LABOUR LAW -1

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Unit-I: Trade Unions and Collective Bargaining

Trade Unionism in India

Trade Unions are voluntary organization of Workers as well as Employers formed to protect and promote the interest of their members. They are the most suitable organizations for balancing and improving the relations between the employer and the employees. Trade Unions have made headway due to rapid industrial development. The workers come together to maintain and improve their bargaining power on wages and working conditions. The first organized Trade Union in India named as the Madras Labour Union was formed in the year 1918. From the beginning itself, Trade Unions were not confined to workers alone. From 19thCentury itself there were Employer's associations in the form of Chamber of Commerce, Industrial Associations etc. to protect and promote the interests of their members in a concerted manner. After independence, expansion of industrial activity and grouping worker's Trade Unions acted as a spur for strengthening and expansion of employers' organization.

In industrially advanced countries, trade unionism has made a great impact on the social, political and economic life. India, being an agricultural country, trade unionism is restricted to industrial areas and it is still in a stage of growth. The earliest known trade unions in India were the Bombay Millhand's Association formed in 1890, the Amalgamated Society of railway servants of India and Burma formed in 1897, Printers' Union formed in Calcutta in 1905, the Bombay Postal Union which was formed in 1907, the Kamgar Hitwardhak Sabha Bombay formed in 1910.

Trade Union movement began in India after the end of First World War. After a decade following the end of First World War the pressing need for the coordination of the activities of the individual unions was recognized. Thus, the All India Trade Union Congress was formed in 1920 on a National Basis, the Central Labor Board, Bombay and the Bengal Trades Union Federation was formed in 1922. The All India Railway men's Federation was formed in the same year and this was followed by the creation of both Provincial and Central federations of unions of postal and telegraph employees.

The origin of the passing of a Trade Unions Act in India was the historic Buckingham Mill case of 1940 in which the Madras High Court granted an interim injunction against the Strike Committee of the Madras Labour Union forbidding them to induce certain workers to break their contracts of employment by refusing to return to work. Trade Union leaders found that they were liable to prosecution and imprisonment for bona fide union activities and it was felt that some legislation for the protection of trade union was necessary. In March, 1921, Shri N. M. Joshi, then General Secretary of the All India Trade Union Congress, successfully moved a resolution in the Central Legislative Assembly recommending that Government should introduce legislation for the registration and protection of trade unions.

Opposition from employers to the adoption of such a measure was, however, so great that it was not until 1926 that the Indian Trade Unions Act was passed.

Indian Trade Unions Bill, 1925 having been passed by the Legislature received its assent on 25th March, 1926. It came into force on 1st June, 1927 as the **Indian Trade Unions Act, 1926** (16 of 1926). By section 3 of the Indian Trade Unions (Amendment) Act, 1964 (38 of 1964) the word

"Indian" has been omitted and now it is known as THE TRADE UNIONS ACT, 1926 (16 of 1926).
(b) Definition of Trade Union and Trade Dispute

Trade Union

Trade Union. Section 2(h) of the Trade Unions Act, 1926 defines 'Trade Union" which is reproduced below:
"Trade Union " means any combination, whether temporary or permanent, formed, primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions: Provided that this Act shall not affect:
(1) *Any agreement between partners as to their own business;*
(2) *any agreement between an employer and those employed by him as to such employment; or*
(3) *any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.* The main part of the definition is analyzed as under: "Trade Union" means:

(1) any combination, whether temporary or permanent:
(2) formed primarily for the purpose of
(a) Regulating the relations between (1) workmen and employers, or (2) workmen and workmen, or (3) employers and employers, or
(b) For imposing restrictive conditions on the conduct of any trade or business, and
(3) Includes any federation of two or more Trade Unions.
Thus a ombination can be a "Trade Union" if it is made primarily for the purposes as provided in S. 2(h) of the Trade Union Act, 1926.

In *Registrar, Trade Unions verses M. Mariswamy,* 1947 Lab 1C 695 (Kant), the Mysore State Employees' Provident Fund Employees' Union was held to be a Trade Union as the activity of the Provident Fund Organisation is 'industry'. A single Judge of the Karnataka High Court observed:
"If the said section is analyzed, it will be clear that any combination, whether temporary or permanent will be a Trade Union, if it is formed primarily for one of the following purposes: (1) to regulate the relations between workmen and employers; (2) to regulate the relations between workmen and workmen; (3) to regulate relations between employers and employers; (4) for imposing restrictive conditions on the conduct of any trade or business. The expression 'Trade Union' also includes federation of two or more Trade Unions. It is clear from the definition of the expression 'Trade Union' that it could be a combination either of workmen or of employees or of both, provided it is formed primarily for one of the purposes mentioned in clause (h) of Section 2 of the Act. It is therefore, possible to have a Trade Union consisting only of employers. The emphasis in Section 2(h) is on the purpose for which the Union is formed and not so much on the persons who constitute the Union.".

In *Rangaswami verses Registrar of Trade Unions,* (Mad.) Madras Raj Bhavan Workers' Union did not come within the scope of the Trade Unions Act, 1926 so as to entitle it to registration there under. The single Judge concluded that it could not be said that the employees of Raj Bhavan were employed in a trade or business carried on by the employer. The services rendered by them were purely of a personal nature. The single judge of the Madras High Court observed:

"The term 'trade union' as defined under the Act contemplates the existence of the employer and the employees engaged in the conduct of a trade or business. The definition of the term 'workmen' in Section 2(g) would *prima facie* indicate that it was intended only for interpreting the term 'trade dispute'. But even assuming that definition could be imported for understanding the scope of the meaning of the term 'trade union' in Section 2(h), it is obvious that the industry should be one as would amount to a trade or business i.e., a commercial undertaking. So much is plain from the definition of the term 'trade union' itself. . . I am very doubtful whether at all it could 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 *pan materia,* that is, as forming one system and interpreting one in the light of another."

Thus for a Trade Union the following conditions must be present:
1. It is a combination of two or more persons.
2. The principal object of the combination must be regulating the relation between workmen *inter se,* or between employers *inter se* or between workmen and employers. The object of the combination may be imposing restrictive conditions on the conduct of any trade or business.
3. The personnel must be either employers or workmen.
4. Where the persons are workmen, they must be employed in a trade or industry. There must be a contract of employment and potentiality to raise a trade dispute. The word 'industry' must be understood in the sense of a commercial undertaking.
Therefore, government servants cannot form a Trade Union under the Trade Unions Act, 1926. Thus every trade union is an association but every association is not a trade union.

Trade Dispute

Trade Dispute. According to S. 2(g) of Trade Unions Act, 1926 *"trade dispute " means any dispute between employers and workmen or between workmen and workmen or between employers and employers which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.*
Thus S. 2(g) gives the definition of "trade dispute" as well as that of "workmen". The first part of S. 2(g) which defines "trade dispute" is analyzed as under:
"Trade dispute" means any dispute:
between employers and workmen, or

between workmen and workmen, or
between employers and employers, which is connected with:
employment, or
non-employment, or
the terms of employment, or
the conditions of labour, of any person.
The definition of "trade dispute" in the Trade Unions Act, 1926 is almost identical with the definition of "industrial dispute" in the Industrial Disputes Act, 1947. Therefore, most of the discussion on "industrial dispute" given earlier will also be relevant here.

(c) Registration of Trade Unions

Registration of Trade Unions
Appointment of Registrars. Sections 3(1) provides that the appropriate Government has to appoint a person to be the Registrar of Trade Unions for each State. Section 3(2) provides that the appropriate Government may appoint as many additional and deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar, such power and functions of the Registrar.
The appropriate government may specify and define the local limits within which any such additional or deputy Registrar shall exercise and discharge the powers and functions specified.
In *North Eastern Rly. Employees Union verses* 3*rd ADJ,* (2006) 10 SCC 417, it was held that Registrar is the authority charged with the duty of administering the provisions of the Act. Hence, High Court's order designating the General Manager, North Eastern Railway as the authority to hold the election of the North Eastern Railway Employees Union was held erroneous. Therefore, the elections directed to be held under the supervision of the Registrar or an officer designated by him for that purpose.

Mode of Registration. Section 4 of the Act prescribes the mode of registration of Trade Unions. According to sub-section 1 of Section 4 "Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade' Union under this Act." The first proviso to the sub-section (1) [inserted by Act 01 200) (w.e.f. 9.1.2002)] states that no Trade Union of workmen shall be registered unless at least ten per cent, or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union, on the date of making of application for registration. The second proviso [inserted by Act 2001^w.e.f. 9.1.2002] states that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Sub-section 2 of Section 4 prescribes that "where an application has been made under sub-section (I) for the purpose of registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that at any time after the date of the application, but before the registration of the Trade Union, some of the applicants but not exceeding half of the total number of persons who have made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar disassociating themselves from the application". It means that if only half or less than half of the members ceased to be members of the Union or disassociate themselves from applications as aforesaid, the application for registration shall remain valid.

Application for Registration. According to S. 5 a Trade Union may become a registered Trade Union in the following manner. The section is reproduced below:
"(1) Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a Statement of the following particulars, namely:
(a) The names, occupations and addresses of members making the application; (aa) in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
(b) The name of the Trade Union and the address of its head office; and
(c) The titles, names, ages, addresses and occupation of the office-bearers of the Trade Union.
(2) Where a Trade Union has been in existence for more than one year before the making of the application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed."

According to Regulation 3 of the Central Trade Union Regulations, 1938, "every application for registration of a Trade Union shall be made in Form A". Regulation 7 prescribes that if the application is made by a Trade Union which has previously been registered by the Registrar of any State the Union shall submit with its applications a copy of the certificate of registration granted to it and copies of the entries relating to it in the Register of Trade Unions for the State. According to Regulation 8 the fee payable for the registration of Trade Union shall be Rs. 5/-.
Advantages of Registration. Registration of Trade Unions is not necessary. A Union already formed can be registered. A registered Trade Union has the following advantages or privileges:
(1) **Body corporate.** On registration a Trade Union acquires the status of a body corporate by the name under which it is registered (S. 13). Thus a registered Trade Union has a separate legal entity.
(2) **Perpetual succession and a common seal.** A registered Trade Union shall have a perpetual succession and a common seal (S. 13).
(3) **Power to acquire and hold property.** A registered Trade Union shall have a right to acquire and hold both movable and immovable property (S. 13).
(4) **Can sue and can be sued.** A registered trade union can sue and be sued (S. 13).
(5) **Immunity from prosecution.** Section 17 grants immunity to office-bearers or members of a registered Trade Union from punishment under S. 120-B(2) of the Indian Penal Code, if the

offence arises out of any agreement entered into between members whose purpose is to further the objects specified in S. 15 of the Trade Unions Act. No other offence is protected by S. 17. The agreement should not be an agreement to commit an offence.

Section 18(1) grants immunity from civil action to registered Trade Union, any office-bearer of the registered Trade Union or a member, of the registered Trade Union. The immunity is for any action done (1) in contemplation of a trade dispute to which a member or the Trade Union is party or (2) in furtherance of a trade dispute to which a member of the Trade Union is a party. The immunity is only for action made exclusively on (he ground (1) that such act induces some other person to break a contract of employment, or (2) that it is in interference with the trade, business, employment of some other person, right of some other person to dispose of his capital as he wills or right of some other persons to dispose of his labour as he wills.
Section 18(2) affords immunity to a registered Trade Union in respect of any tortuous act done by an agent of the trade union in contemplation or furtherance of a trade dispute, it is proved that person acted without the knowledge of or contrary to express instruction given by the executive of the trade union.
(6) **Enforceability of agreement.** An agreement between members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in retraint of trade (S. 19).
(7) **Certificate of registration.** The certificate of registration issued by the Registrar will be conclusive evidence that the Trade Union has been duly registered (S. 9).

Provisions to be contained in the rules of a Trade Union. For internal working and for governing the relationship between the members and the Trade Union a Trade Union is required to have certain rules dealing with certain matters specified in S. 6 of the Trade Unions Act and in the manner specified in Schedule II of the Central Trade Unions Regulation 1938. Section 6 is reproduced below:
"A Trade Union shall be entitled to registration under this Act unless the executive thereof is constituted in accordance with the provisions of this Act and the rules thereof provide for the following matters, namely;
(a) The name of a Trade Union;
(b) The whole of the objects for which the Trade Union has been established;
(c) The whole of the purposes for which the general funds of a Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
(d) The maintenance of a list of members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;
(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honourary or temporary members as office bearers required under Section 22 to form the executive of the Trade Union;
(ee) the payment of a subscription by members of the trade Union which shall be not less than
(1) one rupee per annum for rural workers;

(2) three rupees per annum for workers in other unorganized sectors; and
(3) twelve rupees per annum for workers in any other case;

(f) the conditions under which any member shall be entitled to any benefit assured by the rules under which any fine or forfeiture may be imposed on the member;
(g) The manner in which the rules shall be amended varied or rescinded;
(h) The manner in which members of the executive and the other office bearers of the Trade Union shall be appointed and removed;
(hh) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;
(i) the safe custody of the funds of the Trade Union, and annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and
(j) The manner in which the Trade Union may be dissolved."

According to clause (b) of S. 6 the rules of a Trade Union must provide for whole of the objects for which the Trade Union has been established. In *I.T. Commissioner, W. Bengal verses Indian Sugar Mills Association,* AIR 1975 SC 506. Rules 4 and 64 of a registered Trade Union (respondent) were repugnant with each other. It was contended that Rule 64 should be treated as void as it was inconsistent with the stated objects of the Union. The Supreme Court held that the Court has no right to assume some of the stated objects of the Union as primary to declare others in apparent conflict with them as of ho effect. All the rules formed by the Union coexist. The Court has no right to rewrite the rules of a registered Trade Union by deleting any of them.
In *Bokajan Cement Corporation Employees' Union verses Cement Corporation of India Ltd.,* (2004) 1 SCC 142 : AIR 2004 SC 245 : 2004 SCC (L&S) 23, the Supreme Court held that S. 6(e) does not provide for automatic cessation of members of union on cessation of employment. It deals only with eligibility conditions for admission of ordinary and executive members of a trade union. The requirement in S. 6(e) that ordinary members of a trade union shall be "persons actually engaged or employed in an industry" is only a condition for admission, not one that provides for automatic cessation of membership on cessation of employment.
In *B.S.V. Hannmantha Rao & Another verses Deputy Registrar of Trade Union and Deputy Commissioner of Labour and Others,* (1988) 1 LLJ 83 AP, it was held that the rules cannot be amended to provide for making the President of the Union as election authority, empowering him to nominate all office-bearers and denying authority to the general body to remove the president from office before the expiry of his term.

Clause (g) of S. 6 provides that the rules of a Trade Union must provide the manner in which the rules shall be amended, varied or rescinded. Section 28 (3) lays down that a copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration. Section 29 empowers the appropriate Government to make regulations for the purpose of carrying into effect the provision of this Act. Section 30 makes it obligatory to publish Regulations in the official *Gazette* and they will come into force after such publication. Regulation 9 of the Central Trade Union Regulations, 1938 provides that on receiving a copy of an alteration made in the rules of a Trade Union under S. 28 (3),

Registrar, unless he has reason to believe that the alteration has not been made in the manner provided by the rules of Trade Union, shall register the alteration in a register to be maintained for this purpose and shall notify the fact that he has done so to the Secretary of the Trade Union.
In *Indian Oxygen Limited verses Their Workmen,* AIR 1969 SC 306, the Supreme Court held that the combined effect of S. 6(g) 28(3), 29 and 30 and Regulation 9 is that a registered Trade Union can alter its rules only in the manner provided in those provisions.
Power to call for further particulars and to require alteration of name. In this respect S. 7 provides as follows:
"(1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of S. 5, or that the Trade Union is entitled to registration under S, 6 and may refuse to register the Trade Union until such information is supplied.

(2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or in the opinion of the registrar so nearly resembles such name as to be likely to deceive the public or the members of the either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made."
Registration. Section 8 provides that the "the Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration,"
In *re Inland Steam Navigation Workers Union,* it was held that the Registrar on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration *must* register the Trade Union. The Registrar has no discretion in this matter. The Registrar is not justified in refusing to register a union on the ground that the Union applying for registration is a union declared to be unlawful by the government under a different name. The functions of the Registrar are limited to seeing that the requirements of the Act have been complied with.
In *Keshoram Rayon Workers Union , Registrar of Trade Unions,* it was held that workmen of an industrial establishment can form any number of Trade Unions. There may be rival Unions. The Act does not require a Union applying for registration to give notice to all existing Unions,

In *Chemosyn (P) Ltd. & Others verses Kerala Medical and Sales Representatives Association,* (1988) II LLJ 43 (Kerala), it was held that a Trade Union registered under the Act is not a statutory body. It is not created by statute. Therefore, it is not amenable to writ jurisdiction.
In *ONGC Workmen's Association verses State of West Bengal and Others,* (1988) II LLJ 335 (Cal), it was held the Registrar of Trade Union has no quasi-judicial authority to hold any injury by allowing parties to examine witnesses and decide the dispute as to who are the real office-bearers. To decide such a dispute an inquiry may be held by the Registrar in the presence of both the rival groups claiming to be office-bearers in this regard is administrative in nature.
In *Tata Workers Union verses State of Jharkhand,* (2002) III LLJ 474 (Jhar HC), it was held that no provision of law provides for holding of election under the supervision of Registrar, Trade Union.

In *R.N. Singh verses State of Bihar,* 1998 LLR 645, it was held that provisions of S. 8 relate to only registration of a trade union. It is only a Civil Court which has jurisdiction to decide that dispute under the Trade Unions Act, There is no provision permitting or empowering the Registrar to refer internal disputes relating to office-bearers for adjudication to any other forum.

In *B. Srinivasa Reddy verses Karnataka Urban Water Supply & Drainage Board Employee s Association,* (2006) 11 SCC 731 (2): it was held that under the Trade Unions Act, 1926 an unregistered trade union or a trade union whose registration has been cancelled has no manner of right whatsoever. Even the rights available under the Industrial Disputes Act, 1947 have been limited only to those trade unions which are registered under the Trade Unions Act, 1926 by insertion of clause 2(qq) in the Industrial Disputes Act, 1947 w.e.f. 21.8.1984 defining a trade union *to mean a trade union registered under the Trade Unions Act, 1926.*

Certificate of Registration. The Registrar, on registering a Trade Union under S. 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act (S. 9).

Certificate of registration continues to hold good until it is cancelled.

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

Cancellation of Registration. According to S. 10 a certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar:

(a) On the application of the Trade Union to be verified in such manner as .may be prescribed, or

(b) If the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or (2) that the Trade Union has ceased to exist or

(3) Has willfully and after notice from the Registrar contravened any provision of this Act or

(4) Allowed any rule to continue in force which is inconsistent with any such provision, or

(5) Has rescinded any rule providing for any matter provision for which is required by S. 6;

(c) If the registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members.

The proviso to S. 10 requires that not less than two months' previous notice jn writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union. No such notice is necessary when the registration is withdrawn or cancelled on an application by the Trade Union itself.

In *Tata Electric Companies Officers Guild verses Registrar of Trade Unions, (*1994) 1 LLJ 125 (Bom), it was held that for cancellation of registration of a Trade Union willful contravention of provision of the Act is necessary. In this case the Trade Union did not file return due to misunderstanding of accounting year and the return was filed soon after receipt of show cause

notice from the Registrar. Under these circumstances the cancellation of registration on the ground of non-filing of return was held improper.

In *Bombay Fire Fighters Services Union, Mumbai verses Registrar Trade Unions, Bombay,* (2003) II LLJ 1100 (Bom), it was held that the cancellation of registration of a Trade Union in violation of mandatory provisions of S. 10 of the Act is illegal and improper.

Regulation 9 of the Central Trade Union Regulations, 1938 provides that the Registrar on receiving an application for the cancellation of registration shall, before granting the application, satisfy himself that the withdrawal or cancellation of registration was approved by a general meeting of the Trade Union, or if it was not so approved, that it has the approval of the majority of the members of the Trade Union. For this purpose, he may call for such further particulars as he may deem necessary and may examine any officer of the Union.

d. Disqualifications of Office-bearers, Right and Duties of Office-bearers and Members

Disqualifications of office-bearers of Trade Unions

Section 21-A states the disqualifications of office-bearers of Trade Unions. According to it a person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a Registered Trade Union if:

(1) he has not attained the age of 18 years;

(2) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has clasped since his release.

The expression 'moral turpitude' is not defined in the Act. Normally it refers to conduct which is contrary to the accepted rules of morality whether it is or is not punishable as a crime.

e. General and Political Funds of Trade Union

Section 15 provides that the general funds of registered Trade Union shall not be spent on any other objects than the following, namely:—

(a) The payment of salaries, allowance and expenses to office bearers of the Trade Union;

(b) The payment of expenses for the administration of the Trade Union including audit of accounts of the general funds of the Trade Union;

(c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights of the Trade Union as such or any right arising out of the relations of any member with his employer or with a person whom the member employs;

(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;

(e) the compensation of members for loss arising out of trade disputes;

(f) the allowances to member or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) the issue of on the undertaking of liability under policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
(h) the provision of educational, social or religious benefits for members including the payment of the expenses of funeral or religious ceremonies for deceased members or for the dependants of members; (i) the upkeep of a periodical published mainly for the purpose of discussing

(k) subject to any conditions contained in the notification, any other object notified by the appropriate Government in the Official Gazette. In *Maria Raposo verses H.M. Bhandarkar and Others,* (1994) II LLJ 680 (Bom), purchase of units of U.T.I, by the office-bearers of the Union in their individual names out of General Gund of the Union, was held to be a speculative activity and not investment.

Constitution of a Separate Fund for Political Purposes
Section 16 provides that a registered Trade Union may constitute a separate fund from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civil and political interests of its members, in furtherance of any of the objects specified below:
(a) the payment of any expenses incurred, either directly or indirectly by a candidate or prospective candidate for election as a member of any legislative body constituted under the constitution or of any local authority before, during or after the election in connection with his candidature or election; or
(b) The holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
(c) the maintenance of any person who is a member of any legislative body constituted under the constitution or any local authority; or
(d) the registration of electors or the selection of a candidate for any legislative body constituted under the constitution or for any local authority; or
(e) the holding of political meeting of any kind, or the distribution of political literature or political documents of any kind.

It is further provided that no member shall be compelled to contribute to that fund constituted for political purposes and a member who does not contribute to the said fund shall not be excluded from any benefit of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund, and contribution to the said fund shall not be made a condition for admission to the Trade Union.

f. Civil and Criminal Immunities of Registered Trade Unions

Immunity from Criminal Conspiracy in Trade Disputes
Before the passing of the Trade Unions Act, 1926 the workmen could not organise and participate in strikes for improvement of their conditions of service. There was a strike in 1918

by workers in Buckingham and Carnatic Mills, Madras. The Madras High Court awarded Rs. 75,000 as damages and imprisonment for Mr. B.P. Wadia under the common law principle of illegal conspiracy and combination in restraint of trade for organizing the strike. This case led to the agitation by workers and to legalise the trade unions, the Trade Unions Act, 1926 was passed. Section 17 lays down that "no office bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section 15, unless the agreement is an agreement to commit an offence."
Thus S. 17 confers immunity from liability in case of criminal conspiracy under S. 120-B of the IPC committed by an office-bearer or member of a registered Trade Union. The immunity is available only in respect of agreements made between the members for *the propose of furthering any such object of the Trade Union as is specified in S. 15 of the Act.* If the agreement is an agreement to commit an offence, protection of S. 17 is not available.

The effect of S. 17 is that an agreement by two or more members of a registered Trade Union to do or cause to be done any act in furtherance of a trade dispute shall not be punishable as a conspiracy unless such act if committed by an individual constitutes an offence. In *R.S. Ruiker verses Emperor,* AIR 1935 Nag. 149, it was held that "Trade Unions have the right to declare strikes and do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as Trade Unions Act permits, but there is nothing in that Act which apart from immunity from criminal conspiracy allows immunity from any criminal offences. Indeed any agreement to commit an offence, would under S. 17 of the Trade Union Act, make them liable for criminal conspiracy..." An agreement to commit an offence would under S. 17 make the member of a Trade Union liable for criminal conspiracy. But when the members of the Union resorts to unlawful confinement of persons or criminal tress pass or they indulge in criminal assault or mischief to a person or property there is no exemption from liability.

Immunity from Civil Suits in Certain Cases
Section 18 of the Trade Unions Act deals with the immunity from civil suits in certain cases. The section is reproduced below:
"(1) No suit or other legal proceedings should be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of *any act done in contemplation or furtherance of a trade dispute* to which a member of the Trade Union is a party on the ground *only* that such act induces some other person to break a contract of employment or that it is in 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 of his labour as he wills.
(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of *tortuous act done in contemplation or furtherance of a trade dispute* by an

agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the Trade Union."

Thus S. 18(1) provides immunity to registered Trade Unions, their office-bearers and members from civil suits or other proceeding of a civil nature in respect of *any act done in contemplation or furtherance of a trade dispute* on the ground *only* that:
(a) Such act induces some other person to break a contact of employment (such as persuation exercised on Trade Union members and others to join a strike), or
(b) such act is an interference (i) with the trade, business or employment of some other person, or (ii) with the right of some other person to dispose of his capital or his labour as he wills.
Section 18(2) provides immunity to registered Trade Unions from liability in respect of tortuous acts done by their agents in contemplation or furtherance of a trade dispute, if it is proved that the agent acted:
(a) without the knowledge of the executive of the Trade Union, or
(b) contrary to the express instruction given by the executive of the Trade Union
In *Dalmia Cement Ltd. verses Narender Anandji,* it was held that a registered Trade Union or their office bearers are liable in civil action in tort for an act of deliberate trespass.

In *Rohtas Industries Staff Union verses State of Bihar,* it was held that S. 18 of the Trade Unions Act confers immunity even in cases of strikes which are illegal under Section 22 to 24 of the Industrial Disputes Act provided it is resorted to for the purposes of "furtherance of trade disputes". The employer is not entitled to claim any damages against the workmen of a registered Trade Union which are found guilty of participation in such illegal strikes. Similarly in *Rohtas Industries Limited . Rohtas Industries Staff Union,* AIR 1976 SC 425 the Supreme Court held that workers could not be asked to make good the loss suffered by the employer because of the illegal strike the object of which was inter-union rivalry. The decision of the Patna High Court was upheld by the Supreme Court in *Rohtas Industries verses Staff Union,* (1976) 2 SCC 83.
In *Reserve Bank of India verses Ashis Kusum Sen,* (1962) 73 Cal. W.N. 388, it was held that to get the protection of S. 18, inducement for procurement of contract of employment in furtherance of a trade dispute or interference with the business of another person in furtherance of a trade dispute must be by lawful means and not by means which would be illegal or wrongful by other provisions of law. It was further held in this case that to threaten to induce breaches of contracts of employment is not actionable. It was further laid' down that movement or agitation or demonstration by the employees for the purpose of compelling employer to withdraw certain disciplinary proceedings initiated against some of them was in contemplation or in furtherance of trade dispute and thus immune from action the Civil Court.

Thus if the acts done in contemplation or furtherance of a trade dispute involve any violence or other criminal offence then the immunity will not be available. The acts of peaceful picketing are protected under S. 18. In *D. Ganesh verses State of Bombay,* AIR 1961 Bom. 459, picketing has been defined as the marching to and fro before the premises of an establishment involved in a dispute, generally accompanied by the carrying and display of a sign or banner, etc. Picketing may be accompanied by *a polite* request asking workers not to assist in the running of that

establishment or customers not to pertronise that establishment. The methods of persuasion are limited to oral and visual methods and they do not extend to physical obstruction of a vehicle or person. Right to picket limited by the equal right of others to go about their lawful affairs free from objection or intimidation. In *Simpson & Group Companies Workers & Staff Union verses Amco Batteries Ltd.,* (1992) 1 Lab. L.J. 266 (Ker.), it was held that immunity under S. 18 of the Trade Unions Act, 1926 does not extend to physical interference or duress with free movement of executives, contractors, staff, suppliers and other persons or physically obstructing the free movement of cars, vehicles and lorries carrying raw materials, work-in-progress and finished products into and out of the factory premises.

In *West India Steel Company Ltd. verses Azeez,* (1990) II LLJ 133 (Kerala), a Trade Union leader obstructed work in the factory for five hours protesting against deputation of workman to work in another section of the factory. It was held that a worker, including a Trade Union leader, inside the factory is bound to obey the reasonable instruction given by his superiors and carry out the duties assigned to him. The mere fact that such worker is a Trade Union leader does not confer him any immunity in this regard.

Unit-II: Standing Orders

Concept and Nature of Standing Orders

The Labour Investigation Committee, in its Report, at p. 113 (1946) had observed

"An industrial worker has the right to know the terms and conditions under which he is employed and the rules of discipline which he is expected to follow.

Broadly speaking, in Indian Industry the rules of service are not definitely set out and like all unwritten laws, where they exist, they have been very elastic to suit the convenience of employers.

No doubt, several large-scale industrial establishments have adopted standing orders and rules to govern the day to day relations between the employers and workers, but such standing orders or rules are clearly one sided. Neither workers organisations nor Government are generally consulted before these orders are drawn up and more often than not they have given the employers the upper hand in respect of all disputable points."

It was to ameliorate these evils that the Industrial Employment (Standing Orders) Act, 1946 was passed to require the employers in industrial establishment to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

- Before this Act, there was no law to prevent the employer from having different contracts of employment with workmen that led to confusion and discriminatory treatment.

. The Tripartite Labour Conference pleaded for defining the conditions of employment so as to create harmonious relations between employer and workmen.

Before this Act, victimisation and unfair labour practices were quite frequent. The industrial worker had no right to know the terms and conditions and rules of discipline of his employment.

To avoid friction amongst the employers and workmen employed in an industry is the principal aim of Indian Legislation in India.• It was considered that the society had a vital interest in the settlement of terms of employment of Industrial Labor and also settlement of Labor problems.• Therefore, the steps were taken by the Central Government to enact Industrial Employment (Standing Orders) Act, 1946 with a view to afford protection to the workmen with regard to conditions of employment.• Definition under the Act (Sec.2) "Standing Orders" mean rules relating to matters set out in the Schedule to the Act [Sec.2(g)] to be covered and in respect of which the employer has to draft for submission to the Certifying Officer, are matters specified in the Schedule

Objective of the Act

1. The purpose of having Standing Orders at the plant level and other commercial establishments is to regulate industrial relations.
2. . This Orders regulate the conditions of employment, grievances, misconduct etc. of the workers employed in industrial undertakings.
3. 3. Unsolved grievances can become industrial disputes.

Scope and Coverage of the Industrial Employment (Standing Orders) Act, 1946

- **i**) Establishments Covered (Sec. 1(3)
- The Act applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of preceding twelve months. (the appropriate govt can include other establishments also)
- ii) Industrial Establishment

- Section 2(e) defines "industrial establishment" to mean
- (a) an industrial establishment as defined in clause (ii) of Section 2 of the Payment, of Wages Act which defines "industrial establishment" to mean any:
- i) tramway service or motor transport service engaged in carrying passenger, goods or both by road for hire or reward.
- ii) air transport service other than such service belonging to, or exclusively employed in the Military, Naval or Air Forces of the Union or Civil Aviation, umartment of the Government of India-
- iii) Dock wharf or Jetty;
- iv) inland vessel, mechanically propelled
- v) mine, quarry or oil field;
- vi) plantation;
- vii) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use, to transport and sales;
- viii) establishment in which any work relating to construction development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.
- ix) Industrial and any other establishments as mentioned u/s 2(ii) of Payment of Wages Act. 136., as defined in Clause (ii) of Section 2 of the Payment of Wages Act, 1963;
- or
- a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 or;
- a railway as defined in Clause (4) of Section 2 of the. Indian Railways Act 1890; or
- the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

Certification Process

Procedure for certification

Section 5:- Certification of Standing Orders

(1) On receipt of the draft under Sec. 3, Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary orders certifiable under this Act, and shall make an order in writing accordingly

(3) The Certifying officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) of the certified may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

Appeals against Certification:-

Section 6:- Appeals

(1) 1[Any employer, workman, trade union or other prescribed representatives of any workman] aggrieved by the order of the Certifying Officer under sub-section (2) of Sec. 5 may, within 2[thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

Condition for Certification:-

Section 4:- Conditions for certification of Standing Orders

Standing orders shall be certifiable under this Act, if-

(a) Provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) The standing orders are otherwise in conformity with the provisions of this Act;

And it 1[shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Date of Operation of Standing Orders

Section 7:- Date of operation of Standing Orders

Standing orders shall, unless an appeal is preferred under Sec. 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Sec. 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Sec. 6.

Building Nature and Effect of Certified Standing Orders:-

- Nature of the Standing Order
- The Supreme Court in Bagalkot Cement Company Ltd. v. Pathan (K.K.). (1962) 1 L.L.J. 203)], held that certified standing orders' have statutory force and after they are certified, constitute the statutory terms of employment between the industrial establishment in question and their employees.
- Again in Western Indian Match Co. v. Workmen, AIR 1964
- S.C. 1458 the Supreme Court spoke in similar terms:
- "The terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence at the time of the enforcement of the Standing Order."

CERTIFICATION PROCESS-ITS OPERATION A BINDING EFFECT

- Submission of Draft Standing Orders by Employers
- Section 3 of the Industrial Employment (Standing Orders) Act (hereinafter referred to IESOA) requires every employer of an "industrial establishment" to submit draft standing

orders, i.e., "rules relating to matters set out in the Schedule" proposed by him for adoption in his industrial establishment.

- Such a draft should be submitted within six months of the commencement of the Act to the Certifying Officer.
- Failure to do so is punishable and is further made a continuing offence.
- The draft standing orders must be accompanied by particulars of workmen employed in the, establishment as also the name of the trade union, if any, to which they belong.
- Under sub-section 4, of Section 3, if the industrial establishments, are of similar nature, the group of employers owning those industrial establishments may submit a joint draft of standing orders.

Posting of Standing Orders:-

Section 9:- Posting of Standing Orders

The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

Modification and Temporary Application of Model Standing Orders:-

Section 10:- Duration and modification of Standing Orders

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen l[or a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) Subject to the provisions of sub-section (1), an employer or workman 3[or a trade union or other representative body of the workmen) may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five Copies of 4[* * *] the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen 3[or a trade union or other representative

body of the workmen] a certified copy of that agreement shall be filed along with the application.]

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (1) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

Section 12A:- Temporary application of Model Standing Orders

12-A. Temporary application of Model Standing Orders. (1) Notwithstanding anything contained in Sees. 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the 9't5nding orders as finally certified under this Act come into operation under Sec. 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of See. 9, sub- section (2) of Sec. 13 and Sec. 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or 'the Government of the State of Maharashtra.]

<u>Interpretation and Enforcement of Standing Orders:-</u>

Section 13A:- Interpretation, etc. of Standing Orders

13-A. Interpretation, etc. of Standing Orders . If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workmen 2[or a trade union or other representative body of the workmen] may refer the question to any one of the labour Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947), and specified for the disposal of such proceedings by the appropriate Government by notification in the official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties

an opportunity of being heard, decide the question and such Decision shall be final and binding on the parties.]

Penalties and Procedure:-

Section 13:- Penalties and procedure

(1) An employer who fails to submit draft standing orders as required by Sec. 3, or who modifies his standing orders otherwise than in accordance with Sec. 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of 1[a Metropolitan Magistrate or Judicial Magistrate of the second class] shall try any offence under this section.

Unit-III: Resolution of Industrial Dispute

Industrial Dispute and Individual Dispute

Industrial Dispute:-

Industrial Dispute is "any dispute of difference between employers and employers or between employers and workmen; or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

Industrial dispute as defined under Sec. 2(k) exists between-

Parties to the dispute who may be

- Employers and workmen
- Employers and Employers
- Workmen and workmen

a) There should be a factum of dispute not merely a difference of opinion.

b) It has to be espoused by the union in writing at the commencement of the dispute. Subsequent espousal will render the reference invalid. Therefore date when the dispute was espoused is very important.

c) It affects the interests of not merely an individual workman but several workmen as a class who are working in an industrial establishment.

d) The dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

Chandrakant Tukaram Nikam and others vs. Municipal Corporation of Ahmedabad and another[i]: It was held by the Supreme Court that the Jurisdiction of the Civil Court was impliedly barred in cases of the dismissal or removal from service, The appropriate forum for such relief was one constituted under Industrial Disputes Act, 1947.

Jadhav J. H. vs. Forbes Gobak Ltd.[ii]: In this case, it was held that, a dispute relating to a single workman may be an industrial dispute if either it is espoused by the union or by a number of workmen irrespective of the reason the union espousing the cause of workman was not the majority of the union.

Individual Dispute:-

Before insertion of Section 2-A of the Act an individual dispute could not per se be an industrial dispute, but it could become one if taken up by the Trade Union or a number of workmen. The Supreme Court and majority of Industrial Tribunals held that, a dispute raised by a dismissed employee would not be treated as an industrial dispute, unless it is supported by a trade union or by a body or Section of workman.

For an individual dispute to be declared as an Industrial Dispute, the following conditions are to be satisfied:

A body of workmen (trade Union) or a considerable number of workmen, are found to have made common cause with the individual workman;

That the dispute (individual dispute) was taken up or sponsored by the workmen as a body (trade union) or by a considerable Section of them before the date of reference.

Bombay Union of Journalists vs. The Hindu[iii]: A person working in 'The Hindu, Madras' was terminated for claiming as full time employee. The Bombay Union of Journalist raised the dispute. It was found that, there were ten employees of which seven in administrative side and only three in journalism side. Of these three, only two were the members of the union. Therefore, the Supreme Court held that the Bombay Union of Journalists is not competent to raise this dispute. Even if it had raised, it could not have become an industrial dispute.

Workmen of Indian Express Newspapers Ltd. vs. Management Indian Express Newspapers[iv]: A dispute relating to two workmen of Indian Express Newspapers Ltd, was espoused by the Delhi Union of Journalists which was an outside union. About 25 percent of the working

journalists of the Indian Express were members of that union. But there was no union of the journalists of the Indian Express. It was held that the Delhi Union of Journalists could be said to have a representative character Qua the working journalists employed Indian Express and the dispute was thus transformed into an industrial dispute.

Thus, an individual dispute to fall within the definition of industrial dispute, it must be sponsored by the Trade Union of the workmen or if there is no trade union, it must be sponsored by the majority of the workmen or it must comply with the requirements of Section 2-A of the Industrial Disputes Act, 1947.

Section 2-A provides that "where any employer discharges, dismisses, retrenches or otherwise terminated the services of any individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman nor any union of workmen, is a party to the dispute."

Any workman may make an application directly to the labour court or Industrial Tribunal for adjudication of such dispute after the expiry of 3 months when an application was made before the conciliation officer. This has been done to prevent inordinate delay.

The said application however should be made within 3 years of the date of dismissal, discharge, retrenchment or termination of service.

The court shall proceed to hear the matter as if it was referred to it U/S 10 of the ID Act.

Section 2A does not declare all individual disputes to be industrial disputes. It is only when a dispute is connected with a discharged, dismissed retrenched or terminated workman that it shall be treated as an industrial dispute. If the dispute or difference is connected with some other matter e.g. payment of bonus/ gratuity etc. then it would have to satisfy the test laid down in judicial decisions. Thus only a collective dispute could constitute an industrial dispute but collective dispute does not mean that the dispute should either be sponsored by a recognized union or that all or majority of the workmen of an industrial establishment should be parties to it. (State of Bihar vs. kripa Shankar Jaiswal[v])

A dispute is an industrial dispute even where it is sponsored by a union which is not registered but the Trade Union must not be on unconnected with the employer or the industry concerned. (Express Newspapers (Private) Ltd. Vs. First Labour Court, West Bengal & Others[vi])

Where an individual dispute is espoused by union the question of the employee being a member of the union when the cause arose is immaterial. Those taking up the cause of the aggrieved workman must be in the same employment i.e., there must be community of interest when the act complained against happened and not when the dispute was referred to

Arena of Interaction and Participants: Industry, Workman and Employer

Industry :-

Section 2(gg)(j) in The Industrial Disputes Act, 1947

(j) 7 " industry" means any systematic activity carried on by co- operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,--

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes--

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment. but does not include--

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the

foregoing provisions of this clause) and such other activity is the predominant one. Explanation.-- For the purposes of this sub- clause," agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co- operative society or a club or any other like body of individuals, if the number of persons employed by the co- operative society, club or other like body of individuals in relation to such activity is less than ten;]

Workman

(s) “Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or

whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950 (45of l950),or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison; or

(iii) Who is employed mainly in a managerial or administrative capacity; or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding [55][ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.].

Employer

(g) "Employer" means-

(i) In relation to any industry carried on by or under the authority of any department of [29][the Central Government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
(ii) In relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

Settlement of Industrial Dispute

3. Works Committee

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee

shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

Conciliation Machinery

4. Conciliation officers

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it think–, fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

[1]["(f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer:
Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(g) he is an officer of Indian Legal Service in Grade HI with three years' experience in the grade.".]

Court of Enquiry

6. Courts of Inquiry

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

Voluntary Arbitration

10A. Voluntary reference of disputes to arbitration

[1][10A. Voluntary reference of disputes to arbitration. (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

[2][(1 A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.]

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within [3][one month] from the date of the receipt of such copy, publish the same in the Official Gazette.

[4][(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.]

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

[4][(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.]

(5) Nothing in the Arbitration Act, 1940 (10 of 1940) shall apply to arbitrations under this section.]

Adjudication: Labour Court, Tribunal and National Tribunal

Labour Court:-

7. Labour Courts

[1][7. Labour Courts. (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to then-, under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless.

[2][(a) He is, or has been, a Judge of a High Court; or

(b) He has, for a period of not less than three years, been a District judge or an Additional District Judge; or

[3][* * * * *]

[4][(d)] He has held any judicial office in India for not less than seven years; or

[4][(e)] He has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.

Tribunal:-

7A. Tribunals

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule [1][and for performing such other functions as may be assigned to them under this Act].

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

(a) He is, or has been, a Judge of a High Court; or

[2][(aa) He has, for a period of not less than three-years, been a District Judge or an Additional District Judge; [3][* * *]

[5]["(b) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(c) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade."]

[4][* * * * * *]

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

National Tribunal:-

7B. National Tribunals

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal [1][unless he is, or has been, a Judge of a High Court.]

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Powers of the Appropriate Government under the Industrial Disputes Act, 1947

9B. Power of Government to exempt

Where the appropriate Government is of opinion that the application of the provisions of section 9. A to any class of industrial establishments or to any class of workmen employed in any

industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment.][1]

Unfair Labour Practice

THE FIFTH SCHEDULE : Unfair Labour Practices

[Section 2(ra)]

I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS

(1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say.-

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organized;

(c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.

(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,

(a) an employer taking an active interest in organizing a trade union of his workmen; and

(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.

(3) To establish employer sponsored trade unions of workmen.

(4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,

(a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

(c) changing seniority rating or workmen because of trade union activities;

(d) refusing to promote workmen of higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

(5) To discharge or dismiss workmen-

(a) by way of victimization;

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

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

(d) for patently false reasons;

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

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

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

(6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

(7) To transfer a workman mala fide from one place to another, under the guise of following management policy.

(8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.

(9) To show favoritism or partiality to one set of workers regardless of merit.

(10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

(11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

(12) To recruit workman during a strike which is not an illegal strike.

(13) Failure to implement award, settlement or agreement.

(14) To indulge in acts of force or violence.

(15) To refuse to bargain collectively, in good faith with the recognized trade unions.

(16) Proposing or continuing a lock-out deemed to be illegal under this Act.

II. ON THE PART OF WORKMEN AND TRADE UNIONS OF WORKMEN

(1) To advise or actively support or instigate any strike deemed to be illegal under this Act.

(2) To coerce workmen in the exercise of their right to self-organization or to join a trade union or refrain from, joining any trade union, that is to say-

(a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

(3) For a recognized union to refuse to bargain collectively in good faith with the employer.

(4) To indulge in coercive activities against certification of a bargaining representative.

(5) To stage, encourage or instigate such forms of coercive actions as willful, ,"go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.

(6) To stage demonstrations at the residence of the employers or the managerial staff members.

(7) To incite or indulge in willful damage to employer's property connected with the industry.

(8) To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.]

Unit-IV: Instruments of Economic Coercion

1. Concept of Strike

Gherao

Gherao means to surround. It is a physical blockade of managers by encirclement aimed at preventing the egress and ingress from and to a particular office or place. This can happen outside the organizational premises too. The managers / persons who are gheraoed are not allowed to move for a long time.

Sometimes, the blockade or confinements are cruel and inhuman like confinement in a small place without light or fans and for long periods without food and water. The persons confined are humiliated with abuses and are not allowed even to answer "calls of nature".

The object of gherao is to compel the gheraoed persons to accept the workers' demands without recourse to the machinery provided by law. The National Commission on Labour has refused to accept 'gherao' as a form of industrial protest on the ground that it tends to inflict physical duress (as against economic press) on the persons gheraoed and endangers not only industrial harmony but also creates problems of law and order.

Workmen found guilty of wrongfully restraining any person or wrongfully confining him during a gherao are guilty under Section 339 or 340 of the Indian Panel Code of having committed a

cognizable offence for which they would be liable to be arrested without warrant and punishable with simple imprisonment for a term which may be extended to one month or with a fine up to Rs. 500, or with both.

Gherao is a common feature even in educational institutions. You might have seen in your own University officers sometimes gheraoed by the employees / students to compel the officers to submit to their demands. Here is one such real case of gherao.

Bandh and Lock-out

Bandh, originally a Hindi word meaning "closed", is a form of protest used by political activists in South Asian countries such as India and Nepal. During a bandh, a political party or a community declares a general strike. A **Bharat bandh** is a call for a bandh across India, and a bandh can also be called for an individual state or municipality.

Often, the community or political party declaring a bandh expects the general public to stay in at home and not report to work. Most affected are shopkeepers who are expected to keep their shops closed, as well as public transport operators of buses and cabs who are expected to stay off the road and not carry passengers. There have been instances when large metro cities have been brought to a standstill.

A bandh is a powerful means of civil disobedience. Because of the huge impact of a bandh on the local community, it is a much-feared tool of protest.

Burglary, forced closures, arson attacks, stoning, and clashes between the bandh organizers and the police are common during the period of closure.

Lock-Outs:

Lock-out is the counter-part of strikes. While a 'strike' is an organised or concerted withdrawal of the supply of labour, 'lock-out' is withholding demand for it. Lock-out is the weapon available to the employer to shut-down the place of work till the workers agree to resume work on the conditions laid down by the employer. The Industrial Disputes Act, 1947 defined lock-out as "the temporary shutting down or closing of a place of business by the employer".

Lock-out is common in educational institutions also like a University. If the University authority finds it impossible to resolve the dispute raised by the students, it decides to close-down (or say, lockout) the University till the students agree to resume to their studies on the conditions laid down by the University authority. Recall, your own University might also have declared closure sometimes for indefinite period on the eve of some unrest / dispute erupted in the campus.

A lockout is a work stoppage in which an employer prevents employees from working. It is declared by employers to put pressure on their workers. This is different from a strike, in which employees refuse to work. Thus, a lockout is employers' weapon while a strike is raised on part of employees.

Acc to Industrial Disputes Act 1947, lock-out means the temporary closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him. A lockout may happen for several reasons. When only part of a trade union votes to strike, the purpose of a lockout is to put pressure on a union by reducing the number of members who are able to work.

For example, if a group of the workers strike so that the work of the rest of the workers becomes impossible or less productive, the employer may declare a lockout until the workers end the strike. Another case in which an employer may impose a lockout is to avoid slowdowns or intermittent work-stoppages. Occupation of factories has been the traditional method of response to lock-outs by the workers' movement.

TYPES OF STRIKE

Economic Strike: Under this type of strike, labors stop their work to enforce their economic demands such as wages and bonus. In these kinds of strikes, workers ask for increase in wages, allowances like traveling allowance, house rent allowance, dearness allowance, bonus and other facilities such as increase in privilege leave and casual leave.

Sympathetic Strike: When workers of one unit or industry go on strike in sympathy with workers of another unit or industry who are already on strike, it is called a sympathetic strike. The

members of other unions involve themselves in a strike to support or express their sympathy with the members of unions who are on strike in other undertakings. The workers of sugar industry may go on strike in sympathy with their fellow workers of the textile industry who may already be on strike.

General Strike: It means a strike by members of all or most of the unions in a region or an industry. It may be a strike of all the workers in a particular region of industry to force demands common to all the workers. These strikes are usually intended to create political pressure on the ruling government, rather than on any one employer. It may also be an extension of the sympathetic strike to express generalized protest by the workers.

Sit down Strike: In this case, workers do not absent themselves from their place of work when they are on strike. They keep control over production facilities. But do not work. Such a strike is also known as 'pen down' or 'tool down' strike. Workers show up to their place of employment, but they refuse to work. They also refuse to leave, which makes it very difficult for employer to defy the union and take the workers' places. In June 1998, all the Municipal Corporation employees in Punjab observed a pen down strike to protest against the non-acceptance of their demands by the state government.

Slow Down Strike: Employees remain on their jobs under this type of strike. They do not stop work, but restrict the rate of output in an organized manner. They adopt go-slow tactics to put pressure on the employers.

Sick-out (or sick-in): In this strike, all or a significant number of union members call in sick on the same day. They don't break any rules, because they just use their sick leave that was allotted to them on the same day. However, the sudden loss of so many employees all on one day can show the employer just what it would be like if they really went on strike.

Wild cat strikes: These strikes are conducted by workers or employees without the authority and consent of unions. In 2004, a significant number of advocates went on wildcat strike at the City

Civil Court premises in Bangalore. They were protesting against some remarks allegedly made against them by an Assistant Commissioner.

Hunger strike: Workers gather near the factory owner's residence and refuse to eat.

Pen down: Workers come to work on regular hours but refuse to do any work.

Rule strike: This type of strike is done by strictly abiding by company rules to the extreme, and there is no space for flexibility.

Support strike: Supporting workers from another factory also go on strike to support their fellow workers from a related factory.

Gate strike: Workers gather near the company gates and launch a strike.

Production strike: Workers produce more industrial items but now in harmony.

Go-slow: Workers work their usual hours but their productivity is greatly reduced. They deliberately work slower than usual, causing heavy losses and production delays.

Picketing and boycott: This is the act of surrounding and picketing the owner's residence, and not allowing anyone to enter the premises. Violent picketing is illegal. Boycott is disturbing the normal functioning of the business.

Sympathetic strike: This is an illegal strike done by workmen, who are fully satisfied by their employment, but support the cause of their fellow unsatisfied workmen.

Rights to Strike and Lock-out

The Supreme Court verdict in T.K. Rangarajan v. Govt. of Tamilnadu flies in the face of higher judicial precedent, as well as India's obligations under international covenants. It also threatens the stability of conciliatory and consultative arbitration procedures currently used to settle disputes.

Combat Law, Vol. 2, Issue 6 - In T.K. Rangarajan v. Government of Tamilnadu and Others (i), Justice M. B. Shah, speaking for a Bench of the Supreme Court consisting of himself and Justice A. R. Lakshmanan, said, "Now coming to the question of right to strike - in our view no such right exists with the government employee."

Even as early as 1961, the Supreme Court had held in Kameshwar Prasad v. State of Bihar (ii) that even a very liberal interpretation of article 19 (1) (c) could not lead to the conclusion that the trade unions have a guaranteed fundamental right to strike. In All India Bank Employees' Association v. National Industrial Tribunal (iii - the AIBE case) also it was contended that the right to form an association guaranteed by Article 19 (1) (c) of the Constitution, also carried with it the concomitant right to strike for otherwise the right to form association would be rendered illusory. The Supreme Court rejected this construction of the Constitution: "to read each guaranteed right as involving the concomitant right necessary to achieve the object which might be supposed to underlie the grant of each of such rights, for such a construction would, by ever expanding circles in the shape of rights concomitant to concomitant right and so on, lead to an almost grotesque result."

It was a culmination of the ratios of the Kameshwar Prasad and the A.I.B.E. cases that resulted in the decision in the highly contentious Rangarajan case. In reliance of these judgments, the Apex court was correct in opining that there exists no fundamental right to strike. But in stating that Government employees have no "legal, moral or equitable right", the Court has evolved a new industrial jurisprudence unthought-of earlier. It is true that the judgments mentioned above have rejected the right to strike as a fundamental right, but not as a legal, moral or equitable right. The question of 'strike' not being a statutory or a legal right has never even been considered in the court. Further the expression 'no moral or equitable right' was uncalled for. A court of law is concerned with legal and constitutional issues and not with issues of morality and equity.

The Rangarajan case simply ignores statutory provisions in the Industrial Disputes Act, 1947 and the Trade Unions Act, 1926, and an equal number of case laws laid down by larger benches that have recognized the right to strike. It also fails to consider International Covenants that pave the way for this right as a basic tenet of international labour standards.

Strike as a legal right

The working class has indisputably earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognizes it as their implied right (iv). Striking work is integral to the process of wage bargaining in an industrial economy, as classical political economy and post-Keynesian economics demonstrated long ago in the analysis of real wage determination.

A worker has no other means of defending her/his real wage other than seeking an increased money wage. If a capitalist does not grant such an increase, s/he can be forced to come to a negotiating table by striking workers. This s/he can do because the earnings of the capitalist are contingent upon the worker continuing to work. The argument is drawn from Ricardian and Marxian classical political economy that shows how the employer's income is nothing other than what is alienated from the worker in the process of production. When workers stop working, capitalists stop earning. The same applies to government servants as well. When they strike work, it is not the authorities who suffer a loss of income or disruption of their income generating process but the general public. Here, authorities come to a negotiating table mainly under political pressure or in deference to public opinion.

The right to strike is organically linked with the right to collective bargaining and will continue to remain an inalienable part of various modes of response/expression by the working people, wherever the employer-employee relationship exists, whether recognized or not. The Apex court failed to comprehend this dynamic of the evolution of the right to strike.

In B.R. Singh v. Union of India , Justice Ahmadi opined that "The Trade Unions with sufficient membership strength are able to bargain more effectively with the management than individual workmen. The bargaining strength would be considerably reduced if it is not permitted to demonstrate by adopting agitational methods such as 'work to rule', 'go-slow', 'absenteeism', 'sit-down strike', and 'strike'. This has been recognized by almost all democratic countries".

In Gujarat Steel Tubes v. Its Mazdoor Sabha , Justice Bhagwati opined that right to strike is integral of collective bargaining. He further stated that this right is a process recognized by

industrial jurisprudence and supported by social justice. Gujarat Steel Tubes is a three-judge bench decision and cannot be overruled by the division bench decision of Rangarajan. In the Rangarajan case the court had no authority to wash out completely the legal right evolved by judicial legislation.

Strike as a statutory right

The scheme of the Industrial Disputes Act, 1947 implies a right to strike in industries. A wide interpretation of the term 'industry' by the courts includes hospitals, educational institutions, clubs and government departments. Section 2 (q) of the Act defines 'strike'. Sections 22, 23, and 24 all recognize the right to strike. Section 24 differentiates between a 'legal strike' and an 'illegal strike'. It defines 'illegal strikes' as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23. The provision thereby implies that all strikes are not illegal and strikes in conformity with the procedure laid down, are legally recognized. Further, Justice Krishna Iyer had opined that "a strike could be legal or illegal and even an illegal strike could be a justified one" is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right to strike.

The statutory provisions thus make a distinction between the legality and illegality of strike. It is for the judiciary to examine whether it is legal or illegal. Is the total ban on strikes post-Rangarajan not barring judicial review which itself is a basic structure of the Constitution?

The workers' right to strike is complemented by the employers' right to lock-out, thus maintaining a balance of powers between the two. However, the Rangarajan judgement, by prohibiting strikes in all forms but leaving the right to lock-out untouched, tilts the balance of power in favour of the employer class.

Further, Sections 22, 23 and 24 of the Act imply a right to strike for workers and a right to lock-out for the employers. In Kairbitta Estate v. Rajmanickam (x), Justice Gajendragadkar opined: "In the struggle between the capital and labour, the weapon of strike is available to labour and is often used, as is the weapon of lock-out available to the employer and can be used by him" (xi). The workers' right to strike is complemented by the employers' right to lock-out, thus

maintaining a balance of powers between the two. However, the Rangarajan judgement, by prohibiting strikes in all forms but leaving the right to lock-out untouched, tilts the balance of power in favour of the employer class.

The Court, in opining that strikes 'hold the society at ransom', should have taken into account that the number of man days lost due to strikes has gone down substantially during the last five years. Whereas there has been a steep rise in the man days lost due to lock-outs, due to closures and lay-offs (Annual Report of the Union Labour Ministry (2002-03). In 2001, man days lost due to lock-outs were three times more than those due to strikes. In 2002 (January-September) lockouts wasted four times more man days than strikes. Who is holding the production process to ransom? Definitely, not the workers. The Apex court preferred to overlook the recent strike by the business class against the value added tax and also the transport companies' strike against the judicial directive on usage of non-polluting fuel, both of which created much more chaos and inconvenience to the common people. It is submitted that the court came to a conclusion without looking at the industrial scenario in the present times. Should the apex court not consider banning closures, lock-outs, muscle-flexing by the business class etc., which not only put people to inconvenience but also throw the workers at risk of starvation?

Besides the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 also recognizes the right to strike. Sections 18 and 19 of the Act confer immunity upon trade unions on strike from civil liability.

General Prohibition of strikes and lock-outs

Section 23:- General prohibition of strikes and lock-outs.—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 lock-out— (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings; The Industrial Disputes Act, 1947 (b) during the pendency of proceedings before [a Labour Court, Tribunal or National Tribunal] and two months, after the conclusion of such proceedings; 2 [***] 3 [(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10 A ;

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

Prohibition of Strikes and Lock-outs in Public Utility Services

Section 22:- Prohibition of strikes and lock-outs.— (1) No person employed in a public utility service shall go on strike, in breach of contract— (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of strike specified in any such notice as aforesaid; or (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen— (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed. The Industrial Disputes Act, 1947

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he, within five days, thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

Illegal Strikes and Lock-outs

Section 24:- Illegal strikes and lock-outs.— (1) A strike or a lock-out shall be illegal if— (i) it is commenced or declared in contravention of section 22 or section 23; or (ii)it is continued in contravention of an order made under sub-section (3) of section 10 4 [or sub-section (4A) of section 10A].

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, 5 [an arbitrator, a] 6 [Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out 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 7 [or sub-section (4A) of section 10A]. (3)A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Justification of Strikes and Lock-outs

Strikes - Justified and Unjustified: A strike may be technically perfectly legal in that it may not have been resorted to in contravention of the provisions of Section 22 and 23 of the Industrial Disputes Act, 1947, but still the conduct of the striking workmen may be highly reprehensible, disorderly and violent whereas the attitude of the employer may have all along shown complete reasonableness and a desire for conciliation. Similarly, a strike may have been illegal in that it may have been resorted to without due regard to the compulsory compliance of the mandatory requirements of the relevant section of the Act such as, service of notice in the case of public utility service or violation or prohibition of strike during the pendency of adjudication

proceedings, but the demands of the striking workmen may be quite legitimate, lawful and justifiable whereas the attitude of the employer may have shown malafides. unreasonableness and motive of exploitation. These peculiar features of the strike situation prompted those responsible for the administration of 26 Section 51(I) of Queensland Act Section 99 of New South Wales Act. 149 industrial law to try to classify strikes which are otherwise legal into categories of justified strike and un justified strikes.

Strike - When Justified Although strike is a legitimate and sometimes unavoidable weapon in the hands of workers and may be resorted for securing their demands to improve their conditions, yet the justifiability of a strike has to be viewed from the standpoint of fairness and reasonableness of the demands made by workmen and not merely from the standpoint of their exhausting all other legitimate means open to them for getting the demands fulfilled. However, in Gandhiji's view, a strike of inevitable, has to be called out after negotiations for the settlement of workers' just demands have collapsed and the demand for arbitration has been turned down or the arbitration has been turned down or the arbitration has failed should pass the below mentioned test: 1. The cause of the strike must be just;

2. There should be practical unanimity among strikers;

3. No violence should be used against non-strikers;

4. Strikers should be able to maintain themselves during the strike period without falling back upon union funds and should therefore occupy themselves in some useful and productive temporary occupation . In Chandramalai Estate, Ernakulum v. its workmen K.C. Gupta J. stated that while on the one hand it has to be remembered that strikes is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demands a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request had been made, may well be justified. Collective bargaining for

securing improvement on matters like basic pay, dearness allowance provident fund, bonus and gratuity, leave and holidays is the primary object of a trade union and when demands like these ate put forward and thereafter, a strike is resorted in an attempt to induce the employer to agree to the demands or at least to open negotiations, the strike Majumdar P. An anatomy to Peaceful Industrial Relation at p.54. 28 1960(II) LLJ 243 at p.246. must prime facie be considered to be justified unless it can be shown that the demands were put up frivolously or for any ulterior purpose. Even where the strike was not directly connected with the demand for bonus and uncontroverted evidence established that the strike was a protest against the unreasonable attitude of the management, in boycotting the conference held by the Labour Minister, the strike was held to be not unjustified. In the case of workmen of Bihar Fire-works & Potteries Union v. Bihiar fire works & potteries Ltd. What happened was that the workmen resorted to one hour token strike by way of protest against the dismissal of six workmen. A new days later, the management issued a notice intimating that appropriate deductions would be made from the wages of those who had taken part in the one hour's token strike on 22nd January, 1951. The management issued another notice intimating that further appropriate deductions would be made from the salaries of those who went on token strike for the second time on 1st February, 1951, and thereafter the management did make the deductions. The tribunal to which the matter was referred held both the token strikes as 'frivolous and unjustified' and the striking workmen, therefore, were not entitled to wages for the period of the token strikes. The Appellate Tribunal, to which the matter was referred on appeal, observed that the strikes were not illegal as they did not contravene the provisions of Section 22 and 23 of Swadeshi Industries Ltd. v. Its Workmen,(1960)(II) LLJ. Churakulum Tea Estate (p) Ltd. v. Its Workmen, (1969)(II) LLJ 407. 31 1953 ILL.J.49. the Industrial Disputes Act, 1947. But the point to be considered was whether the strikes were justified or not. It was held by the Appellate Tribunal that the strike cannot be said to be unjustified unless the reasons for it are absolutely perverse and unsustainable. The awards of the tribunal was set aside and it was directed that deductions made from the workmen's wages should be paid back to them. If an employer behaves in an unreasonable manner, if he curtly turns down all worker's demands and refuses to consider them on their merits, if he resorts to unfair labour practices and if he rejects conciliation and arbitration, workers will be regarded as justified in taking recourse to a strike weapon. When a strike, legal

or otherwise, is found to be justified in the sense in which this term is used by Industrial Tribunals, what is normally meant by that finding is not that there is complete justification for the strike, or that the authority in judging the nature of the strike, approbates the action of the workers in going on strike under the circumstances, and where the strike being illegal and against the express prohibition imposed by the law a finding of complete justification of the strike or approbation of the conduct of the workers participating therein is impossible for any Tribunal. Apart from any drastic step that the employer might be entitled to take in consequence of the strike, not only does the law positively disapprove and prohibit such action, but it imposes penalties for the same and also from time to time serious disabilities, in many respects, have been provided by legislature for workers any. which can be looked for in such cases can only be a relative justification, such as can be found when the workers have reason to entertain a bonafide unredressed grievance, which renderthe circumstances in which they happen to be placed., is found to be such as to make them feel that the only course left to redress the grievance effectively and without under delay is some stoppage of work. In this country, the question of payment of wages during periods of strike is not covered by legislation nor is there an accepted code of jurisprudence in this regard. The points generally considered by adjudicator in awarding a strike pay is whether the strike was legal or whether the strike was in consequence to an unfair labour practice on the part of the employer. Sections 22 to 24 of the Industrial Disputes Act, 1947 describe the circumstances under which a strike or lock-out is illegal and fifth schedule section 2 of the act givers a list of unfair labour practices on the part of the employer as well as the employees. With regard to the issue of payment of wages during a strike period there has been a body of decisions by adjudicators. In the recent years arguments are put forth for and against the award of strike pay in context of the circumstances leading to each dispute. There had been no uniform trend smanshahi Mills Ltd. v. Its workmen, (1959)(I) LL.J. 187. But there is a gradual emergence of a body of principles that has guided the adjudicators, Industrial Tribunals in deciding the issue of strike pay. From trend of general arguments advanced by adjudicators it would appear that only in exceptional cases, should the workers be awarded wages during the periods of strike. The board determining principle is no work - no wage. When a strike has been occasioned by the employment of an unfair labour practice by the management or where the employees had been always willing to submit to arbitration which the management has not

agreed to, it would be open to an Industrial court to award strike pay if the strike had been legal and had been conducted peacefully. The first and foremost important consideration taken into account by the Adjudicators, Industrial Tribunals in deciding the issue of payment of wages during a period of strike. The legality concept has to be determined taking into view the relevant provisions of the Industrial Disputes Act 1947. If the strike is found to be illegal, the strikers would have no claim for pay during the period of strike. The next consideration is was the strike Justified. There will be circumstances in which a strike may be justified and a concerned action alone might bring about the redress of a genuine grievance and in such cases the strikers are entitled, to wages during the strike period. The another consideration taken by the adjudicators while adjudicating the strike pay is was the strike occasioned by an unfair labour practice by the employer. If the employer commits an unfair labour practice, the workers are entitled to strike pay. Technical reasons also come into play in rejecting the workers claim for pay during the periods of strike. There had also been instances where the question of strike pay was amicably settled by agreement between the employers and workers. In determining the amount of pay to be awarded during a period of strike the Adjudicators, Industrial Tribunals have often followed the method of apportioning blame and awarding strike pay in accordance with the extent of blame attached to the parties. The strike pay cannot be claimed as a legal right since there exists no statutory provision relating to this aspect. However the relief of wages for the strike period is granted not as a normal legal relief but based on compassionate and equitable grounds on account of economic disparity between the employer and the worker. It is found to be otherwise unjustified. It is not only the end but the means too that must be reasonable and just. The judiciary has taken up the issue of strike pay and it had put forth the arguments for and against it taking into view the facts of the case and the circumstances leading to the dispute. The following case law helps us to know as to when a strike pay is awarded and under what circumstances a striker is entitled for strike pay. It was in the case of Mahalaxmi Cotton Mills v. Their Workmen. The appellate Tribunal held that the right to get pay for the period of the strike depends on the question whether the strike was legal or illegal. But however this reasoning has been rejected by Mukherjee J. in Golaghat Zilla Chah Mazdoor Sangh v. Hautley Tea Estate. It was decided in the case of United Commercial Bank Ltd., v. A.C.Kakkar and Others that workmen who have gone on illegal strike are not entitled to wages for the period of strike. The workmen may have their

fundamental right to do work and withhold it at their pleasure and they are free to choose their own time to launch a strike but this right has nothing to do with the right to get wages during the period of strike. Ordinarily they are not supposed to be compensated for any loss that may be sustained by them during strike period. The strike being deliberate act on the part of workmen they must be prepared to take all the consequences arising out of it. The workmen have no right to wages for the period of a strike when the strike though not illegal is unjustified. Ordinarily upon failure of a conciliation proceeding, the workmen must wait for reasonable time to enable the government to make reference of a dispute for adjudication. However, when a lock-out declared by the employer is unjustified, the workmen are entitled to their full wages for the whole period of the lockout. The workmen are not bound to report for work or to take part in any conciliation proceedings, while the illegal lock-out continues, and their claim to wages for the period of lockout cannot be denied merely on that account. When lock-out is declared in consequence of an illegal strike, ordinarily the workmen are not entitled to wages for the period of the lockout, but if the lock-out duration, both parties are equally to blame for the situation which arises and the workmen should get half their wages for the period of lock-out. Where the strike was held neither illegal as it did not contrivance any statutory provisions nor unjustified as it was launched for half a day as a protest against the unreasonable attitude of the management in boycotting a conference held by the labour Minister of the State, the workmen were held to be entitled to full wages for that day . Chandra Malai Estate, Ernakulam v. Its Workmen, AIR (1960) SC. 902. Indian Marine Service (Pvt) Ltd., v. Their Workmen, AIR (1963) SC. 528. 39 Chorakulam Tea Estate (P) Ltd., v. Its Workmen, (1969) II LL.J. 407. 158 In P.C. Roy & Co. (India) Pvt. Ltd. v. Raycom Forests Labour Union,40 the employer failed to pay work men wages on the due dates, although he did pay the same after some time. The workmen went on strike, and continued even after the wages have been paid. The Calcutta High Court held that the strike was unjustified only up to the date of payment and accordingly allowed worker claim for wages for the period of strike only up to such date. Where during the strike period and even prior to that, several of the workmen resorted to violence and other acts of indecency and the workmen continued the strike even after the notification issued prohibiting the strike and requiring the workers to report for duty and the circumstances clearly showed that the demand of the union regarding ex-gratia bonus could not be considered to be of an urgent and serious nature, the

launching of the strike was held to be unjustified. Hence, the workmen were held to be not entitled to any wages for the period of strike41 . Where the workmen concerned went on strike which was held to be illegal for the reason that an appeal was pending during the period of the strike, the workmen are held to be not entitled to the wages for the period of the strike. The Supreme Court in Crompton Creaves Ltd. v. Its Workmen AIR (1964) Calcutta 221. Management of the Fertilizer Corporation of India v. Their Workmen, AIR (1970) SC. 867. Lord Krishna Sugar Mills Ltd. v Sharanpur Case, (1952) I LLJ 803. observed. It is well setted in order to entitle workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statue. Again a strike are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of the case. In the case of Life Insurance Corporation of India v. Amlendu Gupta a Division Bench of the Calcutta High Court held that the "strike being legal and justified, the employees were entitled to salaries for the period of the strike". On the question whether the High Court in its constitutional writ jurisdiction could mandate LIC to pay the employees their salaries for the period of strike, the court held that it was within its powers to do so. In the case of Statesman Ltd. v. their Workmen45 the Supreme Court held that even in the case of an illegal strike, the industrial adjudicators are empowered to grant wages, in cases where circumstances warrant grant of wages. Relying on the above judgment the Bombay High Court in Balmer Lawrie & Co. Ltd., Bombay v. Balmer Lawrie Employees Union and another46 upheld the award of 35 percent wages to the workmen during the AIR (1978) SC 1489 44 (1989) Lab. ICJ. 484 45 (1976) I LL.J.484 46 (1989) II LL.J 97 160 strike period not with standing the fact that the strike was illegal under the Industrial Disputes Act. In the case of Indian General Navigation & Railway Co., Ltd. v. Their Workmen, the Supreme Court has held that there can be no question of an illegal strike being justified and the workmen are not entitled for strike pay. In the case of Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, the Supreme Court has held that although the strike is illegal, it does not parse spell unjustifiability and the workmen are entitled for wages. A perusal of the above mentioned case law goes to show that the strikers are entitled to strike pay depending upon the legality and justifiability of the strike. But in the year 1990 there came an important pronouncement by a Division Bench of the Supreme Court keeping

aside the earlier judgments and a complete departure from earlier precedents on the workers' right to wages during the strike period. It almost choose to rewrite the law and even its attention was not drawn to its earlier pronouncements. It was in the case of Bank of India v. T.S.Kelawala that a new dimension was created relating to the wages during the strike period. 47 SC (1960) I LLJ 13 48 SC (1980)I LLJ 137 49 (1990) 4 SCC 744 161 In the above case, the court was dealing with two appeals, one dealing with the question of employer's power to deduct wages for the period of strike and the other with the power of the employer to deduct wages in a situation where employees resort to go-slow tactics. The court in a common judgment deal with the two issues raised in these appeals separately. Dealing with the question of employer's right to deduct wages during the period of strike, the court ruled that where the contract or standing orders or the service rules regulations are silent on the issue of worker's entitlement to wages during the strike period, the management has the power to deduct wages for absence from duty when the absence is a concerted-action on the part of the employees whether the strike was legal or illegal. The court held that the question whether the deduction from the wages would be pro-rata for the period of absence only or would be for a longer period would depend upon the facts of each case, such as whether there was any work to be done in the said period, whether the work was in fact done and whether it was accepted. But where there is a dispute as to whether employees attended the place of work or put in the allotted time of work or not, the dispute has to be investigated by holding an enquiry into the matter. In such cases, no deduction from wages can be made without establishing the act of omission or commission on the part of the employees concerned. Where the employees strike only for some hours but there is no work for the rest of the day, the employer in such a situation may be justified in deducting salary for the whole day. On the other hand where the employees may put in work after the strike hours and the employer accepts it, the employer may not be entitled to deduct wages at all or be entitled to deduct them only for strike hours, P.B. Sawant J observed that "Whether the strike is legal or illegal, the workers are liable to lose wages for the strike period. The liability to lose wages does not either make the strike illegal as a weapon or deprives the workers of it. When workers resort to it, they do so knowing full well of its consequences. During the period of strike, the contract of employment continues, but the workers with hold their labour, consequently they cannot expect to be paid." The court did not agree with the arguments of the employees that wages cannot be deducted prorate for the

hours or for the day or days for which the workers were on strike, because the contract was monthly which cannot be subdivided into days and hours. The court felt fortified in its conclusion by reading section are definition of wages and Section.2q strike definition together. The court held that a combined reading of these two definitions makes it clear that wages are payable only if the contract of employment is fulfilled and not otherwise. The court made it clear that in a case where action is resorted to in a mass scale, some employees may have either not been party to the action or may have genuinely desired to discharge the duty but could not do so for failure of the management to give the necessary protection or on account of other circumstances, the management will not be justified in deducting wages of such employees without holding an enquiry. Strike dealing with the aspect of deduction of wages during the period of go slow, the court held that unlike in the case of strike where a simple measure of a prorate deduction from wages may provide a just and fair remedy, the extent of deduction of wages on account of a go-slow action may in some cases raise complex questions. The court held that go-slow was a serious misconduct being a covert and more damaging breach of the contract of employment and it had no hesitation in holding that the employer is within his right to make deduction from the wages of the workmen who resort to go-slow. The approach of the court towards the entitlement of wages for the strike period is not desirable. The industrial adjudication in Indian has consistently followed the principle that entitlement to wages for the strike period was to be decided keeping in view whether the strike resorted to was legal and justified. Even the supreme court has in appropriate cases awarded the percentage of wages to workers even during illegal strike taking into view the facts and circumstances of those cases. The trade union in India find themselves in peculiar situations because of the lack of resources and also social security measures for workers being conspicuous by their absence, outright denial of wages even in cases of legal and justified strikes strictly tantamount to denial of the right to strike for securing of which the workers had gone through many trials and tribulations. Granting of wages in cases of legal and justified strikes and also in some other cases, where the strikes were technically illegal, being in contravention of statutory provisions, but otherwise considered to be justified, notwithstanding the fact that the terms of contract of employment or standing orders were silent on the issue, is necessitated by the considerations of social justice. The court has treated employer - employee relationship as merely one of law of contract issue and it wanted to

imbibe into the working class, work culture which of late has fallen to the lowest ebb. But in a welfare state like ours, the employer-employee relationships cannot be looked at merely from the stand point of laws of contract but has to be considered in the broader context of social justice. no work - no pay has been the basis of this decision. However, apart from the decision of the supreme court, one should keep in view that strike pay is desirable upon satisfying of the following conditions namely the strike was legal, the object of the strikes was justified and the workers sought help of redressal mechanism available under the law before resorting to strike.

Penalty for illegal Strike and lockout

Section 26:- Penalty for illegal strikes and lock-outs.— (1) Any workman who commences, continues or otherwise acts in furtherance of, a 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. (2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out 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 one thousand rupees, or with both.

Wages for Strikes and Lock-outs

In Cropton Greaves Ltd. v. Workmen, it was held that in order to entitle the workmen to wages for the period of strike, the strike should be legal and justified. A strike is legal if it does not violate any provision of the statute. It cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether particular strike is justified or not is a question of fact, which has to be judged in the light of the fact and circumstances of each case. The use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would disentitle them to wages for strike period.

The constitutional bench in Syndicate Bank v. K. Umesh Nayak decided the matter , the Supreme Court held that a strike may be illegal if it contravenes the provision of section 22, 23 or 24 of the Act or of any other law or the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as

the service conditions of the workmen, the nature of demands of the workmen, the cause led to strike, the urgency of the cause or demands of the workmen, the reasons for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules provided for a machinery to resolve the dispute, resort to strike or lock-out as a direct is prima facie unjustified. This is, particularly so when the provisions of the law or the contract or the service rules in that behalf are breached. For then, the action is also illegal.

Right of employer to compensation for loss caused by illegal strike-

In Rothas Industries v. Its Union , the Supreme Court held that the remedy for illegal strike has to be sought exclusively in section 26 of the Act. The award granting compensation to employer for loss of business though illegal strike is illegal because such compensation is not a dispute within the meaning of section 2(k) of the Act

Workmen can claim wages only if the lockout is illegal.(North Brook Jute Co.). It has to be adjudicated whether the lockout is illegal and unjustified if any claim on wages is made by the workmen.

2.Lay off

Retrenchment

The above is a very informal definition of retrenchment. Retrenchment has more to it than just termination of employment by a employer. There are a host of legal provisions which govern the practice of retrenchment. Section 2 (oo) of the Industrial Disputes Act, 1947 defines Retrenchment as -

“the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman, or

(b) retirement of the workman on reaching the age of superannuating if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of the workman as a result of the non-removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(d) termination of the service of a workman on the ground of continued ill-health;

The definition of retrenchment was not included in the Industrial Disputes Act, 1947 in its original form. It was inserted by Amendment to the Act in 1953. Thus the Industrial Disputes A ct, 1947 provides for certain conditions in which the termination of employment would not be considered as retrenchment. It is intersting to note here that the provision (bb) to Section 2(oo) was inserted later through the Amendment Act 49 of 1984. Section 2(oo)(bb) provides that termination of employment on non - renewal of employment agreement upon its expiry shalll not be considered as 'retrenchment'. Before this provision was added to the Act, the Courts were of the opinion that non - renewal of such contracts of employment would constitute retrenchment for the purpose of this Act. This opinion was expressed by the Supreme Court in Hindustan Aluminum Corporation v. State of Orissa. It was later realized that the judgment was a bad judgment and the provision (bb) was subsequently added to the section.

Transfer and Closure: Definition of Lay-off and Retrenchment
Compensation

An Employer Who Intends To Close Down An Industrial Undertaking Wherein 50 Workmen Or More But Less Than 100 Are Employed Or Were Employed During The Preceding 12 Months Has To Serve A Notice To The Government In "Form Q" Atleast 60 Days Before The Date Of Intended Closure Stating The Reasons For The Proposed Closure As Laid Down Under Section 25 FFA Of The Industrial Disputes Act, 1947.

In Respect Of An Industrial Undertaking Employing 100 Or More Workmen On An Average In The Preceding 12 Months, The Employer Has To Obtain Prior Approval Of The Government At

Least 90 Days Before The Date Of Intended Closure By Giving An Application In Form QA To Secretary To Government (Labour) As Stipulated Under Section 25(O)(1) Of The Industrial Disputes Act, 1947. A Copy Of The Application Shall Be Served Simultaneously On The Representatives Of The Workmen Also.

The Government Shall Grant Such Approval, If It Is Satisfied With Regard To The 'Genuineness And Adequacy Of The Reasons' Stated For Closure , The Interests Of The General Public And All Other Relevant Factors. The Government Will Communicate The Order Within 60- Days From The Date Of Application For Closure By The Employer.

RETRENCHMENT

Under Clause (C) Of Sub-Section (1) Of Section 25 N, In Respect Of An Industrial Establishment Employing 100 Or More Workmen On An Average In The Preceding 12 Months, The Employer Has To Obtain Prior Approval Of The Government Atleast 60 Days Before The Date Of Intended Retrenchment By Giving An Application In Form PA To Secretary To Government (Labour), Pondicherry

No Workman Employed In Any Industry Who Has Been In Continuous Service For Not Less Than One Year Under An Employer Shall Be Retrenched By That Employer Until

The Workman Has Been Given One Month's Notice In Writing Indicating The Reason For Retrenchment And The Period Of Notice Has Expired, Or The Workman Has Been Paid In Lieu Of Such Notice, Wages For The Period Of The Notice;

The Workman Has Been Paid, At The Time Of Retrenchment, Compensation Which Shall Be Equivalent To Fifteen Days Average Pay (For Every Completed Year Of Continuous Service) Or Any Part Thereof In Excess Of Six Months; And

Notice In Form P Is Served On The Secretary To Government (Labour), Pondicherry.

The Employer Is Also Required To Serve Three Months' Notice Of His Intention To Retrench The Workman With Reasons For The Same, To Every Workman Who Is Being So Retrenched. Alternatively, The Employer May Pay Wages For The Period Of The Notice, In Lieu Thereof.

LAY-OFF

An Employee Is Said To Have Been Laid-Off On Any Day, If The Employer Fails, Refuses Or Is Unable To Provide Him Employment On That Day Within Two Hours Of His Presenting Himself For Work At The Normal Appointed Time, On Account Of Shortage Of Coal, Power Or Raw Materials, Or Accumulation Of Stocks Or Break-Down Of Machinery Or Natural Calamity Or For Any Such Other Reason. The Expression "Any Other Reason" Should Be Constructed To Mean Reason Similar Or Analogous To The Preceding Reasons.

Under Rule 75A Of The Industrial Disputes Act, 1947, Where More Than 50 And Less Than 100 Workmen On An Average Per Working Day Have Been Employed In The Preceding Calendar Month In An Industrial Establishment Which Are Not Of Seasonal Nature, The Employer Is Required To Give A Notice Of Lay-Off Of Workers In Form O-1 Within 7 Days Of Such Lay-Off. Notice Of Withdrawal Of Lay-Off Is Also To Be Given In Form O-2 Within 7 Days Of Such Withdrawal.

In Case Of Factories, Mines And Plantation Establishments Employing 100 Or More Workers, On An Average Per Working Day In The Preceding 12 Months, (Excluding Seasonal Establishment), The Employer Cannot Lay-Off Any Workman Without Obtaining Prior Approval Of The Government, Except When Such Lay-Off Is Due To Shortage Of Power Or Natural Calamity. Permission Can Be Obtained By Submitting An Application In Form O-3 To Secretary To Government (Labour) Within 60 Days Before The Commencement Of Lay-Off Stating The Reasons For The Intended Lay-Off As Provided Under Chapter V Of The Industrial Disputes Act, 1947. A Copy Of The Application Should Be Served Simultaneously On The Workmen Also. The Procedures To Be Observed For Lay-Off, Retrenchment, Transfer And Closure Of An Undertaking Is Tabulated Below

Number Of Workers Retrenchment Lay-Off Closure Transfer Of Undertaking

1 To 49 (A) One Month's Notice To Workman Or Wages In Lieu.

(B) Payment Of 15 Days Wages For Every Completed Year Of Continuous Service.

(C) Notice To Be Given To The Government

(D) Principle Of Last Come, First Go To Be Adopted Not Applicable (A) One Month's Notice To Workman Or Wages In Lieu.

(B) Payment Of 15 Days Wages For Every Year Of Completed Continuous Service. (A) One Month's Notice To Workman Or Wages In Lieu.

(B) Payment Of 15 Days Wages For Every Completed Year Of Continuous Service.

(C) No Notice Or Compensation Required If Service Is Continued.

50 To 99 Same As Above (A) Declaring Lay-Off By Pasting On A Notice Board, Either For All Or For A Section Of Workers.

(B) Payment Of 50% Of Basic Wages And D.A Payable To The Worker Concerned.

(C) Commencement And Termination Of Lay-Off To Be Intimated To The Government Within 7 Days Such Commencement And Termination. (A) And (B) As Above.(C) 60 Days Notice To Government Required. Same As Above

100 And Above (A) 90 Days Notice To Workman Or Wages In Lieu.

(B) 90 Days Notice To Government Seeking Permission

(C) On Grant Of Permission, Payment Of 15 Days Wages For Every Completed Year Of Continuous Service. (A) 60 Days Notice To Government Seeking Permission.

(B) Simultaneous Notice To Workmen.

(C) On Grant Of Permission Payment Of 50% Of Basic Wages And D.A. Payable To The Worker Concerned.

(A) 90 Days Notice To Government Seeking Permission.

(B) Simultaneous Notice To Workmen.

(C) On Grant Of Permission Payment Of 15 Days Wages For Every Completed Years Of Continuous Service. Same As Above.

Compensation to Workmen in Case of Transfer of Undertaking Closure

25FF. Compensation to workmen in case of transfer of undertakings - Where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately 1 Section 25-FF ins. by Act 41 of 1956, Section 3 (w.e.f. 4.9.1956) and Subs. by Act 18 of 1957 Section 3 (w.e.f. 28.11.1956). The Industrial Disputes Act, 1947 before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if— (a) the service of the workman has not been interrupted by such transfer; (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.]

Conditions: Precedent for Retrenchment

25N. Conditions precedent to retrenchment of workmen

(1) No workman employed in any industrial establishment to which this Chapter applies , who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section(l) has been made, the appropriate government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (l) and the appropriate government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication:

PROVIDED that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Special Provisions Relating to Lay-off; Retrenchment and Closure in certain Establishments

25K. Application of Chapter VB

(1) The provisions of the chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 3[one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently the decision of the appropriate Government thereon shall be final.

25L. **Definitions**

For the purposes of this Chapter.-

(a) "industrial establishment" means-

2. Chapter VB added by Act 32 of 1976, sec. 3 (w.e.f. 5-3-1976).

3. Subs. by Act 46 of 1982, sec. 12, for the words "three hundred" (w.e.f. 31-8-1984).

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (G) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,-

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of section 2] established by or under any law made by

Parliament,

the Central Government shall be the appropriate Government.

25M. Prohibition of lay-off.-

(1) No workman (other than a badli work- man or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except 1[with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay- off is due also to fire, flood, excess of inflammable gas or explosion].

2[(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub- section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub- section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and

1. Subs. by Act 49 of 1984, sec. 4, for certain words (w.e.f. 18-8-1984).
2. Subs. by Act 49 of 1984, sec. 4, for sub-sections (2) to (5) (w.e.f. 18-8-1984).

adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub- section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub- section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the

workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

1[(10)] The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation.- For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment

1. Sub-section (6) renumbered as sub-section (10) by Act 49 of 1984, sec. 4 (w.e.f.18-8-1984).

belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

1[25N. Conditions precedent to retrenchment of workmen.--

(1) No workman employed in any industrial establishment to which this Chapter

applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made,

1. Subs. by Act 49 of 1984, sec. 5, for section 25 N (w.e.f. 18-8-1984).

the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub- section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub- section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the

time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

1[25O. **Procedure for closing down an undertaking.-**

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply for prior

1. Subs. by Act 46 of 1982, sec. 14, for section 250 (w.e.f. 21-8-1984).

permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1) the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is

made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the a appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a I tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this' sub-section, it shall pass an award within a period of thirty days from the date I of such reference.

(6) Where no application for permission under sub-section (1) is made.) within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub- section (2) or where permission for closure is deemed to be granted under sub- section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

25P. Special provision as to restarting undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976.-

If the appropriate Government is of opinion in respect of any undertaking or an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976)-

(a) that such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;

(b) that there are possibilities of restarting the undertaking;

(c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to I restart the undertaking or both; and

(d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking,

it may, after giving an opportunity to such employer and workmen, direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

25Q. Penalty for lay-off and retrenchment without previous permission.-

Any employer who contravenes the provisions of section 25M or 1[* * *] of section 25N shall be 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.

25R. Penalty for closure.-

(1) Any employer who closes down an undertaking without complying with the

provisions of sub-section (1) of section 250 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

1. Certain words omitted by Act 49 of 1984, sec. 6 (w.e.f. 18-8-1984).

(2) Any employer, who contravenes 1[an order refusing to grant permission to close down an undertaking under sub-section (2) of section 250 or a direction given under section 25P], shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

2[*****]

25S. Certain provisions of Chapter VA to apply to industrial establishment to which this Chapter applies.-

The provisions of sections 25B, 25D, 25FF, 25G, 25H and 25J in Chapter VA shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this Chapter apply.]

Procedure for Retrenchment and Re-employment of Retrenched Workmen and Penalty

RETRENCHMENT COMPENSATION and THE AMENDMENTS

As mentioned earlier the has discretionary power to retrench the employees. Thus it is clear that the workmen without any fault are deprived of their right to work but are they compensated for

this? That's really a vital question and most surprisingly the original enactment of 1947 contained no provision for retrenchment compensation. As a result amendment became necessary and in this respect the 3 amendments respectively of 1953, 1964 and 1976 are mention worthy.

1953 AMENDMENT :- IN 1953 a huge stock had accumulated in textile industries. Textile mills were in a mood to close one or more shifts. The closure must have resulted in retrenchment or laying-off a large number of textile employees causing great unrest in the whole of the textile industry. In order to overcome the situation the president of India promulgated The industrial Disputes (Amendment) Ordinance, 1953 to take effect from 24th October, 1953. The Ordinance made provision for payment of compensation for lay-off and retrenchment. The said Ordinance was repealed and replaced by The Industrial Disputes (Amendment) Act, 1953 on 23rd December, 1953. By this amendment Ss. 25-A to 25-J under Chapter V- A was introduced to the Act. Among these sections Ss. 25- F, 25-G and 25- H deals with retrenchment provisions

1976 AMENDMENT:- The 1976 amendment inserted another chapter called Chapter V- B which contains the special provisions relating to lay- off and retrenchment. This Chapter is applicable to the following industries : • Industry not being seasonal or in which work is not performed only intermittently and in which not less than 100 workmen are employed on an average per working day in the preceding 12 months. • This means that the rest are covered by the provisions of Chapter V-A.

GENERAL PROVISIONS APPLICABLE TO BOTH THE CHAPTERS S. 25-G & 25-H • Both the chapters are guided by two principles which are : • (1) "FIRST COME LAST GO, LAST COMNE FIRST GO" (2) PRINCIPLE OF RE-EMPLOYMENT

Conditions for FIRST COME LAST GO AND LAST COME FIRST GO PRINCIPLE • To claim protection under this principle: • (1) he must be a workman and the establishment he works in is an industry within the meaning of this Act (2) he must belong to a particular category of workman.

Conditions for PRINCIPLE OF RE- EMPLOYMENT • It is based on the known principle that when a workman has been retrenched by the employer on the ground of surplus staff, such workman should first be given an opportunity to join service whenever an occasion to employ another hand arises. This section imposes a statutory obligation on the employer to give opportunity to the retrenched employees to offer themselves for re- employment. However in order to claim preference in employment a workman must satisfy the following conditions: • (1) he should have been retrenched prior to re- employment; (2) he should be a citizen of India; (3) he should offer himself for re-employment in response to the notice by the employer (4) he should have been retrenched from the same category of service in the industrial establishment in which the re- employment is proposed.

CHAPTER V-A • S. 25-F deals with some mandatory pre-conditions which the employer must fulfill otherwise the retrenchment would become invalid and it would attract penalty u/s 31 (2) of the Act. It says that : • (a) Notice : One month prior notice indicating the reasons for retrenchment must be given to the employee or wages should be paid for the period of notice in lieu of the notice • (b) Compensation : The workman should have been paid at the time of retrenchment, compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess if six months • (c) notice in the prescribed manner should be given to the appropriate government or to the specified authority by the appropriate government. • If the above 3 steps are not complied then the retrenchment will be void ab-initio and the employee would be entitled to all consequential benefits as if there had been no retrenchment.

CHAPTER V-B • S.25-N contains some mandatory pre-conditions which are to be followed by industries under Chapter V- B. it can be summarised into the following steps: • 1. Notice : 3 months prior notice indicating the reasons for retrenchment must be given to the employee by the employer and in absence of such a notice wages for th period of notice should be paid to the employee. • 2. Application : An application in the prescribed manner seeking the permission of retrenchment should be given to the appropriate government or any authority specified by the appropriate government. • 3. Enquiry : On receipt of the application the authority makes an enquiry in this behalf in the industrial establishment. • 4. Order : after conducting enquiry and after considering all factors in this respect the authority issues its order, either granting or

refusing the application. If the authority does communicate its order within a period of 60 days from the receipt of the application then it is deemed to be granted. • Incase the application is granted then the employer can go for retrenchment after providing the employee, at the time of retrenchment, compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. • However in case, no application is made or the applicaton is refused then there will be no retrenchment and the workman will be entitled to all such benefits as I f there had been no retrenchment. • In addition to this there is another penal provision for the employer u/s 25- Q

PENALTY • S.25-Q: an employer who cotravenes the provisions of s. 25 –N shall be penalised as follows: • (1) imprisonment upto one month or • (2) fine upto Rs. 1000 • (3)with both.

Disciplinary Action and Domestic Enquiry

"Domestic enquiry"

1. Objective: To highlight the procedure for a fair and proper domestic enquiry as per requirements of law.

2. Why we go for domestic enquiry ? In today's context no employer can discharge or dismiss a delinquent workman even for a serious misconduct without following an elaborate procedure fortaking disciplinary action.

3. It is only when the workmen is found guilty of the charge in an enquiry conducted as perthe principal of natural justice, that the employer after following the procedure can punish him as perthe company's standing orders. Principal of natural justice : • No man shall be the judge in his own cause • Both sides shall be heard.

4. Rules of natural justice : • the employee proceeded against had been informed clearly of the charges leveled against him. • The witnesses are examined ordinarily in the presence of the employee in respect of the charges • The employee is given fair opportunity to cross- examine the witnesses • The employee has been given reasonable opportunity to defend.

5. Suppose the employer has dismissed/ discharged a workmen after following the procedure, conducting a fair and proper enquiry. Now the question is whether his decision can be challenged? The answer is yes. Decision can be challenged by the workmen under section 2-A of the ID Act, 1947 by raising an industrial dispute and for this he need not have support of any trade union or other workmen. However, if an employee is not a workman he can not raise industrial dispute under the IDAct.

6. The question of bonafides (genuine) may be raised and it will be open to the court to consider whether the employer had acted bonafide or was actuated by the desire to victimize the workman. The tribunal orLC may interfere into quantum of punishment (11-A-I.D.Act), may order reinstatement of the worker with back wages Now again you have to prove the genuineness of the your decision. In case tribunal finds that management was motivated or has acted with unnecessary harassment, or there was victimization or unfair labor practice than what ?

7. The management will be guilty of committing basic error of the fact. Basic error of fact. If the findings at the enquiry is based on extraneous (irrelevant) matter or if the workman is found guilty and punished on a charge not disclosed in the charge sheet

8. Steps Involved In The Procedure For Disciplinary Action A. Issue Of The Charge-sheet

- It is advisable to obtain a written complaint before issuing a charge-sheet and as far a possible conduct a preliminary enquiry.
- The charge-sheet should be drafted in a clear and unambiguous language.
- Wherever possible, the relevant clause of the company's standing orders should be mentioned.
- If the charges are related to a incident, the date, time, place of occurrence should be mentioned.
- The charge sheet framed should be signed by the disciplinary authority.
- If the charge sheet is vague, whole enquiry will be

9. The charge-sheet framed should be served personally, if possible, and acknowledgement to that effect should be obtained from him. IN CASEHEIS ON LEAVEORREFUSES TO

ACCEPTTHE CHARGE-SHEET The same should be sent to his local and home addresses by registered post with acknowledgement due and getting his refusal attested by two witnesses. IN CASE HE REFUSES TO TAKE DELIVERY OR CHARGESHEET IS RETURNED UNSERVED WITH THE REMARKS OF THE POSTAL AUTHORITIES The same should be kept intact without opening and the charge-sheet should be displayed on the notice boards or action should be taken as per provisions in the standing orders. Also, the contents of the charge-sheet may be published in a local news paper having wide publicity.

10. B. SUSPENSION PENDING ENQUIRY WHY SUSPENSION DURING PENDING ENQUIRY ? This is required when management considers that his physical presence might endanger the safety of other workman or if it is apprehended that he might intimidate (Scare) others or tamper with the evidence. In such case subsistence allowance should be paid as per law.

11. C. CONSIDERATION OFTHE EXPLANATION AFTER A CHARGE-SHEET HAS BEEN SERVED, WITHIN THESPECIFIED TIMEFOR REPLY, HOWHEMAY REACT?

12. * Admitting the charges and requesting for mercy * Denying the charges and requesting for an enquiry * Not submitting any explanation at all • Requesting for more time to submit explanation. • Giving an ambiguous orobscure reply.

13. D. NOTICEFORTHEENQUIRY After consideration of the explanation of the charge-sheeted employee or when no reply received with-in the specified time limit, the management should issue an office order appointing an enquiry officer or an enquiry committee, to hold the enquiry of the charge- sheet. He can be an official of the company oreven an outsider, but care should be taken to appoint only such a person who is neither a witness nor personally connected or interested in the matter WHO CAN BEAN ENQUIRY OFFICER?

14. The enquiry officer. WHO WILLISSUETHEENQUIRY NOTICE? The date, time and place of the enquiry, asking the workman to present himself with his witnesses/documentary evidence if any, for the enquiry. Representative may also be allowed as per Standing orders. WHAT SHOULD BE THE CONTENTS OF THE ENQUIRY NOTICE? If sufficient cause in advance is

produced, new date should be given otherwise ex-party enquiry may be conducted. IFWORKMAN FAILS TO ATTENDTHEENQUIRY ?

15. Not less than 48 hours from the date of receipt of the notice of the enquiry. HOW MUCH TIME SHOULD BE GIVEN TO THE WORKMAN BEFORETHEENQUIRY IS HELD?

16. E. HOLDING OFTHEENQUIRY WHATIS THEBASIC OBJECTIVE? This is to find out whether the workman is guilty of the charges leveled against him in the charge-sheet, or not. In doing so, the enquiry officer gives the workmen a reasonable opportunity to defend himself by cross- examining the witness/ documentary evidences etc. produced against him. The workman can also make an statement apart from what he stated in reply to the charge-sheet.

17. IT IS FOR THE MANAGEMENT TO PROVE THE CHARGES AGAINST THE WORKMAN BY PRODUCING EVIDENCEDURING THEENQUIRY, AND ITIS NOTTHE WORKMAN WHO HAS TO PROVEHIS INNOCENCE. UNLESS MANAGEMENT SIDE HAS BEEN ABLE TO PROVE THE CHARGE AGAINST THE WORKMAN, HE SHALLBECONSIDERED“NOTGUILTY” IT IS OF FUNDAMENTAL IMPORTANCE THAT JUSTICE SHOULD NOT ONLY BE DONE, BUT SHOULD MANIFESTLY AND UNDOUBTEDLY BE SEEN TO BE DONE. THEDILEMMA

18. F. THEENQUIRY WHO SHOULDBEPRESENT? * THEENQUIRY OFFICER * THE MANAGEMENT REPRESENTATIVE * THE CHARGE - SHEETED WORKMAN (AND HIS REPRESENTATIVE, IF ANY)

19. G. THEPROCEDURE * Record the date, time and place of enquiry, name of the persons present and obtain their signatures on the sheet. * Read out and explain the charge and reply of the charge-sheet to the workman and get his confirmation to that effect. (In case workman has not accepted the charges in reply to the charge-sheet, he should be asked if he pleads guilty of the charges. If charge is admitted, that should be recorded and signatures of all concerned with date should be taken).

20. * Explain the worker concerned the procedure to be followed during the enquiry 1. The management representative will produce witness/ documentary evidence /exhibits in support of

the charge and the workman concerned will have opportunity to cross- examine. 2. Thereafter, he will be given opportunity to produce witness/ documentary evidence /exhibits and the MRwill have a right to cross-examine them. 3. He will have further opportunity to make a statement, if any, in his defense. 4. At any stage of enquiry, the Enquiry Officer can seek clarification from any witness or the charge-sheeted workman by putting questions.

21. * Witness in support of the charge are to be examined one by one in the presence of the charge-sheeted workman and he should be given opportunity to cross-examine them. IN CASE CHARGESHEETED WORKMEN DECLINES TO CROSS-EXAMINE ANY WITNESS OR HE HAS NO FURTHER QUESTIONS TO ASK DURING THE CROSS EXAMINATION OFA WITNESS WHATIS TO BEDONENEXT? AN ENDORSEMENT TO THAT EFFECT SHOULD BE MADE BY THEENQUIRY OFFICER

22. * Now, charge-sheeted workman should be asked to produce his own witness one by one and the MR should be allowed to cross-examine them. * The charge-sheeted workman should be asked to give his statement after witnesses have been examined and cross-examined. IN CASE CHARGESHEETED WORKMEN DECLINES TO PRODUCEANY WITNESS/DOCUMENTARY EVIDENCE, OR TO GIVEANY STATEMENT WHATIS TO BEDONENEXT? THE ENQUIRY OFFICER SHOULD MAKE A RECORD TO THAT EFFECT IN THE ORDER SHEET AND OBTAIN SIGNATUREOFALLCONCERNED.

23. IF THE ENQUIRY REMAINS INCOMPLETE IN THE FIRST SITTING AND SOME MORE WITNESSES ARE REQUIRED TO BEEXAMINED WHATIS TO BEDONENEXT? It may be continued next day or on any other day mutually agreed by both sides. In such cases, the enquiry officer should record the same in the order sheet and obtain signatures of all concerned.

24. SIGNATURES WITHDATE * ON EACHPAGEOFENQUIRY PROCEEDINGS - THECHARGE-SHEETEDWORKMAN - HIS REPRESENTATIVE, IFANY - MANAGEMENTREPRESENTATIVE - ENQUIRY OFFICER SHOULD ALSO SIGN ON EACH PAGE AFTER ENDORSING THAT THE STATEMENT HAS BEEN RECORDED BY HIMAND EXPLAINED TO THEPARTIES IN THEIRLANGUAGEBEFORETHEY WEREASKEDTO SIGN. IN CASEWORKMEN REFUSES TO SIGN ? THE ENQUIRY

OFFICER SHOULD MAKE AN ENDORSEMENT TO THAT EFFECTANDGETITATTESTEDBY OTHERPRESENT

25. H. THEENQUIRY REPORT AFTER ENQUIRY IS OVER, THE ENQUIRY OFFICER IS REQUIREDTO MAKEAN "APPRECIATION" OFTHEEVIDENCE ON RECORDTO DRAWHIS OWN CONCLUSION. IF THERE IS NO COLLOBORATIVE EVIDENCE ON A PARTICULAR POINT OR WHEN THERE IS CNFLICTING EVIDENCES ? THE ENQUIRY OFFICER HAS TO GIVE HIS OWN REASONS FORACCEPTING ORREJECTING THEEVIDENCE. The enquiry report should clearly indicate whether the charges leveled against the workmen are proved or not. The conclusion should be logical and based only on the evidences brought out during the enquiry.

26. I. FINALDECISION OFTHEPUNISHING AUTHORITY Before taking a decision on the findings of the enquiry officer, the punishing authority is required to furnish a copy of the enquiry officer's report to the concerned workman even if he agrees with the findings. After considering gravity of the misconduct, the past record of the workman, he may pass an order on the quantum of the punishment after recording his reasons for the same in writing. An order in writing is passed to that effect clearly mentioning the charges proved with date from which order is to become effective and is communicated to the charge-sheeted workman.

Management's Prerogative during the Pendency of Proceedings

Section 33:- Regulation of the Management prerogative Section 33(1) prior permission with respect to matters Section 33(1) prior permission with respect to mattersλ connected with the pending dispute connected with the pending dispute Required both to change the service conditions connected Required both to change the service conditions connectedλ with the pending dispute and for disciplinary action with the pending dispute and for disciplinary action connected with the pending dispute connected with the pending dispute Section 33(2)No permission for matters not connected with Section 33(2)No permission for matters not connected withλ the pending dispute for making alterations in service the pending dispute for making alterations in service conditions conditions Punishment in connection with matters not connected with Punishment in connection with matters not connected withλ the pending dispute

the pending dispute - only approval required only approval required Punjab Beverages case (1978)2LLJ1SC 3judges Punjab Beverages case (1978)2LLJ1SC 3judgesλ – order not void ab initio not void ab initio – no direct claim for wages no direct claim for wages – he can go he can go u/s . 1o u/s . 1o Jaipur ZSB Jaipur ZSBλ - v -R.G.Sharma(2001)ILLJ 639SC 5judges R.G.Sharma(2001)ILLJ 639SC 5judges – reversed the above rulin reversed the above ruling.

Notice of Change

9A. Notice of change

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

PROVIDED that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any [61][settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.]