the employees like conditions of service and work, welfare, improvement of efficiency. Compulsory arbitration is limited to pay and allowances, weekly hours of work and leave of a class or grade of employees. Before the scheme is set up the government employees will give an undertaking of voluntarily abjuring strikes as a means of settling differences between the central government and its employees—(See the Scheme laid on the Table of the Parliament on April 20, 1966).

(3) Code—Nature

There is no legal sanction behind the Code. Also the Code is not super-imposed from above, nor has it a statutory basis. It is voluntary in character and has been evolved as a result of tripartite efforts. It seems from acceptance of parties concerned—labour, employer and the government—that they will have a common purpose which transcends their differences—the common purpose of ensuring the country's progress and sharing the benefits of such progress.

It cannot be said that the Code has no value. In fact it has a value for it lays down the foundation of industrial democracy in India. It is in essence a gentlemen's agreement embodying the norms of regulating the conduct of employees and employers towards each other. It further stresses that every thing cannot be done by legislation howsoever comprehensive and final it may be and, much less, industrial relations. In reality Code calls for mutual understanding on both sides—employers and unions. The members of the central organizations of employers and employees which have ratified the Code are considered to be morally bound to follow it. Non-compliance of the Code, therefore, involves certain sanctions which are applied by central organizations against their members found to be responsible for the violations of the Code. Failure to observe the Code can entail, among other things, derecognition[69] for at least a period of one year.

(4) Implementation of the Code of Discipline

To implement the Code of Discipline, labour enactments, awards and agreements a separate implementation tripartite machinery has been set up[70] at the central and state levels. The central machinery is to co-ordinate the activities of the state machinery for ensuring uniform action. Its main func-

69. See the Recommendations of the 16th session of the Standing Labour Committee, 1957 and the Recommendations of the 17th session of the Indian Labour Conference, 1959.

70. In pursuance of the recommendations of the Standing Labour Committee, 1957, the implementation and evaluation machinery consisting of Implementation and Evaluation Division and a Tripartite Implementation and Evaluation Committee started functioning..

tions[71] **inter alia** are: to ensure implementation of the Code of Discipline, Code of Conduct, labour enactments, awards, agreements etc., with a view to reducing at the source the main causes of industrial strife; to supplement work of the industrial relations machinery in taking preventive action where disputes are brewing and in settling long pending disputes which could not be settled otherwise; to maintain liaison with central, state or local units as the case may be, to ensure effective working of implementation machinery; to bring about out-of-court settlement of cases pending in High Courts and the Supreme Court; to evaluate major strikes and lock-outs and disputes in order to fix responsibility for them etc.

(5) Breaches of the Code

As regards the breaches of the Code of Discipline till February 1960, 900 cases of breaches[72] of the Code were reported. Of these 254 did not require any action as the complaints were either vague or involved units not covered by the Code; 223 were referred to state governments for appropriate action. Of the remaining cases 252 were settled or breaches brought home to the guilty parties for settling them right.

In 1961 the Central Implementation and Evaluation Division received 709 complaints[73] of the breaches of the Code in the Central sphere. This included 260 complaints of non-implementation of labour enactments and awards. In 58% of the cases, where action was to be taken by the Division, breaches were brought home to the parties and the situation set right or the parties advised to avoid such breaches in future. 17% of the complaints were not substantiated on enquiry and the remaining 25% were under investigation. In 1962 the Central Implementation Division received 993 complaints[74] about the breaches of the Code. In 46% of the cases breaches were brought home to the parties and the

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71. **Indian Labour Year Book,** 1958, 144.

72. **The Thirteenth Year,** 225 (Publication Division, Ministry of Information and Broadcasting, Govt. of India, 1960).

73. **The Indian Labour Year Book, 1961,** 104.

74. **The Indian Labour Year Book, 1962,** 106.

situations set right. 15% of the complaints could not be substantiated and remaining 39% were under investigation. In 1963 the Central Implementation Division received 1,236 complaints[75] of the breaches of the Code. Of these 176 did not require action as they referred to the Division for information only or pertained to cases which were sub-judice. Of the remaining 1,060 cases on which action was required to be taken, 179 were not substantiated on enquiry, in 456 cases breaches were set right and the remaining 425 (or 40%) cases were under investigation. Of about 1,710 complaints[76] received under the Code and the Industrial Truce Resolution in 1964, 168 did not require any action, of the rest 9% could not be substantiated on enquiry. 37% of the infringements were set right or settled and 54% were under investigation.

(6) Code—Industrial Peace

Usually tall claims have been made by the government that the Code of Discipline has worked well in preserving peace in the industry. It is said that the Code has stood the strain[77] of test. The results so far achieved are encouraging both in terms of man-days lost owing to stoppages and in bringing about a general improvement in the climate of industrial relations. The Code has been successful in creating an awareness among the employers and the workers of their obligations towards each other; the desire to settle disputes mutually without recourse to the wasted methods of trial of strength and litigation which is steadily growing. Further it is said that the workers and employers have become code-minded and both are ever vigilant in its enforcement and in bringing to notice of the implementation machinery more and more breaches of the code.

It is true that the Code together with Industrial Truce Resolution has restraining influence while labour and management taking unilateral action. However the number of man-days lost during 1964 on account of industrial disputes,

75. **I Report 13** (Ministry of Labour and Employment, 1963-64).
76. **The Statesman,** April 25, 1965.
77. **Third Five Year Plan,** 250 (1961).

which is one of the indicators of climate of industrial relations went up to 77 lakhs as against 33 lakhs in 1963. This increase was mainly due to three factors: first the national upsurge in the face of Chinese aggression started losing momentum towards the end of 1963; second there were economic factors such as steep rise in price level of food articles and delay in the implementation of the recommendations of the Bonus Commission and those of the wage boards; and third the inter-union rivalry led to trouble both in public and private sectors,[78] although this phenomena is not unique for 1964 alone. This accounted[79] for a concerting increase in number of man-days lost in 1964 over seven million against 3.3 million in 1963 and 6.1 million in 1962.

Even during the intervening period between the adoption of the Code in 1958 and of the Truce Resolution in 1962 the anxiety of avoiding direct action by labour and management is not clearly discernible. While in 1958 the number of man-days lost was 78 lakhs, in 1959 it came down to 56 lakhs and in 1960 it rose to 65 lakhs and in 1961 it stood 42 lakhs. Even 42 lakhs man-days lost during 1961 is big figure in our country. The loss involved could be appreciated from the fact that on the average earnings of Rs. 4 per person per day the loss of earnings was Rs. 168 lakhs and loss of production being very much more.

(7) Code—Ideal and Practice

The labour policy makers in India have so far been guided by lofty ideals of industrial peace, social justice and higher productivity. Swayed by this noble idealism they have expected too much from labour and capital who perhaps are not equally enthusiastic, sincere and faithful to the objectives of the Code. The Code is not a divine charter nor

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78. In 1964, the situation was somewhat disturbed in the mining, banking industries and in the major ports of Vishakhapatnam, Madras and Marmago. Of work stoppages in the public sector undertakings, the most important ones were in Heavy Electricals Ltd., Bhopal, Fertilizers Corporation of India, Sindri, and the Hindustan Steel Limited.

79. **Supra note 76.**

a perfect human charter. It embodies only the reasonable goals which after a searching analysis, were put forth before labour and management with best intentions and in the best interest of the country, industry and labour. From the above analysis of work stoppages since 1958 till 1964, it is a tragedy that for want of good faith on the part of both parties such a noble ideal has been badly executed. There is a complaint from the employers that workers do not know the philosophy and principles of the Code. There may be some substance in it. But now attempts are being made in that direction for spreading the message of the Code through the concerted efforts and cooperation of Central Board for Workers' Education. Employers' organizations too have not taken positive steps and some of the employers, both in the public and private sectors, have not even cared to read[80] the Code. The unions complaint that individual employers do not show any desire to honour the terms of the Code of Discipline and when confronted by labour they do not hesitate to tell them that they will have their own way—code or no code. According to them:

> The government as well as employers although professing lofty ideals about industrial peace, have not given proof that they are willing to act up to the principles underlying the Code. The Code has not been applied fully in the public sector in spite of repeated assurances by the Government of India. Many employing ministries and state governments show total disregard of the Code.[81]

Employers of course complain that trade unions adopt unjust and unfair coercive methods whenever they disagree with the employers without resorting to procedure and method envisaged in the Code.

As already observed the Code of Discipline is not a self-sufficient, self-justified and self-contained document for regulating human behaviour in the industry. It is not a talisman

80. **Supra** note 65 at 23.

81. G. Ramanujan, Presidential Address—**INTUC 11th Session—Brief Review** 8 (1960).

to solve all industrial ills. Some of its provisions may be vague or ambiguous.[82] There may be conflicting interpretations of the provisions of the Code, its implementation, functioning at the unit level—especially on the question of recognition of unions. Also one may even doubt the effectiveness and impartiality of the implementation machinery. These difficulties may call for modification and revision[83] of the Code to suit the requirements of labour and management. However, in the final analysis of things observance of the Code is a matter of faith and not of expediency, of practice and not of mere idolatry worship in the day-to-day labour-management relations. Its satisfactory working requires a good deal of self-discipline, understanding and tolerance on the part of labour, employers and the government. It is hoped that the unions and employers would rise to the occasion in sinking their past prejudices and contribute positively in establishing new dimensions of understanding in labour-management relations.

V. Grievance Procedure

Grievances are disputes, differences and complaints affecting one or more industrial workers that are inherent in employee-employer relationship. Grievances affecting more individual workers may relate to questions such as interpretation of service agreements, wage adjustment, dearness allowance, bonus, fringe benefits, promotions, transfers, retrenchment, dismissal, discharge etc. While grievances concerning a single worker may relate to leave, overtime, shift change, work load, work assignment, wrongful exactions, seniority, complaint about fellow workers or supervisors, grievances due to disciplinary actions and other incidents of employment. However where points at dispute are a general applicability or of considerable magnitude, they fall outside the scope of

82. See **Seminar on the Working of the Code of Discipline** 9 (under the auspices of employers' organizations, 1961).

83. A seminar on the Working of the Code of Discipline in Industry held in 1965 at New Delhi under the auspices of the Ministry of Labour and Employment rejected the idea to make the Code statutory—**Hindustan Times**, August 22, 1965.

grievance procedure. On such above matters which need immediate and urgent adjustment the attitude of the management appears to workers as unjust and contrary to their interest. A good deal of mis-understanding and uneasiness so created can be easily cleared up provided the management has an open mind and a sound personnel policy.[84] Hence a properly worked out grievance procedure can help a good deal in the maintenance of industrial peace and amity in an undertaking.

(1) Grievance Procedure—Early Attempts

In India industrial relations at the plant level did not receive adequate attention before 1946. The Industrial Employment (Standing Orders) Act, 1946 made obligatory for employer to define with precision conditions of employment under which employees are to work in industrial establishments. Among other things which are to be covered by standing orders as prescribed in schedule appended to the Act, are the means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants. The model standing orders framed under the Industrial Employment (Standing Orders) Central Rules,[85] 1946 has made provision regarding complaints without providing an adequate tripartite agency for the consideration of complaints. Indirectly the Indian Factories Act, 1948 gave further impetus towards prompt settlement of workers' grievances by making it obligatory for employers to appoint a welfare officer[86] for the well-being and welfare of the workers including redressal of their grievances. The Works Committee[87] established under the Industrial Disputes Act, 1947 also are meant to look after the welfare and interest of the workers at the plant level. Normally works committees are

84. Mr. Naval H. Tata likewise also advocates a fresh approach of employers towards labour which he compared with a very delicate piece of mechanism which needs handling much more deftly than the machinery in the plant. See **Indian Worker,** February 6, 1967.

85. Rule 15.

86. Section 49.

87. Section 3.

concerned with problems arising in the day-to-day working of the concern and to ascertain the grievances of the workers and whenever occasion arises to arrive at some agreement also. Some collective agreements too provide for the grievance procedure.[88] However all the above attempts could not achieve the desired end.

(2) Grievance Procedure—Code of Discipline

The Code of Discipline in Industry is the first concerted and voluntary effort[89] on the part of labour and management which has highlighted the need for a grievance procedure on an agreed basis. In other words establishment of grievance procedure is an essential requirement of the Code. Under the Code both management and unions have agreed that:

> they will establish, upon a mutually agreed basis, grievance procedure which will ensure a speedy and full investigation leading to settlement. And that they will abide by various stages in the grievance procedure and take no arbitrary action which would by-pass this procedure.[90]

Accordingly a model procedure for speedy disposal of workers' grievance was formulated[91] towards the end of 1958. The model grievance procedure describes the principles, procedure and machinery. These principles are that the grievance procedure must be in conformity with existing legislation; that as far as possible grievances should be settled at the lowest level expeditiously within a time limit and that management should designate authorities—grievance committee, departmental heads and works committee—to be connected at various levels by the workers including the right to refer the grievance for arbitration in the last resort. In short the at-

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88. Tata Iron and Steel Co., 1965; the Bata Shoe Company, 1968; Modi Spinning and Weaving Mills, 1956; Indian Aluminium Company, Belure, 1956.

89. Part II (IV).

90. Part II (VIII and IX).

91. **Tripartite Conferences and Committees, 1961-64,** at 184, 190 (The Employers' Federation of India, Bombay, 1964).

tempt is to make the grievance procedure informal, simple, expeditious, definite and effective.

(3) Model Grievance Procedure

The model grievance procedure basically provides five steps for redressal of workers' grievances. If a worker desires he may be accompanied by a union representative at all steps after the first. It is not required that grievances or answers be put in writing, but time limits are set for action and appeal at each step. If no agreement is still possible, the union and the management shall refer the grievance to voluntary arbitration. However, the alternative is also mentioned of carrying the grievances to conciliation and arbitration.

The success of the grievance procedure, however, depends upon the existence of strong trade unions within the plant and the co-operative attitude of the management towards redressal of workers' grievances. The duty of implementation of the grievance procedure is of the implementation and evaluation machinery. During 1961-62 the Central Implementation Division received[92] 20 complaints regarding non-establishment of grievance procedure by managements. The management concerned or their central organizations were requested to rectify this omission. In India management both in public and private sectors is still hesitant[93] in establishing the grievance procedure contrary to the principles of the Code of Discipline in Industry.

VI. Out-of-Court Settlement

Out-of-court settlement is another step to bring the contending parties together and attempt out-of-court settlement of cases of industrial disputes pending in High Courts or the Supreme Court. At the 16th session of the Standing Labour Committee the central organizations of employers and workers had agreed[94] to screen industrial disputes cases to bring about out-of-court settlement of cases pending in courts.

92. Supra note 74, at 107.
93. The Indian Worker, December 6, 1965.
94. Supra note 91 to 82.

In 1961 it was further decided that where efforts of the implementation machinery to bring about out-of-court settlement do not succeed, may be brought before the Standing Committee for further examination. The Committee may further require the central federations of workers and employers to use their good offices to persuade the concerned unions or management to settle disputes out-of-court.

A good deal of success has been achieved in this direction. In 1962 the Central Implementation Division was successful[95] in 44 per cent of the cases taken by it for out of-court settlement. In 1963 in Andhra Pradesh[96] 37 cases were settled by mutual agreement without going to the court. In Bihar, the Labour Minister himself brought about settlement in 8 out of 12 cases pending in High Court or Supreme Court. In Delhi 33 out of 47 cases pending before the industrial tribunal were compromised by the parties. In Gujarat 35 cases were withdrawn by the parties from the labour court. In Madras the Implementation and Evaluation Committee decided that Committee's secretary might take up steps for out-of-court settlement. In Bengal the practice of settling disputes out-of-court, however, has not made much headway although all efforts are being made in that direction. In U.P. 18 out of 148 cases pending before courts were compromised. In Rajasthan 9 out of 64 and in Madhya Pradesh 10 out of 117 cases were resolved out-of-the court. The Central Implementation Division has been successful in bringing about out-of-court settlement in 23 cases out of 50 cases taken up by it. In one of these cases litigation was going on for more than 8 years and as a result of settlement between management and the union the former agreed to pay Rs. 5 lakhs as arrears due to the workers. Indeed the out-of-court settlement device is a novel experiment for the peaceful settlement of industrial strifes by mutual understanding and compromise without a court-room environment which at the present day largely bedevils industrial relations.

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95. Supra note 74 at 197.
96. Twenty-first Tripartite 1963. 39 (AITUC Publication, 1963).

VII. Code of Inter-Union Harmony

The code of discipline in Industry aims at preservation of peace and discipline in the industry by obliging labour-management to follow certain norms[97] of industrial behaviour towards each other. However much of the indiscipline in the industry is due to inter-union and intra-union rivalry. Realizing the need to build up harmonious relations between unions of different political shades of thought and thereby to ensure the growth of strong and sound trade union movement in the country the representatives of central organizations of workers evolved in May 1958 certain basic principles to regulate inter-union harmony. The Code of Inter-Union Harmony envisages the establishment of one union in one industry. Of course it includes the right of a worker to join the union of his own choice without coercion and intimidation and his ignorance or backwardness is not to be exploited by unions. The code also requires unions to eschew casteism, communalism, provincialism in inter-union dealings with regular and democratic election of office bearers etc.

Indirectly the Code of Inter-Union Harmony prohibits 'company unions' and 'closed shop' agreements for promoting sound trade unionism on democratic basis necessary for collective bargaining in India. It is said that the working of the Code has been satisfactory.[98] Till the end of February 1960, 91 complaints of this Code were reported. Of these 17 did not require any action as the complaints were vague; 13 were referred to state governments concerned, one was settled and 26 were brought home to the guilty parties. The rest were under investigation of the implementation machinery. In 1962 the Central Implementation Division received 27 complaints[99] as against 30 in the preceding year. Of these one case was not established on enquiry, 2 did not require action and 9 were referred to respective state governments for appropriate action. However the success of the Code of Inter-

97. Supra note 64.

98. The Thirteenth Year Book, 1960 at 226 (Publications Division, Ministry of Information and Broadcasting, Govt. of India, New Delhi.

99. Supra note 74, at 106.

Union Harmony like any other Code depends upon the moral sensibilities of the workers—their ability to withstand political and other pressures and the policy of the State to guide the movement not according to a particular political credo but on the principles of trade unionism and industrial democracy. This can be achieved through workers' education[100] programme which have the possibilities of not only ushering industrial peace and industrial development but also to turn out workers as more responsible citizens, good workers and better trade unionists.

VIII. Industrial Truce Resolution

Industrial Truce Resolution of 1962 is another instance of the industrial relations policy of the State in promoting constructive co-operation between labour and management. In October 1962 the Chinese invasion of India's northern frontiers created an emergency in the country. Therefore for speeding up of industrial production and defence preparedness and to meet the grave situation confronting the nation after the Chinese aggression, at a joint meeting of employers and trade unions the Union Labour Minister called for the adoption of a Truce Resolution for the duration of the emergency. All the parties pledged themselves to the Industrial Truce Resolution. Similarly during the Pakistani aggression against India in 1965 the labour and management again reiterated their resolve to adhere to the Truce Resolution for meeting all external aggression.

The Truce Resolution calls for maximum production and exercise of restraint and forbearance on the part of the workers and employers. As regards industrial relations it stresses that:

> under no circumstances shall there be any interruption in or slowing down of production of goods and services. There should be maximum recourse to voluntary arbitration. All complaints pertaining to dis-

100. In India an autonomous body Central Board for Workers' Education has been established in 1958 at Nagpur to improve trade union consciousness of workers and to train trade union leaders, etc.

missal, discharge, victimization and retrenchment of industrial workmen, not settled mutually should be settled through arbitration.

The Truce Resolution had its direct and immediate impact on industrial climate and in fact four months[101] from November 1962 onwards had been most peaceful in industrial history of India. But as soon as acute sense of emergency declined the employers and unions again adopted their customary attitude[102] towards each other. In spite of the blanket ban on strikes, rise in prices and fall in the real wages of the workers have led to industrial strife both in public and private sectors. Workers consider that the Truce Resolution as worked 'rather one-sidedly' and the employers' undertaking to resort to increasing use of the machinery of voluntary arbitration, generally and individually in the cases of dismissal and discharge has not been implemented. The Employers' Federation of India has also cited instances of strikes in violation of the Truce Resolution. In 1963 in all 236 complaints have been made to the Central Implementation and Evaluation Division; of these 14 were in the Central sphere and 222 in the state sphere. These complaints of workers' organizations relate to 141 management—10 in the central sphere and 131 in state sphere. 40 complaints are against workers and 196 against employers; in addition, 6 complaints have been made by two workers' organizations against the Government of Rajasthan and Delhi Administration. Most of the complaints against employers pertain to lay off, retrenchment, non-implementation of awards and agreements, closure, reduction in shifts, unilateral action, unfair labour practices, discharges, dismissal and refusal of voluntary arbitration. Against workers complaints mostly relate to strike, non-cooperation in working extra hours etc. On the whole the situation remains unchanged—both the employers and employees resorting to direct unilateral action in utter violation of the Truce Resolution. Inter-union rivalries and economic situation has fur-

101. **Main Conclusion,** 8 (Indian Labour Conference, 21st Session, 1963).

102. **Id., at** 9.

ther worsened the climate so generated during the national emergency.

IX. Voluntary Arbitration

Apart from statutory provisions for voluntary arbitration in the Industrial Disputes Act, 1947 further attempts have been made in India to popularise and strengthen industrial arbitration on a purely voluntary and non-statutory basis. The first attempt in this regard was made in the Code of Discipline in Industry[103] in 1958. The Indian Labour Conference in 1959 also recommended[104] that increased recourse should be had to mediation and voluntary arbitration and recourse to adjudication be avoided as far as possible. Matters of local interest not having wider repercussion should, as a general rule, be settled through arbitration. A panel of arbitrators should be maintained by appropriate governments for assisting parties in choosing suitable arbitrators. At the twentieth Delhi session of the Indian Labour Conference of 1962 it was agreed that readiness to refer disputes to arbitration was an important requirement of the Code. The Third Five Year Plan in 1961 too envisaged on voluntary arbitration[105] in place of compulsory adjudication.

Together with the Code, the Industrial Truce Resolution, 1962 greatly strengthened voluntary arbitration process. While placing a premium of 'no-strike' 'no-lockout' obligation, the Truce Resolution[106] asks for maximum recourse to voluntary arbitration. All complaints pertaining to dismissal, discharge, victimization and retrenchment of individual workmen not settled mutually should be settled through arbitration. For this purpose the officers of the conciliation machinery may, if the parties agree, serve as arbitrators. Dismissals and discharges of workmen should, however, be avoided as far as possible.

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103. See clause 2(4).

104. Seventeenth Tripartite, 9 (AITUC Publication, 1959, New Delhi).

105. Supra note 77, at 250.

106. Supra note 91, at 101.

The response of the Truce Resolution was not discouraging insofar as settlement of disputes through arbitration was concerned. Of the 610 cases in the central sphere, in which conciliation failed during 1963, voluntary arbitration[107] was agreed in 156. This is encouraging if it is borne in mind that settlement of disputes through voluntary arbitration in the pre-Truce period was an exception, the figure of the central sphere for whole of 1962 being only 7. During 1963 in the state sphere out of 3,085 cases 344 were settled through voluntary arbitration. In U.P. while the principle of voluntary arbitration in preference to adjudication was accepted by organizations of employers and employees, the tendency at the lower level had been to resist any such settlement in conciliation proceedings. The proposals for voluntary arbitration on the whole, it was reported,[108] were not acceptable to employers and the cases where there was agreement for arbitration, were of such nature that dispute could be very easily settled in conciliation proceedings. The following figures of arbitration for the year 1961-63 as against the number of cases referred for adjudication in U.P. bear out this attitude of employers:

Year	*Number of cases arbitration-agreed*	*Number of cases referred for adjudication*
1961	29	752
1962	40	884
1963	81	773

Undoubtedly there had been a slight increase from year to year in the number of cases referred to arbitration voluntarily. But if these figures are compared with the number of cases referred to the adjudication, the irresistible conclusion would be that there was a general apathy and unresponsiveness on the part of the employers to accept arbitration in disputed matters.

On the other hand, the employers while advocating for

107. I Report 1963-64, 11, (Ministry of Labour and Employment). See the Hindustan Times, July 12, 1964.

108. See Brochure prepared by Labour Commissioner, U.P. (unpublished, 1964).

voluntary arbitration, had indicated certain difficulties[109] faced by them in resorting to voluntary arbitration in terms of the Code of Discipline in Industry and the Industrial Truce Resolution. According to them[110] voluntary arbitration has been rendered difficult because of the lack of clear cut guiding principles for the arbitrators to follow, absence of proper personnels for arbitration, multiplicity of unions etc.

However it had been decided in April 1965 to set up a national tripartite arbitration promotion board to propagate the idea of voluntary arbitration and evolve appropriate principles. This is nothing but the continuation of the policy as was recommended by the seventeenth Indian Labour Conference and the Truce Resolution. The twenty-third Indian Labour Conference at its New Delhi session of October 28, 1965 further discussed the proposal for establishing a National Arbitration Promotion Board,[111] for settling labour disputes through voluntary arbitration. It is indeed interesting to see how voluntary arbitration through the medium of arbitration boards makes a headway in India. As such employers and employees may be eager to settle their differences through arbitration boards on the basis of mutual understanding without a feeling of rancour, defeat or loss of face—the inevitable outcome of industrial adjudication. The existence of a permanent facility for voluntary arbitration, as in the case of conciliation, has the advantage of being immediately available to parties in the event of a dispute. Consequently the national arbitration promotion board by reasons of its composition, is qualified to give an objective opinion on the question at issue.

X. Workers' Participation in Management

The question of giving workers a sense of belonging—an increased share in the affairs of the industry has been a current issue the world over. Workers' participation is an important

109. **Report of the Proceedings of the Committee for the Year 1963,** 48 (AIOIE, Federation House, New Delhi).

110. **Statement of Conclusions**—Seminar on Voluntary Arbitration (New Delhi, November 28-29, 1963).

111. **Indian Worker,** November 8, 1965.

aspect of joint consultation, but the concept is not easy to define, because it has come to be associated with varying practices in various countries. Thus arrangements of workers' participation in management differ from country to country not only in the form but also in the degree of participation. In Great Britain and Sweden participation is realized[112] through joint bodies which have only advisory status and which have been set up by agreement generally without any legal compulsion. In Belgium, France and Germany, on the other hand, the machinery for participation is based on legal sanction[113] and workers are represented on the boards of management. At the other end is Yugoslavia[114] where the state owned industrial units are run by employees themselves through an elected council and a management board. In India the scope for workers' participation in management was non-existent before 1957. No doubt the works committees established under the Industrial Disputes Act, 1947 were meant to usher a beginning in that direction. The works committee experiment has proved a far cry on account of employers indifference and trade union hostility.

Workers' participation in management was thought of in India in second and third five year plans[115] as one of the progressive measures of labour policy. Such a policy would help:

> increasing productivity for the general benefit of the enterprise, the employees and the community; giving employees a better understanding of their role in the working of the industry and of the process of production and satisfying the workers' urge for self-expression, thus leading to industrial peace, better relations and increased cooperation.[116]

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112. **Report of the Study Group on Workers' Participation in Management**, 1957, 5 at 6 (Govt. of India, Ministry of Labour and Employment).

113. **Id.** 6 at 10.

114. **Id,** 11 at 12.

115. **Second Five Year Plan,** 577 (1966); **Third Five Year Plan,** 254 (1961).

116. **Id.**

A Study Group on workers' participation[117] in management consisting of representatives of government, employers and workers after closely examining the systems of workers' participation in several countries favoured the system of joint management councils on voluntary basis. The recommendations[118] of the Study Group were accepted by the 15th Indian Labour Conference in 1957 and a draft model agreement between management and labour for establishing joint management councils[119] was drawn up by a sub-committee appointed by the Conference. At the meeting of the Standing Labour Committee in April 1961 the central organizations of employers and workers promised full support for the scheme of joint management councils. Details of the scheme and the experience in regard to its working were discussed at two seminars[120] held in 1958 and 1960 of the representatives of central and state governments and organizations of employers and workers and the representatives of labour and management where the scheme was functioning. The discussions at these seminars established the essential soundness of the scheme of joint management councils. The seminars reemphasized the need to extend the scheme as it had improved labour-management relations in units where it was introduced. This was, however, to be done on a voluntary basis and by persuasion and consent.

(1) Joint Management Council—Composition

The experiment of joint management councils is being tried in establishment which fulfils these conditions, namely, strong trade union functions in the undertaking; the employers and the trade union are ready to try out the experiment in a spirit of willing cooperation; the undertaking employs at least 500 workers; the employer in private sector is a member of one of the leading employers' organizations and the

117. The Study Group was sent abroad by the Government of India in pursuance of the recommendations of the Planning Commission in 1956.

118. **Tripartite Conclusions, 1942-46,** 40 at 42 (Ministry of Labour & Employment, New Delhi, 1962).

119. **Id.,** 77, at 78.

120. **Supra** note 91, at 100-101.

union is also related to one of the central federations and the undertaking has had a fair record of industrial relations.

It is provided that there should be a single council for an undertaking as a whole provided it is not made up of units at different places. For undertakings spread over several places there should be separate council at the local, regional or national levels. The council is bipartite consisting of the representatives of the management and employees. The membership of the council is not expected to exceed 12 and should consist of equal number of representatives of workers and management. In comparatively small undertakings the membership should not be less than 6. The criteria for selection of representatives should be, namely (i) where there is a representative union registered under a statute or a union recognized under the Code of Discipline that union should nominate the employees' representatives on the council. Where more than one well-established effective unions exist joint management councils should be formed when the unions among themselves agree as to the manner in which representation should be given to the employees. There is no bar to the members of the supervisory and technical staff being nominated as employees' representatives. Employers' representatives should be nominated by the employers.

(2) Joint Management Councils—Scope of Functions

The draft Model Agreement regarding establishment of councils of management[121] as modified by first seminar on Labour Management Co-operation in January 1958 creates a number of obligations for the employers and confers some rights and responsibilities upon the council in the management of the undertaking.

The Draft Model Agreement provides that council should be consulted by the management on matters like administration of standing orders and their amendment when needed, retrenchment, rationalization, closure, reduction in or cessation

121. See Draft Model Agreement regarding Establishment of Councils of Management. Also See **Fourth Five Year Plan**, 388 (Planning Commission, Government of India, 1966).

of operations. The council should have the right to receive information, discuss and give suggestions on general economic situation of the concern, the state of market, production and sales programmes, organization and general running of the undertaking, circumstances affecting economic position of the concern, methods of manufacture and work, the annual balance sheet and profit and loss statement and connected documents and explanation, long-term plans for expansion, redeployment etc. and such other matters as may be agreed to. The council should be entrusted with administrative responsibility in respect of administration of welfare measures, supervision of safety measures, operation of vocational training and apprenticeship schemes, preparation of schedules of working hours and breaks and of holidays, payment of rewards for valuable suggestions received and any other matter as may be agreed to by the joint management council. In July 1965 the Committee on Labour Management Co-operation recommended that recruitment, training, confirmation, seniority and promotion at the level of operatives in industrial undertakings be decided in consultation with joint management councils. It also suggested that welfare officers might be made the conveners of the councils. In short, the joint management councils are to exercise supervisory, advisory and administrative functions on matters concerning safety, welfare etc. as have been indicated above, though the ultimate responsibility is to vest with the management.

The decision of the council should be unanimous and such decisions should be implemented without delay. If they are not implemented in time reasons should be given for the delay. To ensure prompt implementation of decisions the employer should associate with joint management council a high level executive. The council may meet as it deems fit. It, however, should meet at least once a month. The quorum should be four-two on each side. The council may appoint sub-committees study panels to deal with different subjects. The sub-committee may include persons other than members of joint management council. It is further made clear that since joint management councils are working at policy level,

they can function separately without encroaching upon the functions of the works committees.

However, all the matters like wages, bonus etc. which are subjects for collective bargaining are excluded from the scope of the councils. Individual grievances are also excluded from their scope. In short, creation of new rights as between employers and workers should be outside the jurisdiction of the joint management councils.

(3) Joint Management Councils—Extent of Implementation

As the character of the joint management councils is voluntary and non-legal efforts were made to induct them in Indian industry. By the end of 1958 joint management councils were constituted in 18 industrial establishments. Of these 18 establishments 4 were in Bombay, 3 in West Bengal, 2 each in Assam and Kerala, one each in Bihar, Madras, Madhya Pradesh, Mysore, Punjab, Uttar Pradesh and Delhi. But the councils were functioning effectively in only 10 units. At the end of 1959 only 24 councils were set up—7 establishments in public sector and 17 establishments in private sector, although the sub-committee on workers' participation in management had decided that initially 16 undertakings in public sector and 32 in the private from different industries should be selected for introducing the pilot scheme. Some of the public sector undertakings selected for introducing the scheme were Hindustan Chemicals and Fertilizers Ltd., Sindri, Hindustan Machine Tools, Bangalore, Railway Workshops, Post and Telegraphs Workshops, Ports, Shipyards, Government Mines, Government Printing Presses etc. Likewise cotton textiles, jute, engineering, chemical, sugar, cement, plantation, undertakings in Ahmedabad, Calcutta, Kanpur, Madras, Assam were also selected for the purpose. The introduction of the council in the Hindustan Machine Tools in the beginning was hailed[122] as a great landmark and a revolutionary step in labour-management relations in public sector. But the operation of the council had to be suspended because

122. Nabgopal Das, **Experiments in Industrial Democracy**, 140 (Asia Publishing House, Bombay, 1964).

of the difficulty of reconciling the claims of rival unions for representation, the reluctance of the management to consult the council on matters assigned to it and the attempt of the workers' representatives to use the council as an instrument to secure economic concessions—higher wages and bonus—matters which were excluded from its purview. However, till the end of March, 1965 the joint management councils[123] were functioning in 97 establishments—36 in the public sector and 61 in the private sector representing manufacturing, mining and plantation industries.

(i) Joint-Management Councils—Governmental View

The scheme of workers' participation in management has been described[124] as a challenge to the zeal, capacity and leadership of the workers and sincerity and understanding of the employers. A scheme of workers' education has been launched since 1958 for changing the attitudes of employers and trade unions towards each other and to establish mutual good will and confidence among both the parties as basis of 'inbuilt' labour-management relations. In fact the workers' education scheme is the real foundation for the success of every programme, particularly workers' participation in management. At the 15th Delhi Session of the Indian Labour Conference of 1957, the Union Minister for Labour and Employment accordingly observed:

> the success of the experiment will be an earnest of our faith in industrial democracy without which a socialist pattern of India can have little meaning. Our first step should be firm and sure. Let us not think spectacular arrangements.[125]

Labour participation in management, therefore, is a

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123. The **Indian Worker**, October 25, 1965; According to Fourth Five Year Plan by 1966 there were 122 joint management councils—81 in private sector, 41 in public sector undertakings, **Fourth Five Year Plan—A Draft Outline**, 388-89 (1966). See **I Report 1963-64**, (Ministry of Labour and Employment, Government of India, 1956).

124. **Times of India**, January 26, 1962.

125. **Indian Labour Conference**, 15th Session, 1956 (Main Conclusions). See **Second Five Year Plan**, 577 (1956).

political, social and ideological plank of state policy for establishing a socialist society in India. So it is natural for the government to come out in open support and encouragement of the new experiment in order to give it a full and fair trial. According to Khera:

> The point that seldom appreciated is that in schemes like this it is necessary to keep up a certain urgency and tempo, otherwise the whole thing may wither away for want of enthusiasm and encouragement of the right time and right stage of its development.[126]

However, the scheme of workers' participation in management does not seem to have made much headway in spite of governmental support. The scheme no doubt has very much to do with better upkeep of machinery, improved conditions of work and increased productivity, but in practice neither the employers have accepted the underlying objectives of the scheme nor the workers have understood its implications.

(ii) **Management View**

The management both in the private and public sectors have accepted the scheme under duress—under a fear of being publicly castigated as unenlightened or anti-labour. None of the employers have shown genuine interest in this scheme. They do not wish to part with their prerogatives of decision-making power. Participation to them does not mean limitation on the rights of ownership whatsoever. It merely means right of consultation and of consideration of each other's views to the extent management thinks proper. They are of the view that it is not practical to introduce workers' participation in management at one stroke without creating proper conditions in the industry. Psychologically the employers are not prepared to share their responsibilities with their employees. Some of them have observed that the title is confusing inasmuch as the scheme is an advanced form of joint consultation and as such ought to be more usefully described as scheme of 'labour-management cooperation' and

126. Management and Contral in Public Enterprises, 192 (196).

the joint management councils described as 'works councils' or 'council for labour-management cooperation.' According to them joint management councils are not intended to usurp the essential management functions. Some employers are of the view that where works committees are functioning satisfactorily another consultative body need not be set up. Likewise the management in the public sector is equally adverse towards this scheme. The failure of the scheme in Hindustan Machine Tools, Bangalore—a public sector undertaking, is a well-known instance. While speaking at the symposium on organization and management of state enterprises at Bangalore in April 1956 Khera, Secretary, Ministry of Production gave reactions of the managing directors of two government concerns about the introduction of the scheme. One of the managing directors is reported to have said:

> My God, of course if you want; but you know, it will cost you so much more, and you are only asking for the trouble. But does not matter. I run a government-owned project, and government-owned projects make a loss in any case. If they did not, the government has no business to run them and it will only mean giving a little more subsidy.[127]

Another managing director when questioned observed:

> Look this new thing, what about it, do you see anything in it there may be or there may not be, but you will have to look for another managing director.[128]

The report of the seminar on Administrative Problems of State Enterprises in India held at Bangalore in December throws interesting light on the problem of workers' participation in management. While initiating the discussion on the problem of workers' participation in management the Chairman remarked:

> As a little background in state enterprises, I may say

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127. T. R. Sharma & S. D. Singh Chauhan, **Indian Industries—their Development, Management, Finance and Organization,** 242 (1962).

128. **Id.**

> that we have been told that it is now a definite article of state policy that workers' participation shall be introduced and shall be made to operate. On the other hand and at the same time, when the proposition has been put to managements, at one extreme has been a managing director of quite a large concern who says, 'certainly it is a very good idea but will you please find some other managing director first.' It is something which we are committed to. It is a very typical problem and from the angle of state enterprises, I am not sure that we know how to get about it.[129]

No less a person than Mr. K. C. Reddy, Union Minister for Commerce and Industry, stated[130] in January 1962 that the experiment has not proved a success. In April 1965 during the debate on demands of the Ministry of Labour and Employment in the Lok Sabha members were dis-satisfied[131] with the slow progress of the scheme in public sector undertakings.

(iii) Trade Union View

A large section of trade union leadership excluding INTUC and HMS do not really have a heart in this experiment. Even the INTUC and HMS are critical of scheme because of its slow progress. According to INTUC[132] while the representatives of the workers were keen to have the support and sanction of the law for this programme, they accepted the voluntary basis on the assurances of the employers that of their own accord they would introduce the scheme in selected units and pave the way for its extension on a large scale. While a beginning has been made in this direction, the progress has been exceedingly slow and wholly inadequate both in the private and public sector. The HMS is of the view that:

> the whole foundation of industrial relations machinery in the country as a whole is scarcely sound enough to

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129. **Id.**, 242, at 243.
130. Mehrotra, **Labour Problems in India,** 460 (1964).
131. **Hindustan Times,** April 13, 1965.
132. **INTUC Report** (1959-60), 126-127.

sustain so ambitious a superstructure as successful workers' participation in management.[133]

(4) **Joint Management Councils—Appraisal**

In effect the scheme of workers' participation in management has not made much progress. The **sine qua non** of the success of workers' participation in management is the existence of harmonious industrial relations in the industry. The workers, however, are primarily interested in higher wages, better conditions of work, security of service and trade union activities than in this programme. If there is bitterness over any of these issues no real participation is possible. Satisfactory arrangement for collective bargaining and for the settlement of unresolved disputes are, therefore, essential for the success of workers' participation in management. In India perhaps the time is still not ripe for the success of this scheme. Inordinate delays, wrangles and hesitancy over the setting up of a joint management council are common feature. In U.P. till July 1964 not a single joint management[134] council had been set up in any public sector undertaking out of 17 such undertakings which were selected by the Government of India, for setting up such councils. The position of other states might be the same. Similar situation was found in some of the central public and private sector undertakings. None of the big undertakings in public or private sectors have shown interest in this scheme.[135] Hindustan Aircrafts, Neyveli Lignite, Heavy Electricals, Bharat Electronics, Hindustan Shipyard, the Reserve Bank of India, the State Bank of India, Air India, Indian Airlines Corporation and Life Insurance Corporation have all kept themselves out of it and shown no inclination to introduce the schemes even on an experimental basis. Among the big industrial undertakings in private sector Tata Iron and Steel is the only concern[136]

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133. **HMS Report**, 61 (1959).

134. **Supra** note 117.

135. Gyan Chand, **Industrial Democracy, The Indian Journal of Labour Economics**, 22, 23 (1962).

136. There the scheme has failed also in 1961, due to inter-union rivalry, etc. See Khera, **Management and Control in Public Enterprises**, 194 (1964).

which is reported to have introduced this scheme. The Tatas as a whole, the Birlas, the Associated Cement, the Wimco, the other giant concerns and monopolies, which as is well known represent the massive concentration of power in this country, are not even disposed to consult their employees, give them information or invite their suggestions or even let them administer their welfare schemes or supervise safety measures.

In spite of initial hurdles the scheme of workers' participation in management has come to stay in the Indian industrial world. The period of experiment is now over. The problem is now how the scheme should be carried further in spite of opposition of employers and unions as well. For this both the employers and unions need continuous education as to the aims and objectives of the scheme. The management union should know that joint management council neither acts like grievance committee nor a collective bargaining or adjudication board. They are not to make inroads into the functions which are purely the preserve of managements. But they are not merely talking shops too. At present their functions are confined to administration of welfare facilities, supervision of safety devices without any real administrative powers or responsibilities. They are largely concerned with matters of sharing of information and of joint consultation. The working of the scheme is also bedevilled by multiplicity of joint bodies such as works committee, the emergency production committee, production committees and so on. (The existence of too many bodies have resulted in confusion and duplication of efforts in the absence of functional division.) Besides there are other bodies such as safety committees—which of course can act sub-committees of joint management councils. Ways and means have to be found out to adjust our industrial relations at the unit level where at a future period workers could become shareholders and owners of industry itself. These councils are the grass roots[137] of Indian industrial democracy in which inhere our future goals of economic and social democracy. They have the po-

137. See supra note 77, at 254.

tentialities of prompting the conservative management and restraining the radical unions. They provide an insurance against extremes from Right and Left. They are a symbol of peaceful social change of our changing social philosophy.

XI. Bonus Commission

One of the problems which has been constantly disturbing industrial climate and labour-management relations is the question of bonus. The Indian working class and employers have been greatly exercised on this problem since 1917. The industrial workers have for long been agitating over the manner in which the bonus question has been dealt with by employers and raised the issue in the labour conference for a suitable amendment of the Full Bench Formula[138] for bonus. In May 1959 the Supreme Court was called upon to examine[139] the specific ingredients of the Full Bench Formula. On behalf of the workers it was urged that the Formula should be revised so as to accord a high priority to the claims of social justice. The Supreme Court while conceding the arguments of workers did not think advisable to revise the

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138. This formula was evolved by the Labour Appellate Tribunal for arriving at the available surplus consisted of a series of deductions as the prior charges from the gross profits of the concern for the particular year. The Labour Appellate Tribunal allowed the following 'prior charges' from the gross profit, i.e., Gross Profits minus (1) depreciation, (2) taxes, (3) reserves for rehabilitation and modernization, (4) return on paid-up capital, (5) return on reserves as working capital. The balance as such was the 'available surplus.' Thus after the aforesaid deductions, the Tribunal observed that needs of employees, the claims of the shareholders and the requirements of the industry had to be considered. This formula called Full Bench Formula was followed by all the tribunals for deciding bonus disputes. **Millowners' Association Bombay** v. **Rashtriya Mill Mazdoor Sangh** (1950), LLJ. 1247. After the abolition of L.A.T. this formula was generally approved by the Supreme Court in **Associated Cement Co.** v. **Its Workmen,** (1959), 1 L.L.J. 644 and **in Muir Mills Company** v. **Suti Mills Mazdoor Union,** (1960), 2 L.L.J. 584.

139. **Associated Cement Company** v. **Their Workmen,** (1959), 1 L.L.J. 644; in the subsequent cases the Supreme Court refused to interfere with the formula as the Government was referring this question to a high powered commission—**Ahmedabad Miscellaneous Industrial Workers Union** v. **Ahmedabad Electricity Co. Ltd.,** (1961), 2 L.L.J. 337 (S.C.).

formula which, in its opinion had worked out satisfactorily.[140] It, however, suggested that the question of bonus may be considered by a separate independent body for examining this matter in its entirety. The Supreme Court remarked:

> If the legislature feels that the claims for social and economic justice made by labour should be redefined on clearer basis, it can step in and legislate in that behalf. It may also be possible to have the question comprehensively considered by a high powered commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and all bodies of workmen.[141]

Subsequently the subject of 'Labour Policy in the Third Five Year Plan' came up before the tripartite standing committee.[142] In April 1960, the question of wages, and bonus was comprehensively considered. It was agreed that a Bonus Commission, which should go into that question and evolve suitable norms, should be appointed. The object of constituting Bonus Commission[143] was to evolve a simple formula based on specific principles which would be applicable to industries in public and private sectors and also taking into consideration the problems peculiar to different categories of industries. Accordingly the Bonus Commission was set up on December 6, 1961 composed of the representatives of employers, employees along with two independent members and an economist and the other a member of Parliament—and a Chairman[144] who was the President of the Industrial Court, Bombay. After over two years of discussions and consultations with different interests the Commission submitted its re-

140. **Id.**, at 660.

141. See **supra** note 139 at 661-62.

142. See **supra** note 118.

143. See the terms of reference of the Bonus Commission—**Report of the Bonus Commission,** 1 (Ministry of Labour and Employment, New Delhi).

144. The names of personnels of the Bonus Commission were—Mr. M. R. Meher, Chairman; Mr. M. Govinda Reddy, M.P., Dr. B. N. Ganguly, an economist, (both independent members); Mr. S. R. Vasavada and Mr. S. A. Dange (representing employees); and Mr. D.

(Continued on next page)

port to the Government of India on 24th January 1964 with a note of dissent by Mr. N. Dandekar, the representative of the private sector employers.

(1) Bonus Concept—Explained

The Bonus Commission has accepted that there was no reason to abolish[145] bonus altogether. According to Bonus Commission:

> It is difficult to define in rigid terms the concept of bonus but is possible to urge that once profits exceed a certain base, labour should legitimately have a share in them. In other words, we think it proper to construe that the concept of bonus as sharing by the workers in the prosperity of the concern in which they are employed. This has also the advantage that in the case of low paid workers such sharing in prosperity augments their earnings and so helps to bridge the gap betwen the actual wage and the need based wage. If it is not feasible to better the standard of living of all the industrial and agricultural workers as aimed in article 43 of the Constitution, there is nothing wrong in endeavouring to do so in respect of at least those workers whose efforts have contributed to the profits of the concern in which they have worked. The validity of such a conception of bonus is not affected by the difficulty of determining or quantifying precisely the 'living wage' or even the 'need-based' wage at any given time and place.[146]

(Continued from previous page)
Sandilya and Mr. N. Dandekar, former representing public sector and the latter representing private sector. In December, 1962, Mr. D. Sandilya one of the two members representing employers resigned membership of the Commission on account of ill health and the Government of India appointed Mr. K. B. Mathur, Chairman of the Heavy Electricals (India), in place of Mr. D. Sandilya.

145. **Report of the Bonus Commission,** 1964 (Paragraph 3.29) at 22.

146. **Id.** (Paragraphs 3.21 and 3.22) at 19-20.

(2) Commission's Recommendations

The Commission has recommended that each worker be paid a minimum bonus[147] equivalent to 4% of his total basic wage and dearness allowance (excluding all other allowances and other bonuses such as production bonus, attendance bonus, statutory attendance bonus, etc.) paid to him during the year or Rs. 40/- whichever is higher irrespective of profit or loss. The maximum bonus be equivalent to 20% of the total basic wage and dearness allowance paid during the year. New units or concerns are allowed exemption[148] subject to a limit of six years. Bonus is not to be linked with production or productivity but with profits[149] which should be based[150] on single year's profit on ascertaining[151] the gross profit of the accounting year. However bonus should be related[152] to wages and dearness allowance taken together and the distribution between basic wages and dearness allowance for the purpose of expressing bonus quantum should be done away with. With regard to public sector undertakings the Commission recommended[153] that if no less than 20 per cent of the gross aggregate sales turn over of a public sector undertaking consists of sales or services produced or sold by units in the private sector, then such undertakings should be deemed to be competitive and the bonus formula should apply to such units. The Commission while recommending that bonus should be unitwise observed[154] that it is unable to recommend a formula for a uniform rate of bonus for all industries. The Commission has, however, recommended[155] that bonus formula should not apply to institutions such as Chamber of Commerce,

147. Id. at 56 (Paragraph 12.5).
148. Id. at 57 (Paragraph 12.9).
149. Id. at 27 (Paragraph 4.6).
150. Id. at 37 (Paragraph 7.11).
151. Id. at 39 (Paragraph 8.2).
152. Id. at 56 (Paragraph 12.4).
153. Id. at 88 (Paragraph 18.8).
154. Id. at 34 (Paragraph 6.12).
155. Report, 87 (Paragraph 17.19). But Mr. S. A. Dange was of the view that Bonus Formula should be applicable to those institutions which are covered by Industrial Disputes Act.

Red-Cross Associations, Universities, Schools, Colleges and Hospitals and Social Welfare Institutions on the ground that such institutions are not established with a view to make profits.

As to conditions for being entitled to bonus the Commission was of the view[156] that there should be a minimum period of 30 days' work in the year for qualifying for bonus. Of course bonus carries with it the obligation[157] of good behaviour which helps sustaining the industry. Bonus is to be withheld[158] only in the case of misconduct causing financial loss to the company to the extent of the loss. The position of the available surplus allocated for bonus should be deemed to include bonus to employees[159] sharing a total basic pay and dearness allowance (taken together) up to Rs. 1,600 p.m. regardless of whether they are workmen or non-workmen as defined in the Industrial Disputes Act or any other relevant Act provided that the quantum of bonus payable to employees drawing total basic pay and dearness allowance over Rs. 750 per month. As regards officers and supervisory staff, drawing over Rs. 1,600 p.m. it would be open to company or concern, if it is considered necessary, to pay them bonus out of the balance (40%) of the available surplus left to it under the Bonus Formula suggested by the Commission. It suggested[160] that bonus should ordinarily be paid not later than 8 months after the close of the accounting year.

(3) New Bonus Formula

The Commission modified to some extent the Full Bench Formula for calculating available surplus. It laid down the following 'prior charges' to be deducated from the gross profits[161] in order to find out the 'available surplus' for the pur-

156. **Id.** at 92 (Paragraph 19.14).
157. **Id.** at 92 (Paragraph 19.15).
158. **Id.** at 92 (Paragraph 19.17).
159. **Id.** at 36-37 (Paragraph 12.7).
160. **Id.** at 56 (Paragraph 12.6).
161. For the manner in which gross profit of the accounting year are to be computed for the purpose of Bonus Formula. **See** Chapter VIII of the **Report** 38 (Paragraph 8.10).

pose of bonus payment. These 'prior charges' comprise: (i) Normal depreciation[162] admissible under the Income Tax Act including multiple shift allowance; (ii) Income Tax and Super Tax[163] (in the case of plantation companies, agricultural income tax to be deducted on portion of income taxable as agricultural income); (iii) Return on paid-up capital[164] at 7% and return on preference share capital at the actual rate at which dividend is payable and (iv) Return on all reserves and surpluses[165] shown in the balance sheet at the beginning of the year including profit carried forward from the previous year at the rate of 4%.

It is interesting to see that the Commission did not provide for any specific deduction on account of rehabilitation, replacement and modernization of machinery and plant which was an important ingredient of the Full Bench Formula. It was of the view that for calculation of bonus rehabilitation requirements created many complications[166] and lead to litigation.

The balance would be available surplus of which 60% should be set apart[167] for bonus distribution among the workers, the remaining 40% to be retained by the industry to provide for reserves and gratuity, requirement of rehabilitation, redemption of debentures, payment of super profits tax, additional return on capital, etc.

(4) Modifications of Commission's Recommendations

The issue of bonus had been greatly agitating the minds of Indian working class. It was natural because over 75,000 workers all over the country and more than two crores of their dependents have been vitally concerned with this question. The working class started demanding an early decision on the bonus report and its implementation in the interest

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162. **Id.** at 40 (Paragraph 9.2).
163. **Id.** at 42 (Paragraph 9.6).
164. **Id.** at 50 (Paragraph 11.7).
165. **Id.** at 52 (Paragraph 11.13).
166. **Id.** at 48 (Paragraph 10.12).
167. **Id.** at 58 (Paragraph 12.12).

of industrial peace and productivity. Since 24th January, 1964 when the Commission submitted its report till September 12, 1964 when Government declared the acceptance of the major recommendations of the Bonus Commission—the report had been under serious consideration of the Government of India. The report was accepted by the Government with three modifications.[168] The three modifications are:

(a) In computing the available surplus all direct taxes for the time being enforced will be deducted as prior charges, tax concessions given to the industry for development will also be regarded as prior charges. Steps will be taken to ensure by law that amounts involved in such concessions are used only for the purpose for which they are given.

(b) Rate of return on capital to be allowed as prior charge deductable before calculating the "available surplus" should be—

  (i) the actual rate payable on preference share capital;

  (ii) 8.5% taxable on paid-up equity capital generally and 7.5% in the case of banks; and

  (iii) 6 per cent on reserves generally and 5% in case of the banks.

(c) Beyond a certain maximum, bonus should be paid in the form of securities or investment instead of cash. This matter will have to be discussed and decided through negotiations with the parties concerned including labour organizations.

The modifications made by the Government of India to the Commission's recommendations regarding return on capital and reserves were welcomed by the employers. The workers' organizations expressed disappointment over modifications as that had drastically reduced the quantum of bonus

168. **The Indian Worker, August 31, 1964.**

which would have accrued to the workers. Among the several recommendations which were accepted by the Government of India, the two important recommendations in this regard are:

(i) Acceptance of the principle of payment of minimum bonus to all employees, and

(ii) Not making any distinction between private and public sectors for payment of bonus.

In other words bonus formula was to apply to public sector undertakings which are not run departmentally and which compete with establishments in private sector, e.g, the Hindustan Cables Ltd., National Instruments Ltd., National Newsprint and Paper Mills Ltd., Hindustan Insecticides Ltd., Hindustan Antibiotics Ltd., Air India, Shipping Corporation of India Ltd., Ashoka Hotels Ltd., etc. However on a suggestion from the Union Labour Ministry the Government of India have recently announced[169] the acceptance of the payment of a minimum of 4 per cent of salary as bonus for the employees engaged in public sector undertakings[170] which are not covered by the Payment of Bonus Act, 1965. A decision on the advisability of maximum ceiling was, however, deferred.

(5) Payment of Bonus Act, 1965

As the Parliament was in recess, the President of India promulgated an ordinance, namely, the Payment of Bonus Ordinance on May 29, 1965 for giving effect to the modified recommendations of the Bonus Commission. The Ordinance has now been replaced by the Payment of Bonus Act,[171] 1965.

The Act **inter alia** deals with matters relating to computation of gross profits,[172] and available surplus,[173] sums deduct-

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169. **The Indian Worker**, November 15, 1965.

170. The Bonus Commission and the bonus law covered only the workers employed in such public units which are competing with private sector undertakings.

171. Act No. XXI of 1965 which received the assent of the President on September 25, 1965.

172. Section 4.

173. Sections 5, 6, 7 and the Third Schedule.

able from gross profits, calculation of direct tax payable by the employer, eligibility and disqualification[174] for bonus, payment of minimum and maximum bonus,[175] calculation of bonus with respect of employees drawing more than seven hundred and fifty rupees[176] per mensem, adjustments[177] of customary or interim bonus against bonus payable under the Act, time limit[178] for payment of bonus, application of the Act to public sector[179] undertakings, the recovery[180] of bonus due from an employer, considerations of bonus disputes as industrial disputes,[181] etc. The Act repeals[182] the Payment of Bonus Ordinance but any act shall be deemed[183] to have been done or taken under this Act as if this Act had commenced on 29th May, 1965. The Act is also with four schedules.

It was hoped that Bonus law would mark the beginning of abiding industrial peace and understanding between labour and management and increase productivity. The success of the Act depends largely upon the attitudes of labour and employers in carrying out the letter and spirit of the law in good faith. But the employers were not reconciled with the bonus law and every attempt had been made by them to nullify the objectives of the Act by way of challenging its constitutional validity[184] before the Supreme Court. This is not a healthy sign and can do nothing except embitter

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174. Section 9.
175. Sections 10, 11.
176. Section 12.
177. Section 17.
178. Section 19.
179. Section 20.
180. Section 21.
181. Section 22.
182. Section 40(i).
183. Section 40(ii).
184. Section 10 of the Act relating to minimum bonus has been held valid while sections 33, 34(2) and 37 of the Payment of Bonus Act, providing for retrospective application of the Act to certain bonus disputes, the fixing of a different mode of computation of bonus for establishments in which dispute was pending and empowering the Government to make provision for the removal of diffi-

(Continued on next page)

relations between the labour and management. The employers and employees must understand that bonus is not like manna from heaven. It is the result of the joint efforts of labour and capital which should be shared by both on the basis of equity, social justice and law.

XII. Wage Boards

State intervention in the regulation of wages has usually one of the two objects,[185] namely, the prevention and settlement of industrial disputes; and (ii) ensuring of an adequate wage. The former object is achieved by setting up industrial tribunals, labour courts or similar machinery under labour relations law, while latter requires setting up of some kind of wage fixing board, whether it be a trade board or a general board.

For about a decade in India wages were fixed by the adjudication machinery established under the Industrial Disputes Act, 1947. Several tribunals attempted to define the fair wage in their own way and in spite of the setting up of a Labour Appellate Tribunal to bring about a certain amount of uniformity in the awards of the tribunals, there were conflicting decisions[186] of the tribunals in this regard. Even the unanimous recommendations of the Fair Wage Committee were not acceptable to some of the tribunals and their awards remained practically a dead letter for several years. The prolonged processes of adjudication and litigious spirit

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culties experienced in the operation of the Act have been declared ultra vires of article 14 of the Constitution—**Jalan Trading Co. v. Mill Mazdoor Union** (1965-66), 29 F.J.R. 463 (S.C.). See G.S. Sharma, Economic Justice and the Indian Constitution: Some Implications of the Bonus Case, 8 **Jour. Indian Law Institute,** 457 (1966). For further details regarding impasse on bonus issue see **Indian Worker,** January 9 and 19 and February 6, 1967.

185. **Fair Wage Commission Report,** 28, 1948.

186. In **Calcutta Electric Supply Corporation Case,** 1952, L.A.C. 280 and **Express Newspaper Private Ltd.,** A.I.R. 1958, S.C. 578, observed that minimum wage must be irrespective of capacity to pay. The Labour Appellate Tribunal did not take such a broad view in **Marwari Hospital Case** (1952), 2 L.L.J., 327.

which it engendered gradually made statutory fixation of wages unpopular and unjust among employers and employees. There was a need of adjustment of wage fixation policy and machinery in order to realize the objectives of the planned economy. The First Five Year Plan envisaged[187] that all wage adjustments should conform to the broad principles of social policy and recommended the establishment of wage boards for settling questions relating to wages but no action was taken until the Wage Board for the cotton textile industry was established in 1957.

Second Five Year Plan while aware of the deterioration in real wages and the consequent frustration on the part of the workers, accepted the workers' right to a fair wage. It recommended the setting up of tripartite wage boards[188] as a more acceptable machinery for fixation of wages in the main industries.

The regulation of wages by wage boards by mutual negotiations was a part of new labour policy reflected in the Code of Discipline in Industry, 1958. The Indian Labour Conference at its fifteenth session in 1957 at Delhi also considered[189] the question of wage policy during the second five year plan. While accepting that minimum was 'need-based' and should ensure the minimum human needs of the industrial workers laid down certain norms[190] as guide for all wage fixing authorities including the wage boards. It was further recommended that the appropriate machinery for wage fixation would be tripartite wage boards similar to one appointed for the cotton textile industry.[191] The workers' representatives demanded[192] the setting up of wage boards for jute, plantations, mines other than coal, engineering, iron and steel, chemicals, sugar, cement, railways, posts and telegraphs, defence establishments (for employed civilians), and

187. **First Five Year Plan,** 584 (1952).
188. **The Second Five Year Plan,** 580 (1956).
189. **Supra note 118,** at 49.
190. **Id.** at 49.
191. **Supra note 71,** at 234.
192. **Id.** at 49-50

ports and docks. The employers' representatives were of the view that this should be left to the discretion of government.

(1) Establishment of Wage Boards

In pursuance of the policy accepted in the second five year plan the Government of India first set[193] up the central wage boards in 1957 for cotton textile, cement and sugar industries only. These wage boards were required to determine the categories of employees—manual, clerical, supervisory, etc., who should be brought within the scope of the proposed wage fixation; work out a wage structure based on the principles of fair wages as set forth in the Report of the Committee on Fair Wages; to bear in mind the desirability of extending the system of payment by results and to work out the principles that should govern the grant of bonus to workers in the respective industry.

In evolving a wage structure each board had been asked to take into consideration the needs of the respective industry in a developing economy, the requirements of social justice and the need for adjusting wage differentials.

Thus till 1960 the Government of India was hesitant in accepting the machinery of wage board for the fixation of wages. For, only the six wage boards were constituted for six industries in between 1957 and 1960. These industries which were so covered are working journalists 1956, cotton textile 1957, sugar 1957, cement 1958, jute 1960 and tea plantations, 1960.

(2) Wage Boards—Non-statutory Basis

The question of enacting legislation in connection with wage boards was considered by the Standing Committee at its eighteenth session in January 1960. The consensus of opinion was not in favour of the proposal to give statutory force to the recommendations of wage boards. It was felt that the parties concerned should implement unanimous decision of these boards, but if they failed to do so then gov-

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193. **Id.** at 234.

ernment might take steps to give statutory force to the recommendations. Wage boards as such are non-statutory, voluntary agencies for regulation of wages. Of course there are wage boards set up under the Working Journalists (Condition of Service) and Miscellaneous Provisions Act, 1955 for the purpose of fixing or revising rates of wages for working journalists and non-journalist employees of newspaper establishments. But this is an exception. Wage board is usually a tripartite body set up by mutual agreements between employers and trade unions. It consists of seven members--2 each representing employers and workers respectively, 2 independent members and the chairman. Since a wage board is not the creature of the statute its recommendations are in the nature of agreed decisions of the representatives of employers and workers reached with the help of an economist and jurist who help the interested parties in arriving at decisions on the basis of data collected and analysed for this purpose. The parties are bound by the unanimous recommendations of their representatives in the wage board. It is the duty of the central organizations of employers and workers to ensure that there is full compliance in letter and spirit of the recommendations of the wage boards. Wage boards are free to make interim wage recommendations before final recommendations are made for implementation. It is primarily the responsibility of the employers to implement the interim or final recommendations fully. The government may enquire from time to time the extent of implementation. But it is entirely a matter of duty on the part of the employers to give effect to them.

(3) Wage Boards—Increasing Use

The device of the wage board has thus proved useful not only in settling wage disputes on an agreed basis but also in bringing employees and employers directly together for reconciling their differences and prejudices necessary for good industrial relations. This is a clear evidence of the new emerging collective bargaining system in India to meet the peculiar requirements of the complex wage problems suited to industrial relations system of today. As a result of the

recommendations of the various wage boards improvement has been noticed[194] in recent times in the wage level of the working class. Establishment of wage boards has become now a normal procedure from 1961 onwards.[195] Even during the national emergency, wage boards had been set up for giving a square deal[196] to the workers. An increase in wage, instead of wage freeze,[197] was considered a favourable element in the growth of industrial development and productivity to meet the Chinese menace. During 1963 wage boards for iron ore mining and limestone and dolomite minings were set up. Also a statutory wage board for working journalists and another wage board for non-journalist employees was set up. The question of setting up of wage boards in respect of some other industries was also considered. By the end of 1963 the number[198] of such wage boards was 11, covering in all about 27 lakh of workers.

During 1964 wage boards for cement industry and for non-journalist employees recommended[199] an interim wage increase to workers. In 1965 wage boards were set up for Port and Dock workers at major ports, Engineering Industry and a second wage board for Cotton Textile and Cement industries. The wage boards for Tea Plantations, Iron and Steel Industry and Coal Mines made recommendations for second interim increase in wages of the concerned workmen. The wage boards for Coffee and Rubber Plantations made recommendations regarding wage payable to certain categories of workers and maistries in coffee plantations. The wage boards for iron ore mining and lime-stone and dolomite industries revised their earlier recommendations for the grant of interim wage increase.

194. **Indian Labour Journal,** 1965, 726; **The Indian Labour Year Book, 1961,** 113, at 114; the **Thirtyfirst Annual Report** 1963-64, 46 (Employers' Federation of the India Appendix XII).

195. In 1961, wage boards were set up for rubber and coffee and in 1962 for coal mining and iron and steel.

196. **The Indian Workers,** April, 1963.

197. See for further detail **Indian Worker,** February 27, April 3 and 10, 1967.

198. I **Report** of the Ministry of Labour and Employment (1963-64), 4.

199. **Indian Labour Journal,** 567-70, July, 1965.

(4) Wage Boards—Industrial Relations

In short, separate tripartite wage boards are working for various sectors of employment, viz., engineering, coal mining, iron and steel, cotton textile, jute, paper, transport, sugar, cement, limestone and dolomite, tobacco works, port and dock works, working journalists, non-journalists, chemical and fertilizers, electric works, tea, rubber, coffee plantations, etc. The railwaymen, the postal and telegraph employees, defence establishment employees, state government employees have also been demanding[200] the setting up of wage boards for adjustment of their wages, etc. But the government has not accepted so far the workers' demand and instead have constituted Pay Commissions or Dearness Allowance Commission from time to time for adjusting the wage grievances of the central government employees. These undertakings are 'essential services' run by the state free from profit motive and hence, it is said, that although state being as model employer should give living wages to its employees still there can be no collective bargaining on the fixation of wages of such employees. However the system of wage boards has come to stay in India as dynamic, democratic and efficacious device for the adjustment of economic and industrial relations. The wage boards have served the interest of workers:

> in saving them from falling into the hands of lawyers in search of adjudication as also spared huge government expenses for setting up one-man tribunals running into years for resolution of industrial disputes.[201]

Now the employers also feel socially and morally responsible for a higher wage and economic security for their employees. So the workers have become conscious of greater industrial output and increased productivity, which alone can yield better economic benefits. It is possible these realizations may change the mental and moral make-up of the industrial world of India. It has been rightly remarked:

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200. **Indian Labour Journal,** 1965, at 726.
201. **The Indian Worker, September 6, 1965.**

that the success so far achieved with wage boards encouraged me to hope that time would soon come when wage questions would be discussed outside the area of conflict. A major disturbing factor in industrial relations would then have been removed.[202]

202. **Indian Labour Journal, 32 (January, 1965).**

CHAPTER IX

Gherao and Labour-Management Relations in India

'Gherao'[1] is a new form of labour agitation which was largely resorted by the working class during the United Front regime in West Bengal. Generally it assumes the character of confining management and its staff within industrial establishments under duress for extorting concessions from them. As a mode of pressure-tactic it has been simultaneously justified and condemned by diverse elements. The communists consider gherao as more or less a form of peaceful picketing and demonstration for achieving social justice. While the non-communists are of the opinion that it is an unchivalrous infliction of physical torture or threat thereof upon individuals of the management. Industrialists describe gherao as an illegal activity inspired by Marxist-communists with avowed political motives. Views of individuals and political parties in India are at variance regarding the efficacy of gherao as a trade union weapon for resolving labour-management conflicts. This Chapter, therefore, seeks to study some of the aspects of gherao movement in India and suggest a few guide-lines for re-thinking on the whole frame-work of existing labour-management relations in India.

Gherao—Meaning

The word gherao is derived from the Hindi term of 'Ghera Dalo' and etymologically it means to 'surround', to

1. Late Dr. Ram Manohar Lohia is said to have given currency to it. See, **Weekend Review, June 14, 1967; Mainstream, Independence Day Number, 1967.**

'confine' or to 'seize'. This term, therefore, is entirely new to contemporary industrial jurisprudence. Nowhere in the world including India gherao type mode has ever been considered an instrument for settling labour-management disputes. It has been coined lately in India to indicate all such acts of wrongful confinement and encirclement resorted by labour for preventing egress and ingress of managerial staff from and to a particular establishment, shop and factory with the sole object of extorting concessions. Legally speaking gherao[2] is the 'physical blockade of a target either by encirclement or forcible occupation. The target may be a place or person or persons, usually the managerial or supervisory staff of an industrial establishment. The blockade may be complete or partial'. Accordingly gherao cannot be equated with intercession, non-co-operation and hartals for these latter ones do not involve physical coercion or intimidation of the opposite party. Whereas gherao completely curtails the freedom of movement of gheraoed individuals who are subjected to physical torture, humiliation and harrassment. It differs from strike and peaceful picketing inasmuch as strikes are resorted to put economic and not physical pressure upon the management. Gherao on the other hand is a degenerated weapon implying wrongful obstruction, restraint and assault. It is, therefore, difficult to conceive gherao without coercion. Similarly, it cannot be argued that gherao (even peaceful one) is a form of picketing which accompanies a normal industrial strike. Picketing[3] is resorted to dissuade blacklegs and non-unionists from continuing the work of the management to make the strike a complete success. Law relating to peaceful picketing is no foolproof[4] for justifying the validity of even so-called peaceful gherao. As such it would

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2. per Sinha, C. J. in **Jay Engineering Works v. State of West Bengal,** A.I.R. 1968, Cal. 407 at 439.

3. In India the constitutional freedom of association does not carry with it the fundamental right to strike. It may equally be stated that the right to strike in its turn does not legalise picketing and other incidental acs of omission and commission during strike— **All India Bank Employees Association v. Industrial Tribunal,** A.I.R. 1962, S.C. 171.

4. **Damodar Ganesh v. State,** A.I.R. 1951, Bom. 459.

be wrong to describe gherao as an acceptable and legitimate method for achieving the economic goals of the working community. On the contrary it is a self-defeating non-trade union weapon which has been unsparingly and indiscriminately used by the diverse sections of the Indian society for the redressal of all kinds of grievances. In the labour-management sphere gherao technique adopted by labour consists of compelling the management to do or not to do a thing for the workers which otherwise the management in normal circumstances would have done differently.

Gherao—Recrudescence

In the past gherao has been a familiar device adopted particularly during Puja Festival by workers in West Bengal for demanding festival bonus from management. It is said[5] that in West Bengal more than 700 gheraos took place in 1962 and between 200 and 500 in the following years prior to Puja Festival on the issue of bonus. But recrudescence of gherao led to more violent and dangerous situation ever since the new non-Congress Ministry—the United Leftist Front (ULF), a combination of 18 opposition parties—came to power in West Bengal on March 1, 1967. With the assumption of the United Front Ministry a wave of general unrest spread in West Bengal. The peasants' movement in Naxalbari for land and workers' agitation against retrenchment, lay-off, closure and dismissal of workers assumed alarming proportions. The confinement of managerial staff in factory premises started in an unprecedented scale from February 1967 in West Bengal when the engineering industry adopted the policy of mass retrenchment, lay-off and dismissal of workers due to lack of orders, shortage of raw material and financial loss to industry. Messrs Braithwaite and Company, an engineering firm in West Bengal employing more than 1,400 workers, had been supplying wagons to Indian Railways—the only customer which used to purchase wagons stopped placing further orders to them. The company found

5. Statesman, April 7, 1967. Similar instances of gherao for bonus had been reported in 1953 from Sirpur Paper Mills in Andhra Pradesh and Cotton Textile Mills, Kanpur.

its entire labour redundant and thereupon served notices of retrenchment on the entire working force. The workers resisted this move and resorted to gherao. In this way initially[6] gherao appeared as a weapon to fight out management policy of retrenchment and lay-off. However, subsequently gherao practice spread to some other industries, some of them not at all affected by retrenchment, to compel management to accept the demand of the workers to higher wages, dearness allowance, bonus, etc. For example, the National Tobaco Company where workers faced no threat of lay-off and retrenchment had to be closed down on account of gherao movement. Gradually in the hands of unprincipled trade unionists gherao became a multi-edged weapon for resolving all labour-management disputes. Gherao movement started eclipsing the institutional and in-built labour-management system for the settlement of all kinds of labour-management differences. The labour policy of the United Front Government also had a catalytic effect in intensifying revolt of workers against management.

Gherao—and U.L.F. Labour Policy

After the fourth General Elections in India in 1967 a non-Congress United Front Government came to power in West Bengal. The new Government started functioning with vamp[7] by taking over the Calcutta Tramways Company. In its 18-point policy statement of March 1, 1967, United Front categorically laid down that its Government would treat Labour as the principal[8] partner in production by deliberately overlooking the important role of the management in industrial production and development. The new labour policy was spelt[9] in the following specific terms:

(i) labour policy to be formulated in consultation with political parties and trade unions;

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6. **Hindustan Times,** March 20, 1967.
7. **Hindustan Times,** December 27, 1967.
8. **Emphasis supplied.**
9. **Weekend Review,** May 30, 1967.

(ii) no police interference in 'legitimate' trade union movement including strikes and gheraos;

(iii) no retrenchment, lay-off or closure to be effected without prior intimation to and approval of the labour directorate;

(iv) system of contract labour to be abolished in most industries;

(v) minimum wages under the Minimum Wages Act, 1948 to be fixed and enforced in the light of the prevailing cost of living;

(vi) employees state insurance scheme particularly concerning medical benefit covering 800,000 workers to be organised; and

(vii) labour directorate to be instructed to conclude conciliation proceedings within two months.

As already stated the United Front Ministry started functioning by taking a precipitate action over the Calcutta Tramways which shook the confidence of the business community. It also threatened to detain 'bad' employers under the Preventive Detention Act who violate labour laws. It proposed to appoint labour officers in factories including the right of the Government to appoint and dismiss them. A labour officer while getting pay from management was to be under the control of the Government. On account of the paucity of the judges it intended to entrust adjudication work to persons employed in higher labour service of the State Government. Other proposal concerning casual labour made obligatory for employers to register every casual labour even if employed for one day. The casual worker was to be informed in advance if there was no work for him and failure to provide such previous intimation was to make employer liable to 50% of the workers wages. To give effect to the labour policy United Front Government drafted a number of labour bills. These included bills to amend the Factories Act, 1948, the Industrial Disputes Act, 1947, the Workmen's Compensation Act, 1923 and the Trade Unions Act, 1926. The amendment of the Factories Act provided

for the casual leave, payment for overtime work and framing of rules for the recruitment and service conditions in the factories. Under the amendment of the Industrial Disputes Act universities and research institutions were deemed to be industries and statutory ban was to be placed on mass lay-off and retrenchment without one month's notice and three months' notice respectively. The Labour Minister further decided not to consult the tripartite Labour Advisory Board—a long established and accepted voluntary forum for evolving a consensus on new labour policy as he felt that it was too large a body for effective discussion of labour matters.

The United Front further precipitated matters in denying police protection to gheraoed management threatened by unruly and politically motivated workers and their leaders in the name of 'legitimate' democratic trade union movement. On March 27, 1967, the United Front Government decided to supersede the instructions contained in a circular[10] of February 7, 1956, issued by the previous Congress Government assuring police protection to gheraoed management.

This new circular directed[11] the Commissioner of Police, Calcutta, that in cases of gherao of industrial establishments by their workers resulting in the confinement of the managerial and other staff, the matter should be immediately referred to Labour Minister and his directions obtained before deciding upon police intervention for the rescue of the confined personnel. However, several aggrieved management people moved the High Court of Calcutta under Article 226 of the Constitution complaining against the legality of the said instructions. Mr. Justice B. C. Mitra on May 23, 1967, issued a **Rule Nisi** and also an order directing[12] the Commissioner of Police, Calcutta, 'not to allow the violent demonstrators and

10. '.... workers have no right to resort to coercive methods like wrongful restraint, wrongful confinement and criminal trespass which are all cognizable offences....In case where the management asks for police intervention, the police should (a) disperse demonstrators if it is found that they are unlawful assembly; (b) arrest those who have committed or are committing cognizable offences....' See Memorandum No. 138-PS, dated Calcutta, February 7, 1956.

11. Circular No. 513 P.C. Confidential, dated March 27, 1967.

12. **Hindustan Times**, May 24, 1967.

employees from continuing their illegal acts of trespass and their illegal control of the valuable properties of the petitioners.' Consequently circular of March 27 was withdrawn as a result of **interim** injunction. The United Front Government again issued[13] on June 12, 1967, fresh instructions to district authorities and the Commissioner of Police, Calcutta, that 'police must not intervene in legitimate labour movements and that, in case of any complaint regarding unlawful activities in connection with such movements the police must first investigate carefully whether the complaint has any basis in fact before proceeding to take any action provided under law.'

On the pattern of classical Marxist principle of setting class against class the labour policy of the United Front Government tinged with class consciousness was decidedly and ideologically pro-labour and anti-management. The immobilization on the police from industrial scene made the industrial workers in West Bengal more stubborn, indisciplined and violent in their attitude towards management inasmuch as the police could not act in the so-called 'legitimate labour movements' without properly and carefully verifying the facts regarding wrongful confinement. Contrary to the accepted customs, conventions and laws regulating labour-management relations in India such labour policy only abetted the workers in creating disorder, indiscipline and insecurity of life and property of the management.

Economic Crisis

The United Front Ministry was immediately faced with sudden labour problems due to recession, devaluation and failure of agriculture sector because of two successive droughts.[14] Recession had its impact upon the industry resulting in mass retrenchment, discharge and dismissal of workers. The cruel necessity of retrenchment was, however, looming large much before the general elections of 1967. Only the action on it was postponed so as not to embarass the then

13. Circular No. P. 914 P.S. Calcutta, June 12, 1967.

14. Working class consumer price index increased from 174 to 200 in March 1967 (1949=100), **Indian Worker**, June 5, 1967.

Congress Government and spoil its chances of re-election. Action on other decision too—shifting of some industrial units out of the West Bengal—was deferred for the same reason. Thus retrenchment, lay-off and closure of industrial establishments were carmarked for the post-election period which coincided with the emergence of pro-labour Government. Recession, devaluation and agriculture sector affected the entire economy but the engineering industry in West Bengal and particularly around Calcutta—which depended for orders on Indian Railways—was severely hit rendering huge labour force redundant. The effect of recession spread to other industries as well specially the textile industry leading to **en-masse** lay-off, lockouts and total closure of industrial units. Admittedly the new Government in West Bengal was confronted with intractable problems on the labour front. It is possible that employers intended to defer large scale retrenchment and lay-off at the persuasion of Congress Party but there is no reason to believe that management decision on retrenchment and lay-off had been taken on frivolous grounds or merely to spite the United Front Government.

Other additional factors which ignited the working class unrest in West Bengal were the failure[15] of the engineering industry to implement the recommendations of the Engineering Wage Board for payment of interim relief and the award of the Seventh Engineering Tribunal. An appeal had been filed against the award of the Seventh Industrial Tribunal and a stay order had been obtained from the Supreme Court. The delay in implementation of Wage Board's recommendations and award of the Tribunal by a number of engineering firms caused frustration amongst the workers and resulted in gherao. Job insecurity led to gherao which in turn led to mass retrenchment and closure of industry which again led to mass unemployment and joblessness. High prices, scarcity of food, non-implementation of minimum wages legislation and awards of the industrial tribunals, prevalence of contract labour, tardy adjudication process including the system of special leave to appeal to Supreme Court by management to stall unfavour-

15. **Trade Union Record**, May 20, 1967.

able adjudications and the refusal by the employers of jute industry to recognise trade unions and victimize trade union workers only added fuel to the fire.

Ideological Fervour

While management was justifying retrenchment as purely economic and financial necessity[16] the United Front denounced retrenchment and lay-off of workers as conspiracy of employers and big money to undermine[17] the United Front Government. The labour policy statement of the United Front Government issued[18] on the eve of its assumption of office categorically stated that henceforth police interference in the normal and legitimate trade union struggles of workers would not be allowed because in the past police had acted as strike-breakers. This perhaps was an open provocation to workers to resort to violence and gheraos. Mr. Jyoti Basu, former Deputy Chief Minister, declared[19] that his Government had told the workers that it would not be a hindrance like previous Congress Government in their legitimate struggle for fulfilment of just demands. He observed that in legitimate labour disputes the Government would be '90 per cent on the labour side' and the labour should utilize this favourable position to secure a better deal for themselves. Similarly Mr. Subodh Banerjee, former United Front Labour Minister, while pointing out his limitations that what he had been trying to[20] do 'as a Labour Minister in a capitalist society' was only to implement the policies of the previous Government. He further exhorted[21] the workers that 'a change of Government—ascendency of United Front Government—is not a change in socio-economic and political structure. If emancipation has to be effected, a lasting solution of their basic problems to be

16. **Weekend Review**, May 13, 1967.
17. **Statesman**, April 7, 1967.
18. **Ibid**, March 30, 1967.
19. **Hindustan Times**, August 31, 1967.
20. **Statesman**, March 30, 1967.
21. **Trade Union Record**, May 29, 1967.

found, the gate-way to uninterrupted social progress to be opened, then capitalist order must be replaced by a social system free from all sorts of exploitation of man by man. This needs a revolution. Election is not revolution.' Indirectly it was a clear go-signal to workers facing retrenchment and lay-off to resort to gherao of management without fear of police. Gheraos were described by the United Front Government leaders as simple, just and legitimate struggle of the workers for fulfilment of their demands. To United Front leaders gherao, therefore, was most appropriate and truly democratic weapon to stop mass retrenchment and lay-off.

In brief the economic and financial difficulties of the management and industry responsible for retrenchment and lay-off were given a political twist to brand management as anti-labour in order to create confusion and disorder to end the so-called capitalist system in West Bengal. The labour policy of the United Front Government was so politically oriented which could further the ideological plank of the communists in West Bengal. Alarming incidence of gheraos, demonstrations, squatting and blocking of industrial establishments, rail tracks, highways and other kinds of disturbances became the order of the day during the United Front regime. The immobilization of the police from interfering in such 'legitimate democratic movements' was considered legitimate and proper. With the Government apparently siding with workers the parties to the disputes had been reduced to the irreducible two—the capitalists and the workers. Thus the ideological and political fervour that permeated within the administration of West Bengal contributed towards the greater abuse of gherao. Employers who were already the victims of recession began to be subjected to intimidation and extortion by unruly mob of workers in utter disregard of well-accepted principles of industrial jurisprudence and common agreed codes and understandings for the settlement of labour-management disputes in India.

Gherao and Loss to Industries

The virus of recession was not confined to West Bengal alone. Other parts of the country were also affected by it

resulting in lay-off and retrenchment of workers. For instance[22] in Andhra Pradesh 23,636 workers were laid-off and 5,212 workers were retrenched; in Gujarat 4,219 workers were laid-off and 1,129 workers retrenched; in Haryana 2,829 workers were laid-off and 336 workers retrenched; in Punjab 2,062 workers were laid-off and 30 workers retrenched; in U.P. 27,670 workers were laid-off and 328 workers retrenched and in Bihar 804 workers were laid-off and 542 workers were retrenched.

In West Bengal also several engineering and other industries had to be closed down not only because of recession but on account of fear of gherao. It is said[23] as many as 401 factories were closed down rendering 70,000 workers jobless and penniless during the last six months of 1967. In the wake of United Front rule out of 152 gheraos[24] only 28.8% were occasioned by retrenchment and dismissals; 17.1% related to non-implementation of the engineering wage board or the tribunal awards or non-payment of wages due; 25% related to long pending demands—in some cases stretching up to 12 years. It has been estimated[25] that during the entire period of United Front rule 1,50,000 workers had been turned out of jobs following closure of industrial units because of gheraos and go-slow movement in West Bengal.

It is true that gheraos have never rid West Bengal since 1947. However, between March and September of 1967—the early period[26] of the United Front rule—1,024 cases of gheraos had officially been reported in West Bengal. A break up[27] of the causes of 424 gherao cases showed that 20 of these occurred because of non-implementation of wage boards awards; 14 for not effecting tribunal awards; 35 as a result of closures and retrenchment; 65 due to suspension, dismissal

22. These figures cover only a period of 6 months of the year 1967. See, **Hindustan Times**, February 3, 1968.
23. **Ibid.**
24. **Trade Union Record**, May 20, 1967.
25. **Supra**, 23.
26. **Hindustan Times**, September 22, 1967.
27. **Ibid.**

and victimization of workers and 288 mainly in support of demands relating to wages, allowances and bonus. Although no reliable figures are available as yet it has been reported[28] that 3 million man-hours had been lost in West Bengal resulting in the loss of Rs. 20 crores worth of production and Rs. 5 crores by way of Government revenue and up to 40 per cent loss in production.

Gherao and Violence

Gherao in many cases led to violence. It was not limited merely to confinement of managerial staff but also led to physical violence. In one of the earliest gheraos eleven members of the supervisory staff of a cigarette manufacturing concern[29] were assaulted with wooden planks and iron rods. Every one of them went to hospital with severe head injuries. The longest gherao was for 152 hours—nearly 6 days. A rayon factory[30] near Rajkot in Gujarat which had laid-off 1,000 workers due to water-shortage was set on fire. A engineer in an electrical firm in West Bengal was confined in a small room with 1,000 candle power lamps focussed on him. In another case a supervisor was made to stand before the open door of a furnace until he fainted. Instances can be multiplied involving assault by workers on managers in and outside the factory. In brief the officers, staff, plant, machinery and other property of industrial undertakings became a constant target of mob violence. Besides violence against managerial personnel the fury of gherao did not spare even the trade union workers for holding anti-gherao views. One worker of the Central Workshop in Calcutta was man-handled, threatened and compelled to resign. Other worker of Belgharia depot was seriously beaten and forced to take leave. Several workers were not only beaten but murdered for opposing gheraos. About seven trade union leaders of the INTUC—trade union of the Congress party—including one

28. Statement of the Union Minister for Industrial Development in Parliament on August 11, 1967—See, **Hindustan Times**, August 12, 1967.

29. **Statesman**, March 25, 1967.

30. **Statesman**, April 23, 1967.

former member of the Bengal Legislature were attacked and killed during the gherao movement in West Bengal. Quite unlike other trade union weapons gherao in reality became an instrument of coercion, intimidation and violence in the hands of those workers, imbued with marxist ideology, who were not only against the employers but against the existing Indian social and political system.

Opposition to Gherao

Whereas leaders of the United Front Government particularly C.P.I. (Marxists) were justifying the legitimacy of gheraos with mixed motives public opinion in India had sharply reacted against it. The veteran trade union leader Mr. V. V. Giri described[31] gheraos as 'super enemy number one' of the working class. Former Chief Justice of India Mr. Justice Gajendragadkar condemned[32] gheraos which lead to violence against person and tend to create insecurity in social life and terror in the minds of individual citizens. He cautioned that this tendency must be arrested by educating people if democratic way of life is to succeed in India.

The Swatantra Party described gherao politically manoeuvred to eliminate people and destroy rule of law. All-India Congress Committee and Bhartiya Kranti Dal condemned[33] it as plot of subversion. Legal experts maintained that the gheraos were outside the scope of Industrial Disputes Act, 1947. The Union Labour Minister considered[34] gheraos unlawful and constituted a cognizable offence. The Praja Socialist Party also expressed its opposition to gheraos. The management and various Chambers of Commerce and Industry in India regarded[35] gherao a law and order problem. The Union Home Minister also viewed[36] gherao as 'erosion of the rule of law' and cognizable offence under criminal law. The

31. **Hindustan Times**, November 14, 1967.
32. **Statesman**, February 17, 1967.
33. **Statesman**, January 27, 1967.
34. **Mainstream**, 25-26, Independence Number, 1967.
35. **Ibid.**
36. **Statesman** 13th and 30th May, 1967.

State Governments[37] of Assam, U.P., Bihar, Orissa and the communist controlled Government of Kerala unequivocally condemned gherao as illegal and unlawful. Kerala's Industries Minister while announcing the State Government's labour policy declared[38] that police would not interfere in trade disputes so long such disputes do not trangress the limit of trade dispute. In other words all the cases of law breaking would be dealt with according to law. At the 26th session of the Standing Labour Committee held in Delhi on May 10, 1967, there was general disapproval and denunciation of gherao despite communist controlled AITUC protest and walk out from the tripartite meeting.

Gherao and Judicial Analysis

While public opinion in India was greatly exercised over the incidence of gheraos the managements increasingly turned to law courts for protection against violent gheraos. Even earlier to Jay Engineering Works decision there were two other previous judgements[39] of the same High Court concerning gherao. In these judgements the Calcutta High Court had assailed magistrates for their failure to render help to affected persons who were unlawfully restrained and confined by unruly workers. In several writ petitions[40] the Calcutta High Court had to direct the Calcutta Commissioner of Police not to allow violent demonstrations and illegal confinement of employers and their supervisiory staff. The judgement of the special bench of the Calcutta High Court in **Jay Engineer-**

37. **Statesman,** May 20, June 12, and July 1, 1967.

38. **Statesman,** July 1, 1967.

39. See **Hindustan Times,** October 3, 1967.

40. Mr. Justice B. C. Mitra's order when Mr. N. K. Jalan was gheraoed inside a building—**Statesman,** June 1, 1967; the same Judge further ordered Home Department and others on May 19 on a writ application as to why gherao should not be declared unlawful and illegal being in contravention of Article 21 of the Constitution—**Statesman,** May 20, 1967; Mr. Justice M. V. Issac of the Kerala High Court declared gherao an offence and violation of fundamental rights guaranteed by the Constitution—**Statesman,** May 22, 1967; Mr. Justice N. K. Reddy of the Madras High Court also declared gherao illegal—**Hindustan Times,** November 4, 1967.

ing Works v. State of West Bengal[41] on gherao attracted the attention of the whole country. This judgement settled at rest the legitimacy and the legality of the gherao which workers in West Bengal and other places resorted indiscriminately. The Court, however, did not go into the question of legality of retrenchment which had led to gherao but confined itself to the examination of various acts of omission or commission accompanying gherao within the framework of existing law.

In the present case some of the retrenched employees along with others had blockaded the premises of the Jay Engineering Corporation. They had completely obstructed the passage of personnel and goods including food stuffs for the barricaded persons inside who were wrongfully confined therein and who could be rescued only after police intervention. Thereupon Jay Engineering Works Ltd. made an application under Article 226 of the Constitution complaining unlawful acts, wrongful confinement, restraint and trespass by its workers. The case was considered by a special bench including Chief Justice Sinha who delivered the majority judgement. The main points for consideration before the Court were: (i) Whether gherao as practised in this case was lawful? (ii) Whether the circulars of March 22 and June 12, 1967 were violative of law?

With regard to first point it was held[42] that if a person or number of persons wrongfully restrain or wrongfully confine another person or persons it is elementary that it comes under section 339 and 340 read with sections 341 and 342 of the Indian Penal Code as the case may be and cannot be saved by Section 17 of the Indian Trade Unions Act, 1926 or indeed any provision thereof. The commission of an offence is not excused by any other law. On gherao as practised in the instant case the Court held that all workmen confining or restraining any person belonging to the management or wrongfully confining him during gherao were guilty under section 339 and 340 Indian Penal Code and had committed cognizable offences

41. **Supra note 2.**
42. **Ibid., at 424.**

for which they were liable to be arrested without warrant and punishable with imprisonment and fine.

As regards the State Government's circulars of March 27, and June 12 which required the magistrate to consider whether he was interfering in a 'legitimate labour movement' and also ask the police to make an investigation into the facts before he can make any order the Court held that both the circulars were violative of section 154 of Criminal Procedure Code. Both the circulars in essence interfered with the duties and powers of magistrates. It would be shocking if the ministers are allowed to issue circulars to control the judicial duties of magistrates. That would be the end of all constitutional government. The Labour Minister had no power or authority under law to give directions to the police before taking action where a cognizable offence had been committed. The action that the police or magistrate shall take under such circumstances is provided in the Criminal Procedure Code and the relative Police Acts. By executive fiat such procedures could not be altered or supplemented or varied. The Court had no difficulty in striking down the circulars which were in the nature of administrative orders. On the other hand the Court also held that a gherao is not an offence as such mentioned in the Indian Penal Code but it is an act indulged by labour against the management and where it is accompanied by confinement, restraint or other offences that the criminal law of the land, the fact that it is done by members of a trade union and used as an instrument of collective bargaining, give rise to no special treatment or exemption from liability under law.

This judgement has made the position clear with respect to specific points, namely, that workers confining managerial personnel in a gherao would be committing cognizable offences for which they would be liable to arrest without warrant and punishable by imprisonment and fine; and the directive to the police that inaction or undue delay would render them answerable to the courts and punishable by law. In essence the judgement of gherao is in keeping with[43] the well-recog-

43. **R. S. Ruikar** v. **Emperor,** AIR 1935 Nag. 149; **Dalmia**

(Continued on next page)

nized principles of industrial jurisprudence that there can be no exemption to members of a trade union from an agreement to commit an offence like intimidation, violence and criminal trespass in furtherance of trade disputes. In such situation the law and order machinery of the State must act decisively and immediately in accordance with law notwithstanding executive orders to the contrary.

Gherao—Future Perspective

Although West Bengal is comparatively more industrialized than other States yet it has not succeeded in evolving a climate of peace and understanding particularly in the industrial sector. It has, therefore, never been free from trouble whether political, economic or labour. Moreover with the tacit approval of the United Front Ministry labour trouble in the form of gherao and go-slow became a regular feature in an already disturbed area. Labour unrest further aggravated because of fighting mood of the United Front Government leaders. Such an atmosphere made workers to subvert discipline and sabotage production without any fear resulting in total demoralization and frustration of management personnel. At the sweet will of gheraoing workers the vast industrial complex in West Bengal appeared to be crumbling to dust. However, with the fall of United Front Ministry[44] in April, 1967 a non-communist Government led by Mr. Ghosh succeeded in restoring industrial peace by taking stern action against those who were encouraging and indulging in gherao. It also made an attempt to persuade the management to open mills and factories for providing employment to 60,000 jobless workers. The instable character of the Ghosh Ministry led to the imposition of the President's rule in West Bengal. Since then while gherao movement has withered away still the

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Cement Ltd. v. Naraindas Anandji, A.I.R. 1939, Sind 256; Titagarh Paper Mills v. Paper Mills Employees' Union, (1957), 2LLJ 550 (L.A.T.).

44. The communist dominated United Front Government which was dismissed by the President 15 months ago in West Bengal has again come back to power in the mid-term elections held on February 10, 1969 in West Bengal. In a Assembly of 280, the United Front—a coalition of 12 political parties—has now 218 members.

possibilities of its revival have not entirely diminished. Even to-day there are about 10,000,000 unemployed[45] people in West Bengal. As many as 26,000 industrial workers[46] are out of the employment because of closures, strikes and lock-out itself. It is true there had been no flight of capital in recent months but no new plant or industry has been established there. There is an uneasy peace in the industry. Gherao has left a bitter trial of indiscipline, go-slow or work-to-rule. Management has not yet recovered from the shock it received from its aggressive and militant work-force which is still controlled by communist Marxists. Change to a non-communist Government, therefore, only can diminish gherao. So long as the trade unions in West Bengal continue to be Marxist oriented the inevitable end would be more and more strikes, lock-outs and closures resulting in mass unemployment and gherao situation. This is a very difficult situation for which legal solutions are not only inadequate but unnecessary also. It has to be considered more as a social and economic disease —a signal of danger which may spell disaster both to the labour movement and existing institutional social frame-work concerning labour. The courts of law can merely declare gherao illegal and can enjoin police to preserve law and order in the event of industrial violence. Existing criminal law cannot furnish answers to such social ills like gherao. The judgement, therefore, is not a perfect solution. So the remedy for gherao is not exclusively a legal one. It is essentially an economic and human problem which can be resolved by intelligent and enlightened efforts of all parties involved in industry.

Remedial Measures

Perhaps management can give a better lead by eliminating the possible economic and psychological causes of friction with labour. Management may change its autocratic mentality by observing the sound management principles and practices. It may honour in good faith all mutually agreed settlements, awards and recommendations on wages, bonus etc. If there is a fear of mass retrenchment and closure of industry

45. Statesman, December 8, 1968.
46. Statesman, December 1, 1968.

due to recession or genuine financial difficulties they can be screened by a responsible element of the industry and labour to devise ways and means to recuperate the financial health of the industry as well as allay the apprehensions of the workers regarding the merits of retrenchment. Further there should be a permanent tripartite commission to review cases of mass retrenchment. It should be authorized to consider the appropriateness of retrenchment by management and to recommend methods like absorption and rational lay-off or retrenchment to deal with surplus labour within a period of three months from the date on which a retrenchment notice is given. This body also should keep liaison with public employment exchange services and labour directorate of the State for a co-ordinated action in order to minimize the hardship caused to workers by forced unemployment. The usual practice to deny or deprive economic advantages to one party by formal legal devices and tardy judicial processes only increase suspicion and frustration. Strained relations obviously result in violence and police intervention. To avoid such situations management may evolve a long range personnel and labour policy to win the good will of the general body of all workers irrespective of their trade union affiliations or colour. In actual day to day conduct the management must demonstrate its good faith in the efficacy of bilateral negotiations and peaceful adjustment of labour disputes. Conciliation machinery should be strengthened to accelerate this process. Union leaders may be tolerated to continue political affiliations. For a worker is not immediately concerned with political programme of a trade union organization. However, continuous efforts should be made to establish an in-built industrial relations system for educating the workers concerning the general and financial position of the industry. The open door policy of the management regarding productivity and profits would go a long way in weaning away industrial workers from the clutches of the politicians masquerading in the form of trade union leaders. In the long process it would serve the ends of management and labour and the State. It would go a long way in building and strengthening the traditions of industrial democracy without the hazards of the gherao and industrial violence.

CHAPTER X

Labour-Management Relations and National Commission on Labour

The National Commission on Labour is the second commission in India to be appointed to enquire into the questions of industrial relations in the last forty years. The first high powered body to investigate the conditions of labour and to suggest the basis and policy of the State with regard to growth of trade unions and settlement of industrial disputes was the Royal Commission on Labour in India (known as the Whitley Commission) appointed in 1929. The Commission submitted its report in 1931 which has been the basis of all existing labour laws and labour policy in this country. Since 1931 many changes of far-reaching character have taken place in India. India has become Independent, five year plans have accelerated the pace of industrial development, planned economy has been introduced to establish a socialist pattern of society in India. Also the structure of the Indian working class has changed along with the structure of the employing class. Public sector has emerged a dominant factor in the national economy. Old industries are shrinking and new industries have come up employing people from all strata of society. Impact of technology is also being felt in increasing productivity which has also surcharged labour-management relations on the issue of automation and distribution of the gains of higher productivity. During the post-independent period there have been considerable changes both within the Indian labour movement and in relations between the trade unions, employers and government. Further certain legal awards and judgements of the Supreme Court have

raised doubts in the minds of the working class on the efficacy of retaining the existing compulsory adjudication machinery for the settlement of industrial disputes. In such a situation there has been a long felt need of a thorough investigation by an independent commission of labour problems which are of national importance. Since independent labour policy in India has been guided by short term goals only, namely by means of industrial truce resolutions and ad hoc voluntary agreements. In order to provide new guidelines and for a fuller reassessment and appraisal of labour policy the Fourth Five Year Plan—Draft Outline 1966 recommended the setting up of a new labour commission. The Parliament in April 1966 at the time of the debate on the demands for grants of the Ministry of Labour and Employment recommended the appointment of the labour commission. Consequently the National Commission on Labour was appointed on December 24, 1966 with the following terms of reference. The Commission was **inter alia** "to review the changes in conditions of labour since Independence and to report on existing conditions of labour,....to study the state of relations between employers and workers and the role of trade unions and employers' organisations in promoting healthy industrial relations and interests of the nation....." The Commission submitted its report on August 28, 1969. The Report of the National Commission on Labour contains among other things the fundamental principles which would shape and guide the form of industrial relations in 1970s in India. This chapter makes only an attempt to indicate the approach of the Commission on vital matters such as maintenance of industrial harmony and sound labour-management relations.

A. Workers' Organizations

1. Trade Union Structure

The Commission is of the belief[1] that unions being democratic and voluntary institutions, the basis on which a union

1. Report of the National Commission on Labour. Para 29. 19 at 282.

should be organized is a matter to be determined by the workers' themselves in the light of their own needs and experience. We also recognize that unions regard this right as basic to their democratic functioning. They have to grow according to the dictates of their members, but within the constraints set on them by the laws of the land. According to the Commission[2] the craft unions operating in unit or industry should be encouraged to amalgamate into an industrial union. Where an industrial union covering all categories of workers in an enterprise has been recognized as the sole bargaining agent it would be desirable for a union to set up sub-committees for important crafts and occupations so that problems peculiar to the crafts receive adequate attention. For these arrangements to work, the process of internal decision making should be such that members belonging to any craft do not nurse the feeling that their claims go unrepresented. It favours[3] the formation of centre-cum-industry unions and industry-wise national unions in the interest of collective bargaining.

2. Trade Union Finances and Membership

To avoid multiplicity of trade unions and to improve the finances of the trade unions the Commission is of the view[4] that (a) the minimum number required for starting a new union should be raised to 10 per cent (subject to a minimum of 7) of regular employees of a plant or 100, whichever is lower, (b) the minimum membership fee of a union should be raised from the present level of 25 paise per month to Re. 1 per month.

3. Role and Functions of Unions

The primary function of a union according to the Commission is to promote and protect the interests of its members. The union, however, has to pay greater attention[5] to the basic

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2. Para 20.21 at 282.
3. Para 20.22 at 282-283.
4. Para 20.29 at 285 and Para 20.78 at 296.
5. Para 20.37 at 287 and Para 20.38 at 285.

needs of its members, namely, to secure for workers fair wages; to safeguard security of tenure and improve conditions of service; to enlarge opportunities for promotion and training; to improve working and living conditions; to provide for educational, cultural and recreational facilities; to co-operate in and facilitate technological advancement by broadening the understanding of workers on its underlying issues; to promote identity of interests of the workers with their industry; to offer responsive cooperation in improving levels of production and productivity, discipline and high standard of quality and generally to promote individual and collective welfare. Apart from these basic responsibilities trade unions should also undertake social responsibilities such as promotion of national integration; influencing the socio-economic policies of the community through active participation in their formulation at various levels and instilling in their members a sense of responsibility towards industry and the community.

4. Outsiders in Unions

The controversy about outsiders is as old as the Indian Trade Union Act itself, perhaps even older. The Commission is conscious[6] of the fact that a union office-bearer or leader who has not been a worker but has political affiliations is a peculiar feature of countries like ours where the trade union movement had to be in the forefront of a political struggle. This feature has now survived its historical necessity. Consequently the Commission is not in favour[7] of a legal ban on non-employees holding positions in the executive of the unions as it will be too drastic a step. In any case it may run counter to Article 19 of the Constitution. Whom workers should choose to elect as their leaders is a matter best left to workers themselves. Steps should be taken to promote internal leadership and give workers a more responsible role to play and keep them outside the pale of victimisation. Without creating conditions for building up of internal leadership a complete banning would only make unions weaker.

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6. Para 20.46 at 289.
7. Para 20.50 at 290; Para 20.51 at 290; Para 20.53 at 291.

To hasten the process of building internal leadership the permissible limit of outsiders in the executives of the unions should be reduced. Ex-employees should not be treated as outsiders. To build internal leadership the Commission has recommended some steps like (a) intensification of workers' education; (b) penalties for victimisation and similar unfair labour practices; (c) intensification of efforts by trade union organizers to train workers in union organisation and (d) limiting the proportion of outsiders; (e) treating all ex-employees as insiders and (f) establishing a convention that no union office-bearer will concurrently hold office in a political party.

5. Inter-Union and Intra-Union Rivalry

Unity in the trade union movement has to grow from within rather than from without and through the evolutionary rather than regulatory process to unite the working class into a single organisation committed exclusively to the trade union movement. According to the Commission[8] (a) elimination of party politics and outsiders through building up of internal leadership; (b) promotion of collective bargaining through recognition of sole bargaining agents; (c) improving the system of union recognition; (d) encouraging union security; and empowering Labour Courts to settle intra-union disputes if they are not settled within the organization will hasten the process of reducing inter-union rivalries. Disputes between rival sets of office-bearers of trade unions have also been on the increase in recent years. No satisfactory remedy is available at present except civil litigation which often becomes prolonged and tortuous. It is of the belief that intra-union[9] rivalries should be best left to the central organization concerned to settle. The Labour Court should step in at the request of the either group or on a motion by the appropriate Government in cases where the central organization is unable to resolve the dispute.

6. Union Security

Closed Shop and Union Shop. 'Closed Shop' is an estab-

8. Para 20.58 at 292.
9. Para 20.84 at 297.

lishment where members only of a union in good standing are hired and retained as employees. 'Union Shop' is an establishment in which the employer has agreed to keep only union men on pay roll and in which non-union men may be hired on a stipulation that they join within a specified time. According to the Commission[10] closed shop is neither practicable nor desirable. Apart from considerations of feasibility it is against the fundamental right of freedom of association guaranteed by the Constitution. Union Shop may be feasible, though some compulsion is in-built in this system also. Neither should be introduced by statute. Union Security measure should be allowed to evolve as a natural process of trade union growth. As regards 'Check-off'[11] the Commission has suggested[12] that an enabling provision be made to permit 'check-off' on demand by a recognized union.

7. Registration of Trade Unions

(a) **Registration Compulsory.** Under the Indian Trade Unions Act registration of unions is not compulsory. The Commission has recommended[13] that trade union registration should be compulsory for all plant unions and industrial unions but not for central organizations. The Commission expects that such a provision would not only make for tidier arrangement, but also result in a qualitative improvement in their organization and functioning. As already stated the minimum number[14] required for starting a new union should be raised to 10 per cent (subject to a minimum of 7) of regular employees of a plant or 100, whichever is lower.

(b) **Powers of Registrar.** The Registrar should be time-bound[15] to take a decision regarding grant or refusal of registration. He should complete all preliminaries leading to registration within 30 days of the receipt of application from

10. Para 20.64 at 293.
11. 'Check-off' is the practice in which employer deducts union dues from pay and hands over these deductions to the union.
12. Para 20.70 at 294.
13. Para 20.76 at 295.
14. Para 20.78 at 296.
15. Para 20.82 at 297.

the union excluding the time which the union takes in answering queries from the Registrar. The registration of union should be cancelled[16] if the annual return discloses that its membership fell below the minimum prescribed for registration; if the union fails[17] to submit its annual return wilfully or otherwise; and if the annual return submitted is defective in material particulars and these defects are not rectified within the period. However the Commission is of the view[18] that in all such cases it stands to reason that provision should be made for appeal over the Registrar's orders to the Labour Court. As regards re-registration the Commission recommends[19] that any application for re-registration should not be entertained within six months from the date of cancellation of registration.

B. Employers' Organizations

1. Registration Obligatory

Like the trade unions of workers the registration[20] of employers' organizations should be made compulsory. Arrangements should be made through the Industrial Relations Commission for certification of employers' organizations at the industry and area level for purposes of collective bargaining. According to Commission[21] public sector undertakings should be encouraged to join their respective industrial associations. There is an equally strong case for cooperatives to join the respective industrial associations.

2. Functions of Employers' Association

In the absence of multiplicity of employers' organizations[22] at the national level they should provide for regular and scientific arrangements for training[23] of supervisors and

16. Para 20.78 at 296.
17. Para 20.80 at 296.
18. Para 20.81 at 296-297.
19. Para 20.83 at 297.
20. Para 21.9 at 300.
21. Para 21.8 at 300.
22. Para 21.7 at 300.
23. Para 21.25 at 304.

middle management personnel in the art of handling labour. They should also build up their internal consultation systems[24] in such a manner that all matters which have far-reaching impact on members are scrutinized by the constituents prior to any decisions that might be taken at the national level. As regards labour-management relations are concerned the employers' association[25] should (i) undertake promotion of collective bargaining at various levels; (ii) encourage observance and implementation by their members of bipartite and tripartite agreements in real spirit and form; (iii) expedite implementation by its members of wage awards without undue delay and reservations; (iv) work towards elimination of unfair labour practices by members of personnel policies conducive to productivity and industrial peace; (vi) promote rationalisation of management or organization to improve productivity; (vii) arrange employers' education (a) in the concept of labour partnership in industry, (b) for ensuring identity of interests of labour and management and (c) for promoting harmony between the goals of industry and of the community and (viii) work towards the collective welfare of its members through training, research and communication in the field of labour-management relations.

C. State and Industrial Relations

1. Role of the State

In the sphere of industrial relations, the State has to watch and understand the attitudes[26] of unions and employers in regulating their mutual relations in so far as they concern collective bargaining and the consequent direct action which either party may resort to for the realisation of its claims. This understanding is necessary to chalk out the course the State should adopt which in turn is determined by the short-term and long-term welfare goals it sets for itself. The State, therefore, concerns[27] itself not only with the content of work

24. Para 21.31 at 305-306.
25. Para 21.26 at 304.
26. Para 22.7 at 308.
27. Para 22.7 at 308 and 22.8 at 309.

rules, but also with the framing of rules relating to industrial discipline, training, employment, and adoption of modern technology often substituting machinery for men. Thus industrial relations affect not merely the interests of the two participants—labour and management—but also the social and economic goals to which the State addresses itself. To regulate these relations in socially desirable channels is a function which the State is in the best position to perform. Such regulation has to be within limits. Apart from different roles, the State as an employer binds[28] itself to the rules which it frames for private employers. When standards of good employment are disparate, the State seeks to set standards with a view to influencing the employers in private sector. An equally significant role which the State has to play is the outcome of our Federal Constitution[29] wherein 'labour' is a subject in the concurrent list for the purpose of legislation. It has been a tradition in the country for long that Central Government assumes the responsibility of enacting legislation on many aspects affecting labour whereas the State Governments look after implementation, though they can legislate on their own also. In either case a considerable measure of consultation has been the rule.

2. Tripartite Consultation

Industrial relations in India have been shaped largely by principles and policies evolved through tripartite consultative machinery at the industry and national levels. According to the Commission[30] since the third party intervention will continue for several years, the Indian Labour Conference and Standing Labour Committee along with other tripartite consultative bodies have an important role to play. Tripartite consultation has its value for setting uniform 'norms' to guide industrial relations. The Indian Labour Conference and the Standing Labour Committee and other industrial committees which have been set up in recognition of this fact must

28. Para 22.8 at 309.
29. Para 22.13 at 310.
30. Para 22.29 at 314.

remain advisory in character. The conclusions and recommendations reached by them should be treated as deserving every consideration for implementation. To give to all tripartite recommendations a statutory force will have serious difficulties apart from marring the spirit of tripartite deliberations. To make the process of reaching consensus more consultative,[31] the Government should restrict its influence on the tripartite deliberations.

(a) **Parallel to ILO.** Tripartite decisions could be taken in two stages[32] on the model of procedure followed by ILO. There should be in the first stage a preliminary but detailed discussion on any subject brought to the forum. The conclusions recorded at this preliminary discussions should be widely publicised and free comments on them encouraged. On the basis of these comments, the tripartite, in the second round of discussions, should frame its recommendations. The tripartite discussions[33] should last longer and should be supported by a good deal of spade-work in the Committees of the Conference. The Standing Labour Committee should meet more often and Indian Labour Conference less frequently but for longer duration. The representation[34] at the tripartite should be restricted as a first step to those central organizations only which have a membership of at least 10 per cent of the unionized labour force in the country. There should be a review every three years to accord representation to organizations on this basis, but with the object of weeding out weaker federations to promote organizational solidarity.

(b) **Industrial Committees.** According to the Commission[35] over the last 15 years, agreements in the more active industrial committees have reacted ever greater benefits to workers than the decisions of the Indian Labour Conference. Industrial Committees should meet more often to examine specific issues connected with the concerned industries. Such

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31. Para 22.30 at 314.
32. Para 22.30 at 314.
33. Para 22.32 at 314.
34. Para 22.33 at 314-315.
35. Para 22.31 at 314.

general decisions as are taken in the Indian Labour Conference and Standing Labour Committee should be tested for their applicability in Industrial Committees and difficulties in implementation taken back to the general forum.

(c) **Conference Secretary.** The work of the Indian Labour Conference and Standing Labour Committee, particularly because of the desire of employers and workers to be associated with supervising implementation, will acquire a complexity.[36] To deal with it as a part of normal administration in the Labour Ministry has its disadvantages. There is at present a separate cell in Labour Ministry for the purpose but doubts have been expressed about its effectiveness in co-ordinating the information required for these forums. The Commission recommends that a fairly senior officer of the Labour Ministry should be designated as Secretary to the Conference. He should have adequate staff support, his functions will be to project and meet the informational needs of the Indian Labour Conference and Standing Labour Committee and industrial committees as well as co-ordinate the information available.

3. Common Labour Code

Common Labour Code—Not Feasible. Considering the variety of subjects presently covered under labour legislation it will not be practicable[37] to formulate a common labour code, having uniform definitions all through and applying to all categories of labour without any distinction. Since 'labour' will continue in the 'concurrent list', adjustment to suit local conditions in different States will have to be allowed. These adjustments in some cases may not necessarily conform to the letter of a common code. In order to bring about a feasible degree of simplification and uniformity in definitions, it should be possible to integrate those enactments which cover subjects having a common objective. This will mean a simplification of the existing frame-work of labour laws.

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36. Para 22.36 at 315.
37. Para 22.48 at 318.

D. Industrial Relations

1. Collective Agreements—Collective Bargaining

Except for the industrial relations legislation in some states where arrangements for recognition of union exist, there is no statutory recognition of unions for the country as a whole. Neither are there provisions which require employers and workers to bargain[39] in good faith. It is, therefore, no surprise that collective agreements have not made much headway in the country so far. Nonetheless, there have been more of such agreements than is popularly believed. According to commission the record of reaching collective agreements has not been unsatisfactory, though its extension to a wider area is certainly desirable.[40]

2. Adjudication Disfavoured

The Commission recognizes that adjudication as it has developed in India has tended to prolong disputes, allegations of political pressures, though often without foundation, have been there. Discretion, though used by the appropriate Government in a fair manner, may appear to the workers and employers affected to have been unfairly used. On the other hand, collective bargaining as it has developed in the West may not be quite suitable for India. The requirements of national policy make it imperative that State regulation will have to co-exist with collecive bargaining. At the same time there are dangers in maintaining status quo. There is a case for shift in emphasis of an increasingly greater scope for, and reliance on collective bargaining. But, any sudden change replacing adjudication by a system of collective bargaining would neither be called for nor practicable. The process has to be gradual. A beginning has to be made in the move towards collective bargaining by declaring that it will acquire primacy in the procedure for settling industrial disputes.

38. Para 23.12 at 321; 23.14 at 322.

39. In a minute of dissent the labour members of the Commission wish to prefer and substitute the phrase 'direct negotiations' for 'collective bargaining'—See Minute of Dissent at page 492.

40. Para 23.36 at 327.

3. Collective Bargaining—Success

The Commission is of the view that conditions[41] have to be created for the success of this proposed change-over. An important pre-requisite of it is the grant of union recognition. We have to evolve satisfactory arrangements for union recognition by statute as also to create conditions in which such arrangements have a chance to succeed. Apart from this, we have to indicate the place which strike or lock-out will have in the scheme. Collective bargaining cannot exist without the right to strike and lock-out.

4. Conciliation

Conciliation machinery in order to be free from other influences should be a part of the Industrial Relations Commission. This will introduce important structural, functional and procedural changes in the working of the machinery as it exists today. The independent character of the Industrial Relations Commission will inspire greater confidence in the conciliation officers. This will, also in due course, improve the attitude of the parties towards the working of the conciliation machinery. The National Labour Commission hopes that the parties will be more willing to extend their co-operation to the conciliation machinery as now proposed and working independently of the normal labour administration. Apart from this basic change in set-up of the conciliation machinery, there is need for certain other measures to enable the officers of the machinery to function effectively. Among these are[42] (i) proper selection of personnel, (ii) adequate pre-job training and (iii) periodic in-service training through refresher courses, seminars and conferences.

5. Voluntary Arbitration

The National Labour Commission feels that with the growth of collective bargaining and the general acceptance of recognition of representative unions and improved management attitudes, the ground will be cleared, at least to

41. Para 23.37 at 327.
42. Para 23.22 at 323.

some extent, for wider acceptance of voluntary arbitration.[43] The National Arbitration Promotion Board may have then a better chance of success in the task of promoting the idea. The National Arbitration Promotion Board should pay special attention to preparing and building up suitable panels of arbitrators.

6. Strikes and Lockouts—No Legal Ban

The Commission is not in favour of a ban[44] on the right to strike and lockout; it is also not in favour of an unrestricted right to direct action. In its view the right to strike is a democratic right which cannot be taken away from the working class in a constitutional set-up like that of India. Taking away the right of the workers to strike, may only force the discontent to go underground and lead to other forms of protest which may be equally injurious to good labour-management relations. At the same time there are certain essential industries and services wherein a cessation of work may cause harm to the community, the economy or the security of the nation itself and, as such, even this right may be justifiably abridged or restricted, provided, of course, a specific procedure is laid down for remedies and redressal of grievances. Therefore, in such industries, the right to strike may be curtailed but with simultaneous provision of an effective alternative like arbitration and adjudication to settle disputes.

(a) **Strike Ballot and Notice Requirement.** To avoid strikes called by union leaders without consulting the rank and file of their members the Commission has suggested for a compulsory strike ballot before a call for direct action is given. According to the Commission[45] every strike should be preceded by a strike ballot open to all members of the union concerned and that strike decision must be supported by 2|3rds of members present and voting. The notice of strike should contain a clause to show that such ballot has been taken and the requirement of the needed majority has been satisfied. In

43. Para 23.26 at 324.
44. Para 23.43 at 328.
45. Para 23.44 at 328.

this connection the Commission has attached great importance to the issue of prior notice of strike and lockout. At present law provides for such a notice in case of public utility services only. It recommended its extension to all industries and services.

(b) **Strike and Essential Services.** The Commission has not itself defined the meaning and content of 'essential services' or 'essential industry' and has left to the Government to include any industry in this category. However, it has interdicted strikes and lockouts in essential industries. According to it[46] whenever the parties fail to reach an agreement by direct negotiations and whenever the parties are not willing to submit the disputes for voluntary arbitration, the Industrial Relations Commission shall automatically step in and adjudicate the dispute. Thus the right to strike in essential services and industries has been curtailed with automatic and simultaneous provision of an effective alternative like arbitration or adjudication to settle the disputes. The award of the Industrial Relations Commission will be binding on the parties.

(c) **Strike and Other Services and Industries.** As regards strikes or lockouts in non-essential services[47] and industries, the Commission has recommended that following the failure of negotiations and refusal by the parties to avail of voluntary arbitration system in the industries and services not declared as essential, the workers may go on strike or employers may declare lockout. It is only after 30 days of such strikes and lock-outs that it will become obligatory on the part of Industrial Relations Commission to take the dispute on its file and adjudicate it. When a strike or lockout commences the appropriate Government may move the Industrial Relations Commission to call for the termination of the strike or lockout on the ground that its continuance may affect the security of the State, national economy, public order and if after hearing the Government and the parties concerned the Commis-

46. Para 23.43 at 328; See Para 23.64 at 334.
47. Para 23.64 at 335.

sion is so satisfied[48] it may for reasons to be recorded call on the parties to terminate the strike or lockout and file their statements before it. Thereupon the Industrial Relations Commission shall adjudicate.

(d) **Strike and Government (Industrial) Employees.** Industrial employees of the Government are those who are covered by the provisions of Industrial Disputes Act, 1947 and are distinct from other Government employees like civil and defence services. In other words, Government industrial employees are those as one employed in Railways, Posts and Telegraphs and Defence industrial units excluding those employed in public sector undertakings and companies. The Commission is of the view[49] that it would be reasonable to impose restrictions on the employees' right to strike, particularly in essential services. Insofar as Government industrial employees engaged in essential services the prohibition of strikes would be justified, firstly, because any interruption in the Government's functioning has far-reaching dangers to the community's welfare and security, and secondly, because the employer, in this case the Government, has no reciprocal right to declare a lockout in the area of its services and operations. Such prohibition of strike will, however, have to be accompanied by the provision of an effective alternative for the settlement of unresolved disputes by way of compulsory arbitration or adjudication.

(e) **Gherao.** According to the Commission, resort to gherao is not a trade union weapon.[50] It deprecates the resort to gheraos which invariably tend to inflict physical duress on the person(s) affected and endanger not only industrial harmony but also create problems of law and order. If such means are to be adopted by labour for the realisation of its claims, trade unions may come into disrepute. Gheraos cannot be treated as a form of industrial protest since they involve physical coercion rather than economic pressure. In the long run they may affect national interest.

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48. Ramanujam, Vasavada and Malviya dissent.
49. Para 26.28 at 375-376.
50. Para 23.41 at 328.

7. Recognition of Unions

The National Labour Commission has attached considerable importance to the matter of recognition of unions. Industrial democracy implies that the majority union should have the right to sole representation, i.e., the right to speak and act for all the workers and to enter into collective agreements with the employer. It has, therefore, suggested the following steps for granting recognition to trade unions.

(a) **Statutory Recognition.** It would be desirable to make[51] union recognition compulsory under Central law, in all undertakings employing 100 or more workers, or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargainnig agent from an individual employer should have a membership of at least 30 per cent of the workers in the establishment. If it is for an industry in a local area, the minimum membership should be 25 per cent. Where more unions than one contended for recognition the union having a larger following should be recognized.

(b) **Method of Determining Representative Character.** Serious differences exist, however, on the manner in which the following of a union is to be determined: whether it should be by (a) verification of the fee-paying membership of the unions, or (b) election by secret ballot. This choice and the manner in any particular case has been left to the discretion of an independent authority, i.e., the proposed Industrial Relations Commissions.[52] The Commission will have the power to decide the representative character of unions either by examination of membership records, or if it considers necessary, by holding an election through secret ballot open to all employees. The Commission would deal with the recognition work in its various aspects: (a) determining the level of recognition—whether plant industry, centre-cum-industry—to decide the majority union, (ii) certifying the majority union as the recognized union for collective bargaining, (iii) generally dealing with other related matters. The union thus recog-

51. Para 23.50 at 329.
52. See, Para 23.61 at 332.

nized will retain its status for a period of two years and also thereafter till its status is effectively challenged.

Minute of Dissent on Secret Ballot. The labour representatives in the National Labour Commission, all belonging to INTUC-fold, have given their dissent[53] as they do not agree with the majority recommendation leaving the choice to Industrial Relations Commission to choose either verification or secret ballot method for determining the representative character of the union for the purposes of collective bargaining. They are against the induction of secret ballot method for recognizing a trade union in the industry. They do not want the bases of recognition to be left open to be decided at the discretion of the Industrial Relations Commission and advocate a firm guideline which the Commission will have to follow invariably in all cases. According to them if a representative union is to be chosen by secret ballot, there will be no incentive for workmen to become a member of union. For a trade union a minus membership is inconceivable. Choosing a trade union by secret ballot will tend to politicalise the trade union movement completely. Also where the difference between the contesting unions is small a third and a small union will be able to dictate and decide the issue for a price. In such a case the union election will be at the mercy of the minority union. Ballot will also invite meddling by employers. Further the voters in any case can have no control in day-to-day working of and neither the union on the voters and, therefore, will not be able to deliver the goods. Election by ballot will also raise several other problems such as who should be electorates. This process will equate a member with a non-member as both get the same right to decide which should be representative union. Election by ballot will lead to election petitions, stay orders, no-confidence motions and mid-term polls, all affecting industrial relations in the plant and in the process, upsetting discipline, efficiency and production. They further suggest that unions seeking recognition should also be required to satisfy certain minimum quality tests as prescribed in the Bombay Industrial Relations Act

53. Report at 486-491.

such as that the union seeking recognition shall give an undertaking that it will not resort to strikes before exhausting all other machinery available for settlement of disputes.

(c) **Right of Recognized Unions.** A union recognized as a representative union under any procedure should be statutorily given, besides the right of sole representation of the workers in any collective bargaining, certain exclusive rights and facilities to enable it to effectively discharge its functions. Among these are the rights:[54]

(i) to raise issues and enter into collective agreements with employers concerning the terms of employment and conditions of service of workers;

(ii) to collect membership fees and subscriptions payable by members to the union within the premises of the undertaking or demand check-off facility;

(iii) to put up or cause to be put up a notice board on the premises of the undertaking in which its members are employed and affix a cause to be affixed thereon, notices relating to meetings, statements of accounts of its income, etc.;

(iv) to hold discussions with representatives of employees who are members of the union at a suitable place;

(v) to discuss with employers the grievances of its members employed in the undertaking;

(vi) to inspect by prior arrangement in an undertaking any place where any member of the union is employed;

(vii) to nominate its representatives on the grievance committee in an establishment;

(viii) to nominate its representative on statutory or non-statutory bipartite committees, e.g., works committees, welfare committees, canteen committees and house allotment committees.

54. Para 23.57 at 331.

(d) **Rights of Unrecognized Union.** As regards the rights of the minority union, the Commission has recommended[55] that the minority union should be allowed only the right to represent the cases of dismissal and discharge of their members before the labour court.

8. Industrial Relations Machinery

As regards the arrangements for the settlement of industrial disputes, according to the Commission, real industrial harmony[56] is possible only when conditions are created for avoidance and prevention of disputes. For this purpose the Commission has suggested some basic changes. These are:

(a) **Industrial Relations Commissions.** Discontinuance of existing arrangement of appointing **ad hoc** industrial tribunal and its replacement by a permanent machinery to be called Industrial Relations Commission.[57] An Industrial Relations Commission (IRC) is to be set up at the national and State levels, for settling interest disputes broadly covering matters listed in the third schedule to the Industrial Disputes Act. The IRC will be independent of the administration.

(i) **National Industrial Relations Commission.** The National IRC should be appointed by the Central Government for industries for which that Government is appropriate authority. The National IRC would deal with such disputes which involve questions of national importance or which are likely to affect or interest establishments situated in more than one State, i.e., disputes which are at present dealt with by National Tribunals.

(ii) **Industrial Relations Commission.** There should be in each State an Industrial Relations Commission for settlement of disputes for which the State Government is the appropriate authority.

(b) **Composition of the IRC.** The Commission would consist of a person having prescribed judicial qualifications

55. Para 23.59 at 332.
56. Para 23.60 at 332.
57. Para 23.61 at 332.

and experience as its President and an equal number of judicial and non-judicial members need not have qualifications to hold judicial posts but should be otherwise eminent in the field of industry, labour or management. The judicial members of the National Industrial Relations Commission, including its President, should be appointed from among persons who are eligible for appointment as judges of a High Court.

(c) **Qualification and Status.** The terms and conditions of service and age of superannuation of the judicial members of the National and State IRC should be similar to those of the judges of the High Courts. The President of the National IRC will be appointed by the Union Government in consultation with a committee consisting of the Chief Justice of India, the Chairman of the Union Public Service Commission and the seniormost Chief Justice in the High Courts. The other members of the National IRC will be appointed by the Union Government in consultation with the Chief Justice of India, the Chairman of the Union Public Service Commission and the President of the National IRC. In regard to State IRC, the President of a State IRC will be appointed by the State Government in consultation with the Chief Justice of India, the Chief Justice of the State High Court and the Chairman of the State Public Service Commission. The other members of a State IRC will be appointed by the State Government in consultation with Chief Justice of a State High Court, the Chairman of the State Public Service Commission and the President of the State IRC.

The Conciliation Wing of the Commission will consist of the conciliation officers with the prescribed qualifications and status. In the cadre of conciliators, there will be persons with or without judicial qualifications. Those who have judicial qualifications would be eligible for appointment as judicial members of the Commission after they acquire the necessary experience and expertise. Others could aspire for membership in the non-judicial wing.

(d) **Functions and Powers of IRC.** The main functions of the National and State IRC will be (a) adjudication of industrial disputes, (b) conciliation and (c) certification of

unions as representative unions. In other words, besides adjudication of industrial disputes, the IRC both at the national and State levels will combine functions of conciliation and certification of unions. Analogous to conciliation the functions relating to certification of unions as representative unions will vest with a separate wing of the National and State IRC. The Commission may provide arbitrators from amongst its members and officers in case parties agree to avail of such services. The Commission may permit its members to serve as Chairman of the Central and State Wage Boards and Committees if chosen by the Government for such appointment. Further in case of dispute in essential services in the event of failure of collective bargaining the Commission has the power to adjudicate upon the dispute and pass an award of absolute and binding character upon the parties. It can also intervene in case of industrial dispute in non-essential services. It has the power to arrange transfer of cases from the National IRC to State IRC and vice versa. It can also provide to pay or withhold payments for the strike or lockout period. It is the place of registry of collective agreements.

9. Labour Courts

In addition to the Industrial Relations Commission, the National Labour Commission has suggested the setting up of standing Labour Courts[58] for the interpretation and enforcement of all labour laws, awards and agreements. Labour Courts will mainly deal with matters concerning the propriety or legality of an order passed by an employer under the standing orders, interpretation of standing orders, discharge or dismissal of worker including reinstatement of or grant of relief to worker wrongfully dismissed, legality or otherwise of a strike, etc. Also the Labour Court will deal with disputes relating to rights and obligations, interpretation and implementation of awards of either National or State IRC and claims arising out of rights and obligations under the relevant provisions of laws and agreements, as well as disputes in regard to unfair labour practices.

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58. Para 23.65 at 335.

The Labour Court is to be set up in each State consisting of judicial members only. The member of the Labour Court is to be appointed by the Government on the recommendations of the High Court. It is further suggested that Government should be able to choose from a panel given by the High Court in the order in which the names are recommended. Appeals over the decisions of the Labour Courts in certain matters may lie with the High Court within whose area and jurisdiction the court is located.

10. Unfair Labour Practices

Unfair labour practices[59] on the part of both employers and workers' unions should be detailed and suitable penalties prescribed in the industrial relations law for those found guilty of committing such practices. Labour Courts will be the appropriate authority to deal with complaints relating to unfair labour practices.

11. Miscellaneous

As already stated the National Commission on Labour laid accent on industrial harmony so it has given some suggestions connected with the prevention of disputes and promotion of good labour-management relations. These relate to (1) joint consultation, (2) code of discipline, (3) grievance procedure and (4) disciplinary action.

1. Joint Consultation

The participation and association of workers in industry have varied from mere voluntary sharing of information by management with workers to formal participation by the latter in running the enterprise. In India the experiment has taken mainly two forms: (a) statutory works committees and (b) joint management councils.

(a) **Works Committees.** According to the Commission Works Committees[60] may be set up only in units which have a recognized union. The union should be given the right to

59. Para 23.67 at 365-66.
60. Para 24.7 at 343.

nominate the worker members of the works committee. A clear demarcation of the functions of the works committee and the recognized union on the basis of mutual agreement between the employer and the recognized union, will make for a better working of the committee.

(b) **Joint Management Councils.** When the system of union recognition becomes an accepted practice, management and unions will be willing to extend co-operation in matters they consider to be of mutual advantage and set up[61] a Joint Management Council. In the meanwhile, wherever the management and the recognized trade union in a unit so desire, they can by agreement enhance the powers and scope of the works committee to ensure a greater degree of consultation and co-operation. The functions of the two in this latter situation can as well be amalgamated.[62]

2. Code of Discipline

The Code worked in its initial stages with a certain measure of success and then fell into disuse. With the removal of the important provisions relating to recognition of unions, setting up of grievance machinery and unfair labour practices from the Code and incorporating them in the proposed legislation, the Code will have no useful[63] function to perform.

3. Grievance Procedure

Grievance procedure should[64] be simple and have a provision for at least one appeal. The procedure should ensure that it gives a sense of (i) satisfaction to the individual worker, (ii) reasonable exercise of authority to the manager, and (iii) participation to union. A formal grievance procedure should be introduced in unit employing 100 or more workers.

A grievance procedure should normally provide three steps:[65] (i) submission of a grievance by the aggrieved worker

61. Para 24.15 at 345.
62. Minute of dissent by Shri Vasavada and others.
63. Para 24.20 to Para 24.22 at 345-47.
64. Para 24.29 and Para 24.30 at 347-48.
65. Para 24.31 at 348.

to his immediate superior, (ii) appeal to the departmental head|manager and (iii) appeal to a bipartite grievance committee representing the management and the recognised union. In rare cases where unanimity eludes the committee (iii) the matter may be referred to an arbitrator.

4. **Dismissal and Discharge**

The Industrial Disputes (Amendment) Bill,[66] 1966 (Bill No. XVIII of 1966) as it stands should be enacted without delay. To minimise delays in adjudication proceedings and further delay in appeals, adoption of the procedure which obtains in the Small Causes Courts and abolition of appeals to higher courts may be provided. To make the procedure more effective, the following provision should be made:

(i) In the domestic enquiry the aggrieved worker should have the right to be represented by an executive of the recognised union or a workman of his choice.

(ii) Record of the domestic enquiry should be made in a language understood by the aggrieved employee or his union.

(iii) The domestic enquiry should be completed within a prescribed period, which should be necessarily short.

(iv) Appeal against employer's order of dismissal should be filed within a prescribed period.

(v) The worker should be entitled to subsistence allowance during the period of suspension as per agreement in the tripartite.

In short, the Commission has surveyed the entire field of labour-management relations. On an analysis on the recommendations of the Commission it has been pointed out that 336 proposals, 94 recommendations require legislative action, 68 for administrative action by the Centre, 79 for action by the State Governments, 7 for unions, 15 for action by the

66 Para 24.40 at 350.

employers. The Commission thus has surveyed all the important problems of labour welfare, social security, wages, including industrial relations. The Commission's recommendations as seen above are of far-reaching character and depart radically from the existing set-up of industrial relations. A critical analysis and evaluation is intended in the next chapter.

CHAPTER XI

Conclusion—Labour Relations

1. PRESENT PROBLEMS AND FUTURE PROSPECTS

The fundamental factor determining the nature of labour-management relations in a country is primarily dependent on the social, economic and political conditions in which workers live and act as well as on the attitude of the employers and State towards the well-being of workers. Socio-economic history of labour movement shows that workers had to start with a disadvantage not only in India but everywhere for improving their living and working conditions and defending their basic interests. As such trade unions large or small came into existence in India to meet the needs of workers. In India trade unions also had to face many difficulties in dealing with the employers on wages, hours and conditions of work at a time when the alien rulers were least interested in their well-being. The trade union leaders became quite convinced that there can be no economic and social justice and equality for the workers without India's political emancipation. The alignment of the trade union movement with the national struggle for freedom resulted in the suppression of the trade union movement. This led to strikes and other forms of industrial conflicts with or without economic object which necessitated State intervention for regulating labour-management relations. The present state of trade unionism and industrial relations in India is not an accidental factor but a legacy of the past which needs a fresh appraisal to quicken the processes for establishing social justice and human relations in industry. The National Commission on Labour has surveyed the whole gamut of prevail-

ing trade unionism and industrial relations system in India and has examined its viability, social relevance and purposefulness in relation to changing needs of our socialist pattern of society. Keeping in view the suggestions of the National Labour Commission it is my intention to pinpoint the shortcomings of the present Indian system and focus attention towards new horizons and dimensions which should guide and shape our industrial relation system in the coming future.

(i) **Industrial Harmony—Its Basis**

In India most of the trade unions and employers distrust **a priori** each other. In the past and in the present there may have been grounds for it but there should be no place for such dogmatic distrust if there is a given understanding and belief in mutual co-existence of labour-management towards each other. This basically needs a change of attitudes and minds of both and more especially of employers. It is the attitudes and actions of management which largely determine the character and role of union in the industry. As it is rightly said that management has the union it deserves. Therefore, the employers in India should realize that trade unionism has come to stay in this country not only for economic motives but also for equally compelling psychological and social ones so that they can participate in making decisions that vitally affect them in their work and community life. There must be a conscious effort on the part of management and trade unions to rationalize their relations on scientific basis and not to be swayed by inherited instincts and prejudices of class conflicts. One should understand the legitimate role of the other in the industry and in economic growth and development of the country. Although it is difficult to get rid of old traditions and habits which are so deeply rooted in one's minds, yet given favourable social, economic and political conditions can help much in this direction. Once it is realized by the management that men are more important than machine there will be no failure or breakdown of production and it will have its positive effects on the well-being of the workers and society as well. The National Commission on Labour has also remarked[1] that industrial worker of today

1. Report at 31.

has acquired a dignity not known to his predecessor. A self-generating class with its roots in the industrial environment in which worker is born and bred is growing in strength. Therefore, it should make the employers and workers realize each other's angle to the problem of industrial relations and thereby, accordingly, adapt and adjust themselves which may lead to the welfare and happiness of the workers and society as a whole. It may contribute to the solution of many general problems which undermine normal industrial harmony in the industry.

(ii) Trade Unionism—Some Existing Irritants

Labour-management relations in India need to be tackled in a positive manner for which there cannot be any absolute answer or cut and dried solutions. Nevertheless, if tensions are to be removed, if confidence and understanding between the parties in the industry is to be regenerated and if labour-management relations are to be kept on an even keel organizations of workers and employers must grow, expand and function as cohesive, strong, independent and responsible bodies. The National Commission on Labour has also recommended[2] the formation of national industrial unions in each industry as instrument of collective bargaining. The absence of strong trade unions, therefore, is the root cause of our economic and social conflicts resulting in India's industrial backwardness and poverty. In fact, there cannot be sound and successful economic growth and development without strong trade unionism. Only then our planned economy and socialist system can be a living reality. Therefore, attempts should be made by the State for the removal of obstacles in the way of sound trade unionism.

(a) Lack of Trade Union Philosophy

In India trade unions are old fashioned as the old fashioned capitalist system. The workers are much familiar with trade unionism[3] and still do not realize the paramount need

2. Report at 283.

3. Since independence employment in the organized sector of

(Continued on next page)

of independent trade unionism for promoting their collective group interests. In fact, the unions in India do not have defined goals, whether economic or otherwise. Sometimes they are anxious to achieve some economic gain like a wage increase, reduction in hours of work or protection of workers against industrial hazards but quite often they damage their image by indulging in uneconomic and ideological goals, as strikes against the government policy of devaluation of rupee or non-nationalization of banks or denationalization of trade, which makes them extremely vulnerable at the hands of employers and other anti-trade union element.[4] In India although trade unions no longer have to fight for legal or constitutional existence, nevertheless they have not gained inherent strength because of lack of a common cause, common goal and common philosophy of bread and butter unionism.[5] Partly, the contemporary social and political situation of India, and partly, the long foreign domination are responsible for weak trade unionism in this country. Extreme poverty, massive illiteracy, lack of trained, disciplined and responsible leaders from amongst the rank of workers, their innate belief in a heavenly ordained human destiny, lack of a trade union movement independent of government, and absence of enlightened management have created a vaccum in the Indian industrial scene—a huge labour force without a real philosophy of its own ideals and norms of industrial morality. Unfortunately all that frequently glitters from different forums of various trade union bodies is not all real unionism but political opportunism in the guise of unionism. The Labour Commission has kept an eloquent silence on this aspect. Also in India trade unions are founded on racial, caste, com-

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economy (both public and private sectors included) has increased more than four times but the rise in the trade union membership during the same period has not been commensurate. The combined total strength of four central federations is not even a fourth of the total number of employees. **Indian Labour Year Books.**

4. Landless labour drawn from the rural areas are not attracted by organized activities such as trade unions.

5. Like the opposition parties, the trade union approach has been in the negative because of its political orientation.

munal,[6] language, regional, political and ideological basis. Trade unions are continuously misusing their prerogatives for non-trade union purposes, which has somewhat tarnished the fair name of trade unionism in public image. This is because there has been too much of politics with Indian trade union movement which discourages independent trade unionism in the country. The National Commission on Labour has avoided this aspect by merely enumerating the functions which a trade union should adhere to. It has given no clear direction whether trade unions in India should be de-politicised. On the contrary the Commission seems to have indirectly approved the continuance of political alignment of trade unions in India. This is contrary to the basic philosophy of industrial harmony which the Commission has overstressed.

(b) Trade Unions—Political Parties

It has been said that the history of Indian trade union movement[7] before 1947 was the history of nationalism with a union label. This is also true of many Asian, African and Latin American countries. In fact, the assistance of political parties and other outsiders was indispensable in the initial stages of trade union movement which was without leadership to meet the challenge of the times—the battle for political emancipation and struggle for economic security against the hire and fire attitude of the management. In India, prior to Independence, the labour movement attracted the elite to lead it. This honeymoon between labour and political leaders was a logical consequence of the drawbacks of the trade union movement in India. Outside political leadership was unavoidable to guide and spread the movement which had incipient leadership, weak organizational structure and meagre financial resources. In India political leaders not merely viewed trade union organizations as economic units

6. The Jan Sangh has organized Bhartiya Mazdoor Sangh on the basis of old Hindu economic philosophy. The Akali Party of Sikhs, a communal body, and Dravida Munnetra Kazhagam, a regional political party, have their own trade unions in Punjab and Tamil Nadu respectively. In addition, both INTUC and AITUC are bedevilled by pulls and pressure from party bosses.

7. Oscar A. Ornati, **Jobs and Workers in India,** 108 (1955).

for the protection and promotion of the interest of workers but also used them as convenient tools for engineering political strikes and agitations with little care for their beneficiary —the working class. It were politicians,[8] lawyers and intellectuals who never have been workers were the spearhead of social and cultural renaissance of India including the trade union movement. A few of them are Gandhiji, Jawaharlal Nehru, Patel, N. M. Joshi, Deewan Chamanlal, Giri, M. N. Roy, R. R. Bakhale, S. V. Deshpande, B. T. Randive, S. A. Dange, Nanda, etc., who led the trade union movement through our fight for independence. The Commission also observes[9] that a union office-bearer or leader who has not been a worker but has political affiliations is peculiar feature of countries like ours where trade union movement has to be in the forefront of a political struggle. This feature has now survived its historical necessity.

(c) Difficulties Created by Political Leadership—Employers' Hostility

The political leadership of the Indian trade union movement has not been a boon altogether. It created difficulties also. Outside leaders who secured their position for political purposes have been responsible[10] for much harmful inter-union and intra-union rivalry sometimes sacrificing the workers' interest to those of the party to which they belong. Another kind of leader who can do even more damage is the one who is in the trade union movement for his personal end and who takes the advantage of the workers' unfamiliarity with trade unionism and industrial relations. This has, accordingly, strengthened the fear, suspicion, and hostility of the employers towards all the unions which to them are nothing but mere constellations of different political parties in the industry. The apprehension of the employers also cannot be dismissed as unreal or unnecessary. The employer cannot reconcile himself to leaders of trade unions who have no stake or inter-

8. A. R. Hurst, Suggestion for Labour Legislation, **Indian Journal of Economics**—Vol. III, 504.

9. Report at 289.

10. ILO, **News Service**, June 14, 1961 (India)

est in the industry. Political unionism cannot be substitute for trade unionism. Most of the ills by which the trade unionism is afflicted are due to outside leadership of the trade unions. Trade unions are essentially and exclusively economic institutions for safeguarding and promoting the economic interest of wage earners, and should not be the appendage of various political parties for furthering their political or ideological[11] objectives. Political issues divide rather than unite the workers and the trade union movement. In no country perhaps more than India where workers have been so much disarrayed, disunited and disillusioned by outsiders which have caused a great disservice to trade union movement. Even today the general 'line' for trade unions in India is formulated primarily by the political parties for maintaining or changing the existing status quo. While some of the political parties adhere to the philosophy of **laissez faire,** some envisage the establishment of a new social order by peaceful and non-violent means, and still others wish to bring about a revolutionary change in the economic and political structure by abolishing the existing political system which is supposed to stand in the way of economic well-being of the workers. Thus, trade unions accuse each other as U.S.-inspired or Moscow-inspired or Peking-inspired or Government-inspired. Too often strikes instigated by political parties are purely political intended to embarrass the government in its national or international policy or to fight against Indian or foreign monopolies or to force the government not to accept economic or food aid from certain countries or to support the struggle against imperialism, colonialism, and racialism, etc. So breaking away from the political parties is extremely difficult for the trade unions because they are at present intertwined like the Siamese-twins and are viewed with dismay and suspicion by the employers. The National Commission on Labour has once again shirked this important issue on grounds of legal and constitutional propriety. Knowing fully well the background of Indian labour the commission has

11. Recent **bundhs** or **gheraos** organised by opposition parties in India through their unions were manifestations of political opportunism and other extraneous consideration.

justified[12] the continuance of outsiders on the ground that workers have a right to choose any one as their leader. Internal leadership cannot emerge so long the workers depend on outsiders.

(d) Trade Union Rivalry

The perpetuation of political unionism in Indian industry has led to trade union rivalries which had a harmful effect on industrial relations. Rivalry among trade unions is on account of their political affiliation which has resulted in the fragmentation of work force and multiplicity of unions in the same establishment or industry. As such, each political party tries to create a trade union of its own in the industry and even in an establishment which has led to rivalry and multiplicity of trade unions. Existence of rival unions in the industry creates a piquant situation for the workers as well as employers. It bewilders the workers and troubles the employers who find it impossible to work with or without outsiders. The inter-union rivalry is an obstacle to smooth industrial relations both in public and private sectors. The Railways, Heavy Electricals, the Hindustan Steel, the Durgapur Steel Works, the Heavy Engineering Corporation, the Air-India and the Tata Iron and Steel, Jamshedpur, are a few instances where trade union rivalry has caused deprivation, suffering and loss of production. The state governments too have been responsible for encouraging inter-union rivalry and intra-union faction fights.[13] Some of the state governments used their discretionary[14] power under the Industrial Disputes Act so as to favour certain types of unions. For instance, the U.P. Government had been charged[15] with an alleged pro-INTUC policy.

"To boost up the INTUC at the cost of trade unions

12. Report at 290.

13. See the Intra-Union dispute between two groups of INTUC unions—one led by former Labour Minister Dravid and other by Mr. Verma in Madhya Pradesh, **Hindustan Times**, January 13, 1964.

14. Section 10.

15. **U.P. Shramik Maha Sangh**, v. **State of U.P.**, A.I.R. 1960, All. 49.

> organizations sponsored or affiliated to other political organizations and independent trade unions. The authority conferred under the U.P. Industrial Disputes Act upon the state government has been systematically and regularly exercised in such a manner as to favour unduly the trade unions affiliated to INTUC and to give step-motherly treatment to trade unions affiliated to other political organizations and independent trade unions. In the matter of representations in labour conferences or recognition as recognized trade unions, or in the matter of referring disputes for adjudication, this attitude of the state government for many years is very well known and there have been complaints throughout the trade union movement".

Similarly, the Communist government of Kerala was also charged by the non-Communist trade unions with favouring the AITUC unions. According to the Council of Indian Employers[16] the state governments dabbled in trade union activity with a view to acquiring political advantage. Recently J.R.D. Tata accused the Bihar Government of fomenting rank indiscipline among workers. It was alleged that the state government including the Chief Minister was actively engaged[17]

> "in creating complete disruption among the organized labour of the INTUC. It was said that Rs. 140-crore Heavy Engineering Corporation at Ranchi had an annual output not more than Rs. 15 lakhs because of the faction fight in the INTUC labour union instigated by state government."

Again the Bihar state government was charged of advising the management of the Tata Electric and Locomotive Factory, Jamshedpur, not to recognize a union with which an agreement was in force. It was further said that the state governments have been misusing the Defence of India Rules to gain control of labour movement for political purposes.

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16. **Memorandum on Labour Policy in Fourth Five Year Plan,** 14 (Council of Indian Employers, 1965).

17. **Hindustan Times,** January 29, 1965.

K. K. Birla also questioned[18] the wisdom of the policy of the Bihar government requiring management to employ only 'the sons of the soil' in certain positions of their undertakings. Employers too have been exploiting the trade union rivalries, and playing one against another. The union rivalries, therefore, have caused incalculable harm to industrial production and trade union movement. This can be perhaps cured only if the political parties, employers and trade union federations agree on the principles of trade union autonomy, trade union unity, and trade union neutrality in political affairs of the country. Recently the National Commission on Labour has recommended for statutory recognition[19] of unions as sole bargaining agent by an independent authority for reducing inter-union rivalries. However, this recommendation may not have a salutary effect unless the outsiders are not banned from holding trade union offices. Recent splits between the Communist-Rightists and Marxists and Congress—Pro-Prime Minister and Pro-Congress President—may not only further divide an already divided trade union movement but may adversely affect industrial harmony and productivity.

(e) Wrangle for Power—By 'Outsiders'

It is a well-known fact that the trade unions in India have their moorings in political parties. As a result most of the trade unions are controlled by 'outsiders,'[20] i.e., politicians who themselves have never been employees. The present trade union law and practice also does not forbid 'outsiders' to be office-bearers of the unions. In fact, the existing political leaders of the trade unions are not willing to withdraw themselves from the unions unless they are forced by law or there is a strong self-reliant internal leadership from within to manage union affairs itself. The political union leaders are of the view[21] that there is nothing sacrosanct about the

18. **Id.**, the Labour Commission now has suggested some guide lines, See Report 77.

19. Report, 292.

20. The National Commission on Labour has not bothered to define the term outsider, Report 288-291.

21. **The Indian Worker**, 20, 35 (INTUC 15th Annual Session, 1965).

rank and file leadership as compared to 'outside' leadership of the trade unions. This is however misleading. Indeed 'outsiders' generally wrangle for power by fomenting trade union rivalries and ruin the workers economically and organizationally. In this connection, Justice Shah of the Maharashtra High Court rightly observed:[22]

> "any one who has no honest occupation in life can dabble in trade union activity and even make some money out of it at workers' cost.....'Outsiders' should not be allowed to interpose and to intermeddle in the affairs of any workers' union. Efforts, therefore, should be made to encourage insiders' leadership of trade unions not through the programme of workers' education, but by legislative ban."

The National Commission on Labour has not tackled this problem in the right spirit and has suggested long-drawn procedure and method by which it hopes in due course of time political leadership in trade unions would wither away. The National Commission on Labour thus has become a victim of political compulsions and has failed to give a clear-cut recommendation in this regard.

(f) Recognition of Unions—Difficulties

The problem of 'outside' leadership of trade unions is inextricably mixed with their recognition by employers for the purposes of collective bargaining. Wherever 'outsiders' are manning the unions granting of recognition cannot be a mere formality insofar as employers are concerned. According to K. N. Srivastava:[23]

> "becoming leaders of trade unions has become a fashion amongst politicians of our country. Persons with little knowledge of the background of labour problems, history of labour movement, fundamentals of trade unionism and the technique of the industry and with even little general education assume the

22. **Shanti Patel v. G. H. Kale, General Secretary, Port Trust Railwaymen's Union—the Times of India,** January 10, 1963.

23. **Industrial Peace and Labour in India,** 118 (1954).

charge of a labour union and become a self-appointed custodian of the welfare of workers."

The employers, therefore, have been reluctant to discuss and negotiate industrial matters with 'outsiders' who have no personal and direct association with the day-to-day affairs of the establishment. The issue of recognition has created enough difficulties both for the unions and the employers as well. Employers refuse recognition to those unions which are either controlled by the politicians or on the ground that the union embraces only a minority of workers or the prior existence of another union or the union is unregistered or the union is affiliated to a particular political party or controlled by a particular individual. Absence of recognition of the unions whether de facto or de jure makes them more belligerent and aggressive towards the employers leading to industrial conflict and even violence. No amount of sermonizing through moral codes can bring about understanding in the industry if the unions are not managed by the workers and for the workers. Code or no code, the employers would not recognize the credentials of the unions which are managed by persons from outside. The problem of recognition, therefore, is linked with the problem of strong, healthy and independent trade unionism. Indeed, government cannot morally compel employers to accord recognition to unions without driving out the politicians from the unions. The unions have flouted the Code of Discipline because they remain unrecognized. The employer refused to recognize the unions because the unions consistently violated the code. This unending vicious circle has gone unabated vitiating industrial climate and harmony. The National Commission on Labour has now recommended statutory provision for recognition in all undertakings employing 100 more workers. A trade union seeking recognition should have a membership of at least 30 per cent of workers, etc. But again the National Commission on Labour has waivered as to the method of granting recognition. It has left at the discretion of Industrial Relations Commission to choose either by secret ballot or verification of membership method for determining the representative character of the union. It has once again compromised the democratic prin-

ciple of one man one vote on the grounds of political expediency. It has, therefore, failed to lay down a definite criteria for recognising trade unions.

(iii) A Way Out—Strong Trade Unionism

The root cause of all this malady is the direct involvement of political parties in the trade union bodies which neither the Code of Discipline nor the Code of Inter-Union Harmony could stamp out till today.

The methods suggested by the National Commission on Labour may also meet the same fate. So a way out should be found whereby some basic qualifications for trade union leadership are evolved rendering 'outsiders' as **persona non grata** for the purposes of trade union leadership. So long as State, political parties or employers interfere with the functioning of trade unions, the workers are not given liberty to elect their own representatives and leaders freely, the State curbs the right of free collective bargaining without which trade unions cease to be protest bodies for changing the economic and social order, the ideals of social, economic, and industrial democracy would remain a myth. It is only the strong union which could discuss on a footing of equality with employers economic and social problems which arise at the national and local level. It is alone the strong trade union movement which can give the workers real protection against economic and social injustice, and also social prestige in the industry and society. In essence trade unions are dynamic and democratic instruments of social progress and social change which seek to secure collective freedom, social justice and job security for the workers in an atmosphere of freedom and dignity.

Acharya rightly remarks[24] that:

> "A conscious acceptance of this philosophy—the trade unions as a revolutionary instrument of a higher civilization, something that gives depth to the democracy—

24. T. L. A. Acharya, Industrial Scene—From Truce to Harmony—**The Times of India**, January 15, 1963.

> demands that trade unions must rely on the motive force inherent to its purpose. That is, it should not be affiliated to anything outside its own fields of action or cling to any political apron-strings. It should function within its own framework, not in the covert political framework of INTUC or HMS or AITUC.... that the employer and his association (which is also, in effect, a trade union) must accept the trade union of workmen without demur. Such acceptance creates a stable bridge, a link born of understanding. Without it the industry will stay a house divided."

In other words, if the trade union movement is to be a dynamic force for economic development, it must guard itself against exploitation by unscrupulous labour leaders who bring great harm to the trade union movement, industry and society. Trade unions should not be made a stamping ground for politicians. The State must outright ban 'outsiders' from trade union bodies. Trade Unions Act, 1926, should be amended which authorise[25] any seven persons to combine and form a trade union. The National Commission on Labour has only suggested that for starting a new union minimum number should be raised to 10 per cent or subject to a minimum of 7, etc. This is not an effective cure for minimising union rivalry. Further provision for political[26] fund by trade unions should be done away with—since it invariably encourages the politicians to prey upon the unions. The National Commission on Labour has overlooked this aspect also. State must frame suitable legislation providing compulsory recognition of trade unions by employers for the purposes of collective bargaining. The new legislation should provide a duty on the part of the employers to bargain in good faith with the trade unions. The National Commission on Labour has again erred here too by not recommending concrete steps in this regard. Such a step would alone gradually minimise the multiplicity of trade unions and trade union rivalries and would generate mutual understanding between employers and

25. Section 2, Indian Trade Unions Act, 1926.
26. Section 15, Id.

workers and both of them would be less dependent upon the State for the solution of their industrial conflicts and day-to-day disputes and grievances. Good labour-management relation cannot be achieved unless there were strong trade unions which alone can shield the workers against all kinds of industrial ills.

2. Strike Problem

Industrial strikes[27] are a normal feature of modern industrial life and should not be viewed as "jehad" against management and particularly the society in general. As a matter of fact the strike phenomenon is a resultant after-effect of the industrial morality and modality of the **laissez faire** era responsible for unprecedented social change of both progressive and retrogressive character. Because of the conflict of interest of labour and management resulting in social and political tensions the question is being put particularly in the developing countries whether strikes should be banned altogether as something anti-social, anti-national and anti-labour-management. It must, however, be envisaged that abolition of strikes through legislative fiat is neither desirable nor practicable. In fact, conditions should be created which are least conducive to strikes. The myth that prevention of industrial dispute is better than their cure is untrue and misleading. The State in India must recognize and actively support a truly genuine trade union movement which could be more responsible and conscious of its social and economic obligations towards its members and society. This would make workers less vulnerable at the hands of misguided politicians, hostile employers and unresponsive public. This would promote co-operation rather than conflict between labour and management on many serious problems which divide them at present. Right from now constructive, co-operative, and conscious efforts should be made by the State for establishing a non-political, truly bread and butter trade unionism. The State in India must take lesson from countries like U.S.A.,

27. Dhyani, Strike—A Study in State controls and adjustments of industrial relations in India—**Indian Journal of Industrial Relations**, 109 (1958).

England, Germany, Japan and other democratic countries where trade unionism is an important bulwark of rapid industrial growth and social harmony.

(i) **Strikes—Codes**

The Code of Discipline in Industry 1958 and the Code of Inter-Union Harmony 1959 have not helped much in the elimination of politicians[28] from trade unions nor have they contributed towards building up of genuine industrial peace and harmony. The codes also do not give comfort to the employers on the issue of trade union rivalries or multiplicity of trade unionism responsible for engineering strikes nor give solace to workers on the issue of recognition of the unions, industrial change resulting in dismissal, discharge or victimization of workers by the employers. The State must make a fresh reappraisal of its labour relations policy. The existing policy has neither created peaceful conditions in the industry, nor has it helped in promoting understanding between employers and unions; nor has it contributed to founding of strong, united labour movement nor has accelerated the pace of quick industrial development by making labour and management more responsible of their social obligation towards the community as a whole. The National Commission on Labour has rightly recommended that Code has not served useful purpose, so it should be done away with. The State must recognize the fundamental fact that strike phenomena is a necessary concomitant of the present industrial culture, the employers must accept that trade unions are an important ingredient of industry without which industry cannot run efficiently. The unions must also wield their power in a constructive way by voluntarily eschewing strike in the solution of industrial dispute. For instance, the Government of India has introduced[29] a scheme of joint consultation with compulsory arbitration for its employees who voluntarily abjure

28. In addition to four recognized central federations of workers three more organisations have been formed on political bias. The new organizations are the Bhartiya Mazdoor Sangh (Jan Sangh), Hind Mazdoor Panchayat (S.S.P.) and Indian Federation of Independent Trade Unions. 7 Indian Labour Journal, 35 (1966).

29. **Hindustan Times**, October 29, 1966.

strike for the settlement of their grievances. Of course, a voluntary abjuring of strikes is not in the nature of surrender of the right to strike but a full vindication of exercise of that right. The right to strike, although it appears axiomatic, carries with it the obligation not to strike.

(ii) **No Strike Ban**

Strike is neither an act of war against industry nor against employer. It is basically a weapon of self-defence for the arbitrary and unjust policy of the management. Strike, therefore, is a social necessity for promoting or defending a just economic interest of the working class. In view of the past and present industrial conflicts in India, the social scientists and labour lawyers must assess the factors which have inevitably led to conflict and pin-point the guide-post to all interested parties including the State which would minimise the chances of strike. No amount of legislation or sermonizing can ban or diminish strikes except through the mutual realization of each other's obligations that too can be built up only in an atmosphere of mutual sacrifice and mutual accommodation. Even the attempts to ban strikes in certain sectors of national life have been unsuccessful in Japan and other Western countries. This is no small lesson for Indian industrial sociologists and labour experts.[30] In India today industry whether in the private or public sector is a social function, service and responsibility which must generate a sense of self-reliance, confidence and fuller economic security against unemployment, under-employment, and sub-human conditions. Employees whether in the public services or private sector are not social inferiors or wage earners or second class citizens. They are active citizens who are manning necessary services and producing all where-withals for the community. Legislation cannot, therefore, abolish strikes. First of all, the State must create proper and adequate social and economic conditions to those who live by meagre daily wages. It, therefore, should concentrate on the creation of new social

30. In India, the attempt to ban strikes of government employees has failed in Uttar Pradesh, Bihar, West Bengal, Kerala, Madhya Pradesh, Punjab, etc.

milieu instead of emphasizing on the **modus operandi** whether in the form of Whitley Councils or compulsory adjudication as suggested by the National Commission on Labour. Of course, we need not be rigid in our attitude on this highly sensitive issue. It should be resolved through planned efforts in the light and experience of our constitutional background and social philosophy. The Royal Commission on Labour in India also remarked[31] that the attempt to deal with strikes must begin rather with the creation of an atmosphere unfavourable to disputes than with the machinery for their final settlement. It is precisely here, in our view, that the Indian industrial organization is weakest. Strike ban, therefore, is no panacea for conflicts. There can be no mathematical formulae of calculation, addition or subtraction in industrial jurisprudence to contain social forces and processes within a society which call for a new change in its moral and material philosophy. The problem is basically human which transcends differences of social systems. We should not seek to impose any rigid patterns for the fear of strikes which otherwise would impede the growth of independent trade unionism vital for the establishment of industrial democracy. Consequently, the changes or innovation in labour relations should not be a part of expediency or strategy of a political party controlling the affairs of a nation to serve its immediate policy, programme and ideology. The policy of maintaining a moratorium or industrial truce furthers the psychology of seize in the industrial world. The problem of strikes engulfs the whole compass of economic and social development which should be tackled seriously and not by fits and starts.

A human and social character must be given to the economy in order to make possible for human personality to assert and develop. Only a harmonious exercise of the freedoms by trade unions and employers in India can diminish the chances of strikes. But it cannot become obsolete for the solution of such labour problems which remain unresolved through direct negotiations. For independent trade unionism pre-supposes the existence of collective bargaining system

31. **Report**, 339-340 (1931).

which in itself implies the right to strike for the solution of intractable disputes. There are no substitutes to strike ban as the latter is not only repugnant to democratic constitutionalism but against the notion of fairness and social justice. Right to strike is not only an economic weapon but a psychological necessity and the dangers which inhere in any removal by law of a safety-valve for larger masses of workers may not be ignored. In the words[32] of George Bancroft—an American historian and statesman:

> "the feud between the capitalist and the labourer, the house of Have and the house of Want, is as old as social union, and can never be entirely quieted; but he who will act with moderation, prefer fact to theory and remember that everything in this world is relative and not absolute, will see that the violence of contest may be stilled."

These words are true today for all democratic countries including India.

3. Compulsory Adjudication

The principle of compulsory adjudication forms the core of industrial relations policy of India since 1942. The immediate objective of introducing compulsory adjudication of disputes through an impartial agency was to prevent strikes and maintain industrial peace in the interest of economic development. However, excessive reliance on compulsory adjudication of industrial disputes has aroused controversy in India about its efficacy in maintaining industrial peace in the industry. The compulsory adjudication system has been operating in India for a sufficiently long period and a time has come when a fresh appraisal[33] of industrial relations goals as well as the methods to achieve them should be considered in all its aspects. The working of the existing system, therefore, would have to be assessed and evaluated before making the necessary

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32. **The American Labour Review**, 14 (December 1965).

33. The National Commission on Labour had been constituted to study different aspects and problems of labour in India.

changes. In other words the question arises how far compulsory adjudication has proved beneficial in all respects for its desirability and continuance.

(i) **Elimination of Strikes**

One of the most important objectives of compulsory adjudication system is the elimination of industrial conflicts by providing an alternative method for the settlement of disputes through the three-tier adjudication system—labour court, industrial tribunal and national industrial tribunal. In spite of the procedural restrictions on strikes under the various labour laws the frequency and intensity of strikes have not been sufficiently minimised. Compulsory adjudication in India has not proved very effective either in the prevention or settlement of disputes. The average rate of work stoppages is distinctly higher in India[34] than the corresponding rate in the countries which do not follow the policy of compulsory adjudication. Not doubt, there has been a decrease in the man-days' lost immediately after the Central government employees' strike 1960, the Chinese aggression 1962 and the Pakistani aggression 1965. But a careful analysis would reveal that the sudden decrease in the work stoppages was either due to Draconian measures taken by the government against striking unions or due to patriotic fervour against the foreign aggressors. The Code of Discipline too has not been taken seriously by labour and management in avoiding extreme recourse to the settlement of the industrial disputes. The system of compulsory adjudication which is primarily a device for the prevention of strike has failed in establishing industrial peace. Penal clauses against strikers have not been enforced although there have been many illegal strikes. During the last 22 years no such action has been taken against the workers or unions for going on illegal strikes. The Code of Discipline provides sanction against a union involved in an illegal strike by way of de-recognition of such unions. Yet this too is not an effective deterrent from preventing unions from going on strike. The National Commission on Labour

34. A. M. Ross and D. Irwin, Strike Experience in Five Countries, **Industrial and Labour Relations Review**, 333, (4th April, 1951).

has suggested the abolition of the three-tier adjudication machinery and has recommended the establishment of Industrial Relations Commission at the national and state levels with powers of adjudication, conciliation and recognition of trade unions. The idea of Industrial Relations Commission has been borrowed from British Donovan Commission Report of 1968. While banning strikes in public utilities the Commission has recommended a 30 days' strike in non-essential services before intervention by Industrial Relations Commission. The idea behind this provision perhaps seems to enable labour-management to utilise this opportunity for initiating the process of collective bargaining without the intervention of the Industrial Relations Commission. The recommendations of the National Commission on Labour is just opposite of the U.S. practice called 'cooling off periods'. In 'cooling off period' a party to the collective contract may negotiate a change in the contract giving 60 days' advance notice. After the sixty day 'cooling off period' employees may strike if negotiations were not successful. In India the National Commission on Labour has adopted a reverse attitude of free-strike period of 30 days followed by compulsory adjudication by the Industrial Relations Commission. This arrangement it is said has been devised in India with a view to let off the steam and bottled up emotions which otherwise is not permitted in essential services. It in a way incites the workers to go on a strike and the employers to declare a lockout irrespective of the merits of the situation. It is in this strange fashion that the National Commission on Labour in India wishes to promote collective bargaining. In fact the Commission has failed to give clear guide-lines for minimising strikes and for promoting constructive collective bargaining in place of existing compulsory adjudication system. Although by a artificial device it proclaims to introduce compulsory recognition of unions in industry, wishes to free the industrial relations machinery from political and governmental influences yet the National Commission on Labour has brought in the worst type of unbridled adjudication dominated by the despotism of the irresponsive and all-powerful Industrial Relations Commission unique and unknown in the labour history of any

country. Surely this arrangement can neither lead to industrial harmony nor social justice nor quick economic development.

(ii) Adjudication Process—Problems

Though social and economic justice is the ultimate ideal of compulsory adjudication system, its immediate aim is to secure equitable justice both to workers and employers and maintain harmony in the industry. So the Government of India in introducing compulsory adjudication system was not so much concerned with the building up of strong trade union movement and promoting collective bargaining as it was concerned with economic development and political stability. It is undeniable fact that the adjudication machinery did contribute to a reasonable extent in securing a fair deal to workers in regard to wages, bonus, dearness allowance, gratuity and other conditions of service. However, now there need not be dogmatic adherence to a system which impairs the dynamic growth and vitality of the labour and management in the settlement of their disputes themselves, which makes them dependent on an outside agency for the solution of their day-to-day problems and which above all results in creating a psychological and mental gulf between them. Now, the time has come for a phased withdrawal if not abolition of the compulsory adjudication system. But the National Commission on Labour has still insisted on the continuance of compulsory adjudication in varying forms. The prohibition on strikes in public utilities and restriction on strikes in non-utilities has made compulsory adjudication more stricter and rigid in its form and spirit than before. It seems that National Commission on Labour has not given serious thought in strengthening the trade union movement which is so vital for political stability.

(a) Absence of Uniform Dispute Settlement Machinery

Since in India labour is a concurrent subject under the Constitution there exist different labour dispute settlement machinery at Central and the State level. Besides the Central adjudication machinery, similar dispute settlement mach-

inery with some modification is operating under the Bombay Industrial Relations Act, 1946, the Madhya Pradesh Industrial Relations Act, 1960, and Gujarat Industrial Relations Act, 1960. There is no representation of labour and management in these bodies. Besides being slow moving, dilatory and very cumbersome this machinery is not made readily available either to the workers and their organizations or to the employers, because the right to refer a dispute to an adjudication at any time and with any terms of reference, is reserved for the appropriate government—central or state as the case may be. The refusal to refer to adjudication a particular demand even without assigning any reason, has been reserved for the absolute discretion of the appropriate government. Such a situation always leads to strife between labour and management. Political inclinations and ideological affiliations of workers' organizations continue to influence the minds of the authorities concerned when deciding whether workers should or should not be permitted to avail themselves of the tardy process of conciliation and adjudication prescribed by law. The National Commission on Labour has, however, suggested the establishment of uniform dispute settlement machinery both at the central and state levels. It has also recommended that power of reference would not lie in the government, yet the other drawbacks would still continue in the new machinery as it is too judicially biased.

(b) **Lack of Proper Personnels**

The industrial relations machinery established consists of conciliation officers, labour courts and industrial tribunals. Many conciliation officers or members of the tribunal have no knowledge of industry. In many a case they are a district or High Court judge today and industrial tribunal day-after-tomorrow. Many personnel of this machinery do not have the proper aptitude and motivation necessary to bring about a settlement of dispute and promote industrial harmony. They do not have a degree of specialized training and competence to handle disputes efficiently or wisely. Also the industrial tribunals do not consist of the representatives of the unions and employers for the settlement of labour disputes by which

they lose faith in the decision making body, The National Commission on Labour while suggesting Industrial Relations Commission have stressed on the training of conciliation members of the conciliation wing but have not laid stress on the quality, competence and aptitude of the judicial members of the Industrial Relations Commission. Experience of past labour history shows that judges cannot be the fit persons **to decide matters which are to be decided by extra-legal consideration.**

(c) **Time Involved**

The average time for hearing a discision of a dispute from industrial tribunal to Supreme Court is now about one and a half years. There are instances[35] where workers died by the time the awards were made by these bodies. In one case, the reference was made in 1957 and the award was made in 1961 and the Supreme Court gave its decision in 1963. In some cases decisions take years, illwill and disaffection go unabated and even greater intensity. This criticism may equally apply to the new proposed industrial relations machinery.

(d) **Management and Labour Litigous Attitude**

Apart from its excessively time consuming quality compulsory adjudication has led to endless litigation. Moreover none of the parties accepts the award in good faith. On the contrary, the awards of judgement of the labour tribunals leave a trail of bitterness which naturally deepens the already existing mistrust and prejudices of labour and management towards each others. Lack of faith and confidence leads to further conflicts which in turn is carried[36] to tribunals, from there to High Courts and High Courts to Supreme Court and finally when award is published, one party is down and the other is up. It is a case of victory and defeat. This closes the door between the parties for any possibility of mutual settlement of disputes, thereby defeating the chances of collective bargaining.

35. **Meenglas Tea Estate v. Its Workmen,** (1963), 2 L.L.J. 393.
36. **The Times of India,** January 15, 1963.

(d) **Non-implementation of Awards**

There have been many cases of non-implementation of awards and decisions of tribunals either fully or partially. Even unanimous recommendations of the tripartite body like the Bonus Commission or Wage Boards and the Indian Labour Conference have not been made binding on the courts or tribunals. For instance the unanimous agreement on norms for the fixation of the need-based minimum wage in the 15th Indian Labour Conference has not as yet seen the light of the day. There must be suitable legislation to implement the common agreed norms at the various tripartite bodies including the awards of the tribunals.

(e) **Legal Technicalities**

Indian industrial relations are still riddled with legal technicalities and formalities. Sometimes one loses a case on merely technical grounds like limitation, estoppel, res judicata, lack of jurisdiction etc. Legal technicalities are not on the wane and an attempt should be made to make our industrial relation apparatus as informal, simple and non-legal as possible.

(f) **Conflicting Decisions**

Since the adjudication system was new to the country and there were no guiding principles, the adjudication authorities had to rely upon their own individual judgement. A natural result was that very often there were conflicting decisions, on wages and bonus especially. So what appears to be settled law gets unsettled. The example of original Full Bench Formula on bonus is a remarkable example which has been constantly undergoing a change till the enactment of Payment of Bonus Act, 1965. Likewise there are conflicting judgements on the applicability of law of evidence and procedure to labour courts and on the interpretation of various labour concepts which are incorporated in various labour statutes.

(iii) **Adjudication—Trade Unionism**

So long as compulsory adjudication remains on the statute book in India the chances of strong independent trade

unionism are a remote possibility. It has made the trade unions functionally ineffective—socially less responsible, psychologically powerless and unnecessary in the imagination of workers and the general public. Compulsory adjudication in fact has become an alternate in lieu of collective bargaining which draws its inherent strength from stable independent trade unions. It is because of the compulsory adjudication system that the trade unions have not as yet secured public sympathy and workers' faith. For various reasons they are still branded and ridiculed for strikes and other forms of industrial conflicts. The position has remained unchanged in spite of new trade union law reforms suggested by the National Commission on Labour.

Many of the present evils of our industrial relations system can be minimized if there is one union in one industry verified by an independent agency as the most representative organization of work-people for the purposes of negotiations with the employers. This would pave the way to peaceful settlement of disputes by way of direct negotiations and voluntary arbitration. The existence of such an agency may in the long run diminish multiplicity of trade unions and political unionism leading to industrial democracy which would further create understanding and sympathy between labour and management towards each other. The National Commission on Labour has recommended the setting up of such a body for the recognition of union on the basis of both verified membership and secret ballot. The main purpose of all this is to set up a bargaining unit in the industry. In the future set up of India's industrial development the trade unions should be geared[37] as instruments of economic and social change. If the trade union leadership of the future does not respond to this awareness on the part of the new manager there is a risk of either labour claims being ignored or of labour continually looking upon the State as its guardian. Neither of the trends will be healthy. I, therefore, suggest that the unions be reorganized by the workers themselves on an unit-wide or in-

37. See Observations of Ashok Mehta, Deputy Chairman, Planning Commission—Hindustan Times, July 23, 1965.

dustry-wide basis without any political credo or ambition—throwing their strength behind specifically trade union issues and causes. The first step in the right direction will be the overhauling of the existing industrial compulsory adjudications system. Unfortunately the National Commission on Labour has recommended the continuance of compulsory adjudication system in some modified form. Those who insist on compulsory adjudication must understand that trade unionism is not a lubricant.[38] It is an irritant. Unless it fights for the rights and comforts of the workers it is not a trade unionism. Those who favour compulsory adjudication system also justify its continuance mainly on two grounds, i.e., the existence of a weak and divided trade union movement and the loss of production through strikes and lock-out which a developing country like India cannot afford. It is true that in the short term consequences of compulsory adjudication, workers are benefited—especially where they are not strongly organized. However, on account of excessive reliance on governmental intervention the unions themselves have remained weak and divided and there is no positive inducement to workers to build strong, stable and united trade union movement. The country has had the experience of the operation of compulsory adjudication over a long period and it is time the Government of India, the employers and the trade unions should consider this matter de novo in all its aspects and ramifications and suggest measures for effectively encouraging collective bargaining and direct settlement of disputes necessary not only in the interest of industrial democracy but also for political democracy.

(iv) National Commission on Labour Management Relations—Appraisal

National Commission on Labour was expected to give constructive, progressive and dynamic solutions of intricate labour-management problems to strengthen political stability in the country and to establish industrial democracy in the industry. Its main purpose was to suggest reforms and suitable changes in the existing industrial relations set up to meet

38. 84 International Lab. Rev., 321 (1961).

new situation and new needs of labour and industry. But on vital matters like the need-based wage, encouragement to collective bargaining, strengthening of trade union movement, eliminating outsiders from unions, the feasibility of reducing the scope of compulsory adjudication the Commission has failed to give new concrete guide-lines. Although it was mainly concerned with the establishment of a new industrial relation machinery freeing from political pressures and to advise some ways and means for establishing a bargaining union in the industry, yet if we see the entire report of the Commission in its totality, we do not find anything new in the report of the Commission. The Commission could not go on vital question concerning industrial relations. All the trade unions including the INTUC have opposed the recommendations and suggestions of the Commission on matters which concern the maintenance of industrial harmony. The AITUC boycotted the Commission as a protest against the Central Government's policy towards its employees. The Labour Ministers too have criticised the report for denuding government of its power of reference concerning adjudication. The Commission's recommendations fall short of the expectations on these grounds:

1. The Industrial Relations Commission are more judicially biased. The Industrial Relations Commission should have been tripartite in character so that labour and industry could have a sense of actual participation in the formulation of industrial relations policy. This perhaps could indirectly stimulate collective bargaining process leading to industrial harmony.

2. Although the National Commission on Labour has suggested the need of one union in one industry yet it vacillated on the method of choosing a representative union.

3. It has not fully realised and assessed the need for establishing an independent non-political and economic bread and butter trade unionism. As already suggested, there can be no real economic growth and industrial development without trade union development and there can be no industrial harmony without really strong independent trade union

movement. The Commission should have given more thought on this vital problem which it has not done. Also it has not positively recommended the ban on affiliation of trade unions with political parties on the pretext of constitutional propriety and thus it has succumbed to outside political pressures. It has also not recommended the ratification of International Labour Organization conventions of freedom of association and collective bargaining. It pays merely lip service to collective bargaining by suggesting the creation of an independent machinery for granting recognition to the trade unions, yet the existence of an alternate machinery in the form of compulsory adjudication by Industrial Relations Commission would not make workers and employers to bargain themselves. In fact, there is no in-built change or system suggested by the Commission which could accelerate the growth of harmonious relations in the industry. It has suggested a strike ban in essential services including government employees. However, it has not recommended in clear terms the position of civil servants other than government industrial employees, in so far as the right to strike of civil servants concerns. As already stated, it has strangely allowed a free period of 30 days to strike or lock-out in non-essential services. This recommendation cannot stimulate collective bargaining in view of an impending threat of compulsory adjudication by Industrial Relations Commission. As regards voluntary arbitration, it has not suggested anything new.

As regards the recommendations of the Commission concerning tripartite consultations, the Commission has approved the existing tripartite mechanism with a view to bring reforms. However, the Commission has not given thought on the feasibility of including the consumers and other interests in the tripartite consultations. In fact the report of the Commission is more abortive in character than a realistic appraisal and evaluation of our existing industrial relations.

(v) New Role of the State

Hitherto the State has been playing a dominant role in controlling and guiding labour-management relations through its lop-sided adjudication machinery supplemented by other

half-hearted and ill-executed non-compulsory measures like the Code of Discipline, the Truce Resolutions etc. The net result has been that neither has it been possible to secure the desired industrial peace through adjudication nor has it been possible to secure an atmosphere of good-will and harmony between trade unions and employers. This is because of confusion as to the objectives and goals of our industrial relations policy. In spite of the report of the National Commission on Labour it is not yet clear whether India like Australia or New Zealand is continuing to adhere to compulsory adjudication framework or is moving like Japan and Philippines from compulsory adjudication system of labour disputes to rationalized collective bargaining system as prevails in the United States, United Kingdom and Germany.

However, the consensus that labour disputes should be settled primarily by labour and management themselves is gaining ground in India for resolving employee-employer conflict. The 'Giri approach'—advocating the policy of internal settlement of disputes through collective bargaining and voluntary arbitration—which appeared unrealistic and premature in early 1950 seems to be correct if judged in the present perspectives of social change in India. This is gradually being realized that there must be a break with the existing adjudication system. The State must disown[39] its responsibility and find democratically devised solutions to the problems as they present themselves. For the more one looks up to the State for help the less democratic the State becomes in process. Professor Kirkaldy also remarks[40] that:

> "while statutes, rules, regulations, pains and penalties have their place in the ordering of industry, they do not touch the core of the problems of industrial relations."

It is self-evident from the Indian experience that good labour-management relations cannot be brought about by law. The process of controlling industrial relations must be obviously based greatly on voluntary ethical codes and cus-

39. Acharya, Industrial Scene, **The Times of India**, January 16, 1963.

40. **The Spirit of Industrial Relations**, 58, (1947).

toms and only partly upon laws. The methods of negotiations, the terms of collective agreement and the conduct of arbitrations are the areas where social control should be exercised through informal methods and practices of the labour and the management rather than by legislation. Law must have its exclusive spheres to guide and control labour-management relations in situations which imperil public peace, health and public safety. Professor J. H. Richardson also is of the view that existing social control in the form of compulsory adjudication[41] should be much more sparingly used than in the past. The government intervention of course must aim at promoting and protecting the public interest without injuring the process of voluntary settlement through collective bargaining.

State, therefore, must play a progressive and positive role in removing the pitfalls which have stood in the way of mutual, amicable and voluntary settlement of labour disputes. The new labour policy must reflect a new approach and new objectives. The decision making should be transferred from the State to the parties themselves. The main objective should be not merely the prevention of the strikes to maintain continuity in production. Instead a policy of voluntary negotiations, joint consultation, voluntary conciliation, mediation and arbitration should be adopted to make workers and employers more responsible and conscious of their new role in the maintenance of peace and productivity. According to Chester Bowles for the new society being built up by India[42] requires imaginative new approach in many fields, but nowhere more than in labour-management relations. Of course the State should not withdraw altogether from the industrial relations scene. It must be concerned with direct regulation of wages and other conditions of service only where workers are not sufficiently organized to bargain with their employers. The same can be said of situations where the strike tends to become a danger to social system and to political institutions. There it must keep the ring-fence in its hands to meet abnormal and extraordinary situations. It can also embark on protective

41. **Seventeenth Tripartite, 53, 54 (AITUC Publication, 1959).**
42. **American Labour Review, 6, January, 1966.**

legislation for women, young or old persons, etc. However, legislation cannot do everything for labour alone and much more in the field of labour relations. As Kirkaldy[43] observes:

> "Unwise intervention by State or unwise abstention from intervention, premature attempts of conciliation or too-long delayed offers of advice and assistance, can prolong unnecessarily industrial disputes. Of conciliation there is little to be said except that the government should provide a well-organized conciliation service, that fewer the rules and regulations there are regarding conciliation the better, because its success often depends on its informality and on the personality of the conciliator."

The same can be said with regard to other forms of voluntary settlement of disputes. The State should only provide facilities for labour and capital to submit their disputes for voluntary arbitration where the parties fail to reach an agreement on the interpretation of a particular stipulation. It would encourage a spirit of co-ordination, cooperation and understanding in the industry.

State should do each and every thing in promoting and strengthening the trade union movement. There should be a neutral and independent all-India body like the U.S. National Labour Relations Board to verify and determine by secret ballot the representative character of the unions for the purposes of collective bargaining. Trade unions, thereby, would no more remain the paradise for outside politicians. Employers would be more favourably inclined to enter into agreement with representative trade unions. It would certainly create healthy atmosphere for collective bargaining, voluntary arbitration, voluntary conciliation for settling their differences if need be by reference to an industrial court of arbitration for compulsory arbitration of labour disputes. In the fitness of things it would be desirable to ratify International Labour Organization conventions and recommendations concerning Freedom of Association and Protection of the Right

43. **The Spirit of Industrial Relations, 55, (1960).**

to Organize Convention 1947, the Right to Organize and Collective Bargaining Convention 1949 and the International Labour Organization recommendations concerning joint consultation and voluntary arbitration. This would have a psychological significance necessary for labour-management cooperation.

Of course there can be no final and perfect solution to labour-management problems. The difficulties of social transition and social change are not limited to employee-employers relations. Conflicts between values and institutions occur, new ideas and organizations evolve to suit the needs of the times and the society in each period." The characteristic observations of Mr. John R. Steelman, the Director of War Mobilization and Reconversion showing imperfectness of human relations in industry, quoted by Kirkaldy, are of special significance. He says:

> "In the final analysis, however, the attainment of peaceful industrial relations does not rest with legislation. The relations between men and management are human relations. Even the best legislation can be no more than framework for solving the recurring problems of human relations. Law libraries are full of statutes and court decision on the conduct of married life. But no statute and no court decision ever made a marriage happy and successful. This is just as true in industrial relations. It is just as hard and just as impractical to prescribe iron-bound rules of behaviour in the dealings between labour and management as it would be to prescribe them for husband and wives.
>
> The solution lies in the hands of employers, employees and their representatives. It is they who must bring to their relationship the good faith, tolerance and willingness to cooperate, without which no legislation affecting collective bargaining can be truly effective, Peace and harmony and efficiency cannot be legislated; cannot come by decree or command. Therefore,

44. **The Spirit of Industrial Relations**, pp. 58-59.

a tremendous burden of responsibility for peaceful labour relations, for full production and for a stable economy lies squarely on the shoulders of the men and women of industry and labour. The Federal Government can lay down the broad rules of the game; it can act as a friendly conciliator to both sides when disputes arise. The Government should take stronger measures only when the public welfare is endangered. Recognition, by both labour and management, of their own vital responsibility to get along together without government intervention is of overriding importance."

ANNEXURE No. 2

Membership of All India Organisations*

Year	Number of Unions Affiliated				Total	Membership				Total
	INTUC	HMS	AITUC	UTUC		INTUC	HMS	AITUC	UTUC	
1953	587	220	334	154	1,295	9,19,258	3,73,459	2,10,214	1,29,242	16,32,873
1954	606	331	925	169	2,031	8,88,291	4,92,362	..	..	..
1955	604	157	481	228	1,470	9,30,968	2,11,315	3,06,963	1,95,242	16,44,488
1956	617	119	558	237	1,531	9,71,740	2,03,798	4,22,851	1,59,109	17,57,498
1957	672	138	..	..	..	9,34,385	2,33,990	..	..	..
1958	727	115	807	182	1,831	9,10,221	1,92,948	5,37,567	82,001	17,22,737
1959	886	185	814	172	2,057	10,53,386	2,41,636	5,07,654	90,623	18,63,290
1960	860	190	886	229	2,165	10,53,386	2,86,202	5,08,662	1,10,034	19,58,584

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